

1 BUREAU OF INDIAN AFFAIRS TRIBAL CONSULTATION

2

3 NEGOTIATED RULE MAKING CONSULTATION

4

5 PART 40 - STANDARDS, ASSESSMENTS AND  
6 ACCOUNTABILITY SYSTEMS

7

8 Tuesday, July 23, 2019

9

8:30 a.m. - 5:00 p.m. CT

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2001 Killebrew Drive

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Minnesota Room

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Bloomington, Minnesota 55425

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22 REPORTED BY:

23 Jonathan Wonnell, RMR

24 Capital Reporting

25 Washington, D.C.

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

2 \* \* \* \* \*

3 MR. CRUZ: All right. Good morning,  
4 everybody. Can you hear me all right? Great.

5 It is 8:30 and that is the time listed as  
6 the start for this consultation so we'll go ahead and  
7 get started. Just to start off, I'm Mark Cruz. I'm  
8 the Deputy Assistant Secretary for Policy and  
9 Economic Development. I'm here today on behalf of  
10 Secretary Bernhardt and Secretary Tara Sweeney.

11 This is the fourth meeting on the student  
12 standards, accountability and assessment regulation.  
13 We started two weeks ago out in Albuquerque and then  
14 last week we had staff down in Window Rock and Pine  
15 Ridge as well. And so this week we are here in  
16 Minnesota and on Friday we'll be doing a  
17 teleconference and webinar. And then we'll conclude  
18 the series of consultations out in Seattle,  
19 Washington, next week.

20 And so just to kind of put a little bit of  
21 context from our perspective with the assistant  
22 secretary, this is a long-awaited rule. As many of  
23 you know, the statute was passed in December of 2015  
24 and what has happened is BIE has gotten a little  
25 behind on implementing the new system. And so

1       whereas many states finished within a year to 18  
2       months, here we are today.

3               And so the secretary and the assistant  
4       secretary feel an important need to get this rule  
5       done sooner rather than later. And so we appreciate  
6       the hard work of the negotiating and rule-making  
7       committee. They met multiple times over the last  
8       year. And so they're the ones that came out with the  
9       computer report that was issued in early -- I think  
10      we finished in March and they submitted it in April.  
11      And so that's kind of the framework for where this  
12      proposed reg is coming from.

13              And so I'll just go quickly around the  
14      room and introduce my colleagues from the Interior  
15      Department. From the Office of the Solicitor  
16      Division of Indian Affairs we have Jennifer Castillo.  
17      From our associate deputy director office here in  
18      Minnesota we have Rose-Marie Davis.

19              We have my colleague from Washington,  
20      D.C., Travis Clark, senior policy advisor for the  
21      director. Over to my right we have Dr. Jeff Hamley  
22      who will be here to answer any questions. He's our  
23      technocrat expert.

24              And you'll also hear from Deb Sigman.  
25      She's from WestEd and has been very instrumental in

1 helping the Bureau of Indian Education with this  
2 draft. And then we have Dr. Tamarah Pfeiffer, our  
3 acting chief academic officer, who you will also hear  
4 from today.

5 A couple of things I would like to say at  
6 the outset. We will start with the presentation.  
7 They will go through the PowerPoint. And did you  
8 guys print that off for them? Okay. Yeah. You  
9 should have printouts made available to you.

10 And then after the presentation if there  
11 are any tribal leaders in the room or elected tribal  
12 officials, we will go to them first. And then  
13 depending on if there are those individuals or not,  
14 we'll then go to comment from everyone else here in  
15 the public consultation.

16 Because this is a formal tribal  
17 consultation, we have a court reporter in the room.  
18 So when you do take the mike, please state your name.  
19 I mean every time, not only the first time. State  
20 your name and the organization that you're with. And  
21 if there's any need for spelling, please enunciate  
22 that for the court reporter.

23 Everything said here today will be made a  
24 part of the record and will be sent to Washington for  
25 the team to review. And it will be made part of the

1 final deliberations as this rule proceeds.

2 And then from the onset it's important to  
3 remember all public comments written are due August  
4 9th. So that's coming up. So if you have school  
5 board members, principals, tribal officials back in  
6 your home communities that would like to opine,  
7 please make sure they do so. And the instructions on  
8 how to get that to us are on the Federal Register and  
9 I'm sure at the end of the presentation here today.

10 So with that let's go ahead and begin with  
11 the presentation. And I think we're starting with  
12 Deb. Is that correct?

13 MS. SIGMAN: Mm-hmm.

14 MR. CRUZ: Okay. Great, Deb.

15 MS. SIGMAN: Would it be okay if I stay  
16 here?

17 Well, good morning. Good morning, all. I  
18 am Deb Sigman. I serve as a senior advisor to the  
19 Center On Standards and Assessment Implementation  
20 which is one of several technical assistance centers  
21 that is authorized by the U.S. Department of  
22 Education. And I have been providing technical  
23 assistance to the BIE as they have navigated the  
24 rule-making process and I am delighted to be here.

25 So my purpose today is to give you kind of

1 a grounding in what we're talking about in terms of  
2 the requirements of the law, the statute and so  
3 forth. So this is all about ESEA, the Elementary and  
4 Secondary Education Act, which began in 1965, at its  
5 core really an education law, but really a civil  
6 rights law as well. And as a result of the ESEA the  
7 Title I program began and it currently provides over  
8 \$14 million to schools and students and the States.

9 Obviously there have been many iterations  
10 because the law is reauthorized routinely. No Child  
11 Left Behind, NCLB, had a very long tenure as the  
12 reauthorization. It set the expectation that all  
13 students needed to learn and improve and progress;  
14 not just some groups, but all groups. And then in  
15 2015, in December of 2015 the long-awaited  
16 reauthorization of NCLB occurred and it was  
17 reauthorized with the Every Student Succeeds Act,  
18 also known as ESSA.

19 However, it really is -- regardless of  
20 NCLB, ESSA, the pillars remain. And those pillars  
21 really are founded under standards, assessment,  
22 accountability, which includes the disaggregation of  
23 data and the transparency of that data. And then  
24 ultimately you do those things so you can provide the  
25 interventions to the schools and the students that

1 need it. That really hasn't changed and that really  
2 is about equity and access and promoting excellence  
3 in education.

4 So we know that BIE is not a state, but  
5 for these purposes the Section 8204 requires that the  
6 Secretary of the Interior have requirements for  
7 standards, assessment and accountability and that  
8 those systems would apply to BIE-funded schools. But  
9 taking into account certain kinds of -- the unique  
10 circumstances.

11 Those requirements have to be consistent  
12 with ESSA Section 1111. And they have to be  
13 implemented prior -- or pardon me -- pursuant to  
14 regulations, which are where we are now.

15 So this system of standards, assessments  
16 and accountability, it's important to note that those  
17 standards come first. They guide everything. So the  
18 standards about what we expect students to know and  
19 to be able to do, those are fundamental. Those come  
20 first.

21 Then you have assessments, right?  
22 Assessments to determine whether or not we are  
23 actually making progress with our students in those  
24 standards. And then ultimately they feed into an  
25 accountability system which maintains accountability



1 for ourselves, making sure that those students are  
2 actually meeting those standards.

3 As I said, standards are really statements  
4 about what we expect our students to know and to be  
5 able to do. And why do we have them, right? Well,  
6 it really is about making sure that all students are  
7 given a rigorous curriculum, that we make sure that  
8 all students receive that curriculum, all students  
9 are treated equitably and receive that excellent  
10 education as required by ESEA.

11 So what's required under ESSA? This is  
12 pretty similar to NCLB. So we're required to adopt  
13 challenging statewide content and achievement  
14 standards, right? So content is the "what" and  
15 achievement standards is the "how good is good  
16 enough." So states have to create each of those  
17 standards. And at a minimum in the content areas of  
18 math, reading and science.

19 We have to set at least three achievement  
20 levels. You could accept more, but three is  
21 required. And then you have to make sure that -- and  
22 this is new. This was not in NCLB. You have to make  
23 sure that these standards are aligned with entrance  
24 requirements to credit-bearing courses in the public  
25 higher education system as well as consistent with

1 relevant career and technical education standards.  
2 That's the main difference in the standards area  
3 between NCLB and ESSA.

4 Consistent with NCLB, same standards have  
5 to apply to all students, with the exception of you  
6 can have an alternate set of standards for those  
7 students identified with the most significant  
8 cognitive disabilities. You also have to adopt  
9 standards for English language proficiency. So  
10 that's not an academic content, but rather a standard  
11 ensuring that students who are learning English, you  
12 have to address speaking, listening, reading and  
13 writing standards for language proficiency.

14 So that's the standards part. Assessment,  
15 why do we assess? We really assess because it's our  
16 way to collect evidence, if you will. So it's an  
17 objective measure to determine are students making  
18 progress, are they meeting the standards that we deem  
19 important, that we value, and are they meeting those  
20 standards across all of our classrooms, across all of  
21 our schools, across all of our states.

22 And if they're high-quality assessments,  
23 we want them to help us find those gaps in  
24 achievement across our students and our student  
25 groups. We want them to help give those schools and

1 our systems information so that they can get better  
2 at educating our students. So really it's about  
3 improving and informing teaching and learning.

4 So these are the requirements for  
5 assessments. And these have not changed really much  
6 either. Consistent with NCLB, you have to assess  
7 annually in math, reading, to every student in grades  
8 3 through 8 and once in high school, so you can  
9 determine which grade that will be. And then in  
10 addition you have to assess science in the grade  
11 spans, so elementary, middle and high.

12 All students with disabilities, so those  
13 students who have IEDs, individualized education  
14 requirements, must be assessed. There are no  
15 exceptions. There is, however, a -- one could build  
16 an alternate assessment and that would be reserved  
17 for those students with the most significant  
18 cognitive disabilities.

19 The assessments must be aligned. That is  
20 the most critical part of assessments, that they must  
21 be aligned with the standards that have been adopted.  
22 And 95 percent of the students must be assessed.

23 We also must assess all of our English  
24 learners for that language acquisition. Remember I  
25 talked about that, language proficiency. So that

1 assessment must be provided annually as well. One  
2 must include our English learners in the annual  
3 academic assessments, although there are some slight  
4 differences in how those students may be counted in  
5 the accountability system.

6 And you have choices about how those  
7 assessments are delivered. So they can be delivered  
8 in part -- not a hundred percent, but in part -- as  
9 projects or portfolios, performance tasks. And you  
10 can administer a single test at the end of the year,  
11 which I think we're all very accustomed to, or you  
12 can give multiple interim assessments that build to a  
13 summit of score.

14 And then that alternate test that I talked  
15 about, there is a one-person cap on that in terms of  
16 counting the students that would be able to take  
17 that.

18 MR. LADUCER: So that one percent, is that  
19 in our schools or is that in the state?

20 DR. HAMLEY: It's one percent of the  
21 students in your school.

22 MR. LADUCER: Of the grades, but -- well,  
23 I'm in high school. So if I have 150 sophomores who  
24 are taking three language arts, I have 1 percent of  
25 those or 1.5 kid can take an alternative access.

1 That doesn't seem right.

2 MS. SIGMAN: Well, remember, it's just  
3 reserved for those students with the most significant  
4 cognitive disabilities. So that's generally what you  
5 see, about one percent of the population.

6 MR. LADUCER: In a given year I might have  
7 3 or 4. So is there a waiver for that?

8 MS. SIGMAN: So -- I'm looking at counsel.

9 MS. CASTILLO: I would have to look into  
10 that because I have a general idea but I don't want  
11 to give you something that's incorrect. But I just  
12 want to emphasize that it's specifically for students  
13 that do have IEPs and --

14 MR. LADUCER: No, I agree. But if we  
15 have -- some kids are so severe that we take total  
16 care of that kid, including the changing, the feeding  
17 sometimes. Schools can't -- you know, especially  
18 with a large population like ours of SpEd kids, can't  
19 be expected to be held to 1 percent.

20 MS. SIGMAN: So let me just add this. The  
21 1 percent, let's say we are looking at BIE as a  
22 system. Then it's 1 percent of the students in the  
23 system.

24 MR. LADUCER: See, that's what I asked.

25 MS. SIGMAN: In the system.

1 MR. LADUCER: Okay. Got you.

2 DR. HAMLEY: Excuse me. Do you mind  
3 stating your name, who you're representing and your  
4 title for the record so the court reporter has that  
5 accurately, who proposed those questions?

6 MR. LADUCER: Melvin John Laducer,  
7 principal, Turtle Mountain High School, Belcourt,  
8 North Dakota.

9 MR. CLARK: Thanks.

10 MS. SIGMAN: So the next step after our  
11 standards and assessment is that accountability  
12 system. Right? So thinking how we hold ourselves  
13 accountable for ensuring that our students meet those  
14 standards. So a well-designed system will set clear  
15 expectations so that all of our stakeholders, our  
16 teachers, our students, our parents, know what those  
17 expectations are.

18 It may help us focus resources on all of  
19 the student groups that we serve. It really can  
20 signal priorities about what BIE thinks is important,  
21 what BIE values, what the stakeholders value. And  
22 then probably most importantly, it can prompt  
23 intervention in those places that look like they need  
24 that intervention based on the accountability system.

25 So what is included in ESSA for

1 accountability? And this is probably the biggest  
2 change from NCLB to ESSA. NCLB, as you recall, was a  
3 pretty rigid accountability system based entirely on  
4 the proficiency of students meeting those standards.  
5 But there's quite a bit difference. Under ESSA it's  
6 expected that multiple measures will be used.

7           The first requirement is that for all  
8 schools, academic achievement must be measured. So  
9 in the area of ELA reading and math, just those two  
10 exams, students are measured by the proficiency. So  
11 that goes into the accountability system. Okay?

12           Number two -- I'm sorry. For high schools  
13 that can include a measure of growth. For elementary  
14 it can include -- pardon me. Other academic  
15 indicator for elementary and secondary. So these are  
16 not high school. So this would be your elementary  
17 and your middle schools. That also can include a  
18 measure of growth or another academic indicator.

19           So, for example, some states in this  
20 number two are including their science course. Okay?  
21 Science cannot be in number 1. Number 1 is strictly  
22 reading and math.

23           For all high schools a graduation rate has  
24 to be included in the accountability system. English  
25 language proficiency, do you remember I talked about

1 you have to have English language proficiency  
2 standards? And then you have to have the annual  
3 assessments for that.

4 And then number 5 is any additional what's  
5 called a school quality or student success indicator.  
6 So, for example, lots of states are including a  
7 measure of chronic absenteeism. You can have one or  
8 you can have more of these. Right? That really is  
9 up to the entity to decide what that might look like.  
10 So it could also be something like a measure of  
11 school climate or school safety.

12 So here's what -- you take all those  
13 indicators and ESSA requires that all those  
14 indicators somehow meaningfully differentiate across  
15 schools. Okay?

16 So the system is required -- there are  
17 several requirements within that system. So each of  
18 the indicators, 1 through 4 -- remember, so that's  
19 proficiency on ELA and math, your other academic  
20 indicator, graduation rates and your English language  
21 proficiency -- those have to be afforded substantial  
22 weight.

23 Now, that is not defined in the statute.  
24 That's why it's in quotes. And in the aggregate, in  
25 the total, those combined must be given greater



1 weight than the indicators in 5. You remember what 5  
2 is? That's the school quality, school success  
3 indicator that entities can choose. But that is  
4 given less of a prominence than the other four.

5 You have to set long-term goals on at  
6 least the assessments and the graduation rates. You  
7 can set long-term goals on more of the elements, but  
8 at the very minimum you have to set goals for those  
9 two things for all of your student groups.

10 And then I want to thank the Department of  
11 Ed for providing this slide. This gets a little bit  
12 complicated, but essentially there are three  
13 categories of student improvement. So, again,  
14 remember, you're establishing an accountability  
15 system so that you can intervene when needed. And so  
16 the first comprehensive school improvement is  
17 identified by those lowest-performing 5 percent  
18 entitlement schools. And remember, based on what  
19 your accountability system is. The next would be the  
20 lowest graduation rates for your high schools.

21 And then if you have those schools that  
22 don't exit, right, because you give various criteria  
23 by which a school could exit this support, then you  
24 can apply additional targeted support for those  
25 schools. And then then there's called targeted

1 support and that's for those schools, Title I and  
2 others, that have consistently underperformed in  
3 subgroups.

4 And also you can have targets for  
5 improvement schools, which would be identified via  
6 your comprehensive system support. And then a state  
7 or an entity could have additional categories. But  
8 comprehensive, targeted and additional targeted  
9 support are the required categories.

10 So again a CSI is based upon the  
11 performance of all students and it's the lowest  
12 5 percent of the Title I schools that fail. So  
13 performance based on your academic indicators or  
14 schools that failed to graduate 67 percent of their  
15 students. Those are automatically given a  
16 comprehensive support label. And you have to  
17 identify these entities or these schools at least  
18 once every three years.

19 Then we go into additional targeted  
20 support based on their performance of subgroups. So,  
21 remember, this is for schools that don't exit or  
22 schools that their subgroups are performing as low as  
23 those schools that you've identified in comprehensive  
24 school intervention.

25 So it's the lowest performing, have to be

1 based on the performance of one or more subgroups.  
2 And you can either identify them from all of those  
3 schools or consistently underperforming. It's not  
4 limited to Title I. So this is a large category.

5 And then finally targeted support. And  
6 this is, remember, for all schools. And so that's  
7 identified where subgroups are underperforming. And  
8 schools are responsible for implementing their  
9 interventions, right? And schools must be identified  
10 annually.

11 So this isn't likely a category where,  
12 say, a state would intervene, but rather schools  
13 would be responsible for coming up with a plan and  
14 determining how they're going to improve the  
15 performance of their students.

16 So that's it. Standards, assessment,  
17 accountability and then ultimately intervention.  
18 There's 23 states in which BIE schools operate. And  
19 so that's a lot of territory. The standards,  
20 assessment and accountability system really is  
21 about -- remember that education excellence and  
22 equity. Don't want to lose sight of that.

23 And I'm not going to go over this, but for  
24 your reference there is a chart, there is a group of  
25 charts in the back of your presentation booklet that

1 describes the differences between NCLB and ESSA for  
2 anyone who happens to be interested in that. But we  
3 don't want to take the time to go over that today.

4 So with that I'll turn it back.

5 MR. CLARK: Okay. Thank you, Deb. The  
6 next presentation we're going to have is going to be  
7 from Dr. Pfeiffer over the rule-making itself. Do  
8 you want to do it up here?

9 DR. PFEIFFER: Good morning, again.  
10 (Speaks in Navajo). I'm coming from the Navajo  
11 Nation and I'm very thankful for your presence here  
12 today. We're going to go over what the negotiated  
13 rule-making committee has recommended and as a  
14 preface I would just like to thank a couple of the  
15 members.

16 Sue, thank you so much for your work, Sue  
17 Bement. From this area we have Dr. Rick St.  
18 Germaine, Jennifer McLeod and Leslie Harper. Any of  
19 the committee members here? Okay. But I just wanted  
20 to thank them because they kind of represented this  
21 area.

22 And so I'll go ahead --I have my little  
23 cheat sheet, so the first thing is that under  
24 Section 8204 of the Elementary and Secondary  
25 Education Act of 1965, these are some of the

1 requirements that came out of the rule-making. Such  
2 requirements must be consistent with Section 1111 and  
3 the requirements are implemented pursuant to the  
4 regulations.

5 It took me a little while, so I'm just  
6 going to go ahead and just kind of acknowledge this a  
7 little bit too. When they speak about the rule it is  
8 the regulation. So that's what we're trying to get  
9 input on is the rule, because when it comes out as a  
10 regulation that will be what we stand for going  
11 forward.

12 So there were numerous times that the  
13 committee met from September 14th, 2017. And as you  
14 note on here, you'll see that with the change of  
15 administration they also had input as to the  
16 development of the committee again. And it  
17 reconvened with new committee members and completed  
18 all their tasks by June 10th of 2019. And that's  
19 what you're going to see today.

20 The 17 rule-making committees were total.  
21 I mentioned three of them that were here in this area  
22 and they came from a variety of backgrounds. That's  
23 really important because we need input from school  
24 leaders, principals, teachers, college professors,  
25 individuals that are engaged in this work. So it was

1 very good that, you know, we had school members and  
2 parents as well on this committee.

3 So the key recommendations -- and there's  
4 bigger print in your book. I'll kind of go through  
5 this too. First of all, it's to honor tribal  
6 sovereignty and education. That's key. It's also  
7 looking at a unified system of requirements.

8 As you saw from Deb's presentation, we  
9 currently have 23 state assessments. Here there was  
10 a recommendation that there would be one unified  
11 system; that it is an alignment of the standards  
12 assessment and accountability plan; that there would  
13 be ongoing stakeholder engagement with periodic  
14 review of total transparency as we move through this;  
15 and that standards and assessments and tribal civics  
16 would be phased in and science as an academic  
17 indicator.

18 The first proposed rule. Now I'm going to  
19 have to sit down because I have to look at my cheat  
20 sheets. I just hate to have my back to people.

21 So when you look at the first proposed  
22 rule, you'll see that there is -- the committee  
23 recommended that the rule include a requirement for  
24 standards, assessment and accountability to assure  
25 transparency.

1           Similar to the state plan -- and  
2     Dr. Hamley has been very forthcoming with this. This  
3     was -- the state plan is not a requirement by the  
4     BIE, but the director has determined that that is  
5     something that we want to move forward to.

6           So our question that we want to pose to  
7     you in this is should a plan be -- should such a plan  
8     be specific to the rule. Here is stakeholder  
9     engagement. Again, the committee recommended that  
10    the rule require ongoing and meaningful  
11    representation with stakeholders regarding  
12    requirements.

13           Here are the questions we posed to you.  
14    Is stakeholder engagement a requirement beyond  
15    existing tribal consultation necessary? What effects  
16    would such requirements have on BIE's ability to make  
17    changes to requirements when necessary? What form  
18    should that engagement take?

19           Tribal civics. The committee recommended  
20    that the rule require implementation of standards and  
21    assessment in a subject to be called tribal civics  
22    that would include topics related to tribal  
23    sovereignty, self-determination, treaty law,  
24    et cetera. How might such a requirement be  
25    implemented nationally across BIE-funded schools?

1 Might such a requirement conflict with curricula work  
2 tribes have developed for their communities?

3 Proposed rule science. The committee  
4 recommended that the rule require the incorporation  
5 of science in the accountability system. And as you  
6 remember, we had ELA, math and language -- and  
7 English. ELA math and -- should such a requirement  
8 apply nationally to all BIE-funded schools, what  
9 might be the effect of such a requirement?

10 Proposed rule, tribal civics and science  
11 as SQSS. The committee recommended the rule require  
12 tribal civics be phased in and science as school  
13 quality and school success as QSS indicator was a  
14 possible later incorporation of tribal civics as an  
15 academic achievement indicator at a later date. The  
16 question we posed, what might be the effect of such a  
17 requirement?

18 Proposed rule, Native language, American  
19 language. Many recommended that the rule include an  
20 affirmation of the right to develop and implement  
21 academic standards and academic assessments in Native  
22 American languages. Does a statement regarding what  
23 a tribal governing body or school board -- and that's  
24 important to note -- might implement belong in the  
25 federal rule governing what must be implemented in



1 BIE-funded schools?

2 Proposed rule, state requirements, opt-in.  
3 During transition the committee recommended that the  
4 rule allow tribal governing school boards the option  
5 to continue to use state requirements for standards  
6 and assessments where the state agrees and that  
7 teaching BSB has notified the secretary of such an  
8 intention.

9 The question we asked, how might this  
10 affect the goal of a unified system of requirements  
11 agreed upon by the committee? Does this conflict  
12 with a statutory waiver and alternative proposal plan  
13 process? Proposed rule waivers and alternative  
14 proposals.

15 The committee recommended that the rule  
16 include timelines for responses to proposals for  
17 alternative requirements to ensure timeliness and  
18 transparency in review process, including updates  
19 every 30 days. Would such requirements be overly  
20 burdensome?

21 Here is additional proposed section. The  
22 following did not get the attention of the rule  
23 committee, but we would -- again, it's around the  
24 transparency and we'd like your input.

25 Support and improvement. The proposed

1 rule describes requirements for support and  
2 improvement. Do such requirements belong in the  
3 rule? How much autonomy should BIE-funded schools  
4 have with regards to SI? These were the consultation  
5 schedule. Again, we've got a webinar coming up later  
6 this week. Here is where you can download the actual  
7 slides and information around both the standards and  
8 assessment and the rule-making committee.

9 This is probably the most important slide  
10 because we have the need for tribes and stakeholders  
11 to give comment as late as August 9th, but we also  
12 acknowledge that there are two different ways to make  
13 comment. One is through e-mail and one is an online  
14 process.

15 So we would like to now open the floor for  
16 comment.

17 MR. CLARK: Thank you, Dr. Pfeiffer. So  
18 with that we moved pretty quickly through those  
19 presentations. Thank you, Dr. Pfeiffer. Thank you  
20 Deb.

21 So really now is when the heart of the  
22 consultation starts which is getting those statements  
23 for the record, getting this vitally critical input  
24 that we need to strengthen this rule and make it  
25 effective from you, the stakeholders. So with that

1 I'm just going to really briefly talk about a couple  
2 logistical things moving forward before we start this  
3 open session to take comment.

4 First, just remind everybody we want to  
5 have a conversation with you here today. And it's  
6 great. We want to have a good, free-flowing dialogue  
7 with you. But going from here, the next step is for  
8 the team to be able to do a post-consultation  
9 analysis where they look at all of those statements  
10 that were provided and do a qualitative analysis, do  
11 a substantive analysis of the rule in light of  
12 those -- of your input that you provide today and  
13 make changes to the proposed rule accordingly.

14 In order to be able to do that effectively  
15 we need to know who made which statements, who they  
16 were representing, all of that good stuff. So it is  
17 very, very important and it's just been our  
18 experience the last four times -- you know, we want  
19 to have a question and dialogue session and it's easy  
20 to just kind of get into that free-flowing dialogue.

21 But just to stop you real quickly and  
22 remember that we do have a court reporter here and  
23 it's very important that every time you speak you  
24 provide your name, who you're representing and what  
25 your title is so that we have that recorded in the

1 record so that when that team goes back and they're  
2 doing that analysis of all of the input that was  
3 provided, they're able to effectively figure out,  
4 okay, this person was speaking on behalf of a tribal  
5 government, this was a parent, this was so and so.

6 It's just very important to have that  
7 provided in the record. So, please, every time you  
8 make a statement, I know it will seem redundant,  
9 please give us your name, your title and all that  
10 good stuff.

11 In addition, part of that analysis, it is  
12 your statements here today. They will get that  
13 weight of being put into the analysis. That said,  
14 this is a very complex rule. So we are going to --  
15 if you have questions, we are going to do the best we  
16 can to provide an accurate answer for you today.  
17 However, there are some very complex questions  
18 that -- you know, we had one earlier where we didn't  
19 want to give an answer right now because we wanted to  
20 be able to verify some things before we give false  
21 information or inaccurate information.

22 So for those questions, state your  
23 question for the record. We will get you an answer.  
24 It just may take a written format later once we're  
25 able to come back, verify that information and are a

1 hundred percent confident that we are giving you an  
2 accurate answer.

3 So with that, just understand we will do  
4 our best to answer your questions today. But please  
5 be patient if it is a complex question or we're not a  
6 hundred percent certain that we can give you a  
7 verifiable answer. You'll get a written response  
8 with an accurate answer.

9 And then also it is important -- you're  
10 not limited to what you say today for this  
11 consultation purposes. Again, these are complex  
12 issues. It's a very technocratic rule. So if you  
13 want to provide a written comment for the record, you  
14 can take that -- you can go that route as well.

15 So you can prepare a written statement, a  
16 written -- you know, get into the all minutiae and  
17 the detail that you want and provide that for the  
18 record and it will be taken in as part of that  
19 post-consultation analysis.

20 So in order to do that, just remember you  
21 can e-mail it to [consultation@bie.gov](mailto:consultation@bie.gov) or you can go  
22 to the [regulations.gov](http://regulations.gov) and provide your written  
23 comment there. The deadline is August 9th at  
24 midnight Eastern Time. So that's the deadline to  
25 have those written statements provided for the

1 record.

2 And so with that I'm going to open it to  
3 the floor. First, as Mr. Cruz stated before, we want  
4 to open it first to tribally elected officials. So  
5 if there are any tribally elected officials in the  
6 room we want to welcome you to provide a statement  
7 for the record.

8 Hearing none? Okay.

9 If there are no tribal officials here  
10 today then we'll open the forum to everybody to  
11 provide a statement for the record or a question or a  
12 comment or any kind of input that you want to  
13 provide. So with that we've got a microphone. All  
14 you've got to do is raise your hand and we'll come by  
15 and get you a microphone and you can make your  
16 statement.

17 MR. LADUCER: For the record, Melvin J.  
18 Laducer, Turtle Mountain Community High School  
19 principal, Belcourt, North Dakota. Explain to us how  
20 you're going to roll out the needs intervention  
21 system, how it's going to be scored and what criteria  
22 schools are going to be determined for tier 1, tier 2  
23 or tier 3.

24 MR. CLARK: Dr. Hamley, will you take  
25 that?

1 DR. HAMLEY: I'm Jeff Hamley, Associate  
2 Deputy Director, BIE. As Dr. Pfeiffer's presentation  
3 made clear, the committee did not create regulations  
4 to address that. However, that portion of Section 11  
5 of ESSA is well defined in statute. So we will  
6 follow the statutory rules on that. And also the  
7 Department of Education has given a lot of guidance  
8 on how to do that.

9 So it's a prescribed process of choosing  
10 the lowest 5 percent -- lowest-performing school,  
11 5 percent. 5 percent of 173 schools is 8.7, I think.  
12 And so nine schools in that category. And then all  
13 schools that do not meet high school graduation rate.  
14 So we've compiled that list and I don't know if it's  
15 published on our website yet, but it will be. And  
16 we'll be communicating.

17 So we have selected those schools for  
18 school year '19/'20 and we'll be notifying them and  
19 then providing the supports and interventions. We'll  
20 have a discussion with them. But the actual  
21 procedures for doing that are fairly well defined in  
22 ESSA and we'll be doing presentations to all the  
23 schools who are selected about what that process is  
24 and also roles and responsibilities.

25 Because the role is different for the SEA.

1 It's changed -- it changed from No Child Left Behind  
2 a bit where more autonomy is given to the schools to  
3 make decisions about, you know, what interventions it  
4 wants to use. We'll be going over that with all the  
5 schools. We're running a little late on that.  
6 School is about to start, but we will communicate  
7 with all the schools about that.

8 MR. LADUCER: Dr. Hamley, can you cite in  
9 the statute what section that is so I can read it?

10 DR. HAMLEY: Off the top of my head I  
11 can't, but I will today get that to you.

12 MR. LADUCER: And then my other question  
13 is you're saying 5 percent of our lowest-performing  
14 schools in our nation. There's 173 Bureau-operated  
15 schools. But each state takes a different  
16 assessment. How is it fair that you can say my  
17 school may be lower, in that 5 percent, but our  
18 assessment that we use is at a much higher level than  
19 some of the other schools that are out west?

20 DR. HAMLEY: Right. Good question. That  
21 question has come up before. But that's a question  
22 that we've had to live with for all of No Child Left  
23 Behind. So since 2001 we've had that problem. So  
24 the BIE does have -- so in a state as you're pointing  
25 out, it's relatively easy. They have the same



1 assessment and they have the same assessments scores  
2 that are comparable. So it's very easy to compile a  
3 list.

4 So in the BIE with the 23-part assessment  
5 system -- it's actually not 23 anymore. It's less  
6 than that. But, yeah, we've had to develop a  
7 methodology to do that. And it's not perfect, but  
8 it's the best we could do. And our discussions with  
9 the Department of Ed, over the years we've been very  
10 transparent about what our methodology is.

11 But you're right, it's not as easy what  
12 the states do, but we've still been forced to come up  
13 with the methodology to do it. And that's the one we  
14 dealt with.

15 MR. LADUCER: So can we have copies as  
16 schools and tribes of how you come up with that  
17 method?

18 DR. HAMLEY: Yes.

19 MS. LEADBETTER: Thank you. For the  
20 record, Jenna Leadbetter, Circle of Life Academy  
21 principal, White Earth Nation. Just following up on  
22 that comment, my concern is isn't the entire point of  
23 this moving out of the No Child Left Behind? And if  
24 that's true then why wouldn't we look at new  
25 methodology for unified assessments in the entire BIE

1 schools nationwide?

2 MR. CLARK: That makes sense.

3 DR. HAMLEY: Well, the committee did agree  
4 in principle to have a unified system. So, I mean,  
5 we're talking about, you know, right now, this time  
6 frame, while we're still pre-unified system -- that's  
7 what you're asking.

8 MR. LADUCER: Say that again?

9 DR. HAMLEY: The question you're asking is  
10 in context of right now. So we're still operating  
11 under No Child Left Behind until we get new regs.  
12 But once the regulations are published, depending on  
13 what the regs say, we do intend to move to a unified  
14 system. We will have a single assessment.

15 But those are big ifs. You know, we have  
16 to take this one step at a time. But that was what  
17 the committee agreed upon in principle, was to have a  
18 unified system, one assessment ELA and math and  
19 science and all the rest, for all BIE-funded schools,  
20 except that in ESSA there is a waiver process if a  
21 governing tribe or school board does not want to use  
22 that.

23 But that is the principle that the  
24 committee agreed upon, is to have a unified system.  
25 So we will develop a new methodology for the unified

1 system as soon as it becomes regulation.

2 MS. LEADBETTER: Shouldn't we -- again,  
3 Jenna Leadbetter, Circle of Life Academy,  
4 superintendent, White Earth Nation. Shouldn't we be  
5 doing that at the same time if that's the goal,  
6 knowing that we're moving out of No Child Left  
7 Behind? If we are working on regulations now, and  
8 that's the plan, is to have it unified, why wouldn't  
9 you plan for that now? Why would you wait for the  
10 reg first?

11 DR. HAMLEY: Well, there is discussion --  
12 this is Jeff Hamley again. Sorry. There is  
13 discussion going on. I mean, this has been discussed  
14 very widely for a couple years. So there is  
15 discussion going on in the Bureau, you know, about  
16 how this will happen, how it would unfold. But we're  
17 just being cautious, exercising caution about getting  
18 ahead of the published final rule. So we're erring  
19 on the side of caution.

20 MR. LADUCER: Okay. Melvin Laducer again,  
21 Turtle Mountain High School principal. You're saying  
22 you continue to work on this and you continue to --  
23 but the rollout is '19/'20 school year. So what are  
24 schools going to be accountable for under your  
25 rollout that's going to start this year?

1 DR. PFEIFFER: Good morning again. So  
2 that's been a conversation since the published report  
3 of how is this going to affect school year '19/'20.  
4 We've had numerous conversations with the Department  
5 of Ed and we know that the first -- as you remember  
6 the slide, the first recommendation is that you  
7 determine your standards and those standards are --  
8 should be transparent with the teachers. They should  
9 have engagement with the teachers, professional  
10 development with the teachers.

11 We also are acknowledging that the  
12 regulation has to roll out before we can purchase or  
13 even go out for a unified system. If that is the  
14 determination from our stakeholders as well -- if you  
15 look on page 5 that was a recommendation.

16 MR. LADUCER: Section 1?

17 DR. PFEIFFER: With the slides.

18 And you then align your assessment to your  
19 standards and then finally the accountability. So to  
20 answer your question, we're using the school year  
21 '19/'20 as status quo and implementation 2021, given  
22 that we need to work on some things this year.

23 MR. LADUCER: So you're saying that  
24 basically -- Melvin Laducer, Turtle Mountain High  
25 School. Basically you're saying this school year is

1 going to be a baseline for growth after the 2021  
2 school year? Is that what you're telling us?

3 Because for our school all of our  
4 standards and assessment which we follow through the  
5 State of North Dakota and our standards have been --  
6 we've been working under those continuously for  
7 years. Our standards are set according to -- our  
8 state's North Dakota so it's North Dakota and it's  
9 aligned with North Dakota.

10 So the majority of schools -- and I'm not  
11 going to speak for the majority of schools -- have  
12 standards and assessments that are in place for right  
13 now and now the Bureau is saying you're going to wait  
14 how long or what's going to go on with those?

15 DR. PFEIFFER: So, again, this school year  
16 is a transition school year, '19/'20. We're giving  
17 status quo currently to the process so that we have  
18 time as a Bureau to get the regulation in place.

19 MR. LADUCER: Explain status quo. Just as  
20 is?

21 MR. CRUZ: So from listening to this I  
22 think we're all saying the same thing here.

23 MR. LADUCER: Identify yourself.

24 MR. CRUZ: Mark Cruz. Yes, this upcoming  
25 school year, the one that starts next month in

1 September, schools in the BIE system will operate  
2 under their previous or current, what you just did  
3 last year, standards and assessments.

4 It was the recommendation of the BIE not  
5 to try to jam this draft rule that we're working on  
6 because, yes, ideally we would like everything to be  
7 aligned, but in terms of rollout that wasn't going to  
8 be possible before the start of this academic school  
9 year.

10 So we're kind of in this like weird spot  
11 where the final draft of this proposed rule that  
12 we're currently deliberating will be rolled out  
13 toward the end of this calendar year for  
14 implementation at the start of the following school  
15 year, which is 2021.

16 So I think if I'm understanding your  
17 question, that wouldn't interfere with the standards  
18 and assessments you're currently operating under and  
19 going into for this current academic year.

20 MR. LADUCER: Okay. Melvin Laducer again,  
21 Turtle Mountain. So what I'm hearing from you, it  
22 wouldn't affect standards we're using currently for  
23 this school year. So you're saying, what I'm hearing  
24 is, you're requiring all of our tribal-operated  
25 schools to change to some other format of standards

1 and assessments based on the Bureau roll-out, the BIE  
2 or the government?

3 MR. CRUZ: So what will happen, the  
4 recommendation of the committee was to do a unified  
5 system. So that would be a BIE system for the  
6 following school year. Now, that's not final.  
7 That's just a proposal right now. And that's why  
8 we're doing consultation whether -- to hear if that's  
9 a good idea or not a good idea and for what reasons.

10 MS. LEADBETTER: Jenna Leadbetter, Circle  
11 of Life Academy, White Earth Nation. I love the idea  
12 of the unified piece. My concern is if I'm receiving  
13 funding from the -- federal funding, but I'm also  
14 receiving state funding, how does that piece work?  
15 Because the state has requirements that I have to  
16 adhere to and then the BIE has requirements that I  
17 have to adhere to, so I report to two bodies. And  
18 has that been considered in your discussions?

19 DR. HAMLEY: Jeff Hamley again. That's  
20 actually not a new topic. There are other states,  
21 Washington State, that have raised that issue with  
22 us. So it depends on what requirements you have with  
23 your state. If your requirement is that you take  
24 their state assessment, well, there is the waiver  
25 process.

1           So this is sort of undefined territory,  
2 but we've been in discussion with Washington State,  
3 for example, for a couple years on this. So there is  
4 a waiver process, but also it's going to involve  
5 discussion with the state about whether they would  
6 allow acceptance of the new BIE assessment.

7           It might be the same assessment -- I don't  
8 know -- depending on the state. Washington State  
9 uses Smarter Balanced. We don't know what assessment  
10 we're going to get or we're going to use yet. We  
11 have to go out for solicitation on that, probably a  
12 solicitation process.

13           So, yeah, those are unanswered questions.  
14 But within the context of the law, there's ways to  
15 address those. So we understand that there's going  
16 to be more deeper discussion on these topics about  
17 how to accommodate schools that are meeting state  
18 requirements, but there are options in the law.

19           MS. LEADBETTER: I so appreciate your  
20 response and thank you. But I also think that these  
21 things need to be talked about now in preparation so  
22 that it doesn't cause undue burden on the schools.  
23 My concern is, yes, there's a waiver process but it's  
24 cumbersome and it's time consuming. And if we can  
25 fix that sooner rather than later and try to do all



1 the alignment all at once, it would certainly make  
2 things a lot easier.

3 And if you're already working with  
4 Washington State -- correct?

5 DR. HAMLEY: Correct.

6 MS. LEADBETTER: Okay. Bring in  
7 Minnesota. Heck, I'll join. Let's visit. Let's see  
8 if we can sort it out.

9 DR. HAMLEY: Yes. We're willing to come  
10 out and talk to any school or state. The state  
11 itself -- actually Washington state has been at the  
12 table too. So yeah, we're willing to come out and  
13 talk with you, talk this through and see what might  
14 need to happen.

15 MS. LEADBETTER: And I don't just want to  
16 talk. I do want to see action. Because it does seem  
17 like there's a lot of discussion and not always  
18 follow-through from my experiences thus far. Thank  
19 you.

20 MR. CLARK: You had your hand raised. Did  
21 you have another question?

22 MR. LADUCER: Dr. Hamley -- Melvin  
23 Laducer, Turtle Mountain High School. Dr. Hamley,  
24 you talked about the waiver process. The State of  
25 North Dakota uses AIR for their assessment. And

1 because we receive state funds also, we are required  
2 to take assessment AIR through the State of North  
3 Dakota.

4 So if we're receiving for grant school  
5 upgrading and we receive grant school funds in the  
6 Bureau and they decide they're going to use another  
7 assessment, will that require schools in our state to  
8 take two separate assessments?

9 DR. HAMLEY: Jeff Hamley again. I mean,  
10 that would be one solution, but that's not the ideal  
11 solution because, as we know, time spent assessing is  
12 time taken away from instruction. So that affects  
13 student learning. So that's not an ideal solution.  
14 And I don't think we would advocate that. We would  
15 try and come up with a different solution.

16 And the previous speaker, I mean, your  
17 point is well taken about these discussions should  
18 happen now. But we do -- as Dr. Pfeiffer explained,  
19 this is a transition year, '19/'20. So we have a  
20 year to have these discussions before the new system  
21 kicks in in 2021. So we'll have to resolve these  
22 issues depending on what the final rule says.

23 But I think we have options in the law to  
24 come up with solutions.

25 MR. LADUCER: And I agree -- Melvin

1 Laducer, again, Turtle Mountain. I agree with Jenna,  
2 but you need to come to the State of North Dakota too  
3 because I was informed of this meeting last Tuesday  
4 by our previous ELO to be here Tuesday. So that  
5 didn't give a lot of time for the other schools to be  
6 notified if they even were, or tribes who should have  
7 valuable input into this committee decision.

8 And I believe if we're going to do this  
9 transparently, you need to go out to those tribes in  
10 those states and schedule meetings that clearly give  
11 us time to come together and look at the  
12 documentation and develop questions for that.

13 But asking tribes and leaders, education  
14 leaders like myself, and give us less than a week  
15 notice to be here, that is isn't a fair tribal  
16 consultation, especially on the ramifications of this  
17 and how it's going to impact our school system.

18 MR. CLARK: Sure. So I can address some  
19 of that. Regina, when was this published in the  
20 Federal Register notice? What date? Do you remember  
21 that off the top of your head?

22 MS. GILBERT: I think it was in June.

23 MR. CLARK: June 10th?

24 MS. GILBERT: June 10th.

25 MR. CLARK: So the consultation, the

1 scheduled consultations, there was a "dear tribal  
2 leader" letter that was prepared and sent out and  
3 then the schedule of consultation was submitted into  
4 the Federal Register notice on June 10th.

5 So, you know, we really did not try to  
6 spring this on anybody. We went through the formal  
7 process, the standard process of providing timely  
8 notice before these consultations started.

9 So I'm sympathetic. I apologize if you  
10 personally did not get that notice until a week ago.  
11 Frankly, it puts us in a less than ideal situation  
12 because we want and we need, you know, the input of  
13 you, the stakeholders, the subject matter experts  
14 that are working with our students. That's certainly  
15 not something that we want.

16 I would also say you don't have to have  
17 everything ready today for a statement if you want  
18 that. Again, you have the option of providing that  
19 written statement for the record, a written -- if you  
20 have suggested language, if there's something in the  
21 rule that you want to see changed, you still have  
22 ample opportunity to provide a written comment before  
23 the August 9th deadline.

24 So apologies if for whatever reason -- you  
25 know, obviously information trickles down sometimes

1 and there is a delay. But from our perspective we  
2 did try our best to get timely notification out  
3 before the consultation started. Again, it happened  
4 occurring on June 10th along with a "dear tribal  
5 leader" letter that went out to tribes.

6 MS. LEADBETTER: Jenna Leadbetter, Circle  
7 of Life Academy, White Earth Nation. I can speak to  
8 that. I actually found out about this through Turtle  
9 Mountain. Thank you. And my thought is the comments  
10 of transparency and consistency, those words were  
11 used quite a bit in the jargon. I'm just wondering  
12 how things are communicated.

13 And perhaps it's a communication issue  
14 within my tribe. I don't know. But things aren't  
15 being -- aren't trickling down to us that are working  
16 on the ground with the kids the way that maybe they  
17 should be or the way you're hoping they are. We're  
18 finding out through each other rather than our  
19 leaders.

20 And some of that might have to do with  
21 turnover and changes in leadership as well, just so  
22 you're aware.

23 MR. CLARK: Sure.

24 MS. LEADBETTER: I know within my tribe  
25 there has been a change, and so maybe that's where

1 that has come from. But know now that I will be  
2 watching very diligently and we appreciate your  
3 efforts.

4 MR. CLARK: Very good.

5 MS. LEADBETTER: Speaking -- if you don't  
6 mind, I'm going to continue on.

7 Let's see. Your presentation, Dr. Tamarah  
8 Pfeiffer, looking at page 4, you were talking about  
9 proposed rule, the stakeholder engagement. I do  
10 believe that based off of what's been going on now in  
11 our discussions that there is a lack of clarity  
12 between you and us that are working directly with the  
13 children that you represent that stakeholder  
14 engagement would be almost mandatory, this pilot  
15 2019/2020 school year. I would say that would be my  
16 feedback for that comment.

17 And then to piggyback off of Turtle  
18 Mountain's commentary about coming and visiting the  
19 tribes, I think that's vital, especially if you turn  
20 to page 6 and 7 where you're talking about Native  
21 languages and you're talking about tribal civics. I  
22 already have programs like this implemented in my  
23 tribally controlled school.

24 So I would be interested -- I think it  
25 would be interesting for you to collaborate with the

1 people that I represent to make sure that there is  
2 alignment for not only in our languages, but the way  
3 we are viewing civics, leadership and that role  
4 within our curricula. Thank you.

5 MR. CLARK: Thank you, ma'am. Again, the  
6 rest of the day is open forum for any statements for  
7 the record, questions, concerns, comments or input.  
8 So just raise your hand and Regina will find you.  
9 Sir?

10 MR. LADUCER: Melvin Laducer, Turtle  
11 Mountain. As we're all aware that their funding  
12 continues to be cut for BIE-funded schools, with such  
13 a proposal and the requirements at the school level,  
14 what is the Federal Government doing about making  
15 sure that these initiatives are funded so that we can  
16 be successful in implementing these before they're  
17 required to do them and then we have to use the  
18 existing dollars that are barely enough to operate  
19 our schools? Can you answer that for me, please?

20 MR. CRUZ: Has Department of Ed provided  
21 funding for implementation that we're eligible for?

22 MR. CLARK: Not that I'm -- Dr. Hamley,  
23 are you aware if Department of Ed is providing any  
24 funding?

25 MR. LADUCER: Could you state your name,

1 please?

2 MR. CLARK: Sorry. Travis Clark.

3 DR. HAMLEY: Jeff Hamley. I'm not sure I  
4 understand your question.

5 MR. LADUCER: My question is it looks like  
6 the Federal Government is going to come up with some  
7 sort of plan. You're consulting with us now. And it  
8 looks like implementation is going to be probably the  
9 following school year, 2021.

10 My question is throughout this school year  
11 as a baseline year, the requirements are going to  
12 start to come in and we're going to have to make  
13 changes to our standards and assessment or look at  
14 possibly taking two separate assessments and then  
15 coming into a three-tiered system of schools targeted  
16 or support, targeted or comprehensive support.

17 My question again, though, is what is the  
18 government going to do to fund these initiatives, or  
19 are schools going to be tasked to use the limited  
20 amount of dollars they have and the Bureau is going  
21 to come in and say, well, you need to do it  
22 regardless of your money or your funds?

23 DR. HAMLEY: Well, the funding remains the  
24 same. On the DOI side there's the ISEP and then on  
25 the Department of Ed side there is the ESSA and IDEA.



1 So the funding remains the same. For the most part  
2 it's all formula except under the ESSA side there are  
3 discretionary programs, 21st Century, et cetera.

4 But, I mean, the funding remains the same.  
5 So I don't think -- the ESSA does not change that.

6 MR. CLARK: Travis Clark, BIE. Sorry, I  
7 was struggling to -- I think I understand what your  
8 question is. I think your question is is this a new  
9 program that is essentially an unfunded mandate, and  
10 the answer to that is no. It's simply replacing the  
11 system that we've already been operating under and  
12 there's no unfunded mandate here.

13 There's no additional costs associated  
14 with this because it's not technically a program.  
15 It's just going from one system of standards,  
16 assessment and accountability under No Child Left  
17 Behind to the new standards, assessment  
18 accountability system.

19 And so there's no unfunded program here.  
20 So I don't think -- sorry. It took me a minute to  
21 understand that, but I think that's the answer, that  
22 this is not an unfunded program or unfunded mandate  
23 that's new and additional to.

24 MR. CRUZ: Mark Cruz. I appreciate that  
25 question because I do think that's going to be one of

1 the issues, that if you receive state and federal  
2 money, how you negotiate them. So I'll make sure  
3 that our team has a precise answer for that as we  
4 continue to draft this rule.

5 And I also -- just in reading media, I  
6 know the department has helped facilitate some of the  
7 more technocratic aspects of the devising standards  
8 as well as the designing accountability and they have  
9 the education resource centers, that the BIE and the  
10 Department of Ed have worked together on them  
11 providing the BIE some technical assistance. And so  
12 we'll continue to look at partnerships with the  
13 Department of Ed in that way.

14 And then our team in house will be the  
15 ones devising the accountability system. So that's  
16 all in-house work performed by our employees. But if  
17 there are other specific questions, please ask and  
18 we'll make sure we get answers in the record.

19 MR. LADUCER: Melvin Laducer, Turtle  
20 Mountain. And I know I'm asking a lot of questions  
21 but I'm going to. Regarding that resource centers,  
22 those sites, Turtle Mountain was supposed to have one  
23 in April. We still don't see any job announcements  
24 on USA Jobs. We still don't have a position in there  
25 and we're going to start the school year.

1           So my question is when are we going to get  
2 that resource center for our schools? Because if we  
3 have to transition and start the new standards and  
4 assessments in the previous school year, we should  
5 start now. So my question is when are those jobs and  
6 that center going to be opened in Turtle Mountain?

7           MR. CLARK: So I can take this. Travis  
8 Clark, BIE. Let me get you my business card. I will  
9 get you a specific answer. I don't know that off the  
10 top of my head. I do know with the litigation  
11 everything was frozen. That has now been lifted and  
12 we are moving forward with filling those positions  
13 now. I just don't know specifically where in the HR  
14 process those Turtle Mountain positions are, but I  
15 can find that information out for you and follow up  
16 with you.

17           MR. LADUCER: Melvin Laducer again, Turtle  
18 Mountain. They're not even posted on USA Jobs.  
19 Where are you finding qualified people to apply?

20           MR. CLARK: I understand. There's some  
21 process behind -- so for instance writing out  
22 position descriptions, there's some administrative  
23 functions that go on before they're actually posted  
24 to USA Jobs. So let me find out specifically where  
25 in that HR process, that administrative function,

1 they're at right now and then I'll get a specific  
2 answer and I'll try to get you an estimated time that  
3 they'll be posted on USA Jobs.

4 MR. LADUCER: So except for the people who  
5 were RIFed and one was moved to Turtle Mountain and  
6 then declined, none of those jobs are actually open  
7 yet. Is that what you're telling me?

8 MR. CLARK: I'm not sure what you mean by  
9 a RIF. But again, if your question is what is the  
10 status of those positions at Turtle Mountain, I'll  
11 get you my business card and get you an answer for  
12 that, where they're at.

13 MR. LADUCER: Thank you.

14 MS. LEADBETTER: Okay. Jenna Leadbetter,  
15 Circle of Life Academy, White Earth Nation. Three  
16 different question, unrelated but not -- well, under  
17 the single umbrella here. First just clarity on that  
18 one percent cap on the beginning. That is for the  
19 entire Bureau of Indian Education or for schools? I  
20 wasn't clear and I just want to make sure I report  
21 back to my leaders correctly.

22 MS. SIGMAN: So the statute defines it as  
23 one percent of the students assessed in that content  
24 area for -- now, remember, the statute refers to  
25 states. So in the State of Minnesota it would be one

1 percent of the students who are assessed and it  
2 applies to each of the content areas. So it would be  
3 1 percent of those assessed in reading ELA and  
4 1 percent of those assessed in math.

5 MS. LEADBETTER: I'm concerned with that  
6 just because in my school district and other tribally  
7 controlled school districts that I've spoken to in  
8 the last few months, I have a 25 percent or greater  
9 population of students with special education needs.  
10 I would say within that I'm looking at 10 percent  
11 with significant to profound needs. And I'm  
12 wondering how that's going to affect that 1 percent  
13 cap.

14 MS. CASTILLO: Hi. I just want to provide  
15 some clarity for -- Jennifer Castillo from the  
16 solicitor's office. So there is the 1 percent -- and  
17 I don't want to use the word "cap" because it's  
18 not -- there is some flexibility. You can actually  
19 submit a waiver. You just have to justify the reason  
20 why you want to sort of increase the 1 percent cap.

21 And that's all I'm going to say now  
22 because I want to do some more research in terms of  
23 what that waiver would entail, meaning like what  
24 information you would specifically need for the state  
25 that you're in. So I don't know how you would submit

1 comments in writing. So I can get that and just  
2 review it. But there is a possibility for you to  
3 increase that 1 percent.

4 MR. CLARK: Anybody have another question?  
5 Melvin?

6 MR. LADUCER: Melvin Laducer. If you look  
7 at the register here, Section 30.104(d) and  
8 30.104(e), Number 1, "Consistent with paragraph (b)  
9 of this section, ensure that for each subject the  
10 total number of students assessed in the subject  
11 using the alternative assessments does not exceed  
12 1 percent of the total number of all students in the  
13 BIE-funded school..."

14 It's not the state; it's the schools. So  
15 if the BIE have how many students?

16 MR. CLARK: Around 45,000.

17 MR. LADUCER: Then 1 percent of that. The  
18 whole Bureau can't exceed 1 percent in the waiver  
19 process, not the state or your school.

20 MS. CASTILLO: I just want to -- this is  
21 Jennifer Castillo. I just want to emphasize that  
22 there is a mechanism for increasing that 1 percent  
23 waiver. We're not going to get into discussion on it  
24 today just because it's fairly complex and I think  
25 this is not the right venue for it. But I just want

1 to emphasize that there is a mechanism for increasing  
2 that 1 percent for the assessment of those specific  
3 students.

4 MR. CLARK: So I think this just falls  
5 into one of those buckets where it's in the record,  
6 we'll get you a specific written response once we  
7 have a chance to kind of untangle some of those  
8 complex issues involved in it. So -- but you'll get  
9 an answer.

10 Okay. Any other statements, questions,  
11 comments?

12 MS. LEADBETTER: Again, Jenna Leadbetter,  
13 Circle of Life Academy, White Earth Nation. And  
14 forgive me. I'm not as prepared as I would have  
15 liked to be, but I will be in the near future. So if  
16 this is something that's covered, just direct me to  
17 that page and the question will be answered.

18 We were talking about the -- I think you  
19 mentioned indicator 5 in the climate surveys or the  
20 attendance and what schools can select for  
21 themselves. I hesitate whenever a school is  
22 selecting a survey. What survey? And how is it  
23 valid? And then how is that data being unified  
24 across the BIE of course submitted to the Federal  
25 Government?

1 MS. SIGMAN: So the statute identifies the  
2 state would select that other indicator. And the BIE  
3 is not a state. But if you have a unified system  
4 then presumably BIE would select that other  
5 indicator. Right? So there would be some  
6 accountability across all of the schools.

7 MS. LEADBETTER: I appreciate that. I'm a  
8 data woman, so I want to make sure there's  
9 accountability.

10 MS. SIGMAN: Absolutely.

11 MS. LADUCER: Thank you. I have a  
12 comment. Tammy Laducer, Turtle Mountain Elementary  
13 School assistant principal. I just have a comment.  
14 We're looking at a unified system through the Bureau  
15 but yet we are allowed to do a waiver for this, a  
16 waiver for that.

17 So how is that going to be different from  
18 what we do now? Because basically what we do now as  
19 a Bureau school is we apply for these waivers and we  
20 do what the state is requiring of us. So how is this  
21 new system going to be any different than what we're  
22 doing now?

23 MR. CLARK: So generally right now the  
24 system that we have is 23 different state  
25 assessments. The schools do the assessments in the



1 state in which they're located. Presently there are  
2 two tribes that have sought after and were granted a  
3 waiver and that's Navajo and Miccosukee. So they do  
4 not take the state assessments in which they're  
5 located.

6 I think what we're describing here is just  
7 going away from 23 different assessments, having one  
8 BIE assessment, with the opportunity to do what  
9 Navajo and Miccosukee have done. And if a tribe  
10 wants to have their own assessment, if they don't  
11 like the BIE system, then they can still have that  
12 opportunity to get a waiver and establish that system  
13 that they want, such as Navajo and Miccosukee.

14 So it wouldn't technically be one. Right?  
15 But instead of having 23, you know, maybe we're down  
16 to one BIE assessment and then there's three or four  
17 that have sought after and obtained a waiver and they  
18 have their own assessments.

19 MS. LADUCER: Tammy Laducer, Turtle  
20 Mountain Elementary School assistant principal.  
21 Okay. So what I'm hearing is the waiver is not to  
22 bypass the BIE assessment in lieu of the state  
23 assessment, but is just to create an assessment of  
24 our own?

25 So we would be ultimately doing two

1 assessments then if we're getting state funding and  
2 federal funding. We would be doing the BIE-required  
3 assessment plus the state assessment. And you said  
4 there are conversations that are going on about that,  
5 but that is really something that needs, needs, to be  
6 worked out before this becomes the regulation.

7 MR. CLARK: Yes, ma'am. I think that's --  
8 again, Travis Clark, BIE. That's what Dr. Hamley was  
9 speaking to earlier, was if there are those schools  
10 that are having to do state assessments, having that  
11 conversation in this next year about how we work that  
12 out.

13 Like we said with Oregon, Oregon is at the  
14 table with them. Or Washington. I misspoke. And  
15 talking about those sorts of transitional issues,  
16 that this year is the opportune year to be able to  
17 have those conversations.

18 MS. LADUCER: Tammy Laducer, Turtle  
19 Mountain Elementary School assistant principal. With  
20 all due respect, conversations are not action, as  
21 Jenna said. And having those conversations is not  
22 going to be enough if this goes into regulation.  
23 Because then we're going to be bound by it.

24 MS. LEADBETTER: Jenna Leadbetter,  
25 superintendent, Circle of Life Academy, White Earth

1 Nation. We're just getting to know each other in a  
2 very short amount of time here. It's good to bring a  
3 lot of laughter into this.

4 How does Minnesota get to that table?

5 MR. LADUCER: And North Dakota.

6 MS. LEADBETTER: And North Dakota. How do  
7 we get to the table? When you're having those  
8 discussions with Washington State, how does Minnesota  
9 state?

10 DR. HAMLEY: Well, the way Washington  
11 State did it was they e-mailed -- well, they e-mailed  
12 me actually. But you could -- the issue of technical  
13 assistance begins with a formal request to the  
14 director, but to any one of us. So it's just an  
15 e-mail. But, I mean, I guess this is considered a  
16 request. So you don't have to e-mail. We've got  
17 your request. You want -- Minnesota and North Dakota  
18 want technical assistance, so we will respond.

19 And I agree about the comments about, you  
20 know, discussion. But it has to begin -- I mean,  
21 discussion is not enough was the statement, I think,  
22 but it has to begin somewhere. So we've had  
23 discussions, for example, with Washington State. And  
24 it has progressed and we're going to meet with them  
25 again next week. It has progressed. The issues are

1 complicated but we are moving closer to something.

2 And then also -- I'll go back to the two  
3 waivers that were approved by a joint committee of  
4 the Department of Interior and Department of  
5 Education and that was with Miccosukee Indian Tribe  
6 of Florida and Navajo Nation. It began with a  
7 discussion.

8 So it has to begin someplace. So I think  
9 now we've set a context. But we have less than a  
10 year to have these serious discussions. So, you  
11 know, it will have to begin and then move forward  
12 quickly.

13 MS. LEADBETTER: Dr. Hamley, thank you so  
14 much for that comment. I know that less than a year  
15 is not a lot of time to complete any sort of  
16 statistical analysis, let alone the qualitative  
17 pieces that you're going to have in a discussion.

18 What you're hearing from us on the ground  
19 is that we're worried. We're worried that this isn't  
20 enough time, especially if you're just visiting with  
21 one state, Washington State, who, might I add, has  
22 significantly difficult political affiliations and  
23 support, and that of North Dakota, and even that of  
24 Minnesota. And so I worry about the political piece  
25 that might influence this as well.

1           And you're hearing our worry. That's what  
2 you're hearing. Thank you, sir.

3           MR. CRUZ: Mark Cruz, as I'm listening to  
4 the questions, I was just kind of reviewing, because  
5 I understand that this is transitional and we go from  
6 the 23-state system to an opt-out system. So you go  
7 to one and then opt out with these waivers.

8           And so if you turn to page -- this is the  
9 notice, the Federal Register notice. On page 26787  
10 under Section 2, general description of the proposed  
11 rule, the first column on the lower left-hand side, I  
12 was just reviewing this language. And I'll have our  
13 staff unpack this a little more.

14           But it says that "The secretary is  
15 mandated by Section 8204 of ESEA to establish  
16 requirements for standards, assessments, and  
17 accountability for BIA-funded schools consistent with  
18 ESEA Section 1111 as amended on a national, regional  
19 or tribal basis as appropriate, taking into account  
20 the unique circumstances and needs of BIE-funded  
21 schools and the students they serve by such schools."

22           And so the word that kind of jumps out at  
23 me is the word "regional" and I'm wondering if  
24 schools in a region can kind of create a consortium  
25 of some sort, kind of like Navajo does. Because the

1 whole theory behind ESSA was to provide more  
2 flexibility at the local level. And so I'm wondering  
3 if this is an opportunity for tribes in regional  
4 areas to exercise that newfound flexibility.

5 MR. CLARK: And just to highlight, you  
6 know, as Dr. Hamley said, this is a proposed rule.  
7 We don't want to get out ahead of the regulation.  
8 And that's because of this forum right here. If what  
9 Mr. Cruz described is something that you think is  
10 more appealing, again, August 9. This is your  
11 opportunity to look at this, this proposed rule, and  
12 then voice what your preferences are.

13 MS. LEADBETTER: Jenna Leadbetter,  
14 superintendent, Circle of Life Academy, White Earth  
15 Nation. Mr. Cruz, I do appreciate that commentary.  
16 I cannot speak for the tribe, though. That needs to  
17 go to our tribal leaders. And I would feel it would  
18 be well received by them, just knowing the leaders  
19 that I represent today.

20 So I don't know who would make that  
21 connection, the committee that is sitting in the  
22 inner circle, but I know that from my standpoint it  
23 would be greatly appreciated so that I can do my job  
24 to serve the kids on our reservation.

25 Another piece that I'm looking at the

1 language here now that I'm having a little bit more  
2 time, it just says "BIE-funded schools." I'm  
3 wondering if there should be some sort of delineation  
4 between that and tribally controlled schools, because  
5 I feel like there are some strong differences when  
6 it's a tribally controlled BIE school.

7 Something to consider. Just food for  
8 thought. Thank you.

9 MR. CRUZ: Thank you.

10 MR. CLARK: Okay. We're about an hour and  
11 a half of into it, so if it's okay with everybody, we  
12 have a scheduled break. So we can take a ten-minute  
13 break and then reconvene and continue with comments.  
14 So we'll reconvene at five after.

15 (Whereupon, a recess was taken from 9:56  
16 a.m to 10:10 a.m.)

17 MR. CLARK: Okay. Thank you. It's ten  
18 after, so let's come back together. Okay. We're  
19 going to open the record back up again. And, again,  
20 we're here for the rest of the day for comments,  
21 input, questions. So if you have a comment,  
22 anything, just raise your hand, we'll get a mike to  
23 you.

24 MS. LADUCER: Tammy Laducer, Turtle  
25 Mountain Elementary School assistant principal. I

1 want to speak to the section that talks about  
2 technical assistance. And we touched on this a  
3 little bit earlier, about our ERC in the Turtle  
4 Mountains.

5 We haven't had one in a number of years  
6 and to say that we're going to have that technical  
7 assistance, we haven't had it in the past. The  
8 people that do come up and visit with us or offer  
9 assistance come from Albuquerque, Phoenix, wherever.

10 The positions for the ERC have been  
11 advertised. They were advertised this spring. The  
12 people who applied in our area, none of them were  
13 qualified so the position was readvertised. The  
14 specialist positions, we're hearing now that the  
15 people that applied for those are getting e-mails  
16 saying that they weren't qualified.

17 So the prospect of this office opening  
18 anytime soon is dismal at best and not having that  
19 office has detrimentally affected our ability to  
20 provide what we need to provide for our students in  
21 regards to the requirements that BIE has of us.

22 So if anybody can move that process along,  
23 that would be great. And looking forward to -- you  
24 know, looking forward with this new rule and somebody  
25 is supposed to be providing us that assistance, that



1 has to be addressed also.

2 MR. CLARK: Yes, ma'am. Okay. Any other  
3 comments, questions?

4 MS. LEADBETTER: Jenna Leadbetter,  
5 superintendent, Circle of Life Academy, White Earth  
6 Nation. And this just may be how I operate, but I do  
7 like having definitions. Technical assistance, is  
8 there is a definition for what that entails for us as  
9 school administrators?

10 DR. HAMLEY: Jeff Hamley. Well, it's in  
11 the ESSA. And I'm just trying to see if it's in the  
12 glossary of definitions.

13 MR. CRUZ: I don't see it.

14 DR. HAMLEY: Okay. But it's in the ESSA  
15 that the Bureau will provide technical assistance  
16 either directly or through a consultant, I think, or  
17 a contractor to tribes that request it. So it's just  
18 kind of general, but it's been operationally defined  
19 working with Navajo and Miccosukee as to -- so we  
20 know the shape and form that it takes and how it  
21 moves forward.

22 So we have a context of how that would  
23 work. But, yeah, it's not defined specifically in  
24 the law. It's just sort of general.

25 MS. LEADBETTER: Is it possible to give

1 that shape and form so we kind of know -- I'm so new  
2 to this. Knowing what kind of assistance and who I  
3 would go to for that would be so beneficial for those  
4 lines of open, honest and transparent communication.

5 DR. HAMLEY: Okay. Yes. We'll request  
6 the director to make a clear statement to everybody  
7 about the point of contact for technical assistance  
8 on the waiver and, you know, how to proceed on that.

9 MS. LEADBETTER: Okay. Thank you, sir.

10 MR. CLARK: Thank you. Okay. More  
11 statements, comments, input? Or questions. Just  
12 whenever, if anybody does have a statement or  
13 comment. I know everybody is kind of reviewing  
14 materials and maybe you just don't have one now. No  
15 worries. Just raise your hand whenever you're ready  
16 and we'll get a mike to you.

17 MR. LADUCER: Melvin Laducer, Turtle  
18 Mountain High School principal. The tribal civics  
19 section says, "The BIE-funded schools accountability  
20 system as a School Quality Success Indicator."

21 The civics, is that going to be -- and I  
22 know in the State of North Dakota you have to take a  
23 civics test to graduate. It's a requirement beyond.  
24 So in the proposed ruling, is a tribal civics going  
25 to be a requirement for graduation?

1 DR. HAMLEY: No, not for graduation. Our  
2 graduation requirements are outlined in a separate  
3 25 CFR. But so not -- Jeff Hamley. Sorry. Not  
4 graduation specifically, but it will be required.  
5 Although the committee left this somewhat undefined,  
6 it will be required of all schools.

7 And the committee didn't state all  
8 students, so it's unclear at this point whether it be  
9 K-12, but it would be required of all schools. But  
10 not specifically a graduation requirement.

11 And so the option -- if it's adopted, the  
12 option would be -- and the committee also asked that  
13 it be phased in because they recognize that a  
14 curriculum does not exist. Standards and assessments  
15 do not exist at this point. So it would take a  
16 period of years to be developed and then phased in,  
17 but then would be required of all schools.

18 However, it is subject to a waiver. So if  
19 a school did not want to do that, then they would  
20 request a waiver of that. So different -- at the  
21 various consultations, we've gotten feedback about  
22 that and you can read the record on that.

23 But that was what the committee had done  
24 at this point. It made the requirements, not a  
25 graduation requirement, but it's somewhat undefined

1 as to who it would apply to.

2 MS. LEADBETTER: Maybe I should just move  
3 next to you. Jenna Leadbetter, superintendent,  
4 Circle of Life Academy, White Earth Nation. Within  
5 my tribally controlled school, Circle of Life  
6 Academy, we've done the civics piece a couple  
7 different ways. I'm really excited about this, but  
8 I'm also concerned about how it can be rolled out.

9 You used the term "undefined." I like  
10 defined. Defined gives me direction. So moving  
11 towards that way, just FYI, Dr. Hamley, I would love  
12 to hear that definition.

13 But we have it within our civics  
14 graduation requirement. We've done it that way.  
15 We've moved to separate the two so that one had more  
16 cultural relevance. It has a cultural component to  
17 our school. This upcoming year we're trying it a  
18 different way.

19 The fact that we've done it a couple  
20 different ways I think speaks to that undefined piece  
21 that needs definition if we're going to include this  
22 in a regulation. Just my two cents. And if you have  
23 any comments or feedback or suggestions, we're  
24 growing too.

25 MR. CLARK: Thank you. Okay, comments,

1 questions, input?

2 MS. BEMENT: Sue Bement, DFO for this  
3 committee, BIE. The reason for that, for the  
4 looseness of the tribal civics, was because of all of  
5 the tribes and all of the tribes are so different.  
6 There was much discussion around how can we have  
7 something that is -- you're going to teach about your  
8 tribal leaders, about treaties that affected your  
9 tribes, about the wars or the chiefs or the important  
10 things of your tribe. And it just became something  
11 that could not be controlled, in a way.

12 And Jennifer McLeod -- and Jennifer is  
13 from Sault Ste. Marie. This was kind of her  
14 brainchild. So we all thought it was a wonderful  
15 idea, it's a good thing to have, but really how do  
16 you do that when we're all so different. Just a  
17 comment.

18 MR. CLARK: Thank you.

19 MS. HOPKINS: Thank you. My name is  
20 Shannon Hopkins. I work for the Fort Peck Tribes  
21 Education Department. And I actually am a product of  
22 a four-year school. I graduated from Lockton  
23 Community Boarding School. And I would have  
24 graduated and I was planning to if my grandmother  
25 didn't make me come home and graduate from a public

1 school my senior year.

2 So with that being said -- granted it was  
3 30 years ago -- I never got any of this history or  
4 none of this. I got the mainstream education going  
5 to a boarding school and that was the purpose of why  
6 I went to boarding school to go to school and not be  
7 used and to hear more about myself. Instead I heard  
8 more about myself from my grandmother, my elders  
9 powwowing.

10 So that's the reason why I'm so vested in  
11 my tribe and I really speak and try to push for it  
12 because I believe in it because I'm a product of it.  
13 But it's really hard to push that component when the  
14 public schools -- and recently in the state of  
15 Montana they're allowed to have class language  
16 instructor come in to teach their language. That was  
17 never taught to me at boarding school.

18 Nobody wants to speak or -- well, anymore  
19 anyway. And I can say this because both my parents  
20 went to boarding schools. They were beat for talking  
21 their language. I am a Dakota speaker and my mom is  
22 a fluent Dakota speaker. I knew neither. I had to  
23 pay for it at my local tribal college. And so that  
24 needs to be brought up.

25 You need to realize that cycle is still

1 repeating itself because of what started with the BIE  
2 when you wanted to kill the Indians' native language.  
3 So you need to think about these kids. These kids  
4 are still living that trauma. And I don't see -- I  
5 mean, it's put on paper, words to paper, but I'm with  
6 her. I want to see action.

7 MR. CLARK: Additional comments,  
8 questions, statements for the record?

9 MS. LEADBETTER: Excuse me, Ms. -- thank  
10 you so much for your comments. Jenna Leadbetter,  
11 Circle of Life Academy, superintendent, White Earth  
12 Nation. I'm sitting here and I just feel your  
13 passion. And that's the passion that I serve every  
14 day for every child that comes to my school.

15 And that's exactly why I'm asking the  
16 questions when it comes to any of the tribe-specific  
17 portion of the framework that's proposed in front of  
18 us today, is making sure that the tribe I represent  
19 and their personal interests are being recognized and  
20 listened to.

21 Because our language is not going to be  
22 the same as the language of the other tribes that BIE  
23 represents. Our tribal politics are certainly not  
24 going to be the same. So how are those going to be  
25 incorporated into that beautiful brainchild. Because

1 I love that it's there. It's just the how. How is  
2 it going to be done.

3 And without that how being answered,  
4 that's what makes me as a school administrative side,  
5 the more westernized portion, asking, okay, what do I  
6 do, what are the steps, and then how do I combine  
7 that with the fluidity of the culture that I  
8 represent as well. So thank you, ma'am.

9 MS. BEMENT: Sue Bement, BIE. Regina just  
10 brought to my attention some portions of the book.  
11 So if you look under Tab 4, page 8, there is a  
12 section called "Creating a Unified System." Refer to  
13 that. And then on page 10, "Tribal Civics As a  
14 Challenging Academic Standard." Please review those  
15 sections. Thank you.

16 MR. LADUCER: Melvin Laducer, principal,  
17 Turtle Mountain High School, Belcourt, North Dakota.  
18 In page, the Federal Register, 26787, Section 2,  
19 general description of proposed ruling, it said  
20 "Require that the secretary to provide technical  
21 assistance to tribal governing bodies or school  
22 boards in the development and proposal of alternative  
23 requirements and to respond to such requests in a  
24 timely manner."

25 At this time I'm asking for technical



1 assistance and I'm asking that a date and a time be  
2 given to us that technical assistance is going to be  
3 provided up to Turtle Mountain because we do not have  
4 an ERC center. So when can I get a response to that  
5 request?

6 MR. CLARK: To clarify your question --  
7 sorry. Travis Clark, BIE -- are you referring to --  
8 it sounds like you're referring to the waiver  
9 section.

10 MR. LADUCER: It's on page 267 -- Melvin  
11 Laducer again, Turtle Mountain. Under page 26787,  
12 under Section 2, general description of proposed  
13 rules, on the second column, down toward the bottom,  
14 the second bullet towards the last portion, requiring  
15 the secretary to provide technical assistance tribal  
16 governing schools.

17 At this time because Turtle Mountain does  
18 not have an ERC, I am requesting for our tribe and  
19 the schools within our tribe technical assistance to  
20 begin immediately.

21 MR. CLARK: So if you need technical  
22 assistance today, not specific to an accountability  
23 waiver, that would be -- Rose-Marie Davis is your  
24 ADD. You can directly e-mail her and she will be  
25 able to coordinate whatever technical assistance that

1 you need. Or alternatively, again I will give you my  
2 business card at the end of the day and I will make  
3 sure that you get whatever assistance that you need  
4 for whatever particular issue that you're needing  
5 assistance with.

6 MR. LADUCER: I was monitored in school  
7 year '17 we did a fiscal monitoring by the BIE out of  
8 Albuquerque. One of the requests in writing that I  
9 placed was technical assistance. And, Dr. Hamley,  
10 this is directed to you, because you know very well  
11 that I have called you personally and asked when are  
12 we going to get this technical assistance.

13 As grant schools we normally had grant  
14 training, contract conditions, our grant condition  
15 training. The last one was held in 2008. I gave a  
16 person from Albuquerque my packet of the last grant  
17 conditions training for grant schools.

18 So my question is, again, I'm still  
19 waiting for that technical assistance from that  
20 visit. How long am I going to have to wait for this?

21 MR. CLARK: Again, what we can do, I know  
22 that you're waiting for those positions to be filled  
23 in your ERC. I will give you my business card. I'll  
24 get you an update on where that is at in the process  
25 of getting those filled. So that's the permanent

1 solution, having your ERC there on site.

2 In the interim, if there are specific  
3 needs that you need technical assistance with, I work  
4 in the director's office. I will give you my  
5 business card and we can talk about a plan where we  
6 can get with Rose-Marie Davis and her staff and  
7 figure out what things that you need and try to build  
8 you out a technical assistance plan in the interim.

9 MS. LEADBETTER: Hello. Jenna Leadbetter,  
10 superintendent, Circle of Life Academy, White Earth  
11 Nation. Can I also piggyback off of that? There's  
12 been so much change in many of the grant schools that  
13 I've spoken with in leadership and then how the  
14 communicative pieces with those above us.

15 So, yes, I'll take your card and I will  
16 happily meet, Zoom, Skype, Face Time, whatever, to  
17 make it happen. I'm with you on getting that  
18 additional support. So thank you.

19 DR. PFEIFFER: We're having a sidebar  
20 conversation here, but we just wanted to clarify.  
21 When there's technical assistance terminology inside  
22 the Federal Register, it really is speaking to the  
23 waiver process. And we want to address -- there are  
24 two concurrent conversations going on around  
25 technical assistance, but the technical assistance in

1 the Federal Register is around the waiver. 26787.

2 MR. CLARK: Okay. Thank you.

3 Okay. Comments, questions, statements for  
4 the record? Raise your hand at any moment when  
5 you're ready and we'll get a mike to you.

6 MR. FOX: Everall Fox, superintendent,  
7 Flandreau Indian School. The first name is spelled  
8 E-v-e-r-a-l-l.

9 Not so much a question, more of a comment,  
10 is I had a sidebar discussion during the break about  
11 the ERCs. A concern I've had, and it's been shared  
12 numerous times, is that I think there are a bunch of  
13 moving pieces that need to take place. Sort of the  
14 end result with these expectations is they need to be  
15 met, but we don't quite have all the materials in  
16 place. So we're expected to build this house at the  
17 end, but we don't have the materials we need to build  
18 it with.

19 For my example, we have an ERC, but it's  
20 in Phoenix, Arizona, and it's understaffed. It's  
21 really hard to get -- and I understand the difference  
22 between the technical assistance or the negotiated  
23 rule-making here and just running technical  
24 assistance needed for the work that we do on a daily  
25 basis at the school level.

1 I also heard discussion about working with  
2 states. We actually probably lean more on the state  
3 of South Dakota for technical assistance, even though  
4 we're not funded by them in Title I or in some of the  
5 other programs, because we've developed relationships  
6 with some of the staff members that work in the  
7 offices and they always answer our questions, because  
8 the law is basically the same, Title I and some of  
9 the other programs.

10 And my comment is just an encouragement  
11 and hope that ERCs are moved forward and established  
12 so we can meet these goals or can be successful in  
13 the discussion being held today. Thanks.

14 MS. LEADBETTER: Jenna Leadbetter, Circle  
15 of Life Academy, superintendent, White Earth Nation.  
16 A passion of mine is languages, so the Native  
17 American language piece is sticking. It keeps coming  
18 up. What have you thought of for academic  
19 assessments of Native American languages? Have you  
20 considered what assessment tools? That seems like a  
21 challenge.

22 DR. HAMLEY: Jeff Hamley, BIE. That's a  
23 long story. Well, that was explored in the  
24 committee. But, I mean, that would be a possible  
25 waiver by a governing tribe or school board, that

1 they implement some aspect of tribal assessments.  
2 But that's -- I mean, Section 1111 makes clear that  
3 for ELA and math the assessments, you know, are in  
4 English.

5           Get up here if I get in trouble. But I  
6 guess to cut to the chase, the major issue is if a  
7 governing tribe or school board wants to use Native  
8 language assessments for some aspect of  
9 accountability, it would have to go through a peer  
10 review. And many tribes have developed standards,  
11 you know, for Native language, for their Native  
12 language.

13           The languages aren't necessarily written.  
14 And so it would have to be an oral language  
15 assessment. And I think what we're hearing from the  
16 Department of Ed is that, you know, that's never been  
17 done and would be difficult to get through a peer  
18 review.

19           So that sort of removes that issue from  
20 the accountability, moving Native language into the  
21 accountability box. But what the committee did do on  
22 this is that they made an affirmation that they  
23 encourage the use of Native language in the schools  
24 but they only went that far.

25           But then it was also pointed out that,

1 well, there's already the Native American Language  
2 Act which is up for reauthorization now, I believe.  
3 So the question was raised is it really necessary to  
4 make even an affirmation in the federal regulations  
5 when there's already a statute for that, there's  
6 already a law, a full law, on that. So was it  
7 necessary.

8 But for right now it's in there. There's  
9 an affirmation statement that the Bureau, the  
10 government, encourages schools to use Native language  
11 in the school. But that's as far as the committee  
12 went.

13 So, yeah. Creating assessments is a  
14 challenge. In the context of peer review, that  
15 level, that standard, that is a challenge. But many  
16 of the schools -- and the Bureau has actually  
17 supported this activity for several years when we had  
18 funding, was to help schools develop standards and  
19 assessments. So you can have assessments for the  
20 purposes of teaching and learning in the classroom,  
21 but to move it to the level of where it's going to go  
22 to peer review, that's another issue.

23 So I think the work on preserving  
24 languages in the context of the school, having  
25 written standards and also have been oral language

1 assessments is a great activity and the Bureau  
2 supports that. But moving into accountability is a  
3 completely different issue.

4 MS. LEADBETTER: Thank you for your  
5 comments. It's definitely such an important piece  
6 for the students' identity and something that they  
7 are seeking within the schools where encouragement is  
8 not enough. I don't know if it needs to to be  
9 incentivized so that we're seeing more buy-in by  
10 schools to adopt initiatives to move the language to  
11 the forefront, especially when we're looking at  
12 BIE-funded schools.

13 And I would even say that the sidebar of  
14 the tribally controlled schools, I know that that is  
15 a high point of interest, is bringing back the  
16 language of the people. So I'd be very interested to  
17 see how this grows over the year.

18 DR. HAMLEY: Jeff Hamley again. We  
19 already have an ISEP for language. So I believe the  
20 schools have the option for how to use those funds  
21 within that context, so there is some leeway. So  
22 there already is an ISEP on that, to provide funding  
23 for that.

24 DR. PFEIFFER: And I would just add just  
25 recently in the last three months, Native language



1 grants have gone out to schools who have applied for  
2 it. So that is another way to incentivize it and it  
3 was developed to be at the discretion of the schools  
4 and the tribes.

5 MS. LEADBETTER: I'm almost wondering if  
6 that can be tied into doing some of that research  
7 piece for building the assessment. Because what  
8 you're telling me is we're doing an oral language  
9 peer review. Right? I mean, it's a study. So I'm  
10 wondering if we're incentivizing it at the school  
11 levels. And that's where we're building our language  
12 because we're bringing back some languages and that's  
13 where we're fostering those speakers.

14 DR. HAMLEY: Well, Jeff Hamley again.  
15 Maybe I misspoke. Now, we're not doing a Native  
16 language peer review. I mean, we've done work  
17 several years ago in that area.

18 But, I mean, I'll just be frank. I think  
19 what that exercise showed is that it highlighted the  
20 challenges of developing our language assessments.  
21 And so some progress was made by some tribes, but not  
22 to the level of accountability that it's going to go  
23 through the Department of Education peer review.

24 So we are definitely not exploring that  
25 anymore. But like I said, that's a possible waiver,

1 but I guess governing tribes and school boards are  
2 going to have to decide where they want to put their  
3 energy. And if something, you know, is -- I guess  
4 the other point I wanted to make is that everything  
5 that we're discussing here is -- the terminology in  
6 the law is "consistent with 1111."

7 So 1111, Section 1111 is the context of  
8 this. Those are the statutory requirements we're  
9 trying to meet. So some of the things in the  
10 committee like language fell outside 1111. And there  
11 were several other topics that fell outside of 1111.  
12 So that was discussed. It took committee time. But  
13 in the end we're always back to the same point. It's  
14 we're trying to achieve regulations consistent with  
15 1111.

16 So I think that the language thing, you  
17 know, parts of that fall out of the requirements of  
18 1111.

19 MS. LEADBETTER: Thank you.

20 MR. LADUCER: Melvin Laducer, Turtle  
21 Mountain High School. I'm just asking where  
22 Section 1111 is so I could read it.

23 MR. CLARK: It's under Tab 5.

24 MR. LADUCER: Thank you.

25 MR. CLARK: Okay. Questions, comments,

1 statements? Just shoot your hand up. And, again, I  
2 know people are reviewing materials. Again, whenever  
3 you're ready, just shoot your hand up.

4 MS. LADUCER: Tammy Laducer, Turtle  
5 Mountain Elementary School assistant principal. I  
6 had a question about implementing the targeted  
7 support and improvement.

8 Now, schools that are identified as being  
9 low performing are going to be required to submit a  
10 plan. Is that going to be separate from the plan  
11 that we already submit through the Indistar  
12 NativeStar platform or is that going to be part of  
13 that system?

14 DR. HAMLEY: Jeff Hamley. Good question.  
15 I believe that it's going to be similar but different  
16 because it will have to meet the Section 1111  
17 requirements. But we'll provide guidance on that.  
18 And, yeah, it could be submitted through NativeStar,  
19 but NativeStar is -- I mean, it doesn't have to be  
20 submitted through NativeStar. We just have to --  
21 that's just the easier way to do it. But we'll be  
22 providing guidance shortly on that about what shape  
23 and form the final will take.

24 MS. LADUCER: Tammy Laducer, Turtle  
25 Mountain Elementary School assistant principal. Is

1 there additional Title I funding that's going to be  
2 given for those?

3 DR. HAMLEY: Yes. Yes. This is 1003(a),  
4 1003(g). State funding has been phased out in ESSA,  
5 although we still have some of those funds as  
6 carryover. But, yeah, it's a brand-new pot of money.  
7 1003(a). Yeah. So there will be significant funding  
8 coming for those lowest-performing schools.

9 MS. LADUCER: Okay. Tammy Laducer, Turtle  
10 Mountain Elementary School assistant principal. Are  
11 we going to have to apply for those funds or will  
12 those be part of the process of identifying those  
13 underperforming schools.

14 DR. HAMLEY: It's part of the process, but  
15 you will have to submit a plan still. That's a  
16 statutory requirement that each school will have to  
17 submit a plan outlining how they're going to use  
18 those funds.

19 MS. LEADBETTER: Jenna Leadbetter, Circle  
20 of Life Academy, White Earth Nation, superintendent.  
21 Coming off of the sixth school -- well, actually,  
22 technically, fourth, fifth year -- what are the  
23 checks and balances in place following the submission  
24 of the plan to ensure that the school is able to  
25 fiscally carry out any of those improvements long

1 term?

2 DR. HAMLEY: Jeff Hamley. You mean  
3 fiscally capable? Well, it's assumed that the school  
4 will be fiscally capable of administering its funds.  
5 So if there's an issue there -- okay. So we should  
6 work with the school directly then on that. Okay?

7 I mean, I hate to raise the term, but, I  
8 mean, technically if a school, any school, for any  
9 reason, can't fiscally manage its funds and they run  
10 into trouble, then it runs into sanctions. But we  
11 want to avoid that. So we'll work with you.

12 I mean, if a school is having a particular  
13 issue or problems with that, we'll work closely with  
14 you on that. Because we're still required by statute  
15 to provided the funds to those lowest-performing  
16 schools, so those will be significant funds and it's  
17 expected that the school will manage those funds.

18 MS. LEADBETTER: I guess where my question  
19 is coming from is, well, personal experiences on the  
20 ground, coming into a school that needed -- we'll  
21 call it fixing, fixing a budget deficit, and  
22 proceeding sick for numerous years and  
23 overexpenditures with no checks and balances from  
24 BIE.

25 So that funding was being provided and

1 things were being overspent at the school level, but  
2 no one caught it for years. So I'm wondering if  
3 you're going to be doing improvement processes in the  
4 future, what measures are in place to monitor the use  
5 of those funds?

6 DR. HAMLEY: Okay. Jeff Hamley again.  
7 Well, generally the process for checks and  
8 balances -- I'm understanding what you're asking now  
9 better -- are, one, for tribally controlled schools  
10 the process is that there's an A-133 audit. But  
11 that's still aid, you know?

12 So when you file your A-133 audit on June  
13 30th, it's for the prior year. So we're learning  
14 late that there's maybe audit issues. And it should  
15 show up in the audit. If it doesn't show up in the  
16 audit then that's another issue.

17 But another way to do it is through the  
18 monitoring process. So that's if a school is --  
19 receives a monitoring visit separately than the A-133  
20 audit, those issues would be highlighted. And then,  
21 again, I think technical assistance is appropriate  
22 for the Bureau to try and help the school.

23 But all you have to do is request the  
24 technical assistance at any time, you know. I mean,  
25 it doesn't have to come from an audit or a monitoring

1 visit. And then -- but there's a line there where,  
2 you know, it still is a tribally controlled school.  
3 We're not -- the Bureau is not directly responsible  
4 for administering the school.

5 So we can provide advice, but we're not in  
6 the role -- we're not in the driver's seat in terms  
7 of control of the school's funds and things like  
8 that. But, I mean, in our monitoring -- I mean, I'll  
9 just have to say one of the things that -- and I  
10 don't know all the monitoring processes, but I get  
11 feedback from staff.

12 One of the things that we encounter often  
13 is that a school is frankly glad to see that we're  
14 there. They say we desperately have questions about  
15 special ed or use of funds and thank you for -- you  
16 know, and so our staff clarified there.

17 And I think it's been a highlighted a  
18 little bit in these discussions. But always the  
19 follow-up, technical assistance, isn't timely. So  
20 they don't need just technical assistance during that  
21 week; they need it for the next year. And sometimes  
22 the Bureau, you know, is not providing that timely  
23 technical assistance.

24 So that's a challenge for the Bureau. And  
25 it's not just the ADD tribally controlled out of

1 Bloomington; it's the entire Bureau that should be  
2 helping those schools.

3 So I appreciate what you're saying when I  
4 hear you say, well, the school has not -- has been  
5 challenged in managing its funds. Because we hear  
6 that often when we go to schools, is that they are  
7 having challenges, they really need help and they're  
8 looking for us to give them the help.

9 MS. LEADBETTER: Not necessarily like the  
10 full hundred percent help, because I believe we do  
11 have a very capable team, but more just consistent  
12 guidance, especially if you're considering -- I'll  
13 use the word "sick school" -- that there's that  
14 consistent follow-through, and not just during that  
15 sick process, but even follow through a couple years  
16 after to ensure that those skill sets are still  
17 there, especially when you've probably implemented  
18 quite expensive curricula and changes in programming  
19 that need fiscal monitoring and management.

20 So thank you for your comments and I'm  
21 glad to hear this is a discussion amongst the leaders  
22 of BIE.

23 MR. CLARK: Thank you. Regina?

24 MS. LADUCER: Tammy Laducer, Turtle  
25 Mountain Elementary School assistant principal. Has



1 there been discussion about how long the waiver  
2 process is going to take? Because on one section it  
3 says to apply within 60 days of the decision to waive  
4 the secretary's requirements in part. Then in  
5 another section it says the secretary will provide a  
6 status update regarding the processing of the  
7 proposal within 120 days of receiving the proposal  
8 and every 30 days thereafter.

9 Is this going to be a lengthy process to  
10 get these waivers approved? And how much time should  
11 we be applying for them ahead if it's going to take  
12 them that time to review them?

13 DR. HAMLEY: This is Jeff Hamley, BIE.  
14 Good question. Well, I think under the current  
15 situation moving forward, we have a circumstance  
16 that's different than what we went through with  
17 Miccosukee and Navajo. So I think what's different  
18 is that we -- there's a definite timeline that you  
19 need these decisions -- you need the assistance  
20 provided and you need a proposal ready to go.

21 I know with the Department of Education  
22 we've talked about, you know, what would constitute a  
23 lengthier process if a governing tribe or school  
24 board wanted to consider a whole range of things  
25 versus a very simple one.

1           For example, under No Child Left Behind we  
2 had a couple inquiries about just changing a  
3 particular assessment, like the science assessment.  
4 Well, we saw that, rather than a full-blown proposal,  
5 as maybe being a letter, you know. So it just  
6 depends.

7           Now let me go back to Navajo and  
8 Miccosukee. Those were the first time that they had  
9 ever been done. You know? So those were a long  
10 period of exploration, several years, because it had  
11 never been done. Well, we've done two now. It's  
12 proof of concept.

13           I think we have -- both the Department of  
14 Education -- I can't really speak for them -- but  
15 under the Bureau, we have a pretty clear perception  
16 of how to proceed and move forward.

17           But the length of time really depends on  
18 one thing: What is the governing tribe or school  
19 board asking for. Now with Navajo and Miccosukee  
20 they were asking for a full range of things. But  
21 what we did with them was that we agreed finally to a  
22 phased approach where they put into the proposals  
23 what was immediately acceptable and that they moved  
24 the harder ones like Native language and, you know,  
25 having some SEA status to later phases. So we agreed

1 on that and that's when they immediately became  
2 approved.

3 So, now, what happened -- so essentially  
4 they're both at phase 2 right now. But in the  
5 interim we've had a new law passed. So we can't  
6 immediately move into phase 2. They're going to have  
7 to resubmit their proposals probably under -- you  
8 know, for a phase 1.

9 If they need a proposal. That's always up  
10 to the governing tribe or school board. It's not up  
11 to the Bureau to decide whether you want a proposal,  
12 whether you want to waive something or not.

13 So to go back to the point I made, it  
14 really depends on what the governing tribe or school  
15 board is asking for. If it neatly and easily fits in  
16 with a portion of Section 1111, I mean, the governing  
17 tribe or school board can waive in whole or in part.  
18 If it's just a part, it can move quickly, you know.

19 But if it's 10 or 12 or 15 different  
20 things, that's literally going to take years. To  
21 explore the legalities of and the possibilities of  
22 them, it is going to take years. But I think going  
23 forward, both the -- well, I won't speak for the  
24 Department of Ed, but the Bureau is committed to  
25 moving these proposals forward as quickly as we can.

1           And I think your request to the director  
2 for immediately -- and I'm writing him an e-mail  
3 right now -- for technical assistance and to have  
4 people on the ground to help you do that will be part  
5 of that. So you know what you want. Work should  
6 begin right away I think on that.

7           MS. LADUCER: All right, Tammy Laducer,  
8 assistant principal, Turtle Mountain Elementary  
9 School. When I think about this waiver and I think  
10 about assessments, the Bureau is looking at a unified  
11 assessment. So if a school wants to do the state  
12 assessment in lieu of the Bureau-approved assessment,  
13 would that fall under this waiver process?

14           DR. HAMLEY: Yes, we think it would. So I  
15 don't -- I mean, is the state requiring -- I mean,  
16 you don't have to answer this. But if a state is  
17 requiring that you use all their assessments, ELA,  
18 math, science, alternate, and English language  
19 proficiency, and that's their position, then that  
20 would be your waiver.

21           If they're only requiring that you take  
22 ELA and math, then that would be your waiver. So in  
23 that case you would still use the Bureau's science,  
24 alternate and -- well, the alternate actually  
25 probably would have to follow with the ELA and math.

1           So I don't know if it's become clearer.  
2           We can have lunch and discuss this.

3           MR. LADUCER: Melvin Laducer, principal,  
4           Turtle Mountain High School, Belcourt, North Dakota.  
5           Dr. Hamley, when you're talking about this waiver --  
6           and I'm not sure where I read it, but -- I kind of  
7           walked in on this conversation -- is that until the  
8           waiver is decided, which could take months and/or  
9           years, you're saying that once this proposal becomes  
10          law -- and I think I asked this and I want  
11          clarification -- is that we may have to look,  
12          depending on what assessments the state uses and what  
13          the proposal determines as an assessment; is that  
14          correct?

15          DR. HAMLEY: If I understand your  
16          question -- Jeff Hamley again. If I understand your  
17          question, yeah, if your waiver doesn't take effect --  
18          well, you'll have to use -- you'll have to use the  
19          unified system in 2021 unless you get a waiver at  
20          that time.

21          So I think the timeline issue has been  
22          established, you know, sometime between now and next  
23          July or so -- well, before that, ideally, you'll want  
24          to get a waiver. So when the final rule is published  
25          hypothetically in December, sometime shortly after

1 that you'll want a waiver so that you know what  
2 you're going to do in 2021.

3 But we don't have to wait until the rule  
4 is published to enter into technical assistance.  
5 We're talking to a number of tribes right now. So I  
6 think that process begins now. You know in theory  
7 what you want and where you're going. We don't know  
8 exactly what the final rule is going to say yet. But  
9 we know that the committee agreed that they want a  
10 unified system. So we can have these discussions now  
11 and be ready.

12 So I know that's a small window, December  
13 to July next year, but that's what we have to work  
14 with.

15 MR. LADUCER: Melvin Laducer, Turtle  
16 Mountain. Again, Dr. Hamley you're saying we can  
17 start the waiver process now, but any assessment  
18 portion, what language am I going to write to as what  
19 I'm asking for a waiver for when we don't know what  
20 assessment is going to be used? That just couldn't  
21 be the same amount.

22 How do you predict -- I guess how do I put  
23 in a waiver now so that it's in place when we don't  
24 even know what the BIE is proposing as an assessment  
25 piece?

1 DR. HAMLEY: Jeff Hamley. Well, I mean, I  
2 don't think you need to state what assessment the  
3 Bureau -- I mean you don't need hinge it on that.  
4 You can just say you don't want to use the Bureau --  
5 the secretary's accountability system regarding  
6 assessments; you want use the North Dakota  
7 assessment. I mean, I guess the glitch in that is if  
8 we decided to use the North Dakota assessment.

9 But -- and discussions can happen now. I  
10 mean, discussions, it's good to have discussions to  
11 explore these topics actively now. But the actual  
12 filing of the waiver would not happen until after the  
13 publication of the rule. But we can explore all the  
14 possibilities right now.

15 Okay. I guess Deb just pointed -- this is  
16 Jeff Hamley -- just pointed something out. On  
17 page 26801, the left column, G. A couple of the  
18 members were interested in a transition clause. So  
19 in the interim they wanted to -- "During the  
20 transition to the secretary's requirements for  
21 standards and assessments under this part or at  
22 anytime thereafter a tribal governing body or school  
23 board may elect to use the standards and assessments  
24 of a state without submitting such standards and  
25 assessments for approval as an alternative proposal

1 under paragraph (c)."

2 So they did throw in this section which  
3 would allow them to continue on without a waiver.  
4 But that also raised some questions. What does that  
5 do to the waiver process if they've created a  
6 specific, you know, federal code to allow them to  
7 bypass the waiver?

8 The statute created the waiver process.  
9 So now the Bureau is going to write a regulation to  
10 bypass that? So it raised a technical like legal  
11 issue there.

12 We understand why they wanted to do that  
13 is because they have the same view. They like the  
14 state assessment after 15 years of seeing it.  
15 They've gotten used to it. They've gotten cozy with  
16 their states and they want to continue that process.  
17 But -- so this does raise questions. And we'll have  
18 to see if this makes it through to the final  
19 regulation.

20 And so I guess, as Deb I think was  
21 pointing out to me, I have been talking about the  
22 waiver process, but there is a section in here that  
23 is an alternative to the waiver process that the  
24 committee put in and said, well, if a school wants to  
25 continue to use the state in the interim they can go



1 ahead and do that and we'll just bypass the whole  
2 waiver process.

3 MR. LADUCER: Melvin Laducer, Turtle  
4 Mountain. Then do we have to put that in writing  
5 that we want to stay with the state? You're saying  
6 you don't have to do a waiver, but we have to  
7 identify that we -- under that section, Section G.

8 DR. HAMLEY: Jeff Hamley. Frankly, I  
9 don't know. I think you would have to notify the  
10 Bureau in some way.

11 MR. LADUCER: Would it be the director?

12 DR. HAMLEY: It would be the director.  
13 But then also, the whole question of, you know,  
14 whether the state is going to allow you to use its  
15 assessment. Right now we have MOUs with the states,  
16 but those probably are going to have to be redone  
17 because we only have MOUs with 12, I believe, of the  
18 21 states.

19 We were never able to get all 21 because  
20 that involves complex legal discussions between the  
21 feds and the states and they just -- we tried. We  
22 tried many times but we could never get it. But  
23 those will have to be redone because the legal  
24 authority on those is No Child Left Behind and the  
25 law has now changed.

1           But if the state were -- if the schools,  
2 12 schools in North Dakota, were going to use the  
3 state assessment, that MOU would have to be looked  
4 at. Now, this regulation doesn't even address that.  
5 But that would probably have to --

6           MR. LADUCER: Melvin Laducer, Turtle  
7 Mountain. I'm under the understanding that the state  
8 MOU was already looked at by the Bureau and was  
9 approved and that's why our schools are using the  
10 state assessments.

11          DR. HAMLEY: But that MOU is under the  
12 legal authority of No Child Left Behind. I mean, I'm  
13 not a lawyer, so we have to look at that again and  
14 see and they would have to decide. But Deb is also  
15 pointing out that I quit reading on it.

16          It does say, okay, "alternative proposal  
17 under paragraph (c) of this section, provided the  
18 tribal governing body or school board notifies the  
19 secretary of the intention to use the state standards  
20 and the state agrees to allow you." So it does  
21 actually spell out the whole thing in there.

22          So you would notify the secretary and the  
23 state would have to agree to it, probably in writing.

24          MR. LADUCER: Melvin Laducer. A  
25 clarification, Dr. Hamley. You're saying we

1 notify -- as tribal school, tribal governing body  
2 notifies the secretary and then the state has to  
3 agree with the tribe -- the tribes are asking to use  
4 the state assessment in lieu of whatever assessment  
5 the BIE is going to come up with? Is that what  
6 you're saying?

7 DR. HAMLEY: Well, the state has to agree  
8 to let you use their assessments.

9 MR. LADUCER: And they are.

10 DR. HAMLEY: Yeah, they are. So... who  
11 pays for them is not a question. But --

12 MR. LADUCER: Not the school, but the  
13 state.

14 DR. HAMLEY: Yeah. The states have been  
15 very generous in paying for the assessments. Not in  
16 all cases, but have been pretty generous in doing  
17 that. So will they continue to do that is the  
18 question. And, you know, it seems that they've been  
19 doing it in the past, that they would. And also your  
20 students are also citizens of the state. So we would  
21 think they would pay for them, but we don't know.

22 MR. LADUCER: Melvin Laducer, Turtle  
23 Mountain. By legislation that we just finished, they  
24 will continue to fund the assessment for the next  
25 three years in the State of North Dakota.

1 DR. HAMLEY: Is that a question?

2 MR. LADUCER: No. That's just a statement  
3 if they're going to continue to pay for it and, yes,  
4 they funded that.

5 DR. HAMLEY: Jeff Hamley. I don't  
6 understand what --

7 MR. CLARK: He's just letting us know that  
8 the state has already funded it.

9 DR. HAMLEY: Okay. So you're just making  
10 a statement?

11 MR. LADUCER: Correct.

12 DR. HAMLEY: Thank you. That needed to be  
13 brought up. I've been trying to avoid that all day,  
14 but thank you.

15 MS. CLAYMORE: Hi. Margaret Claymore.  
16 I'm an education specialist with the Minneapolis ERC  
17 here in Bloomington, Minnesota. I'm just curious  
18 knowing that, you know, our schools have stayed with  
19 all their different state assessments. And we've had  
20 some that have gone with PARCC, Smarter Balanced.  
21 We've seen a variety.

22 Has the Bureau decided on which  
23 assessments that they think is probably unique or  
24 going to address across the Bureau those 23 states?  
25 Because we've seen those pockets. And I know when we

1 were doing all the common core stuff, we were looking  
2 at those specifically because that's what we were  
3 telling our schools to do. We were telling them to  
4 do Smarter Balanced or to go with PARCC and some of  
5 them did that.

6 So rather than making it more confusing,  
7 is there something that's on the table that's well  
8 known to work or are you guys looking at having an  
9 alternative assessment created?

10 DR. PFEIFFER: Thank you for your  
11 question. Tamarah Pfeiffer, BIE. So the first thing  
12 we want to do for '19/'20 is to make sure that we  
13 roll out our standards trying to get the cart before  
14 the horse. This is big league work, so we want the  
15 standards first.

16 We have conducted what's called a sole  
17 source where we have spoken with vendors. But that  
18 was more for informational purpose to start to think  
19 about what is the scope of work. We know some  
20 schools need paper-based assessments versus  
21 computer-based just because of the bandwidth. We  
22 know that part of the assessment language is around  
23 do they already have adopted standards that they  
24 align to. Are they rigorous and college/career ready  
25 standards.

1           So to answer your question, we want to  
2           make sure that our language this year is about  
3           feedback on the rule first, getting the regulation in  
4           place so that we know is this a commitment by all  
5           stakeholders to have this unified system. And that  
6           conversation, again, is still ongoing. So thank you.

7           MS. CLAYMORE: Thank you.

8           MR. CLARK: Okay. The floor is open  
9           again.

10          MS. LADUCER: Tammy Laducer, Turtle  
11          Mountain Elementary School assistant principal.  
12          Dr. Pfeiffer, you're talking about standards. And  
13          for lack of a better reference, are you talking about  
14          a common core set of standards for the Bureau? And  
15          we already have standards that we have used that were  
16          through the states. Would we have to have a waiver  
17          for that too or would we be tied to those standards  
18          for the Bureau?

19          DR. PFEIFFER: So thank you. Again,  
20          language has changed across the administration and  
21          with the Department of Education common core  
22          standards are rolled out. And a lot of states took  
23          those standards, made them their own and aligned  
24          their assessment to that.

25          Now we're looking at college and career

1 ready standards and of course with the waiver that  
2 language would all be inclusive to that because you  
3 want to always assess to the standards you're  
4 teaching.

5 MS. SIGMAN: Deb Sigman. I would just add  
6 that when Dr. Hamley talked about that Section G,  
7 that applies to standards as well.

8 MR. CLARK: Okay. Again, comments,  
9 questions, statements?

10 MS. LADUCER: Tammy Laducer, Turtle  
11 Mountain Elementary School assistant principal.  
12 Okay. We covered the standards, the assessments.  
13 Now, the accountability piece. When No Child Left  
14 Behind rolled out with the common core there was AYP  
15 and I know that language is changing too. Do you  
16 know what that accountability piece is going to look  
17 like yet?

18 MS. SIGMAN: So in terms of what -- states  
19 have already implemented their accountability  
20 systems. So if you're with North Dakota I'm assuming  
21 you're under their accountability system.

22 So what's different is I talked about the  
23 multi-measures, so the five indicators as opposed to  
24 simply proficiency on assessment. But each state  
25 through their state plan has had to identify what

1 those indicators will look like and how they will  
2 feed into the accountability system.

3 DR. HAMLEY: Jeff Hamley again. Well, I  
4 mean, I guess it doesn't directly answer your  
5 question, but the standards and assessments have to  
6 be aligned with each other. So if you're going to  
7 use the North Dakota assessments, you would have to  
8 use the North Dakota standards. If you're going to  
9 use the Bureau standards and assessments, they will  
10 have to come as a pair, as a set, because you can't  
11 have -- it's unfair to the students to have  
12 assessments that are not in line with the standards.

13 So that's the main requirement, whatever  
14 you're going to do. There just has to be alignment  
15 between the standards and assessments.

16 MR. LADUCER: Melvin Laducer, Turtle  
17 Mountain High School. Dr. Hamley, you said two  
18 specific things. One is if you're going to use the  
19 state's standards then you're going to use the  
20 assessment. The accountability piece should be a  
21 given. So under Section G if we notify our intent of  
22 the -- to the secretary, do we notify the intent of  
23 every component of it, the standards, assessments and  
24 the accountability piece?

25 DR. HAMLEY: Section G, page 26801 of the



1 Federal Register notice specifically states standards  
2 and assessments. It does not transition any  
3 accountability indicators, so it's just standards and  
4 assessments. So accountability indicators would be a  
5 waiver possibility.

6 MR. LADUCER: So where in the proposed  
7 statute is there a waiver where it indicates waivers  
8 for the accountability piece?

9 DR. HAMLEY: Well, that's basic to -- in  
10 the ESSA it's stated and also in the regulations that  
11 a governing tribe or school board may waive in full  
12 or part the secretary's standards, assessments and  
13 accountability system. So it's in law and it's in  
14 statute and then depending on the regulations that  
15 are passed it will be in regulations.

16 MR. LADUCER: Melvin Laducer again. So  
17 I'm requesting, Dr. Hamley, that you provide me with  
18 that section of the statute so that I can use that  
19 language as part of our waiver for the accountability  
20 piece.

21 DR. HAMLEY: Okay. We will.

22 MR. CLARK: Okay. Additional comments,  
23 questions, statements for the record?

24 MR. LADUCER: Melvin Laducer, Turtle  
25 Mountain again. Under the accountability system,

1 I've been in this business a long time so we used to  
2 have UPA which we don't have -- we haven't used in  
3 how long. So my question is if we have to report our  
4 accountability system, who and how are we going to  
5 have to report them? Because UPA no longer, under  
6 the old, whatever we did back then every child -- No  
7 Child Left Behind.

8 So, again, if we're going to have to  
9 report to the Bureau, who and how are we going to  
10 have to report?

11 DR. HAMLEY: Jeff Hamley. Good question.  
12 Let's see if I have a good answer. Well, this is an  
13 undefined area. So, I mean, I think we're going to  
14 have to work that out. But just off the top of my  
15 head, the Bureau is a quasi-SEA; not in the ESSA, but  
16 through an MOA with the Department of Education.  
17 We're given the responsibilities for certain purposes  
18 in the MOA. So we also have responsibility for  
19 accountability.

20 So the question is would we adopt those  
21 elements of a state's accountability and calculate  
22 the accountability and publish the report cards,  
23 et cetera, for that? It's not the responsibility of  
24 the state to do that. And there's no mechanism that  
25 I know of to assign that responsibility to a state.

1           Now, that's not to say that under No Child  
2 Left Behind that states didn't publish report cards,  
3 et cetera, or try and make AYP determinations. We  
4 had that happen too. And we had to remind the states  
5 there's no statutory requirement to do that. So  
6 you're stepping out of your lane here. You're in our  
7 lane. It's our responsibility.

8           But, you know, how we would have to do  
9 that, that could get quite challenging for the  
10 Bureau. But, you know, Congress didn't have too many  
11 sleepless nights over that issue, the Bureau being  
12 challenged. So, I mean, I think we just have to  
13 follow the law.

14           So that's new territory. We have to  
15 explore that. So far no -- Miccosukee and Navajo  
16 didn't delve into the area of accountability  
17 indicators. They didn't say, well, we don't want to  
18 be a UAP, we want to do PAY or something.

19           So this is uncharted territory we'll have  
20 to explore on a step-by-step basis and through the  
21 technical assistance process we'll learn what  
22 schools -- what indicators that a state may want to  
23 use -- I mean, a Bureau school in a state -- from a  
24 state's accountability system versus the Bureau's.

25           But you have to understand the Bureau has

1 not published -- the secretary has not published his  
2 accountability system yet. So we're still at the  
3 proposing stage. But we're required to meet the  
4 requirements consistent with Section 1111.

5 So we will have an accountability system.  
6 It will look like many of the state's state plans,  
7 you know, where we've chosen what are indicators,  
8 we've weighted them, you know, things like that. But  
9 we're not quite there yet.

10 MS. LADUCER: Tammy Laducer, Turtle  
11 Mountain Elementary School assistant principal. So  
12 if we do the waiver and we decide or we're approved  
13 to go with the state standards and the state  
14 assessments, how is the BIE going to identify schools  
15 needing intervention, what data are they going to use  
16 for that and how are they going to get that data from  
17 the schools?

18 DR. HAMLEY: Jeff Hamley again. Well,  
19 that would put us in the same situation we're in  
20 right now where where we would have dissimilar  
21 assessment data. So we would have to have a  
22 methodology to do it.

23 And the way we do it now is -- although  
24 I'm not the person that does this. It was Brian  
25 Bough previously and now it's Sandra Poolaw It's the

1 percentage proficient using the state assessments.  
2 That's what we adopt. We adopt that. So it's not  
3 the Bureau's own proficiency results on the  
4 assessments. We're still using the states and we're  
5 just moving that into our calculation.

6 So that's an imperfect system because the  
7 assessments are different, the test scores are  
8 different. So it's apples and oranges. But that's  
9 the best we can do. So under this -- if a state did  
10 decide to use -- I mean, if a school did decide to  
11 use the state's standards and assessments, it would  
12 put us back into the No Child Left Behind era where  
13 we have an imperfect methodology.

14 And that's why the Bureau and the  
15 committee agreed to move to a unified system so that  
16 we would have valid and reliable methodology to  
17 determining lowest-performing schools and provide  
18 assistance to schools. And that's what the committee  
19 had hoped we would move towards. But with so much  
20 discussion now of adopting state standards and  
21 assessments, you know, it's possible that we won't  
22 have that.

23 MS. LADUCER: Tammy Laducer, Turtle  
24 Mountain Elementary School assistant principal. I'm  
25 looking at one of your slides, accountability under

1 ESSA. So if we have one subgroup that is targeted  
2 for support and improvement, does that mean your  
3 whole school is targeted for support and improvement?

4 DR. HAMLEY: Jeff Hamley. What slide is  
5 that?

6 MS. LADUCER: It's in Section 2, page 9  
7 identification for -- no. Page 9, Section 5.  
8 "Identification for targeted support and improvement.  
9 Identified where subgroups are underperforming."

10 DR. HAMLEY: What slide? Or what page?

11 MS. LADUCER: Section 2, page 9. The  
12 section on "Accountability under ESSA -  
13 identification." So your schools are identified  
14 based on -- must be based on a performance of one or  
15 more subgroups. So if one of your subgroups is  
16 underperforming is your whole school targeted for  
17 intervention?

18 MS. SIGMAN: So this is the second.  
19 Remember the first identification is the CSI. So  
20 that would be the lowest 5 percent determined by your  
21 accountability system of those schools receiving  
22 Title I funds. So, yes, the school gets identified  
23 with the idea that the intervention would be targeted  
24 for students that are needing that.

25 MS. LEADBETTER: Jenna Leadbetter, Circle

1 of Life Academy, superintendent, White Earth Nation.  
2 Just a question in regards to the use of cut scores.  
3 Is that still going to be a standard practice and how  
4 does that impact reports?

5 DR. HAMLEY: Jeff Hamley. Could you  
6 repeat your question?

7 MS. LEADBETTER: I have concerns with the  
8 use of cut scores. Specifically if we're going to  
9 use, for example, NWA testing and you have five  
10 domains and then you use cut scores and then you're  
11 combining certain domains, which then impacts the  
12 data and the validity of the entire assessment.

13 So I'm wondering are those going to be  
14 used and then if they are is that going to be unified  
15 in BIE? And then, furthermore, how does that impact  
16 that lower 5 percent for identification?

17 MS. SIGMAN: Deb Sigman. So what's  
18 required is that a state, or in this case BIE,  
19 established three levels of achievement, right? So  
20 it could be advanced, proficient, basic, something  
21 like that. So generally there would be a range of  
22 scores, but there is a bottom of that floor. So  
23 essentially that would be a cut score, right?

24 So that is a traditional model of how,  
25 when you're using an assessment, that you would

1 establish that achievement level. So it is required  
2 that you establish an achievement level. Where you  
3 put those cut scores, that's up to the entity.

4 MS. LEADBETTER: Isn't that a questionable  
5 practice if you're allowing an entity to place  
6 scores? I mean, these are students. That represents  
7 an individual child.

8 MS. SIGMAN: Right. So there are very  
9 valid and reliable ways to do that. So generally  
10 what happens -- I'll speak -- I am from California.  
11 So we are a Smarter Balanced state. And so when  
12 those cut scores were established there were 500  
13 educators brought in by -- all across those Smarter  
14 states.

15 And you go through a very long process to  
16 establish -- generally you have teachers in the room  
17 who are most knowledgeable about what students know  
18 and their students. And so you look at what those  
19 students -- how those students have performed and  
20 what those expectations are to arrive at a score that  
21 is -- that meets the definition -- that you've  
22 decided meets the definition of adequate or  
23 proficient. So that is a very common methodology.

24 MS. LEADBETTER: I don't know what it is  
25 about that that doesn't sit right with me. Maybe



1 it's because an individual person is modifying data  
2 and then that completely overrides validity as an  
3 assessment tool. I mean, the Ph.D.s sitting at the  
4 table, you've got to agree with me.

5 This caused significant problems at Circle  
6 of Life Academy. And that's where if we're going to  
7 be utilizing cut scores, there's going to be some sort  
8 of unified approach to doing it.

9 And if California did do that, then maybe  
10 they are the pilot that shows us how to do it the  
11 right way so that we don't have individuals slotting  
12 students on a scale that has five different criteria,  
13 basic, mid-level -- the WMA testing, right? And  
14 having to put those children into three categories  
15 when the test itself is designed for five.

16 MS. SIGMAN: So, again, the validity and  
17 the reliability are all about the process, right?  
18 And so if you have lots of individuals who can make  
19 judgments about the students that they serve, then  
20 you're in a better position to ensure that those  
21 scores are appropriately placed, right? So it's not  
22 just -- it's not one individual. It would be a group  
23 of individuals.

24 MS. LEADBETTER: Okay.

25 DR. HAMLEY: This is Jeff Hamley again.

1 The system of doing that should be standardized,  
2 established and transparent. And I know of some  
3 cases where states have gotten into trouble where,  
4 you know, individuals have varied from the  
5 agreed-upon. So that's a very serious issue. So  
6 that should not be happening.

7 MS. LEADBETTER: It is happening.

8 DR. HAMLEY: Yeah, okay. Well, we'll be  
9 visiting you.

10 MS. LEADBETTER: Good. But because it is  
11 happening and there weren't checks and balances,  
12 that's why it needs to be addressed so that it  
13 doesn't happen again, because it hurts kids. So yes.  
14 I just want that to be a consideration when we're  
15 using cut scores and you're talking about unifying an  
16 entire nation where we have California that has a  
17 methodology that's telling me it's reliable, it's  
18 valid, and I haven't heard anything from Minnesota on  
19 a reliable, valid methodology for using cut scores.

20 So that in itself is telling me we have  
21 two states that are different and you're trying to  
22 unify a nation of many states. I'm just planning  
23 ahead, thinking ahead here. That's all. Thank you.

24 MR. CLARK: Okay. Thank you. Just as an  
25 FYI, we've got about 20 minutes before we break for

1 the lunch period. And then we'll continue on for the  
2 rest of the afternoon. This is the same forum, just  
3 open record for statements and questions. So I'm  
4 just giving everybody a heads-up on the time.

5 So we've got about 20 more minutes for the  
6 morning session. We'll break for lunch. Lunch is an  
7 hour and fifteen, reconvene at 1:15 and then it will  
8 be an open forum for the rest of the day.

9 So, again, questions, comments, raise your  
10 hand and we'll get you a mike.

11 MS. HOPKINS: Thank you. My name is  
12 Shannon Hopkins from the Fort Peck Tribes Education  
13 Department. I just had -- it's really a dumb  
14 question, but I'm wondering how come -- I'm on page  
15 26796 under Section 30.105. In that middle column D.  
16 Why do you need to know if they're serving on full  
17 time National Guard duty?

18 The sentence reads, "Students with status  
19 as a student with a parent who is a member of the  
20 armed forces on active duty or serves on full-time  
21 National Guard duty."

22 MS. SIGMAN: So that language is straight  
23 from ESSA statute. And that group was added. People  
24 wanted to make sure that we were collecting data with  
25 regard to students of military families.

1 MS. HOPKINS: Then I just had one other  
2 question, only because -- oh. This is Shannon  
3 Hopkins again. Only because I'm actually the -- I  
4 work with the Montana OPI and I'm actually their  
5 only -- I go to the schools and do training. In  
6 northeastern Montana nobody wants to come out there  
7 from Helena.

8 So how are they being identified? Because  
9 that is important when they go to college because  
10 they get paid and they get funded -- they get full  
11 Pell. So how can you be sure that --

12 MS. SIGMAN: Are you looking at --

13 MS. HOPKINS: Under the --

14 MS. SIGMAN: Oh. So they would be  
15 identified however you happen to be currently  
16 identifying them.

17 MS. HOPKINS: How would you know that?

18 MS. SIGMAN: I'm assuming BIE collects --  
19 that's a data element that may or may not be  
20 collected.

21 DR. HAMLEY: Jeff Hamley again. When ESSA  
22 was passed in December 2015, we began talking to  
23 NASIS about creating this field in NASIS. So, I  
24 mean, I'm not positive, but it's been created. Now,  
25 the NASIS contract is coming to an end. We are

1 transitioning to a new system.

2 MS. LEADBETTER: We were just told  
3 yesterday at NASIS that we're staying with it.

4 DR. HAMLEY: Okay. Well, I wasn't sure.  
5 I was just turning to Travis to see whether I could  
6 announce that. So it is -- if the new contract for  
7 five years is awarded to NASIS, so we believe -- I'll  
8 verify that both military and foster care are two  
9 elements that have been created in NASIS. I'm 99.99  
10 percent sure, but I'll verify that. So that's how we  
11 identify it.

12 MR. CLARK: Okay. Proposal, we can break  
13 for lunch now. I think the morning is kind of  
14 petering out. And instead we'll reconvene at  
15 1:00 p.m. Kind of typical for our other  
16 consultations.

17 We will be here, the federal employees  
18 will be here at 1:00 p.m. to reopen the record. So  
19 if you had a comment, a statement for the record that  
20 you didn't get into the record this morning, please  
21 feel free to come back and at any time we'll be here  
22 to take that comment.

23 Don't feel obligated to be here if you  
24 don't want to be here for the afternoon, because this  
25 is very much -- this is the precise format that we're

1 taking the rest of the day. It's just going to be  
2 open forum, keeping the record open for comments,  
3 questions, statements, all that good stuff.

4 So with that we'll break for lunch now and  
5 we'll be back here at 1:00 p.m. for reopen the  
6 record. Thanks.

7 (Whereupon, at 11:43 a.m. a lunch recess  
8 was taken.)

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## AFTERNOON SESSION

(1:05 p.m.)

\* \* \* \* \*

MR. CLARK: Okay. We'll go ahead and get going again. Again, beating a dead horse a little bit, but just to reiterate, we're here until you're out of questions, out of comments, all of that good stuff. So from now until the close of business we're here ready, willing and able to listen to any questions, comments, all that good stuff. So as soon as you have one, raise your hand and we're ready to record it for the record.

Do you have a question?

MR. LADUCER: Melvin Laducer, Turtle Mountain High School. Subsection B, page 26802, subpart D, responsibilities and accountability. Again, I still haven't gotten a clear answer on the accountability piece. Can you enlighten us on what plan if any plan you have for the accountability piece at this time?

MR. CLARK: Jeff was the one that was doing that piece. He is not here. Can you come back to that in just a minute? When Jeff is here we can get to that. I'm sorry. I want to get you an answer to that and Jeff is the expert on that, so...

1 (Pause.)

2 (Dr. Hamley returns to the conference  
3 room.)

4 MR. CLARK: We had a question for you  
5 nobody knew how to answer. One more time.

6 MR. LADUCER: 26802, Subpart B.  
7 Page 26208, Section Subpart D, responsibilities and  
8 accountability. And I believe my question was, if I  
9 remember correctly, what is the accountability piece?  
10 How will we report that? Because if there isn't a  
11 developed accountability piece, how do you determine  
12 what schools are in what areas and how do we go on  
13 from there, I guess?

14 DR. HAMLEY: Jeff Hamley. So you're  
15 referring to 30.125?

16 MR. LADUCER: Yes.

17 DR. HAMLEY: Okay. This is an ESCA  
18 requirement and also under ESSA reauthorized. So the  
19 Bureau as drafted No Child Left Behind in ESSA is  
20 required to publish an annual report card for the BIE  
21 school system as a whole and also for -- well, and  
22 the ESCA says LEAs, but in our system LEAs are  
23 schools, local education agencies that are schools.  
24 So for BIE-funded schools. So throughout No Child  
25 Left Behind and continuing we're required to do that.



1           Now, we have fallen behind and are in the  
2 process of catching up, starting with the schools  
3 first, but the BIE overall is still lagging by a few  
4 years. So we'll be required to do this under our new  
5 accountability system. And what the Bureau will  
6 publish is how the schools have done, proficiency on  
7 the state assessments.

8           So if it's a unified system using the same  
9 assessment throughout the system, it will be based on  
10 that, the proficiency on that. Now, if there's a  
11 waiver where a school wants to use its state  
12 assessment, it would be based on that assessment.

13           MR. LADUCER: But -- again, Melvin  
14 Laducer, Turtle Mountain -- I think we've established  
15 that the standards and the assessment are -- we can  
16 place a waiver on. But the accountability piece is  
17 the part that I think the Bureau has no idea what  
18 they're going to do yet, am I correct, as far as any  
19 plan to have a template or something to collect that  
20 data?

21           DR. HAMLEY: Correct. We haven't  
22 published what our accountability system will look  
23 like. However, we've been in internal discussion as  
24 to what we're going to propose. And I think your  
25 question is so when we publish the school's report

1 card, will we publish it on the Bureau's system or if  
2 a school requests a waiver of a particular  
3 indicator -- for example, say growth.

4 Say the Bureau hypothetically weights a  
5 growth at 50 percent, but -- or say another template.  
6 What if they waived it at 25 percent and the school  
7 wants to use the state's -- like in Washington State  
8 I believe it's 50 percent. So then the report card  
9 for the school if that waiver is approved would  
10 reflect that. And it would be noted in the report  
11 card that the school has a waiver, they've decided to  
12 use the state's -- some aspect of the state's  
13 accountability system.

14 So, I mean, it's feasible. It can be  
15 worked out. It's just right now it's all  
16 hypothetical as to what that would look like. But  
17 whatever it is, it can be worked out, it can be  
18 explained, it can be expressed and it can be  
19 published.

20 MR. LADUCER: And, again -- Melvin Laducer  
21 again. I mentioned this earlier. Now with this  
22 accountability piece not -- there's not even a design  
23 for it yet. I'll call it that. Are schools going to  
24 be, once it's -- if we're going to implement this  
25 plan next school year and it takes the Bureau three

1 more years to come up with an accountability piece --  
2 and I'm going to back to DPA days where we were  
3 sanctioned a thing that happened three years ago.

4           What assurances are you going to give us  
5 that once this accountability template is rolled out,  
6 we're not going to have to fill it out and say, well,  
7 three years ago you didn't make adequate yearly  
8 progress? Is it going to be we fill in the data for  
9 the previous years, but the accountability piece is  
10 going to be in current year where we would need it?

11           DR. HAMLEY: I mean, that's a good  
12 question. And I know exactly what you're talking  
13 about. The intent of making accountability  
14 determinations is that -- and the law said this, No  
15 Child Left Behind -- that they be provided before the  
16 beginning of the next school year. I think that was  
17 pretty much the language.

18           So the idea is that states would, you  
19 know, get the assessment scores in May and then in  
20 June develop the determination letters, June, July,  
21 and then issue them to the schools before school  
22 started in September, in some cases August, some  
23 schools start in August.

24           So the school could adjust to their  
25 determination level and make administrative and

1 instructional decisions. So, yeah, the Bureau had  
2 great trouble in doing that, the reason being that we  
3 had a multipart accountability system. We did not  
4 own the assessment data. So sometimes it took us  
5 months if not years to collect the assessment data.

6 So based on the old model, the 23-part  
7 accountability system, we could rarely if ever make  
8 those timelines. And so that's the reason the Bureau  
9 wants to move to a uniform system so that we can do  
10 like the states do, get the data, you know, early,  
11 May, June, we own the data, so we just call the  
12 vendor and the next Monday we have the data and then  
13 we can begin making the determinations based on that,  
14 you know, in time for before school starts in the  
15 fall. That's the whole intent of going with a  
16 unified system, is to shorten that timeline and  
17 provide the information.

18 Now, if a school gets a waiver and they're  
19 using the state assessments, yeah, that may continue  
20 to be a challenge. I won't say it's going to  
21 continue to be a challenge. It may be. So we'll  
22 have to, you know, work closely with the state to get  
23 the data and try and make a determination, deliver a  
24 determination to the school as early as possible.

25 So I don't know if that explains --

1 provides some context. It doesn't.

2 MR. LADUCER: Melvin Laducer again.

3 Again, I'm putting you on the spot, Dr. Hamley.

4 DR. HAMLEY: That's all right.

5 MR. LADUCER: But what you're saying is  
6 the way it should be. What assurances are you giving  
7 schools that it will be, not should be? Because in  
8 the past -- and if you look at right now with our  
9 SpEd, special ed, we're still looking at two years  
10 ago and we're getting dinged on '15, '16 right now,  
11 you know. We can't even catch up with that.

12 And I know when we were at DPA -- and I  
13 keep bringing this up -- that we were years behind.  
14 And, again, in an ideal situation you're saying we  
15 should. But what assurances are you giving tribal  
16 schools and grant schools that we will be, or you  
17 will be dealing with current year, regardless of what  
18 year your accountability piece comes out, and not the  
19 accountability piece came out and, okay, you fill it  
20 in for such and such year and you're going to be  
21 sanctioned based on three years ago?

22 DR. HAMLEY: Well, I guess all I can say  
23 at this point is that if we do have a unified system,  
24 there's going to be a much greater chance that we  
25 will make these decisions, provide those

1 determinations on a much shorter timeline. That's  
2 the whole intent.

3 I mean, I can't give an assurance at this  
4 point because the rule has not been written. But  
5 that is, you know, the intent, as I said, of having  
6 an unified system so that we can do the same as the  
7 states do and provide these determinations on time.

8 MR. LADUCER: The rule hasn't been written  
9 again, yes, I agree. But when are you going to take  
10 into consideration because this is just a draft  
11 proposal and we're here for consultation? So when  
12 are you going to look at this draft proposal and say  
13 when this accountability piece comes out we're going  
14 to deal with current year and not because it took the  
15 Bureau three years to come up with an accountability  
16 piece we're going to going back and penalize schools  
17 for three-years-ago data regardless of what they're  
18 doing in the current year? Where is that assurance?

19 MR. CRUZ: Yeah. I absolutely understand  
20 where you're coming from on that. And it's going to  
21 be our policy direction with the new unified system,  
22 if that's the way that the winds are blowing after  
23 consultation, is to put everyone on equal footing  
24 with that baseline and allow the BIE to make sure  
25 that they're getting timely corrective action or

1 reports back to the schools.

2 I know in conversations with the  
3 solicitors, because we are still beholden to NCLB,  
4 there are certain requirements that the Bureau is  
5 still required to ask of those tribal grant schools  
6 and our Bureau-operated schools. And so our  
7 treatment from a policy level has been to direct the  
8 BIE to comply with the new statute, get all the  
9 schools on kind of the similar level.

10 Because I've heard from numerous schools  
11 that are still reporting, like you mentioned, four or  
12 five years ago. I tend to believe that's not a very  
13 productive use of time. But for potential  
14 litigation, potential litigation requirements, we  
15 have to comply with the law.

16 And so our goal will be to get everybody  
17 up to the same starting point and let the Bureau  
18 manage that new system, whatever we design it to  
19 entail, and then identify next steps if we need to  
20 close out some of that old law, whatever perfunctory  
21 work needs to be done there.

22 So I'm not sure what our litigation risk  
23 is on that, but that will have to be a decision made  
24 in the future. But just from the assistant  
25 secretary's level, it's let's comply with the 2015

1 law and get a reasonable system in place that is  
2 clear, transparent, easily understandable and  
3 disseminate it to all of our schools.

4 MR. LADUCER: I still don't think that  
5 answers my question, but I'll let it go.

6 DR. HAMLEY: Jeff Hamley again. I just  
7 wanted to add one thing. You mentioned a couple  
8 times three years to get the accountability system.  
9 No. We're working on defining the accountability  
10 system. We've had a state plan for a couple of years  
11 published to our website.

12 The missing pieces are the Sand  
13 assessments accountability system, which we're  
14 waiting for a final rule. But we've been exploring  
15 options for the accountability system. We have a  
16 committee or a work group that's working on that. So  
17 it's not going to be three years. We will get an  
18 accountability system in place fairly quickly.

19 MR. LADUCER: Again, and I know this  
20 consultation is supposed to end August 9th if we have  
21 any questions. So my question then is if there's not  
22 an accountability piece right now to question, are  
23 you going to extend the August 9th deadline for the  
24 accountability portion of this proposed bill or law?

25 MR. CLARK: Let me make sure I'm stating



1 your question correctly. If we do not have an  
2 accountability system set up prior to August 9th,  
3 will we extend the deadline for the rule making? Is  
4 that the question?

5 MR. LADUCER: Just for the accountability.  
6 So we have a common something we can actually see  
7 versus, what, you've had your chance. How do I  
8 question the accountability piece? I could see the  
9 waiver. The standards and the assessment piece, I  
10 can live with that. But if you don't have an  
11 accountability piece in place and you're saying this  
12 is done August 9th, how does it give tribes a chance  
13 to litigate or question their concerns about the  
14 accountability piece?

15 DR. HAMLEY: Well, the purpose of this  
16 meeting is to comment to the draft federal  
17 regulations. So the federal regulations are a  
18 framework based on ESSA Section 1111. We're just  
19 discussing the framework now. And the framework is  
20 that we -- the Bureau will have, like it states, an  
21 accountability system.

22 That's all we're doing here today. But  
23 what you're mentioning, what you're raising, though,  
24 is when the actual details of the accountability  
25 system are created, what will be the process for

1 that.

2 Well, in the -- as Dr. Pfeiffer mentioned  
3 earlier in her presentation, the Bureau agreed a  
4 couple years ago that it would do a so-called state  
5 plan, even though it's not required by the law.  
6 That's where -- and in the reg there's a section in  
7 there that requires as a matter of regulation our law  
8 for the Bureau to do a state plan.

9 It's called the SAAP, the Standards,  
10 Assessments and Accountability Plan. At that stage  
11 that's where the accountability system will be laid  
12 out in detail like North Dakota's state plan, similar  
13 to that, or Minnesota's, or Montana's, and that's  
14 when we would go up for stakeholder input on that and  
15 that's where you would have the opportunity to give  
16 input into that, is at that stage.

17 And it's on page 226795, Section C on the  
18 far right side of the Federal Register notice. So  
19 I'll give you a chance to read that.

20 So to summarize, there will be a -- not at  
21 this stage. Right now we're just doing the legal  
22 framework. But at the next stage with the state  
23 plan, there will be an opportunity for you to see in  
24 black and white, the entire country, what we're  
25 proposing for an accountability system and to give

1 comment on that.

2 So as you're reading, I hope I'm clear  
3 about those two separate processes. This is the  
4 regulations, the overall legal framework, but the  
5 next stage is the specific part of what the  
6 accountability system will consist of and we do have  
7 people working on that.

8 And I'll just add here, we have the  
9 benefit that 50 states have written state plans. So  
10 we're able to read those and to evaluate them and see  
11 what looks good in different states. So we're  
12 benefiting from that process.

13 MR. LADUCER: Melvin Laducer, Turtle  
14 Mountain. Dr. Hamley, I guess my concern then is  
15 when I read this Section C it says continue with the  
16 BIE-operated schools and tribally controlled schools,  
17 meeting government-to-government consultation with  
18 tribal governments.

19 If you can light that back up again, I  
20 keep going back to that deadline and how are you  
21 going to assure tribes and -- as a tribal school, the  
22 minister of the grant school in my community, how are  
23 you going to assure that? Because that deadline is  
24 hard and it's in there.

25 MR. CLARK: Correct. So this deadline is

1 just for the framework that Jeff was talking about.  
2 The accountability system through the SAAP will  
3 require a separate essentially consultation. So this  
4 is the consultation for the regulatory framework.  
5 There will be additional stakeholder outreach input  
6 consultation such and such as this for that  
7 accountability system in the SAAP.

8 So this August 9th deadline is just for  
9 the regulation.

10 MR. LADUCER: Can you pull that back up?

11 MR. CLARK: Rosie, can you log in?

12 MR. LADUCER: Show me where you say that  
13 the accountability, the SAAP, is going to be a  
14 different consultation, please.

15 MR. CLARK: It's in the regs.

16 MR. LADUCER: It's not in there.

17 MR. CLARK: Okay. So if you go to  
18 page 26795, Section B --

19 MR. LADUCER: Subpart? 795, you're  
20 saying?

21 MR. CLARK: Yeah. 26795.

22 MR. LADUCER: Okay.

23 MR. CLARK: So Section 30.103,  
24 Subsection B.

25 MR. LADUCER: "The director will implement

1 a standards, assessment and accountability" -- like I  
2 keep saying -- "system" for BIE-funded schools. And  
3 according to that, written comments --

4 MR. CLARK: Right. Right. But this is  
5 describing a separate consultation and a separate  
6 process for consulting on the SAAP.

7 MR. LADUCER: Where in this does it say  
8 it's separate?

9 MR. CLARK: Well, one, this is the  
10 proposed reg that we're going to consult on.

11 MR. LADUCER: Correct.

12 MR. CLARK: So if -- by August 9th, if  
13 this section stays within the reg that we're  
14 consulting on now by August 9th, then this becomes  
15 published. And then this is published as a  
16 requirement that we will go out for a separate  
17 consultation regarding the SAAP.

18 It's the entire section. All of 103 is  
19 describing the separate and additional consultation  
20 that will take place regarding the SAAP.

21 MR. LADUCER: I may have missed it.  
22 Melvin Laducer. Read to me in that section where it  
23 says it's going to go back after for the  
24 assessment -- the accountability piece. Read to me  
25 in this proposal. It doesn't. So I'm assuming --

1 MR. CLARK: Yeah. But the language of  
2 that section says "The director will implement a  
3 standards, assessment and accountability plan that  
4 will provide Indian tribes, parents and stakeholders  
5 with quality, transparent information the only how  
6 the act will be implemented at BIE-funded schools,  
7 including the requirements that have been established  
8 for standards, assessments" -- that is stating  
9 that -- that's giving with the force of regulation  
10 the direction to the BIE to go out and conduct that  
11 consultation regarding the SAAP.

12 MR. LADUCER: And that's what you're doing  
13 right now?

14 MR. CLARK: No. This says a separate  
15 consultation from what's being described here.

16 MS. CASTILLO: Hi. This is Jennifer  
17 Castillo for the record. I just want to clarify  
18 procedurally where we are. So as Mark indicated in  
19 the beginning, in 2015 ESSA passed, and that was  
20 amending ESCA which before that was No Child Left  
21 Behind. So what ESSA required is that for the  
22 BIE-operated schools there needs to be a regulatory  
23 rule-making process in order for the assessment  
24 portion, the standards portion and also the  
25 accountability portion.

1           So then we're sort of at the front end of  
2 that process, establishing the regulatory framework.  
3 And that's what this consultation is covering. And  
4 as was indicated, the next piece would be to talk  
5 about the accountability. So I don't know if that  
6 helps you understand things procedurally.

7           MS. LADUCER: Tammy Laducer, Turtle  
8 Mountain Elementary School assistant principal. Is  
9 there a timeline as to when that next phase is going  
10 to begin and how long it will take for the  
11 accountability piece?

12           DR. HAMLEY: Well, this task crosses some  
13 offices in the Bureau, but we do want to wait for the  
14 final rule because we don't want to get in front of  
15 the final rule. But I don't know if Tamarah has  
16 given any time as to when she's going to release  
17 that. But we are working on it.

18           The other thing I wanted to say, going  
19 back to your comments, is that if you want to make a  
20 suggestion about, you know, making this section more  
21 definite, you can submit comments to that. You know,  
22 if it's not defined enough for you, you can make  
23 comments for that. That's why we're here. So if you  
24 think that the SAAP timeline is too indefinite, you  
25 can make comments to put into regulation, you know,

1 that it should commence such and such.

2 So, Tamarah, did you want address the  
3 second question?

4 DR. PFEIFFER: So the timeline -- I came  
5 on again in April as acting chief academic officer.  
6 The timeline initially had been pushed out based on  
7 the NRM committee's report in April for '19/'20. It  
8 was in consultation with the Department of Ed that it  
9 was acknowledged that we need to wait for regulation.

10 And then in the meantime there are all  
11 these parallel practices that have to start,  
12 including working on developing focus groups around  
13 standards, looking deeply at definitions in the  
14 accountability development. All of this began in  
15 January of 2019. So this is just continuing work.

16 But really defining things like gross, if  
17 that's going to be a recommendation, and getting  
18 those elements in place so that once the rule has  
19 been published, things like the professional  
20 development around standards could be rolled out,  
21 work on getting an RFP out there for a unified system  
22 can go out.

23 But I'll just let you know right now there  
24 are like five or six different parallels that are  
25 happening continuously while we are waiting for this



1 final publishing.

2 MR. CLARK: Okay. Additional questions,  
3 comments or statements? And, again, I know some of  
4 the folks were trying to review the materials kind of  
5 right now. Again, we still have that August 9th  
6 deadline to submit a written comment or statement for  
7 the record.

8 I know for some of these things, for  
9 instance, if language within a certain section you  
10 don't think is clear enough, I strongly encourage not  
11 only comment on that but provide some alternative  
12 language that you'd like to see. I know that's  
13 always really helpful on our end when we do this sort  
14 of post analysis. So just keep that in mind.

15 MR. LADUCER: Melvin Laducer, Turtle  
16 Mountain. For the record, the comments need to come  
17 from either the tribal council or the school board.

18 MR. CLARK: They don't have to, but it's  
19 strongly encouraged that it does come from the tribal  
20 council or the school board, because as a  
21 government-to-government consultation obviously we  
22 give a great amount of weight and deference to those  
23 stakeholders as opposed to other stakeholders.  
24 That's just the inherent nature of tribal  
25 consultation.

1 MR. LADUCER: I'll have a question on  
2 that. If we as tribal leaders got together and wrote  
3 one thing and had multiple councils sign off on it,  
4 can that be done? Is that allowable?

5 MR. CLARK: Yeah, absolutely. And that  
6 has been done in previous tribal consultations.

7 MR. LADUCER: Thank you.

8 MS. LADUCER: Tammy Laducer, Turtle  
9 Mountain Elementary School assistant principal. Your  
10 proposed rule says the committee recommended that the  
11 rule include a requirement that BIE have a standards,  
12 assessments and accountability plan. We've heard  
13 about standards and assessments. The accountability  
14 to me just seems like it's not there, the plan. We  
15 might do this, we may do that, we have done this, you  
16 know, and that has caused issues.

17 But I would like to see something on that  
18 accountability plan in writing about what it is you  
19 guys are even thinking about what's going to happen  
20 as far as how the schools are going to report their  
21 data to the BIE. If we choose to go with the state,  
22 how BIE is going to get that data. None of that has  
23 been outlined here and that's kind of what I've been  
24 asking about.

25 So if the committee had recommended it,

1 then I think that piece should be discussed a little  
2 bit more in depth and something added in here in  
3 regards to what that's going to look like.

4 MR. CLARK: Okay. Thank you.

5 Any questions, comments, for the record?  
6 We'll hold the record open as long as people have  
7 statements or questions to give. If you don't,  
8 again, don't feel obligated to stay. We're just  
9 going to keep the record open until we're sure that  
10 everybody here has had ample opportunity to say  
11 everything they wanted for the record.

12 I would also say, again, August 9th,  
13 midnight, deadline to have written comments submitted  
14 to the Bureau regarding these regulations.

15 MS. LADUCER: Thank you, guys, for your  
16 time and efforts and hard work on this.

17 MR. CLARK: Thank you for coming. We  
18 really appreciate the comments and the interaction.

19 MS. LADUCER: Oh, you'll hear some more.

20 MR. CLARK: Good.

21 MR. LADUCER: Thank you, everybody. I  
22 appreciate everybody listening to us. I hope we  
23 weren't too harsh. We have to answer to our schools  
24 and tribe.

25 MR. CLARK: Okay. Right now it is 4

1 minutes until 2:00. We're going to keep the record  
2 open until 2:00 at least. If nobody has any comments  
3 or questions for the record, we'll go ahead and close  
4 it at 2:00 formally.

5 (Pause).

6 MR. CLARK: Okay. I think we're going to  
7 close.

8 (Whereupon, at 1:59 p.m. the hearing was  
9 adjourned.)

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## REPORTER'S CERTIFICATE

1 STATE OF MINNESOTA )

2 )  
3 )  
4 ss.

5 COUNTY OF HENNEPIN )  
6 )

7 I hereby certify that I reported the  
8 proceedings regarding the Bureau of Indian Affairs  
9 Negotiated Rule-Making Consultation, on July 23,  
10 2019, in Bloomington, Minnesota;

11 That the testimony was transcribed by me  
12 and is a true record of the testimony of the  
13 participants;

14 That I am not a relative or employee or  
15 attorney or counsel of any of the parties, or a  
16 relative or employee of such attorney or counsel;

17 That I am not financially interested in  
18 the action and have no contract with the parties,  
19 attorneys, or persons with an interest in the action  
20 that affects or has a substantial tendency to affect  
21 my impartiality.

22 WITNESS MY HAND AND SEAL THIS 28th day of  
23 July, 2019.

24 

25 \_\_\_\_\_  
Jonathan Wonnell

Notary Public, Hennepin County, Minnesota

My Commission expires January 31, 2022

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