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TRIBAL CONSULTATION  
PART 30 - STANDARDS, ASSESSMENTS, and ACCOUNTABILITY  
SYSTEM

NAVAJO NATION MUSEUM  
HIGHWAY 264 and LOOP ROAD  
WINDOW ROCK, ARIZONA 86515

Prepared by:  
Deborah L. Wilks, RPR  
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A P P E A R A N C E S

JUANITA MENDOZA: Bureau of Indian Education, Special Assistant to the Director

ERIC CRANE: Center for Standards and Assessment Implementation, WestEd

TAMARAH PFEIFFER: Bureau of Indian Education, Acting Chief Academic Director

JEFF HAMLEY: Bureau of Indian Education, Associate Deputy Director of Performance and Accountability

CHAITNA SINHA: Bureau of Indian Education, attorney advisor with the Southwest Regional Office

TONY DEARMAN: Bureau of Indian Education, Director

## 1 P R O C E E D I N G S

2

3 MS. MENDOZA: Good morning, everyone. My name  
4 is Juanita Mendoza, and I am the special assistant to  
5 the director. The director got into town about 3:00 in  
6 the morning so he is going to be coming in around break  
7 time, and he will give his remarks at that time.

8 So I don't see any of our Committee members  
9 from Navajo out in the audience so maybe somebody from  
10 the tribe will be in later, and we'll make sure that  
11 they're introduced.

12 So today we're here for the Tribal  
13 Consultation on the Part 30 Standards, Assessments, and  
14 Accountability System. In order to start our day I  
15 would like to invite Mr. Dmitriy Neezzhoni to give an  
16 invocation.

17 (Dmitriy Neezhoni speaking Navajo.)

18 MS. MENDOZA: Thank you. Now I'd like for the  
19 presenters to introduce themselves. Again, Juanita  
20 Mendoza from the Bureau of Indian Education.

21 MR. CRANE: Thank you, Juanita. Eric Crane  
22 representing the Center for Standards and Assessment  
23 Implementation at WestEd.

24 MS. PFEIFFER: Dr. Tamarah Pfeiffer.

25 (Speaking in Navajo.) I am Acting Chief Academic

1 Officer.

2 DR. HAMLEY: Jeff Hamley. I'm Associate  
3 Deputy Director of Performance and Accountability in  
4 the Bureau of Indian Education. I'm located in  
5 Washington, D.C. I was the -- I am the lead negotiator  
6 for -- on behalf of the government for the rulemaking  
7 committee, and I was involved in all the planning  
8 committee going back two years.

9 MS. SINHA: Good morning. Chaitna Sinha,  
10 attorney advisor with the Southwest Regional Office in  
11 Albuquerque.

12 MS. MENDOZA: Thank you.

13 For right now I'd like to go through the  
14 agenda for the day. So we will be receiving a  
15 presentation on the -- it's an overview of Every  
16 Student Succeeds Act, and that will be by Mr. Eric  
17 Crane. Then after that we hope to have a break around  
18 10:00. Then we will go into the -- at 10:15 we'll come  
19 back, and we will have a presentation from BIE on the  
20 Part 30 consultation presentation. After that we will  
21 hear tribal comments. At 12:15 we will break for  
22 lunch. We'll come back at 1:30 and again open -- open  
23 the floor to tribal comments. We'll have a break about  
24 2:30 and 2:45. We want to open comments to all others.  
25 And we expect to adjourn at 5:00 this evening.

1           So I just wanted to give some -- also, sorry,  
2 I wanted to also explain what's in your binder. In Tab  
3 1 we have the proposed rule as was published in the  
4 Federal Register. In 2 we have the ESSA, Every Student  
5 Succeeds Act, overview consultation presentation. Then  
6 we have -- Section 4 we have the committee final  
7 consensus report. And then Tab 5 we have ESEA Section  
8 1111 amended by ESSA and ESEA Section 8204(C), Parts 1  
9 through 3.

10           So just ground rules for today. We request  
11 that you focus comments on the proposed rule. We want  
12 to hear from a variety of stakeholders, parents, school  
13 representatives, school administrators, and of course  
14 tribal leaders, and we want to hear comments on how  
15 the -- what would be the impact of the proposed rule.  
16 We have a court reporter transcribing, so if you could  
17 please when you speak say your name clearly. If it's a  
18 complex name be sure to spell it for her. You are also  
19 to provide your title and your affiliation.

20           So I'm going to go ahead -- one more last  
21 thing. Sorry. Please hold questions until after the  
22 presentations.

23           And I want to turn it over to Chaitna. She's  
24 going to give us an overview of Section 8204 and the  
25 negotiated rulemaking to set the context.

1 MS. SINHA: Good morning. So as many of you  
2 know, we are here to talk about a proposed rule, and I  
3 wanted to give you a little bit of context about how we  
4 got here for those of you who may not know. So Section  
5 8204, the Elementary and Secondary Education Act, ESEA,  
6 as amended by the Every Student Succeeds Act requires  
7 the Secretary of the Interior to have requirements for  
8 standards, assessments, and accountability systems that  
9 is applied to the Bureau of Indian Education funded  
10 schools on a national, regional or tribal basis, as  
11 appropriate, taking into account the unique  
12 circumstances and needs of such schools and the  
13 students of such schools.

14 Such requirements must be implemented pursuant  
15 to regulations developed through a negotiated  
16 rulemaking process. Tribal school boards may propose  
17 alternatives to these. Such alternative requirements  
18 are reviewed and approved by both the Secretary of  
19 Education and the Secretary of the Interior. However,  
20 the Secretary of Education must find that the  
21 alternative requirements meet the requirements of  
22 Section 1111.

23 So the negotiated rulemaking process required  
24 by Section 8204 began in September 2017. The Committee  
25 was formed in August of 2018. The Committee met four

1 times between September 2018 and March 2019. The  
2 Committee submitted a report to the Secretary of the  
3 Interior on April 2019 that contained a consensus  
4 recommendation on the rule. A proposed rule was  
5 published in June 2019, and that's what we're here to  
6 talk about today. The comments received will be  
7 considered and addressed by the agency in preparing the  
8 final rule.

9 So that provides you just a little bit of  
10 context about how we got here and why we're here, so  
11 really we're here to comply with requirements outlined  
12 in Section 8204.

13 MS. MENDOZA: Thank you, Chaitna.

14 And before we move forward I'd like to  
15 acknowledge President Jonathan Nez for joining us  
16 today. Thank you.

17 And next I'd like to introduce Mr. Eric Crane,  
18 who will be providing an overview of Every Student  
19 Succeeds Act.

20 MR. CRANE: Thank you, Juanita.

21 Good morning. My name is Eric Crane, and I'm  
22 a Senior Research Associate with the Center on  
23 Standards and Assessment Implementation at WestEd.  
24 It's a privilege to be here this morning. I want to  
25 acknowledge my colleagues, Deb Sigman and Bryan

1 Hemberg. Together we've put together this presentation  
2 for you, and I'll begin.

3 So next slide.

4 Some background on the Elementary and  
5 Secondary Education Act, or ESEA. Next year ESEA will  
6 celebrate 55 years. It's the biggest federal K-12  
7 education law. It set up the Title I program, which  
8 provides support of over 14 billion of support for the  
9 education of disadvantaged students.

10 And it has gone through several different  
11 iterations over the years. Those of us who have been  
12 doing this work for a while will remember in 1994 the  
13 Improving America School Act, and 2002, the  
14 reauthorization that was No Child Left Behind, and now  
15 we are here today with ESEA.

16 So No Child Left Behind did an important step  
17 of requiring the tracking of progress of all student  
18 groups, not just school level, and so that drilling  
19 down was a major step forward in No Child Left Behind.  
20 And now December 2015 ESSA was signed into law with  
21 further amendments and updates.

22 Next slide.

23 So as we go forward with the different parts  
24 of this slide, you see that ESSA is built on the same  
25 pillars that the preceding versions of the ESEA, so as



1 we advance we'll see that ESSA maintains standards,  
2 assessment, disaggregation, transparency, and  
3 accountability, as well as a process for school support  
4 and interventions. So that has been continuous through  
5 ESEA and clarified in this version of ESSA.

6 Next slide.

7 So as states have been through this process  
8 you may have seen the discussions, consultation,  
9 stakeholder feedback and input, and it's an important  
10 thing in the process, and it continues with us here  
11 today and the work we're doing today. Section 8204  
12 requires the Secretary of the Interior to have  
13 requirements for standards, assessments and  
14 accountability systems that apply to BIE-funded  
15 schools, taking into the account the unique  
16 circumstances and needs of such schools. And not just  
17 Section 8204 that's from the Interior side, but the  
18 Department of Education side we're looking for  
19 consistency with Section 1111, and this process happens  
20 through negotiated rulemaking.

21 This process has major input from  
22 stakeholders. That's been an important part so far,  
23 and for this to be successful we need to continue that  
24 as we go forward, and I'll say some more about that.  
25 But this is not a one-time event, but rather ongoing

1 discussion and consultation.

2 Next slide, please.

3 So states have gone through great lengths to  
4 have a -- can we advance? Thank you. To have a system  
5 with standards, assessment, and accountability. And  
6 again, for success it's going to take -- I lost my  
7 mike. Thanks for bearing with me there. So for  
8 success it's going to take stakeholder input, including  
9 parents and students, those in school buildings, to  
10 develop and implement and put in a strong system, and  
11 so this idea of continually reaching out and making  
12 sure that the voice of all stakeholders is represented  
13 is a key thing. We want to keep that in mind. We are  
14 at one key point in the process.

15 MS. MENDOZA: Does it keep doing that? Try  
16 that one.

17 MR. CRANE: I can use my teacher voice if  
18 that's -- can you all hear me in the back?

19 So while that's getting -- so, again, just to  
20 underscore that the system of standards, assessment,  
21 and accountability, there are opportunities to weigh in  
22 and give input, and it is important that parents,  
23 students, those in school buildings all have the  
24 opportunity to give comments, and not just at this  
25 point in the process but as we go in and build toward

1 continuous improvement of a system that hangs together  
2 with all three of these key components.

3 Next slide.

4 So beginning with standards, standards are  
5 statements of what students should know and be able to  
6 do, and they're laid out most commonly by grade level.  
7 Having consistent, high expectations for all students  
8 is critical so that students don't differ, so that  
9 students aren't educated to a lower degree, meaning all  
10 students to be educated to high standards and high  
11 expectations, and that includes rigorous content for  
12 all.

13 Next slide.

14 ESSA requires the adoption of challenging  
15 statewide content and achievement standards in math,  
16 reading/language arts, and science, and the achievement  
17 levels are advanced, proficient and basic, for example,  
18 but three levels of achievement need to be identified  
19 under ESSA, and these standards need to be aligned with  
20 what it takes to get into higher education in the state  
21 as well as with career and technical standards, so  
22 we're looking for a connection to credit-bearing  
23 coursework at the states' colleges and universities.

24 Next slide.

25 All students should be educated to the same

1 standards with the exception that alternate achievement  
2 standards may be set for students with the most  
3 significant cognitive disabilities. The state must  
4 also adopt standards for English language proficiency,  
5 and those need to address speaking, listening, reading  
6 and writing, and those standards need to be aligned  
7 with the academic standards.

8 Next slide.

9 So the next piece of the puzzle after  
10 standards is assessment. So annual assessment gives an  
11 objective look at student progress in a way that we can  
12 make statements about how classrooms, schools,  
13 districts, and groups are doing. High quality  
14 assessments help to highlight and expose gaps in  
15 performance between various student groups. They give  
16 schools and systems information needed for decision  
17 making, making changes in the course corrections, so  
18 that we can get better at educating all students. And  
19 in general, assessments can be used to improve teaching  
20 and learning.

21 Next slide, please.

22 So under ESSA annual assessment is required in  
23 both mathematics and reading/language arts for all  
24 students grades 3 through 8 and once in high school.  
25 Science is a little bit different in that the

1 requirement is only per grade span, so in the  
2 elementary grades, once in the middle grades, and once  
3 in high school.

4 Students with disabilities must participate in  
5 the assessment, and there is a couple of different  
6 options. If they are able to take the regular  
7 assessment system and participate in the regular  
8 assessment system, they need to do that, or they can  
9 take an alternative assessment that is consistent with  
10 what is in their Individualized Education Program. In  
11 fact, alternate assessments and accommodations must be  
12 provided for students with disabilities. These  
13 assessments must be aligned with standards and provide  
14 information on whether a student is performing at grade  
15 level. And we're looking for near universal  
16 participation in the assessment, so at least 95 percent  
17 of all students must be assessed.

18 Next slide, please.

19 Not all students with disabilities must be  
20 assessed, but English language students must be  
21 assessed in grades K through 12 for language  
22 acquisition. They also need to participate in the  
23 annual academic assessment. And like the slide says,  
24 although the rules are slightly different, assessments  
25 can include projects, portfolios, and/or extended

1 performance tasks, but they may not be made up solely  
2 of those alternate modes. States may administer a  
3 single summative assessment or multiple interim  
4 assessments that result in a summative score at the end  
5 of the year about student achievement and growth. And  
6 there is a cap on the number of students who can take  
7 an alternate assessment. That's designed for students  
8 with significant cognitive disabilities, and that  
9 applies in each tested subject. So the important  
10 takeaway here is that students with disabilities do  
11 participate in the system at a level that is  
12 appropriate and consistent with their Individual  
13 Education Program.

14 So we move to accountability. Next slide.

15 So accountability systems can do several key  
16 things to help the process. They set clear  
17 expectations about raising achievement for all  
18 students, not just some. They focus attention and  
19 resources on the full range of student groups,  
20 including those who may be traditionally underserved.  
21 They can signal priorities for the Bureau and  
22 stakeholders and prompt intervention when action is  
23 needed when the schools are not meeting expectations  
24 for any group of students.

25 Next slide.

1           So these accountability systems must include  
2 multiple measures, so, first, academic achievement as  
3 measured by proficiency on the assessments in ELA,  
4 English/language arts, reading, mathematics. And,  
5 next, high schools may also include a measure of  
6 growth. And then there is another academic indicator  
7 for elementary and secondary schools that are not high  
8 schools, so the other academic indicator needs to be  
9 either some measure of growth or another valid and  
10 reliable academic indicator. For high schools the  
11 other indicator is graduation rate, so English language  
12 proficiency is also a required indicator under ESSA,  
13 and some additional factor of school quality or  
14 success, and there is a bunch of examples listed here  
15 in the slide.

16           The key is that we are able to get meaningful  
17 differentiation among students groups, so these can be  
18 things, like I said, that are in the slide there,  
19 student engagement, teacher engagement, access to and  
20 completion of advanced coursework, school  
21 climate/safety, and college and career readiness. So  
22 these indicators form the underpinnings of an  
23 accountability system.

24           Next slide.

25           So in terms of how these different indicators

1 come together in the accountability -- yeah, in the  
2 accountability system, at the end of looking across the  
3 indicators we must be able to meaningfully  
4 differentiate annually how all schools are doing, and  
5 the indicators that are academic in the aggregate  
6 receive much greater weight than the other indicators,  
7 so this aligns to the previous slide where I listed a  
8 series of academic indicators. So those must be  
9 weighted more.

10 Substantial weight is the language of ESSA,  
11 and in the aggregate much greater weight, and then  
12 long-term goals are set on at least the academic  
13 assessment and graduation rate. The goals apply to all  
14 groups of students and must expect more progress from  
15 the groups that are further behind.

16 Next slide, please.

17 So it looks like the top is cut off a little  
18 bit, but we're talking here on this slide about  
19 identifying schools that need intervention. So we can  
20 think of this as two rows, so the top row represents  
21 comprehensive intervention -- or comprehensive support.  
22 So you can see that the blue box there applies to Title  
23 I schools, Title I, Part A recipients, as does the blue  
24 box in the upper right-hand corner. So it's the lowest  
25 performing 5 percent of Title I schools and additional



1 targeted support for Title I schools that are not  
2 exiting. Those types of schools are for comprehensive  
3 support. In the middle of the top row is schools that  
4 have a low graduation rate. We're going to talk about  
5 that in just a second. But this draws from all  
6 schools. It may not be a school receiving Title I,  
7 Part A.

8 So the second row is about other kinds of  
9 support intervention. Here in the box close to me, the  
10 lower left, schools with consistently underperforming  
11 subgroups. Additional targeted support in the middle.  
12 This is targeted support and improvement schools. And  
13 then the far box there, the orange, could be from Title  
14 I recipients or other schools, and that's additional  
15 categories of schools that need support. So the exact  
16 details are to be worked out, but this is what the law  
17 calls for.

18 And let me get the page here. Let's go to the  
19 next slide.

20 And so for comprehensive support and  
21 improvement, as I said, the lowest performing 5 percent  
22 of Title I recipients and all schools that fail to  
23 graduate more than 67 percent of their students, those  
24 get comprehensive support, and identification must  
25 occur once every three years.

1           Next slide.

2           For targeted support and improvement, or TSI,  
3 we're looking at schools where subgroups are  
4 underperforming and schools are responsible for  
5 implementing interventions within a set time period,  
6 and for targeted support and improvement schools are  
7 identified annually.

8           Next slide.

9           Then there is additional targeted support and  
10 improvement, and this is based on the performance of  
11 student groups. They use the same methodology as  
12 comprehensive support and improvement, the lowest  
13 performing, and in this case we're looking and drilling  
14 down on the student group performance. And they can be  
15 drawn from any schools. They can be the TSI or all  
16 schools, and it's not limited to schools receiving  
17 Title I.

18           So, again, this emphasis on not just overall  
19 school performance but drilling down the student groups  
20 is a -- you know, is a step that was begun with No  
21 Child Left Behind and further clarified and amended in  
22 ESSA that student groups who are struggling or not  
23 performing, they can't be blended in. They're  
24 highlighted and spotlighted in ESSA for support and  
25 improvement.

1           Next slide.

2           So, again, all this comes back to promoting  
3 excellence and ensuring equity. There is a lot of  
4 information at the Department of Education's website on  
5 the requirements, and periodically the Center for  
6 Standards and Assessment Implementation does webinars  
7 and releases materials. In fact, all of the state  
8 plans are posted on our website as well as on the  
9 Department of Education's.

10          Next slide.

11          So the additional slides, I think in the  
12 interest of time I won't go into them, but they're in  
13 the packets there. There is a side-by-side No Child  
14 Left Behind in ESSA for those who are familiar with No  
15 Child Left Behind and want to highlight the contrast  
16 and differences. There is a series of tables that  
17 are -- that are in your packet, but I will show them,  
18 so if we go to the next slide you can see the kinds of  
19 things. There is a two-column format where you can see  
20 No Child Left Behind at the left and the differences  
21 with ESSA on the right.

22          Next slide. Next slide. Next slide. Next  
23 slide. Next slide.

24          So that is it for my remarks.

25          Juanita, I'll pass it back to you. Maybe you

1 found a battery for that other mike.

2 MS. MENDOZA: I did. Thank you.

3 MR. CRANE: Oh, wonderful.

4 MS. MENDOZA: So I wanted to -- just a quick  
5 change of plans. I said that we would go into a break,  
6 but since we're moving right along let's go ahead and  
7 move into the Part 30 consultation presentation, and  
8 Dr. Tamarah Pfeiffer will be presenting.

9 MS. PFEIFFER: Good morning. I will be  
10 presenting a slide on Standards, Assessment, and  
11 Accountability System. Each slide that is presented on  
12 the rule poses some questions to the audience. When  
13 the -- when we're posing these questions, we really are  
14 looking for specific and very detailed feedback that  
15 you have that will help us encourage this process.

16 Again, slide.

17 The BIE Standards, 8204, the Elementary and  
18 Secondary Act requires the Secretary of the Interior to  
19 have requirements and standards, assessments, and  
20 accountability. Each of these requirements must be  
21 consistent with Section 1111. Such requirements must  
22 be implemented pursuant to the regulations developed  
23 through a negotiated rulemaking process.

24 I want to thank Ms. Genevieve Jackson and  
25 Ms. Lucinda Campbell who were both part of the

1 Committee from Navajo that supported this process.

2 Next slide.

3 This is the timetable that occurred based on  
4 the Committee's work starting in September 14, 2017.  
5 You'll see that it started again due to new  
6 administration, and the Committee then met four times  
7 and submitted a written report to the BIE in  
8 April 2019.

9 Next slide.

10 The Committee members were made up of 17  
11 members in total. Twelve were non-federal with two  
12 alternates; two primary federal employees with one  
13 alternate. And they came with a wide variety of  
14 stakeholder and geographic regions across the United  
15 States for Bureau-funded schools. They included  
16 administrators, teachers, parents, school board  
17 members, and other representatives. So I want to again  
18 thank the Committee members for this. We also had  
19 Tasha Racawan from the Navajo Nation who was a member  
20 as well. Thank you.

21 The Committee recommendations, the key thing  
22 that needs to be outlined here is that the BIE needs  
23 consistent requirements from states as defined in ESSA  
24 under Section 1111, and the Standards, Assessments, and  
25 Accountability Plan is ongoing stakeholder engagement

1 and will be included as part of the state plan. This  
2 is a statutory requirement, and it is -- the word that  
3 we want to be sure that we acknowledge is that we are  
4 consistent.

5 Next slide.

6 The proposed rule: The Committee recommended  
7 that the rule include the requirements that BIE have  
8 standards, assessments, and accountability. This is to  
9 ensure transparency and consistency with stakeholders  
10 similar to the state plan requirements that other  
11 states have under ESSA. Should such a plan be specific  
12 in the rule?

13 Next slide.

14 The proposed rule again: Stakeholder  
15 engagement. The Committee recommended that the rule  
16 required ongoing and meaningful engagement with  
17 stakeholders regarding requirements. Some of the  
18 questions that we'd like to pose: Is stakeholder  
19 engagement a requirement beyond existing tribal  
20 consultations? What effect would such a requirement  
21 have on the BIE's ability to make changes to  
22 requirements when necessary? What form should  
23 engagement take?

24 Next slide.

25 Proposed rule: Tribal Civics. The Committee

1 recommended that the rule required implementation of  
2 standards and assessment in a subject to be called  
3 Tribal Civics. That would include topics related to  
4 tribal sovereignty, self-determination, treaty law, et  
5 cetera. The questions we posed: How might such a  
6 requirement be implemented nationally across BIE-funded  
7 schools? Might such requirement conflict with  
8 curriculum work tribes have developed in their  
9 communities?

10 Next slide.

11 Proposed rule: Science. The Committee  
12 recommended that the rule require the incorporation of  
13 Science in the accountability system. Should such a  
14 requirement apply nationally to all BIE-funded schools?  
15 What might be the effect of such requirement? Again,  
16 this falls under the academic -- Science as an  
17 academic.

18 Next slide.

19 Proposed rule: Tribal Civics and Science as  
20 SQSS. The Committee required that the rule required  
21 Tribal Civics phased in and Science as School Quality  
22 and Student Success, SQSS, indicators with the possible  
23 later incorporation of Tribal Civics as an academic  
24 achievement indicator at a later date. The question we  
25 pose: What might be the effect of such requirements?

1 Next slide.

2 Proposed rule: Native American Languages.  
3 The Committee recommended that the rule include an  
4 affirmation of the right to develop and implement  
5 academic standards and academic assessments in Native  
6 American languages. The question: Does the statement  
7 regarding what a tribal governing body or school board  
8 might implement belong in a federal rule governing what  
9 must be implemented in BIE-funded schools?

10 Next slide.

11 The proposed rule: State Requirements Opt-In.  
12 During the transition the Committee recommended that  
13 the rule allow tribal -- tribal grants -- help me.

14 MS. MENDOZA: Tribal governing body.

15 MS. PFEIFFER: Thank you. Tribal governing  
16 bodies and school boards the option to continue to use  
17 state requirements for standards and assessments where  
18 a state agrees and the TGBSB has notified the Secretary  
19 of such an intention. How might that affect the goal  
20 of a unified system of requirements agreed upon by this  
21 Committee? Does this conflict with the statutory  
22 waiver and alternative proposal processes? That's a  
23 mouthful.

24 Okay. Next slide.

25 Proposed rule: Waivers and Alternative



1     Proposals.  The Committee recommended that the rule  
2     include timelines for responses to proposals for  
3     alternative requirements to ensure timeliness and  
4     transparency in review process, including updates every  
5     30 days.  Question:  Would such requirement be overly  
6     burdensome?

7             Next slide.

8             These are additional proposed sections that  
9     were not addressed by the Committee, but we feel like  
10    we need to have also stakeholder engagement around  
11    these areas as well.

12            Next slide.

13            Proposed Rule:  Support and Improvement.  The  
14    proposed rule describes requirements for support and  
15    improvement.  Do such requirements belong in this rule?  
16    How much autonomy should BIE-funded schools have with  
17    regard to school improvement?

18            Next slide.

19            These are the Consultation Schedule.  Next  
20    Thursday we will be in Ohio, and then we will also have  
21    a webinar that is scheduled July 26th to be announced.  
22    But this is not the only time that we will take tribal  
23    input.

24            Next slide.

25            We would like all tribal input to be sent in,

1 if possible, by August 9th, 2019. Here is the link and  
2 the website for additional comments. Today we again  
3 are here to hear both verbal comments and written  
4 comments.

5 Next slide.

6 And that's it.

7 MS. MENDOZA: Thank you, Tamarah.

8 Okay. So we're moving right along, so if  
9 nobody is opposed why don't we just keep moving  
10 forward, or do you folks need a break? Should we just  
11 continue?

12 Okay. So, again, before we open it up to  
13 comments, questions, I just wanted to let folks know  
14 that we want to keep the comments, the questions  
15 relevant to the proposed rule. We want to open it up  
16 to tribal leaders. Oh, wait. I just saw our director.  
17 Do you want to wait until -- okay.

18 So I want to open it up. We want to allow  
19 tribal leaders to speak first, but I don't know if  
20 there are any leaders in the audience today. But,  
21 again, the ground rules would be to keep the comments  
22 relevant to the proposed rule. And, again, if you're  
23 going to speak make sure you say your name clearly,  
24 your affiliation, and if your name is complex to please  
25 spell it for the court reporter.

1           Let's see. BIE wants to be in a listening  
2 mode today. We want to hear your feedback. We want to  
3 hear your position, so we don't intend to spend time --  
4 a lot of time answering questions or putting forth any  
5 opinions, so we want to be in that listening mode.

6           Let's see. I'm going to go ahead and help  
7 field questions as they're -- or comments. Let's see.  
8 We have a microphone that I can pass along to folks who  
9 want to speak. And let's see. She's got to step out  
10 at 10:00, so we got a little bit of time.

11           Another point I want to make is I don't know  
12 if everybody has had time to read the proposed rule  
13 that was published in the Federal Register. As you  
14 read through the rule, there is a sample. It shows the  
15 language that we're proposing to be in the Federal  
16 Register, the CFR. So as you're reviewing it keep in  
17 mind the language that you would like to propose. It's  
18 great to provide comments or ask for clarification, but  
19 it really makes a difference when you can propose  
20 actual language. That really helps us in our analysis  
21 of comments and any questions. So as we move forward,  
22 we will plan to publish an analysis of the  
23 consultations, and we will include the comments and any  
24 action that was taken based on those comments or the  
25 suggested language. So why don't I go ahead and open

1 it up.

2 Mr. Franklin, would you like to speak? Thank  
3 you.

4 MR. FRANKLIN: Again, my name is Darrick  
5 Franklin. I am the Education Program Manager for the  
6 Office of Diné Accountability in compliance with the  
7 Department of Education, Navajo Nation.

8 My question is for clarification purposes. On  
9 page 8 of the BIE slide can you explain in detail the  
10 definition of Tribal Civics? I know it's been  
11 explained, but for the audience and clarification  
12 purposes define more clearly what you mean by Tribal  
13 Civics.

14 DR. HAMLEY: Jeff Hamley here. Jeff Hamley.  
15 Well, the Committee didn't go into detail on that. I  
16 mean, they had -- I believe it's in the report, but  
17 they had a lot of discussion on that, as to what it  
18 meant, but in the rule they did not move that language  
19 forward. But it covers things like treaty rights,  
20 non-treaty tribes, any Reorganization Act tribes, you  
21 know, the full range, and, you know, what it means to  
22 be a tribe, to be members of a tribe, and whether it's  
23 a political, you know, status, and going back to the  
24 Constitution, all of that.

25 There was discussion about some of the law

1 courses that are given and how, you know, Indian  
2 education law, of course, throughout the country many  
3 law schools have it. That covers sort of the range of  
4 things. Of course, that's at the law school level, so  
5 this would have to be translated into whether it was  
6 going to be K-8 or, you know, K-12, and that also  
7 wasn't really made clear, but that was the general  
8 idea.

9 So there was discussion in the meeting  
10 about -- you know, various people gave various  
11 perspectives about what that would mean, but they  
12 didn't put it in the rule, so it's subject to  
13 interpretation.

14 MR. FRANKLIN: Okay. Then part two of my  
15 question, the way I -- the way as I read Tribal Civics,  
16 it basically would give -- correct me if I'm wrong --  
17 the tribe to act on sovereignty, meaning if the tribe  
18 chooses to develop their own accountability workbook  
19 then they could do so under Tribal Civics. Correct?

20 DR. HAMLEY: No. I mean, Tribal Civics is  
21 meant as an academic subject, so, you know, we have  
22 standards, possibly assessments, but it would  
23 definitely have a curriculum, and then it would  
24 probably require teacher training about what it was  
25 about. But no, no. It's just strictly a course that

1 would be offered throughout the grades.

2 And I guess just to reiterate what Tamarah had  
3 highlighted is that, I mean, the issue here is do  
4 tribes want the government to develop one course for  
5 all schools, you know, or -- and because the issue came  
6 up also that, well, many tribes already teach some form  
7 of Tribal Civics or tribal culture relative to their  
8 tribe in their schools, and so that was -- that was the  
9 issue.

10 MS. MENDOZA: Anybody else have any comments  
11 or questions?

12 DR. LEWIS: My name is Tommy Lewis,  
13 Superintendent of Schools for the Department of  
14 Education, Navajo Nation.

15 My question is in your presentation you  
16 mentioned that tribal government body or school board  
17 was mentioned. Here on Navajo we have 66 BIE-funded  
18 schools, so how do you see all of this panning out  
19 with -- as I say, the Navajo Nation may have its own  
20 plan, but then the schools would also be taking out a  
21 separate plan, so you would have possibly 67 different  
22 plans on Navajo. How will the BIE administer that many  
23 plans if that should be the case?

24 DR. HAMLEY: Good question. Well, that was --  
25 that language was introduced in No Child Left Behind,

1 and then Congress under the reauthorization of ESSA  
2 decided to carry that same language forward. So as we  
3 went through two tribal waivers, you know, with Navajo  
4 and Miccosukee, we had to ask that question to  
5 ourselves. What does that mean, tribal governing body  
6 or school board? But we did work with DOTI on your  
7 proposal, and it was approved by the Secretary. So it  
8 is subject to interpretation, you know, which -- who is  
9 governing a school board of a 297 or 638, or whether  
10 Bureau-funded, Bureau-operated. And so the Bureau's  
11 perspective is to take it on a case-by-case basis.  
12 But, yeah, it's an interesting question, and I don't  
13 think we have all the answers on that yet.

14 MS. MENDOZA: Any other questions? Comments?  
15 Darrick?

16 MR. FRANKLIN: I'll use my teaching voice.

17 On page 13 of your slide -- again, this is  
18 Darrick Franklin, Department of Education -- the  
19 Proposed Rule, Waivers and Alternative Proposals, can  
20 you speak more to that on page 13? What exactly are  
21 you defining as a waiver or an alternative proposal to  
22 this -- to your plan, for clarification purposes?

23 MS. SINHA: So I think, Darrick, the starting  
24 point to your question is going to be found in 20  
25 U.S.C. 7824(C), Subsection 8204, of ESEA, where it

1 says, "The tribal governing body or school board of a  
2 school funded by the Bureau of Indian Affairs may waive  
3 in part or in full the requirements established  
4 pursuant to Paragraph (1) where such requirements are  
5 determined by such body of school boards to be  
6 inappropriate. If such requirements are waived, the  
7 tribal governing body or school board shall, within  
8 60 days, submit to the Secretary of Interior a proposal  
9 for alternative standards and an accountability system,  
10 if applicable, consistent with Section 1111 of the  
11 ESEA."

12 And then if you look at the proposed rule you  
13 will see that -- if you look at the proposed rule you  
14 will see that section, that there is language regarding  
15 how that proposal will be submitted and that what the  
16 process is for approval. Sorry. So, I mean, does that  
17 answer a little bit of your question? I mean, do you  
18 have a specific question about the language in the  
19 proposed regs?

20 MR. FRANKLIN: Yeah.

21 MS. SINHA: That does answer--

22 MR. FRANKLIN: No. Specifics, please.

23 MS. SINHA: So what is your specific question?

24 Because if you look at section -- so if you start  
25 looking at Subpart B under 30.112 and 30.113, that's



1 going to tell you the process for obtaining a waiver.

2 MS. MARTIN: Why don't you tell him the page  
3 number.

4 MS. SINHA: And it is on page 26800 of the  
5 Federal Register notice. And maybe if you go to  
6 30.113(a): "A tribal governing body or school board  
7 may waive the Secretary's requirements for standards,  
8 accessibility, and accountability system in part or in  
9 whole.

10 MR. FRANKLIN: So in Subsection 30.112, the  
11 answer to my question would be yes, correct, on page  
12 800?

13 MS. SINHA: When you say the answer to your  
14 question is yes --

15 MR. FRANKLIN: In terms of the accountability  
16 proposal.

17 MS. SINHA: Do you want to -- do you want to  
18 articulate your --

19 MR. FRANKLIN: Well, what I'm saying is that  
20 the proposed rule is offering waivers and an  
21 alternative proposal. When you cite the regulation on  
22 page 800 in Subsection 30.112: "A tribal governing  
23 body or school board may waive the Secretary's  
24 requirement for standards, assessments, and  
25 accountability systems, then if that's the question,

1 the answer would be yes?

2 MS. SINHA: Yes. The tribe may -- under the  
3 proposed regs the tribe would be able to do that. And  
4 if you look under the language that I read you from the  
5 statute, that also provides it.

6 MR. FRANKLIN: Okay. Thank you.

7 MS. MENDOZA: First, I'd like to recognize The  
8 Honorable Peterson Zah. He joined us today, and I just  
9 wanted to acknowledge his participation today. Thank  
10 you.

11 THE HONORABLE PETERSON ZAH: Thank you.

12 MS. MENDOZA: I'll come to you.

13 DR. LEWIS: I have a follow-up question to  
14 what is proposed on the waiver part. Has the BIE  
15 talked about waiving one or all of the parts to the  
16 current law? If you should have your own  
17 accountability, what are you proposing on waiving?  
18 That would be my question.

19 DR. HAMLEY: Are you asking -- Jeff Hamley  
20 here. Are you asking what the government is going to  
21 waive?

22 DR. LEWIS: Yes.

23 DR. HAMLEY: Well, the waiver is for the  
24 governing tribes or school boards. It's not for the  
25 government. So the governing tribe or school board may

1 waive in whole or in part the Secretary's Standards,  
2 Assessments, and Accountability System.

3 Now, there is a separate section I believe in  
4 ESSA -- in ESSA, for, you know, states to pursue  
5 waivers, but that's different than this. So we  
6 don't -- we don't plan on -- we plan on establishing a  
7 Standards, Assessments, and Accountability System  
8 consistent with 1111, because that's what we're  
9 required to do. And some parts don't apply to us, like  
10 the state plan. But the Standards, Assessments, and  
11 Accountability System, it all applies to us, well, more  
12 or less, so we plan to establish that, and we don't  
13 plan to pursue any kind of waiver at this point.

14 DR. LEWIS: I have a follow-up question. So  
15 the Navajo Nation has the Diné School Accountability  
16 Plan approved by the Secretary as of September 2016, so  
17 if these rules become reality and you're allowing for  
18 tribal governing bodies to set an academic  
19 accountability plan do we have to go through the whole  
20 process of meeting the standards one more time within  
21 the BIE system, or could our Diné School Accountability  
22 Plan that is already approved by the Secretary, can it  
23 move forward without having to go through the BIE  
24 review one more time?

25 DR. HAMLEY: I'm glad you're here, Jill.

1           That's actually where we're at right now as an  
2 agency is that we're trying to look at what is the  
3 status of the current proposal. Essentially can it be  
4 extended, since it had a finite period ended on  
5 June 30th, 2019. So that's one question, and we're  
6 working on that.

7           But the other question is that -- is will the  
8 Navajo Nation need to submit a new proposal, and the  
9 answer to that is yes, because now the content of it  
10 may be similar to the other -- to the prior proposal,  
11 but the prior proposal, the one that was approved, was  
12 based on No Child Left Behind. So we have a new law,  
13 ESSA, and as following that new law we also have -- the  
14 Secretary will have an accountability system,  
15 Standards, Assessments, and Accountability System.

16           So what tribes are waiving are what -- what  
17 the secretary he has in place, and so we're waiting for  
18 rulemaking to finish for the Secretary to define in the  
19 written document the so-called state plan, you know,  
20 what -- what the Secretary is going to implement. And  
21 once that's clear then everyone can consider -- all  
22 tribes and governing school boards can consider what  
23 they're going to waive in whole or in part of that. So  
24 but with the change in the law, yes, a new proposal  
25 would have to be submitted.

1 MR. NEIZE: David Neize, schoolteacher, Navajo  
2 Nation.

3 My question is actually directed to the  
4 accountability plan for Diné education, but it may  
5 affect the overall presentation today. So on Tab 2,  
6 page 11, the fourth one down: "May administer a single  
7 summative assessment," which for me as a schoolteacher  
8 is PARCC, "or multiple statewide interim assessments  
9 that result in a single summative score about student  
10 achievement and growth."

11 So my question to the accountability plan, I  
12 don't know if there is any examples that can be made,  
13 could that multiple statewide interim assessment be  
14 NWEA that has it at the beginning of the year, middle  
15 of the year, end of the year to come up with that  
16 single summative score? Because we know that  
17 evaluating the kids three times a year is more  
18 appropriate than just on one day that we are mandated  
19 to do it by PARCC. Thank you.

20 MS. PFEIFFER: Good afternoon, or morning.  
21 Tamarah Pfeiffer. As you know, NWEA is not peer  
22 reviewed, and so an interim assessment would need to be  
23 peer reviewed in order to be accepted. It does have a  
24 growth model, and that is part of our acknowledgment is  
25 that we do want to look at a growth model, some

1 recommendations for a growth model.

2 DR. HAMLEY: Just to follow on what Tamarah  
3 said, Jeff Hamley here, yeah, unfortunately NWEA is  
4 very popular, but it's not peer reviewed, so we can't  
5 automatically -- it will not be our statewide  
6 assessment, unless we were going to take it to peer  
7 review. But we are very interested in the interim  
8 assessment because we feel our schools like that and  
9 they use that information to inform instruction and  
10 also to get a beginning point, especially after summer  
11 loss, learning loss at the beginning of the year, to  
12 find out where their students are at and then to build  
13 from there. So we are definitely talking internally  
14 about an interim assessment, but -- and when we go out  
15 to get standards and assessments, we'll probably put  
16 that in the proposal.

17 MS. MENDOZA: Thank you for your question.

18 MR. FRANKLIN: I have another question.

19 Darrick Franklin, Department of Education.

20 My question is your proposal, when submitted  
21 to the Secretary of Education, what should happen if  
22 the proposal is not accepted by the U.S. Department of  
23 Education? What do we do?

24 MS. MENDOZA: Do you mean the proposed rule?

25 MR. FRANKLIN: Proposed rule. Proposed rule.

1 DR. HAMLEY: Okay. Well, I don't know if --  
2 you may have stumped us.

3 Jill, do you want to --

4 MS. MARTIN: Sure, sure. Hi. I'm Jill Martin  
5 from the U.S. Department of Education. This is why  
6 we're working closely together, and we have had  
7 representatives from our agency be at each of the  
8 negotiated rulemaking sessions. We also have meetings  
9 with the BIE staff periodically to discuss this process  
10 as well as the content so that we can help ensure that  
11 what BIE is proposing will in fact be consistent with  
12 the requirements of the ESEA with the statute, so hope  
13 that helps.

14 DR. HAMLEY: We need two mikes.

15 DR. LEWIS: So earlier the Navajo Nation had  
16 to go through a whole process for several years, and it  
17 got approved by the Secretary of Education. That was  
18 when the BIE didn't have anyone, so we went through  
19 that whole lengthy process, and now the BIE is talking  
20 about establishing their own accountability system to  
21 be applicable to the 183 BIE-operated schools  
22 throughout the country. So tribes or school boards  
23 that want to pursue this no longer -- from what I  
24 understand no longer have to deal with the Department  
25 of Education but would have to deal with the Department

1 of the Interior BIE standards, and that's as far as  
2 they would go. Is that my understanding?

3 DR. HAMLEY: Jill, correct me if I'm wrong.  
4 Well, technically, the Department of the Interior did  
5 have a system, and that was decided by the No Child  
6 Left Behind rulemaking committee, and they decided and  
7 we put into regulation that we would have a 23-part  
8 system. So our system was the system of each state in  
9 which our school is located, so we did have a system.  
10 Now we're -- the Committee agreed that we would have a  
11 unified system this time. Everybody agreed to that  
12 because that's what all the states do, and that is what  
13 really when you -- it's not stated specifically in the  
14 law, but that is the Congressional intent, that all  
15 states have unified systems and not diversified  
16 systems.

17 But in terms of the review process of the  
18 proposal, No Child Left Behind here, it's still going  
19 to be comprised from a joint committee from the  
20 Department of Ed and Department of the Interior here,  
21 IE and BIE, so the process will be very similar to last  
22 time. There will be a joint committee.

23 MS. SINHA: And, again, so this is required  
24 from -- to fulfill the requirement of 2874, which  
25 required us to work with Ed to develop the proposed



1 regs to implement an assessment and accountability  
2 system. And I think also we talked a little bit about  
3 the waiver process because I think you were getting  
4 there, talking about what are the options for tribes.  
5 So, again, to reiterate, that has been considered in  
6 the proposed regs, and in the statutory language there  
7 would be options for tribes to look at alternate  
8 systems for accountability, the accountability and  
9 assessment.

10 MS. MENDOZA: So I just wanted to take a  
11 moment as we go -- as we look at the BIE's presentation  
12 just to possibly help our -- you know, our consultation  
13 session, the different proposed -- the different items  
14 in the proposed rule were about stakeholder engagement;  
15 Tribal Civics, and that question has been addressed;  
16 Science; Tribal Civics and Science as a school quality  
17 and student success; Native American Languages; state  
18 requirement, opt-in, waiver or alternative proposals,  
19 and we've been discussing that; and Support and  
20 Improvement.

21 So it would be helpful for us to hear any  
22 comments regarding those sections so we can properly  
23 understand the tribes or as a stakeholder your position  
24 on those items in the proposed rule. And if you don't  
25 have questions today, please be cognitive that you can

1 send in any comments, and just so you see the email,  
2 consultation@BIA.gov.

3 Should we -- well, we went through them, so  
4 how do you folks -- would you like us to go through the  
5 slides again, or -- so I'm just going to quickly read  
6 the bullets just so you have an idea.

7 So the proposed rule, as we mentioned earlier,  
8 these were recommendations that came from the  
9 Committee, and then towards the end we had one  
10 additional recommendation that wasn't included in the  
11 Committee's list of recommendations, so overall the  
12 recommendation was that there was a requirement that  
13 BIE have a Standards, Assessments, and Accountability  
14 Plan, so this would ensure transparency and consistency  
15 to stakeholders similar to the state plan required of  
16 states.

17 So, again, the question was: Should a plan be  
18 specified in the rule? The second was stakeholder  
19 engagement. The Committee recommended that the rule  
20 require ongoing and meaningful engagement with  
21 stakeholders regarding requirements. Is it necessary  
22 for there to be stakeholder engagement beyond the  
23 tribal consultation? What effect would such a  
24 requirement have on BIE's ability to make changes to  
25 requirements when necessary, and what form should

1 engagement take?

2 Tribal Civics. The Committee recommended that  
3 the rule require implementation of standards and  
4 assessments in a subject to be called Tribal Civics.  
5 That would include topics related to tribal  
6 sovereignty, self-determination and treaty law, for  
7 example. These are examples. So how might such a  
8 requirement be implemented nationally across BIE  
9 schools? Might such requirement conflict with  
10 curricula work tribes have developed for their own  
11 communities?

12 Next in the proposed rule was --  
13 recommendation was Science. The Committee recommended  
14 that the rule require the incorporation of Science in  
15 the accountability system. Should such a requirement  
16 apply nationally to all BIE-funded schools? What might  
17 be the effect of such a requirement?

18 The next recommendation -- I'm on page 10.  
19 Sorry. I should be noting the pages. Tribal Civics  
20 and Science as School Quality Student Success  
21 indicators with the possible -- so the Committee  
22 recommended that the rule require Tribal Civics, that  
23 it be phased in, and Science be part of the School  
24 Quality and Student Success indicators, with  
25 Science later -- with later incorporation of Tribal

1 Civics as an academic achievement indicator at a later  
2 date, so that would be as it's phased in. So what  
3 might be the effect of such requirements?

4 Native American Languages. The Committee  
5 recommended that the rule include an affirmation of the  
6 right to develop and implement academic standards and  
7 academic assessment in Native American languages. Does  
8 the statement regarding what a tribal governing body or  
9 school board might implement belong in a federal rule  
10 governing what must be implemented in BIE-funded  
11 schools?

12 I just wanted to make note that by law it is  
13 already the policy in the United States to support and  
14 encourage the use of Native American languages as a  
15 medium of instruction, and that is in Public Law  
16 101-477. So does it cause a conflict with the statute  
17 and other regulations? And the -- having Native  
18 American languages included could be accomplished  
19 through alternative requirements.

20 State Requirement Opt-in. Excuse me. During  
21 transition, the Committee recommended that the rule  
22 allow tribal governing bodies and school boards the  
23 option to continue to use state requirements for  
24 standards and assessment where the state agrees and the  
25 tribal government -- governing body and school board

1 notify the Secretary of such an intention. The  
2 questions were: How might this affect the goal of the  
3 unified system of requirements agreed upon by the  
4 Committee, and does this conflict with the statutory  
5 waiver and alternative proposal process?

6           Waivers and Alternative Proposals. The  
7 Committee recommended that the rule include timelines  
8 for responses to proposals for alternative requirements  
9 to ensure timeliness and transparency in review  
10 process, including updates every 30 days. Would such  
11 requirements be overly burdensome? And I just wanted  
12 to make note that this would not be applicable to the  
13 Department of Education. This would only be applicable  
14 to the Department of the Interior.

15           And then the additional section was Support  
16 and Improvements. The proposed rule describes  
17 requirements for Support and Improvement. Do such  
18 requirements belong in this rule, and how much autonomy  
19 should BIE-funded schools have with regard to support  
20 and improvement? There was some discussion that the  
21 school support and improvement might be more properly  
22 addressed in the required BIE Department of Ed  
23 memorandum of understanding, and it's unclear how much  
24 autonomy BIE-operated schools should have with regard  
25 to the school improvement, school support and

1 improvement.

2 So I hope that helps. If there are any  
3 additional questions -- I know we went through the  
4 items very quickly. And, again, it's very helpful if  
5 we get your comments on these proposed recommendations.

6 MR. FRANKLIN: Darrick Franklin with the  
7 Department of Education.

8 Now that I have better clarity on Tribal  
9 Civics, there are a couple of questions that I have.  
10 The Navajo Nation has developed the Navajo Nation  
11 five-content standards, which encompasses various  
12 subjects: History, language, culture, government, and  
13 what we call character -- character development. And  
14 Navajo Nation law supports the implementation of the  
15 five-content standards. Being that Navajo schools  
16 alone encompass one-third of the BIE schools, shouldn't  
17 it have some weight to allow the 66 -- or rather the 61  
18 schools implement the five-content standards to -- I  
19 guess my question would be how would that be  
20 incorporated into the proposed alternative workbook?

21 And, number two, New Mexico Public Education  
22 Department is in the process of developing curricula  
23 which they are calling Indigenous New Mexico, and  
24 Navajo Nation, the Apache tribes, and the Pueblos have  
25 all been a part of this, to redevelop the history of

1 the state of New Mexico upon implementation with the  
2 state. So being that Navajo Nation sits in three  
3 states, how will that curricula be implemented into the  
4 schools within the state of New Mexico?

5 MS. PFEIFFER: So let me start with your first  
6 question around Tribal Civics. Currently there is  
7 nothing right now that would not disallow tribal  
8 nations to develop their own Tribal Civics course,  
9 which is exactly what you've acknowledged in alignment  
10 to that, so that would be something that could continue  
11 to be supported and would not interfere with any of  
12 this process. So if you had specific language that  
13 maybe could be put into the record around that, that  
14 might be a little bit stronger in the recommendation.

15 And I think we'll just stay in listening mode  
16 for New Mexico PED. I don't think we can speak to New  
17 Mexico PED's requirements and their work, but it's  
18 informative.

19 DR. HAMLEY: Can I say something, too, on  
20 that? So if the Bureau -- if the rule did state that  
21 all Bureau-funded schools will implement Tribal Civics,  
22 you know, in one form or another, so all -- so the  
23 Navajo Nation, one-third of your schools would be  
24 required to implement that. Now, the way that you  
25 wouldn't have to do that is to request a waiver, since

1 that would be part of the Secretary's accountability  
2 system. So that's -- if you decided that you didn't  
3 want to implement whatever the government's developed,  
4 that would be a waiver.

5 DR. LEWIS: Going back to tribal governing  
6 body and school boards, you have 33 BIE-operated  
7 schools on Navajo, 33 tribally controlled schools.  
8 Will the BIE allow for one of your BIE-operated school  
9 boards or all of them to develop their own plan, or are  
10 you going to restrict them? Because currently they're  
11 under the BIE system, BIE federal laws, so my -- I'm  
12 interested in knowing whether the BIE will allow for  
13 that BIE-operated schools to develop their own plan.

14 DR. HAMLEY: Well, there is nothing definitive  
15 on that, but under the RESAAP, the prior proposal, the  
16 BIE administration at the time decided to -- to include  
17 the BIE-operated schools, so that was then. So the  
18 question under the new rule, would that apply? Because  
19 from one perspective the school board of the  
20 Bureau-operated schools are not governing. The federal  
21 government is governing. So that's an open question at  
22 this point, and we'll allow the -- the legal  
23 departments to work that out, but that's a good  
24 question.

25 MS. SINHA: I mean, I would just point you to



1 the definition of waiver in the proposed -- the  
2 proposed reg -- the proposed rule on page 26. "Waiver  
3 means the exercise of authority by a tribal governing  
4 body or school board for tribally controlled schools to  
5 elect to implement requirements, in part or in whole,  
6 alternative to the ones adopted by the Secretary  
7 pursuant to this part at schools that are under the  
8 tribal governing body's or school board's  
9 jurisdiction."

10 So I think that partially addresses your  
11 question about the alternative.

12 MS. MARTIN: Can I say something?

13 DR. HAMLEY: Sure. Go ahead.

14 MS. MARTIN: Hi. This is Jill Martin again.  
15 Yeah, the regulation as drafted only allows a waiver  
16 for the tribally controlled schools, not the  
17 BIE-operated. As Chaitna was reading that definition  
18 of waiver, in case you didn't catch that nuance in the  
19 definition, only those tribally controlled schools  
20 could request waivers, not BIE-operated. So I'm sure  
21 since BIE is taking comment on everything that's one of  
22 the topics you could comment on if you disagree with  
23 that. That's how I read it.

24 DR. HAMLEY: Good point. That's why we're  
25 here, to clarify your points, and then you can make

1 comments on that if you don't like the way the rule --  
2 that rule is written.

3 MR. FRANKLIN: I got a question.

4 MS. SINHA: And that would be entirely  
5 appropriate. If that's a concern that you have, please  
6 submit that, and you can comment as well.

7 MR. FRANKLIN: Darrick Franklin again.

8 So for clarification purposes are you saying  
9 that the BIE-operated schools have -- the school boards  
10 have no say-so in the proposed plan; that only tribally  
11 controlled schools can develop their own waiver? Is  
12 that what I'm hearing? Correct?

13 MS. SINHA: I'm saying that in the proposed  
14 rule as it is drafted now a Bureau-operated school  
15 would not be eligible for a waiver, only a tribally  
16 controlled school can. The first part of your  
17 statement I think is outside of the scope of kind of  
18 what we were talking about. Of course there is a role  
19 for the school boards in the Bureau-operated schools,  
20 but it's -- the role is not to request a waiver as the  
21 rule is currently written.

22 MS. MENDOZA: I would just add to that as  
23 you're reading through the draft rule that you submit  
24 comments that pertains to that point.

25 Any more questions? Excuse me. Comments? I

1 keep saying questions. Comments?

2 MS. TOADECHEEME: My name is Sharon  
3 Toadecheeme. I'm with Navajo Nation Board of  
4 Education, and I'd like to know the definition of  
5 tribal governing body or school board. Then I can ask  
6 my questions from there.

7 MS. SINHA: For purposes of the proposed rule,  
8 I would turn your attention to page 26795 where it  
9 defines tribal governing body or school board, and it  
10 defines it to mean "with respect to waiver and  
11 submission of proposals for requirements alternative to  
12 the Secretary's requirements for standards,  
13 assessments, and accountability system at tribally  
14 controlled schools, the entity authorized under  
15 applicable tribal or federal law to waive the  
16 Secretary's requirements and propose alternative  
17 requirements."

18 Sorry. I see -- I see the look there, so  
19 let's -- how can we help clarify your question? That's  
20 the definition that's provided by the rule. Obviously  
21 you want -- it seems like you want to engage a little  
22 bit on that so is there another question that we can  
23 get at that addresses your concern or comments?

24 MS. TOADECHEEME: For here in the Navajo  
25 Nation, Navajo Nation Board of Education is the tribal

1 governing body for education. Then you've got BIE.  
2 They have their own. And then you have the tribal  
3 contract and grant schools that have their own school  
4 board. So what would be the main definition, if we're  
5 going to continue to do the waiver of this, the  
6 continuance of the ESSA for Navajo Nation?

7 MS. SINHA: I mean, I think we would -- I  
8 think that's a matter of Navajo law, and we would have  
9 to work through that on a case-by-case basis. And, I  
10 mean, we would of course defer to the Nation in regards  
11 to interpretation of its own laws.

12 MS. MENDOZA: Any more comments? Just let us  
13 know if you need to go back to the slides, if that's  
14 easier.

15 You want to take a break? Okay. Let's go  
16 ahead and take a 15-minute break. You can read the  
17 federal proposed rule on the break and come back. Just  
18 kidding. Thank you.

19 (Recess taken from 10:12 a.m. to 10:31 a.m.)

20 MS. MENDOZA: Hello, everyone. So let's go  
21 ahead and get started, but right now I wanted to allow  
22 President Nez to provide some comments and then hear  
23 from the BIE director Tony Dearman.

24 President Nez?

25 MR. NEZ: Thank you. Hopefully the battery

1 will hold up, huh?

2 And welcome to friends from Washington,  
3 Department of the Interior, BIE, and also from the  
4 Department of Education. You know, first of all, for  
5 our relatives here a quick introduction in our ways.  
6 (Speaking in Navajo.)

7 Good morning to everyone, and my apologies. I  
8 know we started off together earlier, and I had to run  
9 to another meeting briefly with some council members.  
10 You may know that the council is happening this week,  
11 and they're on their second day, so we had to talk  
12 about some items that we will be debating this week in  
13 their session.

14 Greetings to everyone, our Committee members  
15 that are here.

16 I know this is a tribal consultation. We did  
17 receive the Dear Tribal Leader letter June 10th, 2019,  
18 and it looks like you were in Albuquerque on July 11th,  
19 and now the Navajo Nation, and visiting other tribal  
20 nations throughout the country. And the comments for  
21 you all to take back to jot down, I'd like to present  
22 our perspective from the Navajo Nation. I know that  
23 the Department of Education spoke earlier and some of  
24 the staff I'm sure visited you out in the lobby.

25 Just a brief overview. I don't know if they

1 gave you that overview, but at least this  
2 administration has really supported the continuation of  
3 our way of life, teaching. Right? You may call it  
4 culture and tradition. Here we call it our way of  
5 life, teaching. And that's embedded in academia,  
6 education in K through 12, if you want to say that,  
7 college, university.

8           There is also the other component. We Navajo  
9 call it the wisdom teaching, which is at home, you  
10 know, learning from our parents, grandparents, our  
11 family members, and our community. And, you know, if  
12 you put those two together, it's very powerful, as you  
13 know. Studies indicate a lot of the information has  
14 been gathered throughout many years has stated that if  
15 a Native American student is taught their way of life,  
16 taught their tradition, their culture, and their  
17 language they are more likely to succeed off their  
18 Nation as well as on their Nation, and that's where I'd  
19 like for us to start this dialogue about with  
20 the rulemaking committee and getting the comments  
21 through the country on the position of the BIE, the  
22 Department of the Interior, BIE, developing their  
23 accountability plan so that schools that are governed  
24 by the BIE have the criteria in place that have been  
25 solidified through the Every Student Succeeds Act. And

1 we fought, many of us -- I think all of us around the  
2 room fought very hard to get that tribal provision in  
3 place where tribal consultation does occur with  
4 schools, to hold schools accountable for the funds that  
5 go from the federal government to various school  
6 districts. And I'm talking about state schools here,  
7 but I'll come back around to the BIE schools.

8 But here on the Navajo Nation, our leaders,  
9 and I was a part of a lot of those discussions as a  
10 lawmaker at one point, is -- the vision for the Navajo  
11 people is to have our way of life teaching to be  
12 incorporated in our schools, BIE, all the schools,  
13 state schools, here on the Navajo Nation. And there  
14 was a big push to reevaluate the education system here  
15 on the Navajo Nation, and here we call it Title 10.  
16 The law that's in place is called the sovereignty --  
17 Navajo Diné Sovereignty in Education Act.

18 So what does that really mean to us today?  
19 You know, we as leaders tend to use sovereignty as a --  
20 as a way to bring more funding to our communities. We  
21 say, well, we're a sovereign nation, but we need more  
22 resources based on Treaty of 1868, those promises that  
23 were made. You know, most of the time these promises  
24 are never kept, especially in education. I say that  
25 with all due respect. We have to remind our

1 Congressional delegation there in D.C. of those treaty  
2 obligations, and it's always a continuous battle, I  
3 guess you want to say, to get more funding to the  
4 Navajo schools.

5           And so sovereignty is the ability to take care  
6 of yourself. If you want to bring it closer to  
7 individuals, I think it's inherent sovereignty, right,  
8 the way of the local individual level, and in our case  
9 we call that T'áá Hwó Ají Téego, the ability to take  
10 care of yourself, the ability to make those decisions  
11 for yourself. That's sovereignty. We have that  
12 concept, and that teaching in our way of life.

13           And then we delegate some responsibility to  
14 leadership, right, and that's where we -- through a  
15 vote of the people we get delegated authority to speak  
16 on behalf of the people. We just recently had an  
17 election in January. Sixty-seven percent of the voters  
18 out there voted for myself and our vice-president, and  
19 that's a big majority. And they want some change to  
20 happen. I know we use change a lot. It's cliché these  
21 days. Campaigns are about change all the time. But  
22 based on the numbers, there is also a confidence of  
23 hope as well into the future of the Navajo people.

24           And so back to sovereignty. We should be able  
25 to have the ability to take care of ourselves, right,



1 inherently, community-wide and nationwide. That's  
2 where we look like to the nation level, sovereignty.  
3 But in education we feel that we want and we know  
4 what's better, best for our children, and we have  
5 academics. We have school board members here today  
6 that have gotten that education, that outside  
7 education, if you would say. But they also include how  
8 we were raised and how we would grow up, so that wisdom  
9 and then that knowledge put together is very powerful.

10 And so when they -- the council approved this  
11 Title 10 law to transform Navajo education, it was a  
12 move to say that the Navajo has the ability to take  
13 care of our own, to teach our own young people through  
14 our teaching, and that has been many, many years now.  
15 And so, you know, I like to pride ourselves, the Navajo  
16 Nation, as always being in the forefront of wanting to  
17 take that responsibility or returning that  
18 responsibility back to the Nation.

19 And so when there was an opportunity to have a  
20 school accountability plan, we jumped to the forefront.  
21 And rather than calling it a school accountability  
22 plan, you know, we Navajos like to make it our own, and  
23 we call it the Diné School Accountability Plan. Many,  
24 many hours were put into that, and I was a part of  
25 those discussions as a councilman, going to state of

1 Utah, getting support from the governor there of New  
2 Mexico, the governor, and saying that it is time for us  
3 to have a state-like education agency to where we are  
4 able to set the curricula, to set the standards for our  
5 students here on our land. And that's sovereignty at  
6 the highest level.

7 And then we're asked today to make comments on  
8 a proposed rule that says that -- well, BIE, love you  
9 guys, but I might step on some toes here. Where is  
10 your accountability plan? How many years has it been?  
11 The nations out there, the communities are waiting.  
12 Where is that accountability plan? Well, here, as  
13 always, the Nation took on that responsibility and said  
14 let's do it ourselves, do it ourselves, and we  
15 developed one. And guess what, I was a part of that  
16 signing ceremony over there in Washington, D.C. with  
17 former secretaries for the Department of the Interior  
18 and Department of Education, and at that time we felt  
19 what a big success. We're able to see that vision for  
20 our leaders before us to say, yeah, we can do this on  
21 our own.

22 And then today I wasn't here, but just by  
23 hearing some updates the Nation is being recommended  
24 to, you know, resubmit their accountability plan, so I  
25 kind of scratched my head on that. I said, "We already

1 have one in place." And I appreciate the Department of  
2 Education being here. Thank you, Jill, for being here.  
3 Why do we continue to wait for the Bureau of -- I mean  
4 the Department of the Interior, Bureau of Indian  
5 Education when we already have a plan in place and  
6 there is already momentum going forward?

7 You know, as a leader you start thinking these  
8 things in your mind. You know, sometimes you lay there  
9 in bed and you wonder why these things are happening.  
10 You know, I'm no conspiracy theorist, but, you know, I  
11 was wondering how much of our DSAP, our school  
12 accountability plan, is going to be similar to what the  
13 BIE proposes? Are they going to copy the Navajo Diné  
14 School Accountability Plan and then call it their own?  
15 And then we have to come back and say, oh, we're going  
16 to have to update it. Because there has been a lot of  
17 work done. Maybe that's not the case, but, you know,  
18 as leaders we kind of think about those things. But I  
19 know that a considerable amount of work has been done,  
20 and to make comments on this rule while we already have  
21 a DSAP, our own school accountability plan in place, is  
22 counterproductive, and it doesn't make sense.

23 And so the Navajo Nation wants to move  
24 forward, and maybe this is where we need to sit down  
25 with the Department of Education once again and

1 Department of Interior at that level and to say that --  
2 I understand there is another tribe out there, too,  
3 that's wanting -- that has already done their  
4 accountability plan and are ready to move forward.  
5 Rather than wait we should be allowed to move forward  
6 on our plan that incorporates our way of life, teaching  
7 our culture, our tradition, and our language, and all  
8 the standards that go -- and we have doctors, and we  
9 see some sitting here with us today, that have that  
10 knowledge, that have included a lot of these standards  
11 into our Navajo plan, the Diné School Accountability  
12 Plan.

13 So I ask the Department of the Interior, I  
14 think through Tony here, to set aside some time maybe  
15 in D.C. with the Department of Education, Jill, to have  
16 a serious discussion about our Diné School  
17 Accountability Plan.

18 See, these public comments, this process, is  
19 kind of being pushed in a quick fashion. I think the  
20 notice went out June 10th. That was last month.  
21 Right? And we're already being asked to comment on all  
22 these thoughts from the BIE, and so -- and the comment  
23 ends I think August 9th. Wow. Just imagine if the  
24 federal government can continue to work like that. We  
25 would get a lot of things done. But this is really,

1 really fast.

2           Again, three concerns that we have. One, as  
3 was mentioned by Dr. Lewis, there has been no  
4 one-on-one tribal consultation or consultation with the  
5 Navajo Nation to discuss the proposed rule other than  
6 just having this comment opportunity today. You know,  
7 this proposed rule would impact the Nation's plan.

8           The second is we now hear that the Navajo  
9 Nation must submit a new plan under ESSA, and I stated  
10 before we worked very hard on one plan, and we have  
11 been patiently waiting for the Department of the  
12 Interior, the BIE, to allow the Nation to move forward  
13 with our own plan.

14           So to end, for the record the Navajo Nation  
15 requests formal government-to-government consultation  
16 with the BIE and the U.S. Department of Education on  
17 our Diné School Accountability Plan. And since we do  
18 have a process in place by August 9th, 2019, the Navajo  
19 Nation will be provided those written documents, those  
20 exchanges that have gone back and forth. And I can now  
21 see the frustration from the Department of Education,  
22 being the former council member, being a  
23 vice-president, now being the president, many, many  
24 years of waiting for the Bureau Of Indian Education.  
25 Now is the time to move forward. We look forward to

1 working together on moving our DSAP forward.

2 And I want to say to the folks here, Eric  
3 Crane, who is the Senior Research Associate at Center  
4 on Standards and Assessment Implementation, thank you  
5 for being here.

6 Tamarah Pfeiffer, as always, welcome home. By  
7 the way, Tamarah, make sure you eat some mutton stew  
8 before you go back. Our Acting Chief Academic Officer  
9 of the BIE.

10 Dr. Jeffrey Hamley, the Associate Deputy  
11 Director of BIE.

12 Chaitna Sinha, Attorney Advisor, Office of the  
13 Solicitor Division of Indian Affairs.

14 And I guess the court reporter. Court  
15 reporter, thank you for being here.

16 And, Mr. Dearman, I know you had some issues  
17 with the claim, but welcome back to Navajo. Our  
18 Director for BIE.

19 And U.S. Department of Education, Jill Martin.  
20 Thank you for being here and listening to our comments.

21 But we are here, and others that are part of  
22 the delegation from Washington, D.C., we are looking  
23 forward to working in collaboration with everyone  
24 involved, including our local school boards. So I'll  
25 make that comment and make it as brief as I can, and

1 thank you for -- everyone for attending this session  
2 today.

3 (Speaking in Navajo.)

4 MS. MENDOZA: Thank you very much for your  
5 comments. And I just want to give the director a few  
6 minutes so he can provide some comments.

7 MR. DEARMAN: Thank you, President, and I  
8 appreciate your comments.

9 As you're going to hear me say a lot, it's our  
10 tribal leaders that give us the strength, and they are  
11 our muscle behind what we do taking care of our kids.  
12 He's right in a lot of comments that he said as far as  
13 the BIE. Where have we been? And you heard me say as  
14 a school leader, and you'll hear me say it as a  
15 director, successful schools have been successful  
16 because of local leadership, because of the tribes, not  
17 because of the Bureau of Indian Education, not always,  
18 because the Bureau of Indian Education really hasn't  
19 been a supportive system up until now. I really feel  
20 like we are making the moves. We've done a lot of  
21 things as a system that we're recognizing we need to do  
22 to make sure that our kids are taken care of.

23 We are turning to the mindset in becoming a  
24 servant organization, meaning this: Telling our staff  
25 if a principal calls you, drop what you're doing and

1 act like it's the Secretary of Interior calling,  
2 because that's who is taking care of our kids. The  
3 focus should be on our kids, and I really appreciate  
4 what President Nez was talking about, where has BIE  
5 been, and now it's time for BIE to step up, and that's  
6 what we're doing.

7 You know, we're going from a 23-state  
8 assessment accountability system. I've heard across  
9 Indian countries why did you go with that? Well, you  
10 got to remember there is a rules committee that put  
11 together -- we had strong members, strong members from  
12 multiple tribes that put this together. I'm proud of  
13 the team at the table today because they don't have the  
14 answers. I would say if we had the answers we'd  
15 already have something in place. We don't have answers  
16 because we're waiting to hear through Indian country  
17 throughout our six consultations of what you want in  
18 this plan, just like our strategic direction.

19 Our administration really have been  
20 transparent. If you go back in our strategic  
21 direction, any comment that our tribal leaders gave us  
22 we documented, and we showed where it was implemented,  
23 or if it wasn't why it was not. We owe that to our  
24 tribes. We owe that to our kids. And we are working  
25 hard on a daily basis to make our system better, and



1 with our partnership and with the voice of our tribes  
2 and with our stakeholders we're going to get better for  
3 our kids.

4 I always tell our staff this: Imagine what we  
5 could do as an organization if we got up every day and  
6 focused on our kids and not adults. Focus on our kids.  
7 And I really feel like that that's where we're headed.  
8 We still have a lot of work to do. But, you know,  
9 working with 64 schools -- we have schools on 64  
10 reservations. If there was ever a human pinball, I  
11 could -- I could probably vouch for that human pinball,  
12 because working with multiple tribes that we work with  
13 and finding the happy medium is difficult.

14 But, again, you know, I'm proud of our team.  
15 We're up to the task, and we've received some great  
16 comments, and I know we're going to receive a lot more  
17 great comments to make us better for our kids. So I  
18 really appreciate the input. Look forward to the  
19 comments. Thank everyone for coming. I see school  
20 leaders here. I see staff. Thank you for the work  
21 that you do.

22 President Nez, thank you for stepping up,  
23 taking care. I know it's a huge responsibility.

24 All of our tribal leaders, people who take  
25 care of our kids, I just want to thank you.

1           And look forward to the comments. We'll be  
2 around today. Communication is critical. We've got to  
3 get better at that, and we've got to start making sure  
4 that things coming out in the field are getting down to  
5 our schools, so we look forward to the work ahead of  
6 us. And, again, I want to thank you, everyone, for  
7 coming today.

8           MS. MENDOZA: Thank you. So I've heard there  
9 was a bit of confusion about the consultation so I  
10 wanted to make sure people know that we will be here  
11 until 5:00 today. We will not be going anywhere until  
12 that time, so if you have colleagues or you know of  
13 others who would like to come and participate, please  
14 let them know that we'll be here until 5:00.

15           So let me go ahead and open it up again to  
16 comments. Thank you.

17           THE HONORABLE PETERSON ZAH: Thank you for the  
18 comment. I mean to make a comment, a short comment  
19 about some of the things that are being talked about  
20 and what is being proposed.

21           Way back years ago when we did not have a  
22 formal rulemaking process and then coming into tribal  
23 consultation, I was at the time the Navajo Nation chair  
24 and then ultimately the president, and I always  
25 remember a senator from Hawaii, Senator Inouye, asking,

1 "What do you mean by tribal consultation?" And he  
2 thought about it for I guess many, many times being  
3 asked that question. And he picked up a piece of  
4 paper, and he says, "Let me just tell you what I think  
5 about tribal consultation." So he picked up a piece of  
6 paper, and he said, "For the federal government, your  
7 job under this theory is to go out to Indian country,  
8 and you tell them that you have a plan that you think  
9 is going to work for them, and then the Indian tribes  
10 are going to respond. Your job is to write down  
11 everything that they have concerns about, and then you  
12 turn the paper over and let the tribe ask you  
13 questions. In the meantime it's not final yet, that  
14 it's going to take a considerable amount of planning,  
15 looking at every issue that the two parties have said  
16 to each other. And it will be one of those things  
17 where if you are in agreement with what is being  
18 proposed, then you start looking at the budget, because  
19 it's Congress that has always paid the price for some  
20 of the things that are being put together."

21 That was my understanding of what tribal  
22 consultation is about. It's not dictated into the  
23 American Indian what you think is good for them. That  
24 theory outlived its usefulness for Indian tribes the  
25 way we look at it from here.

1           But other people don't really understand that,  
2           and I'll give you one real good example. You all know  
3           about uranium industry came to this reservation years  
4           ago, and they created something like 523 uranium sites  
5           on this beautiful land, and they extracted uranium off  
6           Navajo land during the Cold War. And we really didn't  
7           know what we were contributing because the local  
8           people, they were only looking at jobs. They needed to  
9           support their family, and they never got adequate  
10          instruction for their own protection, for their health,  
11          wearing masks and wearing things that will I guess keep  
12          them safe and not get contaminated. Many Navajo  
13          people, maybe because of the language barrier, they  
14          never really got that many of them, so they all end up  
15          suffering from what they did.

16          That kind of mentality, I thought during my  
17          lifetime that we were going to outlive that, that we  
18          were going to finally put it away. But during the last  
19          two, three years it has resurfaced nationwide, and it's  
20          kind of sad to see that. I'm saying that because U.S.  
21          EPA continues to tell this Nation as to how they should  
22          clean up those sites. They have a plan. They have a  
23          plan as to how it should be handled and then who should  
24          do it. And the process is so slow, and the Navajo  
25          people continue to ask for in the media clean up of the

1 uranium site, because they're tired. They're tired of  
2 all of the harm that it has done to them and the land.  
3 And they continue to say, "Here is a prescription for  
4 you to get well. This is the way we want to do it."  
5 And they don't pay any attention of -- to what is the  
6 meaning of consultation.

7 The example is the U.S. EPA appoints a trustee  
8 to begin the process of cleaning up those sites, and  
9 they -- all the different regional office, Region 9,  
10 Region 7, Region 4, and then the federal EPA told the  
11 Navajo Nation you can only have one trustee to do the  
12 cleanup, but we have over 523 sites. This reservation  
13 is huge. We have language barriers out there. And  
14 what U.S. EPA is suggesting is non-Indian companies  
15 from off the reservation to come in to the reservation  
16 and begin showing us how the cleanup should be made, in  
17 spite of what the president said about sovereignty. So  
18 my comment is that we have to be very, very careful  
19 about examples like that when U.S. EPA continues to  
20 push their own ways.

21 I came here as a private citizen, as a  
22 grandpa, and what I was really looking for was for the  
23 agency to say, We are going to support whatever it is  
24 that you want your children to learn, and these are  
25 some good examples that includes culture, that includes

1 history, that includes the revitalization of Navajo, a  
2 way of life that is different than what we see at the  
3 national level. That's what I really, really came to  
4 see.

5 But what you have is a mechanism, mechanism to  
6 continue to suggest, maybe in a nice way, what you  
7 would like to see Navajo students learn. For us and  
8 for me, we want our Navajo people, Navajo young  
9 youngsters, students and children, to learn the  
10 language, to learn the Navajo way of life that was so  
11 dear to us that allows us to live as long as we have.  
12 The history about language is very interesting, not  
13 only here, but throughout the nation.

14 And so I was a little -- maybe disappointment  
15 isn't the word. I was concerned about talking about  
16 something else that is a little different, because as  
17 the president said, we already went through this  
18 process, and we want to perfect that, except you're now  
19 stepping in and saying that don't count anymore. We  
20 have a better plan. We have a better plan, and we're  
21 giving you until August 9th to accept our plan. And  
22 that is something that we're worried about and I'm  
23 concerned about. I was looking for some kind of  
24 enrichment as to what our children should be learning  
25 that is dear to the Navajo Nation that includes a way

1 of life, protecting the natural resources, and all of  
2 that.

3 And so I just wanted to make that comment, and  
4 maybe we are too late in talking about this. You  
5 waited too long, and because you continue to wait too  
6 long the Navajo Nation stepped in, and they passed  
7 their own law, Sovereignty in Education Act, and the  
8 goal there was to achieve a quality education for all  
9 of our children. And so with that in mind,  
10 accountability plan came in to make sure that we  
11 achieve the best that we can offer to our Navajo  
12 children. But then you come in with your own -- with  
13 your own rules that you want us to -- seems like wanted  
14 us to accept.

15 And so that is my concern as a grandfather for  
16 our children, and I just think that if this is what  
17 you're going to do -- you already mentioned that some  
18 schools will be exempt. If you already going to exempt  
19 some schools because of their condition, why not  
20 Navajo, because we've already that did the work, and if  
21 we can only have some time to implement what is -- what  
22 has been put together by Navajo education. Maybe we  
23 should give that time to grow and to perfect so that it  
24 does the job of doing the education that we're looking  
25 for.

1           So I just wanted to also welcome you to the  
2 Navajo Nation. You will find that during your stay  
3 we're probably the only American Indian tribe that use  
4 our language consistently, and you're going to hear  
5 that if you go over to the consult, how the language is  
6 being used. And it's an interesting concept, and I  
7 don't really see any other Indian tribe do that. And  
8 so thank you so much.

9           MS. MENDOZA: Thank you. We appreciate your  
10 comments.

11           Keep getting a dry throat here.

12           So I want to open it again to other folks to  
13 comment.

14           MS. TSOSIE: Good morning. My name is  
15 Kathleen Tsosie, and I am also a member of Diné Bi Olta  
16 School Board Association Executive Board, and I'm a  
17 school board member from Cove -- Arizona Cove Day  
18 School and representing Shiprock Agency.

19           We've had several comments that have been made  
20 throughout our meetings and also our agency meetings  
21 and also the Bi Olta conferences, and some of these  
22 things that were brought up on negotiating rulemaking,  
23 comments such as concerns were raised regarding the  
24 length of time the BIE took to establish the Committee.  
25 Too many believe that the Committee did not have



1 significant time, enough Committee meetings in order  
2 for the Committee to adequately address the Committee's  
3 whole scope of work.

4 Three, several Committee comments supporting  
5 regular committee meetings and interests, BIE funding  
6 and staff hiring, in order for the Committee to  
7 continue developing Proposed Rule 4. Commenters  
8 expressed support regarding the Committee's  
9 recommendation to convene additional negotiating  
10 rulemaking to address other parts of the code of  
11 federal regulation of related BIE-funded schools.

12 Next, commenters noted that it may be  
13 unrealistic framework to implement by the definition  
14 for standards, assessment, and accountability --  
15 accountability system pursuant to the new regulation in  
16 2019 and 2020 school year as stated in the Committee's  
17 final report.

18 Several commenters believed that the BIE has  
19 not been transparent enough regarding the Committee  
20 process and that the BIE should have made more effort  
21 to apprise tribal schools representatives on the  
22 progress of the Committee work.

23 Next, doubt was expressed by several  
24 commenters as to BIE preparedness for implementing the  
25 new regulation and its ability to process tribal waiver

1 requests in light of the BIE's current staffing levels.

2 And, next, while not directly related to the  
3 BIE's proposal rule, comments were received regarding  
4 the need to provide more funding to address outdated  
5 school facility and equipment.

6 Thank you.

7 MS. MENDOZA: Thank you. If you'd like, we  
8 could accept your written comments into the record as  
9 well as you can email them again at the email address  
10 on the script.

11 MS. BARNEY-NEZ: Good morning. I think it's  
12 still morning. My name is Angela Barney-Nez. I'm the  
13 director for Diné Bi Olta School Board Association, and  
14 we have all of the 66 Navajo school boards that are  
15 technically members of our organization by Navajo  
16 Nation code.

17 I have a question regarding the whole process.  
18 Since the first Federal Register calling for comments  
19 on, well, maybe two or three negotiator committees ago,  
20 so when you do this in terms of the next steps, again,  
21 relating to the preparedness from the BIE to do this,  
22 and in the FY2020 Green Book for BIE there is -- there  
23 is 88 new FTEs. And I'm just wondering since  
24 Mr. Dearman is here and is assumed to be the top staff,  
25 can you explain what those FTEs are to do, or is it

1 tied to how you're going to implement this proposal  
2 once -- it looks like after August 9th you are going to  
3 have a final rule. Will that go back to the Committee  
4 first? And then the other parts that seemed to be  
5 incomplete, will we get a chance to tweak that at that  
6 point again? Let's talk about that process. The FTE  
7 question is important to know.

8 MS. MENDOZA: Okay. The first part in terms  
9 of the regulatory process, Chaitna, do you -- once we  
10 receive comments, we review the comments. It has to go  
11 through multi-agency review once we have the  
12 Secretary's draft. So it goes through multi-agency  
13 review, and then is the process once the agencies have  
14 come to an agreement it's then posted in the Federal  
15 Register again?

16 MS. SINHA: It will be available for 30 days.

17 MS. MENDOZA: Then there will be a 30-day  
18 comment period?

19 MS. SINHA: No. It will be available for  
20 30 days, and then it will go final.

21 MS. MENDOZA: Okay. So there is a 30-day  
22 published, and then it will be final.

23 And in terms of the FTE, I'll allow the  
24 director to answer that question.

25 MR. DEARMAN: Great question.

1           If you've been around BIE for an extended  
2 period of time, BIE is the only education system that  
3 spans across 23 states, 64 reservations, but yet we  
4 don't control any contracting, so that means we  
5 couldn't voluntarily increase some of the supplies to  
6 10,000. We couldn't even order textbooks, pencils,  
7 paper, milk, bread for our schools. We don't handle  
8 any of our facilities. And coming in to this position,  
9 we really knew where to reach to and who controls what,  
10 so the FTEs that you're talking about is going to be to  
11 start pulling some of this over to where we can  
12 actually start taking care of our own destination, our  
13 own destiny is what I call it, because for too many  
14 years we've had to rely on everyone else to take care  
15 of us.

16           And to do it right we need additional -- this  
17 year our plan is to take and we'll do contracts. You  
18 know, GAO -- again, this really doesn't pertain to the  
19 consultation, but GAO, we're using them as a road map,  
20 and they're looking at our education across our system.  
21 One of the things that was found is contracting, so  
22 this year we'll actually take over contracting. We've  
23 already taken over our school safety inspections. This  
24 is the first year we've done all of our facilities.

25           And then in the future at some point we're

1 working on pulling over the facilities piece, because  
2 we were fortunate to have the Secretary sit down  
3 15 hours with us and ask us what our priorities were.  
4 And hearing from the field and being in the system for  
5 long periods of time we identified contracts, safety,  
6 and facilities. We need that. In facilities, that  
7 includes quarters, because if you've been in our system  
8 you know that that's a definite need.

9 So that's what the additional FTEs are for, so  
10 we can start pulling some of the things that really  
11 impact our ability to hire, our ability to provide  
12 services to our kids.

13 MS. BARNEY-NEZ: So are they like ERC people?

14 MR. DEARMAN: The question is are they like  
15 ERC people. They'll be located -- the majority are  
16 going to fall within school operations, so, you know,  
17 it would really work well with our administrative  
18 staff. Also, people don't want to move to Washington,  
19 D.C., so we've worked with our administration to really  
20 move our positions out in the field to where we can  
21 actually get people that know our communities and  
22 really start attracting and hiring people that know our  
23 communities and are from the communities where our  
24 schools are, so we've done a better job of that. So  
25 the location, it's really the functions -- it's not

1 really where they're going to be located. It's going  
2 to be the functions that they have when they come in  
3 our system.

4 MS. MENDOZA: Thank you.

5 MS. BARNEY-NEZ: I have one more.

6 Back in the first -- first discussion, kind of  
7 like the initial discussions when the Bureau, BIE  
8 brought the consultation hearing to NCAI in Phoenix, I  
9 can't remember it was under Ms. -- the former--

10 MR. DEARMAN: Henry?

11 MS. BARNEY-NEZ: Yeah. At that time we were  
12 talking about a state agency being developed or a BIE  
13 state plan. Is this the same one from at that time you  
14 were trying to do the negotiator rulemaking, and then  
15 at that time was still No Child Left Behind, and then  
16 came ESSA, and then you recreated or redid -- redid the  
17 Committee? So if you look at this proposal now, is  
18 that the BIE state plan?

19 One of the things that we're interested from  
20 DBOSBA, and we've been going to appropriations, is to  
21 have the BIE be a standalone agency away from the BIA  
22 because of so much passing back and forth about --  
23 about the facilities area, about things that are being  
24 controlled by non-educators, decisions being made by  
25 non-educators, so we advocated to the Congress that BIE

1 should be its own agency. So this year we're happy to  
2 see that the BIE has its own Green Book away from the  
3 BIA. So I'm just wondering if all of your operations  
4 are still going to be tied to BIA, because you have the  
5 consultation -- email consultation@BIA.gov, and then,  
6 again, you know, it runs through, so I'm just wondering  
7 when if at some point there will be definition of a  
8 state agency here. And the same way we advocate our  
9 Navajo Nation to become a state agency, because of all  
10 of the important factors that were brought up by our  
11 former president and chairman Mr. Zah, and the level of  
12 sovereignty discussions are going on in terms of  
13 self-determination, so I'm just wondering how we're  
14 going to relate to this in terms of SEA over there and  
15 the SEA over here, and or do we go with the  
16 recommendation that the Nation decide what and how  
17 accountability will be done, so it's -- that's kind of  
18 a concern, sort of like a global picture concern.

19 MS. MENDOZA: Well, just real quickly, and  
20 then I'll turn it over to my colleagues here regarding  
21 the state plan, the consultation@BIA.gov, it's Indian  
22 Affairs, so that's BIA, and BIE goes through the  
23 assistant secretary's office for all regulations, so  
24 that's why you have that email address.

25 MR. DEARMAN: To address your -- I'm hearing

1 two things. One is the state agency, which I would  
2 really think referring to the Department of Ed we would  
3 be considered like other states. The other one I'm  
4 hearing it's like a Bureau. I'll speak on the Bureau  
5 part.

6 In 2006 the BIE started breaking out from  
7 underneath BIA. We didn't pull everything so we had to  
8 rely on BIA for everything. That's why we have regular  
9 meetings and what we call transition meetings where  
10 we're looking at including timelines of when we need to  
11 start pulling things to the BIE to where we have  
12 control.

13 So I'll let Dr. Hamley or some people at the  
14 table address as far as state agency as compared to  
15 other states, but we are pulling things over as a  
16 Bureau where we do function as a separate bureau, and  
17 that's why we have the Green Book now, of course.

18 DR. HAMLEY: Jeff Hamley again. So I think I  
19 heard three questions, but the first one is the  
20 proposal -- the state plan, meaning I think the Federal  
21 Register document, is that the state plan? No, it's  
22 not. The Federal Register is not the state plan. But  
23 so regarding the state plan, technically in the SEA the  
24 BIE is not a state so it's not required to do a state  
25 plan as the states do.



1           However, Director Dearman has decided and  
2 we're all in agreement that the Bureau needs a document  
3 similar to the state plan that outlines what the  
4 Bureau's standards, assessments, and accountability  
5 will be so that every school, all stakeholders,  
6 parents, teachers, even students can pick it up and  
7 read what the Bureau is implementing as far as  
8 Standards, Assessments, and Accountability System, so  
9 that's voluntary. The Committee liked that idea and so  
10 they put a requirement in the rule that the Bureau  
11 develop a state plan, although they named it DSAP.  
12 They like that name. Diné Standards, Assessment, and  
13 Accountability Plan. So that's our state plan.

14           So I think we -- regardless of what the rule  
15 says we are going forward with the state plan so that  
16 every -- it will be published on our website. Every  
17 school can pull that down and look at it and understand  
18 what we're doing. And we're in the process of  
19 drafting -- we have been for two years -- that now, and  
20 there is a committee set up, established by the  
21 director in January. That's another thing the  
22 Committee wanted to know: Is there a group working on  
23 this now? Who are they? So a committee was formally  
24 established in January 2019 to work on flushing out  
25 what are going to be our standards, assessment, and

1     accountability, putting language into that, and then  
2     also transferring that to state plan, so there will be  
3     opportunity for stakeholder input. So that -- that's  
4     the state plan question.

5             Now, as far SEA, again, the BIE is not a  
6     state, and ESEA is authorized by SEA. However, the law  
7     does have a provision in there which requires an  
8     agreement between the Department of the Interior and  
9     the Department of Education, so in that agreement --  
10    and it just covers SEA programs. The Bureau is meeting  
11    the State Education Agency for certain purposes, for  
12    exchange of funds, to get the money to the Bureau, to  
13    the schools, to fulfill the requirements of SEA, and  
14    it's all spelled out in there. And we've gone through  
15    I think three of them under No Child Left Behind, and  
16    we're going to go out for another one now, and that  
17    will be drafted by the Department of Education and  
18    Department of the Interior, and that will go out in the  
19    form of consultation, so you will see that. We don't  
20    have a schedule for that yet.

21            As far as the Navajo Nation -- so basically  
22    the BIE is a quasi-state agency, you know. It's not in  
23    the law, but through an agreement we are a state  
24    agency. As far as the Navajo Nation being a state  
25    agency, this was discussed under the DSAP for technical

1 assistance, and that came up because we understand that  
2 some in the Navajo Nation want to see Navajo Nation be  
3 a separate state agency, but there is no provision in  
4 SEA/ESSA to make a tribe a state agency, so there is  
5 lacking legal authority to do that, so that would be a  
6 Congressional action if that were going to happen. A  
7 tribe would have to go to Congress and ask that an  
8 amendment or a specific provision be created to make a  
9 tribe a state agency and also to find what that is and  
10 what the responsibilities are.

11 Jill, did you want to --

12 MS. MARTIN: I'll just add one thing. Jill  
13 Martin again.

14 I just wanted to add that it could be a  
15 terminology issue. We hear different things with  
16 requests from different tribes in terms of doing  
17 SEA-like functions, or even in some cases LEA, local  
18 educational agencies, like functioning for schools that  
19 tribes administer. Of course, it would be very strange  
20 to call a tribe that is a sovereign nation a state, and  
21 there are all kinds of implications behind that, so  
22 there is lots of layers of complications.

23 That's all I want to say. Thanks.

24 DR. HAMLEY: I'm sure the issue is going to  
25 come up, and as we work with Navajo Nation on their

1 next proposal, the iterations of that, you know, what  
2 responsibilities Navajo will take versus the BIE will  
3 be discussed.

4 MR. FRANKLIN: This is Darrick Franklin again,  
5 Department of Education.

6 Just for clarification, my office is the  
7 Accountability Compliance Office. We try to assist  
8 tribally controlled schools with adhering to federal  
9 mandates, so when we find a school that has not  
10 submitted documentation like the School Improvement  
11 Plan or some sort of other documents, they haven't  
12 fulfilled their title funding spending plan or their  
13 SPED spending plan, things like that, we try to assist  
14 the federal government, BIE, in its mandates. But when  
15 the schools ask for technical support in these areas,  
16 the bottom line is that they're not receiving it. When  
17 I go out to the field and I meet with the school to  
18 assist them in developing a corrective action plan on  
19 how they're going to fix these deficiencies, they  
20 always tell me that there is no support from the  
21 Bureau, from BIE. So when you're implementing such a  
22 plan, such a proposal, my question is you already have  
23 these deficiencies, and it's clearly stated from the  
24 U.S. Department of Education by BIE placed on sanction,  
25 if you're placed on sanction and you're implementing a

1 plan how are you going to fix the deficiencies now  
2 that's currently not being handled when the --  
3 internally when we hear from federal, civil service  
4 staff saying that we're restricted from helping  
5 tribally controlled schools when we can't go out there.  
6 And then you have an FTE increase, you're getting more  
7 staff, but yet the help is not being -- the schools are  
8 not being assisted. Let the tribe handle it. That's  
9 what we hear. Let DOTI handle it. They're tribally  
10 controlled. They have the money. They've been  
11 given -- within their funds distribution document they  
12 have the funds to do what we're supposed to be doing.  
13 But yet the U.S. Department of Education put BIE on  
14 sanction. So you're implementing a plan, you're adding  
15 in additional staff to carry out this plan, but yet the  
16 plan still exists. I see this. I'm a compliance  
17 officer, and I try to help these schools with the  
18 limited knowledge that we have that the other side of  
19 the road has more knowledge of.

20 For example, special education. At Navajo we  
21 say (speaking in Navajo.) It doesn't make sense. So  
22 my question is how are you -- when you're implementing  
23 your accountability plan how are you going to provide  
24 additional support to these schools that have not  
25 received it? Are you just going to rely on the tribe

1 to carry out that plan once it's approved? These  
2 questions need to be answered because my constituents  
3 are sitting here, and it just doesn't exist. We're  
4 tribally controlled. It exists with BIE-operated.  
5 Because they tell me -- we had a meeting yesterday.  
6 They had the same issues as some of the tribally  
7 controlled schools, so a lot of our schools are  
8 struggling in the area of special education with no  
9 support from the AD level. They tell me this. I'm not  
10 making this up. They can speak to these issues. So if  
11 you're implementing such a plan as described in your  
12 PowerPoint, how are you going to handle Title I? How  
13 are you going to administer students with disability?  
14 But yet there is no support at this point, so that is  
15 why Dr. Lewis and myself were trying to employ our own  
16 special education staff to go out there, because we  
17 don't have that -- that ability as BIA has. So that's  
18 my question.

19 MS. MENDOZA: I appreciate your questions.  
20 Definitely we'll have to spend a lot of time discussing  
21 every point for every point you've asked about. I  
22 think as we move forward we'll be able to better  
23 address that question. We can't do it today because  
24 we're just focusing on regulations themselves, but I'll  
25 open it to my colleagues if they want to have -- you

1 know, offer a brief response.

2 DR. HAMLEY: Well, the director wants to  
3 speak, too, but in the reorganization, one of the  
4 things that the Bureau sought to address in these  
5 discussions is that we needed to move towards robust  
6 technical assistance, and honestly I think the Bureau  
7 is still struggling with that. You know, having  
8 adequate staff and defining roles and responsibilities.  
9 I mean, some of them are statutory, so, for example,  
10 under the title the comprehensive needs assessment,  
11 we've stepped up our technical assist in that area. Is  
12 it enough? Probably no. Providing help to schools on  
13 spending plans and now supports and interventions to  
14 lowest performing schools, that's defined in ESSA, and  
15 we're developing a plan right now and we're rolling  
16 that out.

17 And it's not just -- I mean, I guess from my  
18 perspective in division forms of accountability, IEA  
19 are thoughts of the land, so I feel that there needs to  
20 be full participation by all Bureau employees, not just  
21 certain. But, you know, we're working towards defining  
22 roles and responsibilities.

23 But thank you for your input. You need to go  
24 on record with that and say that your schools are  
25 struggling, you need help, especially there in special

1 education.

2 MR. DEARMAN: I want to touch on that a little  
3 bit. We know we have a lot of major improvements. I'm  
4 telling you because I'm coming from the school level.  
5 There is several things that we've done, again, not  
6 dealing in consultation, but I think as you said  
7 constituents we need to hear. We are trying to break  
8 down SILO. Not trying. We are. We're not there yet,  
9 meaning that each department -- I'll say it up front:  
10 DPA has always got a bad rap because they're the ones  
11 that are compliance monitoring. Now when they go out  
12 and do monitoring, we send out -- we're sending out  
13 teams so that we all know how.

14 And it's a change of mindset. It shouldn't  
15 be, School leader, these are all the things you're  
16 doing wrong. You have 30 days to fix it. It should  
17 be, Hey, we're here to help you get stronger. These  
18 are the things we've identified, and now these are the  
19 people that are going to help.

20 We're not there yet. We're getting there, but  
21 we're not there yet. That's where we're headed.  
22 That's where we need to go. But our kids, our  
23 students -- we can't get to a perfect system before we  
24 start and continue to move forward. We owe it to our  
25 kids. So things like that that are mandated and we do,



1 there is improvement that we can make, that as we  
2 continue to push forward we're still getting better in  
3 servicing our schools. We're not there. You know  
4 that. We know that. But I really think open  
5 communication -- and we deal with a lot of finger  
6 pointing, and I'd like to really see us move across  
7 away from the finger pointing and really sit down and  
8 be solution minded versus, Well, you've never done  
9 this. You've done this. But come to the table with  
10 solutions. What do you need from us? How can we get  
11 better?

12 We are changing the way we do business. An  
13 example of that would be the monitoring. The GAO has  
14 been a really good roadmap for us because they have had  
15 a lot of findings and recommendations, and we're  
16 implementing them. So long answer to -- probably not  
17 even an answer, because you like really in-the-weeds,  
18 detailed answers, because you got to remember BIE is  
19 not -- it's a system that covers 23 states, so the  
20 concerns you're bringing up we'll hear probably four  
21 more times, because we're coming from a system that has  
22 been very low staffed to a system where we're really  
23 focusing on developing support for our schools.

24 MS. BLUEEYES: Hello. My name is Faye  
25 Blueeyes with Dzilth-Na-O-Dith-Hle Community School,

1 and I also represent Diné Grant Schools Association,  
2 Incorporated.

3 As we're talking about DSAP, we have questions  
4 and concerns about the Navajo Nation DSAP, that school  
5 officials were not involved or were part of the  
6 development of this document. Some of us agree that it  
7 does need to be updated and revised and that this time  
8 we hope schools will be included to assist in the  
9 development of this new document. We are here  
10 discussing the accountability workbook from the Bureau  
11 of Development from Navajo Nation and all the comments  
12 that's going into it and the students being the focus.  
13 However, our schools may not be able to carry out any  
14 of these requirements because the state of New Mexico  
15 and Arizona are making huge teacher salary increases.

16 For example, a Level 2 average salary for  
17 grant school is about \$45,000 a year. The state's new  
18 salary will be \$53,000. And Level 3 was about \$51,000,  
19 and they're being increased to over \$63,000 a year.  
20 Then if the BIE is increasing FTEs, these salaries will  
21 probably be higher than what our current certified  
22 staff are earning, so if you're a certified teacher out  
23 on the reservation and across the street is a public  
24 school and they're going to give you \$10,000 to \$14,000  
25 more, are you going to stay with the grant school? I

1 don't think so.

2           Since the BIE has stopped asking for teacher  
3 salary increases since 2004, Bureau-funded schools will  
4 not be able to match these high salaries and compete  
5 with the public schools' bigger salaries. Our schools  
6 will be losing teachers to public schools or the BIE.  
7 So what do we do as a grant school out there trying to  
8 recruit certified teachers? Already when you look at  
9 the Navajo Times there is a list of teachers, special  
10 ed teachers, counselors that everybody is looking for.  
11 What chance do we have, and what is the Bureau going to  
12 do to assist us? What is our own Navajo Nation  
13 government going to do? What is the Department of  
14 Education going to do to lend us support?

15           Instead we're -- I guess I feel like we're  
16 kind of bouncing around this DSAP stuff when we have  
17 serious issues like these that is going to impact  
18 directly to the students in the classrooms. We're  
19 going to have to hire substitutes to take over the  
20 lessons. And then how do we meet all these test  
21 requirements? So how do we attain student academic  
22 success with the lack of certified teachers,  
23 counselors, special ed? This could be a crisis that  
24 needs immediate attention from all of us, and we don't  
25 understand, I guess, why our own sovereign Nation is

1 not saying anything about this. I'm not sure if  
2 they're even aware of it.

3 So us schools that are in the trenches, we're  
4 aware of it. We've been looking at our budgets, and if  
5 we try to match the state high salaries now we have to  
6 decide where do we make the cuts. Again, it's going to  
7 impact our children, and I feel like at times we're too  
8 focused on doing reports that are very time consuming  
9 and unnecessary, duplicate reportings that we're asked  
10 to do.

11 And in line with what Mr. Franklin stated, one  
12 issue that some of us really have is about the Native  
13 Star reporting, and that's an issue that I've been  
14 raising for several years that why is Native Star  
15 asking us to break down the budgets? If we got \$1,500,  
16 we have to report that to the Native Star and do a  
17 budget, and if whoever looks at it doesn't agree, it  
18 gets kicked back, and we're told to redo it. But our  
19 schools there is not definitely -- we have declined to  
20 do schoolwide budgets in the Native Star simply because  
21 the law states that we don't have to do it if we're a  
22 schoolwide program, but yet the Bureau keeps pushing us  
23 to do it. I don't know how many letters I've written  
24 regarding this, but I've gotten no official response,  
25 and now we're being threatened that we got funded for a

1 program and we're not going to get all of our monies  
2 until this budget is completed. Those are the things,  
3 the real life things that school officials have to deal  
4 with.

5 And, yes, we do report these things to  
6 Mr. Franklin and say, "Can you help us? We're a  
7 schoolwide program, yet we're being asked to do these  
8 extra -- extra things."

9 And so with that, I thank the Committee for  
10 the work that they did do, and I would like to thank  
11 Mr. Dearman. I know that you have listened to us and  
12 our concerns when we've come to you, but I think this  
13 Native Star really needs to be addressed. Thank you  
14 very much.

15 MS. MENDOZA: Thank you. Any more comments?

16 I think we're getting close to noon. We can  
17 break now for a lunch break and then come back in an  
18 hour and a half. People can think about questions or  
19 comments and bring them back, so why don't we go ahead  
20 and break for lunch. So it's noon. Let's see. 1:20.  
21 Let's rejoin at 1:20. Again, we'll be here until 5:00  
22 so if you knows folks who want to come and join us to  
23 offer comments, please invite them to come.

24 (Lunch recess taken from 11:50 a.m. to  
25 1:20 p.m.)

1 MS. MENDOZA: Good afternoon. I hope everyone  
2 had a good lunch. I'll be walking around to make sure  
3 nobody takes a little nap. The buffet was very, very  
4 good.

5 So I wanted to ask: How many new people do we  
6 have in the audience? So one. We are trying to decide  
7 if we should go through the slides again, but I think  
8 we've all heard the -- gone through the slides. We  
9 went through them twice, so we can refer to the  
10 consultation book instead of showing it on the screen.

11 So again I want to open up the floor to any  
12 comments from our audience.

13 MS. TSOSIE: I have a question regarding  
14 Faye's comment, and you guys didn't ask -- I mean, you  
15 didn't respond to that.

16 THE REPORTER: I'm sorry. Who is speaking,  
17 please?

18 MS. TSOSIE: Kathleen Tsosie, and my question  
19 is: Are you going to respond to Faye Blueeyes'  
20 question and comments right before we left for lunch?

21 MS. MENDOZA: Well, some of the comments  
22 didn't pertain to the consultation so I would ask that  
23 we can provide another time to respond to all of your  
24 comments. If there were -- I'm sorry. I don't  
25 remember word for word all of your comments, but if

1 there is anything within the comments that you had that  
2 pertains to the consultation, yes, we're -- we would  
3 like to respond.

4 MS. BLUEEEYES: I will be submitting the  
5 written response.

6 THE REPORTER: I'm sorry. Who was that?

7 MS. BLUEEYES: Faye Blueeyes.

8 THE REPORTER: Thank you.

9 MS. MENDOZA: Anybody else in the audience?  
10 Darrick, you look like you have a question.

11 MR. FRANKLIN: Actually, I do.

12 MS. MENDOZA: Or a comment.

13 MR. FRANKLIN: I'm just trying to formulate it  
14 properly to align it to what we're discussing.

15 Again, for the record, Darrick Franklin,  
16 Department of Education.

17 DR. LEWIS: So in your proposed rule on page 6  
18 of the BIE PowerPoint, it says the Committee  
19 recommended that the rule include a requirement that  
20 have standards, assessment and accountability plan -- I  
21 guess it's SAAP -- to ensure transparency and  
22 consistency to stakeholders similar to the state plan  
23 required. I don't know if this is implemented how is  
24 that going to be accomplished when it doesn't exist  
25 now? So you're going to fix the situation that

1 currently exists, but when you're proposing -- when the  
2 Committee is proposing this rule how are you going to  
3 accomplish it by ensuring transparency and consistency  
4 to stakeholders? How is that going to be accomplished  
5 by implementing this proposal is my question.

6 MS. PFEIFFER: Thank you for your comment and  
7 your question. I think one of the areas that we want  
8 to speak to is specifically around standards.  
9 Currently every -- the 22 states follow the state  
10 standards, and one of the areas that we see continual  
11 transparency and engagement with is around rigorous  
12 college and career standards. The way that that might  
13 be accomplished is to engage leaders, curriculum  
14 specialists, teachers, in focus groups across the  
15 nation around that development. I don't think of this  
16 as the easiest task, but I think it's a necessary task  
17 to get educators that are in the field speaking to what  
18 is going to be expected of the students to be learning.  
19 And not to beat this very much further, but we're  
20 talking about rigorous college and career-ready  
21 standards, not a watered down set of standards, because  
22 we want students across the Nation to achieve, but that  
23 a third grader in Arizona is comparable to a third  
24 grader in Oregon to a third grader in Maine to a third  
25 grader in Florida.



1 I say that after personal experience. I went  
2 to school at Rough Rock under a set of standards in the  
3 '60s. I moved with my family to Massachusetts.  
4 Another set of standards were implemented, and I as a  
5 result was moved back four grades. Moved to New Mexico  
6 in my early junior high years and was put as an 11th  
7 grader in the high school because of another set of  
8 standards.

9 And to me when I think about rigorous college  
10 and career-ready standards, we're talking about  
11 standards that are going to move our students into the  
12 options that they want after high school and beyond and  
13 students being able to go into their college ready  
14 to -- or their military or their technical school after  
15 high school or a job being able to do what they need to  
16 do. So that's kind of a long answer to the -- to the  
17 process, but that's one way that I see the BIE being  
18 transparent and engaging stakeholders in the  
19 development of standards.

20 MR. FRANKLIN: So let me add to that. So  
21 rather than implementing transparency and consistency  
22 to stakeholders, I'm thinking stakeholders meaning the  
23 tribe, meaning the school, meaning the elected school  
24 board members. Are we going to still stick with the  
25 status quo as working with stakeholder engagements just

1 for BIE-operated, or are we going to include tribal  
2 control? Because that's what exists now. And are we  
3 going to include the tribe or tribes that have a  
4 Department of Education? So for Navajo, is DOTI going  
5 to be included as part of the stakeholder transparency  
6 and consistency by the implementation of the three  
7 areas: the assessments, accountability and standards?  
8 I said it backwards, but --

9 DR. HAMLEY: Well, the Committee agreed that  
10 the Bureau would have the unified system and assess  
11 accountability. So the intent is that when the system  
12 is decided, is finalized, it will apply to all schools,  
13 all students. And that's what Congress requires of the  
14 states as well, all schools, all students, so that --  
15 that will be what's the expectation.

16 Now, as far as if a tribe wants to waive all  
17 or part of what the Secretary determines is the  
18 standards, assessments, and the accountability, that's  
19 when the waiver comes in, and we do expect that law to  
20 happen with governing tribes and school boards about  
21 waivers.

22 But back to the stated plan, I mean, it's --  
23 it's sequential here. I mean, so we're going to have  
24 the final rule published. We're going through  
25 consultation now. We're soliciting input. The input

1 will be considered in the final rule. It will be  
2 published and take effect ideally sometime this  
3 fall/winter.

4 But at the same time, the state plan is being  
5 drafted. I mean, we've had a state plan on our website  
6 for almost two years now, but it's missing the  
7 standards, assessments and accountability section.  
8 It's waiting for this process to conclude. But as soon  
9 as it concludes then that section will be written and  
10 dropped into the existing state plan, and at that  
11 point -- and what the committee wanted with that SAAP,  
12 as they call it, we also call it state plan, is that  
13 once it's drafted they want that to go out for  
14 stakeholder input and get input into that, because the  
15 contents of that are going to be decided by, you know,  
16 as the law says the Secretary of the Interior, but in  
17 practical terms it's going to be the Bureau Of Indian  
18 Education. So we will solicit input, including Navajo  
19 Nation, about the actual plan, as to what's going to be  
20 implemented, so I hope that's clear.

21 MR. FRANKLIN: Yes.

22 MS. MENDOZA: Do we have any new arrivals? So  
23 I'll open the floor to any more questions or comments.

24 MS. BLUEEYES: This is Faye Blueeyes again.

25 I just am asking for a clarification under the

1 Native American Languages and the Tribal Civics. When  
2 the assessment is being put together, how many percent  
3 of that is going to count to determine if the school is  
4 meeting the academic progress? Because I was given a  
5 figure of 15 percent would be required, and I wanted to  
6 know -- I don't know where that came from, but I  
7 understand it's written somewhere in a requirement, but  
8 I haven't been able to find it.

9 DR. HAMLEY: Okay. Let's take Tribal Civics  
10 first. While the Committee has proposed that it be  
11 Student Quality Student Success in that category, so  
12 that wouldn't necessarily put it into the  
13 accountability system, so no weight has been given to  
14 that. What the Committee wanted to set is that it be  
15 taught, so that would be standards, and they didn't  
16 mention curriculum, but obviously we're going to have  
17 curriculum. And then they also talked about the  
18 development of assessments with that, but they didn't  
19 make it part of the accountability system, so I don't  
20 know where the 15 percent came from. Now, if you made  
21 it an academic subject, I mean, I guess in theory it  
22 could be, but that's not what the Committee requested.

23 Now, as far as Native American Language, what  
24 the Committee wanted is that it -- and I don't know if  
25 I'm using the right word, but that Native American

1 Language be emphasized, affirmed in the rule, and  
2 that's what it is right now. There is no requirement  
3 to develop standards, assessments in the Native  
4 Language and to make it an academic subject and to make  
5 that -- you know, to put a weight on that, 20 percent  
6 or 15 percent, so that's not being proposed.

7 And what also was discussed in Committee,  
8 though, is that, well, there is already a law, the  
9 Native American Language Act, that does emphasize the  
10 use of Native American language. So the question came  
11 up, well, why -- so why does it need to be in the rule  
12 at all, because there is already a separate law all by  
13 itself that kind of does the same thing? So does that  
14 answer your question?

15 MS. BLUEEYES: Yes. Thank you.

16 DR. HAMLEY: But Jill has some comment from  
17 Department of Ed. Jill Martin.

18 MS. MARTIN: Thanks, Jeff. Jill Martin.

19 Yeah, there may be a little confusion because  
20 different states have a course of their own, state  
21 plans, their own accountability systems, where they  
22 weight the indicators in accountability differently,  
23 right, and so there may be states that, for example,  
24 the English language proficiency indicator may be given  
25 15 percent. So when Darrick went over the various

1 indicators that are required in the law, one is  
2 academic achievement. School quality or school success  
3 certainly can be a weighted indicator, so if you  
4 include -- it is a weighted indicator. If you include  
5 Tribal Civics under school quality or school success it  
6 would get a weight; it's just that the other four would  
7 have to get a lot bigger weight. So it's not like it  
8 can't be included in accountability. It seems to be  
9 those issues are not yet decided and are not clarified  
10 in the regulations.

11 Eric, is that consistent with what you were  
12 presenting, just to make sure?

13 MR. CRANE: Yes. Thank you, Jill.

14 The idea of a weight or tagging Tribal Civics  
15 as 15 percent, I haven't seen that. But as Jill  
16 explains that when you look at the different state  
17 plans you'll see the weights that various indicators  
18 get. It may be that language in here in some states is  
19 weighted at 15 percent. And, again, just to reiterate,  
20 if Tribal Civics was in the SQSS, the student  
21 quality -- Student Success, School Quality portion,  
22 then the remaining indicators would need to be  
23 receiving substantially more weight, so that's my  
24 understanding as well.

25 MS. MENDOZA: Do you have question?

1 MR. FRANKLIN: Again, I guess I'm trying to  
2 formulate the question in regards to Tribal Civics. As  
3 I understand the 15 percent, states were given the  
4 opportunity to implement 15 percent of what they wanted  
5 to include into their state plan, so if Tribal Civics  
6 was a part of that 15 percent under the proposed plan,  
7 how would you assess that portion of Tribal Civics if  
8 that were the case, worst case scenario?

9 MR. CRANE: So I'm going to invite Jeff to  
10 jump in while I start here, but there is not currently  
11 a Tribal Civics indicator, and there would be a road to  
12 travel between now and that happening, but if that was  
13 decided that that would be an indicator that would go  
14 into the system, then it would be a process for  
15 figuring out what weight it received, just like weights  
16 of other indicators as well. So I'm not sure -- I  
17 don't think there is a 15 percent specified anywhere,  
18 so we can go away from that. But, rather, as for any  
19 indicator there would be a process of identifying it,  
20 developing it, and ultimately figuring out the weight  
21 it would have in the overall accountability system.

22 And, Jeff, I heard you wanted to add to that?

23 DR. HAMLEY: Right. I mean, the statement  
24 about -- and I don't know where that came from,  
25 15 percent in the state plan, again, the BIE is not a

1 state in the ESSA, so whatever it might say about the  
2 state plan in ESSA does not apply to Bureau. I mean,  
3 the BIE is doing the state plan voluntarily, unless  
4 it's in the rule, and then we'll have to meet  
5 requirements. But this is the purpose of the -- the  
6 state plan because in -- in the -- the SAAP that the  
7 Bureau -- that the Committee is requesting the Bureau  
8 to develop, that's where the detail on Tribal Civics  
9 will be laid out in plain language for everybody to  
10 see, and at that point stakeholders can give input to  
11 it.

12 So like it's been mentioned a few times, that  
13 hasn't really been flushed out, and the Committee  
14 didn't really, you know, didn't state -- make a  
15 statement, a thorough statement about what exactly what  
16 they were intending or wanting to do, so it's sort of  
17 not flushed out at this point, but it would have to be  
18 when we get to the state plan, the SAAP phase, and then  
19 it will be clear for everybody to see. There will be a  
20 proposal in there about what to do about it.

21 MR. CRANE: And just going back to the  
22 questions and the purpose of today, it's, you know, we  
23 want to hear from you all about what might be the  
24 effect of including the requirement of Tribal Civics  
25 among the indicators, so that is more the purpose of



1 today, so if there are any comments about the effect of  
2 the Tribal Civics among the indicators that would be  
3 helpful to hear.

4 MR. FRANKLIN: Okay. Since you provided that  
5 clarification, being a former history teacher I think  
6 it's important to include Tribal Civics to expand the  
7 minds of the children, and where they come from is very  
8 valuable, and a Native child to know where they come  
9 from, to know their history, to know their successes  
10 through history. As Navajos we've come a long ways,  
11 just like other tribes, and succeeded in holding onto  
12 our language when, as you know, the government tried to  
13 take it from us. So to include it in the curriculum I  
14 would have to agree with the Committee that they would  
15 have to require Tribal Civics in this plan.

16 MS. MENDOZA: So question: Even though as it  
17 is you could put that into an alternate proposal, I  
18 mean, the question is should we keep it in the  
19 regulations, or should we just keep it as kind of  
20 status quo now where you can include it in an alternate  
21 proposal? The question is do we want it in the  
22 regulations that will be published that may not be able  
23 to be changed for quite some time. I'm not trying to,  
24 you know, persuade anybody either way, but that's the  
25 question that -- that's how you kind of need to look at

1 it.

2 MR. DEARMAN: Tony Dearman, Director.

3 Last week we heard from some of the tribes at  
4 the consultation that they didn't know if they wanted  
5 it because they were not treaty tribes, so they said as  
6 far as being able to teach civics, they would struggle  
7 with that piece as a tribe. So, again, when you look  
8 at all the tribes that we have, I think that really the  
9 comments of how you would work that in as a tribe, that  
10 would be really helpful.

11 MR. FRANKLIN: So this is -- as I stated  
12 earlier this morning, New Mexico has taken -- I think  
13 is probably one of two states that has probably taken  
14 the lead in developing curriculum to teach Native  
15 history, Native culture. And, for example, as I gave  
16 this morning, New Mexico PED has just, from what I  
17 understand through an email yesterday, assuring that to  
18 the Navajo Nation that they are moving forward with  
19 Indigenous New Mexico, which basically will include  
20 Navajo history, historically, as well as the Pueblos,  
21 as well as the Apaches. So with the schools in New  
22 Mexico under the Bureau, they would utilize that  
23 curriculum as part of this requirement, Tribal Civics,  
24 I would think. And I think the other state that has  
25 taken the lead is Washington, state of Washington.

1 MS. MENDOZA: Well, if we went to a unified  
2 system we wouldn't have to follow what New Mexico was  
3 implementing. It would be our own, and then it would  
4 weigh with what we have.

5 MR. FRANKLIN: What I'm saying is that you  
6 would utilize those tools that have been developed with  
7 tribal input to implement Tribal Civics into your  
8 curriculum.

9 MS. MENDOZA: Yes. You could use that as say  
10 a model.

11 MR. FRANKLIN: Right.

12 MS. MENDOZA: But the question has been, like  
13 Director Dearman brought up, how do we implement those  
14 across our entire system if we have it as regulations?  
15 How is it going to be implemented across the BIE-funded  
16 school system, and given the number of tribes we have  
17 how do you create Tribal Civics that could cover all  
18 tribes? And the Committee did try and, you know,  
19 determine how they could do that, but they didn't  
20 really flush it out.

21 MR. FRANKLIN: So as part of the Committee  
22 that DOTI has participated in, this event, historical  
23 event, that New Mexico PED has implemented is that  
24 there were key -- I guess key indicators, like The Long  
25 Walk, or tribes that have experienced such an event

1 would be incorporated into the Pueblos, how they  
2 experienced those issues, those events, as well as the  
3 Apache tribes and their treatment from the United  
4 States and so forth. So there are basically indicators  
5 that they can branch off of in terms of how it applies  
6 to that particular tribe. So I think you would utilize  
7 that across the United States. For the Mississippi  
8 Choctaw, they would, you know, implement The Trail of  
9 Tears in terms of what they experienced and the  
10 hardship they experienced and to teach the children  
11 this is what the tribes went through, but they were  
12 able to sustain themselves. That could be applied to  
13 the same thing with Navajo, The Long Walk. The idea  
14 that these events that happened where there was  
15 hardship during those times, but they were able to  
16 succeed by overcoming those situations and holding on  
17 to their culture and language, I think that would be  
18 the basis of Tribal Civics.

19 MS. MENDOZA: Thank you.

20 MR. DEARMAN: I think one thing, Darrick, that  
21 you mentioned in the curriculum that we developed,  
22 again, dealing with multiple tribes, no tribe wants BIE  
23 to develop their civics or their curriculum. Again,  
24 that's where we need assistance from the tribes,  
25 because that's -- that's not something that the tribes

1 would even want. They don't want us coming in teaching  
2 language, and we have no business doing that. That's  
3 why we need the partnerships, and we need the voices of  
4 the tribes of how you feel it works. That's a good  
5 comment, good conversation.

6 MR. FRANKLIN: But in your organizational  
7 chart you have a position that's called Native  
8 Languages, and if you're saying what you're saying, it  
9 doesn't make sense when you're having that -- when you  
10 have that position but no position to teach it.

11 MR. DEARMAN: That position right there is to  
12 work with our tribes, and that would be Navajo schools,  
13 work with the Navajo Nation and what you want in your  
14 schools and help support that. Work with the Pueblo  
15 tribes the same way, working with tribal leaders on  
16 culture or language positions to make sure that the  
17 school is supported in developing and supporting the  
18 language and culture of that, so that's -- that's what  
19 the positions are designed for, to work to support the  
20 schools.

21 MR. FRANKLIN: Understood.

22 MS. BLUEEYES: I have a comment. Faye  
23 Blueeyes.

24 I want to make a comment to the Navajo  
25 languages being -- Native languages being taught in the

1 schools. I just wanted to say that as schools we  
2 really appreciate the funds that some of us receive to  
3 do Native language immersion this year. The only  
4 concern we have is that we're excited about it and  
5 we're willing to start the school year with that  
6 program; however, it's only funded for one year, so it  
7 would be I think in the best interest of our students  
8 to see if we could get continuous funding on those  
9 programs, at least maybe through -- after the  
10 monitoring is done about it and see the successes.  
11 Then it should be continued for funding because that I  
12 think is what was really needed in these schools, so we  
13 do appreciate that. Thank you.

14 MS. MENDOZA: Thank you.

15 MS. BARNEY-NEZ: I have just a comment, too.  
16 Angela Barney-Nez with Diné Bi Olta School Board. I'm  
17 looking at the section-by-section analysis that we have  
18 on page 6. Right above that we have some expectations  
19 that are listed regarding Tribal Civics. Again, I  
20 appreciate the point that Mr. Dearman talked about  
21 being when you say tribal, that is across the board  
22 tribal. I would say in our case when we're looking at  
23 Diné education and generally how we as a board by doing  
24 school board training is through our tribal colleges.  
25 We have two of them, Diné College and Navajo Technical

1 University. So the leadership aspect on how to -- how  
2 to determine what goes into content for Tribal Civics  
3 or even Science, it says, we would probably want to  
4 have a role from our tribal colleges on the research,  
5 the evidence-based type of information that we would  
6 like to incorporate. So I don't know if that would be  
7 the choice of the tribe or in the final rule where, you  
8 know, the implementation part about putting together  
9 Tribal Civics would be an option for say like us at  
10 Navajo Nation to develop that.

11 Same thing with -- with Diné language. Then  
12 we would expect the school -- the school boards to  
13 be -- to have a role in what would that mean and how  
14 would that pan out in terms of meeting the standards.

15 So I was just looking at how the Secretary  
16 will acquire such standards, and it does have that top  
17 down effect from what the Bureau might be asking tribes  
18 to do, mandating or requiring Tribal Civics, and maybe  
19 a general big one-size-fits-all manual to the schools,  
20 that would be totally inappropriate. I just wanted to  
21 point out that in those bullet points there on page 6  
22 right before the section-by-section analysis.

23 And I -- I have a little question on maybe  
24 someone that can describe the part that says Native  
25 American Languages as a medium of instruction at

1 BIE-funded schools. Are there how many, and is that  
2 sort of like an option what would be -- what began to  
3 be a requirement? I'm looking at that bullet. It's --  
4 it's under Tab 1, Tab 1 right after the regs, right  
5 after the Federal Register. It's probably in the Tab 2  
6 as well, but it's a list of bullet requirements that  
7 the proposal is to do, the proposed rule is to do.

8 MS. MARTIN: Oh, it's page 77 is where she's  
9 looking.

10 MS. BARNEY-NEZ: So when they say like Navajo  
11 Nation wants to do its alternative plan, then the  
12 requirements still will be from the Bureau to require  
13 Tribal Civics, and what's going to go in there we would  
14 not know, and that is kind of like a little contrary to  
15 me.

16 MS. MENDOZA: So you're looking at -- I just  
17 want to make sure. You're looking at the proposed  
18 regs, Part 30, Section 2, in that middle column?

19 MS. BARNEY-NEZ: Well, yeah, the last part of  
20 Section 2, the general description of the proposed  
21 rule. Right, the sixth bullet.

22 DR. HAMLEY: My comment on this, having been  
23 on the Committee, the emphasis on the word on this is  
24 "recognize." It's just saying that federal government  
25 recognizes the tribe -- the right of tribal governing



1 bodies and school boards to use Native American  
2 language. So it's not really making a requirement as  
3 part of the Bureau's standards, assessments, and  
4 accountability system.

5 And to be honest, the Committee went back and  
6 forth on this. I think some members wanted to see  
7 something stronger, but I think the reality is that  
8 that wasn't the -- our purpose was to come up with a  
9 framework consistent with Section 1111, and this fell  
10 outside of that. But the Committee -- I mean,  
11 everybody on the Committee, federal and non-federal,  
12 understands the importance of Native languages. We  
13 agree on that. It's just that, you know, what role  
14 should it play in the final rule, and we did agree -- a  
15 statement to the effect that the government recognizes  
16 the rights of tribes to use Native American language as  
17 a medium of instruction, that was sort of the end  
18 result of a long conversation over a couple of meetings  
19 about the role of Native American languages.

20 MR. CRANE: I'll just make one other comment  
21 about the point you made. If the process does go  
22 forward where Tribal Civics is developed and standards  
23 set for that, connection with higher ed, as you alluded  
24 to, would be a valuable point, a valuable step in that  
25 process, so thank you for mentioning that. That whole

1 idea of coherence of the standards so that it would  
2 culminate in what's needed for higher ed is reinforced  
3 by your comments, so thank you.

4 MS. BARNEY-NEZ: Specifically tribal colleges.

5 MS. MENDOZA: Any further questions?  
6 Comments?

7 MS. BYRNES: I'm pretty loud. I don't need  
8 the microphone. I have a lawyer's voice. It's even  
9 worse.

10 Hi. I'm Erin Byrnes, and I work with some  
11 schools down on Gila and have had the pleasure with  
12 working with schools on Navajo and Hopi as well. I  
13 raised this question before lunch, and so this is  
14 really just sort of to put it out there for everyone,  
15 and then I'll encourage my clients to submit written  
16 comments. But my question/comment was as to propose  
17 Section 30 -- or 30.113, Subpart G, that at this point  
18 in the draft version authorizes a tribal body or a  
19 tribally controlled school board to seek or advise the  
20 Secretary of its intent to continue to follow the state  
21 assessment regulations, for lack of a better word on my  
22 part. I'm still getting over my fry bread at lunch. I  
23 apologize.

24 So I had asked some questions right before  
25 lunch just informally about what the timing of that

1 would look like and procedurally what that would look  
2 like, including but not limited to who will bear the  
3 responsibility of, for instance, if it's one of my  
4 clients getting the approval from the state who is  
5 going to pay for the assessment, et cetera. And it's  
6 my understanding that there is not really a path, an  
7 answer or procedure set forth that's been contemplated  
8 for that, but I wanted to get that comment out there,  
9 and then if there is any information on that we would  
10 appreciate it.

11 MS. MENDOZA: Tamarah or Jeff, do you have any  
12 comments?

13 DR. HAMLEY: Well, the process to weigh it is  
14 not new. It was in No Child Left Behind, so I think --  
15 although there has been a shift. And the discussion in  
16 the Committee was -- it centered around, you know,  
17 having stricter administrative requirements, and so  
18 there is the 30-day reporting on status and -- but --  
19 and I don't know whether I should give you my opinions,  
20 but so it mainly focused on that. But I think that the  
21 general process, now that we've gone through two of  
22 them, is somewhat clear. I mean, it doesn't mean that  
23 can't be defined, you know, more sharply. And when we  
24 give technical assistance when we're talking to tribes,  
25 we talk about, you know, well, it has to go to

1 Interior, but -- no, it doesn't?

2 MS. MARTIN: I'm just saying she's not talking  
3 about waivers. She's talking about state opt-in, which  
4 doesn't require submission to the Secretary.

5 MS. SINHA: So I think you were asking: What  
6 is state approval? What constitutes state approval?  
7 Who is responsible? If you go with the state process,  
8 who is responsible for approving the assessment? I  
9 don't think -- I know that we do not have a definitive  
10 answer for what constitutes state approval at this  
11 point. We're really -- I think it's really helpful to  
12 hear from you as to like what -- what would be a  
13 meaningful way or a useful way to define that for  
14 purposes of your clients. The payment for assessments  
15 question is one that I think is a good question.  
16 Again, I mean, I think that's partially going to depend  
17 on what's going on with the states' rights, so I think  
18 that that's a larger -- a larger question than I can  
19 answer because it involves so many states. So I think  
20 that those are really good questions to pose to us and  
21 things we should be talking about. But it's clear that  
22 you're asking about a more detailed process, because  
23 the intent is clear, but there is also a lot of  
24 ambiguity as to how that would actually be effectuated.  
25 And I think there is a bigger question about rights, so

1 it also raises policy considerations. If we allow that  
2 to happen then have we kind of missed the mark with the  
3 attempt to get unified data that we can -- and  
4 standardized data that we can use?

5 So that was one of the things that also came  
6 up with this provision is does this -- does allowing  
7 this really meet the objectives? So if there is a  
8 reason that that's really important to your clients,  
9 then it's really helpful to hear why that is, and it's  
10 even more helpful to hear from your perspective how do  
11 we address that in the context of trying to get a  
12 standardized approach in data that we can use to  
13 compare apples to apples. That's where we're moving  
14 away from this. So if we're going to keep this  
15 provision in any suggestions on how we might think  
16 about that is really helpful.

17 MS. BYRNE: Thank you.

18 MS. MENDOZA: And for others, if you haven't,  
19 if you look at Slide 12 of the parts of the  
20 presentation, it kind of introduces that question. Any  
21 comments? That was a great question.

22 MS. BARNEY-NEZ: I'm going to go back to the  
23 tab again, first page at the top. It talks about the  
24 question where the Secretary -- how will the Secretary  
25 implement the SAAP. I'm not finding the proposal in

1 this -- in this area. It just -- it didn't get a  
2 consensus as to how -- I'm kind of thinking that we  
3 might fall right into the same status to answer to the  
4 state standards per state and where these BIE schools  
5 are located. Am I not --

6 MS. MARTIN: Can you ask her to clarify the  
7 page?

8 MS. SINHA: Yeah, can you clarify what page?

9 MS. MARTIN: The pages and the tab.

10 MS. SINHA: The pages are on the right -- on  
11 the right-hand upper corner.

12 MS. BARNEY-NEZ: The five-digit number?

13 MS. SINHA: Yes.

14 MS. MARTIN: Which tab?

15 MS. BARNEY-NEZ: So I'm on Tab 1, the proposed  
16 rule where the questions are posed at page 8, that  
17 first part. The first question on page 8, it says,  
18 "How will the Secretary implement the SAAP?" What I'm  
19 saying is I'm not finding a proposed process for it.

20 MS. MENDOZA: Well, Dr. Hamley was talking  
21 about that earlier in terms of we've just started the  
22 drafting -- the draft SAAP, but we still have to  
23 complete the standards, assessments, and accountability  
24 rule before we can continue to work with the SAAP. And  
25 in terms of how it would be implemented, that -- we

1 would get to that point later.

2 MS. BARNEY-NEZ: Is that another proposed  
3 rulemaking?

4 MS. MENDOZA: No, it would not be, but it  
5 would -- it would include tribal consultation and  
6 stakeholder engagement.

7 Did you want to add to that, Jeff?

8 MS. BARNEY-NEZ: You're working with the 23  
9 states. We wouldn't have that answer into the states,  
10 and we would -- our schools would need to fall under  
11 the Secretary's rule, the proposed process in the BIE,  
12 which the earlier question was the BIE as a state, a  
13 quasi-state. But, yeah, you would have these  
14 requirements of the schools, and then the Secretary  
15 will implement those, so how is it related to the  
16 state, to the states in which the schools are located?  
17 That's what we're dealing with right now, New Mexico,  
18 Arizona schools. So when you get this implemented,  
19 will it just be the BIE SAAP that schools will be  
20 required to follow?

21 MS. MENDOZA: That's what we are proposing in  
22 the rule, we have a unified system. So we wouldn't  
23 follow the state. We would follow BIE.

24 MS. BARNEY-NEZ: Okay. And then that goes  
25 back to the question on Tribal Civics and Science. The

1 content of those would be BIE's functions or BIE's  
2 development of those content areas? Is that -- I don't  
3 see what I -- I was suggesting that tribal colleges be  
4 involved in that because of so much history and so much  
5 uniqueness in terms of who we are as in our Diné Navajo  
6 people.

7 MS. MENDOZA: And it was the Committee's  
8 recommendation to include those, but BIE, there has  
9 been no discussion about how we would actually do that,  
10 just because they were proposing it in terms of Tribal  
11 Civics and Science, but we never got to the point where  
12 we discussed how we would develop it and implement it.

13 MS. BARNEY-NEZ: The Navajo Nation has -- has  
14 sort of like a code rule, Navajo Nation code, in terms  
15 of using tribal colleges, the two tribal colleges, as  
16 the base and the research of say like in a science. I  
17 would expect the same with Diné academics and their  
18 government, other things. So if it's required of  
19 schools shouldn't there be an option that the schools  
20 might have to go with a -- with a research-based model  
21 developed locally within our tribal college?

22 MS. MENDOZA: If you wanted to put that in  
23 your proposal, then yes. But the Committee wanted --  
24 was recommending that it be part of our accountability  
25 system, but we needed -- we need feedback from the



1 tribes to understand is that a direction you would want  
2 to move in, so pros and cons of that.

3 MS. BARNEY-NEZ: I'm kind of feeling that  
4 because of what Navajo has done with the DSAP, it's a  
5 big college try in terms of trying to get a plan put  
6 together, and I see that the federal government is not  
7 as willing to adopt a tribally identified plan as  
8 opposed to, you know, the proposed rule here where we  
9 are able to say we require Civics, but then who is to  
10 do it? The option should be tribally driven initiative  
11 on those. That's the concern I have. I feel like it  
12 might be a contrary conflicting requirement for tribes.

13 MS. PFEIFFER: So the way that I'm reading the  
14 proposed rule around Tribal Civics, we're trying to get  
15 stakeholder engagement on should these be part of the  
16 requirement of the federal regulation. If a tribe  
17 acknowledges that they have developed key curricula,  
18 standards and assessments in these areas, then I think  
19 that is something that could be weighed. You know,  
20 given that the regulation is -- the Secretary's -- the  
21 rule is published and we now have a commitment around a  
22 unified system and what should be included in a unified  
23 system of accountability and the related subject  
24 matters that we might need to look at as far as what  
25 will be weighted in each area. I think what I'm

1 hearing from yourself is that, yes, it sounds like  
2 Navajo has gone forth and has thought about these  
3 areas. Now it's about thinking about is -- is there  
4 comment around should the federal government, should  
5 the BIE have this as part of their rule, and if so how  
6 is that going to impact tribes across the United  
7 States?

8 MS. MARTIN: Hi. This is Jill Martin.

9 There is a lot of options that you all are  
10 raising which I think are really good, and it sounds  
11 like one option, which is in the draft regulations, is  
12 a BIE-driven curriculum, right, because that's what  
13 you're proposing, that Tribal Civics would be part of  
14 the accountability system as a school quality  
15 indicator, and it would receive some weight.

16 Another option would be you could suggest that  
17 it be a requirement that all BIE-funded schools teach  
18 Tribal Civics but that the curriculum can be totally up  
19 to each tribe, and then it not be included in the  
20 accountability system. Just like the BIE regulations  
21 might say you must teach health or PE, but that's not  
22 part of the accountability system. So there are many  
23 options, and it sounds like you all are thinking  
24 through some good options.

25 MS. SINHA: Yeah, I was going to say that I

1 think -- I mean, I think we are all on the same page  
2 here. I think what you're currently getting at is  
3 incorporated in the regs. And you heard from DOE here  
4 that there are a couple of different regs that you can  
5 get at what you're trying to do. But the idea is  
6 whether -- fundamentally whether BIE should have  
7 something in place as an initial starting point, and if  
8 the tribes have something else they want to do they  
9 have the option of using the waivers. And even if the  
10 BIE didn't have a baseline, but there is still an  
11 option if a tribe wanted to do something for them to  
12 have that included through the waiver process. So  
13 there is -- I mean, there is any number of ways that we  
14 could approach this, and there is a lot of flexibility.

15 What I think the BIE was specifically looking  
16 for was comments on if we are going to have kind of a  
17 baseline BIE civics approach, should we have that, and  
18 what does it look like. But your point about -- what I  
19 hear you saying is you really want to focus on what  
20 Navajo specifically could do, and that's great to hear.  
21 It emphasizes the importance of retaining the  
22 flexibility that's already built into the proposed  
23 regs.

24 MS. BARNEY-NEZ: I have one more. There is a  
25 part in here -- I can't find it. I was looking for it.

1 Okay. On page 7, again back to those questions --

2 MS. SINHA: Can you please use the five-digit  
3 number? It will just speed things up. It's on the  
4 right hand --

5 MS. BYRNES: It's actually in that Tab 1, but  
6 it's after the regs, so it's the second document under  
7 Tab 1.

8 MS. SINHA: We're on a slightly different  
9 book.

10 MS. BYRNES: I'm sorry.

11 MS. SINHA: Do you want to borrow mine?

12 MS. MENDOZA: I think the section she's  
13 referring to is not in our books.

14 So please move forward with your question.  
15 I'm sorry about that.

16 MS. BARNEY-NEZ: Okay. It asks what  
17 definitions apply to terms in this part, which is  
18 Section 30.101.

19 MS. SINHA: Okay.

20 MS. BARNEY-NEZ: And in there it talks about  
21 it looks like an update from -- the definition is from  
22 BIE, Bureau of Indian Education, to or from Office of  
23 Indian Education Programs or BIA, and then a proposed  
24 alternative proposal. So will that be only section  
25 30.101 in terms of changing those definitions? Will it

1 go throughout the CFR is what my question is, meaning  
2 that you'll change BIA -- I mean OIEP to BIE?

3 MS. SINHA: No. This specific -- these  
4 definitions are specific to this proposed regulation.

5 MS. BARNEY-NEZ: Are we totally away from AYP  
6 in this proposal? I know it does ask for a  
7 re-definition on it. Is that across the board, or just  
8 this proposal?

9 DR. HAMLEY: Well, I don't have a mike, but  
10 AYP went away with No Child Left Behind, so, yeah, AYP  
11 is completely gone.

12 MS. BARNEY-NEZ: Okay. So even though there  
13 are some -- I'm looking at definitions. You are just  
14 redefining it differently. Is that fair to say?

15 DR. HAMLEY: Right. I think we define it as  
16 accountability system.

17 MS. SINHA: And I think what you're saying is  
18 it would replace -- if you look on Standards,  
19 Assessments, and Accountability System requirements to  
20 Part A on page 26788 of the Federal Register, what it  
21 says is: "This proposed subpart would be similar to  
22 the existing 30.102 through 30.104, Subpart A, defining  
23 adequate yearly progress of Part 30."

24 So I think what you're saying is that this is  
25 kind of rewriting that section, so the new Subpart A

1 would replace the adequate yearly progress provision in  
2 Subpart 30.

3 MS. MENDOZA: Any questions? Any comments?  
4 We're going to take another break at 2:30. What time  
5 is it?

6 DR. HAMLEY: It's 2:20.

7 MS. MENDOZA: We'll take a break at 2:30, and  
8 if people want to come back and ask questions, propose  
9 comments, please do. But we'll go ahead and take a  
10 break soon.

11 MS. BARNEY-NEZ: I have one more question. If  
12 you go to that same section on number -- on page 10  
13 where you have the option to have the governing body or  
14 school board, at the bottom of the page, or school  
15 board may waive the Secretary's requirements, and there  
16 is reference in here that says that as proposed this  
17 section confirms that tribal governing bodies and  
18 school boards at 100-297 grants or 638 contract schools  
19 may waive the Secretary's requirement in part or in  
20 whole.

21 What about the BIE-operated school boards?  
22 They are tribally elected.

23 MS. MENDOZA: So this is a question on Section  
24 30.112.

25 MS. SINHA: Sure. So I would go to that

1 definition section that we were looking at a little  
2 earlier in 30.100, and look at the definition of tribal  
3 governing body and school boards.

4 MS. MARTIN: 101.

5 MS. SINHA: What?

6 MS. MARTIN: 101.

7 MS. SINHA: Oh, sorry. 30.101. And look at  
8 the definition of tribal governing body or school  
9 boards, and also look at the definition of waiver, and  
10 both of those clearly establish that this would not  
11 be -- waiver is not an option for Bureau-operated  
12 schools. They would not be able to waive out of the  
13 requirements.

14 MS. BARNEY-NEZ: If the tribal governing body  
15 requested the Bureau for such a waiver for  
16 BIE-operated, is that available?

17 MS. SINHA: No, not under these proposed regs.  
18 It would only be for tribally controlled.

19 MS. BARNEY-NEZ: Because you have the tribal  
20 governing body having the ability to request a waiver.

21 MS. SINHA: Okay. The definition of tribal  
22 governing or school boards means with respect to waiver  
23 and submission of proposals for requirements  
24 alternative to the Secretary's requirements for  
25 standards, assessments, and accountability system at

1 tribally controlled schools, the entity authorized  
2 under applicable tribal or federal law to waive the  
3 Secretary's requirements and propose alternative  
4 requirements.

5 So that's -- that's why I'm giving you the  
6 feedback that I am is because of the language in that  
7 definition.

8 MS. MARTIN: So you should ask for input on  
9 that issue, if they want to comment on it.

10 DR. HAMLEY: Right, and we invite input on  
11 that issue, if you want to provide us feedback.

12 MS. COHO: This is Maxine Coho.

13 I don't know what slide show you all showed  
14 this morning, but I -- I just got here this afternoon,  
15 and I don't know how many of you showed up this  
16 afternoon, but what slide shows did you guys --

17 MS. MENDOZA: If you go to Tab 3 of the book,  
18 that's the -- we showed two slides. One was an  
19 overview of the Every Student Succeeds Act, and then we  
20 showed the proposed rule slide, and that's under  
21 slide -- excuse me, Tab 3.

22 MS. COHO: Okay. Thank you.

23 MS. MENDOZA: You're welcome. Oh, I'm sorry.  
24 Could you state your name?

25 MS. COHO: Maxine Coho.



1 MS. MENDOZA: And your affiliation?

2 MS. COHO: With the Ramah Navajo School Board.

3 I have another question.

4 MS. MENDOZA: Sure.

5 MS. COHO: We're talking about Tribal --  
6 Tribal Civics. If the BIE makes it a requirement is  
7 that going to change or increase the funding that the  
8 school gets? Because that's going to be a totally --  
9 for some schools it's going to be a totally different  
10 subject that's going to be all be part of the -- the  
11 lessons, or it will be included in their lesson plan to  
12 teach the kids.

13 DR. HAMLEY: The Committee did not address  
14 that issue, so, but, however, we invite input on that  
15 topic. The Committee did want to -- did recommend in  
16 the report that the Bureau take up additional  
17 negotiated rulemaking on ISEP funding and WSU, but that  
18 was not within the scope of this negotiated rulemaking.  
19 But specifically on the Tribal Civics, they did not  
20 address the issue, but you can provide comment on that  
21 if you wish.

22 MS. COHO: Thank you.

23 MS. MENDOZA: So it's 2:30 now. Let's go  
24 ahead and take a ten-minute break, and we will be back  
25 here. Thank you.

1 (Recess taken from 2:30 p.m. to 2:46 p.m.)

2 MS. MENDOZA: Well, we can get started again.  
3 We're missing a few people, but the folks that are  
4 here, we're here to answer or listen to comments.

5 I also wanted to make sure that you're aware,  
6 we don't have it on the screen right here so excuse  
7 that, but if you want to submit written comments please  
8 make sure you do so by August 9th, midnight Eastern  
9 Time, and you can submit them -- it's in the booklet  
10 that you received on page 18 of the PowerPoint slide.  
11 There is an email address as well as submitting  
12 comments online at regulations.gov. And we will be  
13 happy with three -- one, two -- four more tribal  
14 consultations. On this Thursday the team will be at  
15 Oglala Lakota College in Kyle, South Dakota. And then  
16 on Tuesday, the 23rd, we'll be in Bloomington  
17 Minneapolis. That's right outside of Minneapolis --  
18 excuse me, Minnesota, Minneapolis, Minnesota.

19 Then we will have an online consultation, and  
20 that will be from 1:00 to 4:00 on July 26th. And we  
21 should have the information for the online session -- I  
22 should have that by tomorrow.

23 And then the last consultation session is  
24 July 30th at Wa He Lut Indian School in Olympia,  
25 Washington.

1 MS. COHO: I have a question on the webinar.  
2 Is that the correct website? It's on page 8 of the --  
3 I think it's --

4 MS. MENDOZA: The webinar conference? Yes,  
5 that number -- those are the web address and the  
6 conference call line. I should have those finalized by  
7 tomorrow so those will be posted to the BIE website, so  
8 www.bie.edu.

9 MS. COHO: I have another question on that, on  
10 the Tribal Civics or Science.

11 MS. MENDOZA: Can you say your name again and  
12 your affiliation?

13 MS. COHO: It's Maxine with Ramah.

14 On the Tribal Civics, is that -- what are the  
15 consensus of the tribes? I'm just wondering are they  
16 wanting that to be a requirement, or are they just  
17 going to -- are they going to say just leave it up to  
18 the tribe?

19 MS. MENDOZA: The Navajo Nation's tribe or the  
20 Committee?

21 MS. COHO: Overall, overall tribe.

22 MS. MENDOZA: Well, it was a Committee  
23 recommendation. Thus far we've only had one  
24 consultation session, so the feedback we received from  
25 that first one was that they felt that it should be up

1 to the tribes.

2 No more questions or comments? Well, I think  
3 everybody else here in the room had comments or is  
4 actually part of BIE Department of Ed, so we'll just --  
5 what would you like to do, Tony? Should we --

6 MR. DEARMAN: I think as long as there is  
7 information that they're welcome to submit comments in  
8 writing. However they want to do it, absolutely,  
9 they're welcome.

10 MS. MENDOZA: Well, again, the comments are  
11 due by August 9th of this year by midnight Eastern  
12 Time. So if you go to Tab 3, page 9 of the  
13 presentation are the email address and the website  
14 address for regulations.gov, and you can submit your  
15 written comments at either the email address or  
16 regulations.gov, and you want to make sure that you  
17 reference the two numbers that are provided for each.

18 Okay. So I'm just -- we'll just wait and see  
19 if anybody else comes into the room. We'll go  
20 ahead and --

21 MR. DEARMAN: Adjourn at 3:30.

22 MS. MENDOZA: So we'll wait until 3:30 and go  
23 ahead and adjourn, but I'm going to go ahead and sit  
24 down, and if you have a question please let me know,  
25 and I will definitely get up and help field any

1 questions.

2 MR. DEARMAN: What are your thoughts on that,  
3 or do we need to stay here until 5:00 because that's  
4 what's proposed?

5 (Discussion held off the record.)

6 MS. MENDOZA: Here comes somebody. Here comes  
7 somebody.

8 So just wanted to -- someone new just walked  
9 into the room, or you had left and come back. We're  
10 going to be here until 3:30 to accept comments, and  
11 then after that we'll refer you to submit comments to  
12 the email address or the online website that's on  
13 page -- I forget what page it is of your -- your book,  
14 but it's on the Part 30. Okay. Thank you.

15 (Pause in proceedings.)

16 MS. SINHA: For the record, this is Chaitna  
17 Sinha. It being 5:00 and there being no further  
18 comment, we officially conclude this consultation.

19 (The proceedings concluded at 5:00 p.m.)  
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## C E R T I F I C A T E

I, DEBORAH WILKS, the certified court reporter before whom the foregoing proceeding was taken, do hereby certify that the proceedings had upon the foregoing hearing are contained in the shorthand record made by me thereof and thereafter reduced to typewriting under my direction; that said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

DATED at Phoenix, Arizona, this 29th day of July, 2019.



Deborah L. Wilks, RPR

Certified Court Reporter

Certificate No. 50849

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