Transcript of U.S. DEPARTMENT OF EDUCATION NEGOTIATED RULEMAKING

Date: April 18, 2016

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

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ESSA negotiated rule-making session.

Ms. Podziba: Good morning everyone.

Welcome to the third session, the third and final session of the ESSA negotiated rule making for assessments before we start -- Speaking in tribal language.

Mr. Payment: Thank you all for your appreciation this morning and your support. I just ask for help as we go through our negotiations here and thank our kids and families for let helping make this happen.

Mr. Rooney: I want to invite our acting secretary Ann to kick us off this morning.

Anne: Thank you this morning.

Congratulations for finding PCP you were all successful so thank you. I want to take a moment for thanking the members of the committee for your willingness to be here for
the third session. Some of you traveled
three times across the country in the last
month and that's not an easy exercise and
many of you away from your families. I want
to say how critically important your work is
so far. I learned a great deal with this
process. I appreciate all of those who
supported the work including the experts, the
staff as well as the facilitator. Thank you
all very much for your time as Secretary King
said on day one ESSA honors the elementary
and secondary -- to ensure implementation
also honor that heritage. That rests in each
state, district and school. As we talk about
these proposed regulations it's helpful to
see what it will look like in the
implementation. The laws real world impact
depends on implementation. It's the
responsibility of the Department of education
to promulgate regulations that will help
clarify key aspects of the law. The

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regulations you draft can have a serious
impact on the field for years and maybe
decades to come. I take very seriously the
charge to support state, district and schools
and improving opportunity for all students
protecting civil rights and providing guide
rails that will help education for all
children. I know all of you do as well.
Thank you very much for that. The issues you
have been working on throughout these past
two sessions assessments and supplement not
supplant provisions are both technical and
challenging topics they are a vital
importance. For assessment it is law
requires for the first time ever that all
students in America are to be taught at high
academic standards that prepare them for
college and career and continuing the
requirement that vital information about
their progress this year with educators,
families and communities and students

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themselves on an annual basis through statewide assessments. The law aims to support English learners and students with disabilities. You tackled many of these key issues including native language and students with the most significant cognitive disabilities. In terms of supplement not supplant they continue a longstanding requirement that title one says supplement and not supplant. It also makes critical changes to the way the provision is written.

As many of you noted in the past sessions auditors have had too much control over this provision or how this provision was implemented. Regulations should ensure that the districts get to make choices on how to spend their funds state, local and title one in a way that makes good education sense that's not driven by risk adverse auditors.

This important equity provision that title one funds are sent to provide the additional

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resources and support that students need to succeed. Unfortunately, we know that title one funds are not able to do that. Make up for shortfalls after state and local funding in high poverty schools. As committee members each of you are chosen to represent specific constituency. Again, we appreciate all of your efforts. The committee has not agreed on every issue. You have done your best to reach agreements for our students and our country. I truly believe that one of the benefits of this negotiating committee is considering real problems in working out our differences. We may ultimately arrive at a better solution. I look forward to yet another better discussion today and tomorrow. I truly hope this committee can consent on all issues. Thank you so much for your time and expertise and thank you so much on behalf of our nation’s students.

Ms. Podziba: I am going to take a
quick minute to review the agenda. Ms. Rigling will walk us through the negotiated rule making process and that is to put into context what our work is and what happens afterwards. We will go over the summary over our last session and we will dive into draft regulatory language in the order that you see them. This order is meant to give us a running start. We will do public comment as we have at the end of each day. If we reach tentative agreements on all issues consensus approvals is when we walk through the drafts one last time to make sure that we have everything and depending on timing you either have a good amount of time or we will do it very quickly. That's what consensus approvals are and we will go through next steps. Any questions on the agenda? Kay, I am going to ask you to put in context our negotiations on that.

Ms. Rigling: It's crunch time. We
have the final two days of negotiated rule making and as Ann said we really appreciate all of the work that you put in to date, and we look forward to a really productive next two days. We sincerely hope that we can reach consensus on both assessments and supplement not supplant. Consensus means that mean for the committee to reach agreement. There can be no dissent from any member who's designated to participate in reaching consensus. Thus for any voting member you can't be out voted. This is the protocol. Also, it says a member should not block or withhold consensus unless he or she has a serious reservation about the proposed reg or a solution that is proposed for consensus, and also please recall that abstention is equivalent to not consenting to reach consensus on both supplement not supplant or on one if not the other. We sincerely hope to reach consensus on both.
If we do reach consensus the secretary will publish the proposed regulations that conform with the consensus based language. Unless for some unforeseen reason the secretary needs to reopen the negotiated rule making process. I think we don't anticipate that would be necessary. If we don't reach consensus that doesn't mean that's the end of the proposed regulations because the secretary has the authority to publish proposed regulations even if we don't reach consensus, so this is our chance for certainty. If we don't reach consensus there is no guarantee that what we have before us at this last session is what will be published in the federal register as proposed regulations. If we don't reach consensus before the secretary publishes regulation he must provide notice to the relevant committees in Congress that he intends to issue regulation that notice has to give him

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among other things a copy of regulations and
explanation of why those regs are needed.
Once Congress reaches that they have 15 days
to comment on them before they are published.
The Department will include those comments in
the public rule making record, will reflect
on them and address them. After a notice of
proposed regulations is published and public
comments are received the Department will
review and analyze the comments an issue
final regulations that's true whether we are
publishing as proposed rules, the regulations
that we reach consensus on today or whether
they are the decision of the Department to
publish proposed regs even if we don't reach
consensus. So again we remain as the
Department committed to the goal of achieving
consensus. We realize that the proposed regs
may not perfectly reflect each constituencies
ideal set of regulations, but collectively we
hope they will reflect a position that we can
all live with that will approach education for the underrepresented students that title one is committed to serve. Thank you for your continued contribution to this process and let's get to work and try to achieve consensus.

Ms. Podziba: We are going to jump right into the issues we are going to start with issue 5 A. Can I ask you to take the meeting summary in the last of your folder? Are there any questions or comments or proposed revisions on the draft summary?

Mr. Cheeks: It's noting as a list of individuals that were present. I was under the impression they were accessible to us but maybe not present during the last session, so would they still be listed that had way?

Ms. Podziba: Patrick, can you respond to that?

Mr. Rooney: They were in the room for much of the three days. We ended up not

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needing them to come to the table. There's
one question that Martha Thurlow answered. I
am fine leaving them here as notes. If you
want to note they were present but not at the
table.

Mr. Cheeks: I knew one was here but
I didn't think the other two were.
They were and they sat in the
audience for much of the three days.

Mr. Chau: I am missing page two of
the summary I don't know about everybody
else? We may want to make sure we have the
second page before we agree.

Ms. Podziba: That's often helpful
that's a good ploy to make sure we get
through it. Just kidding. We will get back
to that after the summary. I just want to
call your attention to the bottom of the
first page and the second page. Who has more
of that? There's sections highlighted that
were the outstanding issues. When you got
the drafts you saw a lot of gray shading.

What the gray shading was an attempt to do is to highlight the not gray shaded as the areas that need our most attention. Here's my proposal. We know that the not shaded areas or the unshaded areas or the areas that were outstanding and were the most difficult issues at our last meeting. While I realize there's some components in the shaded areas that people want to comment on, I am hoping we can primarily focus on the unshaded areas in our effort to reach consensus. We know that if we can't reach tentative agreements on those items we won't have a final consensus. So with the permission of the group can we focus on those unshaded areas with the agreement that will come back to the entire package once we reach tentative agreements on those outstanding items?

Ms. Briggs: Unshaded?

Ms. Podziba: We are going to focus
on unshaded. If there's something that we
can do quickly so we can reach tentative
agreement on the whole issue paper we will do
that. I will ask people if you have an item
on the (inaudible)-- to share, yeah let us
know so that we can flag any of those. Okay.
All right. Thank you. So with that I am
going to turn to Patrick and we will start
with issue paper 5A.

Ms. Podziba: We just did hand out
the revised summary if it's helpful to go
back and close that out. Everyone should
have page two now, sorry about that. I am
hoping people had a chance to look at these
before. I am hoping these will go quickly.
Any questions or comments on any part of the
meeting summary? Does anyone need another
minute? Is there any dissent from approving
the summary as written? Okay. Thank you.
Now I think we are ready.

Mr. Rooney: Thank you all, so we are
going to jump right into issue paper 5A. I am very much looking forward to the discussion today and tomorrow. I know time is short. I will try to be quick in summarizing in what's in the proposals for each of these issue papers. I will say we tried to incorporate much of the discussion from the last session. Hopefully you see that on the issue papers when we sent them on Friday. I am very much interested in suggestions you have on how to strengthen this language to make the best possible set of regulations we can. As a quick reminder this issue paper doesn't have a whole lot shaded some have much more shaded than others. As a general reminder the text in black is text from our current regulations that is in blue. It is text that is from the ESSA that we pulled into these proposed regulations that text in red is where we had proposed language to try to clarify the

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regulations and some of this comes from our
discussion we had in the first two sessions
and some of this is while we are adding for
our discussion today. If it is under lined
that means it is something that we have added
for this discussion in burglar. So that
helps focus you. We did add a footer to each
of the pages to help remind you in case you
get lost with many different colors an
underlying scheme that is we have used.
Hopefully that's helpful. Starting with
issue paper 5 A. There's changes to this
that I will try to walk through. First in
the paragraph the first paragraph on page two
we clarified that this is focusing on the
academic assessments that's the required
under point two you see right in letter F the
first under lining in red. We based on part
of the discussion we had --

Ms. King: We are going to go through
clean versions?

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Mr. Rooney: Yes we are going to go through red and then clean. I supposed we go through the clean version which should be the first version for each of the paper for each of the issues in your binders for each issue paper. I think it makes it easier to read what we are proposing and what we want to discuss. There may be time that is we have to cross reference to the full package in issue paper six and again like we did last time I propose that we use the cleaner version which gets rid of the strike through. I think it's easier to see where we are discussing if we do it that way. Okay so getting back to issue paper 5A. I think there's a lot of discussion about accommodation under both issue 5A and issue paper 4A as a result we made changes and Delia suggested we capture accommodations for English learner and student disabilities after considering that discussion and Delia's
point we propose a different take on how to
do that and you it will make more sense when
owe see issue paper five. As a result here
we kept here in general the states have to
ensure appropriate accommodations and we
clarify this is talking about the student
status as an English learner and looking at
accommodations specifically for the needs of
English learner if applicable in student
status in paragraph A. If you wanted to look
at the language where we identified the
different groups OF children with
disabilities that would need accommodations
it is the 200.6 A in the full package. It's
also how we begin issue paper 4A. So that is
where we clarify that as children covered
under IDEA and other acts which would include
the rehabilitation act and section two of the
American with Disabilities Act. Ron?
Mr. Hager: I appreciate you all

having an explanation and not having all of

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Mr. Rooney: Thanks for that suggestion Ron. Moving on the next piece to discuss is probably that's a change to this -- would be looking at page 30 if you look at romanette 4B, so this is where the state in romanette 4 is where they have to identify what languages other than present to a significant extent. We spend a fair amount of time talking about this on capitol B bottom half of page three. We added English learners who are Native American or Alaska natives. This is talking about English
learners. I think I would like to actually make an amendment to the proposal that we made that because of how we define native American's later in this issue paper we are going to discuss we don't need to say or Alaska natives that by saying native American's we are including the Alaska natives an native Hawaii students an native Pacific islander students. I will point it out to you when we get to tend of the issue paper. The next piece to point out is something that's not here. We spent time in the last session talking about these criteria particularly what was capitol D which was an additional consideration that states should look at English learners any languages spoken by 30% of English learners. Based on the conversation and the discussion we had have delete that had from this list of considerations for this state when it's defining when it's identifying languages
other than English that's present to a significant extent. The next issue that shows up is issue five of the issue paper. It's the red text that starts with letter G. This is a significant change. We spent a bit of time talking and they were helpful pointing out the Native American languages act and considerations for student who is are enrolled in a Native American language medium school or an immersion program. We called internally among ousts after that session and talked with our attorney's always a good idea when we work with the Department of education. There are in addition to the Native American language act there's several components in the ESSA and there's executive order trying to incentive vise in providing supports in Native American languages and groups of student that is we think based on the components that it does make sense to add section G which says which provides an option
for states to develop a Native American
language version of its reading language arts
assessment that it can administer to students
enrolled in the Native American language
immersion school or programs even if those
students are not English learners, so
stepping back one step reminder that the law
says that for reading language arts the test
needs to be in English except for English
learner who is maybe tested in their Native
language for three years and additional two
years on a case by case basis. So this would
create an exception for those students even
if they are not English learners to take the
reading language arts test in their Native
American language if they are in a Native
American language school or Native American
language immersion program for at least 50%
of the time majority of the schooling is
instructed in that language. This again
because it's Native American language it

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would cover Alaska native and native Hawaii immersion programs also. You can see that is what is spelled out in G romanette one, two and three. I think that other piece to point out on this is number two at the bottom of this page which clarifies that which exception for those student ins these programs or schools would last until up no later than eighth grade. With eighth grade they have been take ago test in English. This would permission for the students developing a reading language arts test. I will stop there to see if people have questions about that aspect?

Ms. Harper: I have a quick question.

Just one clarification is that we would say Native American language medium schools. I think that also aligns it with NAHLA and a couple of other definitions if that's something that's available instead of the word impression we would say Native American
1 language medium. It's the phrase that's used
2 in NAHLA.
3 Can you point to where under G we
4 just talked about students providing
5 instruction in Native American or Alaska
6 native languages? Clarify wherever we say
7 Native American we should delete Alaska
8 native because it's unnecessary. There's two
9 spots here including this first one in G at
10 the very last line where I would say we
11 strike Alaska native. You have just Native
12 American language and then can you point to
13 where your recommendation is Leslie?
14 Ms. Harper: Page four number two
15 applicable students are Alaska native
16 language impression schools. We would use
17 the word Native American medium school
18 instead of immersion.
19 It's page five in my set. It's the
20 first sentence in G.
21 Ms. Harper: It's in several spots.

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Can you explain the difference because we thought medium was a bit unclear that it wasn't and I don't know we need to go back and look at I'm not sure we actually saw the programs described that way in NAHLA, but we will go back and look at that. Is there a problem with immersion? It seems more explanatory to the average person reading the regulations?

Ms. Mack: Okay. The medium of instruction is the native is the specific Native American language.

Ms. Rigling: I saw that language. I never saw it modifying school or program but I did see the medium of instruction.

Ms. Harper: Okay.

Ms. Rigling: Okay. We can go back and look at it. I just think that we tried to use what we thought was maybe a more common I word so people knew what we were meaning?
Ms. Briggs: In reading G two I wasn't immediately apparent to me that meant an eighth grade student needed to take the reading language arts test in English which is I think what you meant.

Mr. Rooney: It is what we meant.

Ms. Briggs: I think by no later than eighth grade is tripping me up a bit. I am not sure how you would revise that. I think you just mean like they are taking the reading language arts test in English as the state gives it to everybody else in that grade.

Mr. Rooney: I am open to suggestions on language. The only thing coming to my mind is to say in reading language arts in at the latest eighth grade, which feels a little clunky to me. I think that

Ms. Briggs: Can you just say during the 8th grade?

Mr. Rooney: By no later than during
the 8th grade?

Ms. Briggs: Strike by no later than the eighth grade and say during eighth grade.

Mr. Rooney: Does during eighth grade work or is there a reason why I want the one thing we are trying to clarify is it should be as soon as the students are taking are being instructed in English primary they would start taking the test in English so that should happen by eighth grade by the latest. It may be different for different schools depending on how the program is structured I don't know if we want to presume it will be the same. I agree the language is a little unclear I don't have a suggestion to fix it?

Mr. Hager: It's really based on G one which says provided in the instruction is primarily in the native language, so that's 50% so we could have before eighth grade, I think that's what the Department is saying to
1 no later than its two requirements.
2 Ms. Podziba: Are you okay Kerri with
3 that explanation?
4 Ms. Briggs: Sure.
5 Ms. Goss: I was going to suggest
6 that if using the language by starting. If
7 you say by no later than starting the eighth
8 grade that might clarify it better.
9 Ms. Rigling: We also had a
10 suggestion to move using assessments written
11 in English by no later than the end of the
12 eighth grade or we could also say in eighth
13 grade so move that end clause up. I think we
14 would leave that in and add at the end of so
15 it would saying using assessments written in
16 English by no later than the end of the
17 eighth grade or however in eighth grade
18 starting in eighth grade.
19 Ms. Briggs: I get it.
20 Ms. Rigling: I want to go back to
21 Leslie's point if we took out immersion and
left it native American language or school or program? Would that work?

Ms. Harper: I just I just know that it could possibly work it leaves it open for interpretation. I know some of the states in which our programs are locate redirect examination our schools are located states use the term medium in their statutes native American language schools they use it differently than they leave immersion to describe how does this go? They describe an immersion program as being smaller components of the school and they use the word medium to describe a school that is conducting all of their academic content in the medium of a specific Native American language, so it's different in the different state that is we represent depending on how their statutes read. We could leave both words in their immersion or medium or --

Ms. Rigling: Maybe take both out and
maybe use guidance to clarify that you know
this could be immersion or it could be medium
it's really sort of up to the particular
state because one of the concerns we were
worried about with immersion is that implies
a hundred percent of the time whereas you
seem to be saying if anything in some states
immersion is less than maybe even 50%.
Ms. Harper: Several different
models.
Mr. Rooney: We will remove the word
immersion.
We will add preamble.
Ms. Jackson: I just wanted to see if
maybe procedurally where there are things
where we aren't necessarily in disagreement
it's wordsmithing if we maybe had a protocol
nobody really gets it we could name the
parties will look into it and then check just
to save us time. I feel like issues like
this where we could sit and talk about it.
Ms. Podziba: I appreciate that. If we can reach tentative agreements meaning we get through the whole issue than we don't have to come back to it. If it's something like that and we can't settle it quickly that we just put a pin in it and someone will come back to it. Thank you.

Mr. Chau: I wanted to give the group an update around the language under dual immersion and talking the Delia and Lara and others. I think broadening the concept of in dual immersion schools wouldn't necessarily be appropriate for this section because it primarily deals with English learners another dual English school there is' not English learner ins dealing with language and where the language of instruction is primarily not in English. It wouldn't fit in this section or be appropriate in this section. It might be more appropriate for other areas. It's something that I hope the department can
investigate and maybe propose how dual
immerse schools can test ideally down the
line in the language primarily language of
instruction. I think in this instance I am
really glad that we were able to include this
piece and there seems to be some legal basis
around this already, but I think for dual
immersion for other languages I think we
decided that it's both in an assessment piece
and also in accountability piece too that's
up to the states and that would probably need
to be modified of the ESSA that we are not
really regulating either that's where we are
at. I wanted to give the group an update on
that.

Ms. Briggs: I almost hate to ask
this but I am going to ask. The state's
required to develop this test or is it an
option?

Mr. Rooney: It's an option. I do
want to point out I am not seeing additional
comments. I did mention in romanette three on bottom of page five that while we think this is permissible to have a Native American language test for these students and if they are not English learners that we do think that if they are English learners they will have to take English learner proficiency test whether they need services under title three in English you spell it out here in romanette three that we do think that's important that they continue to have an English language proficiency test if they are English learners even if they are Native American students attending native American medium schools.

Ms. Podziba: I am going to take us back to F is that okay. Are there any comments on F one romanette 1 or romanette 2, which takes us through the middle of page 2 or page 3? We are in the beginning of the rest text. We are looking at F one and romanette 1 and 2, which goes through middle
Ms. Jackson: Sorry, I was just doing oriented I can look into this further because it's not clear. There's any language about who's making children which language the children will be instructed in. I know that's kind of some states have core team that would make that decision and some states do not. I am wary of there being a blanket decision and not a decision in line with the manner of instruction.

Mr. Rooney: Is your question on how they decide whether to take native language version of the assessment?

Ms. Jackson: If you have a language, language learner we talked last time in many different examples of how a child may speak a language but it would not necessarily be the best language to assess them in if they are not being instructed in that language then it's not necessarily an appropriate measure.
So that's a good question. I don't know that the Department has a suggestion I think that maybe something for states and districts to consider how to implement I'm not sure we have never addressed that in the past when it's been something that I permit that had we leave that to the state and district discretion how I identify student take a native language version of the assessments if the state has one. I don't know how we would regulate on that or what would be a good proposal for that. I guess maybe in guidance, which I am still not an expert on. Something about making sure that at the school level teachers, administrators they are aware of which assessments are available and the guidelines for what would be appropriate. I am just thinking of how hectic it can be in ordering assessments or ordering licenses to do computer assessments and knowing which options are out there and
the basis on which they would be appropriate
would help other than just the general system
of them being existing in regulation.

Ms. Podziba: I am going to ask a
guidance issue that we don't have a lot of
discussion on it. That we try to focus on
it. Delia, do you have a something to say on
that? It takes a minute.

Ms. Pompa: Each state varies. I
don't think we should specify anything in
there.

Ms. Podziba: I am going to move to
romanette 3 and 4.

Ms. Pin Ahrens: I just wanted to
open a little bit for discussion in terms of
state decision making for the languages other
than English I don't see in here where
stakeholder input is available for the
decision making in deciding which languages
other than English will be considered.

So if you look at number two on page
three it's the under lining number two which doesn't mean it's actually part of the regulatory process. It can further confuse things. It's the purpose of the process together meaning assessments other than language and -- consult with educators I think that addresses your point?

Ms. Pi Ahrens: Sorry Patrick we were trying to find it in here. Never mind.

Thank you.

Ms. Podziba: Is there anything on romanette 3 or 4? I am guessing everyone has notes. Tony?

Mr. Evers: I would like to offer addition 4A that's getting us to the right spot at the end of the 4A I will talk about why at first. I think we need to put some I love the word guardrail because it's reused all the time now so it's part of my --. The guardrail at the end because there's many states where the most populous language other

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than English is a really small N and it would be you know 20 Somali kids in some places not that they don't deserve recognition, but I just so here's an offer that's my concern that at the end if we put in if such language is a primary spoken language and on at least ten percent of the total student population on a state. That puts the guardrail so it states have some more certainty as to what they should or should not be doing.

Mr. Rooney: Did you mean 10% of the total state population or 10% of the state's English learner population?

Mr. Evers: Of the total population.

Mr. Rooney: I may need to talk with some colleagues on that. My first response to that would be because all of this is things the state should take into account when they are identifying the language that are present not that states have to necessarily create a native language version

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1 of the test for that population. If you look
2 above the state needs to identify their
3 processed to identify the languages and then
4 their plan to develop assessments including
5 if you look at number three right above
6 romanette four Arabic 3 as applicable the
7 explanation of the reason the state has not
8 developed an assessment despite making every
9 effort that provides some I don't want to say
10 protections. It provides a caveat against
11 that. This is just about defining what
12 languages other than English are present and
13 then the piece before it is then what the
14 state has to do once they identified those
15 languages. I think for that purpose we feel
16 that it's helpful to keep that language in
17 there that at a minimum the state is
18 identifying the language that's other
19 language most commonly spoken and other
20 changes they might want to make further
21 assessments.
Ms. Pompa: I would agree. I think it's important for us to all keep in mind exactly what Patrick said. This is not requiring states to do anything. It's just saying you need to take this into account and given the historical implementation of this requirement in the law I do think that some language giving those perimeters is important at this point.

Mr. Evers: Some certainty would be helpful that's why I'm asking for it.

Ms. Podziba: So is there further discussion of the proposal is there dissent on this proposal? There's dissent on the proposal. Okay. Any other items?

Mr. Evers: This is not a new issue for me B and C. The issue of consideration is troubling in that I am not sure as a state agency how we could document what adequate consideration is. I think there's enough other kind of guardrails in this language to
1 satisfy what's in B and C. I would propose B
2 and C.
3 Ms. Podziba: Proposal to strike B
4 and C? Is there discussion?
5 Ms. Pin Ahrens: I want to reiterate
6 what Patrick was saying these are guidelines
7 to help the states flag what languages may be
8 important to look at to develop, so I would
9 prefer that they remain in because there is
10 no requirement for the state to develop
11 languages for B and C.
12 Ms. King: Yeah just to build off
13 what Rita said, I understand the concern
14 about the difficulty that one is considered
15 something. I think it is purposely it's
16 meant to provide direction to the state and
17 the context of making this decision. I am
18 comfortable with the fact that it's hard to
19 demonstrate that you have done that. I think
20 it's important that the state understand from
21 the perspective of the regulation and the

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department the types of thing that is should be informing that decision. I am concerned that I mean you know we could make it more aggressive and we could require demonstration of the ways in which it was taken into consideration. I think that would be excessive burdensome I think leaving it in the language to consider. I think taking it out altogether obscures important information that would form discussion within the state when they are making that decision.

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

Mr. Evers: I wouldn't want to make it more complex and difficult. Thank you for not suggesting that. I just think it's already part of the parcel of what is in here and I would want to, I would like to keep that my proposal as is. Also not to be non-germane I didn't speak up with the language at the end around immersion or other

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1 definition of schools I thought was
2 outstanding work on part of the Department.
3 Mr. Rooney: Thank you.
4 Ms. Podziba: Do you have a comment
5 on this proposal?
6 Mr. Rooney: All of romanette four
7 comes from romanette 3 and if you look at
8 number 2 that the state has to develop the
9 process to gather meaningful input and
10 consider what languages are present. I think
11 that's where Tony's point we would expect
12 states to document how they considered that
13 in the steps they went through in the
14 stakeholders they engage with that would
15 cover how they would meet in the B and C.
16 Ms. Podziba: On the proposal to
17 strike paragraphs B and C is there any
18 dissent from that proposal? Yes.
19 We are off to a good start.
20 (laughter)
21 Ms. Podziba: Are there any other

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1 proposals or concerns to raise on romanette
2 4? Okay let's move to paragraph two. Any
3 comments or questions on paragraph two? Just
4 leave the mics on the table so that we can
5 just pass them back and forth.
6 Ms. Briggs: I do want to move back
7 to Tony's suggestion about the 10%, which may
8 or may not be the language exactly. I think
9 he's getting into an issue that I worry about
10 for people who are implementing this law and
11 that it may be potentially setting up an
12 expectation that a state can't follow through
13 on. So you know back to the students who are
14 Somalian to create a written test in Somalia
15 is practically impossible. I hate to set up
16 people's expectation that something is
17 absolutely going to happen when it's not
18 practically feasible.
19 Ms. George: Just to again being from
20 Washington state it is doable to do these and
21 again it's not a requirement. These are

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considerations for the state to factor in and making the decision of developing this assessment.

Ms. Podziba: Kerri, do you have a specific proposal?

Ms. Briggs: I'm thinking.

Ms. Podziba: Are there any other items for discussion on because we have gone through G is there anything else for discussion on issue paper 5A Patrick?

Mr. Rooney: I do want to point out on page six, I didn't mention this but I did reference this. This is the new H wings where we define Native American to mean Indian Native Islander or Pacific Islander -- one second. Sorry. So this is where we define Native American which is why we don't need to say Alaska native elsewhere in the section. I do think we need to amend it slightly to say for the purpose of this section the term Native American means and
then in quotation marks Indian as defined in
6 -- of the act which includes Alaska native
and members of federally recognized or state
recognized tribes. Native Hawaii semicolon
5 and Native American Pacific Islanders we
think by adding that definition at the end it
can reference Native American's throughout
this regulation or proposal of regulations.
Thank you for that revision. Are
there any other items for discussion on issue
paper 5A?

Ms. Rigling: I want to go back to
paragraph two I think there's a few
conforming change that is we need to make.
In paragraph romanette 1 I think we would
strike or Alaska native and also language
immersion. Paragraph two on top of page
four -- Kerri, do you have anything else?
Anything else on issue 5A? Is there any
dissent on adopting tentative agreement on
issue 5A? Okay. Congratulations we are off
1 to a good start. Okay we are going to move
2 to issue 5B, Patrick?
3 Mr. Rooney: Hopefully this one will
4 be a short conversation. We did not make
5 much change for this based on what we saw in
6 session two. There were a couple of changes
7 that I wanted to point out. It helps if I
8 turn my microphone on. Issue 5A and
9 hopefully 5B hopefully we can move through
10 this one pretty fast, too. There's not a lot
11 of changes based on session two. The first
12 that I wanted to point out is that under 3
13 romanette two the capitol A kind of toward
14 the bottom of pages two. Again, I am looking
15 at the clean version. We added in the phrase
16 including information provided that parents
17 consisted with 20.2 E. So this is about
18 providing information about how students
19 perform on the ELP assessment. We discussed
20 a little bit about how that information is
21 provided in a way that parents can

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1 understand. I am going to ask that you
toggle over to the full package for a minute.
In the last session we spent time I think it
was in issue paper three talking about this
language about how information is provided in
a clear manner to parents and whatever
notices those states have to provide. In
order to help provide some consistency. We
put a new section in 200.2, which were then
going to cross-reference if you turn to page
four line 33. It doesn't look much different
from what we talked about in session two but
this letter E we are now put anything this
location and then we are going to reference
it at different points throughout the
proposed regulations. Does everyone find
that? Issue paper six the clean version of
issue paper six page four line 33. This is
where you are asking for information where
you provided whether its notices to parents
or score cards or these are the expectation
that is states would have to meet. Again, we talked about each of these three romanettes one two and three in the last sessions and we had some discussion mostly about romanette three and there were some examples in EG's in this example and in this romanette that we deleted just for brevity and clarity so now this is a be upon request by a parent with an individual with a disability as defined by ADA and provided an alternative format accessible to that parent. In the last session we talked about examples OF what that might be in having screen readers I think we are happy to clarify that in the preamble or elsewhere but for the regulation or proposed regulation we wanted to be more concise.

Ms. Podziba: Should we take comments on this part now since it's sited in 5B. Are there any comments or questions or proposed revisions for paragraph E in the whole package, which is cited in 5B?
Ms. Pompa: I want to thank you for putting this in here. We are finding children who existed for many many years who are both have disabilities and who are limited English proficient or English learners and this language I believe will go a long way toward clarifying for districts and states on how to support those parents and children.

Ms. Pin Ahrens: I want to ask why guardians was deleted from issue paper six because we have nontraditional families especially with immigrant or refugee families where they maybe living with their aunts or grandparents.

We deleted guardian because there's a definition of parent that includes guardians. It's a pretty broad definition that's why we did it. We thought it was redundant. We can certainly again in the preamble highlight what the definition is. If you would like I
could read that definition if that would be helpful?

Ms. Pin Ahrens: Thank you.

Mr. Ahart: Under romanette 3 I am going to ask if we consider adding to the extent practicable as it is in romanette two just thinking of some very small populations where it's where I don't even know if it's possible for us to do. It's also covered under OCR. Anyway, if there's a compliance issue.

Ms. Podziba: Ron, do you have a response?

Mr. Hager: The phrase may apply -- in terms of ADA in terms of what is and is not required you are talking about reasonable accommodations? I think if we just keep it the way it is with consistent with the ADA that's really what we want. In terms of alternative formats for parents or Braille a lot of EG's were in there to give
example. Which you know departments have
taken those examples out. Those are pretty
much going to be reasonable accommodations no
matter what. The school district when you
look at the definition of reasonable
accommodation. Look at the size of the
entity to determine what's reasonable. The
bigger entity the more required. It's a
sliding scale. It's hard without to imagine
a school district that would not really be
required to provide those kinds of
accommodations to parent with a disability.

Mr. Ahart: Why are we duplicating
it?

Ms. Podziba: Hold on I need Kay in
the conversation.

Ms. Rigling: I thought you were
referring to romanette two to add to the
extent practicable about the oral
translation. And it's my understanding that
we think that's actually required by title
1 six of the civil rights act that an oral
translation to a parent who has limited
3 English proficiency is always practicable.
4 Ms. Podziba: Thomas which was your
5 proposal to put it in romanette two?
6 Mr. Ahart: I was asking for it to be
7 added to 3.
8 Ms. Podziba: Kay thought you were
9 asking for the last line in two? The
10 proposal is for romanette three.
11 Ms. Rigling: I think it's then
12 required by ADA.
13 Ms. Podziba: Unless you are drawing
14 the proposal based on the conversation I will
15 see if there's dissent to it.
16 Mr. Ahart: I will withdraw it.
17 Ms. Podziba: Anything else ton
18 paragraph E in the package? All right let's
19 move back then to issue paper five which
20 sites that paragraph. Is there any further
21 discussion on issue paper 5B? Is there any
dissent on issue 5B? Great. We are moving
then to issue paper two.
Mr. Rooney: We are making great
progress. Issue two which is the first in
session two. In this language on this issue
paper should look very familiar I think it's
unchanged. You actually hand this out at the
very end of the last day of session two
hoping that we would try to come back to it
and reran out of time. We want to spend some
time this morning talking about this issue
paper this language should also look familiar
because it's similar to the language that we
discussed and ended with as kind of let me
put a pin in this issue paper on the first
day of session two unless the days are
starting to blend together for you. The main
issue that we spent our time talking about
this issue paper the last time was paragraph
four on page three. Reminder this is about
permitting states to in case where is

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students are taking advanced mathematics
versus eighth grade take the high school test
in place of the eighth grade test and taking
additional high school assessment once that
student reaches high school. Paragraph four
is I think something that the Department
feels strongly about trying to keep in there
because it's focused on making sure that this
is not something that's limited by where the
student is just for the student school or
geochemistry or location. This is something
that states are making efforts to ensure all
kids have the ability to have access to
and so that states are thinking about how
work with districts in schools to help
prepare kids for advanced mathematics earlier
and if they are prepared to give them the
opportunity to take those advanced courses in
eighth grade rather than the eighth grade
test. That's what this tent of paragraph four
is trying to provide. This language here I

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I think is similar to the discussion we ended with that the state should describe its state plan and strategies to ensure that all students in the state have an opportunity to be prepared for and take advanced mathematics course work in the middle school. We are trying to clarify that this doesn't have to give all student has an opportunity to take eighth grade mathematics that the states have strategy ins place to help them be prepared for advanced mathematics in school. The opportunity to take that advanced course in the math its if they are prepared for it and ready for that once they get to middle school. That will open up for discussion.

Ms. Podziba: Discussion of paragraph four?

Mr. Ahart: I appreciate the spirit of this reg although the word ensure I find problematic as well as the I supposed, I am assuming that the Department made the

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advanced mathematics is defined whatever end
of course assessment the state has. If
there's of course an assessment for algebra
that would be considered an advanced course?

Mr. Rooney: We didn't define. The
way the statute defines it is this an option
and in fact students are taking the course
that leads for that test in eighth grade
whatever that maybe. It could be algebra or
geometry they could take that test in place
of the eighth grade test. It leads to the
state's discretion to have enough courses to
test what that end of course test? Students
who take that course related to that test in
eighth grade can do that in place of the
eighth grade test.

So I guess what I am finding most
problematic is that there are I am sure in
many districts multiple levels of Mathematics
taking by eighth graders depending on skill

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geometry for instance were the high school end of course assessment that states use and you have eighth graders taking it. I would hate for that to be that we would have to demonstrate somehow that all of our students could take that if they so chose. That's where the insurer comes in is making it seem like it might be not possible I guess to ensure that all kids can take that advanced level.

Mr. Rooney: That's not our intent. Our intent is that if students are ready they have the opportunity to take that higher-level math course.

Mr. Ahart: I appreciate the attention but ensure is problematic for me.

Mr. Rooney: Do you have a proposal for alternative language?

Mr. Ahart: I am not sure. Ensure is be confused a lot encouraged perhaps or that there's an articulated pathway or something
that of that stretch. I think you are not getting at tracking students, which I think all of us try to avoid.

Mr. Wilbanks: First of all the two operative words there I think are ensure and then opportunity I am put ago lot of focus on opportunity. I think that's what the Department means here. I think if you could use I think we all agree that all students should have the opportunity that's not that should not be debatable. The ensure becomes problematic if you read that as everything after that has to take place. I think that the phrase or the term with a term opportunity does say that we don't that you are not saying that it has to be, has to take has to take advanced courses. If that's the case I concur but otherwise I do not. That's a heavy lift I'm not sure that's even possible.

Ms. Ricker: I don't know if this is
helpful Thomas, but if you took out to ensure that and just replaced it with the word for the state describes in its state plans it's strategies for all students in state or if that change it is meaning in it too? I will just offer that. Take out the phrase to ensure that and replace it with the word for. So it's the state that describes in its state plan it's strategies for all students in the state to have the opportunity again, just offering because I don't know if that change it is meaning?

Ms. George: I just really wanted to reiterate and I agree with Thomas and Alvin’s' point. The spirit of this is very very important and to Alvin’s' point to opportunity I think it's key particularly for students of color who traditionally don't have or attending underserved districts or under resourced districts where they don't have access to some of these courses. It
really is too important to promote access. I want to flag the last civil rights data collection that issued that show a quarter of high schools with the highest percentage of black and Latino students do not offer algebra two. There's a real disparity in terms of -- course that is students have to take. However, I do support the ensure language. I think it's very key to really urge states to take action and to promote equity to opportunity this access to opportunity it's not a requirement. It's just a strong emphasis on promoting this opportunity. I think again that's the spirit of this law to ensure access and so I support this language.

Mr. Evers: This may not fit exactly in that spot but I heard that in previous comments that we just heard the word promote several times I would be okay with promote replacing ensure.
Ms. Briggs: I agree with the idea that the language needs to be tweaked a little bit because otherwise you can imagine that this requirement is saying to the state hold on let me back up. This is intended to address exceptions to what's expected in eighth grade and to then have the state go back and describe well yes the succession happens because kids take algebra 1 in eighth grade. The state plan is eighth grade algebra and something else. I feel like there's an opportunity there to sort of have the state explain that they are doing something that they are not. I mean the plan for the state is to have eighth grade math. And then something else you know then they go through the sequence of high school. This is an exception carved out for students more advanced. I think the balance is between that ideas of allowing for the exception providing the appropriate protections while
understanding most students are going to go through normal or different sequence. I like kind of changing this language a bit on that front.

Mr. Rooney: I think we appreciate that comment that has been made. We will offer another suggestion for the group to consider. Instead of the word promote we could say provide because the state describes in its state plan it's strategies to provide that all students in the state have -- sorry delete that. Provide all students in the state the opportunity to be prepared for and to take -- we will delete ensure that and have.

Mr. Hager: I was going to echo Janel and respond to Kerri. The issue in many schools of students with poverty they don't offer the class. Even if there's student that is could excel they don't have the opportunity that's why it's important this
issue and how we tweak it is one thing but the issue is extremely important. I have three proposals on the table can I get a sense of the group do people like promote is there a preference for provide? Or is there a preference for taking or just for its plan and strategies for all students? Mr. Ahart: Can I offer one more? Mr. Hager: Sure if it's the winner you can.

Mr. Ahart: I would let's see if I don't duplicate it the states the state describe ins it's state plan it's strategies to assist local agencies in the agent -- to be prepared for and answered mathematic course work in middle school. I appreciate where there's situations where it's not available but I can tell you that we are trying to make algebra one the standard in eighth grade in my district. We are not there yet. We are doing that by back mapping

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1 all the way to pre-K but right now even
2 though we are doing everything we can think
3 of I can't ensure that every single one of
4 those students will legitimately have access
5 to algebra one in eighth grade. If the real
6 issue is we can't take advanced course work
7 in high school I don't know if that this is
8 the way we fix that.
9 Ms. King: I totally understand
10 Thomas the general point that most of what's
11 happening is LEA's are not funded by their
12 own state adequately and that's the larger
13 barrier. I think that does change the
14 meaning the opportunity is provided to the
15 students versus provided to LEA. There's
16 disparities within LEA's. In the context of
17 proposal tons table my preference is that
18 current language I'm also comfortable I think
19 with provide and then as well. I don't know
20 what happened to Mary Cathryn's I thought
21 that also worked? Number 3. Okay. That's
right for all students to have -- I think that also works for me. I think I mean let's be clear this is not required that time you have demonstrated right? This is a plan to ensure so just as you talked about within your own LEA or your own plan is to achieve this and this is just a matter of state widening that effort as well. And one would assume that in order to do this the state is going to have to provide mission support to LEA's in order for this to happen.

Ms. Podziba: For or provide is something you can live with?

Mr. Ahart: Not really that feels like the ESSA is telling the states the standard what eighth grade math should be. It seems to go a field from what the original statute states.

Ms. Podziba: Let's get others in here.

Ms. Jackson: What do you think if
you added the word provide to your option?
The state describes in its state plan it's
strategies to develop and provide
opportunity. I don't know if that changes so
that way you have both the LEA's and
students?

Mr. Rooney: Sorry I was going to
offer a slightly different suggestion but
maybe I will put that down and see how people
want to respond to Audrey's version?

Ms. George: I just wanted to push
back a little bit on that proposal Audrey
because it keeps emphasis on the LEA's
instead of really emphasizing access and
opportunity for the students, so while I do
support the provide language I really think
ensure is stronger again, this is an
exception. It's not promoting the standard
for eighth grade it's a narrow exception. We
want to ensure all students have access to
the foundational courses and the opportunity
1 to exercise this option.
2 Mr. Rooney: Kay and I were
3 conferring. We had an alternative. I am
4 trying to fit into what Thomas said which is
5 not inconsistent with your suggestion. I
6 don't have the wording worked out fully but
7 somehow to get to Janel's point about
8 disparities if we could add that to this
9 without I am not trying to make it too
10 convoluted. The state describes in its state
11 plan it's strategies to assist districts in
12 implementing strategies to address
13 disparities. The idea I think is right but
14 we need to play with the wording. I within
15 the want to get at both points at Audrey and
16 Janel and Thomas was saying.
17 Mr. Ahart: I think I may be
18 misunderstanding what ensure means. Does
19 ensure in your mind mean for anybody who's
20 promoting that term mean that algebra in
21 eighth grade is offered is that what a school
would have to do to ensure the students have access?

Ms. Podziba: How are people interpreting ensure? How would that look like Janel, is that something you can help with?

Ms. George: I think of ensure as trying to secure opportunity that's how I think of ensure. This is an exception this is just describing the strategies to open that access for opportunity. I think again that's consistent with the purpose of the ESSA. Again, if we look at the underlining purpose I don't know if there's language in the preamble we can include to get to that point. Again, I think if we leave the language as is and that the first proposal with ensure again, that's a spirit of ensuring access in underlying that including in that is hopefully addressing the disparities. I think that's part of the
1 parcel of trying to secure access.
2 Ms. King: Yeah, I just wanted to
3 flag one sort of in the context of the
4 disparity thing. I think this is also
5 important we know a lot of course act
6 disparities are on the basis of rural schools
7 so just making sure that middle class, white
8 non-disabled communities in rural communities
9 also have access. I want to add that issue.
10 I think Thomas there's lots of different ways
11 to ensure access. I think this is I think as
12 you had said this is not the place to be
13 talking about what courses are offered school
14 by school LEA by LEA. I think this is about
15 moving towards a place in which all
16 individual children have access whether it's
17 through distant learning or other
18 opportunities. I think it's for reasonable
19 expectation is that if the state as part of
20 the state decision as Tony mentioned this is
21 the state's discretion whether to participate
in this or not. If the state's discretion is moving toward providing for some students opportunity shouldn't they move toward providing all students opportunity?

Ms. Podziba: Do you want to respond?

Mr. Ahart: I do believe if you would if you been through a title one audit. I don't know how an auditor is going to define ensure? I can throw every single student in algebra one in eighth grade and do a horrible disservice to some of them. To me ensure sounds like guaranteed I don't know how we can adequately do that and still be right by all of our students when it doesn't seem like enough clarification on this.

Ms. Podziba: We are working on ensure.

Mr. Evers: I will double down on that last comment. In Wisconsin we would be ensuring something that we can't do. We would be describing strategies to ensure that
we cannot do under law. And I just think it
puts and I don't think we are particularly
different in that, so I just think the word
ensure in this situation is something that
certainly isn't within congressional intent
but it is also something that we as a state
and in Wisconsin we couldn't ensure that. We
would be describing strategies that would not
be in compliance with our law.

Mr. Rooney: I just want to take a
minute to remind people that this was
language that states, it was included in the
ESEA program that states could take advantage
of this prior to -- in that place we asked
states to tell us how they were trying to,
how they were ensuring there were options for
kids if they were ready to take advance
course ins middle school. States often
talked about data they had that showed course
taking by parts of the state but more likely
t they talked about policy ins place or
distance learning opportunities they had or partnerships they were helping facilitate our districts or facilitating with community colleges that was acceptable information to address this question for what it's worth. I do think that in the last example I think Thomas' example, I do want to remind us that this is all of these proposed regulations are around the state requirements and I don't want us to get lost into what the districts are being asked to do. I do think we want to reframe that last bullet if we were to keep it in here the state describes an in state plan, sorry the last two, the state describes in its state plan it's strategies to develop and provide for opportunities before delete the assisting LEA's because that mean really this is about what states are required to do. I don't want it to be about them us asking for evidence about what the districts are doing. We want it to be about what the state
is expected to meet or comply with the regulation that is we are proposing.

Okay. I have a new proposal and I have got four comments. I am going to take the comments then I am going to see if that new proposal works.

Ms. Jackson: So I just wanted to say that I appreciate Thomas' question about ensure, and I actually really appreciate the example that you gave Thomas about how you are working back through to pre K and this is a complex equity issue in many ways, but this specific section I guess I am just saying that all of the work goes down to equity and access right? So to hopefully not let ourselves get stuck here over one word which is what the whole law is trying to do you know and just to have it meet a balance of policy that is targeted to that but also realistic so it's not just like yeah we are doing it and then you don't get to do it.
Ms. Pin Ahrens: I appreciate what Patrick said I was going to make the same comment. If we focus on just states we wouldn't have to worry about title one audits at the district level. This is about states ensuring -- maybe if we put ensure access. This is about making sure that there is some sort of progress towards creating opportunities for students and I want to point out there's no deadline for by which all students have to have access. So there's no deadline in here so I think it's quite reasonable for us to focus on the fact that this is about the state describing strategies towards that goal that we all are in agreement with.

Ms. Podziba: Derrick?

Mr. Chau: I want to double down on Tony's proposal on promote. I think if I were at the state level and asked to demonstrate its strategies to ensure that
students have the opportunity I might just reference our state standards. Right?

Ensure actually ends up being a very passive way of demonstration as I think Tony's recommendation around promote would be more specific strategies about encouraging and actually getting more at ensuring. I don't know it just occurred to me that promote might actually be more aligned to what we are talking about in terms of the inequity happening versus ensure and ensure tends to be very passive. A state could demonstrate by saying look we have this rigorous state standards we are assessing students and we have our accountability system whereas the word promote there I think it would be a little more specific to the actual actions aligned with tackling some of the inequities.

I wanted to put that point out there

Mr. Wilbanks: I concur with the second option there the one that uses the
word promote.

Ms. Pompa: I wanted to address the concern. It seems like the conversation has gone to a place where we are talking about ensuring the state change the way it teaches math or it's taking on a broader meaning because as I read this if I am correct four refers back to B which is if the state does this. Is there a way to clarify that? I think it's clear that it refers back to it, but in case people aren't clear we are only talking about the circumstance in this point although I think as Audrey pointed out this whole thing is about equity but in this case we are not talking about an entire math program we are talking about B.

Ms. George: I wanted to underscore Audrey's point we are talking about equity here the overall purpose of spirit in law. I think that ensuring or providing opportunity is consistent with that purpose. Again, I
1 also want to echo Delia's point this is a
2 narrow exception. This is not the wide
3 standard. In my apologies if you flag this
4 already. I want to have an idea through the
5 waiver or do you have an estimate of how many
6 states my exercise this exception and then so
7 that's a quick question. To the point about
8 promote that actually if you are trying to
9 avoid adoption of something I think promote
10 is more urging you to adopt something where I
11 think ensure is more in line with the spirit
12 of the law.
13 Ms. Podziba: If you feel that you
14 are promoting is stronger do you support
15 that?
16 Ms. George: I support provide.
17 Ms. Podziba: Is there any dissent
18 with the word provide? Okay we will go with
19 provide.
20 Ms. Briggs: I will continue to
21 get -- we are trying to help
explain -- normal course taking. I am
wondering if in the four what you want is for
students to have an opportunity to be
prepared for this exceptional circumstance
because we are I don't you are trying to say
to the state like we are going to give you
this exception but then we want you to
explain how this isn't an exception, so if
you could insert that notion of this is an
exception and that we are trying to make sure
everybody has an opportunity for that and we
are not trying to say move algebra one down
to eighth grade.

Ms. Podziba: I think to Delia's
point this whole thing is middle school
mathematic exception. Do you feel like it
needs to be restated in paragraph four? Just
tell me I will put that as a proposal and I
will see what others think about that?

Obviously it's not totally clear but
we spent 30 minutes talking about. I was
trying to think about how do you wrestle with this difference this is explaining an exceptional activity.

Ms. Podziba: Could you just say that proposal again?

Ms. Briggs: Just somewhere where it's referencing this is an exception to the standard the regular class.

Ms. Podziba: To take advance mathematics course work in middle school, which is an exception or do, you have some language?

Ms. Jackson: What if you said the state describes in its state plan, with regard to mathematics exception with regard to this exception whatever you want to say, it's strategies --

Ms. Podziba: Kerri does that get at it? Discussion on that proposal?

Mr. Hager: I was going back to the question that either Delia or Janel had as
far as I know it has double exception. You have to provide the opportunity and you have to offer an end of course assessment there's only eight to ten state that is meet this whole thing that we are talking about here.

Ms. Podziba: So what is that?

Mr. Hager: It mean there is' not a lot of states.

Ms. Podziba: Are you okay with Kerri's proposal, which is to add Audrey's suggestion with regard to the exception.

Ms. George: That was my question too.

Mr. Hager: Yeah.

Ms. Podziba: Any other discussion with the regard to add to this exception, et cetera, is there any dissent from that proposal? Is there anything else in issue paper two for discussion? Any other items in issue paper two? Is there any dissent from adopting alternate agreement on issue 2?
1 It's 10 to 11 why don't we take a 15-minute
2 break.
3 Mr. Rooney: One housekeeping note.
4 There are nametags on the table for all of
5 the negotiators. I ask that you pick up your
6 nametag and wear it. Apparently it's easier
7 to get escorted to the tenth floor. If you
8 could go out in the table in the hall way and
9 pick up your name. For others in the room
10 also is everyone in the room apparently
11 hopefully in the room has a nametag. If you
12 have a nametag you don't need to be escorted.
13 Ms. Podziba: We are going to begin
14 our discussion of issue 4 A, it's quite
15 lengthy. I don't know if you want to give
16 introduction to certain sections or if you
17 want to give an introduction to the entire
18 issue paper but we will take it up section by
19 section
20 Mr. Rooney: Issue paper 4A has a lot
21 that's not gray. I want to explain why this
1 looks fairly different than what you saw in
2 section two. I will start by saying that the
3 current regulations talked about
4 accommodations for students with disabilities
5 and then in the first section we spent a bit
6 of time talking about whether this is to
7 frame this whether it made sense about
8 accommodations for student that is are
9 eligible for accommodations so we had
10 actually reframed all of this issue paper in
11 the proposed regs going into sessions two
12 along those lines that talked about students
13 eligible for accommodations and then we spent
14 a bit of time talking about that. I think
15 there's discussions about eligible versus the
16 word entitled. That caused us to go back and
17 yet again reconsider how this part was
18 framed. We have come up with this version of
19 how we are describing the intro part to this
20 issue paper and this is the beginning part of
21 200.6 where we are talking about how we

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include students with disabilities in the assessment system. I wanted to give you that frame. The new what starting right from the very beginning on the top of the page two of the issue paper is we wanted to be clear this is now talking about students with disabilities in general and that the assessment system must include all students with disabilities in the assessments then the broke An out into three different pieces to describe who are the children with disabilities we are talking about in this section of the regulations. That would be this is not new. All children with disabilities can define under IDEA and of those two students those with the most significant cognitive disabilities as defined by the IPE teams which we clarify in romanette two. Number three students with disabilities covered under acts and title two of the American with disabilities act. Right
1. below that is a new piece we added is A2
2. which is how those students identified right
3. above it are then included in the assessment
4. system. For students in romanette one and
5. three those students should be taking the
6. general assessment of what Romanette 2I says.
7. Below that romanette two sorry I hope I am
8. not confusing you with my romanette two.
9. Romanette two toward the bottom of page two
10. says if a state has adopted alternate
11. achievement standards with the students with
12. the most significant cognitive disabilities
13. those students can either take the general
14. assessment or alternate assessment aligned
15. with alternate achievement standards. Trying
16. to layout the expectations that states may
17. create alternate assessments based on
18. alternate standards. Only students with the
19. most significant cognitive disabilities may
20. take those assessments the states an IPT
21. students can determine those students with

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cognitive disabilities take the general assessment or alternate assessment. I might make sense about how refrained just what's here on page two this A. Okay. Should we open up for discussion or just questions?

Mr. Rooney: Questions will be fine.

Ms. King: Yeah I think the new structure is much more understandable so I appreciate that. It's really clear. I wanted to make sure that I am understanding this right, so only students with the most significant cognitive disables can take the alternative assessment. It it's still at the discretion of the IPE team whether or not they take that alternate assessment.

Ms. Goings: I just wanted to clarify that IEPT teams do not identify students with mental disabilities. They develop a plan for disabilities. It's a multidisciplinary team that actually identifies that.
Mr. Rooney: I think the IPE team is the one that makes the decision about the alternate assessment or not I was talking about romanette 2.

Ms. Goings: I am reading with the students with the most significant their individualized program teams identify disabilities, which is the IEP teams. Maybe I am not getting it?

Ms. Podziba: Your clarification is not the IEP teams?

Ms. Goings: They develop the plan and the program and they would be the one monitoring the assessment. The identification of students with disabilities it's the actually multidisciplinary team which could be made up of IEP team members but not necessarily.

Ms. Podziba: Who else might it include?

Ms. Goings: It varies from state to state.
Mr. Rooney: Is it about verifying the language is that your concern?

Ms. Goings: Significant cognitive disabilities or identified by your IEP team from among the students maybe I'm not getting it. I am thinking it's the -- team that identifies the student.

Mr. Rooney: I'm trying to think of a way to clarify it. I think we intend this piece to be is that the IEP team if the student is the most significant cognitive disability then they determine whether they take that assessment or not. It doesn't quite say that. Maybe we need to clarify that language in here? I don't know if anyone has a proposal otherwise we can try to consider if there's a way to clarify Regina's point and come back with something. Okay.

Ms. Podziba: So we understand that the Department will work on that.
clarification.

Mr. Hager: Maybe just move up the
IEP team to the front of this the IEP shall
identify the students who -- I am not giving
exact language I might not be too hard to do.
We probably shouldn't worry about it now.

Mr. Rooney: What if we delete it had
reference to IEP teams?
You could put that reference up above
in the assessment team piece to romanette two
A and B. That's where the IEP team is
engaging. They are not engaging in the
identification to Ms. Goings' point.
They are identifying the child. It's
the only thing covered here

Ms. Briggs: But put it in the
assessment part where Regina is right where
right now it says it's the IEP team that are
identifying the kids with the significant
cognitive disabilities. It's the --

Ms. King: They are identifying the
1 student as a cognitive disability as well.
2 IEP teams are not identifying them
3 all the multi-disciplinary teams are. IEP
4 teams write the plan. They would be writing
5 the assessment piece of it.
6 Ms. King: Is not about whether or
7 not the child is eligible for services among
8 those children that identified as eligible
9 for services which among those children are
10 those with the most significant cognitive
11 disabilities therefore eligible for
12 participation.
13 Ms. Goings: I get that it reads
14 confusingly that's what I am saying.
15 Ms. Podziba: There's one of the
16 points there's not a disagreement a need for
17 clarification. We will ask the Department to
18 bring something back to us for that. Are
19 there any other questions or similar
20 clarifying comments on page two would you
21 like to keep going, Patrick?
Mr. Rooney: Moving on to page three where we talk about appropriate. The first thing I want to highlight is that you can see the underlined in the second line of this we talked about a student with a disability. As we change the language in A we just talked about we now made some conforming changes throughout this proposal to no longer talk about students eligible for accommodations and just talk about students with disabilities which we now define that under A. So where we talk about that they need to write appropriate accommodations such as inoperability with assistive technology we added a clause consistent with national recognized accessibility standards. This was a point that Ron made in a different section of the full package in the last session that we wanted to be promised to think about and come back with where states have to be ensuring that their assessments are
consistent with nationally recognized professional standards as part of peer review where they are looking at accommodations and assistive technology that they should be making sure they are consistent with national recognized standards also. We added that here I think that's an appropriate place to consider that. Then we say whether our administrative, we added a reference to A two which is a new piece we talked about how you identify which assessment is students with disabilities are taking whether the general or alternate assessment? Then moving to the next section the two toward the middle of the page we spend some time talking about this at the last session also where the state must develop disseminate information on promote the use of appropriate accommodations and I think there might have been a few of you about a comment that making sure they are making that information available to parents

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in schools so we have that clause now there
that they dropped the information on two at a
minimum schools and parents and promote the
use of accommodations to make clear they
should be disseminating that information to
schools and parents romanette two below it.
This is the one we talked about in the room
this should look familiar to you all the of
the individuals involved in the assessment
which maybe more than general and special
education teachers support personal and other
appropriate staff and they should be
receiving the necessary training to
administer the assessments including as
necessary the alternate assessment which is
again to capture the conversation you had in
the room in a session two that they should be
training school should be training all the
staff that are administering the test and
that may differ between the alternate
assessment and general assessment it may not

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be all staff involved. Hopefully that looks consistent with the conversation you have.

And then moving to section C which is at the bottom of page three there's some additional language you proposed if you turn to page four so this is about if states have developed alternate standards. Number three states individual -- we proposed language that the group not like in the last session we had proposed alternative language to come back again because we do think it's helpful to clarify by measurement of student growth. We proposed this language at the top of page four romanette three in order to be consistent on growth ton alternate assessment and growth on the general assessment. We have proposed the same language in the 200.2 of the fall package where we talk about the states permission to measure student growth on the general assessment also that if they do measure growth it should be a reliable
measure that all achievement levels to assure
that the assessment results improve student
instruction. I am happy to keep going on
this section. The next piece to discuss is
actually on section D which starts from the
bottom of page four. This is the state
guidelines. If the state has adopted
alternate achievement standards there's been
a couple changes to this. The first one
showed up on the top of page five in Arabic
number one. This is I think it might have
been Thomas that made this suggestion in the
last session to make sure we are being
consistent with the ESSA guidelines an IDEA
and we exclusively called out 6-12 A of IDEA
to be clear that's where the guidelines occur
in IDEA so these guidelines are intended to
be read together not something separate or
uncoordinated between those guidelines. Then
the next piece I wanted to add or I wanted to
mention if you look under Arabic number three
in the middle of the page we added the consistent with 20.2 E that's the language we just talked about. I wanted to point it out to you about notice to parents being in a language they understand in a uniformed format so that it shows up here as well.

Number 7 from the bottom of page 5. I will take a second to describe this. We had proposed deleting this in session two and then we are proposing adding it back. I think my purpose to proposing to delete it in the last session was that we felt that it was duplicative very similar language already appear ifs you look back at page 3 the romanette I that's in the middle of the page which is about making sure that they provide information about accommodations on assessments to all students so that all students can be included in the assessment system. We thought that it's duplicative to keep it here in retrospect we think it's
wrong. It's important to keep number 7 here on page five. This is taken from the statute if states developed alternate achievement standards they should be specifically providing information about accommodations to ensure that students with significant cognitive disabilities are not being put into the alternate assessment inappropriately and the language is that this is focused on making sure states are providing guidance and supports for districts and schools and IEP teams to increase the number of kids with the significant cognitive disability who is are taking the general assessment that those students shouldn't be taking the alternate assessment in order to make this consistent with the ESSA language we added this back in so this is a particular piece focused on its alternate achievement standards ensuring that they are providing accommodations with students with significant cognitive

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1. disabilities with general assessment. I am
going to stop there and not go into E yet to
see if people have comments up to that point?

   Ms. Podziba: Questions or comments?

   Ms. Pin Ahrens: On page 3 romanette
I where it developing dissemination schools
and parents can we ask consistent with 200.2
E.

   Can you say that again?

   On page three under romanette I under
number two romanette I where it says a state
must develop, disseminate information to a
minimum students and parents. I want to add
that it's consistent with 2000.2 E to
recognize that there's a lot of parents that
need to get that information in a language
other than English.

   Ms. Podziba: I want to understand

   Patrick, is it your sense that we are now
generating the text or do you want questions

   at this point?
Mr. Rooney: I would be open to negotiating the text.

Ms. Podziba: I thought we might want to do that section by section let's take that proposal after maybe we can go back and --

Also negotiated text.

Ms. Podziba: Is there any dissent from adopting Rita's proposal? Okay. So put that in. So that it's easier for us to each find where people are I propose that we start with anything on page two which is paragraph A.

Mr. Rooney. I didn't do E yet do we want to hold that until the end?

Ms. Podziba: We can hold that.

There's a lot of discussion about that one is there anything on paragraph A? I am going to get tentative agreements on chunks so that we isolate what we have to come back to. I know that we need a clarification of A one

romanette 2 and the Department will develop

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1 that for us. Thomas?
2 Mr. Ahart: On A romanette 3 students
3 with disabilities covered under other acts.
4 Could right after in other facts can we
5 include for purposes of accommodations?
6 Ms. Podziba: Any questions or
7 discussion of that proposal?
8 Mr. Hager: That's already in there
9 under one the whole the Roman numeral one or
10 the number one, the number one students in
11 all assessments with appropriate
12 accommodations, so you already got whatever
13 the little sublet three thing A and B that's
14 part of the definition already. You are
15 basically saying the same thing twice if you
16 look up under number one this is all
17 assessments with appropriate accommodations I
18 think it's already in there Thomas. I may be
19 misunderstanding your question. This whole
20 section applies for the students for the
21 purpose of determining accommodations that's
how I am reading it.

Ms. Podziba: If I could just say what Ron is saying. The stem is a good word.
The stem of number one is the start for each of the romanettes.

Mr. Ahart: Yes I understand that.
Ms. Podziba: Do you still want to?
Mr. Ahart: Yes.
Ms. King: I am confused by why that is important what are you trying to present that your worry is not

Mr. Ahart: I am just trying to clarify it seems that we are asking for clarifying language even if it's redundant everywhere else. It seems that this would be an appropriate place for that

Ms. King: I think --
Mr. Ahart: People seem to think the general public is reading this stuff they are not. I can tell you folks at the district level have to revisit these things the more
expeditious we can make it the better.

Ms. King: For purpose of accommodation on assessment I would add that or assessment of accommodation

Ms. Podziba: Is there a further discussion of this proposal? Is there any dissent from adopting this proposal? No comments. All right any dissent from adopting this proposal? Tentative agreements and you get one last agreement in the final review. Okay that's in there. Anything else on paragraph A? So what I am going to ask is a part from A one romanette two which is Department will clarify is there any dissent from adopting tentative agreement on A?

Okay. You will see how this will help us tomorrow I promise. Okay. Let's go to paragraph B we will try to do one two and three. I think we can find out way. So I am opening the floor for a discussion of paragraph B.

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Mr. Ahart: I would move to strike nationally recognized accessibility standards.

Ms. Podziba: Where?

Mr. Ahart: Paragraph B line A.

Ms. Podziba: The fourth and fifth line?

Mr. Ahart: Right. I would add consistent with -- consistent with nationally recognized accessibility standards.

Ms. Podziba: Can you say why?

Mr. Ahart: Because I don't know what nationally recognized accessibility standards are.

Ms. Podziba: So proposal strike the clause consistent with national recognized accessibility standards is there discussion of that?

Mr. Hager: Yeah we had asked the Department to be more specific here, specifically where there's the WCAG and
section 508 which kind of do have some,
section 508 doesn't imply but the provisions
can explicate what 504 would require.
Instead of being specific with what they are
talking about they want to be broader and the
laws and standards can change. The more
consistent and assessment is with
accessibility standards the more by
definition the interoperability there will
be.

The blue screen of death.
Welcome to assessing by computer.
We will have to go back to issue one.
We can keep going. We will deal with
technical issues.
Mr. Hager: The two go hand in hand
and the more the assessments are developed
it's kind of like another way of looking at
alterative universal design. The more the
assessments are developed with accessibility
standards in mind the more by definition they

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are interoperable with. It's looking at the thing that is they are taking at day one after having trouble and getting the accessible technology they always use on the assessments any computer adaptive test really does not develop up front with those accessibility standards in mind. You run into the unfortunate experience where the student is not demonstrating what they know but they are demonstrating the frustration with accessing their test with assistive technology which is more specific, and then the Department wanted to have more flexibility so they went with the more generic language.

Ms. Podziba: Thomas does that help?

Mr. Ahart: No.

Ms. Ricker: Does this mean the state would be responsible for purchasing or providing funds for a district to purchase the appropriate assistive technology devices?

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Mr. Hager: The assistive technology devices are covered by IDEA independently so that the student would need, would be determined by the IEP team. This is to make sure that the AT that's been recommended for the student they are able to use it on the examinations. It's on the AT is separate. The school district would be required to purchase or obtain for a student through other means any assistive technology a student needed. This is making sure that when they take the assessment we are measuring what they know not their familiarity with the platform or the problems that they have had with the platform so there's significant problems across the country.

So the two streams would be one tapping into IDEA for the device itself that is used obviously consistently through tout child's learning experience and then the
second stream would be getting to design of
the alternative things on the drawing board
to make sure that it comes to the student
ready for the device?
Mr. Hager: The goal would be to make
it more and more interoperable. It's a Way
to make it interoperable.
The Goal is different than it must
provide.
Ms. Podziba: I am still dealing with
Thomas' proposal. Anything else ton proposal
and then I will see if there's dissent or
not? Is there anything on proposal to remove
consistent with nationally recognized
accessibility standards?
Ms. Briggs: I am reading that phrase
in the entirety of its clause this is an
illustrative example of how accommodations
are to play out. Just the consistency with
the standards strikes me more of a guidance.
Opportunity because just the way you were
1 describing it Ron you had a very specific
2 standard that had a name. We all know that
3 different states do this differently,
4 different states are great at this and others
5 are not so great. I think this might be one
6 of the cases the idea is better placed in
7 guidance where you can explain what it means.

   Mr. Hager: In the guidance we
8 described some of the things to flesh out the
9 concern of the vague term. The regulation
10 would include that in this language the
11 guidance could describe what type of things
12 what types of things would be appropriate to
13 make it work so the regulation has the more
14 general approach and then the more specific
15 the details would be in the guidance. That's
16 all I would suggest the concern that Thomas
17 is raising.

   Ms. Podziba: Further discussion. Is
18 there any dissent for deleting this clause
19 consistent with national recognized

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accessibility standards for guidance? Ron,
you would? Is there dissent from keeping it in? Is that a yes there is dissent from
keeping from this language? Okay.

Ms. Jackson: Thomas or anyone else who would agree with that is there a way to
or I guess Ron as well like a compromise language that we could consider so something like instead of consistent with like in consideration of --
In consideration of is that a proposal of nationally recognized accessibility standards?

Ms. Jackson: I don't know if that makes sense?

Ms. Podziba: We are looking for some language that everyone can live with on this one.

Ms. Jackson: You want that in there Ron to make sure that there's a higher level of like people are really being thoughtful
and informed about the way in which we are doing it and then Thomas you are worried if it's not clear how could it be something that you are held accountable for?

Mr. Ahart: Yes.

Ms. Jackson: Is that your point Ron?

Mr. Hager: My point was to keep it in because it's a critical piece of the accessibility features of these assessments but clarifying, I'm proposing which Thomas and others are not happy with I am proposing to make it clear in the guidance keep the general statement in the regulation and clarify with examples and whatever else you would want to clarify in the preamble or in the guidance.

Ms. Podziba: Let's see if Patrick has an out for us.

Mr. Rooney: I don't. I am going to point out the language above that we are talking about that states must provide for.
accommodation such as interoperability with assistive technology. I think this phrase was intended to try to clarify what that means whether that phrase is in there or not states and this is a state requirement you still have to ensure that they are providing for interoperability with assistive technology and I think our intent with this language was trying oh to be clear by what that could mean when states are having to meet this requirement because that will be part of our peer review process. I understand your point I don't have a good suggestion of how to provide that clarity. If there's something else that can be better clarified or do you think this would be providing enough support for states and districts understand what it means as opposed to putting it in regulations. Our reason for putting this phrase that nationally recognized accessibility standards is that we
assume the standards will change over time.
Right now they are the WCAG standards which
the Department of justice either developed or
helps develop. I don't think we can disobey
what that means over time. I think we use
the same phrase in general. We talk about
nationally recognized standards that's
understood to be the American psychological
association another groups there are testing
standards that is the gold standard. In this
case WCAG at this moment the national
recognized standards for accessibility.

Ms. Jackson: When we referred in
other places in regulation about you know
like the acts and that inclusive of 504 and
IDEA but we don't want to limit in case of
new acts I am wondering Thomas if we name it
had specific one that we talked about or you
know whatever comes after it if that's
possible if that's specific enough?

Mr. Ahart: I just feel like the
statute says as Patrick just said the appropriate accommodations interoperability with the ability to use assistive technologies -- it's in our interest to do that if there's not shared understanding of what is national recognized. That gets tossed around a lot. Clearly on the assessment issue there's not consensus on that and I just want anything included to provide greater clarification than what the statute does and not to add more gray and this feels like it's adding more gray.

Ron?

Mr. Hager: Only because the Department didn't want to go the clarity they wanted the gray. I am happy to live with what they proposed.

Mr. Rooney: Is your proposal to be clearer that we are talking about the WCAG or I think your proposal is not that your proposal is to continue to be there to strike
that clause and just follow the language in
the statute.

Ms. Podziba: There was dissent to
the proposal to strike it and there's dissent
to keep it, so we can pass on it for now but
we are going to need to work this phrase
because neither had the consent of all the
members. Why don't we pass on that for now
and mark it as a point to come back to. If
people can think about that as we move
forward that will be great.

Ms. King: I had a thing for 3, B. I
am not sure if we are there yet. This is not
to change the meaning of this but we think
this is important. I want to add clarifying
language. I would strike "does not deny" and
insert that assures as. A state must ensure
this the use of appropriate accommodation any
student with a disability then insert has
student with a disability has the opportunity
to participate in the assessment and insert

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and participate in a way. Strike not and then leave the rest of it so it would be a state must ensure that the use of an appropriate accommodations under this paragraph assure that is any student with a disability has the opportunity to participate in the assessment and participate in a way that is equal to the benefit afforded to students that do not use such accommodations.

Ms. Podziba: Can you tell us why you like that better?

Ms. King: I think it's easier to read in the affirmative than the negative. It's meant for the sake of clarity not trying to change the meaning.

Mr. Rooney: I think we are interested in hearing what others around the table think?

Ms. Jackson: The only question I have is if the language makes sense for participate in a way that is equal to the
1  benefit afforded I am not sure how you
2  participate --
3    Ms. King: The ensure is to make sure
4  it's beneficial to those with or without
5  accommodations, so there's two different
6  pieces right there's the piece about
7  participating at all because did the
8  accommodations allow you to participate. Not
9  only are you allowed to participate. You
10  don't suffer for having used an
11  accommodation.
12    I get that concept I don't get how
13  you are portioning that's equal to the
14  benefit. I am not good with the names of
15  parts of speech and all of that. The
16  reference to benefit afforded to students is
17  implying specifically the ability to use the
18  assessment score for the purposes of college
19  admissions. So participate in a way that is
20  equal to the benefit, I think it's important
21  to have I feel as though what you are

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suggesting is to take out the benefit afforded --

Ms. Jackson: No, the benefit I think it's just syntax.

Ms. Briggs: I think we ought just to get to the benefit issue right now the first half is assuring the student has the opportunity to participate in a test. That's not an assurance it's required so with or without an accommodation so do you see what I am saying. I know you don't mean it to be optional you are assuring the student has an opportunity to participate is not the same thing as the student participating.

Ms. Rigling: What I am going to do is the reason we use it had language we did was because it is very similar to the standard in the 504 regs and the ADA regs on which we believe this provision is based. So what we would need to do I think is to share any alternative language with our office for
civil rights to see if they think that we are changing the meaning because we really did try to keep it as close to the 504 regulations as we could.

Can I ask a clarifying question I urn stood this provision to require that states before adopting any new assessments ensure that the full range of accommodations for any student are available for that assessment is that right and that by using the particular assessment that those that may need the accommodations on the assessment are afforded the same ability to use that assessment for all purposes right so we are talking about if an assessment is used for purposes of admission into college or college credit that when a state includes that as a part of the statewide assessment system that all students are afforded the same right and benefits is that right?

That's right. That second part is
important if the state is using it for other purposes they cannot provide an accommodation that then provides a score that's used in the states accountability system that would not have the cannot be used in the same way for other students that take the version without accommodations.

Would it be appropriate to send a couple of clauses here in separate romanettes by chance I am wondering if you are trying to do two different things this section and there's connection going on within the two separate within the Arabic number. If we separate the two clauses it would be a little clearer that you are trying to get it two different objectives. I know that the Department is going to come back with some language here but I would offer that out and it maybe less confusing to try to separate this into two clauses.

Mr. Hager: That actually was what we
1 had suggested last time that they do the two
2 clauses so you are right there with you.
3 Ms. Podziba: My understanding is
4 there isn't disagreement about this but that
5 Liz's proposal was to make it affirmative
6 rather than in the negative and the
7 Department has said that in order to do that
8 they need to take this back to others inside
9 so should we leave it at that for now?
10 Ms. King: The consistency with 504
11 ran ADA is incredibly important this is not
12 creating a new right but maintaining a
13 previous right?
14 Mr. Rooney: We might need or want a
15 little help in how we break it into two
16 clauses we are struggling on what those two
17 clauses maybe and how to make it any clearer
18 than it is now. I am open to suggestions
19 that people if we don't want to spend time on
20 it now. I can understand if we don't too if
21 Liz or Rich or anyone who has ideas on this
if they want to write them down and give them
to us we are happy to talk to our colleagues
to see if there is a way to do that.

Mr. Hager: Liz jumped a little ahead
of me on the section before the romanette two
and three the romanette two talks about the
students placement team for the students
under 504. And well we thought it's hard to
there is no we always use the term section
504 team which doesn't exist in the actual
regulations I think you chose placement team
because it's the closest thing that you could
come up with. So maybe in the preamble or
guidance to talk about you know what you are
looking at here is, you know the provision of
104.35 C and maybe something about calmly
referred to section 504. I don't think it
has to go to the regulation I think it might
be helpful to have clarification to what is
meant there that might help without having to
rewrite it, and then in the romanette three
maybe in the preamble like pursuant to the ADA it doesn't have to be in the regulation itself, but to make it clear that we talked about a procedure so let's just you would just keep it in the guidance as a suggestion.

Ms. Podziba: Thank you. Anything else on paragraph B? All right, so we have two outstanding items on paragraph B one is the clause in B one consistent with nationally recognized accessibility standards. That is not acceptable to take it out and it's not acceptable to leave it in as is. That's going to need to be reworked. Then on paragraph B 3 it's not a disagreement about the concept but there will be an effort to rework it in the affirmative rather than the negative. Apart from those two is there any dissent from adopting tentative agreement on B? Okay, let's move to C. Alternative assessments et cetera. Any discussion on paragraph C? Any discussion on tentative
agreement on paragraph C? We are moving to five reporting. Why don't we start with page four is there any discussion. I'm sorry I missed six. Reporting is that small part. Did I miss something somewhere? So yeah let's open the discussion for paragraph C, 5, 6 and 7 which goes to almost the bottom of the page. 5, 6 or 7 any discussion? Any dissent from adopting tentative agreement on 5, 6 and 7? Okay moving to paragraph D state guidelines? We will open the floor to all paragraph D which goes up to page six the top two lines. Ron?

Mr. Hager: D one we had Thomas had put it in one spot, and I think you clarified where it should go in terms of that phrase consistent with. I thought we had talked about in coordination with and if we didn't get agreement on that language I thought we did but I maybe wrong. Instead of consistent within coordination with I had my notes in
there from last time I wanted to see if that
was an error or not?

Ms. Podziba: Is it an error or did
you want to propose it?

Mr. Hager: I thought we had already
agreed on that.

There's a discussion to put on in
coordination with instead of discussion. Any
dissent from adopting that proposal?

Ms. Rigling: I just like to ask for
an explanation of what the difference is?

Mr. Hager: Well as Peter and Paul
basically when you look at section 16 I'm
sorry 612 A 16 C is talking about is
developing guidelines for the achievement
standards themselves in the process for
conducting the assessment. It's really not
talking about who gets the assessment. It's
developing the content of the assessment.

It's not quite, so you can say consistent
with but it's not a neat fit is why I would

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1 rather say coordinating it. It's two
2 different concepts that we are talking about.
3
4 Ms. Podziba: Thank you.
5 Ms. Rigling: I don't know I am
6 looking at 612 A 16 C and I'm having a
7 difficult time understanding the difference
8 in. I mean 612 C talks about a general
9 statement that say it is states have
10 developed or implemented participation of
11 children in alternate assessments that can't
12 participate with regular assessments each
13 with accommodations then there's changes that
14 estimate that said that the guidelines shall
15 provide for alternate assessment that is are
16 aligned with the challenging state academic
17 content standards an alternate achievement
18 standards and if the state has adopted
19 alternate achievement standards measure the
20 achievement with children with disabilities
21 against those standards.

21 Mr. Hager: The guidelines you are
1 talking about here are not the assessment
2 guidelines but the achievement standards and
3 then you assess based on the achievement.
4 It's more focused on the achievement
5 standards to be developed that's what the
6 guidelines are referring to and that the
7 assessment would be consistent with those
8 guidelines meaning the achievement standards.
9 That's maybe --
10 Mr. Rooney: The one thing I might
11 add to this piece and maybe why we have a
12 slight preference for consistent rather than
13 coordination. We don't want to indicate that
14 there's two sets of guidelines if you say in
15 coordination with it sounds like two
16 guidelines. If you say consistent with it's
17 one U set of guideline that is make sure that
18 it's meetings section 612 of the IDEA and
19 also meeting this piece here being described.
20 That would be our pitch for consistent.
21 Ms. Podziba: Are you okay to
withdraw the proposal.

Mr. Hager: Thank you.

Ms. Podziba: Is there further discussion on paragraph D? All right is there any dissent from adopting tentative agreement on paragraph D?

Ms. Podziba: We are up to? E?

Patrick, would you like to do that?

Mr. Rooney: I would. E is the definition with the students with most cognitive disabilities. This is all under lined because it was not an issue paper last time. It's not different than we discussed slightly different it's aligned with the discussion we had in the issue in session two, but it's primarily the same definition that we had talked about as we left the room in session two. We think it's important to keep this definition in I appreciate Tony's points about what this means in Wisconsin an other states and we know that it may -- the
definition but we think it's helpful to include in the set a clear expectation for these students and who these students are and that students states say they are implementing this definition will have to go further to provide guidance down to schools an IEP teams but having this base level definition for who are the students with the most significant cognitive disabilities will be helpful to the field and IEP teams to help understand who are the kids and what things as states would take into account in defining who these kids are and who should be taking the alternate assessment. This came primarily from the two groups of state that is are designed new alternate assessments the national center and state collaborative and makes it and we did alter that slightly and it fit into our regulatory framework but we do think it's important to keep it here so we haven't made major changes to that and we
kept it in the regulations for our discussion today.

Ms. Podziba: We will open it up for discussion of E?

Mr. Hager: I will be the lead off here. We concur with the Department that it's very critical to have a definition and we appreciate the attempt you guys made. I want to reiterate what I had said last time about this definition. We looked at in a kind of a general way some kind of core factors if you look at the LCM and SC criteria the vast majority of states you have already adopt it had criteria over substantially similar criteria we are looking at here raising the bar an raising the floor for states that have adopt it had criteria our goal is not to lower the standard. You adopt it had YCM we would deem that to be compliant with this definition. The Department wanted to clarify that kind of...
language in their regulation that would be great for us. We don't want to have states lowering their standards and the goal was here for the states that haven't got that level and with this kind of approach that they would raise their expectations. Is it appropriate to have a definition at all? Okay. You look add idea it lays out in the statute the definition of a child with a disability it lists a bunch of definition. It lists a bunch of categories without defining any of those categories except for specific learning disability which they specify because at the time the IDEA was created there wasn't a definition they created it for the purposes of IDEA. Every other definition is in the regulations so you have a very very open ended kind of thing that the learning assume the disability is XYZ and A through 13 definition or categories and the regulations to find each one of
1 those. We see it to be totally consistent
2 with ESSA to have a similar approach here you
3 have to determine a standard which is not
4 defined by anything else. We are looking at
5 in terms we would like to see a definition.
6 Having said that we have a couple concerns
7 with the definition as proposed. In E one
8 when you use the phrase intellectual
9 functioning I know that's used the statute
10 actually talks about significant cognitive
11 disability. We probably prefer to use the
12 statutory term of cognitive functioning and
13 then when you have adapted behavior what we
14 would like to see perhaps in either the
15 preamble or the guidance is and means and.
16 We have heard that some states have looked at
17 it as an or which is not intended but that
18 you know in other word this is someone that
19 has significant cognitive impairment. If you
20 have adapted behavior issue there is' no
21 impairment of the cognition that you don't

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qualify for this. I don't want to change your definition in your regulation but would make it clear in the preamble that we mean both not one or the other. The third thing is and this actually is picked up from what a number of people said from the school group and people from our disability community of agreed that there probably needs to be a little bit more that it's way it's written would over identify students with disabilities as eligible for this standard so we would like to add another clarifying clause so it would be another exception so you have romanette one and romanette two and three. We would add romanette three as an additional clarifier when I read it maybe I will try and read it slowly and I can read it again if you want to try to get it on the screen. Students with the most significant cognitive disabilities do not include those students who may with extensive, direct and
individualized instruction and substantial supports, sorry where are you? Who may with extensive, direct individualized instruction and substantial supports be able to achieve the grade level academic achievement standards over time? There's three prongs to the LCM and NCSC standard and the last one is the instructional prong. We don't want students who have the opportunity with significant support to master grade level content to be eligible to be taking this alternative assessment. We want to make it very clear that just because student may need significant supports with significant supports students will be able to master grade level content. We don't want that student to be taking an alternative assessment. That's an intent behind our suggested amendment. From the disability community side anyway we think we are adding this additional sublet three that we would
cover our concerns with a definition.

That's two proposals I am going to take them up. Let's get a couple of comments.

Mr. Evers: I am going to argue those same proposals. It's a good example of why it's difficult to define this in regulation.

We had two hits two separate times we continue to add to it. I got the same e-mails this weekend you need to have XY and Z in here because it's inappropriate it's going to over identify the issue of I don't know if you mentioned this one Ron. Somehow you are talking about safety that can be used to keep kids out from being inclusive environment. Some of the same things you talked about I heard about and this is for internally and external and we have been talking about this for a month now and the definition continues to change. I understand completely why federal government hasn't done
1 it for the last X number of years. I
2 understand completely why the subcommittee
3 that attempted to do it did not. I still
4 think given this that we need to look at an
5 alternative to having the express definition
6 in regulations, which is essentially putting
7 it into law, and it will be subject to if we
8 wait another week my e-mail box will be
9 filled to all the other things we should be
10 adding to this definition. That's my overall
11 concern and I can go over everyone Ron did
12 most of them. I am concerned about having it
13 in regulation period given that we have seen
14 it more weekly.
15
16 Ms. Podziba: One thing is I am
17 hearing is a proposal to delete. We can take
18 up that proposal quickly because I have a
19 hunch that there might be a little bit
20 dissent on that. If you don't want me to
21 take up that proposal we can try and work the

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proposals and take up additional proposals to
massage the language.

Mr. Evers: I would propose that we
eliminate the definition and leave the
guardrails in and the guardrails I believe
are romanette one and two.

The proposal is to delete E one but
not romanette two. Just that one paragraph?

Mr. Evers: Romanette one and two and
leave one and two because two -- I'm sorry
leave romanette one and two. Lead guardrails
and eliminate E one eliminate E two because
it refers to E one and leave 3. Okay so
eliminate paragraph E one an E two. Is there
a dissent from that proposal? Yes there is?

Mr. Wilbanks: I was going to say Ron
is normally extremely clear and in his
discussions but I think we each have problems
with someone who know as lot about it in
trying to define it. Is for that reason that
I don't think it ought to be defined. I
1 don't see it as a huge issue. I think people
2 that do this as particularly especially IEP
3 teams are very able to do this and have done
4 it for years and IDEA did not find it the
5 essence committees did not define it and I
6 don't think we should.
7 Ms. Podziba: Are you re-proposing
8 Tony's proposal?
9 I am agreeing with Tony.
10 Ms. Podziba: We need to try to reach
11 consensus we need to work the language a bit.
12 Let me take Ron's proposals one at a time. I
13 will get to the other issues. The first
14 proposal is to delete intellectual and
15 replace it with cognitive. Can we have some
16 discussion of that? So it would read that
17 significantly impact cognitive functioning
18 and adaptive behavior. Any discussion of
19 that?
20 Ms. Briggs: Not only is it strange
21 to use the same word that we are trying to
1 define?
2 Ms. King: I don't think it is. I
3 think we are being clear about cognitive.
4 One of the concerns we had about intellectual
5 is signaling the chimed with a disability is
6 being a necessarily that all kid who is are
7 classified as ID would necessarily be
8 included in alternate assessment and no kid
9 that was -- I think it's important we use the
10 cognitive not -- that we are not trying to
11 have any specific classification.
12 Ms. Goss: You may have answered my
13 question. I was under the impression they
14 just changed the terminology from cognitive
15 disability to intellectual disability?
16 Mr. Hager: It went from mental
17 retardation to intellectual disability that
18 was a change, so they changed it from mental
19 retardation to intellectual disability.
20 Ms. Podziba: Lisa is your comment on
21 this proposal okay? I will get to you. If
there were to be a definition would anyone
dissent from changing from intellectual to
cognitive? Okay. All right. Let's look at
Ron's other proposal. The addition of
romanette three can we have some discussion
of that item? Mary Cathryn?
Ms. Ricker: Thank you. I am
wondering with the addition of this does that
mean that the standard assessment also must
be designed with assistive technology devices
that are nationally recognized in mind?
Mr. Hager: Actually that, the
language we are looking at earlier that was
the general all assessments not just the
alternate assessments it would have been for
both yes.
Ms. Evangelista: Yeah, I am thinking
on a school level if there were to be a
definition and I'm looking at romanette one
and two and I feel like those are more
tangible things we can looking at. Number
three how do you define that? It's like determining a student development which we know is you know I mean there's lots of factors so how could you say that this student with instructions would be able to meet the standards this one won't. I thought we were supposed to be trying to meet the standard with everybody. That would be very very difficult. I think for us to determine and predict the students development.

Ms. Briggs: I recall in the previous one percent rule that there was a concept of even with the very best instruction possible that was part of the definition if I remember that right this sort of feels like that concept?

Lara Evangelista: I'm not sure in the actual reg it was used in the preamble.

Ms. Briggs: I am synthetic individual IEP teams making decisions on behalf of individual students I am curious on
1 how this new clause fits into all of that?

2 Ms. King: In support of the

3 importance of romanette three the goal here

4 is to make it very very clear that the child

5 is placed in an appropriate assessment

6 because that's what's appropriate for the

7 child. So to Lara's point that's the idea

8 here is that we are just trying to reinforce

9 we recognize there's children with the most

10 significant cognitive disabilities to whom

11 the alternate assessment is important those

12 children who have not been denied the

13 accommodations or supports they need?

14 Mr. Hager: And in response to

15 Kerri's point we are actually getting order

16 here. This is guidance for the IEP team. We

17 are not telling the IEP team what to decide.

18 Their job is to take the information about

19 the student how the student or what the

20 students needs are. That's what they do all

21 the time. They make, they look at a bunch of

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reports, evaluations and they decide what the
placement should be and what services they
should have and even whether it's IEP team or
other team someone make it is decision about
what the classification should be. Each time
they make these decisions they have
guidelines they use to help them in making
these decisions because they don't make them
in a vacuum that's really the same intent
here is to give them some guidance in making
it clear that lack of good instruction is not
a reason to put someone into the alternative
assessment. That's the intent.

Ms. Evangelista: If that's the case
then that's what it should say. Because the
student doesn't get there because I don't
know thousand word it. They shouldn't put in
alternate assessment because they didn't
receive the instruction that's afforded to
them based on their rights, but to say that
just sounds like we have to predict what a
student's development is. I think that's really challenging at the school level.

Ms. Briggs: I was going to comment that the overtime piece is confusing to me. Like I don't think that brings much clarity the assessments given three through eight and one in high school and I know these students are allowed to be in school longer than that time frame, so what's the over time is like there is a time frame that we are thinking about?

Mr. Hager: Well, first of all although they are only assessed these grades many times these decisions are made earlier on. Once you are in this group it's you it's kind the longer you go in that group in terms of trying to get out of that group which is one of the things we had in that subcommittee. The over time means it may take a while for them. They are currently not at grade level this is a judgment call by
the committee or IEP team. Anyway that is a judgment call by the IEP team that as we look at the student with appropriate instruction each if it's intensive instruction they will be available to, you know, catch up the whole idea of the ESSA is to remove achievement gaps so that's a concept that over time is that they would be removing the achievement gaps within the significant instruction, if there's concern. We don't know for sure if we have a definition.

Ms. Podziba: I think what I am hearing if there is to be a definition that this may need to be clarified a bit and so would you like to withdraw it for now and come back with an alternative.

Mr. Hager: I don't know if the Department is interested in this and coming up with language.

Ms. King: I am not sure I understand the concern. Tweaking is a possibility but
it would require more guidance about what is not going to work in here as whether it's so, is there a concern about the intent of this? I mean for Lara to put on the table the idea of if it cannot be because of a failure to provide supports an instruction or something like that you know in terms of the over time is important because it may take a child more than one year. It would be helpful to get more feedback if we are going to reopen this again what are the concerns?

Ms. George: I guess I had a question for Lara. I don't know if it has clarifying language in the preamble to just clarify the real intent is to ensure that many students as possible can take the general assessment because this would be a rare alternate a rare use, the alternate assessment would that address your concern that this is more about support and accommodations for the students.

Again, consistent with the purpose I don't
1 know if that would be helpful?
2 Ms. Evangelista: I think it would be
3 helpful. I think changing that so it says
4 just that. They shouldn't be given the
5 assessment because they were not given the
6 instruction that they have a right to receive
7 based on the, you know the plan from the IEP
8 team. I think what's written there just it
9 doesn't say that to me. I mean looking at
10 it, it looks like we have to be thinking
11 about each individual kid and think about
12 whether they are able to reach the standards
13 and make sure they have all the instruction
14 and make predictions around that. I think it
15 could be confusing for a school or an IEP
16 team.
17 Ms. Jackson: I think with regard to
18 word submitting this I think we generally
19 agree ton idea and that it just seems that
20 people are concerned about how you would be
21 held accountable to this and how it would

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even function. I actually think a little bit that I do agree that this there are many students like I have had children come into my classroom five grades below grade level, and so people could say I don't know if they would necessarily reach grade level over time for the window you may end up getting more kids than you need to protect clumped in. I hear everyone agreeing on the idea.

One and two seem clearer than three.

Ms. King: A little more context IEPT team has to project that which a child is capable of all the time. Those are hard decisions and we recognize that. It is reasonable and expected within the context of IEP team and the way it isn't throughout other areas of a child's education. I think the concern about this is the relationship so if you look at one a child who requires extensive direct individualized instruction and substantial supports. I think the
1 concern is that we want to Tony's point not
2 open this too wide. So we are talking about
3 children who require extensive direct
4 individualized instruction. Even among those
5 children that require that instruction
6 there's many of them or any of them who would
7 be able to participate in the general
8 assessment with accommodations, so those
9 children should not be included in the
10 alternate assessment. That's the concern of
11 narrowing the net that's passed under one
12 which is why romanette three is important.
13 We can talk about different romanette three
14 language. I think the concept of number
15 three is important. I am reluctant to be, I
16 feel as though simply saying that it cannot
17 be on the basis of a child having been denied
18 an education for which they are legally
19 entitled to which they are legally entitled
20 which I think is too vague, but I think we
21 can think about it a little bit more.
I guess procedurally I can call the question on this proposal and see if it's acceptable. If it is we are done. If there is dissent I can just kind of get a sense on the concept and then if you are interested that you would then go back and try and refine that would you like me to do that to take care of it in a consistent --

Mr. Hager: You are asking if it's okay as is?

Ms. Briggs: I am just looking at the criteria. What they have written isn't exactly that. I am don't mean to dissent I think I will because I don't think you are getting at the right thing. They seem different to me.

Ms. Podziba: Lara, did you have another comment? If there were to be a definition would there be dissent from adding Roman three as proposed?

Ms. Evangelista: Yes.
Ms. Podziba: Just getting a sense of
the group. Is there a sense that this
concept of further identifying who would be
taking this assessment is the group
supportive of the concept so that we ask Ron
and Liz to go back and refine it? Anyone not
supportive of the concept if there were to be
a definition? Okay. So I think it sounds
like it would be helpful for the two of you
to do that. Okay. New issue on paragraph E
and LISA has been waiting.

Ms. Mack: My point goes back
minimally if we find this to not be
acceptable minimally as a parent I believe
that the congressional intent was to make
parents partner as little bit more in
education and so at the very minimum I had
brought it up before I would like to see even
a definition can be taken from a
non-regulatory guidance that was in no child
left behind. Again, I really believe there
needs to be some kind of definition a couple of our meetings ago I use it had example of when I was forecasting for my daughters seventh grade class she wasn't being recommended for an advanced science class and when I asked why she's daydreams and all kinds of those things even though she had an A in the class so from my experience I said this might preclude her from taking advance classes in science later and his response later was I didn't think of that. I don't want to be sitting at the table as part of the IEPT team without information not being equipped to be able to be a partner in that IEP process. I need to understand if my child falls into that category and make educated decisions in which direction we should take and the ramifications of that. At the very minimum I feel like there's a definition and the regulatory child on the no child left behind can be a source. Okay.
1 Thank you.
2 Ms. Goss: As defined in the IDEA it's not defined in the IDEA so I guess I find it troubling to some to find something in undue law just because we haven't reauthorized another law yet. I guess that's just kind of my question and statement. If you are going to define it, it should be at the state and local level not at the federal level.

11 What we have to have support no definition and support to have a definition. We are working both of those angles. Process wise we are trying to come up with the best definition possible and see if that responds to the concerns that people are raising about having a definition and we will see where that takes us. Lisa's offered I think an alternative proposal that if this definition that we are trying to work doesn't get to a place where people are comfortable with it.
Is it possible to use a definition that's used in the past in guidance from no child left behind? I don't know if we have that available?

Mr. Rooney: Two points of clarification. It's not defined anywhere.

The point Tony has been making is our current regulations for no child left behind do not define students with the most significant cognitive disabilities.

Ms. Podziba: Do you have guidance?

I thought that was Lisa's point. Is it defined in guidance?

Mr. Rooney: No, it is not. I am making sure. No, it's not. I would say to Lynn's point. I know you want to respond.

We try to come up with a definition the children with the most significant cognitive disability which is a subset. This is why we refer back to IDEA in this proposed definition. This is a subgroup that exists.
1 for the purposes of the alternate assessments
2 so it's not a group that there are categories
3 of disabilities that are defined for services
4 for students with disabilities under IDEA and
5 this is the group of students for whom an
6 alternate assessment is appropriate. This is
7 where we are defining what the states
8 alternate assessment should be and so that
9 would be the purpose for providing this
10 definition here where this group comes into
11 existence in order to, but where you need
12 that and information about who these students
13 are so you can identify who should take the
14 assessment to why we propose the definition.
15 Ms. Podziba: Lisa did you have
16 something?
17 Ms. Mack: I am saying I do have that
18 guidance it does for clarification the states
19 responsible to define but it does give
20 guidance so if we can just have criteria
21 guidance or something specified in the

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regulatory language I don't know if you want
that in red or I can pass it to you to see
what that was?
How long is it? Is it more than a
paragraph?
No.
Ms. Podziba: Read it out for us
then.
Ms. Mack: It says the Department
intended the terms students with the most
significant cognitive disabilities to include
that small number of students who are one,
within one or more significant cognitive
disabilities oh wait who are one or more of
the existing categories of disability under
the IDEA and then in parenthesis that is awe
autism multiple disabilities traumatic brain
injury, et cetera. Number two the cognitive
impairments prevent them from obtaining
standards even with the very best

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Ms. Podziba: Patrick, can you give us some context for that?

Mr. Rooney: Thank you for that I forgot about that. I believe that was from frequently asked questions which is non-regulatory guidance we put out at the time we released the guidance or the regulations around alternate assessments for this population. I think that's where that came from and I this' all we said on the cognitive disabilities is that sentence. I have forgotten on that

Ms. Podziba: Thank you.

Ms. Goss: Has there been issues I don't understand why it shouldn't remain in guidance?

Mr. Hager: The issue is that there are a number of states that their criteria have significantly below everyone else is. That's really the concern we have is raising the floor for those relatively small number
states but they are still there and their criteria are not. The other thing in terms of what I think the Department tried to do is take this you know long protocol and shorten it down. Well our counter part said you shortened it too far we didn't want to go the full-page approach. That's why we are trying to truncate concepts into a smallest amount of words as possible to still meet the goal. That's why we chose the language we did to try and capture the essence of the LCM and NCSC guidance without giving a full blown thing.

Ms. King: Just an answer to the question under NCLB the law was silent on this. There's regulations creating the one percent path and there was this FAQ and guidance building it out. The one percent cap is in law. Congress in the new law elevated the importance of one percent cap by moving it out of regulation and into the law
then it seems appropriate that would elevate
the language around and the clarity around
who these children are from guidance into
regulation. I think we have some concern
about that particular wording. I did want to
say reinforcing again the regulation is
everything is elevated because of the way
that Congress reauthorized the law.

Ms. Jackson: I just wanted to see if
we can have it sounds like everyone agrees on
the romanette one and two. It's the other
part that is we have to work on whether they
are there or not or that we have general
consensus. If that's the case I am wondering
if we have a strategy on how to approach
figuring out the other ones or if it's
possible the points illustrated in numeral
one and two could be integrated in a more
romanette or more of a guardrail as opposed
to a statement.

Do you want to test that idea with
the group? Is there any dissent from romanette one and two?

Tony's proposal was to eliminate it? So Audrey's suggestion is to see if one and two are guardrails for people so we can identify additional work. Any dissent from inclusion of romanette one and two? So the concerns then are with E paragraph one and paragraph two and Arabic three. We have outstanding Ron's proposed romanette 3.

Ms. Jackson: I am wondering if people actually so Roman numeral two only exist if's one exists right? I am wondering if we have issues with three and -- no? I guess my point is our main issue is number one?

Ms. Podziba: Thank you, you looking for a job?

She can handle it. What grade do you teach?

Ms. Jackson: Fifth.

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Ms. Podziba: It looks like the isolated piece for which we need to come back is paragraph one, but if paragraph one is in there we may have to come back to paragraph two is that correct? All right.

We have to get greater direction on what's helpful for us to work out to provide as a next proposal so we can look at the language of romanette three in the context of the discussion. It would be helpful to get greater clarity on Arabic one and what I mean is this a blanket objection or is there a way that folks are interested in changing that? I just greater guidance on what we are supposed to be thinking about.

Ms. Podziba: What are concerns about paragraph E one for those of you who have concerns?

Ms. Goss: I felt like it should be in the guidelines rather than rule.

Ms. Podziba: But the substance of
paragraph one is okay it's just a question of
where that is

Ms. Goss: No.

Mr. Evers: We are reiterating I
mentioned before the definition has changed
once again. And I think if I have my perfect
world we would keep those guardrails as I
mentioned and talk about paragraph one being
something like each state must adopt
guidelines for IEP to use in determining when
it would be appropriate for student
significant and cognitive disability
to -- blah, blah, Blah. Provide guidance
around that and if we want to put pressure on
those states that are bad actor ins this area
allegedly I think providing some specific
language in lieu of a definition that the
state guidelines to determine when ever to be
appropriate to have these students take an
alternative assessment that the guidelines

must be developed in your we have the guard
rails over that. Without having a
definition. I think if we want to get to a
piece of common ground.

Mr. Wilbanks: My objection here is
really not I don't see a need for a
definition. Now, you want to work on some
guidelines and other things I just don't
think there's a big problem in this area. I
think it's being handled appropriately and if
not then you know somebody needs to deal with
it at the level of where the decisions are
made. I just think this would increase
number one the number of students that or
offer the alternate assessment and I'm all
for it if a student needs it but it should be
given the opportunity. I think it would
increase that number. I think the fact that
we spent three or four days and I know
everybody is really trying very hard to come
up with language that would be acceptable.

We vice president done that to this point. I
know again I don't think we need a definition
and would be opposed to trying to find that.

Mr. Pohlman: I don't know if it
makes much sense after Alvin's comment. I
actually thought this was where Audrey was
going to say that it seems as if the NCLB FAQ
does provide text that may fit well in number
one. That if you start from replacing the
current number one with that text that we
have up here on the NCLB guidance language
and then we have some then we have some
agreement around romanette one and two in the
deletion of Arabic two because it is no
longer include ed in that definition. It
seems like that maybe a proposal to sort of
put up there and put out in the world. While
I understand this feeling that no definition
is needed in an effort to reach some
consensus. Does this established definition
already? This is what people are using and
if there's a strong will from some to have a

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definition than capitalizing on what exists
is a way to move consensus for it.

Ms. King: I had a question to Rich's
question and I'm just trying to get clarity
about what specifically is being asked of
those of us making a proposal around the
definition. I think I have sense under
romanette three I am not clear on romanette
one. What's the value of the NCLB language
over what is offered here in Arabic one?

Mr. Pohlman: I think it addresses
that additional definition may somehow
broaden or cause confusion in the field. I
think that if you have the same definition of
number one the Arabic one with the romanette
one and two providing additional sort of
clarification and potentially the romanette
three we will put that out there that provide
those additional guardrails, then I think it
begins to get to everyone's desired outcome
and so I am really just proposing this in a
1 method to move toward consensus rather than I
2 am trying to propose something that meets a
3 lot of demands that I am hearing around the
4 table.
5 Ms. King: That's not a policy
6 question it's more of I'm not sure this is a
7 definition per se in practice. I think
8 Patrick is surprised by the language in the
9 case that I don't know that NCLB language, so
10 backing up a little bit this language we have
11 talked about extensively with our
12 constituency. It's easier for me to work
13 from there than to work from new language. I
14 am being honest about efficiency, and I have
15 gotten feedback and comments based on this
16 draft provided by Ed. If there's a policy
17 rational for why it's need to be changes. I
18 am open to swapping a word here or there. My
19 concern about strike and replace I don't
20 think it has the value that you see in terms
21 of being existing in place thing but I think
it also comes at a cost. If there's a policy or a verbiage situation that we can talk about I am happy to talk about that.

Okay, so we are getting close to lunch. Kay, I wanted to ask you a question can you explain the difference between having a definition versus not having a definition, but having what's being referred to as guardrails? What's the punch of a definition that there seems to be some hesitancy towards?

I guess what why we were in favor of the definition is because we thought that the language actually in E one provided some pretty strong guidance around at least characteristics of the kinds of kids that we thought were appropriate for inclusion in this group. And then the guardrails were just that. I think we appreciate Tony's concern that that language is to maybe too broad. I think that's what Ron was trying to
get at with romanette three was to kind of put perimeters around the broadness. I think really what we were trying to do is put in regulations the to the extent that we could summarize the definitions because so many states are part of those two consortia that we could provide sort of a common definition that was consistent with what I think it's at least 30 states maybe more are currently using without being so prescriptive that it sort of tied a state's hand from doing it's own guidelines. So I mean I think we were just trying to. I think we are also trying to address the fact that currently we know that there's I think 35 states that are assessing more than one percent of the students being assessed with an alternate assessment. Clearly there's going to have to be some redefinition of whom those kids are. So we thought it would be helpful to put in the definition or in the reg as definition.
I don't know if we have necessarily looked at just doing guardrails? I mean we could talk about that to as an option. I think we were really thinking that what was in E one was important.

Ms. Podziba: I am going to take the final comments and go to lunch. We will consider that a change for Liz for Tony.

Ms. Jackson: This is just a clarifying question because Liz I heard you ask for clarification on what to redraft for romanette three. You mentioned paragraph one as well. I didn't hear the group actually put that onus on you. I wanted to clarify that. I wanted to throw out that if perhaps this definition dozen belong in the definition section here but just to be noted within the assessment for four B if that would somehow if the guardrails and along the line of definition if it went to four B but not as a definition but as clarification as
Ms. George: Thank you. Just the fact that Kay underscored the high number of states that are assessing over the cap because this one percent isn't statute. It's important to have a definition. Clearly there's some confusion about variation, a lot of variation in the factors that states are using. I just wanted to flag for a couple of folk that is under scored the NCLB language. At least my understanding is with what we have quoted here. It emphasizes instruction. It doesn't emphasize the substantial supports as well that the students need and so that's why I am not; I don't feel comfortable with just leaving it at that.

Ms. Ricker: I will offer just a few of my lingering concerns around Arabic one especially. Actually for folks who need to submit this sort of data or other people responsible so if the state is responsible

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for keeping the number under one percent.
What is the chance that a definition actually
tips because now they have a definition to
use to identify students that it actually
tips it over one percent which leads to my
second lingering concern is this reminds me a
lot of the accountability error on teacher
where we were told what we had to do but then
we were scripted in the way that we did it
which actually in many respects from doing it
as well as we could for our students. If
states are told they must keep this number of
students under one percent I know we will
address the number differently. Shouldn't we
offer the state it is opportunity to get to
that goal with that flexibility? So I wanted
to just leave those as those two lingering
concerns I have around Arabic one.

Ms. King: I just had a question for
I realized we have table it had question of
whether the definition goes in but my concern

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1 is that if we are moving to language that we
2 are increasingly less comfortable with and
3 fundamentally there's a disagreement how does
4 that work? I am deeply deeply reluctant to
5 offer up language that we are less
6 comfortable with if at the end there isn't a
7 language fix to this problem?
8 Ms. Podziba: I think people are
9 trying to make an effort to reach consensus
10 on this. So I think what we are doing from a
11 process point of view is trying to develop
12 language that perhaps everyone can live with.
13 No one is comfortable with what's on the page
14 right now. If I just ask the question is
15 there dissent from this there will be
16 dissent. If there's dissent from not having
17 a definition then we are at an impasse. We
18 still have a day and a half. So with that in
19 mind I think for people for whom this is an
20 important issue to have a definition of some
21 sort that it's worthwhile to make every

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effort to come up with something that may
meet the concerns both of your constituencies
as well as the concerns others are raising.
Can we get a copy of that NCLB
language?
Sure we will have that when you get
bang from lunch or do you want it before so
you might do something with it?
Maybe we want to think about it so we
can go on another topic.
Ms. Podziba: It's a little bit after
one.
Mr. Rooney: Final housekeeping note
before lunch. For all the negotiators for
everyone in the room if you go down stair
there is' food trucks outside and there's Pot
Belly up the hill. If you go up the hill and
make a right then you walk a hung yards under
the pass there's a food court.
Ms. Podziba: The language that Lisa
quoted has been handed out. Before we move
1 onto 4A I want to summarize what the
2 outstanding issues are on 4 A. Paragraph A
3 one romanette two just needs to be clarified
4 in the Department will do that B one has the
5 phrase -- I am going to go with what's
6 outstanding in 4 A before we move to 4 B is
7 everybody set? A one romanette two. Just
8 required clarification B one has the phrase
9 consistent with nationally recognized
10 accessibility standards and we have to
11 clarify that phrase. B 3 is also
12 clarification to turn that into an
13 affirmative statement. And then on E Arabic
14 Roman numerals one two and three are in play
15 but romanette one and two are acceptable.
16 Three?
17 Ms. Podziba: Did we do anything with
18 three?
19 Sorry, different one.
20 Ms. Podziba: We will come back to
21 those. We are going to start fresh now on 4
B. Patrick I will let you walk us through it. Okay so issue paper 4 B this is around the state's criteria or the criteria is going to exceed the cap on the kid who is can take an alternate assessment. If you look at the issue paper the actual beginning language for the first page two and the first half of page three we saw an issue paper 4 A, so the first piece that will be specific just in the issue paper is Arabic number three in page three. There's a couple things I want to highlight as we discussed last section under Arabic number three romanette two we did make a change that commas suggested about revising this language about what the district should submit if it's going to exceed one percent to bring it more in mind with language in the ESSA it's require that LEA submission information justifying. Then we made a similar change to romanette three. If you are using the immersion you can't see this.
There's a phrase in the middle that we struck out of this section which was hold on I am going to find it. I won't say it wrong. Previously it said provide appropriate over site as determined on the state under paragraph C 3 romanette five of this section. We cut that out to provide appropriate over site of the state that's required to provide information to the state. It's seen self-evident that -- it seems unnecessary that to repeat based on what it's doing. It seems to be what the language is saying, so brevity sake we delete that had piece of romanette 3. Okay. Then we add new romanette four this is what we discussed in the session two about making information submitted by the district under paragraph C 3 romanette two publicly available provide that had such information does not reveal personally identifiable information about a individual student. We put a place holder in the last session.

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1 remember that we would be consistent with the
2 regulations this is the language in the
3 statute elsewhere we talked about ensuring
4 that personal identifiable information gets
5 released we added that's the language we used
6 here but we think that's consistent with
7 generally how we talked about being in
8 compliance with FERPA regulations. This is
9 information that's in the state would not
10 submit to the Department, the state would
11 make it available in some manner as
12 determined by the state. It's not defined
13 here in the regulation we are posing. The
14 justification for districts that exceed one
15 percent. I just want to then draw the
16 connection to part of the conversation we had
17 at the last session that districts in their
18 report card are already providing information
19 on how many kids are taking in general versus
20 alternate session. It will be on report
21 cards at the state and district level for

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school this is one would just be the districts justification for exceeding one percent. I am going to stop there to see if people have questions before I move the Arabic number four.

Questions?

Mr. Pohlman: In reading romanette four I think the language is great. I am wondering if information about an individual student do you believe that's broad enough to capture the scenario where there maybe two students where I would say any individual student to maybe account for a small incise which may identify students inadvertently but not particularized information as sort of a nitpicky item. It's just struck me as sufficiently broad to capture in size issues.

Mr. Rooney: I think we are open if others want to have a discussion on that?

Ms. Podziba: Is it a proposal so change and to any?

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Giving the statutory reason to change --

Ms. Podziba: I had that feeling also.

The statute does use the Language we use about individuals. I always write in singular. I can support this. I don't think it in anyway means you look at each individual student so you have multiple students under an end size of ten you couldn't reveal information about any of them.

I think maybe as a note of clarification for guidance you could explore that as an item that just reminding states that we should be still looking at those end sizes as our states tend to push us further and further down that end size.

Are there any other comments or proposals for paragraphs two or three?

Mr. Hager: In the romanette two we
are suggesting that it's not required but to
make it clear that the one percent isn't any
given subject to put in that phrase there to
assess students with any given subjects in an
alternate assessment.

Mr. Rooney: You add in any given
subject. It's sublet two-3 sublet two. It's
on page four of the red line. Page three of
the clean version.

Mr. Rooney: You are suggest anything
romanette two Judi do you mind if I capture
on the screen that you would say require that
LEA submit information justifying a need of
an LEA to assess more than one percent of
it's assessed if we add it in there?

Yeah.

Mr. Hager: It's clear that you can
go over. You look at each subject separately
that's what we are trying to clarify.

It's in the first romanette in a
given subject.
Mr. Hager: In a given subject. In a given -- keep it simple.

Mr. Chau: I think to match what it says in two it should probably meet not in any given subjects or any assessed subject area. In number two for each subject which tests are assessed. I think it would be assessed not just a given subject.

Ms. King: I think Derrick the distinction there is if there's the one percent cap applies to everyone who's assessed in math and to everyone who is assessed in LEA and to everyone assessed in -- I think that's I don't really care about the wording the point is to get to that. If you mean math or science or LEA?

Ms. Podziba: With friendly amendments I think it's an assessed subject.

Mr. Chau: We don't want it to include other subjects. If it read a given, any given subject that would imply any.
Ms. Podziba: Any discussion or any dissent? Are there any other items on paragraph two or three? Okay. Is there any dissent from adopting tentative agreements on paragraphs two and three? Okay. Patrick we are ready for four.

Mr. Rooney: Number four this is about the criteria for a state that intends to request a waiver to exceed one percent of students assessed in an alternate assessment. It's spent a lot of time talking about this. We made changes based on that conversation, but I wanted to run through for you so we understand how we try to capture the conversation in the last session. Number four romanette I state it is same it should be submitted at least 90 days prior to the start of the state's first testing window. Romanette two we spent a bit of time talking about the aspect of the state's request.

It's been changed now to provide state level
data from the current or previous school year so providing the state that is option on which school year they would like to use as their base for providing this data, but the data itself has changed to what's here on the top of page four A and B. A is the number in percentage of student ins each subgroup of student defined in A B and C, A is ethnic groups, B is economically disadvantages D is status as an English learner or not. The one missing is C students with disability. It didn't make sense to include that group. So providing subgroup information at the state level with these subgroups we took the alternate assessment so remember the last time this letter was talking a lot about the disproportionality data and now we reframed it as provide us your state level data by subgroup of how many kids took the alternate assessment. Then B has not changed although we did clarify that we mean it should be show

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us that you assessed 95% of all students and
95% of students with disability subgroup for
the -- and provides assessments. Romanette 3
is then where the state would provide
assurances from each of its district. Again
this language we talked a little bit about
last time is focused on any district that
exceeded one percent and then any other
district that the state determined will
significantly contribute to the one percent
cap. There's three assurances they should
provide for these district that is the state
identifies. The first is that the state has
followed the guidelines in paragraph D and
those are the guidelines we talked about in
the last issue paper around if they have
adopted alternate achievement standard that
is' what D is. And capitol B is that the
state the district will not have tested mark
and the previous year unless they can
demonstrate that they have more such student
that need an alternate assessment. C we have
apprised C in line with our provision above.
It should provide an assurance that it's not
disproportionately -- I think we realize that
would be maybe a hard bar for the districts
to assure that they are doing that but we
made this revised to say they addressed any
disproportionately in the number of students
in any particular subgroup in following the
same subgroups as above an taking an
alternate assessment. I think that gets to
some of the conversation we had about whether
it's disproportionally that states an
districts should be thinking about planning
and time lines to help improve things over
time. I think we try to cap cure that here
in this assurance C. Romanette four is about
the state write ago plan an a time line and
these A and B are the same so this is a plan
and a time line for how we are going to
improve implementation of their guidelines

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1 under D because it's the same reference.
2 Then B is that they will take steps to PO
3 vied support to LEA's that exceeded one
4 percent. And then capitol C on page five
5 again, we have slowly revised this version to
6 try to be consistent with the versions we
7 made in the previous statements. The number
8 of percentage of students taking an alternate
9 assessment through the data provided under
10 romanette two we added a fifth romanette of
11 this section. In light of the conversation
12 we had in session two it occurred to us that
13 there's there maybe another step that we
14 would make sense to ask states to follow if
15 they are going to come in and ask for an
16 additional waiver so that the way we wrote
17 this proposal would be that it would be a one
18 year approval that we would provide for a
19 state. There may be the case that states
20 will need more than one whether to make
21 changes to their plans and time line

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1 implementation in order to come under one
2 percent in that case they would have to come
3 in with another request the following year.
4 There's nothing how they demonstrate the
5 progress and time line they have given us.
6 If they are going to come in for a subsequent
7 waiver in addition to meeting the previous
8 one, two, three and four the romanettes on
9 pages three and top of five they will have to
10 demonstrate progress they made on the plans
11 they gave us the previous years under
12 romanette four. That would be an additional
13 criteria they would have to write toward when
14 they request a waiver.

Ms. Podziba: Thank you. We will
16 open up discussion of paragraph four which
17 starts at the bottom of page three and
18 extends to the balance of page five.

Ms. King: I have pretty serious
19 concerns with getting rid of the precondition
20 they not be disproportionally. I understand
the value of data and plan of addressing disproportionally. I would like to hear more about why the decision was to remove that criteria. It's just I am deeply uncomfortable with that deliverable.

Mr. Rooney: So I think as we were in this discussion two weeks ago or in session two and then as we were thinking about this last week identified what to discuss to propose for all of us today. The different between what's here under A and the plan in time line under romanette four seemed inconsistent. Where under A we said show us the disproportionally and romanette four show us your time line how you are going to address disproportionally. It felt disconnected. It seems there maybe I think on the scale of which to kind of focus on it seemed to make more sense to ask states to have a plan in time line for how they are going to address this area may exist and hold

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them to those changes they are trying to make to address those issues that you know maybe ongoing for whatever reason to try to improve the thing ins their state.

I agree I saw the inconsistency before and I would have made the other switch the other way I would have made it a precondition. I understand that you can't have a precondition for something that didn't exist or you wouldn't have gotten a waiver.

It seems to me that you could have significant disproportionally and make miniscule progress in addressing that disproportionally and that could be the result of deep structural through tout state.

I just you know the idea here is that these waivers should be granted when there is an anomaly which is not evidence of structural an equality. It seems to me that disproportionally is even more so then simply exceeding more than one half structural
equality. You know I don't know if it's helpful. I would propose that I would replace the language or so I am feeling unpersuaded Patrick. Is it helpful for me to propose for putting that language back in or talk about that or what's helpful.

Ms. Podziba: The more concrete we can be the better the discussion we can have among the negotiators.

Ms. King: I would suggest that --

Ms. Podziba: You are moving us to the version of four B that has the strikeouts in it?

Yeah, but I am going to I will just read the language from last time, but it's corresponding to where the red line is. So it says the state did not disproportionately assess students in any subgroup of students with the alternate assessment align W-D alternate academic achievement standards in the prior school year as -- using the
subgroups to defined in section 11 CB A and D
of the act so that goes I would go above the
new A which is it would go on page four at
the very top. Or maybe I know right it would
just replace the A than reporting the
percentage reporting the disaggregated
participation rate that you would instead
report that you did not have the
disproportionally.

Ms. Podziba: I will open the floor
for discussion. I know Mary Cathryn you have
another item the proposal is to move back to
the language that had been in the version we
looked at the last meeting.

Mr. Evers: I changed my tune. The
reason we proposed this last time was because
it almost automatically precluded one from a
prior year and having prior year issues to be
considered for a waiver. I would not support
this change back to what it was. Frankly you
know you look at the reg here it's all
administrative rules for the Department of
public construction to follow and of all the
issue papers here I would say this one is
highly regulated. We have another five here
at the end. So I think we probably got
enough
Ms. George: I just want to echo
Liz's concern. Significant
disproportionalities are a huge issue
particularly one that LDF the legal defense
fund has worked on. I think this is probably
one of the most significant provisions in
this law. It's consistent with the equality
and the person of equity and access under SF.
I think actually those states that have had
disproportionally in the past are the ones
that should not get this waiver is an
exception to the law to exceed the cap. So
those are the very ones who need to take
corrective action to address that
disproportionally so again I really think I
feel strongly that we should have this
language included and that those states maybe
in later year ifs they are able to correct
their action or second year they are fine
then you could qualify. It's really the
whole purpose of this is this is an exception
to the law and so you have to show compliance
through not having disproportionally that's
why this provision is in the law.

Ms. Podziba: Further discussion of
this proposal?

Ms. Briggs: More of a question how
it works. I'm a state and this is obviously
the new structure because previously there
wasn't one participating in the alternate.
So state X has had two percent I am making up
this number and now they can't appropriately,
the one percent cap is good. How does this
all how does this work?

Mr. Rooney: How do you mean?

Ms. Briggs: So if I'm a state and I
1 have been testing two percent of the students
2 because that's been allowed under the
3 previous structure and maybe in any given
4 year I can't get from two to one so just is
5 there a transition year and is there some
6 recognition that these are like individual
7 student decision that is are taking place in
8 IEP teams just like talking about a lot of
9 kids. I guess those teams meet every year
10 anyway. Just trying to think through some of
11 that and thinking about Tony's issue and
12 Janel like how is it going to work?
13 Mr. Rooney: That's fair. I don't
14 know if I have a good answer to that
15 question. The law didn't anticipate that
16 there would be transition once the law goes
17 into effect. It's as when the law goes into
18 effect it's going to assess more than one
19 percent. It's going to request an option for
20 the states to produce a waiver. I think only
21 this rich asked me during the break when this

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goes into effect the one percent cap gets applied in 17-18 school year. The assessments since almost every state tests in the spring. It's the assessments that are given in 18. That provides some leeway for states to identify their guidelines to provide supports to districts to IEP team that is make these decisions I think that's partly why to think this is important. We got shrunk criteria and then we need clear -- if you need to exceed one percent at the state level what is required to demonstrate that this is reasonable and acceptable and that it should be to Janel's other points that limited waiver that most states should be able to get under one percent. I think that the reason that we suggest changing from showing that there be no disproportionality under A to the language to show the number and percentage to make it a criteria not but not necessarily a barrier.

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1 We want to make sure states are addressing
2 that which is why we ask for the data and we
3 ask for the time and time line. That seemed
4 more consistent to have those two pieces
5 together and make it an important area where
6 evaluating the state's proposal. That's what
7 we were partly thinking.

     Mr. Hager: Actually a couple other
8 qualifiers. The disproportionally is a very
9 limited disproportionally. It's not
10 disproportionally of suspensions and
11 classification. It's disproportionality of
12 taking the assessment that's why Liz is
13 talking about a structural problem as far as
14 I understand statistically there should be no
15 differences in terms of who should be
16 qualifying based on race or ethnicity or
17 socioeconomic status so that should not be
18 heavy. I think that's why we like the
19 original language this is something that
20 should not be happening. It's a very narrow
group of students and by definition we should haven't the disproportionally. Okay. Is there any dissent from adopting this proposal?

Ms. Podziba: Liz's proposal, which brings back language from a prior draft. Any dissent on this proposal? Tony, all right.

Ms. Ricker: All right. In the interest of being really concrete so we can discuss something instead of asking a question on the top of page four capitol letter B I would move to strike the state has measure it had achievement to at least 95% of all students and 95% of students in the children with disabilities subgroup under sections 111 C 2 C of the act who are enroll ed in grades for which the assessment is required under 200.5 A.

Tell us why?

Ms. Ricker: If the waiver should be about addressing the one percent. It should
not be about addressing the total number of children who are taking the state mandated tests.

Ms. Podziba: Propose strike paragraph five B. Just the paragraph B?

Ms. Jackson: Just to clarifying question is the 95% in there so that it's more that the one percent is proportionately accurate or reasonably so for example if I am a state and only 50% of the mainstream kids agree to take the test an you calculate one percent on that it's not actually one percent do you know what I am saying. Is that why the 95% is in there?

Mr. Rooney: From our perspective making sure your assessment system is including all students in the assessment is a fundamental components of the assessment system and if you are not meeting that minimal requirement for both overall across all students across the state and
particularly with kids for disabilities of which this is a subset taking the alternate assessment. That does seem like a fundamental concern that we would be uncomfortable deleting.

Ms. Jackson: Let me clarify this is 95% of students in the subgroup with disabilities right?

It east both. 95% of all children to 95% of children with disabilities. There's two measures they have to meet in order to be eligible rat the state level.

Ms. King: So I think some this is I think is super important especially because the creation of the 95% participation requirement in NCLB was directly in responses to the widespread exclusion of children with disabilities from the assessment systems prior to NCLB. This was a very important edition to NCLB that was specifically about children with disabilities an English

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1 learners but because this participation rate
2 has historically been an important tool for
3 ensuring the inclusion of students with
4 disabilities. It's appropriate to make it a
5 part of this system and if this waiver is
6 about ensuring that although you have exceed
7 it had one percent cap that is not a result
8 that is not due to your exclusion of students
9 with disabilities with accommodations or
10 however not meeting the needs of children
11 with disabilities. It's really important to
12 include this given the history and the
13 pattern of excluding children with
14 disabilities from the assessment system.
15 Ms. Ricker: I would start by
16 addressing if you want to have a testing
17 system with integrity you have a testing
18 system that is where the tests are relevant
19 and where there are meaningful and there are
20 meaningful measures. When that happens you
21 are not going to have a problem with

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achieving 95% but you don't hold the waiver hostage until that fact.

Mr. Rooney: This is about a waiver and an exception for states to exceed one percent and I think I understand your point Mary Cathryn to make sure states have good assessments that's our hope and expectation to make sure states do that. And I think this components is an important measure to make sure that the state is including all students in its assessment system. If it can't meet that basic expectation then it seems that we shouldn't entertain giving them a waiver of the one percent criteria. I think we would dissent on it.

Ms. Podziba: Richard on this point it sounds like we have dissent on this proposal?

Mr. Pohlman: I am wondering if there's a way similar to address the disproportionality questions after the first
1 session to -- I completely support it from
2 the outside like this being in here
3 somewhere. I don't think striking it is the
4 way to go for all the reasons Liz said. I
5 wonder if there's a way to insert enough
6 flexibility where the Department is -- it's
7 not a prohibition for applying for a waiver
8 simply because you didn't meet the 95%. They
9 would weigh that heavily in your decision-
10 making. I think you can make that clear
11 through your guidance. We tend to pay a lot
12 of attention to that. There's a way for you
13 to exercise the mechanism without it being an
14 outright prohibition. I think it's good to
15 explore.
16
17 Ms. Goss: My question is the 95%.
18 What happens if you are not able to do the
19 95% due to the people opting out or you know
20 something that is are just totally out of
21 your control?
22
23 Mr. Rooney: If the state has not
assessed 95% of its student then it will not
be eligible for the one percent waiver.

Ms. Podziba: I understand they were
dissenting from the proposal. I think we
will move onto the new item. Are there other
items or concerns or proposals on this
section?

Mr. Hager: Under romanette three A
you had that they filed each of the
guidelines under paragraph D except these
six. That's the UDL provision if it is I was
wondering why you accepted that one of all
the ones in D. It would seem UDL would be a
critical part of this process?

Mr. Rooney: Give me a second. It's
200.6 D 6? Okay. I think our reason for
excluding D 6 is that this is about the LEA
so this whole we are at this reference for D
6 comes from is around the district
assurances around D. D 6 is about the state
describing in a state plan how it's

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incorporating the principles OF UDL. It didn't seem appropriate to ask districts to follow the principles of UDL. It's about the state requirement in D 6 that's why it's accepted.

Okay thank you.

Ms. Podziba: Aqueelha?

Ms. James: I'm not sure if we could go back to B. The reason that is we spent a lot of time tweaking vocabulary. Is the Department saying they are not open to tweaking the vocabulary or language for 95%?

Mr. Rooney: If people want to promote rich was offering we could try something. We listened to conversations on what you might propose around B I don't know what you might propose. We don't have a proposal for something other than the language that is there.

Ms. James: I am genuinely concerned that parents do have the right to opt out
which causes schools to maybe not reach that 95% which ultimately causes a district and to even possibly a state especially a district that is both state and district. I don't know how we can speak to that? I don't have the language.

Mr. Chau: I have a different topic.

Ms. Podziba: Janel?

Ms. George: It's not in the statute it's in the statute I guess I am trying to understand how we can go back on that?

Ms. Ricker: I feel it at least depleting the two.

Mr. Hager: I was going to reiterate what Janel said it's not only in ISSA it's in NCLB it's an obligation since the beginning. So you know this is something that shouldn't be a problem in 2016 unfortunately it is. And again I am assuming I don't know what are the other consequences not outside of the waiver the state is not assessing 95% of it's
students and I'm assuming there's other
consequences elsewhere in ESSA as well not
just this waiver.

Mr. Rooney: Okay. I want to clarify
that what we are talking about right now is
the requirements for states that we are going
to request to exceed one percent. There is
not in this section of the ESSA about
anything that students assess 95% or the
state that assesses 95% of the students in
the school or children with disabilities
subgroup. The law does say and in the ESSA
that the assessment system that the state is
developing needs to include all students in
the assessments. There's no wiggle room at
that point. It should include all students.
On the accountability side which we are not
talking about today they are there and it's
not the subject of negotiations there is an
expectation or a requirement that states
include participation rate in their

accountability system and there is some language has changed between no child left behind and the every student succeeds act in terms of how the participation rates in the accountability system. I don't want us to get mixed up between those two things it's a fundamental requirement of the state that is their assessment systems include all student that is we felt that it was important to make sure if states are asking for this waiver they are asking for special consideration that they are assessing all students.

Ms. Podziba: I am going to take proposals here because we are getting far flung, so Patrick I heard you say that this is important to the Department and I also heard you say that the door was open if I heard you correctly for proposals about that. So if people have proposals let's entertain those. Richard?

Mr. Pohlman: I would like to propose
that in B it read the state must demonstrate it has made sufficient efforts to ensure it and then has measure it had achievement so that there's an inserting of a clause between statement has that reads must demonstrate as made sufficient efforts to ensure it?

Ms. Podziba: Response to that proposal?

Ms. Pin Ahrens: I would have to disagree with your proposal Richard because this is part of statute for the 95% participation rate. I want to point out that there's only two states right now currently in danger of not meeting that requirement for that one percent exception New York and I believe Oregon. This really I don't think this is a huge problem right now. I also think as a parent if I know that my state is not meeting the basic requirements of the law in terms of making sure that all students are being assessed at the necessary participation.
1 rate I don't want my state having an exception you know to this particular one percent rule.

4 Ms. Podziba: I heard some dissent on Richard's proposal. Is there dissent from this proposal, yes? Okay other proposals on this paragraph D Lynn did you have a proposal?

9 Ms. Goss: That we just need to clarify that it's the state that decides the impact of missing the 95% it's not it's already in the statute it's somewhere else for the 95% and that we need to not have it be it's not a precursor for the waiver.

15 Ms. Podziba: Are you asking Patrick to clarify that that's what this says?

18 Mr. Rooney: I didn't follow your question sorry.

20 Ms. Goss: The 95% is already in statute so where does it become a precursor

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to getting the one percent waiver and it
should not be an automatic. It should be a
state decision.

Mr. Rooney: Which should be a
state's decision? Again, 95% that is part of
how the state incorporates it is
participation rate in its accountability
system. It's not part of what we are
discussing here today. The requirement under
the state or assessment systems they include
all students in their assessment. We have
added this components under B that we are
looking at which says that in order to get
the one percent waiver and all of this is not
in the ESSA. The ESSA says the states have
the request a waiver. It calls it out when
one percent of kids take the assessment. We
are trying to clarify what are the
expectation that is are states that are going
to come in and ask for this waiver than what
they have to do to ask for it. Where we want
to add in this piece we think it's important to include all the students.

Ms. Goss: We don't believe that's the intent of the law that it should be a precursor forgetting the waiver for the one percent.

Mr. Rooney: I think the Department feels this is a fundamental component that you include all students. This is about not just include all students in the assessments because this is about a subset of students with disabilities that take the alternate assessment they should demonstrate they are including all the students with disabilities in the assessment system.

Ms. Podziba: Okay. We are going to I don't have any additional proposals on the table for this so we are going to go to is yours on this?

Ms. Jackson: I have a question so I think this is a validity test for one
1 percent. You have to already be
disproportionately not assessing. I am
wondering for those that are against this if
you could explain to me how kids lose or kids
are harmed by this being included? I am not
saying that in an aggressive way I don't
think so. I am curious what the concern is?
Ms. Goss: I was talking to Marcus so
I missed your question.
Ms. Jackson: To ground it back to
kids taking assessments and kids being over
referred to all assessments. I am wondering
how will children be harmed by B being there?
My clarification is that I'm not telling you
I think you are advocating for that I am
wondering what is the harm in having this for
the children?
Ms. Goss: It gives us artificial
caps and moves us away if a student center
decision.
Ms. Podziba: I hope that answers you

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somewhat? Is there I don't have any proposal
on the table right now so I am going to go to
Derrick for a new item. Switching gears for
a little bit on the bottom of page three. It
talks about being submitted at least 90 days
prior to the state's first testing window.
Operationally I am wondering what that means.
In California there isn't actually a state
testing window it's actually a percentage of
the school year and then individuals schools
to determine their own testing windows and
each school has their own and the district
has their own calendar. I am operationally
wondering what the expectation is and I can
understand the rational to 90 days prior. I
am assuming that schools put in their orders
for the assessments so they can possibly
anticipate when schools are requesting more
than one percent of the alternate
assessments. Again, that's I mean I'm just
sort of wondering operationally because at
the end of the day this is going to have to
operationalize from people at the state
level. I don't know if something like this
was taken from another statute and this was
regular language. I don't know?

Mr. Rooney: I'm happy to answer
that. This is not taken from other language.
We talked about this last time the new
requirements they may not assess more than
one percent on an alternate assessments.
It's tricky in time wise for states to
request this waiver. We tried to balance
that need for states to ask for the waiver
before the assessment is given because
generally speaking we don't we try not to do
waivers after the fact we try to do waivers
before so their prospective not
retrospective, but the timing here is hard
and that states will take them sometimes to
identify that they will need the waiver. By
putting 90 days here as the time line that

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1 was our attempt to thread that expectation
2 which will give states time to identify if
3 they need the waiver or not. It will give us
4 time hopefully to get the waiver a review and
5 act on it to decide whether or not to approve
6 it or not. That's the first part of your
7 question it's about the first testing window
8 there's no exact science to this and I think
9 California is probably different than most
10 states. Most states generally say our
11 testing window starts from March 4th through
12 April 30's or whatever the time is and
13 schools treat their individual testing
14 windows within that time frame. I know when
15 they moved to computer adapted tests they are
16 moving away. I think we are open to
17 suggestions we are not sold on the first
18 testing window. I think before the testing
19 window opens in the state the state should
20 back that up 90 day ins order to figure out
21 that they need the waiver an then come in and

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1 ask for it. That's our thinking. If you got
2 a better suggestion on thousand deal with
3 that language. The other thing we can deal
4 with that through the preamble to explain
5 that language that we can't figure out
6 something that would be more prescriptive
7 than
8 Mr. Chau: I don't have a proposal
9 but I'm asking for clarification, but it
10 would be beneficial to maybe think of
11 something a little bit clearer. I can sit
12 down and think about it and talk with some of
13 our state folks about what that would look
14 like also. I wouldn't want something to get
15 in the regulation that is we can't meet. I
16 want to recognize that if we are asking for
17 this beforehand there's also the reality of
18 even though schools may order the assessments
19 they might not administer the assessments
20 because often time schools request the
21 assessments an don't administer them. I want
to flag that we don't want to put something
in regulation to ask states to do something
that they don't need to do when they realize
after the fact they didn't administer all of
these assessments and we didn't need to go
through all of this business and writing we
were trying to save you some work.
Operationally I am trying to think how this
would play out in your world.
I understand you are asking for a
hold on 4?
Yep.
Ms. Podziba: Any other additional
proposals or discussion on paragraph 4? Okay
so we have a hold on four romanette one apart
from that is there any dissent from adopting
tentative agreement on section 4.
Mr. Hager: I thought there was a
concern about 4 romanette two A and B? If
I'm not mistaken?
Ms. Podziba: If you dissent because
people raise issues and then they are not
deal breaker issues, so if you dissent Ron
tell us that you dissent and tell us why?
Please help me out and don't dissent on
behalf of somebody else.

Mr. Hager: It's B romanette two A I
think Liz we had made a proposal which I
fully support to go back to the original
language. As far as I know that was either I
think that was rejected.

It was rejected.

Mr. Hager: We want to maintain our
request that we go back to the original
language.

Ms. Podziba: So the proposal that
was dissent ton proposal so you bring back
another proposal? You can dissent and we can
hold off on it.

Mr. Hager: We want to hold on that
that's what I'm trying to say in a roundabout
bizarre way.

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Ms. Podziba: I want to be able to note it so it's four romanette two A. We have apart from four romanette one and four romanette two paragraph A is there any other dissent on any other parts of that?

Ms. Goss: Paragraph B as well for the 95% of all students.

Okay. So essentially we have a hold on romanette one and dissent on romanette two both A and B. Okay. If you dissented I am going to expect you to come with alternatives to put before the committee. I think that means we will move away from four B I am expecting people don't have proposals right now is that right? Okay. So let's set that one aside. We will go to issue paper three.

Mr. Rooney: Issue paper is locally selected, nationally recognized assessments.

We spent a bunch of time talking about in the last session we made a couple final tweaks otherwise this issue paper should look
1 similar to what we discussed in the last
2 session. I will point out the changes we
3 made and then we will talk about where we
4 could make changes. I think in the last
5 session Rick had asked for a couple changes
6 to address charter schools that is within an
7 LEA and charter schools that are asking to do
8 this. In the discussion issue paper two in
9 session two we had made the changes under the
10 in general section under A on the bottom of
11 page two and the top of page three. I think
12 after going back to looking at how these
13 pieces fit together it made sense actually to
14 move those suggestions under the LEA
15 application which is on page four. It's
16 grayed out text. We grayed it out because we
17 didn't make any substantive changes to the
18 language we just reworded it. I do want to
19 point out it's changed. Before an LEA
20 applies they need to notify all parent that
21 is the LEA tends to request approval and how
they can provide input and the effect they have and then if you look in the middle of page four and provide a meaningful transportation where students are included in such assessments that's if the charter school is part of the LEA asking for this. And then under number two romanette two sorry I'm looking we aren't as part of that the reason why number two or romanette one is underlying we move them down into this section. It's all about the LEA application. It must update its plan to update for the change. Romanette two which is at the bottom the last red paragraph. If the LEA is the chart school that the use of the assessment -- consulted with the authorized chartering agency. That's the language we had general agreement in session two we have move that had from the A in general section to C under the LEA application. I wanted to walk us through why that's different. All of
this is how the LEA applies for the request
to the state. It seems consistent to put it
there. One is the top of page three. The
LEA must administer the same locally selected
nationally recognized high school assessment
that language is not you have the intent is
that you are setting the same tests you have
comparable information in both districts both
of those things are being safeguarded earlier
with that components. The second piece is on
page five with definition sorry I will back
up one second. The number five right above
the definition where we talk about notices to
parents. All the notices to parent ins this
section have to be consistent with 200-point
E again is the same reference that we talked
about first thing this morning D the
definition for the nationally recognized
assessment is the same definition that we
talked about that we brought into session
two. We have changed it slightly last time
we talked about there being an assessment of students, knowledge and skill that is administer in multiple states an used by institutes of higher education. We changed use to accepted by institution of higher education. We added in those are other states. To provide additional flexibility and then we consolidated the second half of the definition. Where before we had if for the purpose of entrance and the in the we combine that together and hopefully it's more streamlined in placement of the courses in post-secondary or training programs. It's a slight consolidation of that definition. We -- we didn't make substantive changes in this definition. We think a nationally recognized assessments has a particular connotation, which is beyond just a test administered in multiple states. There is an additional expectation for a nationally recognized test. We think it's helpful to

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clarify in the regulations its clear
information to the field -- with that I will
open it up for discussion.

Ms. Podziba: Why don't we take
discussion first on essentially pages two and
three not including romanette one at the
bottom. Richard?

Mr. Pohlman: This is likely self-
explanatory. I am wondering within the
requirement for the LEA to administer I can
make the assessment should there be a note
exempting or with the exception of those
students tested ton alternate assessments
with the statutory reference there? I am not
sure that was the intent but if we are saying
all students we actually have other
regulations.

I think that would be a good
clarification. We might need to work on the
language on how to put the exception in there
unless Judi can think of one?
Ms. Podziba: Proposal as written by Judi. Any discussion of that proposal? Any dissent? Anybody want a clarification question first?

Ms. King: I don't know if it's necessary but in this context we mean those children will be assessed in the statewide alternate assessment. Do we need a cross reference that will make clear that it is that, all students in the state are taking the same alternate assessment even if in that LEA the high schools are taking alternate?

Mr. Rooney: We can make it consistent with 200.6 C that's where they adopt alternate standards.

Ms. Podziba: Further discussion of this proposal?

Mr. Chau: I think LARA and I will have the same issue, but it will be good to hear from both of our perspectives. I want to reiterate again this requirement that all

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1 high school students take it across the
district. Means it's different things for
different districts. It's a different
experience implementing in district like ours
and they are unified where we have over 120
high schools. And by having a blanket
requirements that the same assessment has to
be given across the district means very
different things across different districts,
so I just want you, it's not a deal breaker
for me. We talked it over and we give the P
SAT to all of our students right now. In
practice what this regulation will make us do
is to double test students. When we
implement this if we as a district were
thinking about moving over to a different
assessment. We end up and we have school
that is can probably start administering
those assessments this year. We have other
that is are probably not and so what would it
would probably happen what would likely

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happen is we would keep on giving our state assessment the balance assessments to all of our high schools. We would start rolling out this other assessments so that those students will be asked to test twice until such time we are able to roll it out to our schools that's just practically speaking the way we would probably roll it out. I want to put that out there and recognize that. I heard from some other groups from our previous conversations and it seems like this is a deal breaker for most. I want to share the reality of the situation that this will result in double testing students.

Ms. Evangelista: I was wondering if we should do the definition first for me it would maybe help inform us on this discussion better when we talk about what does this mean in the nationally recognized assessment.

Just to add what Derrick said that is what will happen. I think at the last session you
even said well New York won't choose an
assessment like that. The districts around
us the West Chesters and the NASA county it
is rich districts will be able to move to
those assessments very quickly and not have
to double test those students whereas our
students will have to be subjected to that
just because of the size of our district. So
I just think that's something to consider. I
also wanted to see if we should discuss what
the definition of it is first before we
talked about these other things.

Ms. Podziba: How do you feel about
moving to the definition first?
Mr. Rooney: Sure.
Ms. Pompa: I can hold the question.
I was going to talk about the preamble. I am
still concerned about messaging
accommodations within the section. It does
refer to 200.2 to 200.5 to 200.6. I would
still want language in the preamble that
makes it very very clear that accommodations
need to be in place for any of these
nationally recognized assessments for
students with disabilities an English
language learners.

We are going to take Lara's
suggestion and move to page five the
definition and then we will come back to
these other questions. I am opening the
floor for a discussion of the definition.

Ms. Pin Ahrens: On the definition I
am wondering why I think I made a comment at
the last session for adding in international
benchmark assessments such as the TENS and
the PISA. I'm concerned that the current
definition would not allow for those tests
which we know are highly rigorous and also
there's an opportunity there because a lot of
them are translated into other languages so
that's actually a cost savings for districts
and states. I am wondering why that wasn't
1 included in this definition, and if we could
2 add that international benchmarked
3 assessments?
4 Ms. Podziba: Patrick, did you want
5 to respond?
6 Mr. Rooney: I'm sorry I don't
7 remember there being particular language on
8 how we will do that? I will find that
9 international benchmark second-degree a
10 define term which makes it a little hard. I
11 think it's a term that people use, but I
12 don't know that it has a clear distinction on
13 what it means. I also say that I think one
14 of the challenges with Tim's an PISA the
15 U.S. -- they are not our assessments our
16 generally speaking given to a random sample
17 of students in schools and they are not given
18 to all kids in any school or all kids in any
19 district. I don't think TEN's is an option
20 to do that I think PISA that there might be
21 one that schools can often. I don't know
whether if it matches up with the international PIS A. I am open to discussing this I am not trying to put Adam Ferr on the proposal. Internationally benchmarked I don't think it's defined has a connotation that you are then looking at the comparison across countries while the nationally recognized vocally high school assessment needs to make sure it's measuring comparable achievement to the state assessment. You are benchmarked at the international test plus a state test it's hard to do those things. I think it's hard for those states to operationalize or try to do that I am open how to do that language. Those are some of the things I would flag for the groups thinking.

Ms. Podziba: Do you want me to put that up as proposal based on what Patrick said?

Ms. Pin Ahrens: I should have
included this as well because I used Ten's
and PISA there's nape and IB test, which I am
not quite sure, would be covered under these.
I guess I am trying I would like us to figure
how to make sure those assessments are
included if the district opts to do that?
Mr. Rooney: I think under this
definition AP and IB would meet this
definition. They are training programs for
entrance or placement nape like Times an P I
S A it's only given to a random of sample of
students every two years in reading and math
and only in grades four, eight and 12. So I
don't know that by its designed it would fit
the requirement that all students take the
assessment in the district. It doesn't quite
it's trying to do a different thing. I don't
know how well it would fit what this
requirement is?
Ms. Evangelista: I was also
wondering I think originally we had talked

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1 about having something in there about
2 demonstrating mastery of the standards, the
3 assessment that demonstrate mastery of the
4 state standards. I am wondering I mean then
5 given our discussions that that's what a
6 valid assessment is one that's designed to do
7 that I am wondering why it didn't end up in
8 there
9
10 Mr. Rooney: I think it is in there.
11 I am not trying to be defensive. It's a
12 measurement and assessment of high school
13 student’s knowledge and skills does that not
14 capture what you are thinking?
15
16 Ms. Evangelista: For clarify I was
17 thinking one that mastered that demonstrates
18 mastery of the state standards and word is
19 used by institutions for placement so
20 something like both or both I guess I have an
21 issue of saying it has to be used for
22 placement or entrance. I think they are also
23 tests that could be down the road that are
1 rigorous and can assess the standards but
2 aren't necessarily used for placement. I am
3 wondering if there's still a place in there
4 to include both?
5 Does that reflect your proposal? I
6 want to make sure that's your proposal and
7 then we will have discussion it.
8 Mr. Rooney: I don't think we are
9 allowed to say and slash or in regulations.
10 Ms. Podziba: Or is accepted
11 discussion of this proposal I do have Thomas,
12 Janel for this proposal?
13 Ms. Briggs: I believe that would be
14 covered in the fact that the assessment has
15 to go to the states pure review process. I
16 don't know that you would need to repeat that
17 particular phrase here. Right because they
18 would have to go through peer review. I do
19 want to look back to Rita's comment.
20 Ms. Podziba: Thank you. The idea is
21 Kerri's comment is that it's already assumed

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1 in the peer review.

2 Ms. Pompa: The peer review that
3 makes state standards? I was going to argue
4 against the or I think it needs to do both?
5 Mr. Rooney: I would flag that to
6 Kerri's point if you look on page 30 where
7 the state has criteria to how they are going
8 to evaluate these assessments in addition it
9 has to go through peer review which is
10 correct. If you look at romanette four about
11 half way down the page it has to meet all the
12 requirement under 200. B, which is an
13 alignment to state standards. I do this that
14 captures it. I think there's something
15 missing in what you commented maybe isn't
16 entirely coming through on the proposal on
17 the page. To the point of it make sure it's
18 finishing the standards after alignment to
19 the state content. That's covered under peer
20 review and specifically under the state
21 criteria in romanette four.
Ms. Jackson: I think I have notes based on what you said last time Lara. You added for the purpose of demonstrating for content over mastery and then it said your concern was that it would be limiting to have the issue about that they have to be used by higher education institutions of higher Ed because those expectations change and some are not using them anymore. I think you were. I don't know if this was you but I think what you were trying to speak to wasn't so much the issue of the standards, but about the requirement that it's used by higher Ed institutions if they go the way of not using as many or that those change.

Ms. Evangelista: I think it was both because I think without that piece when I read it I think SAT ACT that's what you think. I think that adding some more descriptive language opens it up a little bit so we can consider others. When you read it
1 that's what people think when they think
2 institutions of higher education.
3
4 Ms. Podziba: I heard comments about
5 people not wanting it in there but I don't
6 know how deep that is? Is there a dissent
7 from this proposal?
8
9 Ms. Briggs: Not because I disagree
10 with the idea but I don't think that gets at
11 what you want to do.
12
13 Ms. Podziba: All right. I was going
14 to go to Tom for a new issue.
15
16 Mr. Ahart: I have proposed language
17 for this same issue to read nationally
18 recognized high school assessment means
19 assessment of high school students knowledge
20 and skills one is administered in multiple
21 states and two romanette one is accepted by
22 institutions of higher education and those or
23 other states for the purpose of entrance or
24 placement into courses an post-secondary
25 education or training programs or romanette

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two meets all the requirements and providing valuable information on the students achievement level?

Could you read that romanette two again?

Meets all the requirements of this section and provides valuable instructional information on the student’s achievement level.

Ms. Podziba: Can you explain to us you’re rational for that?

Mr. Ahart: When we limit it to those tests used by post-secondary institutions often times it’s very difficult to appropriately make accommodations to make it accessible to all students. We give the ACT to all of our students but we don't use it as an accountability test. We get very hard to get high participation rate. It's very challenging mainly because of the limited window you have to administer the assessment.

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1 Secondly it also doesn't give us very clear
2 information to help us improve instruction
3 and so there are assessments out there that
4 are certainly meet or actually exceed in my
5 case our state test requirements in terms of
6 technical adequacy and validity and
7 reliability that would also provide more
8 useful information on how we can improve
9 instruction for our students but I don't
10 believe I can demonstrate the post-secondary
11 institutions and use that as a placement or
12 an acceptance.  Data point.
13 Discussion on proposal?
14 Mr. Rooney:  Partly what I am
15 thinking about is really that nationally
16 recognized should have an additional
17 connotation other than just a test given in
18 multiple states.  I think that maybe that's
19 language that we have in the statute is
20 nationally recognized that isn't just a test
21 that's given by two districts and two

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different states but it's a test that has some recognition and it's not defined so I am trying to think about what that might mean. To your point I don't know that I can answer for the Department right now on what our response would be to this proposal. I guess maybe my question will be just you don't seem worried about the nationally recognized means something other than a test that's given in more than one state.

Mr. Ahart: I am not saying that, but I do think the alignment with post-secondary is, it doesn't help achieve the purpose in any meaningful way. It's when it's beneficial to kids and our ability to instruct them. To me that seems like there's not really an alignment there. I understand how it would help demonstrate. If this language if one University says we actually look at that score even if it's a test that's only given in like you said two states that
1 would make it nationally recognized. I don't think that helps further that cause do you understand what I am saying?
2 I think the other part that maybe I am that nationally recognized meetings as opposed to state test for the exception for the kids in that district to take an assessment and not the states assessment so you are getting away from the expectation are taking the same test and you are providing comparable -- performing across the state that there's some beneficial benefit to the student.
3 Mr. Ahart: That's what I was trying to get at with provides valuable instruction information on the students level.
4 Mr. Rooney: I would hope that the state would provide that information.
5 Mr. Ahart: I would too our state does not. There are tests that do. In my state we don't do either of the we don't do
MARTYR balance should we be absolutely. I can't right now that's not because of my Department. It's not because of my state Department it's because of our legislature. It would be really nice to not waste time administer ago test that is we demonstrate it's not even aligned with our standards. It's not providing any meaningful information and it's punishing especially our English language learners and special education students particularly. We could the a much better job and as it's currently written I don't think we can better meet their needs and there's a number of tools out there I am sure. I have a couple in mind that I would like to move to that would help us do a much better job. I wouldn't want to be selling any one short.

Ms. Podziba: I am mindful that Patrick is going to have internal discussion on this proposal, but Kerri, do you have
another comment on it?

Ms. Briggs: Because you mentioned -- balance one or both are used for college admission decisions in certain states. Those are the two you mentioned. They would work.

That's not what I want.

Ms. James: Quick question could we possibly include or prove competency based assessments in this area I am defined nationally recognized high school assessments specifically when you go to I guess I should backtrack in the question if the nationally recognized must include multiple states that's one question. Then the other question I have is could we possibly include language that would allow for competency-based assessments?

Ms. Podziba: In the definition where would you specifically put that?

Ms. James: I don't know if I have
that answer but I have a different suggestion in the proposal to the definition. To act or multiple states, does not systematically disadvantage certain groups of students over others and is used by institutions of higher education and the rest is included. Which would then allow for competency based assessments.

Ms. Podziba: Is the last phrase what you said in the definition or are you saying that's the result of your proposal?

Ms. James: Adding does not systematically disadvantage certain groups of students over others and is used by institutions of higher education and the definition would continue. This proposal is to be inclusive of competency based assessments.

Ms. Podziba: It's a good opportunity to take a break. Okay we have two proposals on the table. I don't know if you had a
chance to check back with people during the
break on Thomas's proposal.

Mr. Rooney: A little bit. I need to
talk to my colleagues more. I won't have an
answer on that until tomorrow.

Ms. Podziba: We will set that aside.

On Aqueelha's proposal is there some
discussion to be had on that proposal?

Did you want to say some more?

Ms. James: I yes I would like to
elaborate. It does support part of our peer
review. For me the goal is to how do we make
sure that certain populations that have been
subject to taking the SAT and or ACT in the
past have not faiired very well. How do we
speak to other assessments? My goal is to be
inclusive of competency based assessments
Annie additional future assessments

Ms. Briggs: On that freeze how is
that different than the provision earlier in
the reg where we are talking about the
benefit language I forget what it's called exactly. They can't afford the benefit that no one else gets or that language it's sort of the same thing.

Ms. James: That's what I meant when it was reinforcing --

Ms. Briggs: I don't read that as competency based assessments. I was thinking you were going to suggest additional language?

So I don't have that language certainly am open to anyone who may have a recommendation for that language. I agree that it does reinforce what's already said and maybe it doesn't speak to competency-based assessments. I would like to broaden that narrow definition of nationally recognized high school assessments.

Ms. Jackson: To Kerri's point I don't think though that the line does not systematically disadvantage their groups over
others which I agree would be ideally covered
in peer review is the same as not be given or
benefit from the same way because that's more
about accommodations such that like if you
receive an accommodation your score wouldn't
have an asterisk next to it. I think there's
two different issues.

Mr. Hager: You don't have the actual
language but your goal was to include
competency-based assessments. As far as our
understanding is there they are not quite
there to give you the definition you need to
under 200.2 the general requirements really
for that you think that's the type of thing
that the pilots are tended to do. You know
this could be the competency based
assessments is something that would be
appropriate for pilot. At this point as far
as our understanding at the state of the
field the competency based assessments they
are not quite there yet. They are moving
there but they are not there right now. We would have a concern with specifically you know referring to the competency-based assessment. We love the idea of not systemically disadvantaging anyone.

We have got a proposal and not a proposal but responses to a not proposal. If I can separate those out, so LARA is your comment on proposal or competency based testing?

A combination. I just wonder if Thomas's proposal can incorporate that. I think the idea is they are not there yet but with these regulations it could be ten or 12 year that is we are looking so we want to have an opportunity to write nit a way when they do get there people can use those. So I am you know given the last part of what Thomas said I just wonder if that would cover things like competency based and other kinds of assessments that maybe start off with the
1  pilot states but that can become recognized
2  as nationally recognize assessments that
3  other states can use?
4  Ms. Podziba: I don't want to talk
5  about competency-based test yet. I want to
6  talk about the proposal on the table. Is
7  there any further discussion about this
8  proposal? Derrick is there a comment or
9  proposal?
10  Mr. Chau: I think so. It's really
11  the second part of the proposal it sort of
12  gets at what Thomas mentioned and some of
13  what Rita mentioned earlier as well. I was
14  wondering if we could consider changing some
15  of the language the part is about accepted
16  institutes of higher Ed and other states. I
17  was wondering if we would be open to changing
18  it to recognized by institutions of higher
19  education. The reason why I change the word
20  to recognize versus accepted is because
21  accepted in my mind implies a slightly
different use at the universe level where there's actual documentation they are using it. Whereas recognition is simply just that the University can write a letter saying that this is a valuable assessment that we may or may not use it but we find it valuable for our students to have taken this assessment. I think it might be opening things up more an then to take off the rest of it kind of might get at some of what Rita is talking about in terms of international piece in opening it up for future assessments that may not exist yet. We have already discussed in prior meetings that some of the assessment that is we have in our mind may not actually fit. I just want to put it out there.

Ms. Podziba: Aqueelha, do you accept that as a friendly amendment to your proposal?

Ms. James: Yes.

Ms. Podziba: Further discussion of
what's listed as alternate proposal two?

Patrick is this something that you need to take back or can I call a question on it?

Mr. Rooney: What is a state how would a state be asking to do? What would we ask the state to do or what would a state have to do to demonstrate or systematically -- over others? I am trying to think about operationally this. I am still struggling a little bit I don't know what others think about that. It will help me understand what our opinion would be.

Ms. Briggs: It's one of the reasons I think that previous language is per happen as little clearer because it talks about the benefit afforded based ton combination of things. If you take the test and it's accommodated you don't get the benefit from it you know that's a problem that seems really clear to me. This I am with you this seems a little vague like I am not
particularly supportive of it. I do like the friendly amendment part.

Ms. Podziba: People from states what would you, what would you do in response to Patrick's question. How would you operationalize this definition?

Mr. Evers: I don't know. I supposed we would look at data that would indicate that certain groups were disproportionately not taking the exam I don't know. We would have to look at the data to be honest with you this whole thing would be extraordinarily difficult to not just who is advantage or disadvantage of take ago test but Wisconsin or any state of starting to do a peer review on numerous tests I don't know how we would do it Frankly. That's a concern.

Okay any other thoughts on how to operationalize this definition?

Mr. Cheeks: When this was brought forward did the person that brought the
1 additional language talk about
2 operationalizing? Because it hasn't come
3 from what was the thinking behind this
4 additional language?
5 Ms. James: As previously stated it
6 really was to somehow someway reach a goal of
7 being inclusive of students who would be
8 better served taking assessment such as
9 competency based assessments. I know you
10 don't want to hear any more about it. I am
11 answering his question. That's the thought
12 process behind it. Even to be more to give
13 another example I am just thinking about
14 newcomers specifically that come in the 11th
15 grade and or that may even beginning at the
16 beginning of their 12th grade year how do you
17 make sure that this narrow definition is
18 inclusive of students I won't say 12th grade
19 because then someone is going to say they
20 have a year based upon the language and so I
21 will stay tenth grade. How do you make sure

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we are including all students and giving them
the opportunity to take certain assessments
that will capture their thinking, their
mastery level. I don't have the answers
operationally. My lens isn't there. My lens
is at the school level.

Ms. Podziba: I apologize that the
goal of this was to get to inclusion of
competency based testing, so perhaps should
we withdraw this proposal if it doesn't do
that and then I think you are asking people
if there's a way to write it such that
competency based testing is allowable. Ron
raised the issue that it's not there or not
ready for prime time yet, but Lara raised the
point is there a way to write it so when they
are available in that way they would become
possibility?

Ms. James: Yes, I would agree with
Lara's statement maybe just adding to

Thomas's recommendation of romanette two
1. words such as competency-based assessments if
2. we go back to that. If it is accepted.
3. Ms. Podziba: I wonder Patrick if
4. it's getting complicated and can we give it
5. back to the Department, and can we have the
6. Department take a crack at putting these --
7. Mr. Rooney: I cannot promise
8. pristine or clearness but we will take it
9. back (laughter).
10. Ms. Podziba: Great. Lara, I am
11. aware that we do the definition before we do
12. the rest of the paper. I hope it's okay to
13. go back to the rest of the paper now that we
14. have a sense of what the definition might
15. say? I think we are at page three any other
16. items to discuss on 200.3 A one or two? I am
17. not including romanette one at the very
18. bottom of the page.
19. Ms. Ricker: Thank you I just am
20. really concerned about the one assessment
21. chosen for all high school student ins an
LEA. For a couple different reasons, so when
you use St. Paul as my example. I need to
understand this. There's six suburbs around
St. Paul that all have one high School.
Theoretically the state of Minnesota could
approve all six of those different LEA's to
have six different tests because they are
independent school districts. St. Paul,
which has six comprehensive high school in
one district, must choose the same test for
all six high schools.
That's correct.
Ms. Ricker: Just because of
boundaries of a school district students will
be taking the same test of each other when
sometimes each just across the street they
could get into another school district and
take a different test at a high school that
might be more relevant to what their future
plans are and things? And so our earlier
discussion around the 95% had been the more
relevant you make your assessment system the
less attractive you are going to make opting
out and since we have seen a considerable
number of opt outs in the country at the high
school level I think the more relevant we can
make the choice of however we are going to
define it or come to a definition we actually
will offer or perhaps not the perfect
relevancy for every child in a district but
the highest level of relevancy possible. So
I am struggling to understand why St. Paul
because of the boundaries of its school
district would be held to one test and
therefore they are going to have to make up a
more generic decision than south St. Paul
which has decided to go like K-12 and wood
bury which has decided K-12 ID or still water
that's decided to go advanced placement and
other districts that already have a lot of
advantages.

Ms. Podziba: Patrick do you have a
1 comment or Delia?

2 Ms. Pompa: It's not just geographic location it really is a jurisdiction. It just happens that one school is an LEA and another school there's six LEA's. It doesn't have anything to do with gee I don't go If I in my mine. I think the second piece I react to. I understand you are coming from the standpoint of the student. I could come from the standpoint of the student on another side. How do you determine relevance? It seems to me that the assessment should be relevant for all kids because we are trying to prepare them all for the same thing which is high levels achievement. I worry when adults start saying that's not relevant because his future career is this or that? I get concern that is going down that road we are moving away from equity rather than toward it.

21 Why would we let any LEA make the
choice?

Ms. Pompa: Because the law says so.

To me this piece of the law should be the exception rather than the rule. In implementation especially since we are making it hard enough it probably will be the exception.

Okay.

Ms. Evangelista: Just for clarification I didn't know that the law actually said that it had to be that the LEA had to administer the same law does it?

Okay. And just I am wondering I mean can we have something in there that it's at the states decision or discretion to do that because it also just to add to Mary Cathryn you know we will also have a situation in New York and other large cities where charter schools within the district will have that option and kids who don't attend the charter schools won't. So again, I think you know I
1 can for see lots OF problems because of that.
2 Is there a way to include something that
3 states can decide? If it is a problem for
4 states than that's you know they can work
5 that out with their LEA's? Derrick?
6 Mr. Chau: I am going to piggyback.
7 We are talking about an exception in terms of
8 which districts we are talking about
9 exceptionally large districts. I am
10 wondering if we might make an exception or at
11 least an opportunity for states to make a
12 decision around that. I know that I think in
13 the last session I did propose the option for
14 districts to as a part of their proposal to
15 the LEA to state how a time line for how they
16 might implement in all their schools just to
17 give the larger districts an opportunity to
18 implement this in a more peace meal way to
19 ensure that all students will be taking the
20 assessment. You have to recognize that some
21 schools and some students right now are
probably better prepared than others to start taking some of these assessments. I think we just need to recognize that there's the difference between schools within a district. I am not saying I'm not advocating for there to be permission for a district to imperpetuity to allow for that to happen. As long as there's a plan for them to get to that point. There should be some leeway for that and if we need to have some sort of qualifiers in terms of the size of the district do you think that would be reasonable. I just do want to echo that what Mary Cathryn mentioned also.

Ms. Podziba: It sounds like there's a conceptual proposal. I didn't get language but conceptually that there be something added for certain size districts that have a plan with a time line. Patrick?

Mr. Rooney: I appreciate that the concerns that Lara and Derrick are raising, I
mean this is a district permission that's in
the law so I appreciate that there's going to
be border areas where few high schools could
be right next to one another but down the
street and different districts and they are
going to make different selections. I don't
think there's a way around that. I kind of
think that it seems okay because this is a
districts decision to do that. However, if a
district chooses to do this and this is an
option for districts to request this of their
states. It is not a requirement they have to
do this. This is a permission not a
requirement, and we feel strongly that it
should be district wide decision and once you
get away from that you run the risk that this
becomes one test for kids the less well off
schools with less resources and not out of
any intention but that just maybe the school
that is are more ready for it and the time
frame for some of the other schools to get

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I think that is why you know we feel strongly that district wide is the if districts wanted to do this
then it should be a district wide decision.
The other thing is we talked a little bit about this in session two. Right now when
states change assessments they change the assessments across the entire state all at once. In California you switch to smarter
balance last year it wasn't just all the schools in LA unified. It was every school
in California did it all at once. This is a permission for districts to do this. When
they are ready to do it across the district that this is an option for them. This is

something that they require states to do it

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1 seems in this permission they should do it
district wide. To me it doesn't seem like
it's a reasonable expectation. I realize
it's harder in LA unified than the small
districts outside St. Paul that Mary Cathryn
is referencing.

    Ms. Podziba: We have a lot of
discussion on this I haven't heard a
willingness to move on from that. I am going
to ask for new items of discussion.

    Mr. Hager: It would be little B
numeral two sublet one in the red line, if
I'm saying that right? The red line at the
top of page four and the cling of bottom of
page three. It's talking about this language
elsewhere. Whatever you come up with
elsewhere.

    Mr. Rooney: Our intent would be this
came out earlier in both discussions of five
ark and four A the same language appears

should be here for three we are working on a

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revised proposal that we will bring forward
tomorrow morning hopefully that addresses
everyone's concerns. It will make it clear I
think I am looking for that will apply in all
three places.

Ms. Podziba: I was just noticing the
definition on page five. Are there any other
new items on issue paper 3? I realize that
we have five the definition will come back.

Is there any dissent on anything in issue
paper three not including the definition?

Okay.

Mr. Chau: I kind of get the sense
that number two there were a couple of
comments from Lara and Mary Cathryn about
addressing the entire district.

Ms. Podziba: I do remember you said
you knew this was the way it was going to be
and were going to go along with it.

Mr. Chau: That's before other people
made comments. I am wondering if that's
something that we can approach and offer up
language? I appreciate Patrick's comment and
implementing an assessment all at once. It
came with several years of planning an
planning and implementation and billions of
dollars of professional development fund that
is came along with that. I hope that people
will appreciate that in a large district the
cost of implementing curriculum and aligned
with those assessments. It's still ongoing
an unfunded. That we have that it is a
serious issues for those smaller districts.
It isn't as much as an issue in a small
district when you have one high school and a
couple dozen teachers versus 120 high schools
in LA unified.
Ms. Podziba: Are you going to come
back with some language?
Mr. Chau: Yes.
Ms. Podziba: Can you run it by a
couple other people?
Mr. Chau: Sure.

Ms. Podziba: We are going to move to six. There are only a few items on this.

First of all should we also use the clean version?

Mr. Rooney: I would prefer you use the clean version. It's easier to read.

This issue paper the further clarify we tried to gray out anything that we have on issue papers this is a catch all we had questions left over from issue two that we promised to take back and think about. There's a couple of things I want to highlight here that we haven't talked about and that we left open from issue two or session two sorry.

Okay so I think the first one is page 3 line 36?

Mr. Rooney: Yes. In this actually as a cross-reference to end of 200.6 if you sort of read this if I can. On page 23 this is where we are going to go back and forth on
what's here on page three and four and what
appears on page 23 and the reason for doing
that is in the discussion in section two we
spent some time talking about the definitions
for the different groups which appear here on
page three and four will be defined status as
a child in foster care and on page 23 where
we, the current regulations included
information about status of homeward child
and migratory child. In session two we
consolidate in a consistent in the two places
how we talk about these groups. So keeping
in mind that there's these two places. On
page three and four if you start with Roman
numeral four on-line 26 actually sorry right
about that to Roman numeral three on-line 24
this is where we define it had different
subgroups that the state assessment system
needs to be providing data for because
elsewhere in the law state haves to report on
this data on state or district report cards.

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This section is just requiring that states make sure they can produce data from their assessment systems from all of these groups.

There's each ethnic group and then status as an English learner and we added the definition of where that comes from section 8101 of the ESSA of the definition of what it means. The next one is status as a migratory child and that is we are trying to cross-reference where those definitions really are to hope to make it simpler for states implementing this. Section 1309 -- part C where they talk about migratory children. Children with disabilities reference IDEA we talked about that a fair bit. Romanette six economically disadvantaged students we did not define. Romanette 7 on-line 33 stat of a homeless child section 725 of title 7 of -- homeless act. And we made that change thanks to Audrey who caught our switching the numbers last time and then romanette 8 where

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we had the status of the child in foster care. This has been changed slightly. We took this from existing U.S. Department of health and human services regulations for foster care and we clarified that when we were talking about where this came from and it comes from the Social Security Act, so title 4 E of the Social Security Act. And then romanette 9 on the top of page four on-line six. Status of a student of a parent who's a member of the armed forces. We spent a fair amount of time talking about this. This is where we are clarifying what's in the statute whether the statute talks about one on one D 5 we have change that had to 101 D one because that is actually a parent in the active duty in the armed forces not defined as active duty in the national reserves. And one second I will we actually included in the binders I think yes what those definitions are if it's helpful for the armed forces
ones, so if you go just after the issue paper
there's a supplemental material for this
issue paper which provide it is excerpts from
the U.S. code for what it means for different
duty status if you want to see what the
actual language is for 101 A four an 101 D 5
and what they mean.

Ms. Podziba: Is that a good place to
stop?

Mr. Rooney: I want to make sure you
see that reference an we spend a good time
about whether we should include D one active
duty in the arm forces versus D five which is
national guard duty which is not the citation
that's in the statute but we think D one is
the appropriate status. This is not about
actually reporting the information but this
is making sure that the assessment system has
the ability to support the data because
elsewhere the districts have to support this
information. This is making sure that states
1 can produce this data. I think it's a good
2 stopping point. I can talk about the cross
3 reference in 200.6 in a minute. I will give
4 people a chance to react to this or at least
5 read it. Is there any discussion of this
6 section essentially from the bottom of page
7 three to the unshaded area on page four?
8
9 Ms. Briggs: Can you repeat why you
10 switched from D one on the military piece
11 from D five to D one why you just didn't add
12 D one?
13
14 If you read the text on page four of
15 the proposed regulation, which comes from the
16 statute. It says status is a student of a
17 parent of armed forces an active duty. I
18 think that the plain reading of that if you
19 look at that supplemental materials D one
20 says the term active duty means full time
21 duty in the active military service of the
22 United States. Which we think is what the
23 language is saying. If you look at D five

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the term full time national guard duty means training or other duty other than inactive duty performed by a member of the Army national guard of the United States or the air national guard of the United States. I think we read the language about active duty in the armed forces to be consistent with D one and not consistent with D five. And again. We added D 1 and D five to the draft to the pros regulations back on page four of the regulations that I think I will be adding an additional components that I don't think what it's intended in the language that's included in the statute. It wouldn't require states to report that. It would require to demonstrate that they can report active duty and National Guard and the requirement of what they actually report is a different part of the law that we are not talking about with this negotiating session and that's a little confusing. Hopefully that clarified it.
Any other discussion of this item?

Mr. Evers: As I understand it national guard was not part of the congressional intent is that, are you getting me on that one here?

I'm not saying that. He's talking about armed forces on active duty. D five is not capture armed forces active duty.

Mr. Evers: I guess again to think of all the National Guard persons in this country that are presently fighting a war and we are not including them in this is disappointing. I'm not saying it's a Department issue it's probably more of a congressional issue.

Mr. Rooney: There's nothing that would stop a state from doing this and collecting and reporting that data and they want to what are the requirements for states to show we think active forces or armed forces active duty as D five would be both
1 capture that is point of cross reference.
2 Just to piggyback we have sometimes up to 3, 000 National Guard soldier that is are
3 deployed. I am thinking that the parents and
4 the children would be as much as someone who
5 is active duty. We are not considered a
6 military state but we do have up to 3, 000
7 families if he canned.
8 So is someone proposing to add D five
9 is that the proposal to add D five?
10 I would like to see it added.
11 Ms. Podziba: I would like to see D
12 five, comments on the proposal to add D five?
13
14 Ms. Jackson: I think that we already
15 proposed that. We asked that and we decided
16 that you couldn’t deliver that, correct?
17 We talked about it. We talked about
18 it and I don't know if we made a proposal and
19 discussed it. This would not require that
20 states report this information. This would
just create an expectation that state have
to demonstrate that their assessment has to
produce this data. They would not have to
report this data that's not what we are
negotiating that the reporting requirements
are very spelled out in a different part of
ESSA. This would say if this were in here
that states part of peer review would have to
demonstrate that this assessment can be
disaggregated and national guard active duty
and they have that code anything data system.
It wouldn't require them to include it in
there.

Ms. Rigling: What I wanted to do is
go back to the reporting requirement because
as you know the reason we included this in
the assessment regs is because you can't
fulfill the reporting requirement unless you
have the proper flags to be able to
disaggregate the information. In looking at
this section in the report card requirement
1 on this I think that it's pretty clear what
2 Congress wants to be reported. It says a
3 student with a parent who is a member of the
4 armed forces as defined in section 101 A four
5 and as you can see from what's include ed in
6 your binder 101 A four is a definition of
7 armed forces. Then it goes onto say on
8 active duty and then the parents that say as
9 defined in section 101 D five. 101 D five
10 again as you see is not a definition of
11 active duty it's a definition of full time
12 status in the National Guard. The definition
13 of active duty is actually in D one, so we
14 are just really following the words of the
15 reporting requirement. I think when you sort
16 of break it out in those two sections with
17 parenthesis as define ed in it's pretty clear
18 that just an error in the citation but what
19 they seem to really want to be included on
20 the report cards is active duty in the armed
21 forces.

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If the group wanted to add that I don't think we would have a problem with it. I think we were just using the only one notation that's the most relevant to match the language that's there.

Ms. Podziba: Just for the purposes I am hoping that we can finish six before the end of the day. I hope it's okay to go over by 15 minutes or so if we need to do that? The proposal is to add D five is there any dissent from doing so? Richard?

Mr. Pohlman: I just want to point out that I don't have the ability to dissent what's being proposed is in conflict with itself. It says such term does not include full time National Guard duty. Adding D five would clarify the term full time National Guard duty. I would not sure it would confer a new so that I guess I am there's a conflict in having both D one and D five statutorily that I am not sure that can be resolved.
That's only to support what Kay is saying which is this is a correction in a drafting error and then by adding D one an D five we may actually create additional confusion.

Ms. Podziba: Do you want to withdraw this proposal based on the discussion or should we move forward to get consensus on it?

Ms. Mack: I certainly think that this segment should be included but and if it conflicts could we get clarification as to whether this was an error in citation? We believe it was I would like to see it concluded.

Ms. Podziba: Is there a proposal on the table to add it, D five.

Ms. Jackson: I am not a Mr. Evers. (laughter) I say it in a good way and the workload you are putting in. I am wondering if it makes sense to require states to disaggregate data if they are not required to
1 report. I am hoping states will be able to
2 say this is what the original was the
3 committee thinks it's valuable to include but
4 not to require the states to do that work if
5 they are not going to follow through with
6 reporting since we can want require that.
7 Ms. Podziba: Rita, do you have
8 another issue?
9 Ms. Pin Ahrens: I want to go about
10 the status of child in the foster care. I
11 don't see it addressed here, which is how a
12 child or when a child is designated as foster
13 care. Is that at the time of assessment? Is
14 it if they are in foster care at any point
15 during the school year, and what about the
16 children who go in and out of foster care?
17 How are we addressing that? So I just want
18 to know if that's if that's addressed under
19 title four E of the Social Security Act,
20 which we don't have in front of us. Or how
21 it or how your resolving this issue of

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children who may go in and out of the system?

Ms. King: My preference is that we not speak to that in this regulation and that be reserved for the reporting requirement because there's going to be a question about individual state data systems and making sure that we are getting the right thing. I did we reached back out to our foster care advocates about this question specifically the -- we hold this and not add it to the delegation. It's the ability to aggregate an assessment. It's relevant to when you are reporting it maybe one time you know it maybe an October first count and every child in foster care it maybe any child in foster care for more than 24 hours or more than two weeks or more than six months or something. I think that's a conversation that happens in the context of the reporting requirements and the regulation that is govern that and that would be my personal preference would be to
leave it unaddressed here an certainly
dress it in the regulations governing the
111 H reporting requirements
Ms. Podziba: Does that work for you
Rita?
Ms. Pin Ahrens: Yes.
Ms. Podziba: Any other discussion on
the bottom of 3 through the top of page four?
Okay. Patrick, do you want to take us to the
next section?
Mr. Rooney: So the next things for
us to discuss is to page 23 which is where we
cross referenced the same groups of students
so in the last version that we brought during
session two there was at the bottom of this
was a regulation there was a definition of
migratory students and children, homeless
children that was spelled out in this section
of the regulation and is now proposed. I
think there was discussion from all of you
trying to make it consistent whether we just
discussed it. As a result we have remove it
had definitions from this page on page 23 and
they all then appear at the previous piece
that we just discussed. They just walked us
through here and we now include, continue to
have a discussion of these groups of students
but we now are going to put them together as
under a highly mobile student lead in to this
section I. The state must include it's
assessment system of highly mobile students
then we reference back to what we just talked
about where the definition really occur and
it's about all of these groups now again
included that status of migratory child and
homeless child and status of child in foster
care and students with participants of the
armed forces active duty.

Ms. Jackson: This is thumbs up for
that and my only thing is that actually above
and I am naming it because it's in gray and
we probably won't come back to it. Earlier
1 in paper 5A you sited section 6151 of the act
to clarify that. I want to make sure that's
also included in here.

        Mr. Rooney: We did make some
5 changes. That's a good catch. What you see
6 on the top of page 22 and 23 was what we
7 discussed. We made changes to this language
8 to delete the reference to Alaska native in a
9 couple places here in G and then we changed H
10 to reference the other title six of the ESSA.
11 We will make those changes in the full
12 package that we bring back so that you have a
13 version that sees all the language that we
14 are hopefully getting consensus on.
15        Ms. Podziba: Is there any other
16 discussion of page 23 line 10-17? okay.
17        Mr. Rooney: We have one other thing
18 on page 24-200.8 is about assessment reports.
19 We had not discussed this because we had not
20 proposed any language for the current
21 regulations. We shared it with you on
session one and two. You can see the
non-grayed out piece on-lines 13 and 14 where
we previously said that the reports had to be
provided and understandable uniform format.
We have now revise that had to then refer
back to 200.2 E which is the language we
talked about a little bit this morning about
how they make that information available to
parents an including in accessible format for
participants who have a disability. I am
making sure we are being consistent with
those reports in that information.

Ms. Podziba: Any questions on that?
Okay is there any dissent from achieving
attentive agreement on those section that is
we just discussed those unshaded sections in
issue paper six? Okay. All right. I don't
have anyone signed up for public comment is
there anyone in the audience who would like
to address the committee at this time? Okay.

So the next steps so tomorrow we will start

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with supplement not supplant. And then we will go back to assessment do you want to say a little bit about what the committee can expect to receive tomorrow?

Mr. Rooney: I am not sure. I appreciate you asking me that. I know my colleagues have been working furiously and there's many e-mails I am not apart of. To address a lot of questions I am trying to raise. Hopefully we will have proposal or language particular around the areas we had agreement on concept but not necessarily the language worked up we will have revised language for us to talk about tomorrow when we come back with assessments.

Ms. Podziba: We will focus on in assessments is 4 A we have got four sections, two are clarifications an one is that nationally recognized assessment standards and then E one and two which is the definition and then on four we have got four
paragraph four romanette one and romanette two both A and B and those pieces of issue three that we just discussed. I have them as A 2 and romanette one.

I think it's just A two.

Ms. Podziba: A 2 and the definition.

Okay and so that's what we will focus on onto tomorrow. We will have to move pretty quickly to get through everything. We covered everything we wanted to cover today.

I think we're in good shape to cover our work tomorrow?

Ms. King: The expectation is that we are bringing to the group tomorrow those of us want to include the disproportionally precondition for waiver alternative language for that and then also alternative language for romanette three in the definition of cognitive disabilities. Is there anything else that you know of that I think that was it right?
1 Mr. Rooney: I think that's right.
2 Thanks.
3 Mr. Rooney: Tomorrow we are not in
4 this room.
5 It was easier to get in here.
6 I enjoy the nice open space.
7 We will be back in the auditorium in
8 the main building tomorrow. You can leave
9 your nametags and your name whatever these
10 are called the tents thank you. We will
11 collect those. You should take your binders
12 and any belongings you have. If you can
13 throw away your trash. Thank you for today.
14 We are looking forward to one last session
15 tomorrow.
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