Transcript of U.S. DEPARTMENT OF EDUCATION NEGOTIATED RULEMAKING

Date: April 08, 2015

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 8, 2016 9:03 a.m.

Court Reporter:

Kim M. Brantley, C.S.R.

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NEGOTIATED RULEMAKING COMMITTEE:

SUSAN PODZIBA, Facilitator
PATRICK ROONEY, Moderator
ARY AMERIKANER, Moderator
KAY RIGLING
JANEL GEORGE
LIZ KING
RON HAGER
MARCUS CHEEKS
TONY EVERS
LYNN GOSS
REGINA GOINGS
RICHARD POHLMAN
ERIC PARKER
LARA EVANGELISTA
MARY CATHRYN RICKER
AUDREY JACKSON
RYAN RUELAS
KERRI BRIGGS
LISA MACK
RITA PIN AHRENS

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NEGOTIATED RULEMAKING COMMITTEE CONTINUED:

AQUEELHA JAMES

AARON PAYMENT

LESLEY HARPER

THOMAS AHART

DERRICK CHAU

ALVIN WILBANKS

ALSO PRESENT:

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

JUDY BECKER, Technical Assistant

Office of the General Counsel

PUBLIC COMMENTATORS: KANDISE LUCAS MARY JEWELL, NAACP TICHI PINKNEY EPPES LAQUETTA MASSEY

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MS. PODZIBA: It looks like everyone's here. So if everyone would take their seats, we can get started.

All right, good morning. Welcome back to day three of the great slog. A lucky thing for all of us is it's also Friday, so at the end of the day we get to actually go home to our families and play for a few days.

I wanted to let everybody know that Delia has a family emergency, so she won't be here today, and Liz is her designated alternate. So when I'm asking for a consent and dissent, Liz is authorized to dissent as the alternate for Delia, who is not here. And that's consistent with our protocols.

That said, I'm going to turn it to Patrick and Arv. We're going to start with Supplement Not Supplant. From there we'll go to Issue 6 on assessment, which is just a few things left that we haven't looked at in the package, and then we'll find out if the Department's been able...
to review and revise any of the issue papers that
we got through yesterday. But we'll know more
about that later.

So for now we're going to focus on
Supplement Not Supplant.

Ary.

MR. AMERIKANER: Hi, there everybody.

It's good to see you again. I know I've been the
only lucky one of us to not be at this table the
whole last three days, so as a reminder, my name
is Ary and I'm in our Office of Elementary and
Secondary Education, and I just wanted to take a
second to say thank you again from all of us at
the Department.

I know we are the ones here who this is
our full-time day job, and you all have other
full-time day jobs that you are not attending to
fully right now, and we appreciate your thought
and effort and willingness to be here and work
with us.

And I personally really appreciated the

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conversation we had about this topic two weeks ago. I hope that you will see it was really helpful for me and for the rest of the team working on this topic here at the Department and I hope that you will see your thoughts from that conversation reflected in the draft text that is in our issue paper for today.

Just to bring us back out of assessments and into Supplement Not Supplant world this morning, I wanted to briefly just reiterate that the purpose of Title I, as we all know at this point of the ESSA, is to provide all children with significant opportunity to receive fair, equitable and high-quality education and to close educational achievement gaps.

As you all are well aware I know at this point, the law contains a provision that is designed to insure that these Title I funds have a chance of actually achieving that goal and achieving that purpose and to insure that these Title I funds are used to supplement state and
local funds and not to supplant state and local funds.

So the supplement not supplant requirement is not new in the ESSA, but the ESSA did change the Supplement Not Supplant requirement. So the text that we are here to talk about today is designed to help districts, to help clarify for districts how they meet that statutory requirement.

So I think this is very short compared to what you guys have been working on in Assessment. So I thought I would just do a very quick walkthrough of the whole two pages right now, paragraph by paragraph, and then open it up for questions and input.

So, if you turn to Page 4 of the issue paper, the paragraph (A) is the In General paragraph which -- I'll give everybody a second to get there. Paragraph (A) is the In General and simply restates section 1118(b)(1) and (3) of the law.
Paragraph (B), Compliance, is where we propose language to implement the statutory compliance requirements that insures that Title I funds are used to provide truly supplemental support in high-poverty schools.

Within paragraph (3) you'll see that there's (B)(1), School Costs or Services, and then (B)(2) which starts on the top of Page 5, which is Districtwide Costs or Services. We'll walk through each of those, but I just wanted to point out that distinction before we started on the schoolwide, or on the school section.

So School Costs Or Services, paragraph (B)(2) focuses on schools and services, and then (B)(1) little (i) or romanette (i) states that each district must annually demonstrate compliance and leaves the time and manner of such check to the states to determine.

Then (B)(1) little (ii), or romanette (ii), states that "Each district may determine the methodology it will use to allocate state and
local funds to its schools, provided that the
methodology results in two things," A and B on the
bottom of Page 4. A is that "it results in the
district spending an amount of state and local
funds for people in each Title I school that is
equal to or greater than the average amount spent
for people in non-Title I schools," and we took
the suggestion that we heard at the table a couple
weeks ago to use the -- not reinvent the wheel
there and use the reporting requirement that's all
ready written into the law for that purpose.

And then paragraph (B), the other
requirement, is that the methodology allocates an
amount of state and local funds that is sufficient
to enable each Title I school to provide its
basic -- its basic educational program. So A is
just that, the basic, and little (i) I guess is
the basic educational program as defined under
state or local law, and this is to insure that a
school can literally keep its doors open and
continue to function without Title I funds, so
that Title I funds are actually supplemental on
top of a basic program of school.

And then (ii) is saying that if "each
Title I school needs to have enough state and
local funds to provide services required by law
for students with disabilities and for English
learners". And there I should say that IDEA
funding can be included in that calculation for
the students with disabilities.

And then moving on to Page 5, there's a
paragraph that is much more limited on
districtwide costs or services, so this simply
says that to comply with the requirement, the
statutory requirement in allocating state and
local funds for districtwide costs or services,
which we know might be things like transportation
or, you know, other types of districtwide
services, "An LEA must insure that each Title I
school receives a share of those costs or services
that are equal to or greater than the share it
would otherwise receive if it were not a Title I
And then we go into Exceptions in paragraph (iii) and this again I think you'll see is reflective of the conversation that we had a couple of weeks ago.

So the first exception is that "A district may demonstrate compliance with the requirement around insuring that each Title I school has as much as the average non-Title I school in the district and expenditures, either districtwide or on a grade-span basis".

So this is reflecting the fact that often times it's more expensive to run a high school, say, than an elementary school. So it gives districts the flexibility to choose which way they want to do that.

Exception two is that "A district with only a single-school or a single-school for grade span does not have to meet the compliance requirements that was related to comparing schools". So we think that clearly wouldn't make
much sense and also is in response to some of the
issues that I believe were raised last time.

And then for paragraph (iii), romanette
little -- romanette (iii), we spell out a couple
of additional flexibilities. One is that a
district may choose to exclude a school that
enrolls fewer than one hundred students in their
calculations and comparisons of expenditures. We
know that any time you do something on a
per-people basis, if you have a very, very, very
small number of students, it sort of makes the
calculations hard and makes, by definition, the
per-people expenditure go up.

It also allows a district to exclude
supplemental state or local funds expended in any
school for programs that meet the intent and
purposes of Title I districts, which we think will
respond to some of the concerns that we heard last
time, I forget now who it was, but this worry
about having schools who are high poverty but
maybe not the highest poverty, or getting Title I
1 districts to try to allow some flexibility there.  
2 And then we put in the transition  
3 timeline. This says that a district has two  
4 options. One is to demonstrate to the state no  
5 later than December 10th, 2017, that its current  
6 methodology meets the requirements, and that's the  
7 statutory dates. And then it also gives an option  
8 instead for a district to submit a plan to their  
9 state by that date to say how they will meet the  
10 requirement by the 1920 school year.  
11 We're open to respond to some of what  
12 we heard about meeting three-year budget cycles  
13 and needing time to plan ahead.  
14 Then the last little bit is just prior  
15 to the use of this new requirement, the district  
16 can choose to use either the methodology it plans  
17 to use under this new law or the methodology it  
18 was using under the old law to meet the Supplement  
19 Not Supplant requirement.  
20 So that's the whole overview and I  
21 would love to answer clarifying questions or just
hear suggestions and comments.

MS. PODZIBA: Tony.

MR. EVERS: Thank you.

I have several foundational tech questions, but I'll just hold it to one and see what other people have questions about.

First of all, as I saw his law or this process become law in non-rules, I was really excited about the possibility of equity being enhanced, and I'm concerned that it may work just the opposite, but that's just an overall question.

First I want to go back to the basic educational program and sufficiency around that. How will that be determined in Wisconsin where there's no statutory language around that? How will sufficiency -- I mean, will auditors come in and determine a basic education program? Is it going to be done by schools?

I'm from the old days when Title I kids were sent down the hall, and I'm fearful that this will help us revisit those old days, which we
1 don't want.
2 So one of the basic starting blocks
3 here is the basic education program, other to
4 determine who determines the sufficiency, and how
5 will that all be operationalized as this is an
6 important operational issue. This is in a high
7 level.
8
9 MR. AMERIKANER: Thanks, Tony. That is
10 a good question --
11 MS. PODZIBA: Excuse me, Kerri, did you
12 say you have something?
13 MS. BRIGGS: I just have a basic
14 question.
15 All of this is regulatory text? This
16 is just in different treatment? Like the font's
17 different? It's all black.
18 MS. PODZIBA: Yes.
19 MS. BRIGGS: I miss the colors.
20 MR. AMERIKANER: I apologize.
21 MR. AMERIKANER: It is all regulatory,
22 guys, and that is purely just a feature of that
it's been the big bureaucracy and different teams
working on preparing different documents. So
please take nothing from the fonts being different
or the colors being different. It is all the same
on Page 4 and 5. This is proposed draft
regulatory language, and as I said at the
beginning, the In General paragraph at the top,
paragraph (A), is all just restating statutory
language, if that helps. And then the remainder
is helping to clarify statutory language.

And Patrick points out, hopefully, and
Richard was also helping out too, that there is no
existing Supplement Not Supplant regulation. This
is just much simpler to think through than the
Assessment piece.

MS. PODZIBA: Now we're all on the same
page. So to Tony's question.

MR. AMERIKANER: To Tony's question.

So I think where there is state and local law, it
would be state and local law. Where there is not
state and legal law, or where there is not state
law at least, which is I think what you said, it
would be whether if there is any local law
provided, then local law I think controls or, if
there are not laws, then policies.

I don't know where exactly you're going
with it, but we could consider changing it to not
say "laws," but "policies and rules," or "laws,
rules and policies" or something like that, if
that would help.

MR. EVERS: Well, it could be. I just
don't know how to deal with that. This music,
art, and phy ed, is that basic? Is guidance
basic? Help me out. I've got to run this gig.

So tell me how that's going to work.

And if I can't define it, how, you know, like I
said, is the auditor going to come and say, well,
this is what is going to be here on Franklin, and
you're not sufficiently -- you're not meeting the
sufficiency test.

MR. AMERIKANER: So is it helpful to
give -- there are two examples I can think of
where this has come up in the past. This has actually been in our Guidance documents in the past, so that's where this language comes from.

The two examples that I can come up with, and Kay really might be able to speak to this more, is the one example where a school district literally did not have enough money to operate the school buses, like the transportation in its district, and so without Title I funds it would not have been able to actually continue to get kids to school. And so it felt pretty clear that Title I funds were not supplementing a basic educational program there when you literally can't get your kids to school.

And the other example that I know of off the top of my head is where a school district did not have enough funds to actually provide a second grade teacher in all of its elementary schools, and so they just literally couldn't provide the basics.

So those are the two examples that I
know of that we're trying to get at here is that
Title I funds shouldn't be used to literally keep
your doors open and provide the basic educational
program.
MR. EVERS: So, in those two cases, who
determined that, the sufficiency?
MR. AMERIKANER: I think in those
cases --
MS. RIGLING: Yeah, we most certainly
did not determine sufficiency. We turned it back
to the state or district and said, you know, What
is it that you have to provide -- as Ary said --
in order to keep your doors open and you don't use
Title I funds for that basic provision of
services?
We're not telling you what those are,
but Title I funds can't be used to provide what a
district is otherwise required to provide for
basically free appropriate public education --
free public education. I don't want to say
"appropriate".

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MR. EVERS: Sorry --

MS. PODZIBA: That's ok. I think Alvin may have another question related to your question.

Alvin, is your point related to this question of basic educational programs?

MR. WILBANKS: In a way it is, and it's sort of a general question.

You know, ESSA basically carries forward the NCLE 2015 strategy for compliance for Supplement Not Supplant.

MR. AMERIKANER: This piece was in that 2015 guidelines.

MR. WILBANKS: I get that and I also get that Title I is to supplant.

MR. AMERIKANER: To supplement. We know what you meant.

MR. WILBANKS: Yeah, supplement. So, why, since 2015, why such a change, in particular how you go about making the decision of Supplement Not Supplant as it relates to average cost and
individual cost in salaries?

I'm concerned, and I'm sure a few other people are here too, how this gets played out in the district. More importantly, it is very disruptive that you -- you know, references you may have to or at least some of the methodology which say you have to change veteran teachers in one school, in order to reach this, or spend a lot more money.

I think that is inherently disruptive. I'm not sure that's not a tremendous overreach in the operation of schools. And again, I get the Supplement Not Supplant. I get that. I have no problem with it. And I believe as a district that's tried for many, many years to close the achievement gap as has been recognized by publications, based solely on that. I think we get that.

My biggest concern is how it's going to impact the day-to-day operations, certainly the yearly operations of the industry, in order to
meet what I'm considering an artificial recommendation or an artificial criteria to average in a cost spent on first year or whatever.

There are a lot of things that go into that. Just transferring a teacher, traffic patterns are horrendous. We have traffic -- I'm not sure to arrive in LA every day, but we're second in terms of traffic. All of those things are disruptive to people. They don't have anything to we're trying to get at here in providing an equitable, fair, the highest possible education available for all students.

So that's a big challenge that I think we need to sort of address.

MS. PODZIBA: Ary?

MR. AMERIKANER: I definitely want to hear from everybody else. I just wanted quickly to say on that we, Alvin, on that last point, certainly I agree with the idea of forced teacher transfers is a terrible idea and terrible policy.

So I just wanted to put that out there.
MS. PODZIBA: So are these cards up for the same point that Tony raised?

Ok, Lynn?

MS. GOSS: In our school district, we hover around that forty-percent mark anyways, and so now this year we have actually fallen below that forty percent. So we will be on waivers for next year.

So what happens in year two, year three, you know?

It just seems like it's really hard to figure out what will happen and what will have to actually be cut, after having Title I funds, it becomes -- it's not like there's one teacher and one parent that does all of the Title, because in a schoolwide Title, every teacher is a Title, every Paraeducator is a Title staff. And so, it gets imbedded when you put in that you're also working with response to intervention, the interventions that are happening.

And so, we've created a system in our
school where we do have the Title I services that
somewhat could be looked at as separate, and you
could take that layer off, but there's just so
much that we have embedded as far as, you know,
supplementing the classrooms with additional
books, additional things like that.

So, how do you figure out what we can
take away and keep it basic?

MR. AMERIKANER: Can I just ask a
clarifying question, so I understand your
question?

Are you worrying about your individual
school falling under forty-percent poverty and
therefore, going from a schoolwide Title I program
to a Target Assistance program, or are you worried
about losing all of your Title I funds or what?

I'm just trying to understand a little
bit more the question that you're asking.

MS. GOSS: It just changes the dynamic
of it. And then what happens, you know, how do we
define what that basic is in our school district?
We've already made cuts. We've lost our tech ed teacher. Our phy ed has gone down to one or two days a week, our music program is cut, art's cut. We have all of these cuts because of the funding system that we have, and so then what is then -- to Tony's point, what's basic?

You're talking about all those things, you know, phy ed should be more a part of the basic than it is. The health, our health classes are completely taken out.

And so, if you can't define what's basic, then how do you know if you're supplementing or supplanting?

MR. AMERIKANER: Yeah, I think we -- I certainly feel your pain and I hear about the cuts that you are facing, and I think one of our concerns is that we don't think that at a federal level we should be defining what is the basic educational program. And so I hope that you can work with your district and your state to figure out how to define that.
But I think our concern is that Title I funds, that at least -- at a bare minimum that Title I schools have enough money to keep their doors open and are not getting shortchanged relative to other schools in their district.

Right, so that at a bare minimum the highest poverty schools should be getting as much as the schools that are less stricken by high concentrations of poverty.

While I a hundred percent feel your pain, our concern is that we're trying to take a step forward here. You know what I mean? So we're trying to say, at least have enough to keep the basics.

So if your district had a policy that every school had to provide art, then presumably that would be part of the basic educational program, but it would be up to your state and district.

MS. GOSS: Because the percentage of kids that need the services don't change. Because
in our school you're talking maybe ten kids, you know, depending on -- coming in and out, but those ten kids coming in and out of the system would determine whether we get any of the funds.

MS. PODZIBA: Thomas?

MR. AHART: I'd like to echo what Alvin shared. We have a pretty high poverty level districtwide, and where we've had the most success a lot of that has involved -- in some schools in particular, that has involved replacing a lot of staff. And I can tell you that the average age of the staff in the schools has not gone up when we have done significant replacement to improve the quality of instruction.

So we don't have good measures or systems in the country, or even by state, to measure teacher quality. And I would say that seniority, which really drives the cost, is not a good proxy for that.

And so the disruption that we would have to undertake to be in compliance would force
us to not serve students as effectively as we currently are.

MS. PODZIBA: Richard?

MR. POHLMAN: Sure. I have some questions about one of the -- I think it piggybacks on something Tony said.

When I read this I thought about two different ways in which I've interacted with Supplement Not Supplant in my roles as a school leader. The first is when we're doing our applications with the state agency, and the second is when we're audited under our circuit audit, the wonderful A133 audits. And I love auditors, let me preface it by saying that. I love them, really do. They're doing great work.

That said, when there is a void, when there is something that is undefined, it takes us a lot of time in working with auditors to mature that definition and to come to a place where, you know, they are reading the law, and they are reading your regs, that they want us to show them.
1 How did you define your basic -- that's going to
2 be the question, right? Show me how you define
3 your basic education program. Well, we don't have
4 a local law.
5                       Ok, absent the local law, my fear is
6 that they may use things like the prior year's
7 allocations, the prior year's salary allocations.
8 They may start using things that would
9 historically define the program historically
10 offered.
11                       My concern with that is that it becomes
12 a cap or a limitation on innovative practices. I
13 think that anything that begins to have that
14 chilling affect is actually -- I think this is
15 what Thomas said, and some are saying this, it's
16 contradictory to some of the tenants of really
17 advancing how we're serving our most needy
18 students.
19                      Again, I speak from this perspective.
20 Like my schools are super-high poverty, ninety
21 percent in one of them. I think that we are
concerned that wherein there might be conflation
to it at a state level, saying, Oh, if you're
using Title I funds to, for instance, cover a
salary of an FTE of a teacher, that couldn't be
done... Look, when you're ninety-percent poverty,
it can be done.

And I think this gets to a space where
you've created in turn where auditors and state
officials may conflate, and I'm concerned about
the unintended consequences here.

So I want to offer those out. I don't
have a lot of solutions to it. So like my
solution would be can we strike it or can we
better explain it? Can we add a "such as"? Can
we do some things that would somehow -- I don't
want to use the term "soften," but it's the word
that comes to mind, because of these
considerations.

And I think too that this question of
when it's not defined in state and local law...

Love our legislators, love them, just like
auditors. They are all wonderful people who often
times though don't understand the practical
implications of a definition they made, and it
takes years for those definitions to mature under
local law, and one sort of slide of the pen can
create audit findings for every LEA in the state
or can have really detrimental impacts.

Also I think you find that locally many
times a legislature can't come to consensus about
what this might mean. So I think you're kind of
going down a path where it's fraught with a number
of things that were brought up for me that I just
like put on the table. I know that there's a ton
of stuff.

MS. PODZIBA: Tony.

MR. EVERS: I guess I said enough about
the basic program. I just absolutely cannot
figure out how that's going to work. Let me go
someplace else.

Equity is a huge issue in the state of
Wisconsin, and we have a long way to go. One of
the ways that we're attempting to go, and I hope
to get the legislature to buy in on this is,
change our school funding formula -- which is
inherently bad and it's broken -- to include,
similar to California where foster kids are
counted, ELL kids are counted; essentially
weighting a whole number of kids that frankly
aren't giving a good shape of our state.
If we do that, I believe -- I don't
know how that's going to work, first of all.
Because what we -- any non-Title I school that has
any of these kids, whether they get more money, I
just -- how is that going to work? Operationally,
how is that going to work?
MR. AMERIKANER: Susan, I'm happy to
answer this.
MS. PODZIBA: No, I think that you may
have moved -- are we still on basic educational
programs or are you bringing up--
MR. EVERS: Which kids. I'll wait.
MS. PODZIBA: Ary and Marcus, are you

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on basic educational program? Liz is waiting for new issues.

MR. CHEEKS: That's where I am also.

MS. PODZIBA: Ok, Aaron?

MR. PAYMENT: My statements are fundamental to basic education and Supplement Not Supplant.

So two examples really quickly is in my community the local city used U.S. state funding -- used us to qualify a community, because we didn't have indoor plumbing, in the city limits in the early '70's to qualify for sanitation dollars. And then they used the funds to do a beautiful park downtown and left us without sanitation funds.

And so they supplanted their obligation and they actually used funding specifically for an equity purpose.

And then also a university that I worked at used Title III dollars to buy qualified -- using our disadvantaged population to
qualify, and then used the dollars to buy computers and not service our needs. And the argument was, well the computers have a possible benefit for the disadvantaged population.

So as far as the concern about keeping your records straight, we have eight different funding cycles, because we have to go and apply for grants. We get some trust fund grants from the federal government, and we have to keep separate budgets, separate checkpoints and separate audits for all of that. And it's cumbersome, but it's what you have to do.

So, you know, I'm concerned about-- and the reason why these regulations exist is out of experience. It happened for a reason. And they became Guidance and now they're finally Regulation because it wasn't clear what the state could or could not do.

So you don't recognize for the state's rights people, the default is that it is in the law, and so it will be left to interpretation,
probably left to litigation. So it seems like there should be a desire to want to quantify it to some extent without overreaching.

And then the other thing is that I'm a little confused to hear the arguments that the state legislators don't have the competency, and I happen to agree with that, but you can't argue for state rights and then argue that the states aren't going to get you the regulations to clarify for you. You can't argue out of both sides of your mouth on that argument. You have to respect state's rights and then put the pressure on them.

And we know as educators that the legislators don't know anything about education and they are entrusted to make the rules. But you can't argue for state's rights and then say that the state doesn't have the competency to create the regulation.

Finally, you know, I'm just concerned about balancing budgets on the backs of the most disadvantaged populations and then not having the
equity measures to meet their needs.

So I'm not saying that that's overt any more, but I think it's to our benefit to clarify it in Regulation so that it's very clear, and then it's incumbent on you to get with your legislators to get them to write regulations that are clear so that you're not overburdened with regulations.

Remember, the default is, it is in the law and you have to do it. So you shouldn't want to then clarify what that means.

MR. EVERS: This has nothing to do with putting things in buckets.

MS. PODZIBA: Hang on, Tony --

MR. EVERS: It has to do with the kids.

Doing it this way is going to impact poor kids in a negative fashion. That's my issue. It's not about whether we have enough auditors to put things in buckets.

MS. PODZIBA: Excuse me, so the question is how do we get it to work so it measures the goal and protects the kids. So
that's really the charge to the group is how do we make this work?

Liz, you're up next.

MS. KING: Yeah, just to sort of round out the basic education thing before moving into another point...

I absolutely agree with the clarity.

And anything that sort of creates ambiguity for auditors I think doesn't serve any of us well.

I think we would likely have different interpretations. Auditors are likely to have different interpretations. So I think one of our goals is going to be the greatest clarity we can get to minimize the discretion that auditors have, just because there is a particular history on auditors not supporting the best instructional decisions or the best equity decisions.

I just wanted to sort of echo the concerns about that in making sure that we have clarity and are limiting the discretion auditors have to make their own determination about things.
And then in terms of a new issue, I wanted to strongly push back on this exclusion of funds from the calculation for the demonstration of compliance. I wanted to push back on the exclusion of funds expended for the intent and purpose.

As we know, the intent and purpose of Title I, while rooted in equity, is pretty broad, and I think that that exclusion is just too broad, and I worry that when a district does their calculation to demonstrate their compliance, I think they could just exclude way, way too much under that. So I really wanted to express a high degree of concern about that provision and ask that it be stricken.

So, my proposal would be to strike 3(3)(b).

MS. PODZIBA: Ary?

MR. AMERIKANER: Sorry, Liz, when Kerri asked -- this is our downside of not using colors.

When Kerri asked I should have pointed out that
this is straight from the statute. So it can't --
we can circulate this part of the statute, because
it wasn't in the part that we sent. And I
apologize for that. That's my fault. But I
wanted to make sure you know that -- so it says
(D). It's Section 1118(D), and it says "exclusion
of funds for the purpose of complying with
subsections (B) and (C)".

So (B) is the Supplement Not Supplant
section and says "An SEA or LEA may exclude
supplemental state or local funds expended in any
school attendance area or school that meet the
intent and purpose of this part".

MS. KING: I've been told.

MR. AMERIKANER: I'm sorry, I should
have said that before, and I apologize for that.

MS. PODZIBA: Marcus.

MR. CHEEKS: So that is what I wanted
to bring back, that the national organization
spent some time going through the actual statute
and trying to line up where the brief aligned to

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the law.

So, actually what you just pointed out, it creates I guess -- the biggest conundrum is that much of what we're talking about is aligned directly to the law. And in an effort to try and carry out our role in terms of finding a solution, one of the things I wanted to point out, the auditor aspect is a critical factor. The basic education program becomes also a critical factor.

In my state, the question was moved around, How do we determine this piece? In some respects we can look at the manner in which our legislature awards funds to the actual school districts.

There is, at least to some extent in that formula process, a mechanism for determining the actual required areas that funds should flow and are being awarded to schools.

Even though at the doorstep of the school, the school district still has a great deal of latitude in terms of assigning those resources,

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be that teacher units, be that for instructional supports, they still have a great deal of latitude there.

So one of the things that may offer some help for a number of the problems that have been brought forward is, if under item romanette (ii)(A)(b), if there could be possibly a (c) that offers an "other" that gives some room for the innovative approach that was mentioned earlier and possibly some leeway for that out-of-the-box thinking in terms of what's being used to determine that basic educational program that may not be listed specifically here in the statute.

I think also another end-around way of getting to this point, and I don't know how much leeway we'll have in this, simply because it is listed in the law, if there was a way for (a) and (b) to be somehow a "such as," and I know that that's probably not possible because of the verbiage that we're dealing with.

The final piece that I want to bring to
I guess some type of question is, when we look at the exceptions and we start talking about the intent and purposes of Title I part (A), is that a step away from the school focus, the school model of measuring Supplement Not Supplant, the schoolwide model of measuring Supplement Not Supplant?

Because under that process we would generally be looking at, from a state side and probably from a legal standpoint, if the state had a comparable program that would align itself to the intent and purposes of Title I part (A), and the difficulty in that is, at least that I've always struggled with is, unless the state actually has a program that's carrying out the same tenants of either the schoolwide or the alternative assistance program, you don't really know if you're getting to the true essence of the intent and purpose.

So I'm wondering specifically where and how should that area land.
But those are my two points at this time for kind of a pathway forward around a number of clearly identified problems that I, for the record, agree with and can see in a real sense every day.

MR. AMERIKANER: I just wanted to maybe respond a little bit to the question there at the end, Marcus, about how the intent and purposes of Title I might -- what does that mean and what does that look like.

We have put out Guidance on this in the past. That part of the statute is not new. So generally we have said that a program meets the intent and purposes of Title I if it is either "implemented in a school with at least forty percent poverty and" -- and so these are all and's, so sorry. There's a few things that are and's and then I'll give you option (B).

So the first option would be "if implemented in a school with at least forty-percent poverty, is designed to promote..."
schoolwide reform and upgrade the entire educational program at the school, is designed to meet the educational needs of all students in the school, particularly those who are not meeting state standards, and uses the state assessment system to view the effectiveness of the program."

So that is one way that we have described it, or "it serves only the students who are failing or most at risk of failing to meet the state standards, provides supplementary services to participating students designed to improve their achievement, and again uses the state's assessment system to review the effectiveness of the program."

So, in other words, if the services would be allowable under Title I, then they would be considered to meet the intent and purposes of Title I.

MS. PODZIBA: So, Marcus, it sounded like you put out a conception proposal as opposed to a verbal response. Should we discuss it? Is
there a specific language that you would like us
to comment on?

MR. CHEEKS: So I guess the only
specific language would be adding (a) (b) and (c)
and listing "other," and that would -- "as an
optional methodology for measuring Supplement Not
Supplant".

MR. AMERIKANER: What I'm struggling
with, Marcus, is the way the lead-in is written
is, an LEA may determine any methodology it will
use, the methodology it will use, provided that
the methodology in an (a) and (b) are sort of the
safeguards about sort of describing the results of
that methodology.

So if we added an "other," it would
just be an "other".

I think I understand what you are
trying to do. I'm just not sure that it--

MS. JACKSON: It makes the safeguards
moot if there is an "other". We could disagree on
the safeguards if those are the appropriate
language to use, but if you're like, here is
safeguard A, here is safeguard B, here is C, and
you don't have to follow any safeguards, then
they're moot.

MR. CHEEKS: And I guess as I mentioned
earlier, the problem with this is we're dealing
with the specific language of the statute.

Here again, crude approach -- you don't
think we are?

MS. PODZIBA: I suppose the question is
is there a way to define another set of
safeguards?

MR. CHEEKS: Yes.

MS. JACKSON: Is it possible to get a
copy of the text with color, because I am trying
to go back and forth and I'm not successful with
that. I think it would save us time.

MR. AMERIKANER: We can work on that.

MS. PODZIBA: Maybe we put a
placeholder in some other safeguard that defines
it in a way other than (a) and (b).
Derrick?

MR. CHAU: Ary, you and Kay mentioned before when a district was unable to provide a basic education program with its state and local funds, and I think, well right now our economy is pretty good and our states have some funding. That hasn't always been the case, and I'm wondering if we have this requirement around basic education program if the state does have a definition of it but knowingly does not fund that level, which happens, when times get tough, as recently happened, what happens in those instances? Would then the schools be unable to utilize their Title I funds?

I'm just wondering what the consequence would be for that because that is definitely a real scenario in California where our school districts, during the recession, were not funded fully.

MR. AMERIKANER: I actually would love -- I certainly hear the point you're making
and the point that Rich was making and would love
suggestions about alternative approaches to this.

The intent we're trying to get at here
is just literally you're able to keep your schools
open and running without Title I funds. So if you
have a sort of more specific way that we could
frame that, I think we're very much open to
suggestions.

I appreciate the point you're making,
as well, so if there is a way that we could come
up with something.

MR. CHAU: Let me think about that,
because I worry that then the unintended
consequence of this, which is always I guess
something that my mentors have made me think about
whenever determining policies, is the unintended
consequence of this might be that states and local
districts set a basic education program definition
that is so low that they'll never reach it.

So that is sort of a -- you know,
there's consequences to this. So I'll have to
think about that and talk about it just to figure out -- I just want to put that out there. I'm just curious.

In those instances, the schools I believe were still able to utilize Title 1 funds, correct?

MR. AMERIKANER: The only experiences I know of, and Kay can tell you more, are the ones that I described. So they were pretty low-level floors.

MS. RIGLING: And I think they absolutely can use their Title I funds, they just couldn't use them for bussing to get the students to school. They had to figure out another source of funds for the bussing. They couldn't use them for, in one case, the second trade teacher, but they could use them to provide other supplemental services.

MR. CHAU: Yeah, because I know my concern is that in general local districts set some policies around class size and whatnot, which
they inevitably break in times of harsh economic conditions, and so some might interpret that some of those norms might be the basic education programs that they are no longer meeting, which then require them to utilize Title I funds to balance that out.

So just an example and a very real one from recent history. So, definitely think about how we can address that.

MR. AMERIKANER: Thank you.

MS. PODZIBA: Tony?

MR. EVERS: This is a similar question. If Wisconsin did find a basic education program, and the district was found by an auditor to not meet that. What's going -- I think it's the same thing. How do we rectify that? Withhold Title I funds for poor kids? I don't think so. That would be kind of moving in the opposite direction. But frankly that's the only end game there is, right?

MR. AMERIKANER: Well, it might be
helpful for us, and Kay is probably the best person to talk to regarding the general toolkit that we use and we have when thinking about potential problems of violation of Title I, and certainly it doesn't go as far as withholding Title I funds from poor kids.

Do you want to talk about the Title I exceptions?

MS. RIGLING: I think if there was a violation of Supplement Not Supplant, and there have been in the past, the remedy is usually to require the state to repay from non-federal funds the extent of the violation.

So, we would not be withholding Title I funds in that case. The district would be getting all of the Title I funds to which it was entitled, but the state would repay out of state or local funds the amount of the violation.

I don't think anybody thinks that that's even a good solution. I mean, that's a penalty, but that doesn't do anything to help the...
students who perhaps didn't receive supplemental services in the year of the violation.

So obviously that's why we're trying here to do some regulations, that obviously aren't clear enough, to try to prevent those kinds of things from happening where we do have more clear guidelines, so that we're not leaving it up to the auditors.

MS. PODZIBA: So, we have some more comments, but I hear concern about basic education program, and I hear flexibility on the part of the Department.

So, if there are ways to choose other words or further define that, I think that's the challenge that we have here.

Richard, you're next.

MR. POHLMAN: Sure. I think the two questions I have is, you know, I will again -- I'll start my record again.

I think that as we approach these items that are very hard to define in Regulation, that
is where Guidance becomes a much more appropriate tool. I will put that out there.

The second thing is that, as Derrick was talking about, I'm once again reminded in our briefing we talked about that there are three fiscal tests and three fiscal control rules.

I think that we have to be careful to not put rules in here that may conflate some of MOE requirements that could serve as protections and guidelines for precipitous drops in state-level funding, for instance. That's something that needs to be covered under MOE.

Again, as I always talk to legislators and others, and I try to keep in mind through my work, is that you are trying to regulate to the most narrow type of exception that we can think of, or the worst case scenario. I think that that becomes very difficult to do in a way that doesn't have unintended consequences.

So again Guidance I feel is always a more appropriate place to do that, and it's clear
that we're all struggling here to try to provide
you with succinct language that wouldn't get to a
list that would, you know, plug the federal
registry.

So, I would just put that out there as
a possibility of striking this and then with the
Department's understanding that they could carry
this forward in Guidance.

MS. PODZIBA: Aqueelha.

MS. JAMES: I'm just thinking about how
this may affect the school district that's all
ready doing a very good job at utilizing funds
appropriately.

What that means with the progress that
we've made within our own schools, particularly
staff, and when I think about various forms of
evaluation attracting and retaining highly
effective teachers, I'm starting to question what
this will do to support that work and allow us to
continue to make positive impact.

MS. PODZIBA: Mary Cathryn?
MS. RICKER: I wanted to speak on (A), so if you wanted to collect --

MS. PODZIBA: No, that's ok.

MS. RICKER: Ok, great.

So I have a question on capital (A) under School Costs and Services where you talk about results in the LEA spending, the amount of state and local funds for people in each Title I school.

Given what you said -- and I really appreciate about how course transfers are a really, really bad idea -- I'm wondering how you and your team thought of how you do this, either absent new money or absent course transfers and resignations.

MR. AMERIKANER: So I'm happy to respond at the level we thought of, and also people thought -- we've thought about a couple of different things.

We've thought about the potential for paying teachers more who choose to work in
1 high-need schools, Title I schools. We think it
2 is a hard job and we should be rewarding teachers
3 who are willing to do that.
4
5 We have thought about things like
6 paying for additional support staff, wraparound
7 services that we know are really important in
8 Title I schools where they're serving high
9 concentrations of students living in poverty.
10
11 We've thought about choosing to pay for
12 extended learning time in those schools.
13
14 We've thought about, you know, a
15 variety of -- I think you would probably be in a
16 great position to tell us what the best and sort
17 of important needs are in Title I schools, but I
18 think we know that it takes time too.
19
20 But if you don't have new money, right,
21 as you pointed out, if you don't have new money to
22 put towards this problem, it takes time to think
23 about moving money around and re-budgeting.
24
25 So that's why we have tried to propose
26 this with a pretty long phase-in, roll-in time to
27
help districts -- give districts time to think in
a -- I think in advance and think about whether
they would need to move any money around.

I will say that my understanding is
that, in most places, this would not require a ton
of movement of money, so, that we aren't thinking
that this would be like in a -- no one wants to
see any like big huge required budget moves
overnight. I think that we all know that that can
lead to bad things.

So we thought of those as some
potential options. You can see that as one way to
try to retain teachers in Title I schools. You
might reduce class sizes to make the working
conditions better.

You can see a lot of different things
for how a district might choose to try to do this.

MS. RICKER: And you don't anticipate
that taking new money?

MR. AMERIKANER: I think in some cases
it could take new money and in other cases
1 districts could plan over time to reallocate the
2 existing money.
3 
4 I think it could be done either way,
5 depending on, to Derrick's point, you have more
6 money and it's a time of relative wealth, or you
7 have not more money and it's a time of relative
8 non-wealth, or the right word is recession.
9 
10 MS. RICKER: No, as someone who has
11 spent a considerable amount of time at the
12 bargaining table negotiating for these sorts of
13 things, you know, for different student/teacher
14 rations in our Title I schools versus our
15 non-Title I schools, and in lots of license areas
16 as well, as well as enhanced wraparound and
17 support services in our Title I schools versus our
18 non-Title I schools, while still trying to
19 provide, perhaps not this definition, but a basic
20 level of service for all children, because, you
21 know, so there is this comprehensive package of
22 the services that all children deserve... I know
23 that at the bargaining table I come up against the
question of where the funds for what our students
deserve, where they're going to come from.

MS. PODZIBA: Thank you.

I think we can get another point in.

Liz?

MS. KING: Yeah, I just wanted to

strongly caution, the idea of using teacher
evaluation in a fiscal requirement is just a
little bit terrifying. I think we've seen some
bad policy happen as a result of trying to use
teacher evaluations for purposes other than what
they should be used for. So I would just strongly
cautions against that.

I certainly recognize that --

MR. AMERIKANER: Sorry, Liz, what are
you responding to? I just wanted to clarify. I
want to make sure that everyone understands that
that's not what we are proposing.

MS. KING: No, I hear that. So this
question that salary is not a proxy for the
quality of a teacher, and then there was a
recognition that there has been progress and
innovation around teacher eval and different ways
of looking at differences in teacher quality, and
that's great, and that is very much about HR
policy and should be handled that way.

So we're only talking about dollars,
because this is a fiscal requirement. So I would
just want to be really careful that we're not
moving into like things that I think should be
collectively bargained but that are certainly
about personnel.

And we're just talking about funds is
what it says in the law... because I've been
reminded that what it says in the law is relevant,
so since we're talking about funds.

The other piece I think -- a couple of
things about this idea of disruption and moving
money around; on the one hand we need more money
in the system. I think generally we are
underfunding a lot of our school districts and
they don't have the resources that they need.
1 So just as a general principal, and
2 that's something we fight in other spaces, but if
3 somebody else made that argument, we can't
4 appropriate money through a regulation. That is
5 the limitation here.
6 So to that degree, the reason that
7 there is this inequity is essentially that
8 wealthier schools are benefiting and poorer
9 schools are losing. So the sort of disruption
10 would be to change that dynamic, and avoiding that
11 disruption is to preserve a system in which poor
12 children subsidize the education of non-poor
13 children.
14 And I think I just wanted to sort of
15 put that on the table.
16 In terms of ways of doing this, I think
17 the way to do this is that there should be more
18 money from the state. That is how this should
19 happen.
20 In the absence of that, I think there
21 are options -- you know, we know one of the
biggest differences in per-people spending at the school level, I think Karen Hawley Miles talked about this last time, is the differences in the size of schools. So a small school is an expensive school as a general matter.

So, talking about, you know, maybe you have a low-poverty high-performing school, and you increase the number of slots in that school as a way of lowering the per-people expenditure without actually limiting the services available for those wealthier children, which then frees up more services to serve children in other schools, would be one option.

And then, you know -- again I think it's important to remember that the premise of all of this is -- and I will say, I'm nervous about the degree of flexibility being provided here. I mean, this is flexibility in the use of funds that is far beyond that which has ever existed before, and it just makes me incredibly nervous.

But, you know, as long as we preserve
the equity protections, I think there's an argument to be made for why flexibility is valuable, sort of in supporting improved instructional programs.

But, the district has the flexibility, and so whether it's a decision about maybe you have more people in Central Office than should be in Central Office, and that more of those positions should be moved into classrooms and moved into schools to support poor children.

So that would be another option, I think, in the absence of new money -- obviously I always prefer new money -- but in the absence of new money, that would be another option.

MS. PODZIBA: Alvin.

MR. WILBANKS: I'd like to go back again to the general program and to add on to some of the comments that have been said.

I agree with Principal James that I'm afraid that districts that are doing a good job in this are going to be penalized, not to death or...
anything like that. We'll all live. But again
I'm getting back to how this plays out in the
system, how we continue to educate all children to
the highest level possible.
It seems to me, if you look at the
compliance section, the big issue here is the
averaging of the per-people expenditure of a
student. And again, I think the Department did a
good job when they rolled out their 2015 plan that
really put a lot of emphasis on methodology.
I have with me six pages of how we go
about funding all schools. Every school gets
everything on this page, on these six pages.
And it doesn't escape my attention that
the Title I dollar is is not in addition to that
to those Title I schools.
But when you get back to a per-people
average, then you just sort of -- that just sort
of goes out the window.
And I think there probably needs to be
more emphasis put on the methodology, and again, I
think everybody that knows anything about running a school or a district would understand that, if you apply your methodology to all schools equal for the state and local funds, then that gives every school the same amount of money. Now, it's not the same dollar amount of money, but it's the methodology of how you go about getting it by the basic education costs.

One school -- we have schools that are forty-three hundred. I think our smaller school is perhaps six hundred, and I think we're not unlike districts across the country.

So as we use that methodology that applies to all students, state and local funds, and then you apply your Title I funds to those schools -- now there are some central services that you do provide for all Title I reserve, five, seven percent, whatever that number happens to be, tell them that you're in the state level, but again you've got some of that same reserve and allocation.
So I think if we tend to focus on how can we reach the intent of Title I, without -- does the law require you average the appropriate funds? Is that in the statute?

MR. AMERIKANER: You want me to respond?

MR. WILBANKS: Yes.

MR. AMERIKANER: So first the law requires that you average an end section in your reporting, in 1111(H), a cross-reference, and the law then also requires in the Compliance section of Supplement Not Supplant, as we've seen, and I don't want to state it wrong -- let's go back and look at it. It's that "A district shall demonstrate that the methodology used to allocate state and local funds to each school receiving assistance under this part insures that such school receives all of the state and local funds it would otherwise receive if it were not receiving assistance under this" --

MR. WILBANKS: I don't have a problem.
with that.

MR. AMERIKANER: "If it were not

receiving assistance under this part," if it were

not a Title I school, right, so all of the funds

it would otherwise receive.

Actually I was going to ask you a

question, if you don't mind, in your six pages

of --

MR. WILBANKS: I'll give them to you.

MR. AMERIKANER: No, I'm just curious.

Do you know, do all of your Title I schools get

the same amount of -- get as much state and local

funding as your non-Title I schools?

MR. WILBANKS: Actually they really get

more, just on a per-people amount, and it's a

grade span amount. Elementary get one amount,

middle schools get another, high schools get

another.

But then we break it up. The lowest

amount are those schools that have a grade that

goes from one to twenty-four, from twenty-four to
forty-nine they get more, from fifty up they get more. So, just in that initial allocation, all of that is state and local, ok.

Now, every now and then it's difficult to separate state from federal funds, but Title I is easier. But generally speaking what we had at the state and local level, that goes to every constituent.

MS. PODZIBA: Ok --

MR. WILBANKS: And again it gets back to the methodology that you use, and I think the methodology is a better way to provide equity to really serve and preserve the integrity of the programs that are really designed to educate the children in a school which can be very different from one school to the other, the basic -- some of the basic problems would be --

MR. AMERIKANER: It sounds like if your Title I schools are all getting the same amount or more than your non-Title I schools, then good.

MS. PODZIBA: Ok, excuse me. There are
a lot of comments.
So Ary, I want to try and get all of these comments in, unless there's something that you absolutely need to respond to.

MR. AMERIKANER: No.

MS. PODZIBA: Thomas, you're next.

MR. AHART: A couple things I wanted to lift up in regards to the same -- demonstrating the same program school by school by school.

One of the things that happens I think inadvertently is when we're talking about Title 1, we start to think that all of our students with needs relative to the code are being served in Title I schools, which just isn't the case.

So under one of the things, we have our own system of allocating resources and we support at a higher level some of our schools that are not Title I, but in most districts would be Title I schools, you know, over seventy percent reduced rate, but they don't qualify for Title I in our district because they don't have enough money to
go around.

This is one thing I wanted to lift up
in terms of flexibility for districts to use their
resources, their state and local resources to its
best effect to meet the needs of all of our kids.

The second thing I would like to
highlight is, in the code it says "Nothing in this
title shall be construed to mandate people as
spending per-people for a state, local -- a state
or local education agency or school," and this
seems to fly in the face of that.

MR. AMERIKANER: Susan, can I --

MS. PODZIBA: Sure.

MR. AMERIKANER: I do want to respond
to that.

First of all, thank you for pointing
that out. It is certainly a relevant provision in
the statute, and I do think we would be careful to
not violate or to write around that.

Nothing in the proposal that we put out
would require equalized spending. I think it's a
couple of different reasons for that. One is that we are requiring that a district compare each Title I school to the average non-Title I school. So non-Title I schools averaging across them sort of implies that they have different spending. Similarly each Title I school could spend anywhere as long as it was at least as much as the average of non-Title I schools, and then -- I thought there was another point. But I guess those are my two points, that it does not require equalized spending.

MS. PODZIBA: Regina -- oh, Thomas.

MR. AHART: I would suggest that that equalizes a floor, and so it is getting to that equalizing concept.

MS. PODZIBA: Regina.

MS. GOINGS: Thank you.

In the absence of funding or limited funding I'm going to throw something out there for people to consider.

You've got valuable resources at your
schools all ready. Many of the SLPs are not --
and I'll give a prime example of the Title I
schools. The SLPs are there and I have the luxury
of having SLPs assigned to one school. That's a
real luxury for schools. They're there to provide
a service to the general population, generalized
students as well as specialized students.

In the general population, the most
valuable resource on campus is a speech
pathologist when it comes to literacy. She's
there to support the general ed teacher. She's
there -- we piloted a program several years ago in
a Title I school where the SLP worked on literacy
in one first grade classroom and we saw those
scores go up astronomically to the point where the
principal bought into the concept and provided
funding to extend that program to all first grade
classrooms.

So look around your schools and find
the resources that are there to support you, and
it's an asset for all students and not just a
select group of students.

MS. PODZIBA: Thank you.

Aqueelha?

MS. JAMES: So I just wanted to go back to a couple of comments that were shared, one in regard to thinking about funding versus HR and/or personnel in that it's very clear that within the District of Columbia public schools that we do both. We have to appreciate all perspectives in the sense that highly-effective teachers are not just at non-Title I schools. They're dispersed throughout the district.

In fact, we see countless times -- and I'll speak specifically to my former school, John Burroughs Education Campus, which is a Title I school with about ninety-nine percent of students with free and reduced lunch, and being the principal, there was a lot of autonomy given to me that allowed me to pick particular interventions and/or programs that support the students that are in our building.
I've shared during session one that we achieved a lot of progress, and when I say "we," meaning the students have learned a lot based upon the decisions that I have been able to make with the current process in place as it relates to budget.

And so I can't express enough how concerned I am about what this can possibly do to the progress we've made.

MS. PODZIBA: Let me get a few more comments in.

Ryan.

MR. RUELAS: So, I'm from the great state of California, and we do weight the student funding, ok, and it's awesome. It's great.

My problem with what is written here is that the way it's written itself is really -- well, first off, I just want to make it clear that, the history of this supplant -- or the whole history of the Supplement Not Supplant itself was to insure that LEAs do not decrease state and
local funds to Title I schools because they participate in Title I. Correct?

MR. AMERIKANER: Wait, sir. I didn't mean to be nodding to you. I don't know what you said.

MR. RUELAS: I said the history of the whole issue of Supplement Not Supplant is to insure that the LEAs do not decrease funds to states and Title I funds, because they participate in Title I, correct?

MR. AMERIKANER: Well, I would say it's to insure that Title I funds are actually providing supplemental services.

MR. RUELAS: Ok. So the problem that I have, coming from California where we're using a weighted student funding, is that it could really punish and incentivize weighted student funding methodologies, and the reason why is because the proposed regulation actually compares actual per-people spending in Title I schools to average per-people spending in non-Title I schools. And
so districts themselves would be out of compliance if heavier weighted student concentrations occur in non-Title I schools.

So, for example, special education students in California, they're weighted more heavily in regards to the funding that they get than other student groups. Ok? Now this, as a result, could skew spending in non-Title I schools, ok.

So, what is being proposed here could possibly incentivize concentrating or sending students that get higher weighted students, such as special ed students themselves, to Title I schools. You know?

It's going to be very complicated for us, and it's kind of a conflict of the methodology.

MR. AMERIKANER: Susan, I know you're telling me I should not -- Susan is shaking her head, but I do think this is an important -- I do think it's an important point to respond to, and
it is similar to one that Tony brought up that we really never engaged on. I think it's important, this weighted student idea.

We thought through this quite a bit as to how does a weighted student funding formula work in this case? And actually I think weighted student funding formulas, as far as I know, all of them weight for poverty, right? So students with -- or schools with higher concentrations of students in poverty are supposed to get more money, and I know they also weight for other things, like students with disabilities and other things, but that poverty is one of the factors considered. And we know that Title I funds are supposed to go to schools with higher concentrations of poverty.

So it actually feels that districts following a weighted student funding formula would meet this requirement, because they would be spending more money in schools with higher concentrations of poverty.
I do hear your concern about the students with disabilities, and if you have a specific suggestion around that, I'm more than happy to hear it.

But I think actually our point was we wanted to make sure that we were allowing districts to determine the methodology that they would use. So whether that's a weighted student funding formula or something more traditional that a lot places aren't -- California doesn't use weighted student funding formulas. We wanted to make sure that this would work in either case, but actually intentionally thought about how this would work in weighted student funding formula locations and intentionally try to make sure that this would work.

So if you have specific suggestions about that, I'm happy to hear about that, as to whether there's any tweaks that we could make.

But I definitely want to make sure that that works with this kind of progressive system.
MS. PODZIBA: Ok, we've got five more cards up. I'd like to take those cards and then we'll break.

Lara.

MS. EVANGELISTA: I'll be brief, because I think Aqueelha and Ryan both said my concerns.

I just wonder if there is a way that we could -- similar to what Marcus is saying, there's something in there that we could write in, something about "weighted formulas or other innovative methodologies that are currently being used" or something like that that's specifically in there. Because coming from New York, having a weighted formula that has really -- and having the autonomy to use those funds to serve the needs of my students, you know, I can see that it works.

I mean, I'm also a New York City public school parent, and I could tell you that my kindergartners -- well, they're not...
kindergartners any more, but when they went to kindergarten, their class sizes were bigger than my kids' class sizes, which were a ninety-five-percent poverty. So that methodology is working, it's working well for a lot of schools, and I would hate for these regulations to stop that work from happening.

MS. PODZIBA: Kerri?

MS. BRIGGS: This whole discussion is so interesting, and coming from a southern state where it's not really generally polite to talk about money... this is all a little uncomfortable. But I think this is such a challenge to figure out how to write regulations to address every unique situation. And I even heard some of the solutions that were being offered as solutions that strike me as very localized decisions, like moving teachers, and to your point, moving students' class sizes up and down, whether or not teacher effectiveness is considered, like all of
those things that are so critical and so local.

I don't know. I guess I'm just like, I feel for you in trying to write this reg, because it seems sort of impossible, and as I talked to people back home, you know, I immediately came up with like three different districts that do budgeting differently. And like trying to think through, some of them we'd probably like; some of them we probably wouldn't.

I also think about, like Dallas, where I live, you know, the solution really picks Dallas as being -- and being I'm a Dallas supporter,

being like an active parent or an active citizen,

and I don't know. I can't figure out what I would change or what I would strike or add. I just really I guess want to echo that I see the complication. I see what it's like.

MS. PODZIBA: Audrey?

MS. JACKSON: I have so much to say on this issue. I'll try to keep this brief.

We also have weighted student funding
in Boston public schools and pulled up our
template here. Yes, definitely high poverty is an
area.

I guess I'm confused, and I want to
hear other people's points. I'm confused about
how making sure that high-poverty schools that are
receiving Title I funding, have supplemental
funding, would hurt other places. It doesn't make
sense.

I mean, I have principals, teachers and
people I totally trust and respect. So I'm not
saying you are wrong, but I'm a little confused
about it.

And with Alvin, apparently you have
solved every equity issue in Georgia, and I don't
mean that totally rudely, but if the idea is that
everything is working well and that these schools
where everyone who is successful is going to be
harmed by insuring that kids in high-poverty
schools have their supplemental funding is really
confusing to me.
And so that is not again meant to say that anyone's concerns are invalid, but as a teacher who works in a high-poverty district with high-poverty kids, and more often than not schools with wealthier families, wealthier students, who all ready have an increased capacity to fundraise within -- fundraise from their parent population and solicit investors, that there are ways that are not purposely discriminatory against kids, but there are ways that the funds always seem to end up at those schools and not necessarily at the schools where the children and their families do not have as much of a voice, or they're so used to not being heard that they're not necessarily continuing to speak up. At least from what I read, low income schools and geographically, tax rates, those families are much more willing to be taxed at a higher rate in those schools, and so it's not out of a lack of commitment or investment. I'll stop rambling now. I'll speak more later.
I would love to know how that would potentially negatively impact schools. To me, I'm confused.

MS. PODZIBA: Ok, Liz is the last comment before the break and then, Alvin, we'll pick up with your comment.

Liz.

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

On the question of flexibility, I mean, this is, like I said, discomfort with flexibility. This is some serious flexibility. You could decide as an LEA, obviously subject to your collective bargaining and state law and board policy, you know, to only hire band teachers at your school and you'd be compliant with (A). So your band teachers could do all of the teaching and that would be compliant, as long as you were spending the money.

I think that again, great big piles of flexibility in here... I just wanted to reinforce
And I mean, there's sort of an idea of like, looking at the methodologies that a district used, again, I'm just not comfortable with the level of discretion an auditor would have to go through and unpack all of the ways that a district chooses to spend its money.

I mean, giving the auditors that power to sort of decide whether, in part, When this part of the money goes out that way, that's ok; When that part of that money goes out this other way; And when you have this other thing that does this other thing... having that level of discretion for auditors is not a good system.

And then an overall question or point that I wanted to ask is, so we've heard examples of, like, any district that, based on the reporting, they already have to do, is compliant under (A), then gets to go home and do other things, right? Like they are no longer -- that is all they have to do, other than also (B). So they
still have to do (B), and (B) is a little bit trickier. But with (A) what you're doing is submitting data that you all ready have to submit to show that you're all ready compliant.

The question I just wanted to ask is when is it ok to spend more money per pupil in wealthier schools, and why has that not been supplanting when the Title 1 funds are filling in the gaps in the higher poverty schools?

So I'm just interested. I think that's sort of the core fundamental issue is in sort of the (A) test is when would violating (A) not be evidence of supplanting?

MS. PODZIBA: Ok, I'm going to suggest that we take a break. It's 10:30. Let's come back at 10:45.

(Recess taken.)

MS. PODZIBA: Ok, I'm going to ask for everyone to sit down, please.

So I'm going to give Alvin a chance to
21 speak, and then Rita, and then what I'm going to
do is try and focus the conversation about how to
fix things.

Alvin.

MR. WILBANKS: Ok, thank you.

This is beginning to resemble the
presidential debate, so when somebody gets tagged,
you need to give them thirty seconds.

To my friend from Boston, I don't even
know what all the questions are, much less all the
answers. If we have many problems for which we
haven't solved, and if I came across saying
that -- obviously I don't believe I did -- I can
tell you it was tongue-in-cheek.

We're just trying to educate all
children. In doing so we're trying to design
programs that really are effective. We're trying
to make sure that we do abide by whatever the regs
are.

But I go back to really say,
methodology makes all the difference in the world,
and I think when you -- when we get -- this is
America, and when we get that we can't trust people, I just believed the assumption that we're going to squander the dollars, and spend dollars carelessly, so sure there's got to be checks and balances. Sure there's some SOBs around.

At the same time, I do think we've got to make sure that we have processes in place that we can do what it is that we're supposed to do and not really have to spend more time on trying to make sure that we're meeting some requirement that I think may be in many ways artificial.

I do think in the areas -- and I still am relating my question, maybe ya'll need to ask somebody else -- but does the statute require that we average this? And that's still a question that's out there. I won't expect you to answer that until you check with somebody. Before we end today, I would like that question answered.

So, my point in all of this is that I think Title I was for a purpose, and I applaud the Department's efforts in making sure that we get it.
and that its implemented as it should be, but we can't add more requirements and regulations that make it almost impossible to implement.

And when a district has again a methodology that works for that district -- it may not work for anybody else -- but when it works for the district again in addressing the needs of all students, you know, I don't have the right to just focus on any one set of students. I've got to focus on all of them. And that's what I think this ESSA regulation requires us to do in the final analysis.

MS. PODZIBA: Rita?

MS. AHRENS: I just wanted to comment on the provision or the statement that allows "basic education programs" that are defined under state and local laws, and I wanted to speak on this with pockets of my fellow parent advocates, and I think it's important to really state that we believe this is an incredible opportunity for parents and students and other stakeholders at the
local level to determine what the basic school unit looks like, you know, and what the basic education program encompasses.

To us this is a tremendous opportunity.

I don't understand the confusion, the pushback against having this in the regulations. Because this allows us to really meet the needs at the local level. It allows us to look at the population that we're addressing and say, All right, we want to define our basic education unit as having things like facilities, academic programs, whichever ones we want, student handbooks, parent engagement methods, transportation. So we get to decide this at a local and state level.

Yes, it's going to be hard to do that definition, but just because it's hard doesn't mean that we should not do it. And I want to point out that Ary said we have until 2020 to implement this law.

So, I think, you know, we should make
the attempt to do this at the local level.
There's an amount of flexibility here that I think is appropriate, and I don't think -- you know, I'm confused and wondering why there's so much pushback, because, you know, every stakeholder is going to have the opportunity to provide input into this, from teachers, to parents, to administrators, to our legislators.

So, you know, let's try this.

MS. PODZIBA: So I appreciate the thought of the presidential debates, because I haven't felt that they are very helpful in getting to policy questions. There is something about scoring points, but not about policy, and since we're really here to try to develop federal policy, our conversation has to look a little bit differently.

So, Rita, I appreciate you're raising that, because that was what I was going to propose is that there is the phrase "basic educational program". It seems that it was in Guidance in the
past and there is a lot of discomfort with it, and nobody has a solution for resolving that discomfort.

So I would propose that we spend some time seeing if, as a group, people can come up with whatever it takes to change that language, refine that language, describe that language in a way that is workable in a regulation as opposed to Guidance, so that we could try to make some progress on this issue.

So I'm going to take the cards and ask you that say what you want to say, but I'm hoping that we can focus our discussion on the question of "basic educational program".

Liz?

MS. KING: I wanted to respond briefly to Alvin's question about where the statute requires.

So the old statute said that funds had to be supplemental, had to include the Supplement to Not Supplant requirement, and then the test of
demonstrating that went through Guidance.

So what happened was, in order to
change the Guidance and the auditing practice,
Congress changed the law. So now the law
prohibits the old test that was in Guidance. And
so historically the Department has determined how
to demonstrate -- required LEAs to demonstrate
compliance so they could get their Title I money.

So it is totally within regulation for
the Department to lay out this methodology for
demonstrating compliance, and otherwise it would
also be appropriate for the Department to do this
through Guidance, although I would rather it was
done through Regulation because in that we are
involved in that regulation process in a way we
are not involved in that Guidance process.

So, sorry, that was the short point on
there.

And then I just wanted to second -- I
do think that having the concept of a basic
educational program I think is important for
supporting the long-standing intent of Title I.

MS. PODZIBA: Marcus?

MR. CHEEKS: I'm sitting here trying my
best to figure out a way to narrow our target in
dealing with this particular subject. And I want
to be sure that I'm correct in my thinking before
I offer this suggestion.

The reporting requirements, as well as
the actual law, is what we used to pull together
this draft regulation. But specifically when I
look at the Compliance section of school costs and
services -- is that correct?

MR. AMERIKANER: Are you asking that
question?

MR. CHEEKS: Yes, I'm asking that
question.

MR. AMERIKANER: So the whole
Compliance section is a way to clarify how
districts meet the compliance requirements in the
law, so, in the Supplement Not Supplant
requirements in the law.

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MR. CHEEKS: Ok. Knowing that the romanette (ii), items (a) and (b), item (a) being a specific area for reporting, but reporting not to the extent that item (a) is listed, and then item (b) being a part of the draft regulations, these are the areas that I'm seeing as being the primary sticking points, particularly when I start thinking, and what I'm hearing about from some of the local school district people when they speak about the inequity that would come about with high-poverty schools that are not identified as title schools, but as a result they do have higher paid teachers that would possibly have to be removed or adjusted in order to be in compliance with this piece.

So I'm still trying to figure out the item (C) and what that option might look like -- and I'm proposing and asking the question at the same time -- if we dealt with the basic education issue and the equity problem possibly under creating a floor or a threshold around what would
be considered to be a school of high poverty.

So for example, if I'm still looking--

because at the local school level, from a state

level, I'm under the impression that schools have

a great deal of latitude under the statewide

model.

So if the school is high poverty and

that determination for poverty is forty percent of

poverty or more, then the flexibility of at least

using these resources, even though there's an

absence of having enough resources for everyone or

every school, the flexibility of the school

district using the resources would begin at a

school that's forty percent poverty or higher.

So I'm wondering if this test for

Compliance could deal with in some way some

flexibility around schools that are forty percent

or higher in poverty and somehow given some leeway

for possible non-Title schools that are, by virtue

of their poverty, a part of that process.

And I'm putting thoughts out on the
table in hopes that maybe somebody else can hear where we're going and possibly offer some other suggestions.

Because at the end of the day, I think we're stuck with some aspects of the law as it's concerned and the reporting factor that is in play. So I think we have to build on those pieces that are required in order to still figure out the latitude so that it doesn't disenfranchise other entities because of the fact that there's high poverty.

That's my suggestion.

MS. PODZIBA: Eric and Thomas, you're in the cue. Should we hold off or --

MR. PARKER: I think, so hopefully.

MS. PODZIBA: Ok.

Janel, do you have some help with what Marcus is trying to flesh out?

MS. GEORGE: Actually I have a clarifying question for Marcus.

Are you asking maybe to add to the
Exceptions section, "schools" -- and again I'm just trying to clarify. Are you trying to add to, for those demonstrating compliance or a threshold, another poverty threshold for the school, or what?

I'm trying to clarify what your goal is for those high-poverty schools that don't meet the Title I -- that aren't Title I schools.

MS. JACKSON: This is very small, and like would it help to say "Title I-eligible"? I don't know if that's actually a useful thing to throw out there, because I don't think I even a hundred percent understand everything out there.

MS. PODZIBA: Liz, do you have help on this?

MS. KING: Yeah, I will say sort of the intent and the purpose of that I absolutely support. My concern is it's outside the scope of the SNS requirement, which is just about those Title I schools that receive support and those schools that don't.

I would say that given my support of
1 the concept, I'm willing to ignore that and
2 have -- and make that larger point.
3 I do agree, I mean, it serves nobody if
4 what we end up doing is -- yeah, I'm trying to
5 think of what the right word is.
6 But I support the intent I think -- I'm
7 wondering, given the smackdown I'm still smarting
8 from, if "those funds used to serve or to meet the
9 intent and purpose of Title I," since that
10 exclusion is already in there, if that would fix
11 the problem.
12 So, like, if a state has dedicated
13 funding to serve high-poverty schools, that --
14 those -- I think, and Ary can reread the text she
15 gave before of how that's currently defined, but
16 my suspicion is that that current definition in
17 Guidance, which we could move into the reg if
18 folks wanted, or we could leave in Guidance, my
19 guess is that that would fix the problem that you
20 are raising. I did want to say that I am
21 sympathetic to and supportive of fixing the
problem you are raising.

MS. PODZIBA: So we're going to let people think about that a little more.

Eric?

MR. PARKER: Yeah, definitely that's one -- the second is a question -- but looking to piggyback a little bit on what was raised as far as possibly looking at ways to reduce possible disruptions that the methodology may cause for schools and school districts that are having success and effectively implementing their current methodology...

Looking at I guess under romanette (iii) for Exceptions, so I guess just trying to put a provision there or clause to not restrict any innovation or particularly as relates to Title I staffing -- that's a component that was raised earlier -- so that that's not inadvertently affected by potential changes in methodology.

But then, speaking back to methodology, I had the question, because looking back over to
and jumping back over to Compliance, looking at romanette (ii), "LEA may determine the methodology," and I guess this is my question. "LEA may determine the methodology," and then jumping down to (a) where there is a proposed methodology, but then I'm looking over at the statute, 1177, number (4), and there is a prohibition as far as "limited session can be constructed to authorize or permit," you know, it says, "prescribe a specific methodology". So I guess I'm stuck questioning the how and why of the methodology and also looking at the provision under Exceptions. I think maybe under Exceptions it may get to possibly some of the innovation in things that are mentioned earlier, so...

MS. PODZIBA: Thank you.

MR. AMERIKANER: I'm sorry, are you looking for a response?

MR. PARKER: Yes, a response to the question.

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MR. AMERIKANER: Do you want me to wait --

MS. PODZIBA: Sure, there's a question.

Go ahead.

MR. AMERIKANER: So I think, the one thing I would say, just to answer your question is, you said that as in paragraph (a) that we're talking about -- and you said it was a proposed methodology, and I would actually say that that is certainly not the intent of the language. It's in fact just so a district could adopt any methodology it wants so long as the methodology ultimately results in the schoolspending.

For instance if you could see the difference between choosing to allocate via ways through the funding system, or through traditional staffing, you know, one teacher per X, as long as ultimately -- unless they refuse to do it -- it results in the district spending an amount of state and local funds for people.

So, that would be my answer.
MS. PODZIBA: Does that answer your concern, Eric?

MR. PARKER: Slightly, but, yeah, I'm ok with it.

MS. PODZIBA: Thomas?

MR. AHART: Yeah, we know that the supplement vs. supplant issue has been a challenge probably since the inception of Title I. We know we waited a long time for ESSA to be reauthorized and Congress spent a considerable amount of time debating some of these core issues.

Ultimately Congress negotiated a compromise that says the law includes no changes for districts in terms of comparability and compliance and no fiscal test based on per-people spending amounts by schools, but districts would be required to publicly report their per-people spending amount by school.

When you take that with the second point I'd like to make, it says the law does not require districts to use a specific methodology

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for distributing state and local funds, but

Congress authorized a new pilot program granting
districts flexibility if they allocated their
state and local funds according to a specific
methodology.

That combined with the public
reporting, while nobody thinks this is perfect,
Congress has answered some questions that I feel
like were reopened in this argument.

MS. PODZIBA: Does that lead to a
proposal?

MR. AHART: Well, I think it's -- what
I'm suggestion is that there's at best
contradictory language to what Congress has all
ready decided for us in some of the proposed rules
that I think we've not gotten to.

I think the last response, which I
appreciate, is a false choice: You can do anything
you want, as long as you do this. And I don't
think from a pure logic perspective that that --
that doesn't make sense to me. Perhaps I may not
just be smart enough to follow it.

MS. PODZIBA: Ok. Liz.

MS. KING: Yeah, I think the challenge here is that the word "methodology" is used twice, and I think that's what's tripping us up. But the end of the sentence in the prohibition in the law is something about "may not prescribe the methodology an LEA uses to allocate state and local funds," which is different, and maybe we just need another different word from the -- there is no prohibition on the Department having a test or a methodology for demonstrating compliance, and I would remind folks that, unless there is a way of demonstrating compliance, then you are noncompliant. So people need a way of demonstrating compliance. I think that is definitely in all of our interests.

MR. EVERS: No argument there.

MS. KING: Yeah, and I think also it's in all of our interests that that methodology be clear and be understandable and we all have a
1 common understanding of what that is. So I just
2 wanted to add that.
3
4 Also, there is no prohibition on using
5 this test, right? Like Congress prohibited the
6 old test. They did not prohibit this test. And
7 the old test is that you have to demonstrate that
8 an individual service is supplemental. So they
9 didn't prohibit this one. They didn't require
10 this one. They didn't prohibit this one. They
11 just said, You can't use the old test. You must
12 comply with the requirement.
13 I'd remind folks that this is not
14 waivable either. That's how much Congress meant
15 it, is they did not allow for the waiving of the
16 Supplement Not Supplant requirement.
17 MR. AHART: Nobody wants to do that.
18 MS. KING: No, no. I'm sorry. Sorry,
19 sorry.
20 MR. AHART: I made a suggestion this
21 morning that I don't think it merits it.
22 MS. KING: No, and that's fair. I
appreciate you're calling that out. I didn't mean
at all to suggest that that's what you're asking
for.

I'm just using that as evidence of how
serious they are about preserving it, they're
serious about having a meaningful demonstration of
compliance. I think that's where we need to get
on that.

MS. PODZIBA: Janel.

MS. GEORGE: I know that everyone is
tired of my history lessons, but I just wanted to
add one quick thing.

Supplement Not Supplant has not been
around since the inception of the Elementary and
Secondary Education Act of 1995. The Legal
Defense Fund and the Washington Research Council
actually issued a report showing abuses of Title I
funding.

So Supplement Not Supplant came around
in 1969, a 1970 guidance to insure compliance and
the proper use of and integrity of Title I funds.

So I just wanted to underscore that, again, not to give a history lesson.

I just wanted to add, you know, Thomas, in terms of the methodology you said, You can do anything you want so long as you do this... I think I would rephrase that to say, You can do anything you want, so long as this results in X, Y and Z that's laid out.

So maybe I'm just interpreting it differently. I don't see that specific outline of what the methodology should be. I see what it should result in, which is how we can really measure compliance.

And just to Eric's point of adding innovation or adding a romanette under the Exceptions, my only exception with that is, if we get into adding that, how do we define what's innovative?

So that's my concern if we continue to add these other exceptions; how do we define that?
How do we still have clarity on that? What's innovative in one place might not be considered innovative in another.

MS. PODZIBA: I would like to ask people, because we spent most of our time on Compliance in paragraphs (i) and (ii), so I just want to give a minute -- and Aaron, sorry, I'll get to you in just a second. I'll get Aaron's comment. And then I just want to see if there are any comments on paragraph (a), because again my goal is to isolate what it is that we need to focus our work on.

Aaron?

MR. PAYMENT: So mine is kind of a methodology question. So when we reference in (B)(i) romanette and then (a), if I got that right, we reference "average," and there seems to be some consternation with the word "average". So "average" denotes in statistics the mean, the median or the mode. Would the mode have been preferable?
MS. PODZIBA: You may need to describe that.

MR. PAYMENT: So, average, sometimes the mean is the mathematical average, all of them divided by the number; mode is the most frequently occurring; and then the median is, if they're all lined up, it's the one rate in the middle.

So if we're concerned about either understating or over stating, the mode probably is the most reflective because it's the most used.

So would that help?

MS. PODZIBA: So for those with concern about "average," does using the mode, the most frequently occurring fit?

MS. JACKSON: I would imagine, this is right in line with fifth grade math. I saw the median as like in between two rows, and mode rhymes with moose -- or not rhymes, the letters.

And now I'm way off track.

I don't think that we would be able to be prescriptive I don't think on which method of
averaging, but I think that's actually a place where states or LEAs could have some flexibility in justifying which one they chose and why. So if there were this weighted student funding and you have one school that's very high need that's heavily weighted, maybe in that case the school justified their use. I don't know if's an art for you to pick which average.

MR. PAYMENT: It could be Guidance.

MS. JACKSON: That is an important point that like, for exceptional situations or dynamics, mathematically, that's why there's a range of ways to calculate the average.

MS. PODZIBA: So for statistics people -- and now I'm never going to forget what mode is, because you gave me a great way of remembering.

MS. RICKER: That's right.

MS. PODZIBA: But is there a way to say, based on Audrey's comment, that there should
be flexibility? Is there a way to say
"statistically significant to use a methodology" -- no, that won't work?

MS. JACKSON: That doesn't go with --

MS. PODZIBA: Great. I did statistics a long time ago in graduate school.

MR. PAYMENT: I would conceive -- so I only offered up the mode, because I've heard concern about the word "average," but if we don't define it, I think it may default.

It's probably going to default in the terms of the Department to the mean, which is the mathematical average, adding them all up.

So if there's consternation -- I'm trying to find us some middle ground.

MS. PODZIBA: Right, I understand.

MR. PAYMENT: And the mode really is the most reflective because it's the most used.

So if we don't define it, it will default -- I think it's going to default to the mathematical average, which people take exception
to, I think are taking exception to, if I'm reading it right.

MS. PODZIBA: Alvin?

MR. WILBANKS: I would just say that the Department is the one to ask what they mean by "average". I'll willing to -- I think I know what average is, and I believe I've got to be somewhere in the ballpark there, but I believe they're the ones that are going to define it, not us.

MR. PAYMENT: It's one standard deviation.

MS. PODZIBA: I want to check in with everyone. Are there any questions about paragraph (a)? I know that that's essentially statutory. But are there any comments or questions on that? How about on transition timeline? Is there any discussion to be had on paragraph (4)? I think I've heard some people saying that they appreciate that.

Ok, thank you. So that just helps me in sort of keeping track of what we need to keep
working on.

So I'm hearing all sorts of things.

I'm hearing concern about certain phrases; I'm also hearing concern about both sections, and I'm wondering, Ary, is there something that might be helpful for you to hear a more focused discussion on, and again if we can kind of try to jointly problem solve an issue that's been raised repeatedly?

MR. AMERIKANER: So I think, Susan, I actually really agree with you that it would be helpful to spend a little more time on -- I think there are two things that it would be helpful to spend a little more time on. One is if we have specific ideas about how to make the basic education program more specific and clearer for all of our purposes. Because I know everybody is concerned about that. And that may be a sign we need to go back and have some time over lunch to all brainstorm on that and then come back on.

The other one is -- I do want to talk a
little more about this "average" phrase, because I
know Alvin has asked a couple of times about that.
I don't mean to be dodging the question.

So, no. Your question was does the law
require average. Right, Alvin? That was your
question?

MR. WILBANKS: Yes.

MR. AMERIKANER: So, no, the law does
not require average. The law requires all funds.
And so we are trying to put a little clarity
around what that means to not leave it in the
hands of auditors.

And so to Aaron's point, I think if
there was a different idea about that, one of the
things we thought of and rejected, left on the
drawing board, to say that every Title I school
had to get at least as much as all -- like the
most well-funded, non-Title I school, right?
Because in some way you can interpret all funds to
mean that that felt like there might be some
special circumstance where a non-Title I school is
getting a whole bunch of money, like for instance
they have a lot of students with disabilities
under a weighted student funding system. So we
didn't think it quite made sense to whether they
actually went for average of the non-Title I
schools, just as a way to provide some
concreteness.

But absolutely, if median seems to
make -- I mean, I'm not sure of a median in this
case, because I'm not sure that any particular
dollar amount would ever be repeated. But in --

MS. JACKSON: That's mode.
MR. AMERIKANER: I meant mode, sorry.

Thank you, Audrey.

I don't know that mode would make any
sense with that point. But median might make
sense to avoid the problem of a particular school
really pulling the mean up. We're open to other
ideas there.

So, to answer your question, Susan, if
people have specific language suggestion changes

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for that paragraph (a) that would address this problem that we've heard from a couple of folks about whether their particular district's type of funding methodology is allowable, that would be great.

MS. PODZIBA: Aaron.

MR. PAYMENT: I just wanted to say the median is not subject to cases that can bring it up. The average is.

MR. AMERIKANER: I know. I wanted to say, we want to go median.

MR. PAYMENT: No, the average is affected, but mode is not. Mode is the most frequently occurring.

MR. AMERIKANER: Right.

MS. JACKSON: Mode is a little tricky because it can be such a specific amount for a child or how you calculate which amount that you may not have that. But the mode could actually come from -- you know, you could have kids one percent off or a tenth of a percent off. And so
then the mode may actually be the most frequently occurring for kids who have a very extreme situation. Mode doesn't necessarily work if there's a lot of variability in the program.

MR. PAYMENT: One standard of deviation.

MS. PODZIBA: Go for three and you'll lose all of them.

So I appreciate the request for actual ways to fix. I don't know that anybody actually has an actual way to fix, so I'm wondering if we can have a discussion about possible ways -- do you want to caucus?

MS. GEORGE: I'm sorry, Liz, I would like to caucus.

MS. PODZIBA: You'd like to break for a caucus?

MS. GEORGE: Yeah.

MR. AMERIKANER: How much time do you think you would like for that.

MS. KING: We can caucus.
MS. GEORGE: Five or ten minutes, fifteen minutes. I don't know. I would like to caucus.

MS. PODZIBA: Ok, who would you like to caucus with.

MS. GEORGE: Whoever -- Rita. Whoever would like to discuss this.

MS. JACKSON: Wait, on what?

MS. GEORGE: On the definitions -- on this issue we're discussing, the average.

MS. PODZIBA: Ok, let's see. Could I ask you to do it this way. Just hold off. It's not too far from lunch. If we can see if we can get some discussion going, then maybe we can do that as a group and maybe you can caucus over lunch.

MS. GEORGE: Ok.

MS. PODZIBA: Thomas?

MR. AHART: I have a clarifying question. When you are talking about the resources, what all would you expect to be
included in that besides personnel? I mean,

there's some general language in the statute, but

how granular does that go?

MR. AMERIKANER: How granular?

MR. AHART: How granular, yes? What

all did it include?

MR. AMERIKANER: So that provision, the

reporting provision is not one that we are sort of

negotiating here. But I can tell you just my sort

of understanding of how that's worked in other

similar data collections. Is that helpful?

MR. AHART: Yes.

MR. AMERIKANER: In general, it

includes things like personnel expenditures, so

salary and benefits as well as things like costs

for instructional programs of other types, right,

sort of that stuff, the computers and the other

kinds of things.

It tends to exclude, so to not include,

things like capital costs, capital outlays and

debt service, that type of thing.
So in general those kind of data collections try to keep it at the actual sort of instructional, the educational services, and not on the stuff that we know over time a district has to spend money on building at different times, stuff like that.

MR. AHART: Thank you.

MS. PODZIBA: Tony?

MR. EVERS: And this has been alluded to a couple times, but a year ago the Department came out with Guidance around Supplement Not Supplant as it relates to school wide programs, and that I guess has worked.

Do you believe that what you have here now is the same as what you were talking about a year ago, or different? How is it different and why is it different?

MR. AMERIKANER: So it's a bit different, and it's a bit different because the law has changed since that Guidance came out. So the law itself has changed the requirements. And
we heard quite a bit of -- we heard some requests in our public commentary for clarity around this, and I'm also inquiring what that meant and to make sure that we had clarity around how you comply. And so that's why we have changed it a bit. We're trying to make it clearer through this process.

MS. PODZIBA: Liz?

MS. KING: Yeah, so I wanted to just read the reporting reference -- the reporting requirement that's referenced. So it says -- and this is again only required to be reported, "the per-people expenditures of federal, state and local funds, including actual personnel expenditures and actual non-personnel expenditures of federal, state and local funds disaggregated by sorts of funds for each local educational agency and each school in the state for the preceding fiscal year".

So that's from the -- we had that ink in our packet last go 'round.
MS. JACKSON: We have it here to.

MR. AHART: I read that. I was wondering what their interpretation is.

MS. KING: Oh, thanks, Thomas.

Also, I think the 2015 language that keeps getting referred to as "not Guidance," I think it's like "helpful hints," but I don't know that that distinct -- "helpful hints," I shouldn't say that. That's not a legal term. But, yeah, we've had a new law since then, and... yeah.

MR. AMERIKANER: It might be helpful in the second -- I mean, we do consider it Guidance, non-regulatory Guidance. So even though it comes out in a slightly different format.

We're always trying to innovate the Department in trying to come up with more helpful, user-friendly ways to write that.

MS. PODZIBA: I've got Richard and then back to you Tony.

Richard.

MR. POHLMAN: Thanks, sure.
I'm going to try to parse out back to this question of average, if you will indulge me for a minute, in that I think that, one, I don't think average is unclear. It's something that we use in fiscal terms all the time, in all of our work with our accountants, our financiers, our auditors, et. cetera.

I would also say that narrowing it to one of the three methods to calculate average, I think it narrows options for schools -- or for districts and states.

The third piece that I would add in there is that it seems to -- and again, this is my interpretation, and I would just put it out there for clarity piece -- it seems to somehow contradict with the exception that was noted earlier in three -- romanette (iii)(b), and this is statutory, right, is that those supplemental state or local funds expended, like, it includes more than just the average.

So I think that the intent behind that
is to include as much as you can within that, that
it's justifiable under the audit guidelines to
come up with something that makes sense on an
individual district-level basis, and so I think
that was -- that part of the goal I read here, I
don't think it conflicts with anything anybody has
actually said. I think it just goes to saying
like, I'm not sure that -- while average would be
a point of -- a sticking point for Aaron, I don't
think that -- I think that maybe even more than
that would be per-pupil, for instance, or there
may be some other components of that language, and
it may be even reading it all together that's
striking people, not a single word, and by
changing the word I think we would go against
Congressional intent to allow the maximum
flexibility to determine those things.

MS. PODZIBA: Tony?

MR. EVERS: Not to be picky, but, yes,

this is a new law, which the Supplement Not
Supplant "helpful hints" a year ago applied to
schoolwide programs, and that, to my knowledge, hasn't changed dramatically in the law.

MS. PODZIBA: Ok, it sounds like there may be disagreement about what the status of past Guidance has been.

Ary, can you help?

MR. AMERIKANER: I know you were saying that back to me.

I mean, I think that there are actual changes in the law within what's the Supplement Not Supplant requirement on the page now from what there used to be in the schoolwide program.

And you're right, Tony. It is similar.

It is definitely similar. I don't mean to discount that. Of course it is similar.

But at this point the test is different in a couple of I think important ways. So one of those ways is that it has a requirement that a district demonstrate somehow that its methodology insures -- like these are new words, and this focus on methodology and a new focus on that, and
insuring that every Title I school gets all of the
state and local funds it would have gotten
otherwise if it were a non-Title I school. Like
those are strengthening words, and now the test
applies to all Title I schools, not just the
schoolwide programs.

So, because it now applies to a lot
more schools, we thought it was particularly
important to go through this process to try to
clarify so that districts and auditors and states
know exactly what it means.

So it is similar, you're right. And I
certainly don't mean to undermine that point, but
it is also strengthening and applies to a lot more
to schools. So we thought it was important to go
through this process.

MS. PODZIBA: Mary Cathryn?

MS. RICKER: Thank you.

So in looking at (a) all together,
beyond even just the word "average," I am
wondering what is the purpose or what are you
1 getting at with (a) going beyond these new
2 reporting requirements from Congress, which are
3 fairly significant and kind of exciting, from my
4 point of view?
5 MR. AMERIKANER: I think the purpose is
6 to try to give clarity to districts about how to
7 meet the Supplement Not Supplant requirement. So
8 we would definitely be open if people have other
9 ideas.
10 I think we are trying to be as clear as
11 possible about how you demonstrate, as the law
12 requires, at a district level and how that
13 district would demonstrate that every Title I
14 school is getting all of the state and local funds
15 it would otherwise receive.
16 This seemed to be the clearest, most
17 straight forward kind of dry way, is to use these
18 dollars that are already going to have to be
19 reported. And also it has the benefit of being
20 clear and quantifiable and also gets at what we
21 think the underlying purpose of the Title I
Supplement Not Supplant requirement is.

But truly, if other people have suggestions about a better way to do that, we would love to hear that.

MS. RICKER: Can I just follow up quickly?

MS. PODZIBA: Sure.

MS. RICKER: So sort of like the new sun that shines on this reporting can be a really powerful tool for me at the bargaining table as I negotiate for what I believe we, as a community, believe are the schools our children deserve, and I see our community organizations having that same opportunity.

And so, if there is a bit of sort of a standardized requirement at the federal level that actually -- that actually keeps it from being the powerful tool I think it can be, and I feel that the reporting itself has not demonstrated its potency yet. And so I feel like we are prescribing a remedy for something I don't see has...
exposed itself as an issue yet.

MS. PODZIBA: Alvin?

MR. WILBANKS: I want to follow up with something Tony said, really a question.

The 2015 version of Compliance mentions that schools could demonstrate compliance based on allocation methodology, not spending, and there's a big difference.

So, I guess the question I think to ask, and I'm not assuming this is your question, Tony, but why couldn't we not just use that -- and maybe that was your point as well. Why isn't that a good approach to demonstrate compliance?

And again, I don't think any of us are against the Supplement Not Supplant principal, but it's how you go about operationalizing that.

Whenever you have people retire every year in the school, you have redistricting that occurs, staff assigned to schools.

So, if it's on the allocation methodology, I don't know. I don't speak to that
point. But I think that might be a point that we
could agree to, but not necessarily on what seems
to be now the expenditure side. And particularly
in areas of eighty-eighty percent of -- I can't
speak for every school district, but for most
school districts the personnel and benefits costs
range between about eighty-six and eighty-nine
percent of the budget. So, when you lump in
utilities and a few other things, there is no
discretion at this point, or if so, it's very
small.

So I think that is a good way of
getting that in, and it's not -- we just now --
it's sort of like a form. Now that we've learned
to use the form, it changes again. So we sort of
know how to do the other.

We might like to address that as a good
compromise.

MS. PODZIBA: So, Alvin, does that also
get to Mary Cathryn's point, that that also gives
the reporting element a chance to be tested?
MS. RICKER: Prove itself.

MS. PODZIBA: Prove itself.

MR. WILBANKS: Yes.

MS. PODZIBA: Ok.

Aaron?

MR. PAYMENT: So, I'm good with "average" and it's listed here, because again I think it will default to a mathematical average, which is the mean. So really doing this appropriately and allowing for maximum flexibility to the state might be to say something like "average or other appropriate statistic," and allow the states to define that". And it could be -- really it would be some other measure of central tendency, standard deviation or something, because there are different variances that the mathematical average is not going to be reflected, but I do like the concept of having something to compare against.

So a proposal, if somebody else wants to make it, because I don't feel that strongly
about it, is "average or other appropriate statistic," and then you leave it to the states to define what that means.

   MS. PODZIBA: Ok, could we keep that up there and see? Because it feels like there's some elements of a new proposal coming up and that may fit within it.

   MS. PODZIBA: Tony?

   MR. EVERS: Oh, I'm sorry.

   MS. PODZIBA: Ok, Rita.

   MS. AHRENS: I just wanted to comment on Alvin's proposal, which is a suggestion of using allocation. Because I would need some clarity or I guess more knowledge about what is the typical discrepancy between allocation and spending. Because I know that sometimes we make plans, but the money doesn't necessarily get spent, and if it's a small discrepancy, you know, and there's a little bit of leeway -- I mean, there's mathematical ways to calculate this, right, whether you're within five percent of your
allocation in terms of your spending--

MR. WILBANKS: Can I answer that

question?

MS. PODZIBA: Yeah, as soon as she

finishes asking it.

MS. AHRENS: Yeah, because I think the

problem is, if there's a huge discrepancy, then it

just causes an equity issue that that's covered up

by using allocation assessment.

MR. WILBANKS: Well, I guess that

depends on how you define "discrepancy," but let

me give you the most common one...

You had a teacher who taught

thirty-three years, had a doctorate, a salary of a

hundred thousand dollars. She gets replaced with

someone that has been teaching three years, has a

Master's degree. So, that salary line goes from a

hundred thousand to whatever it is. Let's just

say it's sixty thousand.

MS. RICKER: Right.

MR. WILBANKS: But you're still
1 allocates -- your methodology allows you to
2 allocate a staff person at that school. So that's
3 the difference between allocation and expenditure,
4 and that's just for that one teacher. When you
5 consume that as a whole...
6
7 Again, personnel and benefits is a huge
8 part of any district's budget. I would dare say,
9 I've never known anybody to get less than
10 eighty-six, but it generally runs between
11 eighty-seven to eighty-nine percent. Our current
12 budget is eighty-eight percent of our total
13 budget.
14
15 MR. AHART: Can I just add one other
16 brief example that's relevant to that?
17
18 MS. PODZIBA: Yes.
19
20 MR. AHART: So, on the other end, I can
21 have two teachers with identical education,
22 identical years of experience, and because in our
23 master contact the district covers the cost of
24 full benefits, if I have a teacher that's taking
25 full family insurance and another one with the
exact same assignment is only taking SEMBLE (phon) insurance, that one teacher will cost an additional twelve thousand dollars.

So how our allocation formula works is we have a weighted formula where you get weighted more heavily, but we don't do it in terms of dollars; we do it in terms of staff, because we also want to encourage our schools to hire the best talent they can.

So if I'm allocated twenty-five staff members and I have, let's say, five hires to make... I don't have to worry about hiring a brand new teacher because that's all I can afford. I know I have a fully-compensated FTE.

So if I find that the best candidate has twenty years experience, a Master's degree, is highly effective and is going to take full family insurance, I have no disincentive to not hire that person, if that's the best person for the job.

But what that does in terms of the actual dollars spent on staff, building to...
building, it's not correlated with the level of services that we're providing the kids.

Like Alvin said, way over eighty percent of our total budget is spent on personnel. And there is a lot of variance for which we have very little control. As governed by the master contract, measuring the dollars spent on staff per student is not a way to measure the level of quality service. But the number of FTEs that we're citing is a much better way to do that.

MS. AHRENS: Can I just ask a follow-up question?

MS. PODZIBA: Sure.

MS. AHRENS: Alvin, in your example, what happens to that leftover money if that retired person leaves and you're hiring in a new person?

So you have something that's allocated for personnel. Does it still go to personnel --

MR. WILBANKS: It goes into the "Superintendent Slush Fund".
(Laughter from the committee.)

MS. AHRENS: Wouldn't you still spend it on personnel if it's allocated?

MR. WILBANKS: Well, obviously there is such a thing -- you know, we have a budget, and for those of us that live and die by budgets, if your expenditures are running less than your revenue, you're in good shape, ok.

And then at the end of the year we have this thing that we call carryover, or whatever, but you may have, in the next district, you may have a first-year teacher that decides they're going to leave, and then you hire somebody with a doctorate. It could just be the reverse of that. But from the district level, your personnel budget is still, you know, paying for whatever your staffing methodology is.

MS. PODZIBA: Thank you.

Liz?

MS. KING: Yeah, I wanted to just thank Mary Cathryn for highlighting the value of the
reporting on per-people expenditures. We're very excited about that. That is a different and separate requirement elsewhere in the law.

I think we want to make sure in ways that that's standardized. That is just a very different conversation, although obviously related because it's referenced here in the Regulations.

Again, I will say this idea of having auditors sort of discern motive behind multiple methodologies and Alvin's "slush fund" that he's identified, the discerning -- the intent around a methodology, I'm not comfortable with that level of discretion for auditors.

In the example, Thomas, that you just gave, that does not allow for school-based budgeting, if a district does not allocate FTEs but instead allocates -- gives discretion at the school level that would determine staffing that's not allowed under this.

Just to remind everybody that this is about supplemental funds, not supplemental...
services. So that would be, you know, a test that
was based on services and that was looking at, Did
you have a districtwide salary schedule, and Did
you have a districtwide class size and a method
for allocating instructional resources, which
would be a different test than that which was
required under here.

Also, there's a distinction, to -- Rita
I think raised a very excellent point. This again
does not say, Did you plan to use these funds
supplementally, but, Did you in fact use them
supplementally. So that is I think an important
distinction that Rita just made. If you planned
to use them supplementally and then didn't end up
using them, I'm not sure how that's compliant.

Again, I'm still not sure, for any LEA
that is not compliant with (A), why are they not
supplanting. That's what I'm having a hard time
with. They may need to demonstrate more in order
to be not supplanting. They may also need to
demonstrate (B). But if you fail to demonstrate
under (A), that's what I'd like some greater
clarity on, especially if we're going to talk
about changing (A), how, presumably because
there's a scenario in which you could fail (A) and
still not be supplanting. So I'd like to hear
more about that.

MS. PODZIBA: Are you directing your
question to someone, or is it a general question
to the group?

MS. KING: Both. I mean, I said both
Alvin and Thomas' names, so as far as I'm
concerned, they get to respond, but I'm also
interested in the whole group.

MS. PODZIBA: Ok. I don't want to have
it that way. I'm going to go through the whole
room, and if Alvin or Thomas want to respond, they
can put up their cards to do so.

Audrey?

MS. JACKSON: I just want to speak a
little bit to the comments that have been made
about the expenditures at the school level.
One thing that's happened, or one that I have seen happen personally in really high-need schools is that, a solution, when there are fiscal constraints, are to have -- to utilize almost sort of loopholes with multiple certifications, to have people serving different roles.

So for example I'm a triple-certified teacher -- I don't know if that would count in other states -- in special education, elementary education and for English-language learners, SCI. The issue is that, on paper, people would say -- and this happens to teachers all the time -- in an inclusion classroom, or any classroom that that teacher would have more than one certification, he or she delivers all of those services. And this is what happens a lot in schools when there are fiscal constraints, and particularly in schools that are in high-poverty schools.

And so, even as I was Massachusetts State Teacher of the Year, and in my first years of teaching, I thought I was good, but I have
definitely gotten better. But I can tell you right now, if my district did not have such a competitive pay scale and proper supports in my school, I would not be able to stay there. I would have burned out.

And because there are, I wouldn't say necessarily ample or sufficient resources, but there are adequate resources, and we are treated like professionals there, that's one of the reasons that I'm able to stay in the classroom.

And so I think that -- I guess I'm just cautionary. I totally get what you, Thomas and Alvin, are trying to bring up, but I think that these funds are for the kids who are most in need.

These are not like pity funds. These are not, you know, you need it just a dose for it to be nice.

That's because there is a greater need, and what -- no, sorry. You did not say they were pity funds. I'm not saying you said that.

But I'm speaking to the need for increased services and that often really does
correlate to higher costs, if done well.

MS. PODZIBA: Ron.

MR. HAGER: I had a question about --
you had earlier said that (A) was from the statute, but as I compare it with (B), I think this is the problem. Is (B)(1) also from the statute? It looks like it is.

Because you were talking about how the statute now requires that they demonstrate that the methodology to allocate "all" and the word "funds," that's all from the statute, right? Is that what you're coming up with?

MR. AMERIKANER: This is why it's tough to try to do these things in color code.

MR. HAGER: Yes.

MR. AMERIKANER: So some sections of what you're talking about, Ron, is Compliance (F)(b)(1) romanette (i), so some of these words are taken right from the statute and some of them aren't. So I don't think it's fair for me to sit here and say that that entire paragraph is
straight from the statute, but we were trying to
make it clearer how to actually implement it.

So it's a little tough to answer.

Let's put it that way.

MS. PODZIBA: Alvin?

MR. WILBANKS: I was just going to
clarify again, when you consider state and local
funds, in a district it's not uncommon for one
school to -- maybe the PTA to purchase a computer
lab. To make all that legal and everything, the
PTA raises the money, they give that to the
school, and the school buys that.

It's also not uncommon for districts,
that other students in the district could not do
that.

So, you know, how do you deal with
that? And I think that points to the part of the
metrics here that this is still America and that
there's differences of whatever.

The initial intent of Supplement Not
Supplant is that you look at all of these schools,
and then you look at the Title I schools. Are they getting the use of the Title I money, not the other schools?

And I think that's the basic intent of it. And I live and die with that every day and certainly agree with that, and I want to make surer that whatever we do here today doesn't take away from that.

But to make it more difficult, make it harder, I'm obviously opposed to that.

MS. PODZIBA: Thomas.

MR. AHART: Liz, to your point about there are different methods that districts use to distribute resources, and so I wasn't trying to say that (A) -- I wasn't trying to suggest any test for (A).

What I am trying to advocate for is that there is some degree of flexibility so a district can make the best use of its resources within its own context and still equitably serve the students we're charged with providing supports.
I would also like to request after lunch that we could get a red-line version of what is on here. Because I would also say, Liz, that (A) is not a requirement in regulation. It's a proposal from the Department.

MS. PODZIBA: Rita?

MS. AHRENS: All right, as we're discussing, I think it's more helpful for us to consider both (A) and (B) together as tests that together will help come at the question of compliance.

Because if you're doing -- if you're just looking at the (A) test, I think that, you know, you can come up with all sorts of reasons why you might not like the (A) test, you know, part (A), as opposed to, you know, look at part (B) by itself where you might object because there are exceptions that you can find.

But as a whole together, I think it is actually quite reasonable in giving us the results.
of whether districts are compliant or not.

One of the things, I think, when I'm thinking about the average, you know, I think the use of the average in part (A) actually resolves the issue of allocation and spending, or the issue of some schools spending more on personnel than others, and in a way I think it would actually help incentivize some of those schools to bring in the, you know, more experienced teachers, more qualified, you know, more effective teachers to kind of help out that average.

So I think it might be a good incentive to equitably distribute teachers to those high-need schools.

So I don't -- I like (A) and the use of average for expenditures. I don't think you've convinced me that allocation is appropriate in this case, so I do support still using spending.

MS. PODZIBA: Tony?

MR. EVERS: So I know this won't be helpful, but I just have to say it.
We talk about what part of the law is in here; I just want to talk about what part of the law is not in here.

The law says "No local education agency shall be required to identify that an individual cost or service supported on this part is supplemental".

It also indicates that "Nothing in this section shall be construed to authorize or permit the Secretary to prescribe the specific methodology a local agency uses to allocate state and local funds to each school receiving assistance under this part".

So I think there is this conflict in what the law says, what this says, and I'm not against working it, but the bottom line is, this is one part of the law that really isn't reflected here.

MS. PODZIBA: Ary?

MR. AMERIKANER: So I just wanted to mention that I agree with Tony that the part about
the prohibition is not rewritten into the regulation, but the first part he mentioned about an LEA not being required under this section to identify that an individual cost is in paragraph (A), In General, Roman numeral II, and romanette (i).

MR. EVERS: The prohibition law is not in here.

MR. AMERIKANER: Right, is not written in here.

MS. PODZIBA: Liz?

MS. KING: Yeah, to that, I will say that it says in (B)(1)(ii) "An LEA may determine the methodology it will use," right? So, it's not saying, we do not prohibit you from -- or, We do not require a specific methodology.

I mean, you could have that, right?

You could say that, The Department is not requiring that an LEA use a specific methodology.

The LEA may determine the methodology it will use; just as a way to resolve that, because I'm
perfectly comfortable with that.

To the issue of flexibility, I think it's important here to look in (A) specifically. And I don't want to strike (B). I'm sorry if it sounded like I was suggesting that. But in (A), the only flexibility that is not allowed is that you may not spend less in Title I schools.

To sort of come back to my, You could only hire band teachers, point, there's lots of reasons you shouldn't do that, and there are lots of other laws that that violates.

The only flexibility that is not allowed under (A) is the flexibility to spend less money in Title I schools. So that's the only thing that (A) disallows from a flexibility perspective and from a district-discretion perspective.

MS. PODZIBA: Derrick?

MR. CHAU: Ok, there's been a lot of discussion about how are schools run and how teachers are hired. And coming from a position
where we are running schools and hiring teachers, and having hired teachers myself and understanding those methodologies, I'm just wondering if --

there's an assumption in our discussion that (A) and (B) are necessary, because romanette (i) under (B)(1) is not clear. And I'm wondering whether or not we've agreed to that. Is what it says in romanette (i), under (B) unclear?

A lot of the comments that I've heard today have talked about hiring more teachers, hiring more experienced teachers, allocating staff and funding. Maybe it's just my ignorance in this process, but I don't think the Congressional intent behind this was to tell local districts how to spend their money and how to allocate their money. And if a local district has determined, through it's elected school board, that the way it funds its schools is in a certain way, they should be able to demonstrate that in romanette (i) and meet the requirement.

I'm just trying to get some clarity on
what the feedback from others might be around that.

You know, I'm representing LA Unified,

but I'm representing all the other districts in this country who have very different budgeting methodologies. And I'm fortunate, like Ryan, to live in California where we are blessed with a state funding formula that allocates funding in a more equitable manner than most states.

However, our budgeting process is not based on students. It's based on school-based budgeting. And so we're allocated by that to use.

So we do have instances -- I don't have the exact data with me right now -- but I could imagine that we have schools where there are more experienced teachers who are earning more money who, and in those schools, it's very likely that that school's per-people funding is going to be higher than in other schools. That is a fact. And that was determined by our school board as publically elected.
So, I'm wondering how, when we start talking about results of a methodology, as Thomas said earlier, I think it's sort of skirting the issue that, we're not allowed to create a methodology, but we can only choose the one outcome.

I don't know. I have a nine-year-old at home, and if I tell him, You can go to soccer practice, but you have to do your homework, there's one methodology there.

It's not that you get to choose. And I worry that by forcing districts to meet this outcome, we are basically telling them what methodology they need to use in their schools.

I mean, yes, there's some flexibility there, yes. It's a base level. But it seems like a false choice and it goes beyond maybe what Congressional intent was originally.

MS. PODZIBA: Lara?

MS. EVANGELISTA: I just want to -- from a school perspective, I think the most
important thing that we do is have the autonomy to
hire our teachers and pick the teachers who are
best suited for our school, our model and our
students. But I think there's this -- it just
sounds like there's this ongoing assumption that
it's always the highest paid, most experienced
teachers that are always the best teachers. And
that's just not always the case. And I think we
spend a lot of time --
I mean, the fact that I have my staff,
that people aren't transferred in and out, and
that I can work with them over a period of time,
and my newer teachers can work with my existing
teachers and develop them, we do retain a lot of
staff. We don't have a lot of turnover.
But when we're hiring, we're not always
looking for the most experienced, highest paid
teachers, and I think that's just something to
consider.

MS. PODZIBA: Yeah, I just want to make
the observation that it sounds like the people who
would be regulated under this are all choking a
bit on it. That's just an observation; that the
others who want a change, and I understand that,
are supporting it, but the ones who would have to
change their systems, I'm not hearing people feel
like they can do that.

Richard?

MR. POHLMAN: Yeah, going back to
something Ary said much earlier in coordination
with Derrick's comment --

(Technical difficulties.)

MR. AMERIKANER: It was working.

MR. POHLMAN: How about now? Can you
hear me now? Can you hear me?

The question I have is, you mentioned
some public comments earlier that you had
received, and like I am not extremely well-versed
in the exact language of the former test, but I've
been operating schoolwide programs, and this seems
really close to the old test for schoolwide
programs before. So lots of people have
implemented this test previously.

What specific questions came up in the responses from your open-comment period that said, This is a specific problem we need to solve, and how does that interrelate with romanette (ii) (A) and (B)?

Because I think hearing more about that could be helpful to just contextualize it from the experiences from the field even beyond the state level.

MS. PODZIBA: Ary?

MR. AMERIKANER: May I respond to this? So I think there's two different answers to your question, so I'll take them in sort of categories.

One is we have heard over the past however many years, not just the public commentary, but over the past like ten years of implementing the law, implementing the old Supplement Not Supplant test, a lot of frustration from districts specifically who are frustrated
with the way the other -- remember under the old law. I know you know this --

MR. POHLMAN: Yes.

MR. AMERIKANER: There were two different kinds of Supplement Not Supplant requirements, right? So one of them was very, very specific about what kind of services you could buy with your Title I dollars. And that was frustrating to a whole lot of people. They wanted to be able to use their Title I funds in various ways, and they are told, no, no, no, no, no, by auditors. And that felt burdensome.

We heard a lot that schoolwide programs -- even though under the old law schoolwide programs didn't have to use that particular test, auditors were still making them use that particular test, because they didn't understand that they didn't have to.

So in one case, we heard a whole bunch of, please make it very, very clear what the actual requirements are so that auditors do not
1 have this ability to push us around like this.

2 So one line of commenting is, Please

3 write something that is extremely clear and

4 specific so that auditors can't give

5 misinformation.

6 So that's one line of request. And

7 that I'm not going to point out the commentary.

8 I'm pointing to the last ten years.

9 The other kind of request that we got

10 for specifically the public commentary was a

11 request that we address the long-standing resource

12 and equity.

13 So, you're right. I think Alvin and

14 Thomas had been making the point that, in the

15 past, there were provisions that said, In the

16 schoolwide program you could use staff allocation

17 methodologies and that would meet the requirement.

18 And unfortunately -- and I actually think -- I

19 think Thomas especially is making a really fine

20 argument about the concern about not wanting to

21 have a disincentive to hire the right teacher in
your school, and I think Lara is making that point. I hear that fully.

I think unfortunately, what we know from looking at data across the country is that the more common problem is the reverse. And I don’t actually think -- this doesn't sound like it's you at all. But the more common problem across the country is that what would end up happening is that, in your highest-need schools, you end up getting a high concentration of first-year teachers because the turnover is high, and, as Audrey pointed out, it's really hard to work there and people leave. And we know that years of experience are not directly correlated with being the best teacher and it depends on the context.

But we also know from research that years of experience do matter and that you get better relative to yourself in your first year as a teacher, and that you get better relative to yourself in your second year as a teacher. So we
think that that matters as an equity point.

We also think that, as we have been told in public comment fairly often, we know right now that the fiscal inequities that exist around our country are problematic, and that around our country, in Title I districts, Title I schools are getting less state and local money than their non-Title I counterparts.

Even if you have a methodology that allocates to all schools based on the number of teachers per students, let's say, what that leads to is often, because we know this pattern of inexperienced teachers going to Title I schools, and as soon as they have the seniority and flexibility to choose, they go to a less needy school, what ends up happening is a lot more dollars get spent in your non-Title I schools in a lot of places.

To us in the Department when we read the letter of the law, of the Supplement Not Supplant test that said "all state and local funds
1 that it would otherwise receive if it were not a
2 Title I school," it seemed pretty clear that if
3 the pattern is that you're getting less state and
4 local money in your Title I schools than your
5 non-Title 1 schools, it can't possibly be the case
6 that your methodology is resulting in you getting
7 all the state and local funds you could get if you
8 weren't a Title I school.
9
10 It just seems like, reading the letter
11 of the law, and also thinking about the
12 overarching purpose of the law, which is as we've
13 all talked about, inequity, and combining the
14 letter of the law with the intent of the law, of
15 the Civil Rights aspect of the law, it just seems
16 pretty clear that that hasn't worked in the past
17 to get to a place where we're breaking these
18 cycles of underfunding our highest-poverty
19 schools.
20
21 So that was the type of public
22 commentary that we got in the public commentary.
23
24 MR. POHLMAN: That's helpful.
MS. PODZIBA: Thanks.

Liz?

MS. KING: Yeah, I just wanted to respond to Susan. I hope that you're also hearing from the advocates for students and families that there's a need to have a regulation here and there's a need to insure that those intended beneficiaries of the law are also being served.

MS. PODZIBA: Right, of course I hear that. My goal is to get consensus, and so what I'm hoping is, if I hear that all of the parties who are going to be regulated can't live with it, it means to me that the construct needs to shift.

And so, I totally understand the intent, and what I am wishing for and have not been able to bring the group to that place, is to think together about how to be responsive to the concerns that everyone is raising.

So, I just keep hearing that what's there doesn't work and that we have to do it -- this has to be done, but I'm not hearing very much...
1. thinking together about saying, These concerns
2. that everybody has are legitimate and how do we
3. come up with a scheme, a mechanism that's
4. responsive to the concerns that everyone's
5. raising.
6. So it feels a lot to me like a
7. Ping-Pong ball, and I'm wishing more for a dance.
8. MS. KING: Ok, I just would say as a
9. general thing, I hope that the intended
10. beneficiaries of the law carry at least as much
11. weight as those responsible for operating under
12. regulation. That was just sort of my --
13. MS. PODZIBA: But I just want to
14. respond to that, because what I'm hearing around
15. the table is that everybody cares about the
16. students, and I think what's hurtful is that some
17. people are suggesting that not everybody cares
18. about their students. And what I'm hearing from
19. everyone, and have heard in all the phone calls
20. that I did before this, is that the focus is on
21. the students, and the focus is on the students
that will benefit from Title I funds.

MS. KING: No, I just -- the distinction that you had made is those who -- so I just wanted to make sure that everybody was being represented.

So I think -- Derrick, I wanted to sort of come back to the point that you had made that this was requiring a methodology, and I just want to hear more about that.

My interpretation, when I look at this, I think you could have, you know, a system of state and local funding that is only categorical, where you are only funding, you know, based on individual funding streams, or you could have a per-people expenditure system that is weighted. I think you could even have a non-weighted system under this, which is too bad, because you'd have a weighted system. But you could have a non-weighted system and that would be compliant. So those are multiple methodologies an LEA could have and still be compliant.

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Also, on the issue of sort of the federal interest in this is not just a recreational interest in the way that LEAs allocate funding, right? There is a very specific federal interest which is insuring that the federal investment is in fact supplemental.

And I -- I'm just still interested in hearing what the -- because if the problem is that (A) is undermining -- as written, is undermining the intent, I would like to hear more about how (A) is undermining the intent and why an LEA that fails to meet the (A) test should be considered supplemental in the interest of, if we are going to rewrite the language -- that's the construct that I'm not understanding, is when is it justified to violate (A) and still be supplementing?

MR. CHAU: Can I respond to the question?

I would like to hear why you believe romanette (i) is unclear. Before we talk about
(A) and (B), we need to talk about romanette (i).

MR. HAGER: Yes.

MS. KING: No, that's a fair point.

Sorry, I forgot about that part. I will come back to it, but thanks.

MS. PODZIBA: Ron?

MR. HAGER: Yeah, Derrick, that actually is my question from before that I asked Ary. If you look at (B)(1)(i) in this regulatory language, that's the one you're concerned with, right? If you compare that to the statute, it is almost verbatim. And the key operative terms here are the same.

So, you know, that's where the confusing of the methodology comes. Because the (B)(1) -- if you look at the statute, which is 1012 -- sorry, Section 1118(B)(2) and I don't know what page it's on on yours.

MS. PODZIBA: Seventy-four.

MR. HAGER: Page 74? I have Page 76.

I don't know how I got different pages, but if you
look at Page 74 and look at the statute, so this is I think the principal within which the Department must operate, because this is in the statute.

So if you read that language it says, "To demonstrate compliance with paragraph (1)," which is the general Supplement Not Supplant, "a local agency shall"... "they must demonstrate that the methodology used"... so here is methodology, there is limitations on the methodology... "the methodology used to allocate state and local funds to each school receiving assistance under this part," which is where they get the Title I from, "that such school receive all," all, "of the state and local funds it would otherwise receive if it were not receiving assistance".

So that language constrains the test that they can use, and my hearing of what Ary is saying is, when we see that language in (B)(1) that's basically from the statute, how else can we operationalize that requirement? And that's why
they have selected this as an alternative.

I mean, if there is another alternative, going back to Susan, that would comply with the statutory language, then what is it? And I think that's also what Liz is trying to say.

MR. CHAU: I understand that that's the statutory language. My question is what about that is unclear that requires us to have an (A) and (B)?

MS. PODZIBA: In other words, just stay with the statute.

MR. HAGER: I'm sorry, Derrick.

MS. PODZIBA: Marcus?

MR. CHEEKS: So Ron just pointed out one part of what I wanted to identify is that, romanette (i) is not in conflict with the law but in concert with it. And from a practical standpoint I still go back to some point in time, on the ground they will need to know how to carry out this test of compliance.
MS. PODZIBA: Right.

MR. CHEEKS: People in school districts will want to know that, and they will want to know it from both sides of the fence, either making the argument that, I'm in compliance, or making the argument that, I'm not in compliance. The law doesn't give us that room.

And the sad part about this is, we've taken away the three-prong test but left the primary driving factor of the three-prong test, which is the fact that Title dollars cannot supplant state and local funds.

I think our starting point is to find which area of schools are not being represented in this particular test and would be automatically disenfranchised as a result of it.

If I'm listening to the group, small schools are being covered. Title schools, Title-like schools are being covered. What's not covered are these high-poverty schools that are not receiving Title funds but could inadvertently...
cause an automatic disenfranchisement -- or an appearance that Title schools are not receiving their equitable or equal share of Title I funds by virtue of the fact that they're high-poverty schools; by virtue of the formula process where they may be all ready receiving as much or more state and local dollars than Title schools would be concerned.

So it's that group. I think it's that area that we have to find the sweet spot in order to be able to say they're in compliance or they're not in compliance.

I think it hinges around this conversation of "basic educational program," which is defined as the floor of the state.

So, in a lot of ways, we're getting into the weeds of trying to figure out how this looks from a compliance standpoint, because it's necessary, and absent having something there that says, this is how the test will be carried out, I think we leave ourselves vulnerable to this test.
to be developed over time and someone is going to suffer as a result of it.

MS. PODZIBA: Could I just see if I understand you?

I thought that the key concern was that wealthy schools were getting more than their share. But I think I hear you saying that high-poverty schools that are not Title I schools may be getting more, and that's the category of schools that could cause questions about compliance?

MR. CHEEKS: If I'm hearing the conversation, that's the area. Because the high-poverty -- the low-poverty, higher-fluency schools, they're getting the resources, and if they're causing this average test to be imbalanced, then I think that's getting to the point where the law is intending to go.

But if a school that is high poverty is not receiving Title funding, simply because there's not enough resources coming from the...
federal government to supply all of those schools, but now as a result of this district putting more resources because the high-poverty school now has low-performing children, so now by virtue of having the more experienced teachers there, you're getting more dollars going to that school, that's the group that I think is the sticking point that I'm hearing from this conversation.

So how do we find -- and whether it's -- whether it's under the area of exclusion, whether it's under the area of -- as Derrick has made mention -- how to deal with the law. If you leave it there to the law, you're going to have an auditor that's going to deal with us on this matter.

So, I think at some point in time we have to be able to address the buckets -- if that's a term that Tony used earlier -- the buckets of schools, by virtue of their status, in order to see -- if those schools are following in compliance with this law, then we know the law is
If for some reason some groups of schools that would normally be served well because of this law, but now they're outside the spectrum, then that's the group of schools we need to figure out, how do we find an umbrella for them to be under this.

MS. JACKSON: Marcus, does the Title I-eligible help with that, or no?

MR. CHEEKS: I don't think so.

MS. JACKSON: Ok.

MR. CHEEKS: Because just by virtue of being Title I-eligible may not necessarily speak to the resources that are going there. I mean, I have plenty of Title I-eligible schools --

MS. JACKSON: No, I'm saying the non-Title-I-eligible was put in so that, like what Thomas was talking about where they have many high-poverty schools, but they don't all get Title I funding. So everyone would not be Title I-eligible.

Does that make sense?
MS. PODZIBA: Ok, let's let him think about that.

Aaron?

MR. PAYMENT: So, just so that we're not spinning our wheels, I guess I would like to ask if there's any point of agreement from the states to develop language that's more clear, or if the bottom line for the states is that there's -- that there isn't any point of agreement, that we're not going to be able to draft language? Because otherwise we're going to spend a lot of time and end up at the same place.

MS. PODZIBA: So are you proposing that I see if there's dissent on the language that's here, or the question about whether people think if we work hard enough we'll be able to come up with something?

MR. PAYMENT: I would say the second one, but I think maybe the question should be posed as, Is there any point of agreement to
develop language that's clarifying?

It seems clear to me, but I think it's

a matter of developing language that states are
going to interpret as restrictive or as going to
create new categories.

I see it very differently than that. I
think clarifying it here makes it easier for the
auditor -- everything that they have expressed, I
think this addresses it.

The bottom line is, rather than
continue to try to negotiate back to the same
point, if there is no point of agreement, then I
don't think we should waste our time trying to
develop criteria.

MS. PODZIBA: So I appreciate your
concept. I'm just trying to understand that when
you say, is there a point of agreement, I don't
know what that means.

MR. PAYMENT: I guess I'm looking for,
if there's a proposal that is palatable for the
states that we could then negotiate to, rather
than keep trying to come up with something that in
the end the states are just going to say, No, we
can't.

Based on the principal of how this
process is working, we have to have a consensus,
and in the end, if the states just say no to
everything that's proposed, then I really do think
we're wasting our time.

But if they have a proposal that they
find palatable that we can work with, then we can
respond to that.

So rather than drive it from draft
language that they can react to, let's ask the
states to develop language that they think they
can live with so that we can see if we can live
with that, as well.

MS. PODZIBA: So I'll put that to the
people who are having the most concerns. Do you
all think you can come up with a proposal that
would meet the concerns of everyone around the
table, including yourselves?
Alvin.

MR. WILBANKS: First of all, and in due respect to Aaron's comment, I think that there are several oppositions here, not just the state's, as I believe you referred to it. And everybody has that right to be so, certainly.

But I think the issue is, Marcus, if you're not a Title I school it wouldn't apply to the Title I schools. This Supplement Not Supplant applies to official Title I schools, meaning that they have to have at least forty percent of reduced lunch students to qualify. So if you are below that or above that, there is some issue. I don't know how you could really be above that if you are not a Title I school. There may be some issues where you can get into that...

But I think again we're getting back to what we see is what's really not in the law to be propagated as it is in the law. And I'm just saying that to me that's a sticking point.

MS. PODZIBA: Right, I think in some
ways the proposal then is to delete some parts of this.

MR. WILBANKS: Yes.

MS. PODZIBA: So maybe we can take up that proposal, which hasn't been put out as a proposal, but we've been kind of winding around it, and then we can see -- get a sense of where the group is, which is what I think Aaron's point is.

Thomas?

MR. AHART: I think we're conflating comparability with Supplement Not Supplant, and I think that's causing some frustration. We're trying to take care of some comparability concerns through Supplement Not Supplant.

I would also like to echo what Derrick has suggested a number of times, and we seem to not stay on that long enough to move forward, is that under Page 4, under Compliance, (B)(1), romanette (i), to clarify where or if there is disagreement on that.
And then just two more things, quick.

I want to just echo that it would be really nice to have a red-line version after lunch, that I think that would help moving the discussion --

MR. AMERIKANER: We have it and we will give it to you after lunch.

MR. AHART: Thank you.

And then the last thing, which hasn't really been referenced yet, but there is some statutory language relative to making requirements that will cause an additional financial burden to LEAs, and we've not had a discussion about what the anticipated costs in these proposed regs would be.

MS. PODZIBA: Let's hear from Liz and Rita and then we'll break for lunch.

Liz.

MS. KING: Thanks, and sorry, Derrick.

I should have answered your question before. I just got distracted on other things.
So I do believe it is unclear,
specifically given the history on the way this has
been implemented by auditors and through Guidance
that we know has resulted in considerable
confusion and variability, which is why I think
there was interest in reforming the way that this
worked.

(1), as it stands, is insufficiently
clear. I believe that, as written, it would allow
for the discretion of an auditor to make an
individual determination about whether a
methodology is good or not, or whether the intent
was to specifically deny funds to Title I schools,
or something like that.

So, it is insufficiently clear,
especially given the ways in which auditing
discretion has operated in the past, and therefore
I think needs to be clarified through regulation
to avoid that problem again.

MS. PODZIBA: Rita?

MS. AHRENS: So, but I do agree with
romanette (i) not being sufficient from a parent's standpoint. You know, if that data were to be provided, I'm not sure that in just romanette (i) that I could, as an advocate, determine whether my schools within the district were compliant.

I see number (ii) as safeguards for stakeholders to determine whether the schools within the districts are demonstrating, you know, whether, you know, we are supplementing and not supplanting.

I wanted to push back on the earlier idea that we're prescribing methodology that isn't flexible. I don't think we're doing that. What we're doing is we're putting I guess some Guidance into what we want to see the LEA methodology to arrive at. It's very similar, as an analogy, if I were to tell my students that, you know, you can plan a trip to California as long as you spend under a certain amount of point, and that you arrive at a certain amount -- you know, you arrive at the destination at a certain time.
So I see (A) and (B) as those guidelines that I'm giving people to demonstrate that they have carried out the objective that I've given them.

And so, the proposal I want to do, because I know there's a lot of anxiety around (A) and (B), is, because it sounds like there's a lot of exceptions that people feel they have within their local contexts that, you know, may not make them able to come up with a methodology. So what if we add a (C) in there that has "reporting on why, despite your methodology, that you developed at your LEA level, you may not show compliance because you have a certain amount of," I guess "non-Title I schools that are serving high-risk -- or high-need students, why your expenditures might be over for (A)," or why they might be -- you know.

So I think that's the proposal I want to throw out there, is some sort of explanation, so that folks can figure out what is going on at
MS. PODZIBA: I think it's a good time
to break for lunch. I think it will be good if
you can get us the color-coded version. And if
people want to caucus during lunch...

And again, if there is no solution
here, then it probably is less frustrating to get
to know that sooner rather than later.

On the other hand, if there is a sense
that there is a way to work this issue, then I
would not want to make that impossible.

MR. AMERIKANER: Just so folks know, I
don't know if you are using the room for lunch,
but the caucus room for you to use 1W112.

MS. PODZIBA: So it's 12:30. Let's
reconvene at 1:30.

(Whereupon at 12:30 p.m. a luncheon
recess was taken.)
AFTERNOON SESSION

(Whereupon at 1:37 p.m. the Negotiated Rulemaking Committee meeting reconvened.)

MS. PODZIBA: I think if everyone sits down, we can get started. It looks like almost everyone's here.

MS. PODZIBA: Ok, so, you have before you the red/blue version of the proposed language. Janel has asked to make an announcement before we get started.

MS. GEORGE: Hi. The announcement is we are honoring Ron's birthday. So we all want to take the time and wish Ron a happy birthday, and we do have some birthday treats. We have some carrot cake and chocolate cupcakes. However, they do contain nuts, so if you have a nut allergy, that's probably not an option.

But we do want to wish Ron a happy birthday.

MR. HAGER: I couldn't think of a better way to spend my birthday.
MS. PODZIBA: So those treats will be coming around. And happy birthday.

Ary, I think you wanted to get us started back into the issue paper.

MR. AMERIKANER: So I wanted to say two things. One is that the primary thing is that I think we heard a lot of really good feedback that we are mulling over that I think was actually really -- I know that it got a little heated at times, but I think we really got some good substantive feedback and concerns. And so we would love some time to mull over too on that and try to make it a little better and go over it with our full team.

We know that we also sent everyone off for lunch to ask everyone to think of proposals, so we wanted to -- before we just said, We'll work on this and cut up the conversation. I want to ask if any new ideas came up over lunch, to put those on the table, and then we could take those back and mull it over.
MS. PODZIBA: So are there any proposals?

Eric?

MR. PARKER: Well, thank you.

In looking at what we talked about before and looking at the new color-coded version, my thoughts of the proposal would be looking at (A) and (B) under number (1), sublet (ii) would be to look at (B) moving to Guidance potentially, given the conversations and what we had talked about with the LE components of it, and looking at that as a strong possibility in all the -- or at least the large proponents of it, I think (A) and (B) could potentially be served in Guidance.

MS. PODZIBA: Ok, discussion about moving (A) and (B) into Guidance?

Liz?

MS. KING: So then the idea is -- I mean, isn't that just essentially striking (2)? I mean, I'll just say what I had said before about the concerns I have about leaving one
on its own, is that I think it is insufficiently
clear, especially given the history of the
variability in the way in which this provision has
been enforced. I think there needs to be greater
clarity so that auditors don't have sole
discretion about how they interpret the
methodologies offered by the district.

MS. PODZIBA: Lisa?

MS. MACK: I would like to see it
remain there because I believe there needs to be
some kind of matrix for measurement. I don't
believe it's clear enough without some kind of
explanation.

MS. PODZIBA: Audrey?

MS. JACKSON: So I just wanted to note
like, in hearing the Department before talk about
(A) and (B), that their attention was not to have
any forced teacher transfers, at least on a mass
scale. That was not the intention. And then
hearing concerns from others over lunch was that
they felt that would be absolutely what had to
And so, I'm wondering -- I just want to put that out there. Because if that's not your intention and that's what people think would happen, and that's one of the biggest issues, that to think about how adjustments could be made, not just to move to Guidance, but adjustments would be made to make sure that that is not the unintended consequence?

MS. PODZIBA: Ryan?

MR. RUELAS: You know, I heard this morning that the regulation itself doesn't require the districts to use any specific methodology, right. And the example I gave you this morning in regards to California and in regards to our weighted per-pupil, et cetera, that extends to the whole issue of foster youth, special ed, et cetera...

So, to me I think that it seems to be saying that we can't use our methodology in essence because of the fact that, according to
this in particular, in regards to (A), I think it's going to be a conflict.

And also I'd like to point out what was made earlier on several different occasions about the whole issue of how it will conflict with 1118(B), because I believe that this is a methodology.

So, I, too, would like to see it be moved.

MS. PODZIBA: So you would support the proposal?

MR. RUELAS: I would.

MS. PODZIBA: Ok. Janel?

MS. GEORGE: Again, I want to support this remaining in here. The goal I think of the regulations is to provide clarity and implementation.

We have to be mindful -- again not to beat this into the ground, but we have to be mindful that this is in the statute, so we need clarity on how to define this. It will be left to

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auditors if there is not additional clarity, and
in the absence of any alternative language or
proposal, this does create some clarity in terms
of implementation or what the result should be.

It's not prescribing the exact
methodology. What it is doing is underscoring or
outlining what the goals of this are to insure
that there is equity in spending.

And I guess one thing that would be
helpful for me for the -- and specifically I'm
thinking of Ryan, because you just pointed out
about the weighted funding form, how it might be
in violation.

I guess I want to get another example,
a specific example of where you would be in
violation of it, under your weighted funding
format.

MR. RUELAS: You know, as I mentioned
earlier in regards to California's weighted
funding formula, itself, it's just not -- you
know, foster youth is weighted, students with
special needs are weighted. So one of the major reasons why I have this is that the special education students are weighted more heavily than the other student groups themselves, ok?

MS. GEORGE: Right.

MR. RUELAS: And basically it could skew the average spending of non-Title I schools, ok, maybe because it says that we have to -- "the results in the LEA spending on the amount of state and local school's funds per pupil in each Title I school that is equal to or greater than the average amount spent per pupil in non-Title I schools"...

MS. GEORGE: Right.

MR. RUELAS: My concern is could this really incentivize, could this really push, you know, LEAs to concentrate higher weighted students to just Title I schools only.

MS. GEORGE: I guess my concern is, is that all ready the case where we're seeing these needs, particularly high-need students in Title I
schools, which again is the purpose of this funding, to help address those effects, particularly in concentrated poverty? We see so many overlaps, and I'm thinking of data that's in government accountability reports and other reports on Title I spending that documents a higher concentration of high-needs students, including special education students and other students in Title I schools.

Now I guess that's why I'm looking for something specific. I don't know if it's out there, if there is a report or research or data showing perhaps an example of a weighted-funding formal state that shows that there would be an actual inequity.

I hate for us to just speculate about it. I'm wondering if -- because based on the data that I've seen, there is such a high concentration of Title 1 schools. And what I would not want to happen, and again, dating back to the 1969 report, is a misuse of this funding.
So this, for me, provides needed clarity.

MS. PODZIBA: Derrick?

MR. CHAU: I just wanted to get clarification from the Department. About how long has the methodology piece been required in our schools, or has that been required?

Just romanette (i), I think there was some discussion earlier about how -- does this requirement provide a methodology to use to allocate state and local funds. I think before that it was -- there was a comment that somehow we've been doing this and it hasn't worked. And I just wanted to clarify that, whether this is new.

MR. AMERIKANER: It's a new component of the statute, right? The statute before did not say "methodology," and in the past, I believe, our Guidance has referenced having a methodology of allocating slots as one way to meet the requirement. So in the past it has not been a requirement. It has been an option.
MR. CHAU: Just, I wanted to get clarification on that, because if that's the case, we haven't been held equally to the standard yet.

MR. AMERIKANER: Sorry, I understand your point now.

So I did say that in the past, under the schoolwide program, schoolwide program test, that the way that we interpreted the requirement was that you had a methodology that either allocated slots or allocated money in a uniform way to Title I and non-Title I schools.

So that part of it has been happening for a while and we still see these inequities.

MR. CHAU: So I was just asking about the extent to which this methodology has been in place or have our schools been held accountable to that, and it sounds like it was just for the schoolwide schools and not for the targeted.

MR. AMERIKANER: So for a district that has a schoolwide program school in it, that's how the test was applied for those districts.
MR. CHAU: Ok.

MR. AMERIKANER: And I was clarifying that the majority of Title I schools are schoolwide schools. So about seventy percent of Title I schools in the past have been schoolwide programs.

MR. CHAU: Thank you.

MS. PODZIBA: Liz?

MS. KING: Yeah, just a couple of pieces on this.

Again the prohibition is on the methodology that the LEA uses, not a prohibition on the methodology the Secretary uses.

And also I wanted to ask a question of Ryan. My hope is that California's weighted funding system sends more money to higher poverty schools. It seems to me that that would be the goal of doing it. I mean, it seems like if that's not helping, then that seems contrary to the intent of what California is going.

So is more money going to
higher-poverty schools, or is less money going to higher-poverty schools?

MR. RUELAS: I would assume that more is.

MS. KING: Ok --

MR. CHAU: I can provide clarity.

MR. RUELAS: But, yeah, he would be familiar with that.

MR. CHAU: So from the perspective of California, there is more funding allocated per pupil for students for a higher need. Start with that; not just poverty, higher needs kids. But that's different than how districts allocate funds, as well. So you kind of have to separate both.

So there's state funding and then there's the way that our districts allocate funding within a district, and that's dependent on whatever budgeting system, the way that the district has allocated funds for teachers and whatnot as well.
So in LA Unified, we don't have a school-based budgeting formula. It's based on norms. It's based on an average teacher cost. And this is something we talked about in the last session, it's based on an average teacher cost so as not to penalize schools for hiring more experienced teachers or less experienced teachers.

So even though those schools may be receiving more money, the way that our budget works, it's possible that some of those schools that are more Title I aligned might actually have less money because the teacher costs might be very different.

And as we said before, teacher costs are the bulk of these costs, and when we talk about equalizing funding or insuring that there's equal funding, there's going to be an implication on our teaching staff as well.

MS. KING: Right. Ok. That's super helpful on how the California system works.

There isn't a weight for youth in
foster care and there isn't a weight for students
with disabilities at the LEA level statewide,
right?

MR. CHAU: No. There is no requirement
for that at the moment.

MS. KING: Right.

MR. CHAU: Not at the LEA level.

MS. KING: So then this just
wouldn't -- this wouldn't affect the way the funds
go from the state to the LEA. So that part would
be unaffected.

And then I will say that I think that
there is a good rationale for why a school and,
you know -- to answer my own -- the question I
keep asking about, if you are noncompliant with
(A), when is it ok?

So I think the two examples that I've
heard that I find compelling and that I would want
to find a solution for, one is the example that
Marcus is using of a high-poverty LEA -- or a
high-poverty school that is not a Title I school.
And I think that makes sense to me, why that would be in the mix. I think the scenario is probably one in which you only have two schools within that grade span -- one is Title I; one is not -- and they both are of comparable poverty, although we would have to think a little more about when that really happened within schools.

The other example of, when you are getting additional funding to serve students with disabilities, I think that that is a fair point, as well, especially since I recognize that a lot of those funds are required by federal Civil Rights law. And so I would be open to finding a way to make sure that that is not -- we're not inadvertently having a negative affect on that. So I'm happy to help work on that to meet those two needs.

Are there other ways in which folks want to adjust the (A) determination? I realize
the proposal on the table is to get rid of it, and I'm offering to amend that proposal, because I don't support that underlying proposal.

But I would like to amend that to preserve (A) --

MS. PODZIBA: Could you just wait to see if there's dissent on that, and if you want to offer another proposal, we will do that.

On this proposal that's on the table, Lisa? Do you have a comment on this proposal?

MS. MACK: I just wanted to reiterate that, as a parent, I like this language because it let's us know that the schools have received the state and local funding that it otherwise would not receive if it was not a Title I school.

But as we're discussion this, I am open to other proposals that can be put in place, but I just don't believe that this (B)(l) romanette (i) and (ii) are enough by themselves.

So if we can come to some kind of agreement as a committee, for some kind of revised...
(A) or (B), or something like that, you know, for criteria for methodology, you know, I'm open to that as a parent.

I wanted to say that.

MS. PODZIBA: Ok. Tom.

MR. AHART: Just to make sure we're all clear, what is the proposal right now? Is this to strike (A) and (B)?

MS. PODZIBA: That's correct. That's the proposal on the table.

MR. AHART: Yeah, I would be in support of that. I just wanted to offer one more example to maybe help clarify.

If we do the per-people spending, I can literally staff a non-Title building at a much richer rate than a Title building and meet that rule. And then the Title funds could be used, if you'd look at it on the services being provided for kids, would literally appear to be supplanting; even though by this rule, by this language, it would be supplementing. And that
wouldn't be what was happening. It would
literally be supplanting, if I'm forced to follow
this dollar spent per student.
So I still have the idea that concept
isn't quite fully understood, and it's very much a
reality at the LEA level.

MS. PODZIBA: Liz?
MS. KING: Yeah, so I will say, I mean,
this is why all of the flexibility here does make
me nervous. Because basically what this says is,
While you are no longer prohibited from --
This prohibits supplanting on a dollar
basis, but absolutely does not supplant on a
services basis.
So, for example, the reading program
you paid for with state and local funds last year
you can pay for with Title I funds under this
provision.
The math program you provide in
compliance with state law that you paid for with
state and local funds, or that you are now
including because of a new state law, you can now pay for with Title I funds.

So I totally agree with you, and I think that's part of why this is not the only oversight and protection that we need to make sure that, not only are the funds supplementing, but the services are comparable and are of high quality, and all of these other things that we need that are outside the scope of this requirement.

But I absolutely agree with you that you could fail all three of the existing individual services tests definitions under the new flexibility provided in (A).

MS. PODZIBA: Ok. I want to call the question on this because I think that is probably not going to fly, and if people are coming up with new proposals, we should make room for that.

Is there a dissent on this proposal to strike (1) and (2)?

Yes. Ok.
So I just want to remind people, the Department said they'd take this back, and so what we're trying to do now is see if there is any more information or concerns or guidance, dare I say, that we want to give to the Department before we do that and come back with something that they're hoping for.

Aaron?

MR. PAYMENT: So I would just think it would be helpful to know what would work on behalf of those who object to the language, so that we can refine that. But also I think if we can come up with a statistic that is better than the average and maybe have somebody think through what the implications are for the local level, to be the least burdensome for the local level. That would be what I'd do.

MS. PODZIBA: That's advice to the Department?

Ok. Any other thoughts to the Department?
Derrick?

MR. CHAU: Since this was in Guidance before, I'm wondering if, rather than make it a requirement that the methodology meet these requirements, might it not be better to just include it as maybe a consideration or something to consider when they're determining the methodology; just another way to keep it in there but have it be a recommendation rather than a requirement.

MS. PODZIBA: Ok, any other thoughts?

Were there some thoughts about exemptions, exceptions?

Liz?

MS. KING: Yeah, and I'm sorry, I realize it's more helpful with specific wording, and I can think about that for a minute, but it would just be helpful to know in theory if it would be sufficient to provide for an exception that covers both the issue that Marcus raised and the issue that others have raised about additional
funds used to meet the needs of students with disabilities.

If that would be a sufficient adjustment, I'm happy to come up with the language, but I think in concept -- and if people would need the words to make a decision, that's fair, too, but in concept, would that be sufficient?

MS. PODZIBA: Could we get some response to that?

So the proposal without a specific language is to add two exceptions, if I understand correctly. One would be for funds related to students with disabilities, and the other is for high-poverty non-Title I schools.

MR. AMERIKANER: Or it sounds to me like Liz was saying it could be done through an exception, as long as we come up with somehow the substance to address those issues.

MS. KING: Yeah, I'm not sure that I would put it in the Exceptions. I might treat
them as Title I schools for the purpose of the determination.

But I'm also open to talking about that part of it. It's just in concept, preserving a per-people test, with those exceptions.

MS. PODZIBA: My apologies.

Conceptually, does that sound like people would support that?

Richard?

MR. POHLMAN: I'm sorry. I don't have a comment for that element. I was going to bring up something else for the Department.

MS. PODZIBA: Ok, could you hang on for a minute.

Lara.

MS. EVANGELISTA: I just wanted to add ELLs to that as well. Because a lot of weighted student formulas also fund ELLs, in addition to the schools that are not necessarily high-poverty schools, but they get additional funding.

MS. PODZIBA: Other thoughts about --
I'm not going to say exceptions, but somehow making space for those thoughts?

MR. POHLMAN: Mine is on another topic.

But not in response to this.

MS. PODZIBA: Sorry, Mary Cathryn.

MS. RICKER: I feel very strongly that we would need an exception, that you could not violate a local collective bargaining agreement.

MS. PODZIBA: Liz?

MS. KING: I have a question -- I think there is a rule of construction that does that, but I want to check that that is the case.

I think there's a rule of construction that applies across Title I around preserving the collective bargaining.

MS. PODZIBA: Thomas --

MS. RICKER: I would just say that one of my lingering concerns about (A) is that it will undermine local agreements that some of us have very creatively constructed with our communities to protect programs we've built for some of our communities.
most vulnerable populations in the way that we need to build out those programs.

MS. PODZIBA: Thomas?

MR. AHART: No, I don't think that would satisfy the root problem that I'm struggling with here.

MS. PODZIBA: Marcus.

MR. CHEEKS: I'm going to ask the Department to -- I think the pathway we're going now is going to create more of a confusion.

MS. RICKER: Yes.

MR. CHEEKS: And I wonder if there's a way to address these matters without basically pushing schools out onto a ledge. Because I think the more we spell this out and piecemeal it together, it's going to get more and more difficult.

And these things, if I'm looking at a state's definition under its basic educational program of what should be being covered, by law, Title VI should cover these areas.
So I would really ask the Department to consider those factors that may not necessarily be listed here under the Supplement Not Supplant law, but how all these other things could be tied into -- even without making a definition, by virtue of other federal regulations that are requiring school districts and states to look at these particular areas.

MS. PODZIBA: Richard?

MR. POHLMAN: Yeah, I'm wondering, you know, as we're trying to talk about compromise, if one of my most unfavorable terms could be maybe thought through by the Department, which is using "rebuttable presumption," in that, by constructing and defining, getting to Liz's point, a test or clarifying the test, but also providing for, with a rebuttal presumption, the idea being that failure of that test would create the presumption that you have not complied with Supplement Not Supplant, however that presumption could be rebutted through the auditing process so that you
could show that there are extenuating circumstances, whether it be a collective bargaining agreement, other provisions of local law, et cetera, that don't conform to whatever definition you have talked about. You are likely familiar with this, as are many people at the table, from the old Supplement Not Supplant. I wonder if there is a prohibition against that within the Congressional language -- I don't read one there -- and if it would be a useful tool to get around some of what I am hearing as sort of a logjam.

MS. PODZIBA: Thank you. Sometimes it's not compromise, but it's creative or integration of interests.

MR. POHLMAN: Let the record reflect that in my counsel.

MS. PODZIBA: Liz?

MS. KING: To Rich's rebuttable, I think that is a good example of why I am so uncomfortable dropping (A) and (B).
A scenario in which this exact conversation happens district by district with individual auditors, and the back and forth about whether it is or is not complying with the intent, just seems like a bad day for everybody and a lot of funds spent on compliance and not serving children; which is certainly not in our interest, nor is it the desire of anybody around this table. So rebuttable I think is not a good scenario.

And the larger goal here obviously that I have is clear, but one of the goals that I have is also the clarity with which this operates and the limited discretion that auditors have.

Because in order for this provision to be meaningful, I think auditors need very clear limitations in which they operate, and I think that opens the door too wide.

MS. PODZIBA: Janel?

MS. GEORGE: I don't know if this is a viable option or not. If it's possible to put
in -- what is it called? Numerette?

Sub-numerette (ii), just after schools, before "provided," just put appeared there. And I'm just throwing this out. I'm just thinking out loud.

And then maybe a (iii), Roman numerette (iii), to say "compliance may be determined by" -- I don't know. "If the methodology". "Compliance must be determined by whether the methodology," and then I wonder if we can then add, after (A) and (B), probably -- and also consideration of some way to address the weighted funding formula, special education students, or presence of high-needs students, including special education students, ELL's, et cetera.

That's just something I'm putting out there. I don't know if that might work or not, to address the concerns.

And I don't know, Derrick or Thomas, if that might address some of your concerns.

MS. PODZIBA: Derrick?

MR. CHAU: I just want to go back and
get clarity again. What I heard from Ary earlier
was that auditors have been using this process for
part of the Title I already.

MR. AMERIKANER: In theory. They
should have been. We've heard from a lot of
places that's in mixed application.

MR. CHAU: So auditors are all ready
using this and have been -- so are familiar with
this idea of testing the methodology. So I don't
understand why we would need to further complicate
things by adding additional requirements to it.

I understand that you're not happy with
the results of it, but I don't know. Maybe that's
where our differences are -- I think that's -- I
just wanted to put that out there.

MS. JACKSON: You have to speak louder.

MR. PAYMENT: Use your teacher voice.

MR. AMERIKANER: I don't know if my
teacher voice will help the transcripter.

I want to ask a follow-up question
about your idea about the rebuttable presumption.
I felt like that could have been a breakthrough.

Is there a -- do you have a little more about --

MR. POHLMAN: How it works?

MR. AMERIKANER: Yeah. What would be the kind of thing you could rebut the presumption with?

MR. POHLMAN: I think that is probably what would need to be defined in Guidance. So, for instance, if a romanette (iii) said that this -- that, you know, "in the absence of proof or in the absence of evidence from the LEA demonstrating methodologies consistent with," whatever that provision is, "an LEA will be determined to have used its funds to supplement and not supplant -- to supplant. However, that determination may be rebutted by the LEA".

You can end the regulation there, right? You can simply provide the option for a rebuttal presumption in the regulation. Guidance
is where you could elaborate on how one might rebut that presumption, right? And that's when, as a LEA administrator, right, you could use the Guidance in your conversations with the auditors to say, Well, we've got a collective bargaining agreement. We've got a formula that, despite the fact it's showing an overall expenditure rate that exceeds this test, the allocation itself was, you know, X Y or Z, you have these" --

I can't come up with all of these off the top of my head. I'm sorry. I could probably think of a lot of them, but I don't want to get bogged down with that at this table, because I think that's what's maybe keeping this from moving forward.

Honestly in response to my proposal, I don't have a personal investment in this, and so I'm struggling to sort of not talk a lot on this issue, because I hear a lot of other invested interests.

That proposal was made not as one to
sort of augment protections or, you know, degrade
them, but one to move us through them as an option
for something.

So if it's honestly not something that
people would agree to, I don't know how much
farther it's going to go.

MS. PODZIBA: Liz?

MR. POHLMAN: And there's lots of
information Kay can probably talk to you about
regarding the rebuttable presumptions.

MS. KING: So a couple of different
pieces in terms of the history of this methodology
stuff...

I mean, the scope of S&S compliance is
expanded now to include targeted assistance
schools which would also be covered under that,
given the prohibition on the individual services
test included on the statute. So I think it is
reasonable to have a higher bar when the scope of
the coverage of that is expanded.

Also, the other thing that has happened
is that a test which was once Guidance is now addressed in the law through a prohibition, and so I think it is reasonable sort of thinking about an escalation here. That which is Guidance is now statutory. I think it's reasonable then to have in the regulation that which was previously simply just in Guidance.

And also, I just wanted to make sure-- I mean, the Department, in the event that there were a regulation that did not include (A) and (B), the Department is fully within their legal authority to write Guidance which says, In order to demonstrate compliance, you must show both (A) and (B).

That will happen in a room that we are not -- you know, that will happen without us negotiating around it. But that is fully within their authority, would be to continue to implement this through Guidance rather than through Regulation.

I still believe that it is important
that it be kept in Guidance -- sorry, through

Thank you. Thank you, Ron.

MS. PODZIBA: I think we know what you

meant.

MR. CHEEKS: Her subconscious was

coming out.

MS. KING: Nicely played, Marcus,

nicely played.

MS. PODZIBA: Rita?

MS. AHRENS: I wanted to just comment

on the rebuttable presumption. I think it's

somewhat similar to the proposal I put forward on

the report that talked about why your numbers

might not meet (A) and (B), but it's a more

proactive thing.

I think if you anticipate your numbers

are going to be wonky due to meeting the needs of

high-need populations, such as English learners

and students with disabilities, you should

proactively anticipate that and present the report
ahead of time.

But, you know, I want to say that the rebuttable presumption piece, I would be very uncomfortable if we were to move down that route and we did not define what the demonstrated evidence would need to be to show that you were in compliance.

Because I think the point of this whole particular regulation is to show compliance. And so I want some affirmative proof that you're in compliance. And it should not be left in Guidance. It should be in regulation.

MS. PODZIBA: Thomas?

MR. AHART: Yeah, I tried to touch on this prior to our lunch break regarding costs.

The statute does say that "This Act prohibits the federal government from mandating, directing or controlling a state local education agency or school's curriculum, program of instruction, or allocation of state and local resources and from mandating a state, or any subdivision thereof, to
spend any funds or incur any costs not paid for under such Act”.

I know that if we left (A) and (B) as is, certainly my district would have to undertake additional costs to be in compliance under this rule, potentially, and I know there are other districts that would have much larger price tags, and I’m wondering -- in addition to the reallocation. So I wonder if you all had a chance to consider that at all, the cost question?

MR. AMERIKANER: Thomas, could you say a little bit more about what the costs would be that you would incur? Because my understanding is that this requirement is about how you allocate your pot of money, not changing the amount of money that's spent in schools.

MR. AHART: Well, to put it simply, unless I violate my local teacher's contract by forcing the movement of teachers on a pretty wholesale basis, I'm going to have to somehow come up with millions of dollars to spend in my Title.
buildings, which I would argue now on meeting the Supplement Not Supplant rule, and you know, I can't do either of those. I don't have the money available to meet this reg, as written, nor do I have the ability to reallocate as this dictates. And I have less of a problem with it than a lot of other districts around this table.

MR. AMERIKANER: That's helpful. I appreciate that clarification. I think what I'm hearing is that it could be that there's a cost implication, but there could also be a collective bargaining issue that I think Mary Cathryn has raised and that others have raised around the table about, like, would it help if -- well, we have to think about sort of how we can think about getting around that.

But I hear you. I hear the point that you're raising.

MS. PODZIBA: Mary Cathryn?

MS. RICKER: Yeah, thank you.
I am still concerned that (C) does not address the issue and, similar to Thomas, I know that before my time my union worked really, really hard to get an average teacher salary used in staffing schools so that there would not be the adverse selection of experienced teachers, given that our negotiated agreement had traditional wages and an experience quotient to it. Additionally, since then, we have had the opportunity to craft some really creative exceptions to other things, like seniority-based layoffs where we are specifically staffing schools with the teachers intended for those schools; working with the community to create an exception at our American Indian magnet, so that it could be -- so that the priority was to have it staffed by people with an eminence credential or a specialty from the University of Minnesota, and then, after doing that, allowing that school to expand, or helping that school expand from a K6 to a K8, and at the same time enacting the class-size
language that we successfully negotiated, meaning that they got to expand grade levels and reduce class sizes meant that there was an infusion of teachers in that school. While some were experienced, many of them were new to our district, or would be considered new to our district.

And so I could very much see that -- as well as the language we crafted around our language emersion programs, or Montessori programs, similarly at the same time we had language that improved case-study ratios for our special education teachers and class-size ratios for our Title I schools meant that some of these schools got an infusion of teachers that would be seen as perhaps early in their careers.

So I could very much see that it would look like we were not spending as much in those schools on a per-teacher basis, when really what we were doing was making a concerted effort to actually better meet the needs of students in
those schools.

And so, I see the complexities. I need to see where we believe that collective bargaining is addressed, because it's my understanding it's not addressed in this portion, but, you know, I would love that assurance. I really believe that this -- not to mention the wage and benefit suppression that could be experienced at a bargaining table that we'll have to prepare for, if indeed it is the idea that people are going to try to start, you know, flatlining wages and benefits as a way of getting around having really great, robust local conversations within the community about how to better meet the needs of our kids.

MS. PODZIBA: Ary?

MR. AMERIKANER: So I think this has been helpful. I feel like we're getting back to hearing concerns, just generally, but if anyone else has any -- I'm happy to keep having a conversation, but I know you guys want to get back
to finishing up assessments as well. Is there anything else that -- sort of new ideas that -- or just proposals that we should be thinking about, going forward?

MS. PODZIBA: Richard?

MR. POHLMAN: Super quick: it's been brought to my attention there's some general prohibitions in 1111(E) around Guidance that I am -- I'm not versed in. But I would just mention it on the record and the Department as you guys are going back to see what you can and can't do. Again, this is not an area that I am well-versed in, but I wanted to address the issue. I don't think we have a copy of 1111(E).

MR. AMERIKANER: No, I don't think we do. I personally don't know which one it is.

MR. POHLMAN: I just wanted to raise a simple flag.

MS. PODZIBA: So, Ary, do you just want to tell us what your next steps are?

MR. AMERIKANER: So our next steps are
to go back and wrestle with some of the comments and suggestions and concerns that we've heard and see what we can do and work with our lawyers and our team and we will get on that as you guys turn back to Assessments.

Thank you all very much. I know this was a hard issue. I know everybody has tried to do the right thing here.

MS. PODZIBA: Ok, so we could just take a deep breath and I think we're going to move back to Assessments, back to Patrick, and start with something that should be, I'm hoping, fairly easy, which is Issue 6, and it's simply the material in the package that wasn't part of any of the issue papers.

So to make it easier, because there are two choices, shall we all use the red-line version of the package?

MR. ROONEY: I was going to propose the alternative. It might be easier to go with the other version, just so you could actually start to
see what it looks like.

MS. PODZIBA: Ok.

MR. ROONEY: And just a reminder, something we handed you Wednesday morning, I think it was Wednesday, was a matrix that actually Susan was kind enough to draft which helps show what language in the full package in Issue Paper 6 -- Alvin is modeling it for us -- that shows what pages of the full package for both the red-line or the clean version that we haven't addressed in one of the issue papers.

And I'm also going to hand out something that we're hoping, after Issue Paper 6, to also bring back, which is Issue Paper 2, to see if we can try to come to some resolution after discussing it yesterday. So after Issue Paper 6, we want to come back. There is one more point for Issue Paper 2.

So I'm going to hand that out and we'll circle around to it afterwards. So I just want to give it to you before we start on six.
MS. PODZIBA: So Issue Paper 6 is at the tab. There are two versions. One is clean, and one is redlined. One has strikeouts and one does not, but both are color-coded.

So, if you go to tab six, there are a couple of purple sheets, and then after the second purple sheet is the clean version, and then the matrix was handed out yesterday.

So, if everyone can try and get those in front of you.

MS. JACKSON: Are there extra matrixes? Because I didn't get one yesterday.

MS. PODZIBA: If someone can bring up some extra versions of the matrix, copies. Not versions, copies.

There is a new paper two, but please put that behind something for now, yes.

May I have your attention. Does everybody have the clean version of Issue Paper 6 and a matrix?

MS. JACKSON: I'm sharing.
MS. PODZIBA: You're sharing. Everyone have access to a matrix?

All right, Patrick.

MR. ROONEY: Before I start, I just want to say, after sitting at the table but not having to be an active part of the last conversation, I have very much a new found respect for all of the thoughts and the work that you guys have put into the last two and a half days, and that I know you'll put in for the last half day and the last several weeks, as you've been preparing for this.

Clearly you're giving a lot of thought to this and a lot of deliberation, and I appreciate the dedication that you all are showing and the perseverance that you're all showing as well, that this has not been an easy conversation to have, for all of you, and I appreciate the dedication and the commitment you guys have in trying to think about the right language to help all kids in school.
So it's been with profound respect from being on the side watching Ary do that. But I just wanted to say that.

Issue Paper 6, I think our intent is actually not to go through this like we did two weeks ago when I laid out what all the different sections are, but just to highlight, there are only two or three things that I wanted to make sure that I pointed out to you, but I think the best way to do it may be to go kind of chunk by chunk to see if there are pieces that we didn't talk about that you would like to raise.

And just to remind you, the matrix shows you where the issue papers show up in the text of the full package of Issue Paper 6. And we talked a lot about potential changes or amendments you would make to the different issue papers.

They're not reflected in this since this is the version that was sent last week to all of you.

So, there are some changes that will be made through this in light of the conversation we
had on Wednesday and Thursday and maybe we'll have
later on Issue Paper 2 when we get to that
resolution. So I just put that out there to
start.

So, with that, I guess the question
would be whether anyone has any questions about --
or should I just do this page by page?

Susan is that the way to do it?

MS. PODZIBA: Yeah, I think if we just
go page by page or get to a section we have to
focus on.

MR. ROONEY: The other reminder to give
you before we start is that, things that are in
bold are things that -- especially if it's in blue
and bold, are changes that were made that were
something we either made a mistake the last time
in the versions with what's in the statutory
language and that we corrected.

So, the best example right now is on
Page 1, line 23, we previously had the version say
"Universal Design," and Audrey flagged for us that
it was "Universal Design for Learning," so we added that "for Learning" in the bold. Those are kind of the simplest changes in the table three weeks ago or that my colleagues and I, as we were looking at this version today, caught something that was wrong in the statute and tried to fix it in this version.

Does that make sense? Does anyone have anything they would flag on Page 1?

MS. PODZIBA: Rita?

MS. AHRENS: I think we didn't get to it, and I meant to raise it earlier.

On (B)(1), I just wanted to add in where it says "measures student performance." It should be "measures student performance at all ability levels, including the ability to differentiate performance among low-performing students".

I think I raised it in the last session or to make sure that we could capture in those assessments the lowest performing students,
because I think there were issues that were raised.

MR. ROONEY: Sorry, are you looking at line -- it might be helpful --

MS. AHRENS: Line 38.

MR. ROONEY: Sorry, I was looking at a different (B)(1). Thank you.

MS. BECKER: Can you say it again?

MS. AHRENS: Yes. I would like to add after "student performance," "at all ability levels, including the ability to differentiate performance among low-performing students".

MS. PODZIBA: Kerri?

MS. BRIGGS: So I was looking through the statute, because my knowledge was NCOb days on this stuff. But previously there used to be a requirement to have three or four different achievement levels: the professional, advanced, blah, blah, blah. I didn't see those in the statute, so I assume that's why they weren't repeated in red, and I think that that addition
sort of reintroduces that concept in a way that wasn't intended.

MS. PODZIBA: So, does that mean you dissent from that proposal?

MS. BRIGGS: Yes.

MS. PODZIBA: Ok. Patrick.

MR. ROONEY: Sorry, Kay is looking to try to find the clarification to Kerri's question. I think the language in the statute is that the state needs to have three levels of achievement.

MS. BRIGGS: At least.

MR. ROONEY: At least? For the assessment system. So it's in a part of the statute that's not -- it's in 1111(B)(1) and all of the assessment components are in 1111(B)(2), which is why it's not in the statute that you have in front of you. And 1111(B)(1) is talking about the standards. We're not negotiating on the standards. We're not trying to change the regulations around.

So I'll read the language if it's
helpful for the people in the room... "Each state in its plan shall provide an assurance that the state has adopted challenging academic content standards and aligned academic achievement standards, referred to in this Act as the challenging state academic standards"... that's the term that we had used throughout our regs, our proposed regs, "which achievement level" -- "which achievement standard shall include not less than three levels of achievement that will be used by the state, its LEAs, and its schools to carry out this part of Title I".

So that is the language that the state has to have, at least three levels of achievement on assessments, which is where this piece comes from that's in our existing regulation that is in front of you right now.

MS. PODZIBA: So, are you saying that Rita's proposal actually is statutory? Patrick?

MR. ROONEY: I'm sorry, Susan?

MS. PODZIBA: Are you saying that
Rita's proposal actually does come from the statute?

MR. ROONEY: So Rita's proposal, that language is not in our statute. The statute is just that the state has three levels of achievement. Not necessarily that are differentiated between low-performing students in particular. They just need to have three levels as defined by the state. Presumably they would be identifying low, medium and high, but the statute doesn't say that.

MS. PODZIBA: Right, so I'm just trying to understand. So should this text differentiate the different levels of achievement?

MS. RIGLING: We're not regulating on standards and that includes content standards or achievement standards.

MS. JACKSON: Can you speak into the mic.

MS. RIGLING: We are not regulating on either content standards or achievement standards,
so the statutory language is what would be used.
And I would think that adding in this addition
would actually be contrary to the statutory
language regarding achievement standards.

So, I would propose that we not do
that, because I think the statute gives the state
the responsibility to define what achievement
levels are, and they have to have three, but they
don't have to have more than that.

MS. PODZIBA: Rita.

MS. AHRENS: Can we amend that just to
"measure student performance at different ability
levels"? Because I want to make sure that the
assessment is covered at multiple levels.

MR. ROONEY: I'm sorry. I don't know
whether they have a feeling about that. If
they're measuring student achievement, student
performance based on achievement standards, and
they have to have at least three achievement
levels, doesn't that obviate the need for this
addition?
MS. AHRENS: So the reason --
MS. PODZIBA: Rita, let me get Lynn in.
MS. AHRENS: I wanted to respond to it.
MS. PODZIBA: I know, but Lynn also want to say something on this issue.
MS. GOSS: Thank you.
I just want to make sure that we don't confuse it more in that we're identifying it at each level and then having to have three at each level, or -- I think, you know, just making sure, when you're doing the testing and you're doing the other things at all the different levels, those are already described elsewhere. This is just measuring student performance at whatever level that they're tested, and that's described somewhere else?
MS. PODZIBA: Rita?
MS. AHRENS: And I guess I wasn't very clear on this, but the reason I'm raising this is -- and that I raised it at the first session,
is that there are assessments, and especially for
the local LEA -- the option for a local LEA to adopt nationally-recognized assessments, there are some assessments out there that do not capture performance of lower-performing students, and this is meant to address that.

I think I referenced at the first session was that there were some assessments that did not capture eighty-seven percent of English-language learners' performance, for example.

So it's problematic and it's something I wanted to flag to make sure we somehow address it.

MS. PODZIBA: Kerri?

MS. BRIGGS: I think one question is about introducing a new terminology around ability levels. That's not something that's referenced in the statue, achievement levels. I think adding in something new adds a whole new level of complication.

I think referencing the need to have
three achievement levels is fine, it's perfectly fine, but to require differentiation within each of those three is -- doesn't make sense.

And "ability levels," I don't think you meant to use that. I think you probably meant to use "achievement levels".

MS. AHRENS: Yeah.

MS. PODZIBA: Patrick?

MR. ROONEY: Let's try this again.

I think, Rita, your question may be addressed further up if you look at line 18, which is (B) number (2), which says that "The state needs to insure that the assessment is valid and accessible for use by all students, including students with disabilities and English learners". And then our peer review I think of state assessments would then be where we look for the state to demonstrate that the test actually is meeting that requirement in providing a valid score for all students.

So I think that may be the place to...
address your concern. I don't know if you feel
like it actually does, but I think that would be
my response to the point you're making in the
issue papers.

MS. AHRENS: I have one more take on
that.

MS. PODZIBA: Do you want me to not
call the question? I think there is dissent is
what I'm getting.

So, let me call the question, and then
if you want to bring it back, we can do that.

Ron, did you have one more comment?

MR. HAGER: Yeah. I just wanted to say
I agree with Rita's concerns. I just want to make
sure I understood what your point was, Patrick.

So the way you're reading line 18, "be
designed to be valid and accessible for use by all
students"... You see I don't read that language
"valid and accessible for use by all students" to
include getting at what Rita is talking about
here.
Now, maybe when we get to the provisions for the national assessments, you have some language there that's a little different than this. At some point I think we want to address this and make it clear, you know, that we're addressing Rita's point, but I don't know if this is where it is. I'm just asking, the way you're reading this "valid and reliable and accessible," you're reading this to say that would capture all the ability levels? Is that what you said -- achievement levels. I keep saying "ability," too. I meant achievement.

MR. ROONEY: The challenge I think in Rita's question is -- I think the point Rita and Ron are trying to make is that you're worried that the test may not provide a valid and reliable measure of what those students know and can do. That's fundamentally what I think you're saying, and if that is the case, then I would say that that piece above does get at that point. Because the state has to make sure it's designed to be
valid and accessible for all students. And if there are some students for which it's not providing a valid score, then that would be a concern -- the state would have to demonstrate that it is, through peer review. And if it's not, the state would have to identify what steps it would take to address that concern as identified by a panel of assessment experts who are reviewing the documentation submitted by the state.

So, I think that gets to the point you're making, Rita

MS. PODZIBA: So is there a dissent from adopting this proposal?

Kerri? Ok.

Patrick, do you want to keep going?

Are there any other items on Page 1?

MR. ROONEY: I'll also mention we have copies of the matrix. If anyone wants a copy, we'll pass it around. Can you pass that to Audrey.

MS. PODZIBA: I think we can go to

MR. ROONEY: All right, Page 2 --

MS. PODZIBA: Ron.

MR. HAGER: This is another thing we talked about last time around. You maybe answered this and I probably forgot.

It's on Page 2, line 14, "be consistent with relevant, nationally-recognized, professional and technical testing standards," and we wanted to specifically include "including nationally-recognized accessibility standards". That was a concern that we had with a lot of the state-wielded, computer-generated tests of all different types.

I can't remember if you said that that would be included in the definition of "technical testing standards," but I wanted to flag that. The concern is that it also be consistent with nationally-recognized accessibility standards.

MR. ROONEY: Are there nationally-recognized accessibility standards?
MR. HAGER: Sure.

MR. ROONEY: Can you name them? I think we might want to know a little bit more about what those are before we--

MR. HAGER: I think it's the Web 3, the web content standards. I think that's what we're referring to. I probably don't have that in my readily available mind, but I might be able to find it. I think I left that book in my hotel room.

MS. PODZIBA: Thomas, is your point on Ron's --

MR. AHART: No.

MS. PODZIBA: Hold on. Any further discussion on Ron's proposal?

Patrick --

MR. HAGER: It's also 508, and Section 508 is really the statutory provision.

MR. ROONEY: I think I'm less familiar with what those standards are and what the implications of using those are. So I think we
may want to take a look at them and identify what
the implication would be of adding that to the
regulations, if that's ok.

MR. HAGER: Totally. We don't have to
flag it. We don't have to spend a lot of time on
it now, but I just wanted to flag it.

MS. PODZIBA: Tom.

MR. AHART: On roughly lines 10 through
13, the -- I'm trying to think of a word, the best
way to start, and I have so many points.

So it starts "with respect to
alternative assessments for students with the most
significant cognitive disabilities," "measure
student performance," yadda, yadda, yadda, yadda,
"of the Act," on line 8 there, "reflect the
professional judgment as to the highest possible
standards achievable by such students to insure
that a student" --

MS. RIGLING: Where?

MS. BECKER: He's using the tracked
changes version.

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MR. AHART: Oh, my bad.

线2,"reflect the professional judgment as to the highest possible standards achievable by such students to insure that a student who meets the alternate academic achievement standard is on track to pursue post-secondary education or competitive integrated employment, consistent with the purposes of the Rehabilitation Act of 1973".

Just curious as to why that one element of the Rehabilitation Act of '73 was cited, what the intent was and not the other ones that further elaborated.

MR. ROONEY: So to clarify your point, Thomas, which I appreciate your reasoning, we actually I think brought this up at the end of the day on Monday and you asked for a copy of the Rehabilitation Act.

MR. AHART: Yeah.

MR. ROONEY: So if you want to look at that, I think the papers we handed out Thursday
morning included, if I can get my binder open, a one-pager that looks a little like this (indicating), for those of you who are close and can see it. At the top it talks about ESSA 1111(B)(1)(e), which is where this language that Thomas has pointed to comes from the statutory language about alternate academic achievement standards.

And then below it is the Rehabilitation Act of 1973, which is where we took this language for competitive integrated employment.

And so you'll see, our intent with doing this is that the statute just references that the assessment needs to be aligned to that the "student is on track to pursue post-secondary education or employment consistent with the purposes of Public Law 93112, which is the Rehabilitation Act.

In our proposed regulations we wanted to clarify the purposes of Public Law 93112 and just use the -- pull the language in from that
law. So you can see the purpose is laid out here in (B) on the bottom of this page and then onto the back of the other page, and we focused on the competitive integrated employment because we think that is the primary purpose of the Rehabilitation Act, so we wanted to focus on that one rather than include all of the purposes.

MR. AHART: It seems like they were referring maybe more broadly to the other purposes as well. I was just wondering, if you go up to the professional judgment, you know, the practitioners, if that gives them a better ability to serve students, if they could look at the broader purpose of the Rehabilitation Act instead of just that one item.

MR. ROONEY: So if it's okay, I'd like to ask my colleague, Ruth Ryder, who is the director of the Office of Special Education Programs, who I think can talk more knowledgeably about the Rehabilitation Act better than I can. She can give our rationale for that.
MR. AHART: Thank you.

MS. RYDER: So in looking at this, we felt like, you know, the two new purposes that were put into the Rehab Act with the reauthorization of the Work Force Innovation and Opportunity Act, and we felt like they were really kind of the crux of the WIOA and the Rehab Act, and rather than putting in all of the purposes, we could get the focus that we wanted with putting in the competitive integrated employment.

MR. AHART: I believe that gets to part of it. I'm just curious if Congress didn't specify that in particular, what the need would be for limiting it, if that makes sense.

MS. RYDER: We felt like the reference to 9312 didn't really give kind of the descriptive nature that we wanted in there with the focus on competitive and integrative employment.

And if you look at the other purposes, they're all focusing on preparing youth and adults with disabilities for competitive integrated
MS. PODZIBA: Let me get some other voices in here.

Ron.

MR. HAGER: Yeah, if you look at the-- again, this is like the color-coding scheme. So the reason why I think they chose that one purpose is, if you look at the blue, so Congress, when they chose what sections to focus on from WIOA, they said post-secondary education and employment. So those are the only two that they focused on. So then when you look at what does WIOA say about employment, it is full of competitive, integrative employment.

MS. RYDER: Right.

MR. HAGER: So it's really trying to fit what did they mean by "employment consistent with WIOA," but what they mean by "employment consistent with WIOA" is not that they guarantee it, but they're preparing students to pursue competitive integrated employment.
That's why that purpose down at the bottom of the thing that we received from the Department, "to maximum opportunities for individuals with disabilities, including individuals" -- and this is all related -- "with the most significant cognitive disabilities."

There's four competitive integrated employments.

So that is the one thing that is -- to make it consistent with WIOA, you have to put in that competitive integrated when you talk about employment.

I don't want to speak for the Department, but I'm assuming that that's where they were going.

In fact, the other point about this is, effective this summer, students that are transitioning from schools to adult services will not be allowed to go into sheltered workshops unless a whole series of things are done. So that's really -- all of this is why -- I think that phrase "competitive integrated employment" is
one that was selected because that is such an important piece of it.

MS. PODZIBA: Thomas, hang on. I'm going to get Lynn's comment.

MS. GOSS: I was just going to comment on just how limiting the competitive integrated employment could be. A lot of the students that I worked with in the past are gainfully employed, but I wouldn't say it would probably be covered under that competitive integrated employment.

And so, maybe I'm not understanding it correctly, but I would think that that would be severely limiting to some of the students I've worked with in the past.

MS. PODZIBA: Ruth, do you want to respond?

MS. RYDER: By "gainfully employed" do you mean they're working at minimum wage?

MS. GOSS: Some of them, yes.

MS. RYDER: Ok. Well, that would be what "competitive" would mean. "Competitive"
means that they're working at minimum wage.

MS. GOSS: Then some of them no.

MS. RYDER: Well, the point of this is this is our goal for all children and youth, that they are working towards having a job at minimum wage in an integrated environment.

MR. ROONEY: I just want to make the point that Ruth just made is that, this section which starts on the bottom of Page 1 and then goes to the top of Page 2 is talking about the state setting the highest possible standards for this group of students taking the alternate assessment, reflecting the professional judgment and insuring the highest possible standards for these students, that that would be kind of heading it toward that competitive and integrated employment as the goal or expectation for those kids.

MS. PODZIBA: Thomas, did you have another comment?

MR. AHART: Yeah. I guess I would just say that reflecting professional judgment and then
saying that -- implying that this is what your
judgment ought to equate to feels unnecessarily
restrictive. But I appreciate your point, where
we all are working towards that.

MS. PODZIBA: Ron?

MR. HAGER: Yeah, I mean, the qualifier
I guess is professional judgment to what, and in
terms of the phrase "consistent with WIOA," it's
professional judgment toward competitive
integrated employment. Because that's where the
change is from the gainful employment in the prior
law to this new phrase, "competitive integrated
employment in WIOA".

MS. PODZIBA: Ryan?

MR. RUELAS: No.

MS. PODZIBA: Ok, can we keep going?

Anything else on Page 2?

Rita?

MS. AHRENS: On line 21 I'd like to add
after states "website and in alternate modes;"
because not everyone has access to the Internet.
MS. PODZIBA: Patrick?

MR. ROONEY: So I don't know that we have any concern with that language, other than the statute, the new ESSA language says that it has to be made available to the public, including on the state's website.

So this would be adding an alternative method to meet that requirement in the law. I'm open to discussion on that suggestion.

MS. PODZIBA: Ok, discussion on that subject.

Audrey.

MS. JACKSON: To clarify, Patrick, Congress wrote that they have to make it available, and when you just said "including on the website," that doesn't mean only on the website. Is that correct?

MR. ROONEY: So I can try to find the statute for you in one second, but I believe it actually says "is made available to the public, including on the state's website".
So that would mean not solely limited to the state's website, but it has to be on the state's website, is how I would read that.

MS. JACKSON: So if it is accurate, then I would think that -- was it Rita?

MS. AHRENS: Mm-hmm --

MS. JACKSON: Whoever brought it up, then it's almost like an additional we're adding it on.

MS. PODZIBA: Aaron.

MR. PAYMENT: So I know I was advocating for mode earlier. But I think this is appropriately mean.

MS. PODZIBA: Kerri.

MS. BRIGGS: This is an area where I was getting lost on what's modifying what.

Actually the phrase that Rita just-- the clause that Rita just highlighted, what's being made available? I'm lost.

MS. JACKSON: Evidence.

MS. BRIGGS: Evidence. Which evidence?
MR. ROONEY: Right, it's number (5).

If you look at line 16 is the stem.

MS. BRIGGS: Ok, thank you.

MR. ROONEY: And all of (5) is coming from (B) if you go back to Page 1, Line 12. So it's the assessments required under the section "Must," and then all of the alpha numeric numbers follow from that.

MS. BRIGGS: So the evidence that explains all that stuff is the stuff.

MS. PODZIBA: Any further discussion of this proposal? Rita I think you accepted a friendly amendment?

MR. PAYMENT: Maybe "through alternate means," "and alternate means".

MS. PODZIBA: Ok, so do we have a proposal as you like it, "and alternate means"?

Rita, that's ok with you?

MS. AHRENS: Yes.

MS. PODZIBA: Any dissent from adopting that proposal?
Kerri?

MS. BRIGGS: Not dissent, just clarifying. By calling it plural, I want to understand -- Tony, I'm asking this of your staff and people -- I've never been in a state agency before, are we making this available to the public? It's in paper form somewhere. That's available in public?

MR. EVERS: It sounds to me that we've now added another --

MS. BRIGGS: Another provision. I just want to understand how many ways we're making this available to the public.

MR. EVERS: Yeah, and I don't want to be insensitive, but to me the idea that it's being made available to the public gets -- it's either made available to the public or it's not, and if some of the public doesn't have access to the website, we'll find a different way of doing it.

I understand the need to be absolutely precise, but to me the way it was is fine. I'm
not going to spend any time arguing, but as it
says right there, now we're going to do it two
degrees over this.

MS. PODZIBA: Aaron?
MR. PAYMENT: So I guess just a
clarification.

I think maybe we need something to
modify it, so it's -- it's at least the website,
and it could be alternate means, but some people
collect information through different ways, and so
a website is not the only way, but of course you
would want it be to made available through
alternate means, and we would leave that up to the
states to decide what alternate means is.

MS. PODZIBA: Audrey?
MS. JACKSON: I just want to repeat
what we clarified before, that this is -- the
reason why it says "website" is because in the
statute it says you have to make it publicly
available, including on the website. So it's all
ready stated that it's on the--
MS. GOSS: It has to be available some other way.

MS. JACKSON: Some other way. So I feel like we're belaboring it.

MS. PODZIBA: So I need to ask the question. Is there a dissent from adding this? Lynn?

MS. GOSS: No.

MS. PODZIBA: Ok, other items on Page 2?

MS. JACKSON: Hold on, not all of that.

MS. PODZIBA: No.

All right, any other items on Page 2?

Ok, Patrick. I think there's probably something you want to say with Page 3.

MR. ROONEY: There is. Good prediction.

MS. PODZIBA: It's the red.

MR. ROONEY: There's big red text on Page 3 that we haven't talked about yet. And we did talk about these two weeks ago about this.
particular provision, and we tried to address that concern by adding in what is here in red.

Just to step back one second to remind you, in ESSA, there is a new reporting requirement which is not part of the statutory text that we are focusing on for this regulation that says, "in addition to the typical categories that states provide data on, they also have to provide data on homeless children or youth, status as a child in foster care, and status as a child with a parent who's a member of the armed forces on active duty".

Because of that requirement, that it has to be part of the reporting system for the state and for districts, we added into this draft regulation that the assessment -- the state needs to insure that the assessments can provide data on these groups of students, so that way they can
meet that reporting requirement later. That's just that background for you.

And "status as a child in foster care"
was not defined, and in our discussion two weeks ago, there was discussion that we define it so it was clear what that is.

We have defined it here, and I will actually tell you that this definition comes from the Department of Health and Human Services and the definition that they use for "status of a child in foster care," to be consistent with what's being used there, and to make sure that we're not creating a new and different definition that states then have to -- and districts have to respond to. So that's where this language came from.

MS. PODZIBA: Ok, yes.

MS. KING: Just a friendly request.

Can you say title (4)(b) of the Social Security Act? I think it may be confusing that it's referring to title (4)(b) of this law.

MR. ROONEY: That's reasonable.

MS. PODZIBA: Audrey?

MS. JACKSON: First of all, I want to
say thank you very much for putting this in, and I have two clarifying questions...

One, is that the child is in one of these situations at any time during the school year for like -- you know, I have students who fall into different categories at different times. So I mean, I don't want to be really prescriptive and say "for a minimum amount of time" or something like that, or is it at any time in their youth? That's one question.

The second is in the previous, in romanette (vii). I believe it's supposed to be Section 725, not Section 752. When I was looking it up I couldn't find this Section 752, but it seems to be referring to the definitions in Section 725.

MR. ROONEY: I think you're right on the second point, Audrey. We'll confirm, but I think that was a typo on our part that we may have had last time that I think we didn't catch. I think it's Section 752.
MS. JACKSON: I have it on my phone.

MR. ROONEY: Do you have a proposal for romanette (viii)?

MS. JACKSON: It could say, a child in foster care -- "status as a child in foster care during any" -- "for any period of time in the given school year". I don't know if that's too vague. I'd like to hear from state leaders if that's really challenging, but I think that there's --

MS. PODZIBA: Liz, do you have a comment on this?

MS. KING: Yes. My advice would be not to answer this question. Within our foster care advocacy community there's been a lot of conversation about this, because there's a lot of different merit to different ways of doing it. And so I think that folks are still working on that.

Because this is primarily governed by the reporting section, I'd rather it got repped
that way instead of being in Guidance.

So my preference would not to address

that piece of it, although I certainly understand

why that's relevant.

MS. JACKSON: Wait, can you say that

again. Where would it be covered?

MS. KING: So outside of 1111(B)(2) is

the actual requirement, right? The reporting

happens elsewhere -- there is a different part of

the law that also talks about reporting around

children in foster care.

So, my preference -- I mean, either

way, my preference would be not in this regulation

to define that, just because I want to be very

careful. Since this is a really great opportunity

for new data, I want to make sure we're getting

the data we want about the children we want. So

I'd rather not do it in this regulation.

MS. JACKSON: One other question then.

It seems to me a child could easily overlap

between (vii) and (viii).
MS. RICKER: Yes.

MR. ROONEY: I think you're probably right. I think our response to that would be there are oftentimes kids are in multiple categories and they're reported in whatever category that they fit in. There is oftentimes kids are more than one race, or kids are also a race and they have a socioeconomic status. So when they report that information, they report it for whatever categories that they would fall in.

MS. JACKSON: Ok, that's great.

I think the other categories report much more easily. Like I'm clearly a Caucasian female. It's a lot easier to see that it's two buckets, but this is where I think people would be tempted to pick one.

I don't think you have to change anything. I'm just stating it as a note perhaps for Guidance.

MS. RIGLING: Let me bring this back to -- this provision is actually a requirement.
that state assessment data must be able to be

disaggregated by these categories. So I think

what that means is that the state, in designing

its assessment system, has to have a way of

flagging these kids.

I think we don't want to get ahead of

ourselves here in what rules either HHS has for

how these kids are reported or what we might do in

either Regs or Guidance about the report card,

which is really where this requirement is that we

pulled from, because they can't report

disaggregated data on these kids if the assessment

system can't provide them that data.

So, I guess I'm saying I'm not sure we

want to be too prescriptive here, because we

definitely need to be consistent with what other

agencies are doing, but also what the report card

Guidance might say on this.

And I just don't know if maybe this is

something that they're leaving up to states to

determine when you would determine the status of a
child in foster care. I don't know the answer to that.

MS. JACKSON: Ok.

MS. PODZIBA: Rita?

MS. AHRENS: I just have a quick comment on this.

In recognition that some foster care kids are going in and out, my brother actually has foster kids that he takes care of, and he might not see them for a year or two and they come back to him.

So I wonder if, wherever it is that we are defining somebody as a foster care child, and we are then looking at the reporting requirements, you know, similar to how we include former English-language learners in the current English learner category for reporting purposes, I think we should take a look at using that same standard and consistency.

MS. JACKSON: Ok, I second that and appreciate it.
MS. PODZIBA: Kerri?

MS. BRIGGS: "Where in the law," I think that's an error. "Issues around privacy for students and/or families, particularly with foster kids". Is there a cross reference somewhere? Is that in the statute, privacy issues?

MR. ROONEY: There is a requirement in the statute that we make sure they're not providing personally identifiable information.

That would cover all of Title I. I don't think it's in the regulations we proposed, unless I'm forgetting that it's in here somewhere. I think it is covered.

There is a 200.7 regulation, which is a lot about the accountability system, and we'll talk about it and we can get a little bit further into this issue paper that covers -- to make sure that there is the clarification for insuring you're not personally identifying -- providing any personally identifiable information and you're consistent with the privacy laws that is not...
covered in these regs, but is certainly something that we are very much aware of and try to maintain.

This is just about making sure that the assessment system can provide data for these groups of kids, which is why it's not here.

MS. PODZIBA: Liz?

MS. KING: Yeah, I just wasn't sure about the status. I would like to take this text out. Are we -- sorry, I didn't know where we were on this. I felt like we were moving on.

MS. PODZIBA: You want to take out this definition?

MS. KING: No, no. The "for any period of time in the given school year" is my request.

MS. PODZIBA: Yeah, I think that's --

MS. JACKSON: Yes, that's fine.

Because we talked about how it's being covered and addressed. That's totally fine.

MS. PODZIBA: Janel?

MS. GEORGE: Just to Kerri's point, I
think FERPA would still apply here as well for the privacy.

MS. PODZIBA: Tony?

MR. EVERS: Number (ix).

MS. PODZIBA: Number (ix)?

MR. EVERS: Does the definition of "armed services" include National Guard? Does the definition --

MR. ROONEY: Yes, I heard you, Tony. That was the next thing I was going to say.

I have confirmation, Audrey, to your question on line 17, 752 should be 725. So thank you for catching that for us. I appreciate that.

And then romanette (ix), starting on Line 32, this is a requirement that the assessment system need to be able to aggregate data for students who have a parent who is a member of the armed forces on active duty. You can see the citations which we took directly from the ESSA as defined in 10 US Code 101(A)(4) and 101(D)(5).

That is actually what's in the statute. 101
(D)(5) is the National Reserve. It is not correct. We actually think it should be 101(D)(1), which then is the armed services or the armed forces.

So that is a change that we were going to propose making here and that we want to adopt that change, that clarification. It is supposed to be just the active duty and the armed forces, not the Reserve Guard.

MR. EVERS: So it does not include National Guard?

MR. ROONEY: Correct.

MR. EVERS: Thank you.

MS. PODZIBA: Audrey?

MS. JACKSON: Just to confirm that also -- I know we've confirmed this before, but "parent" here also does refer to the legal guardian or care provider?

MR. ROONEY: That's correct.

MS. PODZIBA: Lisa?

MS. MACK: I just want a clarification
on it not being National Guard. And I'm confused
with the coloring now at this point. The blue is
the regulation, not the statutory language?

MR. ROONEY: Other way around. The
blue is the statutory language. So the statute
says 101(D)(5), which would then mean "parents on
active duty and Reserve Guard". We think it
should be 101(D)(1), which would be "active duty
in the armed forces," which is what, if you look
at the language in the statute, it's referring to.

MS. GOSS: So why are they changing it?

MS. MACK: I'm just curious as to why.

I know that there are some issues with
self-identification in often military families,
that if a reserve person is actually -- I can't
think of the word --

MS. PODZIBA: Active duty?

MS. MACK: -- deployed, then they are
considered military. I know there's that effort
in Ohio.

MR. ROONEY: So I think at that point
they would be on active duty to be pulled into the
armed forces once they are being deployed
somewhere. But that might be a little out of my
depth of actually how the terms are used with the
different offices.

MR. EVERS: We have thousands of
Wisconsinites in the National Guard that are
deployed all across the world, some of them single
parents, and I can't imagine us not including
them. It seems irrational.

MS. PODZIBA: So, Patrick, you're
saying that the change that you made is what the
statute has? It has (D)(1)?

MR. ROONEY: No. The statute says
(D)(5), and if we keep it at (D)(5), then it would
be just the reserves. It would not be actual
parents on active duty in the armed forces.

So that's why we think it should be
(D)(1) and not (D)(5), which is why we're
proposing that change.

MS. PODZIBA: So I think there's some
pushback and I wonder if it's an "and". Is that what I'm hearing from people, that you want it to be (D)(5) and (D)(1)?

MR. EVERS: I think so, yes.

MS. PODZIBA: So a proposal to leave leave (D)(5) and the proposal would then be to add (D)(1). Let's make sure we have all those citations correct.

MR. ROONEY: So I was just given a note. So this is helpful having colleagues with me. They ask that I make clear that this was an error in the statute. The statute actually meant to be (D)(1) is what I'm being told, and they did (D)(5) in a drafting error.

MS. JACKSON: But if we're writing Regulation, are we prohibited from doing that. It was in the Regulation, not--

MR. ROONEY: Your question is whether you can include them both, even if there was a drafting error in the statute? I might need to--

that's why it's good to have an attorney sitting
next to me. We might need to get back to you on
that. I don't know if Kay has anything she wants
to add.

MS. JACKSON: I'd say at the minimum,
perhaps in Guidance, states could be advised that
they could, at their discretion, include both.

MR. ROONEY: So this is a list of what
the states have to do, right? So I think what
we're proposing is that it would be 101(D)(1),
which would be parents on active duty in the
around forces, that they have to make sure their
data can disaggregate for that.

It would not preclude them from doing
additional information if they wanted to. This is
what the minimum is required under the statute and
the Regulations.

MS. PODZIBA: So it sounds like people
are proposing the addition. Do you need to take
that back and get back to everybody about that?

MR. ROONEY: I think I do.

MS. MACK: I just have a clarifying
1 question. What is 101(A)(4).

2 MS. RIGLING: The definition of

3 101(A)(4) is the definition of active duty.

4 MS. PODZIBA: So, Patrick, I think

5 there's some confusion. Maybe you can just walk

6 through that line again and let people know what

7 those citations refer to.

8 MR. ROONEY: So I believe 101(D)(5)

9 is --

10 MS. PODZIBA: Starting with (A)(4).

11 MR. ROONEY: I don't know what

12 101(A)(4) is doing. We're looking it up right

13 now.

14 101(A)(4) is the armed forces, and then

15 101(D)(1) is the active duty in the armed forces,

16 and 101(D)(5) would be active duty in the

17 reserves.

18 MS. PODZIBA: Ron?

19 MR. HAGER: So I think the phrase

20 "armed forces in active duty," I mean, I think

21 what Tony and I have been kind of talking back and
forth here is we want to try and capture people who are in active duty.

And then we also would want to consider, and I'm just going to propose it, the National Guard. You have people that are on active duty that might be on reserve that are called up that are in regular military that are on active duty, and then the National Guard that may be called up to active duty.

The regular army is the (D)(1), and then they have got the National Guard and the reserve, and the modifier is active service, right?

So I think that's what Tony's suggesting.

MR. EVERS: They're over there.

MR. HAGER: They're over there.

MS. PODZIBA: So it's National Guard that have been called up?

MR. HAGER: Right, for the active duty piece.
MS. PODZIBA: So, Patrick, maybe we'll ask you to take that back and get back to us on that.

Mary Cathryn.

MS. RICKER: Thank you. I just wanted to ask actually online nine, the definition of how we would determine a "migratory child".

MR. ROONEY: So that is defined in section -- so we just are using the definition elsewhere of the ESSA and we provide the citation for what that is, so we're trying to be consistent with the other parts of the law that uses the same definition.

MS. RICKER: And so just confirming that determining the status of a migratory child in no way would need to request their immigration status?

MS. RIGLING: I think that's right. "Migratory child" refers to the child of a migratory agricultural worker or a migratory...
MS. RICKER: Yep.

MS. RIGLING: So I think it's really the vocation of the parent that defines who a migratory child is.

MS. RICKER: So there would be no reason a district would ever have to ask a child what their immigration status is.

MS. GEORGE: That's contrary to the law.

MS. PODZIBA: Anything else on Page 3?

So, Patrick, do we now move to Page 8, because the rest of this --

MR. HAGER: Page 4?

MS. PODZIBA: No, I think the rest of this has been discussed under Issues.

MR. ROONEY: There is one thing that I wanted to flag on Page 5, just because I don't think I've mentioned this before.

So I think it's good for me to mention now, that 200.3, which we spent a lot of time
talking about yesterday, and I don't want to go
into the content, the text within this page and
what's here on 200.3, but there is a note at the
top on line one that this is removing and
replacing the current text of 200.3. So I just
wanted to flag that for the group's consideration.
A lot of what was in 200.3 we think
either is no longer relevant or we moved it into
200.2 to reorganize a lot of the components around
the design of the assessment system.
So 200.3 used to be called the
Assessment System Design, I believe. It seemed
like they had split out a lot of the requirements
for Assessment and we tried to put all of the ones
that we felt were relevant in 200.2 and then
delete the others that we thought were not
relevant.
MS. PODZIBA: Ron?
MR. HAGER: I thought yesterday we had
talked about coming back to this when we looked at
Issue Paper 6 about if there's any provisions in
this part on Page 5 for states that are selecting
the nationally-recognized assessment that we don't
have in the general part of 200.2.

One of the things in particular was the
one about the assurances that we had come up with
as part of our package yesterday.

MS. JACKSON: Yes.

MR. HAGER: And the second one is some
of the stuff about the comparable data for all
high school students in each subgroup and that the
consistent -- "provides rational consistent
differentiation". Some of the language from (3)
that applies to "locally-selected," we were
wanting to consider if the state selected the same
test, that it really be consistent with the intent
of the, you know, ESSA requirements; that it
should apply to both groups.

This is a type of test, whether it's
selected by the local school district or if it's
being used by the entire state. We talked about
looking at and making sure that the criteria would
be consistent.

MR. ROONEY: So, Ron, could you clarify what language you are proposing and where you would propose for it to be, to help us understand your request.

MR. HAGER: From Issue Paper 3 yesterday, it would be (B)(1) romanette(v)(A)(B) and (C), and then (B)(2) romanette (i) as modified yesterday. That's the provisions. And then somewhere up in -- somewhere in (A)(3) probably would be the place to put it, and I'm sorry, I had it here, but I had it behind a different page.

MR. ROONEY: Sorry, it sounds like you're saying romanette (v), which starts on line 34 of Page 5 of this package that we're looking at. I'm trying to keep us from trying to jump around too much.

MR. HAGER: Yes.

MR. ROONEY: Around "producing valid and reliable data on student achievement comparable for all high schools and subgroups in
the state are expressed in terms consistent with 
the achievement standards and provide unbiased,

rational and consistent differentiation among 
schools”.

I do think those are covered in the 
existing 200.2. I think, because the state has to 
demonstrate that the tests, all its tests are 
valid, reliable, fair and accessible, and that by 
being the same test for all high school students,

they must then be comparable for all high 
schoolers taking that test.

We added this language about it being 
comparable in 200.3 because this is a case where 
you have some kids in the state taking a different 
high school test than is the state’s test, if they 
have done a locally-selected,

nationally-recognized assessment. So therefore we 
have that extra piece in there.

If there is something in particular you 
don’t see in 200.2(B) and you’ve got a suggestion 
on where to put it, I’m definitely open to it.
MR. HAGER: Definitely that language around the parent, the (2), the language about (B)(2) that we modified yesterday, that should apply whether it's the school district that's selecting the test or the state that's selecting the test. That's definitely not reflected in the general provisions of 200.2.

I'm not sure where it would fit, but--

MR. ROONEY: Sorry, I'm not sure I'm following what provision on (B)(2) you mean. Can you just help point me to the right line or language?

MS. JACKSON: I think this is from yesterday when we talked about the fact that whatever entity is administering or selecting the test has to, on behalf of the child, insure that their accommodations are met. The family doesn't have to do it.

So this is all stuff we worked on yesterday which will be included. Is that correct? You're just trying to make sure it is?
MR. HAGER: Right.

MR. ROONEY: So I get it. So the language we talked about around the accommodations not providing a different benefit to some kids than other kids --

MS. JACKSON: Yeah.

MR. ROONEY: -- which doesn't sit in 200.2. It's also in 200 -- actually it might be 200.6 is where it appears, where we talked about that requirement, because that's where we talked about including English learners and students with disabilities in the assessments.

We incorporated it in Issue Paper 4 and Issue Paper 5, (4)(A) and 5(A). Whatever language we ended up with presumably in 200.3 we would make it consistent in 200.6. But that's where it will fit is in 200.6 when we get there. Maybe I didn't see it.

MR. HAGER: So if you take the language that we put in from 200.3 yesterday, if you put that in consistent -- that language in in 200.6,
yes, that would work.

MR. ROONEY: In the language about the new red paragraph, which, if you're looking at the full package, shows up on Page 6, starting on line three.

MR. HAGER: Right. We're substituting the text from the Issue Paper 3 in there --

MR. ROONEY: Right.

MR. HAGER: -- and then we will take that same text and put it into 200.6.

MR. ROONEY: I don't know that we asked for a consensus on that yesterday. Now I'm blanking there's been so many discussions.

MS. PODZIBA: Yeah, I think it might be easier, Ron, when we come back to have the last version and we have the actual--

MR. HAGER: Again, this is something we left open and we wanted to make sure we discussed. We don't have to deal with it right now. But I just wanted to again flag it.

MS. PODZIBA: I would just say,
Patrick, when you are redoing the issue papers, it becomes clear where it should go, maybe you can just put that in and then we'll go over that to make sure that's taken care of.

MR. ROONEY: Yeah, that makes sense.

MS. PODZIBA: Lynn?

MS. GOSS: As she was going back and forth up on there, I noticed that the "competitive integrated employment," that "competitive integrated" was still in there, and I thought that we wanted to strike that.

MS. PODZIBA: No. I thought there was a discussion and then there was an understanding. That is how I understood the conversation. I don't believe there was ever a proposal to remove it.

MS. GOSS: I just think that it would be a disservice to some of the students. I mean, that's always our goal, but I think that it's going to be a disservice to the students.

MS. PODZIBA: Aaron?
MR. PAYMENT: I guess I don't understand that. Isn't it expected to be a higher standard that meets their needs rather than basically employment?

I mean, I have a nephew who I think, if we would have had an expectation for gainful employment, now defined as "competitive integrated," he wouldn't have gone on to college. I think he would be working at the sheltered workshop today.

So I think it's just the opposite. My opinion is just the opposite of what you're saying. I think that unduly limits them and diminishes the expectation of what they can achieve. He has a college degree now with a 3.5 GPA.

So I think in my opinion, as a parent or someone who has helped parents, that it's just the opposite. So I don't understand.

MS. PODZIBA: Lynn, is that ok to keep going forward?
MS. GOSS: Yes.

MS. PODZIBA: Ok. Patrick?

MR. ROONEY: So jumping ahead to Page 8, this is the State Law Exceptions, and this text is all in black text, which means this is our current regulations that are in place and affect now, and we are not proposing any changes to them.

MS. PODZIBA: Any questions about that?

MR. ROONEY: And then we can also talk about the top of Page 9. It's just lines one through 14 are new -- sorry, they're not new. They're actually not changed from what you saw two weeks ago. They are not new. Although there's some bold blue here where we clarified the language in the statute slightly to be a little more unspecific, but this is just essentially saying what grades the states need to have assessments, and that the states may have other subjects, if they so choose, but they are not required to.

MS. PODZIBA: Ron.
MR. HAGER: I just have a friendly technical amendment proposal. If you look at (A)(1), "A state must administer the assessments under 200.2 annually as follows," and because it was really based on old language, we had this exception for science and all that, I think if you cross out "annually" there and put in the "annually" under romanette (i)(A)...

So it would be "annually in each of grades three through eight and at least once in grades three through twelve".

So the science tests are done annually, but maybe that's ok.

MR. ROONEY: Sorry, I think the "annually" is referring to how often the test needs to be administered, which means every year.

MR. HAGER: I'll withdraw it. Sorry.

MS. PODZIBA: Ok, all right. Anything else on Page 8 and 9, top of nine?

Richard?

MR. POHLMAN: On the top of nine, at
lines 13 and 14, the bold, is that just scrubbed to add statutory language? So that with respect to "any other subject chosen by a state, the state may administer the assessment at its discretion"? Is that the statute".

MR. ROONEY: Yes, I believe that's right.

MR. POHLMAN: Is there any way to add a clause at the end, "consistent with state and local law"?

I mean, I don't think this can expand a state's right to require additional assessments if that conflicts with local law. It may otherwise limit their abilities.

That's probably clear here, but I can see state offices maybe using it in that direction. I don't know if it's possible.

MR. ROONEY: We can have a discussion on that proposal.

MS. PODZIBA: Discussion on that proposal?
MS. GEORGE: I'm sorry, I was a little confused. Are you saying the state law would supersede? I guess I'm just asking for clarity. Are you saying the state and local law conflict, Richard?

MR. POHLMAN: What I am saying is that if there is a state law, for instance, that limits the authority of the state to test in non- -- what's the language? Non-core subjects, sorry, but the state then proposes in support of this provision to say, Actually we have the authority to test for a statewide assessment for PE, for instance, that this could not be used to support that if it contradicted local or state law.

It's late. I'm not being clear, so I apologize.

MS. RICKER: I get it.

MR. ROONEY: I would say the word "may" in this number makes that maybe unnecessary. I don't know that we have a stance on whether it gets included or not, but this is just the state
may interact, the state has to -- there is no
requirement that the state do this. But also, I
don't necessarily --

MR. POHLMAN: Yeah, I just read it as
sort of providing this ultimate flexibility for a
state to decide, Any other subject chosen, you may
administer the assessment at your discretion.

MS. RIGLING: I think maybe where this
is coming from is that there is a statutory
provision that says the state has to administer
assessments in at least reading, math and science.
Then it says "The state retains the right to
implement such assessments in any other subject
chosen by the state".

I think this provision is saying, if
the state chooses another subject, it can
administer that subject on any timeline that it so
chooses.

MR. POHLMAN: That's helpful. I
couldn't tie the relevant statute that this was
going to be supportive. Thanks, that's helpful.
I'll withdraw the proposal.

MS. PODZIBA: Ron, do you have anything else?

MR. HAGER: I'm sorry, I was talking.

No.

MS. PODZIBA: All right, Patrick, where do we go from here?

MR. ROONEY: The good news is we can actually jump ahead. So the rest of Page 9 we talked about, and then we talked about all of 200.6. I don't think there's anything we didn't talk about.

I will pause on the bottom of Page 17. Starting on line 33, we talked about recently-arrived English learners, and we talked about this slightly two weeks ago, and I think I did not do a very good job of explaining it. Yes.

So there is a requirement that -- or there's a permission around recently-arrived English learners that's in the statute around the accountability system, and it relates to whether
students in their first year need to be assessed or not. And then there's some flexibility that's in the statute that's new in the ESSA around how those recently-arrived students get included in the accountability system and when they get included in the accountability system.

That second part is not covered in this regulation, because that's about the accountability system. This piece that's here on the bottom of of Page 17 and then onto the top of Page 18 is just setting out the requirement that, "while all students need to be included in the assessment system, a state may elect to exempt recently-arrived English learners from one administration of the English Language Arts test in their first twelve months of school in the United States". Again, this is something that was in Regulations previously that the Department permitted back in 2006 or so that's now a part of the statute. It was codified in the statute from
1 something that was in our regulations, and this
2 language actually doesn't look different, because
3 it was something that was all ready in the
4 Regulations. So there's very little change to
5 this part, or actually no change to this part of
6 the statute. And we wanted to describe that.
7 
8 And then, the rest of Page 18, it is
9 coming from existing regulations, but if people
10 have questions about that, we're happy to discuss
11 that.
12 
13 MS. PODZIBA: Lara?
14 
15 MS. EVANGELISTA: I just want to
16 clarify, this is for the testing at three to
17 eight, because I'm guessing this is not applicable
18 to the high-school assessment test, because there
19 are often late arrivals who are coming in in the
20 eleventh grade. I mean, I'm guessing.
21 
22 MR. ROONEY: So this would apply to any
23 student from one exemption of the English Language
24 Arts test in their first twelve months at school
25 in the United States, whenever they first entered
schools in the United States.

So if New York had a grade eleven test that they gave to all students, and a student showed up in October of grade eleven, they would be exempt from having the administration of the English Language Arts test.

They would still have to take the math test, and, if there's a science test in grade eleven, I think the science test, but they would be exempt from that first administration of the Reading Language Arts. It's not grade dependent.

MS. PODZIBA: Kerri.

MS. BRIGGS: I just want to, I think to Lara's point, it's an allowance. It's not "can't take it". They can take it.

MR. ROONEY: They can take it. This is the state's decision on whether to except recently-arrived English learners. All of this again, since the state is the entity that is our grantee. They're the ones who these regulations apply to first and they determine how to implement
them in their state.

So this would be a state-exempt, recently-arrived English learner.

Seeing no comments, we can go to Page 19. I want to say -- actually, the rest of this text, there's not much left, and it doesn't change from our current Regulations, although we're happy to take questions on it.

I will point out that, if you look at the top, this is 200.8, and the previous regulation -- the previous page was 200.6. So we skipped from 200.6 to 200.8. So I want to point out that 200.7 is missing from this package -- it's not missing. It's purposely not here, because 200.7 is really about -- in the past was calculating adequate yearly progress in the accountability system.

Because the accountability system is not part of this negotiated rulemaking, and because adequate yearly progress no longer exists as a concept for the accountability system, we
1 didn't bring it forward to talk about or discuss.
2 But it's something that we made part of the
3 accountability system as a separate consideration.
4 So it's not -- we didn't bring it here
5 for us to discuss at this table, right? But I did
6 want to point that out that we jumped from 200.6
7 to 200.8.
8 MS. PODZIBA: Audrey?
9 MS. JACKSON: I just have to back up
10 for a second. On Page 18, I was just seeing the
11 definitions, one is "migratory and other mobile
12 students, students experiencing homelessness," and
13 I'm just trying to clarify what that's with regard
14 to, and if the additions of the other categories
15 you put before should also be here.
16 I may have just lost reference of where
17 we are and what we're doing, but I see some of
18 those categories listed and others not, and I just
19 want to clarify why.
20 MR. ROONEY: That's a good question. I
21 might need Kay to me help answer that.
I will point out that (G) and (H), so starting on line 19 and line 24, are actually not listed under Definitions. They are their own category. The definitions under number (5) definitions, line 13 is actually referring just to the Section 200.6(F) that's referring to English learners, so that defines it just there.

But Kay, do you want to clarify it further?

MS. RIGLING: I think that, like Patrick said, this whole section is a holdover from our existing Regulations that were done through negotiated rulemaking in 2002, and at that time the negotiators had a concern that migratory students and homeless students in particular might be left out of the assessment system if it wasn't -- if they weren't called out and included, specifically in the Regs.

So basically what these two provisions say is that a state must include migratory children and homeless children in its assessment
I guess a question for you is whether thirteen years later you think that we still need to have these provisions explicitly called out, or whether we're sort of more used to now including all students in the assessment system, including migrant students, including homeless students, including students with disabilities, English learners, everyone.

They were just put in here for emphasis in 2002. We didn't want to take them out until you had the opportunity to look at them and determine whether you felt like they really should still remain in.

MS. PODZIBA: Audrey.

MS. JACKSON: I guess my other question would be, it says their "assessment and accountability systems". So those imply two different things to me. And so if it's a matter of which subgroups we have to consider in reporting and be held perhaps accountable, or at
least publicly noting how they're performing, then

I think we maybe would want to discuss it.

But if it's just a matter of being

included in the assessment and not -- as written

it says "assessment and accountability".

MS. PODZIBA: Liz?

MS. KING: Yeah, I think that was a

good idea they had back in 2002, and thanks to

Audrey for flagging this.

I think it's worth preserving and also

moving youth in and foster care and also military

connected, also here for the same purpose, just in

terms of creating visibility and emphasis for

historically marginalized children who are likely

to be left out if not explicitly acknowledged.

MS. JACKSON: And I'd ask for state

leaders, and I'm assuming they would be able to

disaggregate data in that way, there wouldn't be a

lot of extra work involved, and it would be a

protection for some of our most adverse children.

MR. EVERS: Let's do it.
MS. JACKSON: Did I just hear Tony Evers say, let’s do it?

MR. ROONEY: Liz, can I just ask for a -- Liz, are you clarifying -- not to take us backwards too much... but on Page 3, where we define "status of the child in foster care" and where we define "status of a student with a parent who is a member of the armed forces on active duty," that we move those definitions to this spot in 200.6, so they're here with the definitions of students experiencing homelessness and migratory and other mobile students," so we make them like an (I) and a (J) here.

MS. KING: Yes, I would make them (I) and (J). I would copy and paste it; "a student must include a child in foster care as defined".

And I'm fine with either having -- copying and pasting the text or referencing the earlier text. I do want the foster care pieces to be left on a higher priority within our constituency, so that's the part that I will focus
But, yeah, I'm comfortable with including a reference, but having an (I) for child in foster care with the line "a state must include a child in foster care as defined," and then either a reference back here or a copy and paste of the same definition.

MR. EVERS: Let's do it.

MS. PODZIBA: So is this a proposal?

Is it just a cut and paste?

MS. KING: Yes.

MS. PODZIBA: This is a proposal. So discussion on this proposal.

MR. EVERS: Whatever the federal government is requiring us to collect we collect. So this is it. Right? It's all federal law.

Cool.

MS. PODZIBA: Marcus?

MR. CHEEKS: My thought is, if it's there for affect and emphasis -- I mean, removing it sends the wrong message definitely, so I don't
see any harm in us carrying it over. Because we're dealing with all students. I mean, all means all.

MS. PODZIBA: All right, any dissent from adopting this proposal?

MR. ROONEY: Can we agree -- I think conceptually we agree. I don't think we've got a reason to dissent, but we may want to play around with the language and how it looks in there.

I don't want us to be duplicative in 200.2 and 200.6, but there may be a better way for us to structure it that makes sense conceptually and we can bring that back.

MS. KING: I would just add, with the caution that Marcus made, that there becomes an inadvertent message that gets sent when you remove text. I think we saw that in some other examples too. So I just could caution not to remove, but absolutely finesse is the word I think it is.

MS. PODZIBA: Anything else on 19, 20, 21?
MS. JACKSON: Sorry, we were just talking about 19 and I detoured us. So whatever you were asking about 19.

MR. ROONEY: No, I was pointing out that 200.7 does not appear in the package for our discussion here, because it was a regulation that was focused -- a component of the regulation that's focused on the accountability system, and as a result, we didn't bring it forward for this session.

But I did want to point that we did jump from 200.6 to 200.8, but I thought that I should point that out for the group.

MS. PODZIBA: Marcus.

MR. CHEEKS: Patrick, for the sake of clarity, will you talk a little bit about 200.10. What I'm wanting to hear more about is the requirement as it relates to private schools and the options as relates to state academic assessments. Are the "maybe's" there?

MR. ROONEY: I think fundamentally what
this is saying here in (A) is that if a private school receives funding, it does not mean it needs to participate in the state's academic assessment system as a condition of getting that funding.

Sorry, they get services -- Kay is correcting me. To clarify, they don't get funding. They get services through the Equitable Services provision. And in the case that a private school is getting services served by the private school, that does not require them then to give the state assessment system.

MS. PODZIBA: I'm just cognizant of the time, that we didn't take a break. Should we take ten minutes and then come back and finish it up?

I apologize for that. Let's just take a quick ten-minute break, and then be back at 4:00.

(Recess taken.).

MS. PODZIBA: I want to let everybody know there are a bunch of public comments, so I want to be sure to leave time for that.
Anything else on 19, 20 or 21?

Ok, so than -- I should take breaks more often.

So we're through six, and I think that's all the content that we're going to work through today.

Now we have a couple of process questions to go over. So the first is, there is this optional meeting. We have not achieved full consensus on all issues. I apologize.

But Patrick, I'm going to let you say a couple of things about that.

MR. ROONEY: Sure. First, again, to reiterate, I really appreciate everyone's time and dedication in the last three days. We think it's been, maybe not quite as fruitful as we would like, but a very fruitful discussion, and I think we made a lot of progress on all of the issue papers, even though we only came to tentative agreement on one of them.
I think we heard a lot of good feedback
that we would like the opportunity to take back
and try to think how we can address those and
bring forward for further discussion.

    We think a third session would be
helpful to try to come to consensus. I am an
optimist at heart, and I'm optimistic that we can
come to consensus on a package of regulations. So
we would certainly love to take the opportunity to
have a third session to try to do that.

    MS. PODZIBA: Is there anybody who does
not want to come back and do this again?

    MR. HAGER: Don't say "want".

    MS. JACKSON: Can I make a vote for the
second hotel over the first hotel?

    MR. HAGER: Yeah, yeah, yeah, second
hotel.

    MR. ROONEY: We can talk in a second.

We do all agree that we should have a third
session?

    MS. PODZIBA: Is everybody ok with
coming back?

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I'm glad. See you in a couple of weeks for sure, but Patrick, go ahead.

MR. ROONEY: It's been fun. So there are a couple of logistics things that I wanted to say now that we're going to have a third session.

First, we will have to obviously work with our logistics contract to get you all booked to come out here. So I suspect that Monday morning you will be getting -- our contractor will get in touch with you to help you book your travel.

Audrey has a preference for the second hotel. So that's good to know.

So our logistics contractor will be in touch with you and we will be following up with them to make sure they are in touch with you.

If you do not hear from them Monday or Tuesday at the absolute latest, please let us know so we can make sure that we attend to this, since time is short and we want to make sure that we get everyone booked for that third session.

Because we're doing a third session,
the meetings will be April 18th and 19th. So that doesn't give us a lot of time. It's a Monday and a Tuesday. That Monday we will not be in this room. This room is not available. So we're actually going to be at our office down the street from here. It's in the Potomac Center Plaza office, which is on, I think it's 550 12th Street.

550 12th Street Southwest. So it's down from the the Smithsonian metro for people who are local.

Because we're changing the location from what is in the federal registry notice, we will have to put a revised federal registry notice up at the beginning of next week alerting everybody that the meeting location will be different for Monday, Monday only. On Tuesday we will be back here, but that Monday session will be at a different building.

So for all of you in the crowd who have been patiently bearing with us for all of this time, and for everyone at the table, I want to be clear that that change will occur, and we will
1 make sure we give you information and the address
2 so you know how to get there.
3 Security is slightly tighter in that
4 building, because we share with other agencies, so
5 you may want to give yourself a little bit more
6 time on Monday to get up to the auditorium in that
7 building.
8 The last thing I wanted to say is that
9 our plan will be to take all of the discussion and
10 we will build on the red-line text that we worked
11 on together. I don't exactly know how we're going
12 to do this, but we'll try to make clear -- either
13 color-coding or color-scheming or some other
14 method -- what we have agreed to and then what are
15 the changes that we're proposing for discussion in
16 the third session, so it's very clear what areas
17 we want to focus on. But we'll start with the
18 issue papers and the text that we were going to
19 approve editing together and that Judy was taking
20 notes on in the last three days.
21 We will work to get those to you as
quickly as we can, so we would have time to review
them before the session on the 18th. It may not
be until late next week before we get those out to
you, but we will get them out as quickly as we
can.
And for those of you in the audience,
we will make them public on our website, as soon
as we get them out to the negotiators. So they
will go up on our website as quickly as we can get
them out.
But we're going to try to work through
a lot of the questions and the suggestions that
either we put a pin in because we needed to talk
internally, or that we didn't come to agreement on
or we just need to think about other ways to
address the questions when we come back as a
group.
I encourage you all and invite you all
to keep thinking about how, as a group, we can try
to think differently about some of the draft text
that's there. We've got some concerns. So when
we come together on the 18th, we can use that time productively and try to build consensus around some of these areas that seemed like we were a little bit at odds over the last three days, to see if there is a way that we can find a middle ground, where we can find something that is maybe not the "perfect," but is certainly something that helps advance the needs of the kids that we're all talking about, and also kind of meets the concerns that we have from our different groups that we come with. Because I know we all have different backgrounds, and we all are working from the same thing.

So on that note, I'll turn it back over to Susan.

MS. PODZIBA: Derrick, you had identified the desire to have a subcommittee. Could you tell us the status of your thoughts on that.

MR. CHAU: At this point I think --

I've been collaborating with a couple other
committee members, and we'll probably just come
back with a recommendation. I don't know if we
need to have a formal subcommittee meeting, per
se.

I don't get the sense there is any
opposition among the group for a need to explore
the option of including a bilingual, or a dual
emersion sort of exception to this, and I would
ask some coordination with the Department of Ed
folks on just the -- whether it's even possible to
put this in there.

So, I mean, I've been talking with them
a little bit also. So I don't think we need a
formal subcommittee meeting, per se.

MS. PODZIBA: I think that's fine.

Anything else before we go to public comment?

Aaron?

MR. PAYMENT: So I apologize. I came
back in late. The dates I know cannot work for me
and it's not just a matter of scheduling meetings
or appointments. I'm the lead of our legislature
and we have a legislative session on the 19th.

So if it is on those dates, that means that I'm not available, number one.

Number two, I think the Department has requested a consultation with us. So I think it's just the opposite of what I said last time. So, I did talk with the NCAI, and we are in acceptance of the request to do consultation during NCAI. So I believe that's the week of the 27th of June.

MS. PODZIBA: Thank you.

Ok, I think we'll open for public comment. So there's a microphone. If you could just turn that on me for me, and I'm just going to call people as they signed up. And apologies if I mispronounce names.

Kandise Lucas, advocate for Equity in Schools.

MS. LUCAS: Good afternoon. Once again my name is Kandise, and I am a parent advocate that primarily works with families of children with special needs in low-income areas.
I'm here today to talk about the issue of accountability, and I know that that is a primary concern for a majority of our community.

As parents, as stakeholders, and advocates of stakeholders in the academic setting, one of the greatest challenges that we do have is ensuring that there is equity and there is access to educational services and that our states are held accountable.

I operate mainly out of the state of Virginia, and as a result of that we are constantly addressing the state level in order to find out how we can hold localities accountable for implementing accommodations for our students and insuring that they have access and equity regarding a general curriculum.

I want to just share quickly a quote from one of our awesome partners. I also represent the Dignity in Schools Campaign. I'm a member organization of that group, as well as one of our federal partners, Ms. Janel here. There
was a quote that was shared that's really impactful, and I want you guys to hear this. It says, "ESSA does not address the wide range structural inequalities that contribute to the learning achievement gaps. This includes dramatic and equitable school funding across states, districts and schools, and the intensified segregation of students on the basis of race and socioeconomic status," and I'd like to add "disability" to that as well... "which have together created a growing number of underresourced Apartheid schools serving exclusively poor and minority students.

"Squarely facing these ongoing issues with much more powerful expectations for quality and equity than ESSA currently offers will be much more important than annual testing or measurement in achieving the goals of our nation's most important educational law".

And that was by Dr. Linda Darling Hammond from Stanford University.
As I'm standing before this committee,
I really want us to consider, yes, we need the
assessments. Yes, we need to hold some type of
uniformity regarding accountability for
assessment. But there are structural inequities
that continue to plague our children with
disabilities and our children of color, and we are
fighting, fighting with all our might at the
grassroots level to insure that our children are
getting what they need.

However, we are facing very hostile
responses. And so we need to have some type of
bite and some type of -- some type of strong
accountability in this program, in this -- in ESSA
to make sure that school districts, states are not
collaborating against the children, but
collaborating for our children.

And in closing I also state, the
parents are out there that want to be engaged. I
know there are issues regarding whether parents
want to have full engagement in our school
communities. We have to redefine and re-establish what "engagement" means for a lot of our families.

Parental engagement does not necessarily mean attending every PTA meeting. There are various areas that we need to expand in, you know -- not just go traditional.

Orsman created a public education system a hundred years ago. We all know it wasn't meant for everyone. So we definitely need to look at how we're going to expand. And I'm charging the U.S. Department of Education to also become more open to looking at and actively receiving feedback from parents, educators and advocates.

Thank you.

MS. PODZIBA: Thank you.

Marty Jewell, Richmond NAACP.

MR. JEWELL: Good afternoon, everybody.

I've been listening to you go around with your work, and it seems way over my head. I just want to bring it down on the ground for a minute and talk about what I believe is missing in rulemaking
at the thirty-thousand-foot level.

I've been working with Ms. Lucas. You have no idea how she been retaliated against by Chesterfield County and Rico, and in some ways Richmond City in Virginia, arrested four times, criminally, and beat every one of the charges because they were all made up.

It's very clear to me that the State Department of Education is complicit with the school districts in denying services to special-needs children. What in the ham sandwich are they doing with the money? I mean, they're getting the funds, but they're denying these children the services.

There's some dog in that cat, and I just think that, as we make these rules, we're going to have to in some kind of way drill down with requirements that cause these people to follow the state and federal law that's telling folks that advocates don't have the right -- parents don't have the right to bring their own
advocates, people banned when they assert that
right.

And so, I don't know how we get at
this, but it's hugely important.

The second piece is, and again, down on
the ground, in Richmond, eighty-five to ninety
percent of our children are not going to go to
college, yet we've got this hour and a half block
schedule that scared the bejesus out of me when I
first went to college.

We need to return to the
fifty-five-minute class. I'm learning that the
ninety-minute block schedule is highly formulaic,
which means you've got to transition every thirty
minutes. They're not doing it. Kids are bored in
the first twenty minutes, and then the last hour
is lost. And they don't come back to class for
another two days.

This is robbing our children of the
continuity that they need if we're really going to
make a difference.
And so as you make your rulemaking, I'm hoping that you can come down a bit from thirty thousand feet and get at how the needs are being skimmed over by what appear to be relatively innocuous procedures. Thank you.

MS. PODZIBA: Thank you.

MS. JACKSON: Susan, just a question.

Will the names of the people who spoke be shared with us at some point?

MS. PODZIBA: Well, they will be in the transcript, if you want them.

MS. JACKSON: I was just curious.

MS. PODZIBA: Tichi Pinkney Eppes.

Sorry if I got that all wrong, from the City of Alexandria, Richmond Public Schools.

MS. EPPES: Hello, everyone. It's actually pronounced teeceh pinknee eps. And I am a school board member with Richmond City Public Schools.

One of the first things I'd like to dispel is that, as an elected official, I do know

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a little bit about education. We've gotten used
to the elected official just being there for the
policy piece of it and not really having an
in-depth understanding, and that's one of the
things that brings me here today with this group
of individuals.

We are working very hard to insure that
individuals understand that, just because the
majority of our population is in poverty, does not
mean that those children are not capable of
learning. Part of that issue that we are
attempting to address with some policy changes is
that, when you look at these assessments with
regard to the mandated testing, and then
ultimately in comparison with when the children
enter into schools, those type of other
assessments that they have to have, that perhaps
we should be considering that, because of the
challenges that the children face as a result of
the poverty, that mental health is one of the
issues that we may need to take a much closer look
at, that as these behaviors -- the children begin
to exhibit the behaviors, I think we're missing a
critical piece that perhaps if we do some other
in-depth assessments before they enter into the
classrooms, we have an opportunity to insure that
we're putting the right individuals in the
classrooms with them, and we are equipping them
with the necessary professional development to be
able to work with these children.
So definitely, I'm really excited about
the ESSA. I'm looking forward to having an
opportunity to hold the local school board
association accountable along with our school's
attorney to make sure that, as a board member, we
are receiving that professional development from
that thirty-thousand-foot view, such that we are
able to then ultimately get down into the weeds,
if you will. That's another thing that's always
kind of said, Well, Ms. Epps, you're always in the
weeds.
I'd like for people to consider, our
schools shouldn't be surrounded with weeds. These children should be able to have grass to play on.

So I'll close that in saying that, for me, one of the most important pieces is the language that we use around public education and how we divide our children in such a way that when we speak to the challenges of poverty, it oftentimes stigmatizes children in a way that would be -- for instance with exceptional education, we call "gifted and exceptional education," and the children that are in poverty, you have to kind of sometimes go into "special education."

And so I'd like for this committee to consider that we have an opportunity to really be the champions for public education for all children if we assess our own biases and consider the languages that we use around it.

Thank you.

MS. PODZIBA: Thank you.

LaQuetta Massey, advocate for Equity in
All Schools.

MS. MASSEY: Good evening. My first
name is LaQuetta. My last name is Massey. And
I'm actually a parent with a child that has
special needs.

My son is a little unique. He kind of
falls in the gray area -- I'm nervous as I don't
know what.

MS. GEORGE: Don't be.

MS. MASSEY: Through my advocacy for my
son, his name is Kendrick Malachi Massey. That's
why I'm here. I've been an advocate for my son
since he's been in the first grade, and it's been
a long, tough hike.

I was very fortunate to meet Kandise
Lucas. She's more versed at the laws regarding
policies. And so what happened was -- well, now
my son is in a Title I school. He is diagnosed
with dyslexia dysgraphia, and as an onset of not
properly being accommodated, he developed
reflexive neurovascular dystrophy.
So he went from riding bikes in the fifth grade to being homebound and a couch potato. And so, what's going on is that I don't know how the funds are allocated. I don't know what the stipulations are put on how those funds are allocated. But had my son been properly accommodated, by people who I guess are more educated with children such as my son to have special needs that fall in the gray area, he wouldn't have developed the medical portion that we're dealing with.

He's on several therapies. He's on sleep therapy. I take him once a week now to pool therapy. It's horribly extensive. I've had to literally leave my job. It has put me into an impoverished state to go from taking trips to now I can't even afford season passes to Kings Dominion.

So it's been a downward spiral economically for me, you know, and so I'm used to being that person who helps the other people in
the community.

So, there's two things that come out of this. I've learned how to understand how the lower-income families really function, and what it takes to be functionalable. But on a level dealing with a child with special needs, in those schools it's evident. I have burdens and burdens and burdens of proof that is evident that they are not equipped to handle kids such as my son and other kids.

I just don't happen to be that parent of a child, who is an educator and a grandmother who is an educator. So I kind of had the functionality or both levels. My mother was a dynamic teacher. She took nothing and made something out of it for the kids, and she met them at their needs.

So they are dynamic teachers. I've come across them. But you have to be trained specifically to accommodate a lot of the needs that's out here that these children have.
They are our future. My son has an IQ of 126 the last time he was tested. He's fourteen years old. I forced him to be passed to the eight grade because mentally he couldn't... he couldn't... stomach failing, because, for one, he's a perfectionist, and for two he's very intelligent. He has full cognitive abilities. He's aware of his environment. He's high functioning, but the physical part took a down spiral when he wasn't being accommodated academically and he was constantly forced into this environment that he couldn't function, and his body just deteriorate.

So I'm pretty sure that there's more children out there like my son. So my heart goes out to them.

So as a result of it I joined the team of advocacy so that I can at least help the parents. I just talked to a parent just the other day. And I could hear it in her voice, That sound! And I said, Oh my God. She needs a
Russian Kandise Lucas.

Seriously because, what people don't understand if you don't wear these shoes, you really don't understand how serious it is. In advocating for my son, I have been put in a position where principals would get in my personal space, trying to invoke me to act outside of my character.

Just recently criminal charges were filed against me. We had to go back and forth for truancy when I begged for these schools to put in place a health care plan for my son.

So. What is it that a parent is supposed to do? You know, how far am I supposed to go down this hill in trying to make sure that my son, who is fully functional, in being able to be a productive individual of society?

He has a lot to give. I can't even pronounce what it is that he wants to be, molecular-something-something... when he is able.

He just wants to be enabled, because he learns
differently.

So I don't know what's going on with these Title I funds. I know he attends a Title I school. They gave him his assisted technology.

The person who was in charge of assisted technology prescribed to him two laptops. I don't know the cost of them; one for the home, because physically he can't carry but so much weight, and one for school.

A teacher couldn't operate -- none of his teachers could operate them. He would come home and say, "Mommy, they're not accommodating".

But then when I would try to advocate for him, then I would get, "Oh, yeah. He has the laptop".

Yeah, he has it physically, but no one can instruct him how to use it.

So that's the proof that we need people who have been trained, properly trained in certain areas. You can't prescribe some medicines and you don't know what they do. You have a headache and you want to prescribe something that's designated.
1 for something that's totally different. That's
2 the situation I was in.

3 When Kandise came to the table, she
4 brought law to the table and therefore the level
5 of accountability increased.

6 So I don't know what you have to put in
7 place as far as being able to delegate how the
8 funds are proportioned, or what type of
9 stipulation that can be put on the monies that's
10 delegated.

11 Something has to be done. Because my
12 son attends a Title I school, has been for the
13 past three years, and so, it's been a struggle,
14 but I'm pretty sure I'm not the only person out
15 here.

16 And so, you know, I wish that someone
17 could walk into the shoes that I've been in for
18 the past three years. And I can't imagine for the
19 parents who may be intimidated, because if
20 criminal charges was pressed against me, and I've
21 never been in a court before, I don't even have a
blemish on my driver's record. So I was

2 horrified. And not only that, my character. It
tore away my character. I'm like, Wait a minute.
I'm a single parent of six children. I have one
that just graduated from Virginia Union, number
three in her class, and a program at UVA. I have
another one who stays on the dean's list at
Norfolk State. I have two that's about to leave
and they're going to attend OD, and I can't
remember the other one. But, I'm a good parent.
So you want to press criminal charges against me
just because I'm advocating for my son, but you
all are getting the funds that you're supposed to
be able to accommodate my son? I don't know. I
don't get it.

But whatever needs to be deposited,
whatever needs to be done, if this is the deciding
factoring board, I would appreciate, not just for
my son, but for those other children.

Because, now I'm looking at you paying
for homebound for my son when you could just train
someone to be able to better accommodate these 
children. You know, I don't know how the costs 
are done. I'm just learning this thing. I'm just 
a baby here and just trying to get it, but I want 
it for other people.

So that's pretty much all that I have 
to say.

MS. JACKSON: Thank you.

MS. RICKER: Thank you.

MS. PODZIBA: That's all that signed 
up. Is there anyone else in the audience who 
would like to address the committee at this time?

Then public comment is closed, and we 
will adjourn until the 18th and 19th. And Aaron, 
we will certainly miss you.

(Whereupon at 4:32 p.m. the Negotiated 
Rulemaking Committee meeting adjourned until 
Monday, April 18, 2016, at 9:00 a.m.)

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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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