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BUREAU OF INDIAN EDUCATION  
CONSULTATION WITH ELIGIBLE ENTITIES  
ON JULY 16, 2019 AT 8:09 A.M.  
IN TAHLEQUAH, OKLAHOMA

APPEARANCES

Mr. Mark Cruz

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REPORTED BY: Shannon S. Harwood, CSR

(Appearances continued on the next page.)

1 (Appearances continued.)

2

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1 PROCEEDINGS

2 July 16, 2019

3 MR. CRUZ: All right. Good morning everybody.  
4 We're going to go ahead and get started, so thank you  
5 for your patience. I'll go ahead and get started.

6 My name is Mark Cruz. I serve as the Deputy  
7 Assistant Secretary For Policy and Economic Development  
8 at the U.S. Department of Interior. I am here on behalf  
9 of Secretary Bernhardt and Assistant Secretary Tara  
10 Sweeney.

11 Today is our first tribal consultation on the  
12 new Johnson O'Malley regulation. As many of you know,  
13 at the end of last year, Congress re-authorized the  
14 Johnson O'Malley Program. And so part of that  
15 re-authorization was the obligation for the Department  
16 to go out into Indian country and head up tribal  
17 consultation around a couple of different questions.

18 And so today, we have staff from the Bureau of  
19 Indian Education that will be going through their  
20 presentation on our proposed regulation and they will  
21 complete that presentation and then we will turn it over  
22 to any tribal leaders that are in the room.

23 We'll acknowledge them first, and if there  
24 aren't any tribal leaders in the room, we will move on  
25 to stakeholders and other interested parties within the

1 public. And so the only thing I ask is that when we  
2 bring the mike around, that you introduce yourself,  
3 starting with your name and your affiliation and the  
4 organization you're here representing.

5 This is a formal tribal consultation, so I ask  
6 that if you have not already done so, please sign in in  
7 the back. We would like to make sure that everyone who  
8 is here is properly documented as being here. And,  
9 second, since this is a formal tribal consultation, we  
10 do have a court reporter here, so everything said here  
11 is a part of the official record, and so that will be  
12 published in the coming weeks as we continue to go down  
13 this path of finalizing this rule, and so all of your  
14 comments are appreciated. Our staff will go through  
15 every single one of them and as they go through that,  
16 they will send that to the assistant secretary.

17 But before we get into the presentation, I  
18 would like to introduce my colleagues from the U.S.  
19 Department of Interior, so I'll start with my right.

20 MS. RIEL: Hi. My name is Brenda Riel. I'm  
21 with the Bureau of Indian Affairs, Solicitor's Office.

22 MR. BOWERS: Hey, everyone. Clint Bowers,  
23 BIE, Bureau of Indian Education, Chief of Staff.

24 MS. LUSKY: Hi. Good morning. Maureen Lusky,  
25 Bureau of Indian Education, Program Manager for the

1 Office of Sovereignty in Indian Education.

2 MS. BARNETT: Good morning. My name is Angela  
3 Barnett. I'm a program specialist for JOM. My office  
4 is located in Oklahoma City area education office.

5 MR. CRUZ: Okay. So at this time, what we'll  
6 do is we'll begin the presentation where there will be  
7 an overview. Also, for your information, there are  
8 printouts in the back of the room that include the track  
9 rule as well as the presentation and a few other  
10 printouts. So if you would like to follow along that  
11 way, please feel free to do that, so we'll go ahead and  
12 begin.

13 MS. LUSKY: (Inaudible) but we'll go ahead and  
14 use the handouts that were provided to you and we're  
15 starting off here with the agenda. And we have welcome  
16 that Mr. Cruz just provided for us. We're going to  
17 discuss the JOM report, which you all know will be a  
18 review of that. Talk a little bit about the JOM  
19 Modernization Act, what the requirements are, and we'll  
20 go into the first topic of looking at the definition of  
21 eligible Indian student; and the second topic is the  
22 funding part of that; the third topic will be the  
23 proposed goal, which is other reconciliation and  
24 modernization, and some other information we'll provide,  
25 and at the end, we'll ask for comments to the

1 recommendation.

2 I'll keep going. Just a brief history of the  
3 authority. We wrote here that in 1934 Congress passed  
4 the Johnson O'Malley act, and I won't read through the  
5 whole thing, but as you know, the purpose is to provide  
6 for the educational needs of students. It discussed  
7 who -- who can enter into contracts; tribal  
8 organizations, tribes, who cannot -- also who cannot  
9 enter into the contracts is also spelled out in the 25  
10 U.S.C., the numbers there, 5342.

11 And a little bit of a timeline. In 1955, BIA  
12 established regulations. In '75, BIA updated the  
13 regulations, which are now 25 C.F.R. Part 273. And then  
14 recently, 2018, we have the Modernization Act and that  
15 became public law 115-404. So now we're at the point  
16 where we're proposing changes to 25 C.F.R. to implement  
17 the Johnson O'Malley act, and we're really excited to  
18 get your feedback on the proposed changes.

19 So here in the Modernization Act, we know that  
20 Congress directed the interior to make an initial  
21 determination of the number of eligible Indian students  
22 served or potentially served by each eligible entity.  
23 There will be a preliminary report that is published and  
24 we had an earlier consultation, a webinar that went over  
25 this topic of various resources and those data sources

1 will be discussed in the preliminary report that will be  
2 published soon, taking comments for eligible entities on  
3 the preliminary report and then issuing a final report,  
4 which will be due at the end of this year, December  
5 2019.

6           The Modernization Act also requires that in  
7 subsequent years, so after this initial baseline of  
8 orientation years, that in subsequent years, there will  
9 be a determination of the number of eligible Indian  
10 students, which is the Indian student account and that  
11 will be required by contracting parties, the requirement  
12 to report.

13           Another requirement is to prepare an annual  
14 report, and that annual report will include the number  
15 of eligible Indian students, the student count, as well  
16 as recommendations on funding levels and assessments of  
17 the contracts. So this -- what we're doing is one piece  
18 that will inform that final annual report.

19           Congress also directed the interior to  
20 complete a rule by December 31st of this year, and that  
21 will include determining how the regulatory definition  
22 of eligible Indian student may be revised to clarify  
23 eligibility requirements. It will also determine, as  
24 necessary, how the funding formula may be clarified and  
25 then otherwise reconcile and modernize the role.

1           So we move into our first topic, Indian  
2 student eligibility. So currently in 273.12, the  
3 student must be one-fourth or more to be Indian blood  
4 and recognized by the secretary as being eligible for  
5 bureau services. So this definition was deemed too  
6 restrictive with the "and" and based on a District Court  
7 decision, DOI issued a memo that states instead of the  
8 "and," it would be replaced with the word "or."

9           So the eligibility requirement will be a  
10 member of or at least one-fourth degree Indian blood  
11 descendant of, a member of an Indian tribe, and then  
12 also have the other criteria we cited, reside on or near  
13 an Indian reservation.

14           There was a previous consultation held in 2015  
15 and it was feedback on the eligibility requirement. BIE  
16 proposed a rule that would have required membership in a  
17 federally recognized tribe, deleting eligibility for  
18 those who are not members but have one-fourth or more  
19 degree of Indian blood. So based on comments from these  
20 various consultations in March of 2018, the proposed  
21 rule was to wait and see what the Modernization Act  
22 brought about with the required consultations and get  
23 more feedback on that, but then establish eligibility  
24 for any student who is a member of a tribe or one-fourth  
25 degree Indian blood or more.



1           So the current proposal remains the same as  
2 the memo in terms of a member, eligibility as a member,  
3 a student who is a member of a federally recognized  
4 tribe or at least one-fourth degree Indian blood  
5 descendant of a member of a federally recognized tribe.

6           So in this slide, you see exact wording of  
7 273.112 that an Indian student is eligible for benefits  
8 to be served by the JOM contract if the student is; age  
9 three through grade 12; if they're not enrolled in a  
10 bureau or sectarian operated school; if they're at least  
11 one-fourth degree Indian blood descendant of a member of  
12 a federally recognized tribe; or a member of a federally  
13 recognized tribe.

14           I'm just going to pause here. We're going to  
15 move on to the next topic, but so that is the proposed  
16 eligibility, and so at the end, we'll be asking you for  
17 comments. For the next topic, we're going to look at  
18 the funding formula and Ms. Angela Barnett -- Ms. Angela  
19 Barnett will be discussing that topic.

20           MS. BARNETT: Okay. On the funding formula,  
21 currently the current rule's formulated is 25 percent  
22 weight factor times the number of eligible Indian  
23 students. However, if you go down and you take a look  
24 at how that was calculated and you look at the numbers,  
25 it says 50,000 (sic) eligible students, then funding,

1 take 3,250 times the 500 eligible students equals one  
2 million 625.

3           However, if you turn over to the next page, if  
4 we go to the next slide, this is Education Amendments of  
5 1978, P.L. 95-561, required the Secretary of Interior to  
6 develop alternative method for the distribution of JOM  
7 funds, which was published in the Federal Register in  
8 1979.

9           Then 10 years later, a new formula based upon  
10 a 1.30 weight factor would be phased in and that would  
11 be phased over a three-year period so that they -- it  
12 wouldn't impact the programs too much as a -- as they  
13 went to the 1.3 factor. And if you continue on in  
14 funding formula, it says, determine as necessary how the  
15 funding formula may be clarified and revised to ensure  
16 full participation of contracting parties and provide  
17 clarity on the funding process.

18           The BIE was directed to use weight factor  
19 times the number of eligible Indian students. So the  
20 state average over the national average, and if that  
21 came out to be 1.3, then they use that 1.3 factor to  
22 factor in what the funding ratio will be. If it was  
23 lower than 1.3, then they use the 1.3 as a calculating  
24 weight factor. However, if the factor happened to be  
25 higher than 1.3, then the 1.3 would be used. And this

1 is currently what's being used right now as far as the  
2 calculation of the distribution.

3 And then -- and if you go to -- go back to the  
4 next one. And that's what I was talking about. This  
5 slide right here, when they did the weight factor, you  
6 see the .88 will -- so the weight factor will be 1.3  
7 because it's lower than 1.3. So that's how the  
8 calculation was being done and calculated and currently  
9 being done.

10 And then we go to the next slide. What we did  
11 was we took the different weight factors, the first one  
12 is 1.3, and we did the calculation by 400, 500 and 600,  
13 and you can see the difference in the amounts that would  
14 be awarded to a program or a tribe that has that  
15 particular number. And then you go on to 1.4 with the  
16 same numbers and then a weight factor of 1.5 so that we  
17 can -- you can see the difference in how it's in the  
18 amounts.

19 And then on this slide, it's the "Hold  
20 Harmless" clause or provision. And this started the  
21 prior year to the modernization when it came into  
22 signed, so this started in FY 2017, and it will be for  
23 four years. So it's saying that for four years, any  
24 existing contracting party may not receive an amount  
25 less than they received in FY 2017, unless they fail to

1 complete an annual report; violates the contract; or the  
2 number of eligible Indian students on an annual report  
3 decreases below the number served in FY 2017.

4           And it says note: The contractor may receive  
5 a total amount less than what it received in FY 2017,  
6 but may not receive an amount per eligible Indian  
7 student less than the per eligible Indian student amount  
8 received in FY 2017. Then after four years, says no  
9 contractor may receive less than a 10 percent decrease  
10 from the amount received in the prior year, so this is  
11 the "Hold Harmless" clause.

12           MS. LUSKY: The third topic is the other  
13 reconciliation and modernization, which also includes  
14 the proposed rule. One of the main changes was just  
15 modernizing the language, so changing the format. If  
16 you recall, in a previous slide, the last change were in  
17 1975 and so one of the updated formats is to have a  
18 question and an answer format. And in your packet, if  
19 you want to look at the last -- towards the end of the  
20 packet, there's proposed rule and there's some degree of  
21 changes.

22           So we won't talk about every single change.  
23 We're going to highlight a few of the major changes and  
24 then you can see all of the changes that are being  
25 proposed, which is in the packet, and you'll also see

1 that new format of the question and answer.

2 Another update with the proposed rule is to  
3 change terminology, so we deleted, revised, added  
4 definitions. BIE recently went through a  
5 reorganization, and so a lot of the titles that were in  
6 existence several years ago we no longer have some of  
7 those titles and some of those positions, so we've  
8 updated BIE titles.

9 Some of the revisions that were made  
10 (Inaudible) several. We deleted the requirement to file  
11 committee procedures with BIE as soon as practicable.  
12 These are just items we went through and we know that  
13 the practice is no longer there.

14 Also in 273.131, deleted the February 1st  
15 deadline to request to contract, and there's various  
16 reasons why we made changes in, because common practice  
17 now for different types of contracts, February 1st isn't  
18 always the deadline for the various contracts.

19 Revised the -- revised to reflect current  
20 process of the regional review. Again, trying to align  
21 with what is happening now. Point 134, extending the  
22 timeline for approval of contract decision from 60 days  
23 to 90 days. And so some of the new definitions we've  
24 added academic year, approving official, awarding  
25 official, calendar year, advise Indian advisory board,

1 etcetera. There's a section that you can look at that  
2 just talks about definitions.

3 Other new sections, .104 determine interest in  
4 extending geographic coverage and enhancing JOM  
5 participation. That was part of the Modernization Act,  
6 so again, trying to align everything with the proposed  
7 rule. Point 120 through 121, approval of education plan  
8 by BIE. In the past, when BIE was part of the BIA and  
9 so we're trying to align what BIA does from what BIE  
10 does.

11 Point 154 through 155, when reports are due  
12 and consequences for not submitting. So we know the  
13 Modernization Act, there is a requirement for reporting.  
14 Also, technical assistance is available for complying  
15 with reporting requirements. Other additions, renewal  
16 of JOM contracts, decision within 90 days. Point 194,  
17 authority of Indian Education Committee, this is  
18 regarding canceling contracts and then adding more to  
19 dispute resolution and appeals. Again, that's all  
20 listed through the meeting in the proposed ruled  
21 handout. Those are a few items that we've highlighted.

22 We have provided some guiding questions.  
23 These are just topics of conversation. We'll put those  
24 up again. At the very end, I think I'm skipping ahead,  
25 but I'll go to the other slide. At the end, we have a

1 website here for you to go to to obtain additional  
2 information. We've been updating the BIE JOM website,  
3 so we've included in the handouts that we have here  
4 today on the BIE JOB website as some other schedules,  
5 some historical documents that we've archived there as  
6 well.

7           You can also go to this longer link that's  
8 provided to you at [bie.gov](http://bie.gov), regulations, and then look  
9 for Johnson O'Malley. You can also provide written  
10 comments, and here's the email that's available that's  
11 also in your handout, [consultation@bia.gov](mailto:consultation@bia.gov), and I  
12 believe we have the date for -- August 26th is the date  
13 for receiving comments.

14           Let me go back up to guiding questions. And  
15 we're going to open it up to you-all. We have a  
16 microphone and we also have a court reporter here. We  
17 would like for you to go to the podium. There's a  
18 microphone there and if you could state your name and  
19 what organization you're representing. This is an  
20 opportunity for you-all to provide recommendations to  
21 what has been proposed, provide your suggestions. It's  
22 working.

23           MR. VANCE: Good morning. Mark Vance,  
24 Cherokee Nation. Page 7 on your funding formula  
25 continued, I had a question on the weight. How do

1 you -- you've got 1.3, 1.4 and 1.5. How do we get to  
2 the 1.5? I see the numbers of available students  
3 (inaudible). The recommendation on that, can you kind  
4 of clarify that, please? Thanks.

5 MS. LUSKY: Just getting back to the slide.  
6 Did you say -- page 7, slide 14. And you said how you  
7 get to 1.5?

8 MR. VANCE: Yes, please.

9 MS. LUSKY: So these were examples of a weight  
10 factor if you make a slight change. So right now, we're  
11 required to use 1.3. We were showing, because we're  
12 trying to get suggestions on weight revisions or  
13 clarifying that if the weight factor will change  
14 slightly, we made an example of 1.4 and we gave an  
15 example of 1.5.

16 MR. VANCE: So it could go up to 1.4 or 1.5?

17 MS. LUSKY: So these are just examples. We're  
18 not -- the weight factor, the 1.3, there is a slide that  
19 we had right here, so we were -- we were required to use  
20 the weight factor of the 1.3. This was in 1988 and that  
21 1.3 weight factor was phased in and we were directed by  
22 the Appropriations Act and by recommendation by the  
23 Assistant Secretary of Indian affairs to make  
24 appropriations.

25 So the 1.3 weight factor came about in 1988,



1 and so now as we're looking at it now in 2019, we were  
2 demonstrating what -- how the weight factor might change  
3 funding by providing an example of a 1.4, an example of  
4 a 1.5, but we're not currently using that.

5 MR. BOWERS: And just for some additional  
6 context, you can look at it in the '88 (Inaudible)  
7 formula, there was no consensus created around what the  
8 extra formula was and so we provided (Inaudible) to the  
9 last contract out there. So I think there was issues  
10 with trying to determine -- trying to clarify just a  
11 fair practice formula, but again, the high costs of some  
12 states, determine education dollars (Inaudible).

13 So what they tried to do was tried to run a  
14 fair balance for that formula and they resolved it to be  
15 1.3 for that weight factor. And Angela and Maureen can  
16 go into more in-depth on how the formula was derived and  
17 everything, but I think the biggest issue they were  
18 trying to find a fair use of that process and it was --  
19 at the time, we had to come up with 51 percent majority  
20 approval and never got it (Inaudible) everything across  
21 the country. So what they ended up doing was trying to  
22 correct that kind of middle ground and fund that  
23 disparity there.

24 MR. MOSELY: Clint, Maureen, thank you for  
25 that explanation. Palmer Mosely, Chickasaw Nation. The

1 question I have, and I think you answered it to some  
2 degree, we're dealing with this 1.3 weight factor from  
3 1989, which is 30 years old. We now have a new law in  
4 place. Hopefully the House that's in DC will have more  
5 money coming into JOM based upon the new student  
6 population count.

7 Are we -- let me ask you this question. Can  
8 BIE answer today, are we going to go back and look at  
9 this 1.3 weight factor since it is 30 years old or are  
10 we going to come back and be able to get that and say if  
11 there's a possibility that we need to increase this?  
12 Because the way I read your handout, this is a -- also a  
13 recommendation by the Assistant Secretary of the Indian  
14 Affairs to the committee on appropriations, and if I  
15 have to go back to my tribe and tell the tribal leaders  
16 that we strongly advocate for a larger weight factor,  
17 that's what I'll need to do, but what I'm asking is, is  
18 this possibility of having a higher weight factor also  
19 sitting on the desk of ASIA to make that recommendation  
20 to the committee as well since we're now 30 years into  
21 this particular factor?

22 MR. BOWERS: Yeah, I really think this is the  
23 opportunity for that to tell us, because the  
24 recommendation is going to come from the assistant  
25 secretary and based upon tribal followings. So if we

1 see where there's discrepancies in the funding that's  
2 coming to your students or (Inaudible) this is your  
3 opportunity to tell us we need a more balanced or more  
4 fair weight factor in terms of determining how that cost  
5 is provided to our students.

6 We know that appropriations have increased  
7 since the program -- since the program from what we had  
8 in 1995, so I think at that time, it was 24 million  
9 appropriated for JOM, maybe 25, and now it's around 14  
10 million annually based upon that revised. So, you know,  
11 take that into account. I mean, ultimately, a lot of  
12 the reasoning behind this legislation was to show the  
13 increased need for students provided by the (Inaudible)  
14 and there's a wide birth of students that may be  
15 potentially served, and so whether you want that  
16 information provided toward the input, but I think the  
17 term itself maybe should benefit your tribe a certain  
18 way, another tribe another way provides that context, we  
19 can look at it, provide a fair balanced approach to  
20 looking at how we move forward with our recommendations  
21 to the assistant secretary from there.

22 MR. MOSELY: All right, Clint. Appreciate it.

23 MS. LUSKY: I would just also add, if you have  
24 a recommendation to increase that you would send that in  
25 writing and also provide a weight factor that you think

1 would be equitable and fair.

2 MR. MOSELY: The higher the better. Just one  
3 more -- again, Palmer Mosely with Chickasaw Nation, and  
4 I hope you understand this. The Johnson O'Malley  
5 program here in Oklahoma is vitally important. I have  
6 two children that participate in the JOM program and  
7 that's the reason why I'm very sincere about trying to  
8 get this right while we have that opportunity. I think  
9 that opportunity is now.

10 All of you know the history behind JOM and  
11 this -- this has been a long time coming and having  
12 worked for the federal government, for BIE for a number  
13 of years, I've been on the other side of that table with  
14 you many years ago. I can tell you from my experience  
15 that sometimes when Congress puts something out there to  
16 law, and an experience I had was the Tribal Law  
17 Enforcement Order Act. It was sprung on us through the  
18 BIA and I remember sitting at the cafeteria building for  
19 hours at a time, staying there until 9:00 at night  
20 trying to go through that law and trying to determine  
21 exactly what BIA law enforcement was going to do on our  
22 side to fulfill that law.

23 And I can tell you that there was some things  
24 in there that we simply didn't do. We had no input, on  
25 BIA side, back in 2009 and 2010. And even today, in

1 2019, even though I work for the tribe, I can tell you  
2 that the BIA still hasn't done some of the things they  
3 have -- are supposed to do. And I just don't want that  
4 situation to happen to this particular situation when we  
5 come back maybe eight or nine years later down the road  
6 and we still haven't accomplished what we need to  
7 accomplish.

8 But, again, I understand, you know, there's  
9 some give and take there, but I just implore the Bureau  
10 of Indian Education to do what they can to fulfill  
11 requirements of this new law, and I can tell you on the  
12 tribal side, that we will do what we can to support  
13 that, because again, the JOM program is very important  
14 to the tribes here in Oklahoma and we want to try to do  
15 what is right when we have that opportunity, which is  
16 now. So, again, thank you.

17 MR. BOWERS: Well, you know (Inaudible)  
18 education and we understand that, and I think when we're  
19 looking at the bill itself and the complex nature of the  
20 language, because it is a complex bill. It's a complex  
21 law, and a lot of that is because the law initially was  
22 pretty vague in terms of contracting between tribes.  
23 You know, it left it open in terms of how we best  
24 contract tribes providing education, but when you look  
25 at the law itself, that's why we have the lawyers like

1 Brenda to help us.

2           So we're trying to look at is look at the  
3 intent of Congress. I think ultimately what we're  
4 trying to do is improve the program so we can benefit  
5 our students in schools, and looking at eligibility  
6 criteria, the funding formula earlier, the standard that  
7 everybody work towards so you don't have one-offs. You  
8 don't have individual contracts doing different things  
9 where everybody has agreements in this. Not only are we  
10 being more accountable in terms of the bureau side in  
11 terms of funding, but we're also making sure the  
12 contract is more manageable as well.

13           So I think that's what we're looking at the  
14 legislation of. We're trying to get to the intent of  
15 Congress, so some of things are intricate and complex.  
16 At the end of the day, they're just trying to make sure  
17 the program benefits students and that's why these  
18 conversations are so vitally important, because we need  
19 to hear from you in terms of what you think is best for  
20 the program and we can take that back and sit in that  
21 room until 9 p.m. and hash out the details.

22           MR. MOSELY: And, Clint, and I appreciate  
23 that, but there's also something that's called  
24 interpretation of what is the law, and that's where I  
25 think that the tribes and BIE need to make sure that we

1 have that back and forth communication, because what you  
2 interpret something one way, the tribe may interpret  
3 something a different way. And I think that's probably  
4 something that -- and, again, I'm glad we're here today,  
5 but that's a very important thing we need to look at as  
6 well is the interpretation of what is written in black  
7 and white.

8 MR. BOWERS: We're in agreement, and the  
9 secretary and Mr. Cruz, we're -- that's why we're here  
10 (Inaudible) because we want to hear your interpretation  
11 of what you think that law should be and take that back  
12 and find out where the commonalities are and what it's  
13 for.

14 MR. VANCE: Mark Vance, Cherokee Nation. One  
15 more question. The count, where are we on the count?  
16 Have you heard anything else about the count that we can  
17 understand? Thank you.

18 MR. BOWERS: So we'll give it over to Angela  
19 and Maureen, because they are working on a preliminary  
20 report, but that was based on the Modernization Act,  
21 just trying to get an understanding of where we are in  
22 the scope and based on the consultation and if the  
23 eligible requirements are formed then the count will be  
24 based on those eligibility requirements after the  
25 consultation.

1 MS. BARNETT: As far as the count, I'm still  
2 collecting those counts, because I know that when the  
3 form was sent out, I know it was in May and some of the  
4 tribes and some of the schools weren't able to submit  
5 those. If you send them out to the tribes, there were  
6 some tribes I didn't get a consolidated count. Most of  
7 the tribes here in Oklahoma, they sent back consolidated  
8 and all of their schools that they have within their  
9 program, which was great. Enjoy that, and it helped me  
10 out a lot.

11 But then we have some tribes that are out  
12 there that they sent them out to the schools for them to  
13 send in their counts, plus we have some public schools  
14 here in Oklahoma that may have already been gone for the  
15 summer and may not be aware that the form is being sent  
16 out, so we are still collecting those. So once -- once  
17 they come back from summer break and then they start  
18 sending those in, then that will be -- we have set a  
19 deadline date on them we're going to stop collecting  
20 those for, at least for this date/time that you have all  
21 sent yours in. I think the majority that are in here  
22 have sent all of yours in, but there are still some that  
23 still needs to get theirs sent in.

24 So as far as collecting count, you know, we'll  
25 probably be maybe around 50 percent, maybe a little less



1 than 50 percent, so still have a ways to go, but we're  
2 going to start reaching out to them to get those sent in  
3 here pretty quick.

4 MS. LUSKY: I'd just like to add that this  
5 first year after the law was passed, the orientation  
6 phase, the student count is being looked at along with  
7 other data sources that are identified in the law, which  
8 is also in your handout, and those include the census  
9 data, department of education data, as well as current  
10 contractor data.

11 So we have been looking at all three of those  
12 to help inform the final report that's due at the end of  
13 the year. So just reminding everyone that this student  
14 count this year, because of the tight turnaround for the  
15 preliminary report, we didn't have a long period to  
16 collect it. So we didn't have a high response rate, but  
17 we will continue to collect to inform that final report  
18 that is due in December. ,So just wanted to add that.

19 MR. BOWERS: Real quick, and that's why I have  
20 Angela and that's the position we haven't had until the  
21 reorganization took place, because we didn't have that  
22 one central point of contact to really help with  
23 information. So please utilize her as your point of  
24 contacting for getting information around this if you  
25 need. We're also always available at the office. Don't

1 hesitate to reach out to me or Tony or anybody else.

2 We'll try to get you an answer.

3           You know, the count has not been easy. The  
4 last registration (Inaudible) was several and they were  
5 never able to publish information from contractors  
6 (Inaudible). You know, if you're a contractor and your  
7 student count goes down, you really want to report that  
8 number and show less (Inaudible). So I don't know if  
9 that was a reason. I know we've always had -- there's  
10 always issues (Inaudible) from the bureau's side to make  
11 sure we're doing outreach, technical assistance and  
12 getting out to tribal level. So you know, we're partly  
13 to blame as well.

14           The big thing here is moving forward, we have  
15 a point of contact. Please utilize her and utilize us  
16 and we'll try to get (Inaudible) as soon as possible.

17           MS. LUSKY: Also -- sorry, one more quick  
18 suggestion here. If you do have a recommendation on the  
19 student count, please submit that as well, because we're  
20 in a need to identify a date, a consistent date for a  
21 deadline that all contractors will need to use so we can  
22 start submitting that student count as a whole and  
23 consistently. So if you have recommendations on a  
24 deadline date, whether that's October, whether it's  
25 January, please send in that suggestion.

1           And if you have any suggestions on a format,  
2 we did -- we do have a form that's on the website that  
3 we've been using that is going to be approved, but we  
4 can always make it better. So if you have suggestions  
5 on, for example, maybe doing some kind of online data  
6 collection, we're open to all of your suggestions.

7           MR. VANCE: Mark Vance, Cherokee Nation. I  
8 think you said change of eligible students in the count.  
9 Can you explain that?

10           MR. BOWERS: And I think -- sorry. Yeah, so  
11 we're back -- we're talking about the quarterly blood  
12 (Inaudible) for a federally recognized tribe. You know,  
13 I think it was in the late '80s, the department tried  
14 submitted where are you on blood quantum and member of a  
15 federally recognized tribe, which made it more  
16 restrictive, and then came down and moved forward with  
17 making it "or" so that was or, and that's what's been  
18 common practice since then.

19           I think when it goes to eligibility  
20 requirements, if there's ways that would better reflect  
21 population in the Indian tribe, letting us know if  
22 there's different eligibility criteria that you're  
23 looking at (Inaudible) should be eligible in the program  
24 where students, you know, due to age range and those  
25 different at some point. Let us know that information

1 and provide us that and we'll take it back and compile  
2 it.

3 MR. VANCE: We don't want it changed.

4 MR. CRUZ: Yeah, and I think the challenge  
5 you're going to see in numbers is that was a quarter and  
6 that was moved -- the "and" to "or," and as you guys  
7 know, the last time that was done in 1995, so since  
8 these contractors may or may not have changed their  
9 student eligibility in those five years in the length of  
10 that contract, and so I would anticipate a fresh look  
11 fresh look at that would have some old "ands" that now  
12 become "ors," which will be a precise number.

13 And then, as you guys know in Indian affairs,  
14 tribes have the power to determine who their members are  
15 and we all know in the last 30 years, a number of  
16 different tribes that have taken different approaches on  
17 who are enrolled tribal members and who are not. And so  
18 we look forward to working with tribes that may have had  
19 a quarter blood quantum that either (Inaudible) made it  
20 descendancy based. I anticipate you'll see some  
21 contractors move from -- move in that direction, so that  
22 would also change the student eligibility number.

23 MR. HADDOCK: Shane Haddock with Choctaw  
24 Nation. Has the suggestion been made to look at tribal  
25 membership department's information to gather that

1 student data from ages three through grade 12 or age 18?

2 MS. LUSKY: Yes, and we are looking into that.

3 That was brought up in our consultation session last  
4 month of what the data sources, and so we are going to  
5 look into seeing who can collect or collaborate with  
6 tribes to look at membership, membership information,  
7 membership numbers for that specific age range.

8 MR. BOWERS: And a lot of stuff was mentioned,  
9 so (Inaudible) three bureau -- specific bureau of  
10 national education statistics and also (Inaudible)  
11 department of education, but then it also stipulates  
12 that, you know, let's see -- yeah, secretary shall  
13 (Inaudible) identifiable tribal information. So that's  
14 in the law itself, so we're moving forward with that.

15 MR. HADDOCK: And just one more comment on  
16 that. I know that we've sent in our report to Angela as  
17 far as our service area for the Choctaw Nation, which we  
18 have about 80 different tribes represented within our  
19 10-and-a-half counties of JOM students, and that count  
20 was around 13,200 students, but when we pull our  
21 tribal -- tribal membership data and we ask information  
22 three to age 18, we ask for tribal members within and  
23 outside of the Choctaw Nation, then we ask for CDIB  
24 holders, if they're not members yet, but they're  
25 eligible for membership.

1           That number nationwide grows to 94,651, and to  
2           us, that seems like more of an accurate snapshot of how  
3           many eligible JOM students we're looking at from a  
4           national, you know, the entire United States standpoint.  
5           So just we have those numbers and I would be more than  
6           happy to give those to you today after we're done, but  
7           thank you.

8           MR. CRUZ: I think the only thing I would add  
9           to that is we can't compel tribes to turn that  
10          information over, but the more that tribal governments  
11          to report that to us, we're better able to reconcile the  
12          numbers that we have come up with through the program  
13          site. So it's very, very important to the Assistant  
14          Secretary that we maintain that government-to-government  
15          relationship as the tribal members report that to us so  
16          we can reconcile the best possible number (Inaudible).

17          MR. BOWERS: And I would just add, in addition  
18          to your comments, you know, your comments today will be  
19          in the record, so we go back and compile the  
20          information, we have that.

21          MR. WELLS: (Inaudible) Angela, you know we've  
22          already submitted our number and we feel like -- we have  
23          20 schools that (Inaudible) JOM and we don't have any of  
24          those counts. So my question is, is there a deadline  
25          for submitting supplemental numbers? Because we have

1 the deadline to meet what you guys propose. What you  
2 asked for initially was for us to give you the number of  
3 students that we had contracted with. Okay. That was  
4 the instructions and that's the number we provided, but  
5 that did not include at least 20 public schools.

6 So my question is, can we submit supplemental  
7 numbers now and go back to those 20 schools, because  
8 basically we followed the directions of only listing  
9 those we had contracted with, did not include at least  
10 20 schools and about 70 preschools, so we know we have  
11 20 schools we did not get numbers from. So my question  
12 is, can we go back and work those schools and gather  
13 those numbers and submit those? And if so, what's the  
14 deadline for submitting those supplemental numbers?

15 MS. BARNETT: We don't have a deadline  
16 established for submitting supplemental numbers.  
17 However, I did have a tribe that did contact me and ask  
18 about that same question and they wanted to get that  
19 information and submit that. What I did was I started  
20 to gather a tab for potentials and I listed under that  
21 particular tribe and their count that counted.

22 MR. BOWERS: And, also, in addition to  
23 questions, if you want to review any of the slides  
24 again, you can tell us that as well. We have plenty of  
25 time if you want to do that. There are other slides to

1 review as well.

2 MR. CRUZ: Okay, everybody. It is now 9:05  
3 and we are scheduled to be here until 10 a.m. Because  
4 this is a formal tribal consultation and we did pose the  
5 fact that we have two sessions today, this one will end  
6 and there is a second session that begins at 1. If  
7 there are no further questions at this session, what we  
8 will do is we'll adjourn until 1 p.m. and all of us will  
9 be back at that point to take any additional questions  
10 or comments for the record. And so if there aren't any  
11 further questions or comments in this session, we will  
12 go ahead and recess until 1 p.m. and we'll come back --  
13 oh, it looks like --

14 MS. HARJO: Good morning. My name is Lucyann  
15 Harjo from Norman Public Schools. I had a couple of  
16 schools in my area that asked if they could submit to a  
17 count. They don't have a Johnson O'Malley program and  
18 so they're not in Indian tribal jurisdiction, and are  
19 they able to still work through this process with you in  
20 submitting their Johnson O'Malley count?

21 MS. BARNETT: Whenever I asked that question  
22 as far as a tribe or a school that does not currently  
23 have a JOM program, what I tell them is that they can  
24 submit the count and I'll put it in just like I would a  
25 tribe and potentials.



1           So I do collect those and then if the  
2           opportunity does open up where we're able -- you know,  
3           we're able to take new applicants, then at that time,  
4           that's when we will contact them, because like I said, I  
5           do get that question and I do respond to them, but also  
6           I have to let them know that there's no additional  
7           funding at this time, that just because they submit a  
8           count, that does not automatically say that they're  
9           going to start receiving funds. So that's one of the  
10          things I have to be careful and be sure and let them  
11          know that.

12                 MR. BOWERS: I would just add in terms of  
13           funding issue, I know that's always a (Inaudible)  
14           everybody wants to fight for their own pod to keep their  
15           pod. I think that's why the law and there's (Inaudible)  
16           to make sure that there's eligible contractors in the  
17           program, that those contractors that are already  
18           existing mostly thereby diminished until there's an  
19           increase in appropriations and I think the (Inaudible)  
20           association and then tribes so look at the (Inaudible) I  
21           think they knew that you can't advocate for more funding  
22           from the program if you don't show an increased need.  
23           So I think, you know, the department reinforced they  
24           wanted legislation first at least to try to get a more  
25           accurate count of what is out there, students that are

1 out there needing services before they're actually  
2 trying to get more funding that support more programs  
3 and like that in their petitioning.

4 MR. CRUZ: Is there any further discussion,  
5 question or comments?

6 MR. MOSELY: Mr. Cruz, just one last question.  
7 Again, Palmer Mosely from Chickasaw Nation. And forgive  
8 my ignorance here, JOM funding will be here through the  
9 Bureau of Indian Education budget, correct? And this  
10 year, of course, that's been separated from the Bureau  
11 of Indian Affairs budget.

12 Say for (Inaudible) we know that there's two  
13 bills in Congress now for bench appropriations. Say,  
14 for example, that particular bill passes, passes the  
15 Senate, signed by the president, will JOM (Inaudible)  
16 appropriations (Inaudible) BIE, will that include JOM  
17 money as well if that bill is passed? And, again, I'm  
18 just asking the question because I don't know.

19 MR. BOWERS: Interior appropriations will  
20 raise funds each year (Inaudible) and that's different  
21 with the president's budget request based on our own,  
22 based on his, but I'm not sure. I need to go back and  
23 see what's going to be progressed. I don't know if it's  
24 going to be continuing resolution or it's going to be  
25 regular order, but regardless, if it's a new bill

1 (Inaudible) whatnot, it will either have (Inaudible) and  
2 if it's a continuing resolution, what it does is  
3 continues on existing funding obviously.

4 MR. MOSELY: And, again, I think I'm just  
5 (Inaudible) advance appropriation, if that is enacted,  
6 will that be part -- will JOM be part of that advanced  
7 appropriations from BIE, from what I understand?

8 MR. BOWERS: Yeah, Congress will appropriate  
9 those funds for the BIE.

10 MR. MOSELY: Thank you.

11 MR. CRUZ: Okay, folks. If there's no further  
12 discussion, questions or comments in this first morning  
13 session, what we'll do is go ahead and recess until  
14 1 p.m., and at that point, we'll come back in and  
15 continue conversation. And so if you know folks that  
16 are on their way, you can let them know that we'll be  
17 back to take further feedback at 1 p.m. local time. So  
18 thank you.

19 MR. BOWERS: And we're going over the same  
20 presentation, so we'll be going over the same  
21 presentation this afternoon, basically it will be just a  
22 mirror of this morning, but if you know people, like  
23 Mr. Cruz said, have comments, the record will also be  
24 open -- how long will comments -- August 26 we'll  
25 (Inaudible) we'll receive your comments.

1 (A recess was taken from 9:11 a.m. to  
2 1:06 p.m.)

3 MR. CRUZ: All right, folks. We're going to  
4 go ahead and begin for this afternoon's session. If you  
5 could take your seats, please. Okay. We're going to go  
6 ahead and get started.

7 Just a couple of housekeeping things here, if  
8 you have not signed in, please do so at the back. Also,  
9 if you were at this morning's session and signed in, we  
10 also need you to sign in for this afternoon as well, so  
11 please do so before you leave. That way, we can get an  
12 accurate count of who was here.

13 Also, for those of you that weren't here this  
14 morning's session, we're going to have a presentation as  
15 well as the draft regulations are in the back. You can  
16 read those and follow along with the presentation. My  
17 name is Mark Cruz. I serve as the Deputy Assistant  
18 Secretary for policy and economic development. I am  
19 here on behalf of Secretary Bernhardt as well as  
20 Assistant Secretary Tara Sweeney. You are at the second  
21 session of today's tribal consultation with tribes and  
22 stakeholders on the proposed Johnson O'Malley  
23 regulation.

24 As many of you know, Congress passed the  
25 Johnson O'Malley Reorganization Act at the end of last

1 calendar year and directed the department to undertake a  
2 proposed rule by the end of this calendar year, and part  
3 of that process is to draft the rule and get out in  
4 Indian country and consult the tribes and stakeholders  
5 on that proposal.

6 Just for your awareness, the comment period  
7 for this draft rule is open until next month, August 26,  
8 2019. Our staff here will have a few other details  
9 about how to submit any comments, questions or other  
10 things you want to share with -- for the record, and you  
11 will all be made a part of a complete record as we go  
12 ahead and move from the draft proposal to the final rule  
13 later this calendar year.

14 And so anything said here will be included in  
15 that record and our staff will review the comments and  
16 make changes to the draft rule as appropriate. And then  
17 from there, we will publish a final rule in the Federal  
18 Register and the rule will not become effective for, I  
19 guess, 30 days after that final publication, so that  
20 will be early next calendar year.

21 So what we'll do is we will go ahead and do  
22 the presentation on our draft proposal. We'll -- staff  
23 will go through that and then we will open it up for any  
24 further questions, comments or other perspectives. Once  
25 again, you guys are the ones that work with this program

1 every single day in the field and your insight and  
2 expertise are very appreciated.

3 And so with that, I'm going to go ahead and  
4 allow the staff to introduce themselves and we'll begin  
5 with the presentation as well. I'll start to my right.

6 MS. RIEL: Hi. I'm Brenda Riel. I'm with the  
7 Office of Solicitors, Bureau of Indian Affairs.

8 MR. BOWERS: Hi, everyone. I'm Clint Bowers.  
9 Bureau of Indian Education, Chief of Staff.

10 MS. LUSKY: Hi, good afternoon. I'm Maureen  
11 Lusky, program manager for the Office of Sovereignty in  
12 Indian Education.

13 MS. BARNETT: Good afternoon. My name is  
14 Angela Barnett. I'm the program specialist for the JOM.

15 MS. LUSKY: We'll begin with the overview of  
16 the agenda. We will start with reviewing the JOM  
17 authority, discuss the JOM Modernization Act briefly.  
18 Our first topic will be about the definition of eligible  
19 Indian student. Second topic will be on the funding  
20 formula. The third topic will be about the proposed  
21 rule, other reconciliation and modernization of the  
22 rule, additional information, and then we will provide  
23 the comments, web link, email address, and timeline for  
24 comments.

25 So as you all know, I'm sure you know that

1 Congress first passed the Johnson O'Malley Act in 20 --  
2 sorry, 1934. I'm sure most of you are familiar with the  
3 purpose of it, and the purpose is to provide for the  
4 educational needs of Indian students. It also describes  
5 who can enter into a contract with Interior and then  
6 also who may be excluded so that you know that states  
7 can enter contracts, schools, etcetera. Tribes and  
8 tribal organizations are also eligible.

9 And then going through the timeline, in 1955,  
10 BIA established regulations. 1975, BIA updated the  
11 regulations to what is now in effect in 25 C.F.R. Part  
12 273. And then here recently, in 2018, the Modernization  
13 Act was passed and that became public law 115-404. And  
14 so at this time right now, there are proposed changes to  
15 25 C.F.R. Part 273 to implement the new Modernization  
16 Act, and that's what we're here today to get your  
17 feedback on the proposed rule and we're going to be  
18 discussing and looking at it a little more closely.

19 The Modernization Act, it's also in your  
20 handout if you want to read the exact word for word law,  
21 but the -- the new Modernization Act directs Interior to  
22 make an initial determination the number of Indian  
23 eligible students served or potentially served by each  
24 eligible entity.

25 Part of that task is issuing a preliminary

1 report, taking comments from eligible entities, and then  
2 issuing a final report. The preliminary report should  
3 be posted on the BIE website in the near future. Also,  
4 the Modernization Act talks about after the initial  
5 implementation year, in subsequent academic years, the  
6 number of eligible students served by the JOM Program  
7 will be required to be reported by the various clients  
8 contracting parties.

9 Also, another requirement is for Interior to  
10 prepare an annual report on the number of eligible  
11 Indian students served, recommendations on funding  
12 levels, and then an assessment of the contracts.

13 The Modernization Act further requires the  
14 completion of the rule by December 31st of this year,  
15 and that rule will determine how the regulatory  
16 definition of eligible Indian student may be revised to  
17 clarify eligibility requirements for contracting  
18 parties. The rule will also determine, as necessary,  
19 how the funding formula may be clarified and revised.  
20 And then lastly, otherwise reconcile and modernize the  
21 rule, and listed are three different topics that we will  
22 be going into and discussing in the presentation.

23 The first topic is the definition of eligible  
24 Indian student. So currently in 271.12 (sic) students  
25 must be a fourth -- a fourth or more degree Indian



1 blood, and the word "and" is in bold font, and  
2 recognized by the Secretary as being eligible for bureau  
3 services. So that definition was deemed too restrictive  
4 based on the District Court decision. And so in 1991,  
5 Interior issued a memo stating that a student must meet  
6 the following requirements, changing the wording, and  
7 that is a member of or at least a fourth degree of  
8 Indian blood descendant of a member of an Indian tribe,  
9 so it changes from "and" to an "or." And then also  
10 residing on or near an Indian reservation. So that was  
11 the criteria, the eligibility criteria for special  
12 programs and services.

13 There was a consultation in 2015 that also  
14 discussed various options for revising eligibility. In  
15 2018, March 2018, BIE proposed a rule that would have  
16 required membership in a federally recognized tribe,  
17 deleting eligibility for those who are not members but  
18 have one-fourth or more degree Indian blood.

19 So based on comments during that time, it was  
20 decided that Interior would wait and see what the JOM  
21 Modernization Act brought once it passed in  
22 consultation, how that might affect the proposed rule.  
23 And the comments on March 2018 also proposed to  
24 establish eligibility for any student who is a member of  
25 a tribe or one-fourth degree Indian blood or more.

1           So currently, this current proposed rule is as  
2 you see there 273.112. The current proposed rule  
3 establishes eligibility for any student who is a member  
4 of a federally recognized tribe and leaves in the word  
5 "or" at least one-fourth degree Indian degree blood  
6 descendant from a member of a federally recognized  
7 tribe.

8           So, again, it's a little bit repetitive, but  
9 the exact wording of the proposed rule is the  
10 eligibility for Johnson O'Malley services is Indian  
11 student from the age three through grade 12, not  
12 enrolled in a bureau or sectarian operated school and is  
13 either at least one-fourth degree Indian blood  
14 descendant of a member of a federally recognized tribe  
15 or a member of a federally recognized tribe.

16           Moving on to topic 2, I'm going to hand the  
17 mike over to Angela Barnett, who will discuss funding  
18 formula.

19           MS. BARNETT: Topic number 2, within the  
20 current rule, the funding formula is the number of  
21 eligible Indian students multiplied by 25 percent of  
22 whichever is higher the state average per pupil  
23 operating cost; or the national average per pupil  
24 operating cost.

25           However, in this example, this is different

1 from what the former BIE has been using since 1988.  
2 Since 1988, BIE has been using a JOM funding formula  
3 that relies on data from the U.S. Department of  
4 Education on the state annual cost per pupil and the  
5 national annual cost per pupil to determine a weight  
6 factor. The weight factor is then used to calculate the  
7 funding subject to a minimum factor.

8           So in this example, the number of JOM students  
9 times 25 percent, and in this example, it's saying that  
10 it's -- the national is higher than the state, so they  
11 use 13,000 times .25, which equals 3,250. And in this  
12 example showing where there's 500 eligible students, so  
13 then the calculation is shown 3,250 times 500,000 equals  
14 one million 625.

15           However, because of the 25 percent was a high  
16 number, it was difficult to be able to fund each program  
17 a hundred percent. So what they did was on this next  
18 slide, it talks about the Indian for the Education  
19 Amendments of 1978, P.L. 95-561, required the Secretary  
20 of Interior to develop alternative methods for the  
21 distribution of JOM funds, and publish such formula in  
22 the Federal Register in 1979.

23           So 10 years later, a new formula based upon a  
24 1.3 weight factor would be phased in, and that was  
25 phased in over a three-year period.

1           The Appropriations Act September 27, 1988,  
2 directed use of a funding formula by AS-IA, which AS-IA  
3 is the Assistant Secretary of Indian Affairs, to the  
4 committees on the appropriations in a letter dated June  
5 27, 1988.

6           And then on the next slide, it shows where  
7 this 1.3 is -- is used as a calculation in the funding  
8 formula. And then on that -- whenever it's calculated,  
9 if you -- for that example, the calculation comes out to  
10 be .88, so if there's anything that's less than 1.3,  
11 then they will use a 1.3 as the calculation, as the  
12 weight factor.

13           And the next slide, what we did here is we  
14 just did some calculations based off the 1.3 weight  
15 factor and these assumed numbers by 400, 500 and 600,  
16 and you can see the calculations out there. And then we  
17 had a weight factor by 1.4 using the same numbers and  
18 the calculations as shown, and then a weight factor at  
19 1.5 with the same numbers, and just to give you an idea  
20 of what the amounts would be based off of 1.3, 1.4 and  
21 1.5. Again, those are just examples.

22           And then the next slide is talking about the  
23 "Hold Harmless" clause, which the "Hold Harmless" clause  
24 is for four years and that's -- that started in FY 2017.  
25 And it says for four years, any existing contracting

1 party may not receive an amount less than what they  
2 received in FY 2017 unless the contractor fails to  
3 complete an annual report; the contractor violates  
4 contract terms; or the number of eligible students in  
5 the annual report decreases below the number served in  
6 FY 2017.

7           And then it says Note: The contractor may  
8 receive a total amount less than what they received in  
9 FY 2017, but will not receive an amount per eligible  
10 Indian student less than per eligible Indian student  
11 amount received in FY 2017. And then after four years,  
12 no contractor may receive less than 10 -- greater than  
13 10 percent decrease from the amount received in the  
14 prior year. So that's all in the "Hold Harmless"  
15 clause.

16           MS. LUSKY: Moving on to topic 3, this is the  
17 final topic, is the section about the proposed rule and  
18 other reconciliation and modernization. So I would like  
19 to remind you that in your packet, towards the middle is  
20 the Federal Register, a copy of the Federal Register,  
21 and this provides the exact wording of the proposed  
22 changes. You can see a summary of the proposed changes  
23 in this handout, so this will be helpful as we discuss  
24 the last topic.

25           One of the major changes in the proposed rule

1 is updating. So in the previous slide, we talked about  
2 how the last updates were in 1975, and so we did need to  
3 update the wording to fit the question-and-answer  
4 format, which is part of the modernization of the rule.

5 We also updated some of the terminology.  
6 There's a section on new definitions and there's been  
7 some deletions, revisions, additions and some updates to  
8 the BIE titles. So over the years, especially with BIE  
9 reorganization that happened not too long ago, some of  
10 the former positions are no longer in existence and now  
11 they're called something different. So we updated some  
12 of those titles in the proposed rule to reflect what is  
13 happening now.

14 Other revisions, I'll just briefly mention  
15 them. They're listed here. Other revisions are  
16 deleting the requirement to file committee procedures  
17 with BIE as soon as practicable. Deleting the February  
18 1st deadline for requests to contract.

19 And there's a reason we have all these. For  
20 example, there might be different ones that pertain to  
21 different types of contracts, so we're really trying to  
22 align with reality and what's happening now. Also,  
23 revising some of the process of reviews, extending  
24 timelines for coming contract. That change was 60 days  
25 to 90 days.

1           A few other highlights here, new sections that  
2 were added was determine interest in extending  
3 geographic coverage and enhancing the JOM participation;  
4 approval of an educational plan by BIE. You'll find  
5 that reports are due and there are consequences of not  
6 submitting, complying with reporting requirements,  
7 technical assistance. Technical assistance is required  
8 to be available on the reporting requirements. Renewal  
9 of JOM contracts, having a decision within 90 days, and  
10 then talking a little bit about the authority of Indian  
11 Education Committee. And this is specifically regarding  
12 the cancellation of contracts and then adding more to  
13 the dispute resolution and appeal.

14           So, again, in the handout, you can read all of  
15 the various changes. We're just highlighting some of  
16 those revisions and additions.

17           On this slide, there's some examples of  
18 questions. These are not questions that we have to go  
19 over. These are just some ideas. And then lastly,  
20 additional information can be found at the BIE, JOM  
21 website, which is listed here for the [bia.gov/raca](http://bia.gov/raca)  
22 regulations website there and go there and click on  
23 Johnson O'Malley.

24           And on the website, we're really trying to  
25 update it and make sure what we're presenting in

1 consultation is also available on the website. So the  
2 handouts that we have are on the website as well as on  
3 the archived information recent and in the past are  
4 there as well.

5 Comments on the proposed rule are due August  
6 26 of this year. You can email comments there to the  
7 email account consultation@bia.gov. You can also go to  
8 the regulations.gov website and search for JOM and  
9 submit comments.

10 And just some of the next steps here, there  
11 will be a review of the comments, make changes as  
12 appropriate, publish a final rule in the register, and  
13 the timeline of 30 days. The final rule will not become  
14 effective for at least 30 days after publication and  
15 that final rule is due December 31st, 2019.

16 So I'm going to go back up to the guiding  
17 questions, and this is an opportunity now for you-all to  
18 submit recommendations and we're going to turn it over  
19 to you to provide your comments. We ask that you walk  
20 to the podium there in the middle. There is a  
21 microphone, and if you do have a comment, would you  
22 please state your name and organization or who you're  
23 representing?

24 MS. ZIENTEK: You can hear me now? Good  
25 afternoon. I'm Margaret Zientek, Citizen Potawatomi



1 Nation. I'm also co-chair of the Public Law 102-477.  
2 I'm still going through this, so I'm sure I'll be back  
3 up here in just a minute.

4 My first question has to do with eligibility  
5 and quarter blood or enrollment. I wish I could say  
6 that every child that comes to us for Johnson O'Malley  
7 services is already enrolled in their tribe, but that's  
8 not always the case. We have situations where the  
9 parent applies and are waiting more than a year, in some  
10 cases two years before their enrollment goes through.

11 We can verify if they have been in enrollment  
12 and they will be enrollable when the tribe acts upon it,  
13 but we have had situations where we would have to -- by  
14 this rule, have to deny the student, the youth services  
15 until that child reached enrollment status.

16 Is this foreseeable that this could be waived?

17 MR. BOWERS: So I don't think anyone  
18 (Inaudible) look at reforming the eligibility  
19 requirement itself. So right now, tribes are  
20 (Inaudible) based on limited eligibility, so based on  
21 your comment in the record, we'll take that in there and  
22 compile the rest of the comments, noting that we will  
23 analyze that. I am not going to say that (Inaudible) it  
24 will be waived until that criteria is set.

25 MS. ZIENTEK: Thank you. Good to see you

1 again.

2 MR. BOWERS: Always a pleasure.

3 MS. ZIENTEK: Also, I was reading the rules on  
4 reporting and the annual report it does not define, so  
5 I'm going to make an assumption, since it doesn't define  
6 how that annual report will be done, that there will be  
7 an acknowledgment of how 477 reports annually so that  
8 (Inaudible) annual report so make note. And I'm coming  
9 back up in a minute. I may have more.

10 MR. VANCE: Good afternoon. Mark Vance,  
11 Cherokee Nation. Slide 9, page 5, from age three years  
12 through grades 12. My question, do you think we could  
13 add maybe special needs, disability, or autistic  
14 children that are JOM that graduate or older?

15 MS. RIEL: So there are -- they've already  
16 graduated and they're past 12 grades?

17 MR. VANCE: Some of them need to go to school  
18 to 21, Brenda.

19 MS. RIEL: Okay.

20 MR. VANCE: I just want them to be accounted  
21 for. We had a question come up.

22 MS. RIEL: Okay. That's -- that's a good  
23 point. We'll take that recommendation. Thank you.

24 MR. CRUZ: And I know that having been  
25 involved in the legislative process before I came over

1 to Interior, I know that's why we have split the baby  
2 there, is we went with age for pre-K because some of the  
3 services start at three and four years old, but we left  
4 it at grade 12 because we -- it was acknowledged amongst  
5 health staff that there are 12th graders that are older  
6 than 18. So instead of to age 18, it was three to grade  
7 12, and so we'll have to look at the legislative record  
8 to ensure that's the intent of Congress, but that  
9 question and concern will be documented and we'll have  
10 an answer for that. I will follow that.

11 MR. QUALLS: Leroy Qualls, superintendent  
12 Sequoyah High School, former Indian ed director of  
13 Tahlequah Public Schools. One thing mentioned that  
14 caught my attention is that kids on the IEPs are served  
15 until 21. Can that not be something, according to  
16 federal law, that make them actually between IEPs,  
17 especially -- and Johnson O'Malley? So, yes, there are  
18 going to be kids that are older than 18 or 19 and  
19 sometimes 20, because you certify them until they're 21  
20 years old.

21 I don't remember but one or two cases at  
22 Tahlequah. We had up to 1800 kids with CDIBs in the  
23 high school. We had 650 to 660 kids grades nine through  
24 12 in this, but about 600 of those on average were  
25 Cherokee kids. So before I came to Cherokee Nation to

1 work for Sequoyah High School, having a relationship  
2 with Cherokee Nation and visited back and forth, there  
3 could be a tribal thing also, because they serve those  
4 kids.

5 That may be something that needs to be looked  
6 at at each tribal level, but anyway, I just thought I  
7 would mention what federal law states and how we looked  
8 at it and we had no choice to serve those kids up to 21  
9 years old. Thank you.

10 MS. YELLOWFISH: Hello. There we go. Hi,  
11 Sydna Yellowfish, Edmond Public Schools, Indian Nation  
12 Education Coordinator for Johnson O'Malley program.  
13 Thank you for your time and thank you for the time  
14 allowing us to spend some comments on behalf of our  
15 Johnson O'Malley programs.

16 I won't read our whole submission that we are  
17 going to submit, I do have a written part, but I do want  
18 to suggest or make a recommendation as far as  
19 eligibility. And probably the first thing is that I'll  
20 assume the tribal documentation JOM eligibility students  
21 in pre-K through 12th grade are a member of a federally  
22 recognized tribes or have a CDIB or be a quarter degree  
23 blood quantum.

24 And being in the public school system and  
25 working with Johnson O'Malley students that we have in

1 the metro area, I'll speak on behalf of those students  
2 who are not in a tribal jurisdiction area, and those  
3 numbers are significant and we have attached a chart as  
4 well that will be submitted. And this is on behalf of  
5 the Oklahoma City area, metro Indian education director  
6 of enforcement.

7 Some things on the ground that we'd like to  
8 take into consideration is that the documents that are  
9 required as submission to be eligible for Johnson  
10 O'Malley, one of those is (Inaudible) tribal enrollment  
11 cards, tribal citizenship cards, documentation from  
12 tribal enrollment offices or similar documents.

13 The second one is student CDIB (Inaudible)  
14 student CDIBs until they receive their tribal enrollment  
15 cards. We deal with tribes clear across the United  
16 States. Within my own school district, we have 49  
17 different tribes that we work with and each tribe has  
18 different membership qualifications, as you well know,  
19 and different times to set up new enrollees.

20 Some of the students are back logged two or  
21 three years and some of our students, their tribes only  
22 submit or accept approval of tribal enrollees twice a  
23 year. So we would like for you to consider looking at  
24 CDIBs, parent CDIBs as well until they get their actual  
25 tribal enrollment.

1           Something else we would like for you to  
2           consider is that we have Indian students who are in  
3           foster care or DHS custody and those students are  
4           lacking their tribal paperwork because of advance  
5           notice. Many times, those students are taken out of the  
6           homes and then placed in foster care without the proper  
7           documentation that will be required for Johnson O'Malley  
8           program, and for those students to get the services and  
9           the resources that they desperately need, we ask that  
10          that be considered for those Indian students in foster  
11          care and DHS custody.

12           The same thing goes along with the line that  
13          the Indian students who are in juvenile facilities.  
14          Just around the Oklahoma City metro area, we have some  
15          facilities such as Boys Ranch. Sometimes those students  
16          are placed in those centers, Boys Ranch, without their  
17          proper documentation, but we know that they are  
18          definitely enrolled in their tribe. They're just  
19          lacking that proper documentation.

20           So as far as Johnson O'Malley eligibility, we  
21          ask that these be considered as the necessary documents  
22          to be provided and held for particular individuals with  
23          those extenuating circumstances get their own tribal  
24          enrollment cards or tribal citizenship cards.

25           One other thing that I would like to, I guess,

1 might go along with the annual reports, but when  
2 thinking about the different considerations for the  
3 Johnson O'Malley program, we might ask for it to be more  
4 consistent and uniform for all JOM contracts, whether  
5 you're a tribal contract, a public school contract, a  
6 parent incorporated contract. We would like to ask that  
7 it all be placed on the same calendar year. We would  
8 also like to ask that the reports, the annual reports,  
9 the submissions of our Johnson O'Malley applications all  
10 be similar and consistent and more uniform with other --  
11 other programs or other contracts. And, also, we  
12 certainly would ask you to consider having the Johnson  
13 O'Malley students eligibility requirements pretty  
14 consistent clear across the board.

15 As I mentioned before in earlier areas, we  
16 have many times students in situations where they are  
17 coming from a tribal contract and they may have a little  
18 bit more availability to them being under their tribe's  
19 contract versus being under a public school contract.  
20 So I'd like to submit that for consideration also on our  
21 document here that you will be considering.

22 In the chart that we provided for the metro  
23 school district, we have 6,769 Johnson O'Malley students  
24 in the Oklahoma City area alone. As far as our Title VI  
25 program, we have 12,389. So you see the difference in

1 that we know our Johnson O'Malley counts can go up much  
2 higher because those students are waiting on their  
3 tribal enrollment. So that is one reason why we ask  
4 that the parents CDIB, maybe the child's birth  
5 certificate as necessary documents to be added to our  
6 Johnson O'Malley program and to help the student does  
7 receive their own tribal enrollment card.

8 I'm not for sure how that is to be considered,  
9 but we ask that you consider that due to the students  
10 and families that are married with multiple tribes and  
11 multi-tribal. The other thing that we have, I think  
12 this just an example, is that, for example, we have a  
13 child that's one-eighth Cheyenne and one-eighth Kiowa,  
14 but they cannot be enrolled with either tribe, but if  
15 you put their -- both tribes together, they are  
16 considered one-quarter degree. So, again, those types  
17 of documents as far as CDIBs, adopting it from the tribe  
18 indicating that they are at least a quarter degree with  
19 both tribes be considered eligible as necessary document  
20 to place that child on Johnson O'Malley program.

21 One other area is Indian health service  
22 documents. We ask that you accept and consider Indian  
23 Health Service documents, like a birth certificate, a  
24 shot record, a copy of records so that we know that in  
25 order to receive Indian Health Service services, you



1 have to have either a parent enrolled or the tribe, the  
2 students enrolled, and sometimes we know that when  
3 parents come in, they don't have their shot records  
4 readily available because they have to have shot records  
5 to be enrolled in public schools, and they may not have  
6 their tribal enrollment or CDIB readily available.

7 Also, we ask that you consider that one size  
8 does not fit all and there our Indian students should be  
9 considered a priority no matter where they reside or  
10 individual circumstances. And as educators, we must  
11 work with students from clear across the United States  
12 with over 50 tribes. Oklahoma City schools has probably  
13 80 different tribes that they work with, so we have  
14 multiple situations, multiple tribes that we work with  
15 for our Indian students in our public schools.

16 Thank you for your time and thank you for  
17 this. Thank you.

18 MS. LUSKY: Just to follow up on those  
19 comments, appreciate the comment for similar consistent  
20 requirements. If you have any recommendations on what  
21 that consistency would look like, please add those to  
22 your comments. So, for example, a consistent deadline  
23 for reporting a student count, we know that areas have  
24 different deadlines and if you could provide us your  
25 recommendation on specific dates, like deadlines for

1 submitting student counts. We know that there are other  
2 requirements in schools for submitting other effective  
3 data and it would be helpful to know if -- if the  
4 Johnson O'Malley reporting requirement also is in that  
5 same timeframe as your other school reporting  
6 requirements.

7 So just things like that, if you can also get  
8 specific on any recommendations no matter how minor they  
9 may seem, that would be helpful for us to take into  
10 consideration.

11 MR. BOWERS: And I would just add that, you  
12 know, the idea of this is not to increase administrative  
13 burden on you-all's programs. The last thing we want to  
14 do is add to that (Inaudible) so streamline while still  
15 making sure there's that consistency. I think that is  
16 what we're trying to get to. So I think that's a clear  
17 component, makes it easier for your job and ultimately  
18 helps us as well.

19 MS. ZIENTEK: Good afternoon. Margaret  
20 Zientek, Citizen of Potawatomi Nation, Public Law  
21 102-477 Tribal Co-Chair.

22 In reviewing the proposed changes, I'm looking  
23 at Section 273.116, 273.117, and 273.118 and 273.119.  
24 It would appear that each of these that are proposed in  
25 here are very slanted towards an Indian Education

1 Committee working with a school contract, not  
2 necessarily taking into account self-governance tribes,  
3 nor taking into account 477. So I will be submitting  
4 some written comments particularly, but I did want to  
5 bring attention that these are very slanted as to if it  
6 was an IEC dealing with a contract with a school, not a  
7 tribe, not a self-governance tribe, and not a 477  
8 blended program. It would be very difficult on some of  
9 these to be applicable.

10 MS. STAR YELLOWFISH: Good afternoon. Hello.  
11 This is a good sound system. Okay. Star Yellowfish,  
12 Oklahoma City Public Schools, Indian Education. Just  
13 why I want to support the document I submitted on behalf  
14 of the metro directors, Indian education directors in  
15 Oklahoma City area, and I also support and put another  
16 little tab there for supporting the use of CDIBs or  
17 parent and tribal documentation with birth certificates.

18 In our program at Oklahoma City Public  
19 Schools, I have about 3,000 native students. I'd say  
20 three-fourths of them are JOM students and I'd say  
21 three-fourths of them -- most of them are in -- either  
22 in the process of getting their tribal enrollment or  
23 their parents are lagging in doing the process. So --  
24 but the parents sure do have their documents so we -- we  
25 try to work with our families to get them school

1 supplies, school uniforms, all sorts of stuff. Senior  
2 cap and gown is a big deal.

3 I mean, there is so many things that we help  
4 our kids with that they aren't able to get through their  
5 tribe mainly through proximity. Whether they are able  
6 to get it through their tribe out of their jurisdiction  
7 boundaries or not, they still prefer to go through our  
8 office because we are right down the street. They're  
9 able to get things from Choctaw Nation or Chickasaw  
10 Nation, but they don't have a fax machine. They don't  
11 really have a printer that they can print out the  
12 documents sometimes. They bring stuff to us and we will  
13 fax it for them or scan it and email it, but to do that  
14 kind of paperwork, for whatever reason, it's really  
15 daunting so it's much easier for them to go through our  
16 little office and get what they need.

17 And so we really want to push strongly that we  
18 not limit the services of our Indian children to just  
19 those that are tribally enrolled or one-fourth degree  
20 native, and I think especially here in Oklahoma, that a  
21 huge issue. We have kids that are full blood Indian  
22 students who are not able to be enrolled in a tribe, in  
23 one single tribe. So we just want the BIE to take that  
24 into consideration.

25 The other thing I would like to ask is I think

1 when it comes to decision making, whether it be through  
2 consultation or even in small groups or small focus  
3 groups, we would like to ask that you ask -- I would  
4 like to ask that you consider the JOM educators who are  
5 people like me who work in and around students every  
6 day.

7 I am happy to give you my opinions and  
8 suggestions. It would be awesome to have some kind of  
9 small focus group of regional people, you know, that  
10 work with JOM students so you can, you know, run it by  
11 us. I'm happy to edit and look at, you know, documents  
12 and I think some of us -- some of us will make the time  
13 because of the kids, our kids and parents.

14 The third thing I'd like to ask is that you  
15 take into consideration a school calendar. Whoever is  
16 writing these policies or decision making, you can't ask  
17 JOM directors for a student count in May, because  
18 graduation is happening, spring break is happening.  
19 Schools are -- from my experience, schools are closing.  
20 We're going through huge transformation. There's a lot  
21 of stuff that happens at the end of the school year and  
22 most school employees, not myself, but most school  
23 employees are off for the summer. So May, June is a bad  
24 time.

25 So just take into consideration the school

1 calendar, and I am glad that you said that we could make  
2 recommendations on reporting deadlines. I think myself  
3 and our -- our group, that we likely will definitely  
4 look and suggest some really good timeline that  
5 coincides with things that we already do so it's not too  
6 much administrative work and it's not adding to the --  
7 to our daily duties.

8 But thank you for coming all the way to  
9 Oklahoma and we will also submit that document via email  
10 so that you have it.

11 Oh, that was my last comment. Any way that  
12 you guys could think about going as non paper and  
13 through a software system for, I don't know, grant  
14 proposals, annual reports, that would be awesome. So  
15 but I've been asking that for, like, 10 years now, so  
16 but I'm going to put it on the record. Great to go  
17 vision if you can. Thank you.

18 MR. CRUZ: Is there any further discussion,  
19 thoughts, questions or comments?

20 MS. ZIENTEK: Margaret Zientek, Potawatomi  
21 Nation again. As referenced earlier on the reporting,  
22 I'm actually reading Section 273.150, 273.151, 273.152,  
23 etcetera, about annual reporting under Subpart G.  
24 Again, 477, notwithstanding other provisions of law,  
25 lovely term, legal term, notwithstanding.

1           We have an annual report and there are parts  
2 of this here that are in conflict with the 477 reporting  
3 requirements, so we need to at least have a notation  
4 here follow 477, Public Law 477. Thank you.

5           MR. CRUZ: Any further discussion? Okay. I  
6 am looking at 2 p.m. If there's no other comments,  
7 questions or discussion for the record, we can go ahead  
8 and close out this afternoon's session.

9           MS. SYDNA YELLOWFISH: A couple of questions.  
10 Do you have a proposed timeline of when this will be --  
11 Sydna Yellowfish, Edmond Public Schools -- a timeline of  
12 what you're looking at? I believe that you're supposed  
13 to prepare an annual report on another eligible Indian  
14 student that's served. That would be based on the count  
15 we submitted. So the count was submitted, so what  
16 happens between now, tribal consultation and I believe I  
17 saw a December deadline?

18           MS. LUSKY: The final rule is due December  
19 31st, which I think you just said, and it's on the  
20 slide. So in order to prepare to have that final rule  
21 created, then after our consultations, we have some next  
22 week, there will be a time period where we will review  
23 the comments and look for themes and patterns and make  
24 changes as appropriate. And then I think in the next  
25 steps here, so between now and submitting the final

1 rule, that's our timeline.

2 MR. BOWERS: And I would also say that we're  
3 putting together a work plan to make sure that all the  
4 dates are met (Inaudible) the timeline. In addition,  
5 they're just reviewing (Inaudible) and so we will be  
6 able to put together. We'll make sure we adhere to that  
7 timeframe, so that's right at about a year. So that's a  
8 working document, but it's going to keep us on track,  
9 so...

10 MS. SYDNA YELLOWFISH: Okay. And based on all  
11 the comments and the consultations, that will happen.  
12 Your office will be making a final decision on all these  
13 consultation meetings with the proposed suggestions and  
14 recommendations that will go forward and will there be  
15 any information sent back for clarification?

16 MR. BOWERS: Yeah, so in really creating new  
17 standards, when we did our consultation on this new  
18 direction that was released this last year, and then  
19 what we did is we went to consultation. We had a draft  
20 plan, and based on that draft plan, we put together a  
21 whole matrix and we color coded it based on tribal  
22 leaders, education stakeholders, and we show how  
23 (Inaudible) are used or not used. So if they weren't  
24 germane, we said that. We let people provide a  
25 statement and we (Inaudible) it down and if they



1 weren't, we showed how they were incorporated into  
2 strategic direction. And so we used that as the best  
3 new standard. We want to make sure that when we go to  
4 consultation, this isn't just an exercise for all of you  
5 to come here and state comments. I've been on the that  
6 side -- I've been on that side of the table and it's not  
7 fun. So we want to make sure, you know, we value your  
8 input as well (Inaudible) and how that's improved the  
9 process and how it improves the document.

10 MS. SYDNA YELLOWFISH: And then on your  
11 formula funding, is that -- is that based on what we're  
12 currently receiving or am I anticipating a funding  
13 increase?

14 MR. BOWERS: So this is an area it's up to  
15 Congress to provide funding, but what Johnson O'Malley  
16 advocates said when they came, I was working on the Hill  
17 at the time, so on the Hill, we have a baseline to show  
18 increased steam before we can actually call for  
19 increased appropriations and increased funding. So the  
20 whole idea is to get student count, you know, the  
21 environment and then you can go and advocate -- and  
22 stakeholder likes yourself can go and advocate for  
23 increased funding to Congress and to the  
24 representatives.

25 MS. SYDNA YELLOWFISH: And I think I have one

1 last question here. Oh, I know what it is, a booklet.  
2 Is there any way we can have a Johnson O'Malley  
3 guideline booklet updated and given to us with all  
4 the -- what's approved -- what's not approved? This is  
5 what's approved by the tribe's contract. This is what's  
6 approved by the public school contract. Because we are  
7 different and certain things we can't do the tribal  
8 contract can do. Is that in the works anywhere to have  
9 produced a booklet for all the hundreds of Johnson  
10 O'Malley programs?

11 MR. BOWERS: I think it would be great. I  
12 think that's great, but taking that idea first, we need  
13 to update the law and get the new criteria set and then  
14 based on that, we can create a manual that would have  
15 those in it (Inaudible) in terms of I think that's  
16 something we're trying to do. Be it a bit slow, we're  
17 just now in the process of updating our website and  
18 there will be a lot more data content on the website,  
19 make sure things like that will be useful by the  
20 stakeholders.

21 MS. SYDNA YELLOWFISH: Thank you. I  
22 appreciate your attention to my email about our Johnson  
23 O'Malley funding that we received and went over, like, a  
24 day ago. I appreciate that.

25 MS. ZIENTEK: Thank you. Margaret Zientek,

1 Citizen Potawatomi Nation again. My question deals with  
2 the count, even the preliminary count. As a tribe in  
3 Oklahoma, we have a lot of OTSAs, Oklahoma Tribal  
4 Statistics Area for reservations and we -- our tribe  
5 spans across two separate schools that were being served  
6 by another tribe in our service area.

7 What we don't know is when counts are turned  
8 in, do they count those same schools? And to this day,  
9 I don't know. I don't know if one of those tribes  
10 turned in a count or not and the other one, I know that  
11 tribe dropped the school that they had been serving in  
12 our service area and we picked it up. That's happened  
13 to us since the last round of counts.

14 MR. BOWERS: And that's why we're here is  
15 we've -- that's not just in that -- your area. We've  
16 seen instances like that in the past and so we go to not  
17 only our instances like that, but inconsistency and so  
18 making sure we can update this process and get us  
19 through the baseline count that's verifiable and can be  
20 utilized and that creates a place for us to move  
21 forward. And not only that, but based on the  
22 information gathering, we'll be able to clean up those  
23 issues like that to make sure it's not one double  
24 dipping or people not being served. It's all trying to  
25 get them in the program.

1 MS. ZIENTEK: So you're going to have  
2 intentions to give back to the tribes or have a report  
3 or something we can look at and say check, did this get  
4 count or not? Thank you.

5 MS. HARJO: Good afternoon. My name is  
6 Lucyann Harjo from Norman Public Schools, Indian  
7 Education Program or Johnson O'Malley program for our  
8 district.

9 May I recommend that we -- that you give us  
10 several months notice about the student count, possibly  
11 to have it in the spring, January, February, March?  
12 Again, I second what Star said about not being in June.

13 I was looking at on page 4 about the Indian  
14 student eligibility criteria. Under the second  
15 presentation of that page, it says the Bureau of Indian  
16 Education proposed a rule that would have required  
17 membership in a federally recognized tribe, deleting  
18 eligibility for those who are not members but have  
19 one-fourth or more degree Indian blood.

20 Just curious about the thought behind that  
21 suggestion from BIE, but it's also good to see that you  
22 have a different proposal as well, but I have students  
23 who are like others in the Oklahoma City area who are  
24 coming in from all over the United States. So I may  
25 have Sue who is (Inaudible) that doesn't meet tribal

1 membership and they're one-fourth of their tribe and  
2 they have descendancy, for example, or a (Inaudible) who  
3 doesn't meet their tribal requirements and they are just  
4 a little lower than that.

5 I am not able to count those students in my  
6 Johnson O'Malley count, but I'm able to serve students  
7 who are one over two thousand something degree blood. I  
8 can't justify in my mind turning away kids who are  
9 native, who may represent multiple tribes, but not  
10 enrolled in a particular tribe because they do not meet  
11 the blood quantum.

12 So reading that really stood out to me, and I  
13 was wondering about the thought from BIE when they  
14 proposed that.

15 MR. BOWERS: So (Inaudible) there was a  
16 proposed concern of the health department so that was  
17 they had to be a quarter degree and a federally  
18 recognized tribe. That was (Inaudible) too restrictive  
19 and so basically since then, since the contract to allow  
20 a quarter degree or a federally recognized tribe. So  
21 basically, I mean, that initial proposal last March was  
22 just to instate what the contract was (Inaudible), but  
23 then there was no legislation. And so I want to retract  
24 that to allow legislation because of that formula and  
25 other aspects of that (Inaudible) were by itself. And

1 so that's what happened. The law passed in the calendar  
2 year and here we are today. But to back up, your  
3 comments will be recorded and we will take those into  
4 the record and other comments into the record.

5 MS. SYDNA YELLOWFISH: Okay. Just  
6 clarification on that. So according to the current  
7 proposal, if they are not a member of a federally  
8 recognized tribe or at least a quarter degree Indian  
9 blood, they are not eligible for Johnson O'Malley. Does  
10 this mean, and correct me if I'm wrong, that a person  
11 who is seeking membership of a tribe based on  
12 descendency, they're not eligible for Johnson O'Malley  
13 while they're seeking tribal membership such as Cherokee  
14 Nation? They cannot be deemed eligible for Johnson  
15 O'Malley because they're not a quarter degree, they  
16 might be 1/64th Cherokee, so they're not a quarter  
17 degree and they're not a member of Cherokee Nation yet,  
18 they would not be eligible for Johnson O'Malley; is that  
19 correct?

20 MR. BOWERS: Based on the regulations, they  
21 have to able to show (Inaudible).

22 SYDNA YELLOWFISH: Okay. So the purpose of  
23 this consultation is for those that work with those  
24 individual students, we need to suggest that this be  
25 amended?

1 MR. BOWERS: Yeah, yeah, that's correct.

2 MS. SYDNA YELLOWFISH: Okay. I'm sorry, Sydna  
3 Yellowfish, Edmond Public Schools. Thank you.

4 MS. STAR YELLOWFISH: Hello. Star Yellowfish,  
5 Oklahoma City Public Schools. Mr. Bowers, quick  
6 question. The spreadsheet that's color coded and notes  
7 what comments were used and where they were used, that  
8 sounds glorious to me. Are we going to -- are we privy  
9 to seeing that? Is that something that's for public to  
10 look at?

11 MR. BOWERS: It's on our website, so it will  
12 be similar to posting once that's complete. You guys  
13 can put together a whole consultation report that  
14 provides content for and a graph for the chart. So we  
15 can say similar to our subsequent consultation sessions.

16 MS. STAR YELLOWFISH: Great. So I know this  
17 question is to you, Angela. Is there a way that we can  
18 request that we get notification? Because I noticed the  
19 letter for this consultation only went to tribal  
20 leaders, but we are not a tribal leader, nor are we  
21 associated with a tribe. We're a public school.

22 Is there a way that we can get notification  
23 that says, hey, we posted these comments on our website,  
24 what was used in the -- if you want to review it. I  
25 just -- I feel like we, me in particular, don't find out

1 about things unless my friends find out about it and  
2 then we're like, okay, we gotta go to Tahlequah, you  
3 know.

4 MR. BOWERS: We agree. We don't want to just  
5 put it up there and (Inaudible). We have proven  
6 communication and coordination with you all. Sometimes  
7 that doesn't always happen as well or (Inaudible) it  
8 doesn't mean we can't get better at, so once we put it  
9 up there, we'll reach out to stakeholders.

10 I think where we (Inaudible) makes it easier  
11 because we all have a pretty close network. You know,  
12 we want to make sure what's going on in one program  
13 isn't isolated, so we put out a website because people  
14 can go through it on their own, but we're also in the  
15 process of updating our newsletter and (Inaudible) news  
16 feed on our website. It's in process.

17 MS. STAR YELLOWFISH: Facebook posts.

18 MR. BOWERS: Yeah.

19 MS. STAR YELLOWFISH: All right. Thank you.

20 MS. LUSKY: I would just also add that Angela  
21 Barnett, she is our new Johnson O'Malley specialist, and  
22 prior to her, the position was vacant for awhile. And  
23 then the person before that was only there for awhile,  
24 and before that, there was no position.

25 So while she's collecting the student count,



1 she's also updating her directory of contacts so we are  
2 improving that directory and so I think we'll be  
3 moving -- in the future, we'll have a better idea of who  
4 to send notices out to.

5 We're also working harder to collaborate with  
6 the National Johnson O'Malley Association, and so we  
7 intend to also reach out to them when we have major  
8 notices to post.

9 MR. BOWERS: And other stakeholders, some of  
10 them are Indian 477 groups and all these other parties  
11 that we work with.

12 MR. CRUZ: Is there further discussion?

13 MS. SYDNA YELLOWFISH: Sydna Yellowfish,  
14 Edmond Public Schools. You mentioned National Johnson  
15 O'Malley, that's who you collaborate with I believe or  
16 you consult with?

17 MR. BOWERS: Yeah, from a national level  
18 perspective, they have different regions, so more or  
19 less, there's a coordination.

20 MS. SYDNA YELLOWFISH: Well, just a bit of  
21 information, I'm not for sure they were aware that the  
22 metro public schools are under the public school  
23 contract with the Bureau of Indian Education, because  
24 when the question was brought to their attention, they  
25 kind of like didn't know how to respond.

1 MR. BOWERS: I can't speak to that.

2 MS. SYDNA YELLOWFISH: Yeah, I'm just saying  
3 so -- that's fine. I mean, I like National Johnson  
4 O'Malley and what they do, but again, I feel like the  
5 metro public schools are somehow being left out of this  
6 process, and you know, thankfully Angela can respond to  
7 our emails and she does. We're just trying to find out  
8 what's happening here with Johnson O'Malley programs.

9 MR. BOWERS: And I think that's why this is so  
10 critical, and you know, the point of this contact that  
11 you provided is just to show your attendance and so we  
12 have that number and utilize that for feedback on what's  
13 provided as well as the ultimate consultation reports.  
14 So the whole idea here is that just because  
15 relationships have been utilized in the past doesn't  
16 mean they're going to be utilized going forward and we  
17 can build on those and expand on them, so...

18 MR. CRUZ: Are you going to sing us a song?

19 MR. WELLS: If you can bear it.

20 MR. CRUZ: All right. Without seeing any  
21 further speakers, I'll go ahead and close out this  
22 session. So our next consultation will be held on  
23 Friday, July 19th, in Bismarck, North Dakota. Also, if  
24 you wanted to jot down July 23rd, we will be doing a  
25 teleconference consultation, the staff and I, as well as

1 July 25th, and it will be the same presentation that you  
2 all saw this morning and this afternoon and it will  
3 follow this similar format where the presentation will  
4 be given and then we will take comments from tribal  
5 leaders and the public in that fashion.

6 Just for the record, all comments will be  
7 reviewed and changes will be made as appropriate. This  
8 will be published as a final rule in the Federal  
9 Register and the final rule will not become effective  
10 for at least 30 days after publication, and then the  
11 final rule is due December 31st of this calendar year.

12 And so before we go, on behalf of the Bureau  
13 of Indian Education, the Assistant Secretary for Indian  
14 Affairs and the Department of the Interior, we want to  
15 thank you all for your participation here today. We  
16 also want to thank our hosts at Sequoyah Indian School.  
17 They did fabulous in facilitating this conversation and  
18 providing the resources for us to be able to have here  
19 and conduct this consultation.

20 We felt Oklahoma was critical to get out to  
21 because there are a number of JOM contracts out here, so  
22 your feedback is very appreciated and we look forward to  
23 working with you in this process and we will see many of  
24 you down the road. So thank you very much and I hope  
25 you guys all get home safely and appreciate the

1 participation.

2 (Consultation concluded at 2:21 p.m.)

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## C E R T I F I C A T E

I, Shannon S. Harwood, a Certified Shorthand Reporter, do hereby certify that the foregoing is a true and correct transcription of my shorthand notes of proceedings had on the 16th day of July, 2019, and is only valid with my stamped seal and my original signature.

I further certify that I am not related to either of said parties nor otherwise interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 22nd day of July, 2019.



Shannon S. Harwood, CSR, RPR

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