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2019 TRIBAL CONSULTATION  
Conducted by Juanita Mendoza  
Friday, July 26, 2019  
1:06 p.m.

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A P P E A R A N C E S

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Veronica Lane  
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Bureau of Indian Education  
Regina

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

2 MS. MENDOZA: So let's go ahead and get  
3 started. Again, my name is Juanita Mendoza. I work  
4 for the Bureau of Indian Education. I am a special  
5 assistant to Director Tony Dearman.

6 I want to welcome everyone for joining the  
7 Tribal Consultation today. Unfortunately, the  
8 Director is not able to join. However, he does -- he  
9 did ask me to send his thoughts for a very successful  
10 Tribal Consultation.

11 I want to go ahead and allow the presenters  
12 to introduce themselves. So I will go ahead and start  
13 with Dr. Jeff Hamley.

14 DR. HAMLEY: Good day, everyone. This is  
15 Jeff Hamley. I'm the Associate Deputy Director,  
16 Division of Performance and Accountability for the  
17 Bureau of Indian Education. And I'll be presenting  
18 the slides on the proposed rule.

19 MS. MENDOZA: Okay. Deb.

20 MS. SIGMAN: Good morning, everyone. My name  
21 is Deb Sigman. And I serve as a senior advisor to the  
22 Center on Standards and Assessment Implementation

1 housed at WestEd. We provide technical assistance to  
2 the BIE regarding this negotiated rulemaking process  
3 around standards, assessment, and accountability. And  
4 we are a federally funded center that provides  
5 technical assistance not only to BIE, but to all the  
6 states, as well around the area.

7 MS. MENDOZA: Thank you, Deb.

8 And Tamarah?

9 DR. PFEIFFER: Good morning. This is Tamarah  
10 Pfeiffer. I'm the Acting Chief Academic Officer for  
11 the Bureau of Indian Education. Welcome.

12 MS. MENDOZA: And Brian.

13 MR. QUINT: Hi. This is Brian Quint. I'm an  
14 attorney advisor at the Office of the Solicitor. I've  
15 been providing support to the Bureau of Indian  
16 Education throughout this negotiated rulemaking  
17 process and these conversations.

18 MS. MENDOZA: Great. Thank you, everyone.

19 First off, I'd like to recognize our court  
20 reporter. He will be recording everything that we're  
21 saying, so this will be an official record.

22 If everyone, when you're speaking during the

1 comment period, if you could say your name slowly  
2 before you start speaking and spell your name if it's  
3 a complicated name or a complex name, that would -- he  
4 would very much appreciate that.

5 UNIDENTIFIED MALE SPEAKER: (inaudible - off  
6 mic).

7 MS. MENDOZA: I'm sorry?

8 UNIDENTIFIED MALE SPEAKER: (inaudible - off  
9 mic).

10 MS. MENDOZA: Oh. Oh, I'm sorry. Also, say  
11 your affiliation.

12 Okay. So up on the screen, I have today's  
13 consultation agenda. I want to just note the time.  
14 So we're going to -- we started at 1:00. We'll go  
15 into -- we're talking about the ground rules right  
16 now.

17 I want -- also wanted to direct folks to try  
18 to keep their comments to points that are relative to  
19 the PowerPoint and to the proposed rule. Of course,  
20 we want to hear, you know, what you have to say. But  
21 if we could focus our comments on the proposed rule,  
22 that would be very helpful.

1 I also want to make note that the  
2 consultation materials that are -- that we will be  
3 referring to during the session, they are available on  
4 the BIE and BIA website. And I'm showing the links  
5 right now. So you can access them now or access them  
6 later.

7 And so we're going to start off with the  
8 overview of the Every Student Succeeds Act. Then we  
9 will present on Part 30 the draft of the proposed  
10 rule. Then we will go into tribal comments. We'll  
11 have a short break, if necessary. And then we will  
12 open comments to the public. And then we will  
13 adjourn.

14 I also want to point out that all comments  
15 for the draft rule are due by August 9th. And on the  
16 screen, you'll see the email to send a comment as well  
17 as the federal rulemaking portal. And there you want  
18 to make sure that you refer to the docket number.  
19 This information will also be displayed at the end of  
20 the consultation. We'll make sure that it -- it's on  
21 the screen for you to refer to.

22 Right now, in this session, I have folks



1 muted. If -- I'm going to go ahead and unmute  
2 everyone. But if you could be sure to put your phones  
3 on mute so there isn't background interference. It  
4 can be difficult for people to hear and especially for  
5 the court reporter for him to hear people speak. So  
6 I'm going to be taking you off of mute now.

7 AUTOMATED VOICE SYSTEM: Unmuted.

8 MS. MENDOZA: I don't know why it's not  
9 allowing me to unmute everyone. All right. It's  
10 doing it slowly. So if there's a problem, just write  
11 in the chat box, and I can respond that way.

12 So Deb, I have turned over the PowerPoint to  
13 you as the presenter.

14 MS. SIGMAN: Okay. Now, I don't see the  
15 PowerPoint. So it's asking me to share. Do I need to  
16 bring up the PowerPoint and share it? It looks like -  
17 -

18 MS. MENDOZA: Do you see it now?

19 MS. SIGMAN: No.

20 UNIDENTIFIED MALE SPEAKER: (inaudible - off  
21 mic).

22 MS. MENDOZA: You know, it was -- just to

1 make this easier for us, why don't I go ahead --

2 MS. SIGMAN: And well, Juanita, I can  
3 certainly share my screen because it's asking me to  
4 share my screen. And then we can try to do it that  
5 way.

6 MS. MENDOZA: Yeah, do that.

7 MS. SIGMAN: Okay. So the -- can you see it  
8 right now?

9 UNIDENTIFIED MALE SPEAKER: (inaudible - off  
10 mic).

11 MS. SIGMAN: Okay.

12 MS. MENDOZA: No, I don't see your screen.  
13 Oh, there it is.

14 MS. SIGMAN: Okay. All right. We're good?

15 MS. MENDOZA: We are good.

16 Thank you, everyone, for your patience.

17 MS. SIGMAN: Yes, indeed. All right. Hang  
18 on. Oh, my goodness.

19 All right. Can you still see it?

20 MS. MENDOZA: Yes.

21 MS. SIGMAN: All right. Okay. So thank you,  
22 everyone. I appreciate your patience as we work

1 through this.

2 So my presentation is just to give you a  
3 brief introduction and summary of the Standards and  
4 Assessment and Accountability systems under the  
5 Elementary and Secondary Education Act, as amended by  
6 the Every Student Succeeds Act, known as ESSA.

7 So we're going to go through this, and we  
8 can, as Juanita indicated, answer questions after the  
9 presentation.

10 So ESEA was -- has been around since 1955.  
11 It's a very large federal education law for students  
12 in K-12. Primarily, it's -- one of its functions is  
13 to provide a great deal of funding through the Title I  
14 program, which is now over \$14 billion (ph) across the  
15 states.

16 And there have been several iterations of  
17 ESEA since that time. Most notably was No Child Left  
18 Behind, also known as NCLB, which functioned to 2015  
19 from 2002, this set the expectations for the first  
20 time that, really, schools needed to be progressing  
21 with all groups of students, not just one.

22 And then in December of 2015, ESEA was to be

1 authorized, as amended by ESSA. And so that is our  
2 current -- we are currently functioning under that  
3 law.

4           However, ESSA really maintains the core  
5 pillars of the law. And that is really about  
6 promoting educational excellence and equity. And it  
7 really does flow through the four pillars, standards  
8 being that first pillar, the standards that we declare  
9 what students should know and what we expect them to  
10 be able to do. And those are supported with aligned  
11 assessments so that we're able to measure and quantify  
12 if those students are actually meeting those  
13 standards.

14           Thirdly, the issue around transparency and  
15 disaggregation and, ultimately, accountability so that  
16 we can ensure all students are meeting the standards  
17 and getting the services that they need.

18           And the fourth is for those schools that are  
19 not able to meet the needs of those students -- are --  
20 that are not meeting the standards, that we can  
21 provide school support and intervention.

22           Now, the Bureau of Indian Education and -- is

1 not a state. However, a section of ESEA, Section  
2 8204, requires the Secretary of Interior to have  
3 requirements around standards, assessments, and  
4 accountability that applies to all BIE-funded schools  
5 and taking into account the unique circumstances and  
6 environment for such schools. And those requirements  
7 have to be consistent with a certain section of ESEA,  
8 Section 1111, which really is all about standards,  
9 assessment, and accountability.

10 And the Secretary implements those  
11 requirements pursuant to regulations that were crafted  
12 during a negotiated rulemaking. And that brings us to  
13 today and to this series of Tribal Consultations. As  
14 a result of those negotiated rulemaking, we have a  
15 rule now that we -- is out for comments.

16 So what is the system and -- the standards,  
17 assessment, and accountability system? Well, it  
18 really is a system. It really -- there are three  
19 parts to the system, with the first part being  
20 standards. They -- really foundational for the system  
21 with -- everything rests on that standard. So the  
22 achievement, those content standards, what we expect

1 students to be able to know and to do, and then those  
2 achievement standards that talk about -- we want them  
3 to know them. But what's the measure, and how good is  
4 good enough?

5 And that really is -- takes into account the  
6 assessment piece of the system, which is we develop or  
7 we procure assessments that really help guide us in  
8 terms of who we -- are our students really meeting the  
9 standards, and are they able to know and to be able to  
10 do what we expect of them?

11 And then ultimately, those two parts of the  
12 system feed into an accountability system that is  
13 really -- helps the adults to measure whether or not  
14 we are doing right by our students.

15 So we are going to go through each of these  
16 pieces and talk about the why. So why are standards  
17 important? Well, as I said, they are statements about  
18 what a student should know and be able to do at each  
19 grade level, and it really is a way to be transparent  
20 with our communities and our parents and our  
21 stakeholders about our expectations for the students  
22 that we serve. And having consistence in our

1 expectations really is a critical piece of our system  
2 because it makes sure that we don't give our students  
3 two different kinds of standards and that we all  
4 deliver to all of our students a rigorous set of  
5 standards.

6 Under ESSA, a -- and by virtue of Section  
7 8204, BIE is required to adopt challenging statewide  
8 content standards. And so there are two kinds of  
9 standards. There's the content standards, which is  
10 the what, right, so what students should know and be  
11 able to do. So those -- that content and those  
12 standards have to be developed at a minimum in math,  
13 reading, and science.

14 And then achievement standards are the  
15 standards that indicate how good is good enough. What  
16 does it mean to be proficient, right? And so the  
17 states have to adopt at least three levels of  
18 achievement. For example, some states reported those  
19 as advanced, proficient, and basic. It -- some states  
20 refer to it as exceeding standards and meeting  
21 standards and approaching standards. So there are  
22 different ways that you can define those levels of

1 achievement.

2 And then the third requirement, which is  
3 different than NCLB -- this is a new piece of ESEA --  
4 these standards have to be aligned with interest  
5 requirements for credit-bearing coursework in the  
6 public higher education system. So that's a very --  
7 that's a different piece. That's a new piece that got  
8 added with ESSA.

9 As I said before, the same standards must  
10 apply to all students. The only exception to that is  
11 if a state or BIE elected to have alternate  
12 achievement standards, which can be set for students  
13 with the most significant cognitive disability.  
14 That's a small portion of students, and it's designed  
15 for about 1 percent of the tested population.

16 In addition to that, standards for English  
17 language proficiency -- so this is not an academic  
18 content, but, rather, a language proficiency -- must  
19 be adopted (inaudible) speaking, listening, reading,  
20 and writing. And those standards must be aligned to  
21 the academic standards.

22 For whatever reason, I am not -- I ...



1           For whatever reason, I am unable to advance  
2 my slides here.

3           UNIDENTIFIED MALE SPEAKER: (inaudible - off  
4 mic).

5           UNIDENTIFIED FEMALE SPEAKER: (inaudible -  
6 off mic).

7           MS. SIGMAN: Okay. There we go. Thank you.

8           So the next piece of the system is  
9 assessment. And why is assessment important? Well,  
10 it's important because it provides that objective tool  
11 that we can measure students' progress for meeting  
12 those standards. But it also gives us a way to  
13 measure our performance in classrooms, schools, and  
14 districts to make sure that we're meeting the needs of  
15 the students that we serve.

16           And high quality in assessments can help  
17 expose gaps -- achievement gaps, opportunity gaps --  
18 between various groups. And as I said, it can -- it  
19 gives schools and systems information, data, evidence  
20 that they need in order to get better at educating  
21 students and to inform and improve teaching and  
22 learning.

1           Also, requirements under ESSA require that  
2 assessments are administered every year in both math  
3 and reading, language arts to every student in grades  
4 3 through 8 and once in high school. So there's a  
5 choice at which grade in high school those assessments  
6 are given.

7           And in addition to that, a science assessment  
8 must be given once per grade span. And so that grade  
9 span is an elementary grade span, a middle grade span,  
10 and a high school grade span.

11           Our students with disabilities must be  
12 included in the system of assessment. They can be  
13 included in the regular assessments that are developed  
14 for all students, or they can be assessed via that  
15 alternate system that we talked about just a few  
16 minutes ago. But again, that alternate system would  
17 be for a very small percentage of students. And our  
18 students with disabilities really have to be provided  
19 accommodations so that they can be provided access to  
20 that assessment.

21           Assessment -- the most important thing about  
22 assessments is that they have to be aligned with

1 whatever academic standards were adopted. So you  
2 don't want to have an assessment that is not actually  
3 assessing and measuring the standards that we deem  
4 important for students to know and be able to do.

5 And then, again, all students must be tested,  
6 but, minimally, 95 percent of students. And the  
7 system must be assessed.

8 All identified English learners -- so those  
9 students who are in the process of learning English --  
10 must also be assessed in the -- their language  
11 acquisition with that language proficiency assessment.  
12 And English learners must be included, also, in those  
13 academic assessments, although the rules are slightly  
14 different. We're not going to go into them here.

15 And states, BIE, have the choice about how  
16 those assessments may be delivered. And so you have  
17 choices. They can be delivered as projects or  
18 portfolios or extended performance tests, in part, not  
19 in full. So the expectation is that there's a  
20 traditional kind of assessment that is given to  
21 students, but these can be included as well. And you  
22 can have a single sum (ph) of those tests at the end

1 of the year, or you can have multiple interims that  
2 lead to a single (inaudible) score.

3 And then there -- as I said, there -- for  
4 those students with the most significant cognitive  
5 disabilities that would participate in an alternate  
6 assessment, there is a 1 percent cap on that number.

7 So then that brings us to our last piece of  
8 the system, which is accountability. And why is that  
9 important? Well, well-designed systems really set  
10 clear expectations. So we have our standards that set  
11 expectations for what our students must know and be  
12 able to do.

13 Our accountability system sets expectations  
14 for schools and systems so that they know what the  
15 expectations are for them in order to raise the  
16 achievement for all students, not just some, but  
17 really is about creating that equitable system so that  
18 all of our students receive rigorous standards and  
19 receive -- and are able to meet those standards. It  
20 helps them focus their attention and resources on all  
21 of the students that we serve.

22 It really can be a signal, a statement, a

1 priority about what BIE and its stakeholders consider  
2 important. What do we care about? What do we want  
3 accountability to say about our system?

4 And then ultimately, it really provides a way  
5 that it trumps intervention, a way for hints (ph) that  
6 we can intervene when schools or -- just don't meet  
7 the expectations for any group of students.

8 So what does accountability look like under  
9 ESSA? Unlike NCLB, which was very much about a single  
10 assessment -- and it was, really, accountability  
11 systems were driven strictly by assessment -- ESSA has  
12 really opened that up. And it's about using multiple  
13 measures in the system. But there are -- the law is  
14 pretty specific about what those measures have to be.

15 So the first measure is that the academic  
16 achievement has to be measured for all students, and  
17 it has to be measured by proficiency on those yearly  
18 assessments. In just the two subjects, so in ELA,  
19 reading, and math. This is the first indicator that  
20 all states must subscribe to.

21 (inaudible) sorry. My system is having a  
22 little bit of a problem.

1           Secondly is, for high schools, this could  
2 also include a measure of growth.

3           The other academic indicator is number 2 for  
4 elementary and secondary schools, secondary not being  
5 high school. And that means for the measure of growth  
6 that other academic indicator, or it could be some  
7 other measure that might yield a valid, reliable  
8 academic indicator. For example, some states have  
9 science as their other academic indicator for the  
10 school.

11           You must include graduation rates for all  
12 high schools in the system. You must include a  
13 measure of English language proficiency, progress on  
14 English language proficiency.

15           And then number 5 is really up to the states  
16 or BIE. But it's an additional factor about school  
17 quality or student success. And there are lots of  
18 different -- this is up to -- this is a choice, and  
19 you can have more than one. You at least have to have  
20 one. You could -- lots of states are electing to look  
21 at a measure of chronic absenteeism. Some states are  
22 looking at school climate. Other states are looking

1 at college and career readiness, as measured by  
2 perhaps students -- how students are doing on advanced  
3 coursework. So this is really -- gives states quite a  
4 bit of flexibility in what they choose.

5 So those are the five must-have indicators.  
6 And how those indicators play out in an accountability  
7 system, the state does have quite a bit of  
8 flexibility, but there are some requirements under  
9 ESSA. And that is that each of the indicators -- A,  
10 you have to have a system that can differentiate  
11 performance across the schools. But you also have to  
12 do that on an annual basis.

13 But each of the indicators, so the 1 through  
14 4 -- so that's proficiency on ELA, math; it's that  
15 other academic indicator; it's the graduation rate and  
16 the English proficiency -- those four indicators have  
17 to be given substantially (ph). And together, those  
18 four indicators must be -- have much greater weight  
19 than the indicator in 5, which, remember, that was  
20 that flexible indicator around school quality or  
21 success.

22 And you have to have one from both, at least

1 on assessments and graduation rates, right? So that's  
2 a must. You have to think, where do we want students  
3 to be -- our groups of students to be in the long  
4 term, right? And the expectation is that you'll  
5 expect more progress from some groups than others that  
6 are further behind.

7 And then part of that accountability system,  
8 as I said, is intervening. How can we determine where  
9 we need to intervene? And so this slide talks about  
10 how we identify schools that may need intervention.  
11 And this is a slide that I -- the U.S. Department of  
12 Ed has provided. And I think it's a complicated  
13 system, but I think this slide tries to make it at  
14 least understandable.

15 There are categories of identification. And  
16 so that first blue box in the left-hand corner is  
17 called comprehensive school improvement. And that --  
18 or comprehensive support and improvement, sorry. And  
19 those are identified by the lowest-performing 5  
20 percent of Title I schools. So it's a defined number,  
21 and it's defined by the lowest-performing.

22 Then in addition to that, you also have to



1 identify any high school that has a low graduation  
2 rate. That -- those are musts. You can provide  
3 additional support to Title I schools, but don't exit  
4 their comprehensive status.

5           You also can identify schools with  
6 consistently underperforming subgroups. That's  
7 targeted support. And so -- and then you also have  
8 additional targeted support for schools that are not  
9 necessarily Title I schools. And then states can  
10 choose additional categories if they'd like to  
11 identify schools for intervention.

12           But the blue and the green are -- those are  
13 the must-do's, according to law. The blue apply to  
14 Title I schools only, and the green apply -- even  
15 identify from the whole pool of schools.

16           So this identification of comprehensive  
17 support and improvement, also known as CSI, as we  
18 said, it's based on the performance of all students,  
19 the lowest-performing 5 percent of Title I, and all  
20 schools that fail to graduate more than 67 percent, or  
21 all high schools that fail to graduate more than 67  
22 percent of their students. And those are identified

1 for comprehensive support. That identification is to  
2 occur every three years.

3 And secondly, that targeted support and  
4 improvement is based primarily on the performance of  
5 subgroups. So it's identified where particular  
6 subgroups are underperforming. And in this case,  
7 schools have to implement -- are responsible for  
8 implementing interventions within a set period of  
9 time. And this identification needs to occur  
10 annually, but on a state-identified timeline.

11 And then finally, additional targeted support  
12 and improvement, this is also about the performance of  
13 subgroups. And the methodology that a state or BIE  
14 would use to determine this would have to be the same  
15 methodology that you use to determine the lowest-  
16 performing CSI schools. But it must be based on the  
17 performance of one or more subgroups. And again, you  
18 can identify these from either all of the schools or  
19 those identified as targeted support.

20 And again, this is not limited to Title I  
21 schools. So there's quite a bit more identification  
22 in here. So Title -- this is about Title I funding,

1 essentially, as in the accountability system,  
2 obviously, encompasses all schools and all students.

3 So as I said at the beginning, ESSA, ESEA, at  
4 its core, is about education excellence and equity.  
5 And so for BIE, 23 states, this system, making sure  
6 that we have standards and assessments and  
7 accountability is really about ensuring that equity --  
8 equity for all of our students served by BIE and in  
9 our BIE states.

10 So that's the end of the presentation. I  
11 just want to -- for your reference. And this is  
12 available to you on those links that Juanita was  
13 talking about there in the agenda presentation.

14 But for your reference, there are several  
15 slides, six slides, in the back that really do a  
16 comparison between NCLB and ESSA around the standards,  
17 assessment, and accountability. This is adapted from  
18 an ASCD document. But for those of you who have lived  
19 in the NCLB time, it's -- it might be a nice reference  
20 for you so that you can take a look at kind of how the  
21 world has changed in terms of assessment -- standards,  
22 assessments, and accountability.

1           And with that, I will stop sharing my screen.

2           Did that take the screen off, Juanita?

3           MS. MENDOZA: Yes, it did. Thank you so  
4 much, Deb.

5           MS. SIGMAN: All righty.

6           MS. MENDOZA: So we're supposed to move into  
7 the BIE proposed rule presentation. And I will be  
8 turning it over to Dr. Hamley.

9           But first, I want to make sure everybody can  
10 hear me.

11          Deb, could you hear me?

12          MS. SIGMAN: Yes, I can hear you just fine.

13          MS. MENDOZA: Okay. Okay. Great. And let's  
14 see. Give me a moment.

15          Okay. Let's go ahead and get started.

16          DR. HAMLEY: Hello, everybody, again. This  
17 is Jeff Hamley, Associate Deputy Director of Bureau of  
18 Indian Education.

19                I wanted to acknowledge Sue Bement. She --  
20 she's joined us. Sue was the designated federal  
21 official for the rulemaking committee.

22                So I'll make this presentation. And then

1 afterwards, we'll open it up to questions.

2 So this presentation --

3 MS. MENDOZA: Hold on. Where -- we got some  
4 feedback here that we can't see the presentation.

5 DR. HAMLEY: Okay.

6 MS. MENDOZA: Let's see.

7 DR. HAMLEY: You have to unshare it ...

8 MS. MENDOZA: I think so. That's what --  
9 share.

10 DR. HAMLEY: Or not share.

11 MS. MENDOZA: And then try that.

12 DR. HAMLEY: Regina (ph), can you see it now?

13 REGINA: Yes, but just through the full  
14 screen on the presentation.

15 MS. MENDOZA: That's what I was trying to do.

16 DR. HAMLEY: Well, while she's doing that, so  
17 this presentation outlines the vast rule that was  
18 published on the Federal Register Notice. And I'll  
19 cover the major points.

20 Oh, do you ...

21 MS. MENDOZA: Let's just go ahead and --

22 DR. HAMLEY: Okay. So we'll proceed. She's

1 working -- Juanita's working on that.

2 The proposed rule is explained by CFR Part  
3 30. ESSA Section 8204 requires the Secretary of the  
4 Interior to have requirements for standards,  
5 assessments, and accountability system that apply to  
6 the BIE-funded schools on a national, regional, or  
7 tribal basis, as appropriate, taking into account the  
8 unique circumstances and needs of such schools and the  
9 students served by the schools.

10 I'm reading this literally from the law  
11 because it's important.

12 Such requirements shall be consistent with  
13 the ESSA Section 1111, as Deb outlined. And the  
14 requirements should be -- well, shall be implemented  
15 pursuant to regulations requiring a negotiated  
16 rulemaking process.

17 So as a federal agency, we are required to  
18 undergo rulemaking to develop our standards,  
19 assessments, and accountability system.

20 MS. MENDOZA: Next slide.

21 DR. HAMLEY: The timeline for the rulemaking  
22 was, in September 2017, we began the process of

1 establishing the committee.

2 In January 2018, the administration directed  
3 the BIE to restart the process of establishing the  
4 committee.

5 In August 2018, the Bureau of Indian  
6 Education established a committee, an ongoing  
7 committee, that -- biweekly and then weekly on  
8 organization of the committee and conducting the rule  
9 -- the rulemaking sessions.

10 And from September 2018 to March 2019, the  
11 committee met four times.

12 And in April 2019, the committee report was  
13 submitted to the BIE director, following the  
14 consultation meetings.

15 And January -- June 10th -- excuse me --  
16 2019, a proposed rule was published in the Federal  
17 Register. And that rule, if you don't have it, is  
18 available on our website, bie.edu. On the right side,  
19 it has Rulemaking Committee. If you click on that,  
20 there's a full page of documents.

21 Okay. The committee -- oh, go back.

22 MS. MENDOZA: You want to go back?

1 DR. HAMLEY: Yeah. The committee was  
2 comprised of 17 members -- 12 primary nonfederal; and  
3 2 alternates, nonfederal members. So there were 14  
4 nonfederal members. And then there were two federal  
5 members and one alternate federal member. And all  
6 that information is contained in the various Federal  
7 Register Notice as well, who they were.

8 So the nonfederal members reflected a wide  
9 variety of stakeholders, geographic locations, and  
10 included administrators, teachers, parents, and school  
11 board representatives.

12 Major recommendations of the committee --  
13 number one, honor tribal sovereignty in education.  
14 Two, create a unified system of requirements for  
15 standards, assessments, and accountability system.  
16 Three, recognize or acknowledge or -- or actually  
17 codify the right of tribal governing bodies and school  
18 boards to waive and in whole or part the Secretary's  
19 definition of standards, assessments, and  
20 accountability system. And four, to create  
21 requirements for standards, assessments, and  
22 accountability system similar to states which are



1 consistent with Section 1111 of the ESSA.

2 The committee also wanted to create a  
3 standards, assessments, and accountability plan --  
4 we'll talk more about that -- i.e., a state plan for  
5 the Bureau. And they also wanted ongoing stakeholder  
6 engagement and periodic review of the contents of the  
7 SAAP. We call it the SAAP. I -- our -- also, we  
8 still refer to it as the state plan sometimes.

9 They wanted to adopt standards, assessments,  
10 and Tribal Civics, which would be phased in over a  
11 period of time. And they wanted to adopt science as  
12 an academic indicator. So we'll talk a little bit  
13 more about these as we go.

14 MS. MENDOZA: So we're on --

15 DR. HAMLEY: It's the proposed rule.

16 MS. MENDOZA: Okay. Science?

17 DR. HAMLEY: Back. Back. You're getting way  
18 ahead. One more back.

19 MS. MENDOZA: Sorry.

20 DR. HAMLEY: Six, yeah. Six -- slide six,  
21 Proposed Rule. The committee recommended that the  
22 rule include a requirement that BIE have the

1 standards, assessments, and accountability plan, a  
2 SAAP, so-called state plan.

3 Now, as Deb explained, the Bureau is not a  
4 state. So in ESSA, states are required to do a state  
5 plan. And so that's not a requirement of the Bureau,  
6 according to the law, or the statute. However, the  
7 Bureau and the committee thought this was a good idea  
8 for the Bureau to have a so-called state plan, which  
9 would ensure transparency and consistency to  
10 stakeholders similar to the state plans required by  
11 states.

12 Now, the Bureau had already a few years  
13 before decided that it would do a state plan because  
14 we needed a means by which to communicate. What are  
15 the Bureau's standards, assessments, and  
16 accountability system? And so we had already adopted  
17 that, and the committee realized that. But they  
18 wanted to codify it into law.

19 So I guess one question that came up: Does  
20 the state plan actually need to be specified in the  
21 rule since the Bureau had already decided that it will  
22 do that?

1           There's also one other means to create a  
2 requirement. And in ESSA, the Department of the  
3 Interior/BIE and the Department of Education are  
4 required to engage in a memorandum of -- an agreement  
5 that we also call an MOA, but a memorandum of  
6 agreement. And under No Child Left Behind, I believe  
7 there was three of them. So that would be another  
8 vehicle to specify that the Bureau do a state plan.

9           MS. MENDOZA: Next slide?

10          DR. HAMLEY: Yeah, go ahead.

11          Stakeholder engagement. The committee  
12 recommended the rule require ongoing and meaningful  
13 engagement with stakeholders regarding requirements.  
14 But by putting it into a regulation, which is law, it  
15 would make this a requirement. And the Bureau -- the  
16 Department of Interior, as all federal agencies, have  
17 a tribal consultation policy.

18          So I guess it raised questions about, you  
19 know, what is the rule of the regulation for  
20 stakeholder engagement versus the Department of  
21 Interior requirement for -- to engage in meaningful  
22 tribal consultation. So that was a question that the

1 committee did not address.

2           However, in BIE's plan to develop a state  
3 plan, we included in that that we would undergo  
4 stakeholder engagement. So we will ask them  
5 regardless of whether it's in a rule or even the MOA.

6           Proposed rule and Tribal Civics. The  
7 committee recommended that the rule require  
8 implementation of standards and assessments in a  
9 subject to be called Tribal Civics that would include  
10 topics related to tribal sovereignty, self-  
11 determination, treaty law, and other topics. So  
12 that's -- that proposal would require that Tribal  
13 Civics be required nationally in all BIE-funded  
14 schools. Although the rule didn't specifically say  
15 that, but that's the implication.

16           And I guess some of the discussion in the  
17 committee and some of the discussions since is in the  
18 consultations that we're doing, is how does that  
19 requirement that it be implemented across the Bureau  
20 system conflict with work that tribes have already  
21 engaged in, in developing their own curricula and  
22 teaching in schools about their tribes, so their

1 tribal histories. And so another question that  
2 recently came up is: How does this affect the  
3 graduation requirements in particular states where  
4 they're required to meet state requirements for  
5 graduation and they already teach civics in some form.  
6 So there were questions raised about this.

7 Proposed rule, science. The committee  
8 recommended the rule require the incorporation of  
9 science in the accountability system. Congress -- as  
10 Deb explained, science is required by Congress in  
11 ESSA. So it's required in all the schools. It's  
12 taught -- it's required by grade band (ph) rather than  
13 grade level. And so it's already a requirement.

14 But the questions are, which aren't really  
15 defined in -- by the committee: What would be the  
16 effect of such requirements in terms of, you know,  
17 science standards, curricula, science labs, you know,  
18 all of those topics? And it would also elevate  
19 science to -- possibly to an accountability -- to a  
20 weight and accountability indicator.

21 And so for some schools, that might be  
22 challenging if they're already challenged with

1 proficiency in literacy and in numeracy. Science  
2 would require, you know, a high -- a somewhat high  
3 level of proficiency in those areas. And it may  
4 affect the overall status of the school in terms of  
5 their determination if it were elevated to an  
6 indicator.

7 So those questions weren't fully answered.  
8 But everybody agreed, you know, science is important.  
9 And that's why Congress has made it a requirement.

10 Proposed rule, Tribal Civics, and science as  
11 a school quality school -- student success indicator.  
12 So the committee recommended that the rule requiring  
13 Tribal Civics and science be incorporated as school  
14 quality, student success indicators.

15 So I guess the question on that is: What  
16 would be the impact of doing that? Indicators are  
17 weighted. So then those two indicators would become  
18 part of the overall accountability determination of a  
19 school and would be required in all schools.

20 It also creates the impression (ph) of,  
21 generally, this -- you know, if you look at what all  
22 the states have done on their state plans, they have

1 selected a few school quality, student success  
2 indicators. But this puts the Bureau in the position  
3 of already having two required ones. So the question  
4 is: How many more, whether it was chronic absenteeism  
5 or, you know, some other topic, would be added in  
6 addition? And would there be room for additional  
7 school quality, student success indicators?

8 And generally, the choice of school quality,  
9 student success indicators is left to the  
10 superintendent, you know, guidance perhaps from, you  
11 know, their stakeholders, obviously. But in this  
12 case, it would codify it in the law and, you know,  
13 would not be changeable unless it went through  
14 negotiated rulemaking again, which is a very complex  
15 process.

16 So generally, states -- there's flexibility  
17 in states to make these selections, to change them  
18 over time if they find out that they're not the ideal  
19 school quality, student success indicator. Or if they  
20 want to weight them differently and make those  
21 decisions, that flexibility is left to the  
22 superintendent. In this case, it would be, you know,

1 a decision by the Bureau and the Secretary of the  
2 Interior. But by codifying it in law, it makes it  
3 permanent.

4 The page got away from me.

5 Proposed rule, Native American languages.  
6 The committee recommended that the rule included  
7 affirmation of the rights to develop and implement  
8 academic standards and academic assessments in Native  
9 American languages. The committee -- everybody on the  
10 committee agreed that Native American language is  
11 important. But it was also acknowledged that there's  
12 already a law, Public Law 101-477, the Native American  
13 Languages Act, on this topic. And so the question  
14 was: How does the fact that there's already statutes  
15 on -- independent statutes on this topic fit into  
16 these recommendations for standards, assessments, and  
17 accountability system?

18 Proposed rule on states requirement option.  
19 The committee had a discussion about, during this  
20 transition period before the -- while the rule is  
21 being adopted and the Secretary actually determines  
22 what standards, assessments, and accountability



1 system, recognizing that may take a little while, that  
2 there be an opt-in provision where, if a school wanted  
3 to -- well, I'll just read it. "The committee  
4 recommended that the rule allow tribal governing  
5 bodies, school boards, the option to continue to use  
6 state requirements for standard assessments where  
7 state agrees and the tribal governing body has  
8 notified Secretary of such an intention."

9           So there was interest in that. It was agreed  
10 upon. But it also left unanswered questions. How  
11 does such an opt-in fit in with the statutory  
12 requirement for a waiver? Because the waiver already  
13 is embedded in ESSA or tribal governing bodies and  
14 school boards to waive all or part of the Secretary's  
15 system. And this seems to circumvent that process.  
16 So there's a question of, you know, what -- how are  
17 those two regulations, those two options, balanced.

18           Proposed rule waivers and alternative  
19 proposals. The committee recommended that the rule  
20 input timelines and responses to proposals for  
21 alternative requirements to ensure timeliness and  
22 transparency in the review process, including updates

1 every 30 days. So it -- there have been -- there were  
2 two waivers under No Child Left Behind with the  
3 Miccosukee Indian Tribe of Florida and also the Navajo  
4 Nation. And those processes took a number of years.  
5 So the committee was concerned about -- that there be,  
6 you know, transparency and some official way to  
7 register progress every 30 days.

8 So -- but I guess the concern was -- about  
9 this is that it creates bureaucratic requirements that  
10 the two parties, the Bureau who's providing technical  
11 assistance and the tribe, essentially stop work to  
12 file an official notification of what the status of  
13 the work is. And our experiences with the work that  
14 goes on, it becomes very fluid, the meetings. The  
15 communications may initially be monthly, or whatever.  
16 But as it moves on, it becomes weekly and daily.

17 So it just was seen as maybe an unnecessary  
18 bureaucratic requirement. The communication is  
19 already ongoing by regular -- at least it was in the  
20 case of Navajo and Miccosukee. I mean, I know we have  
21 interest at this point from other tribes, and  
22 technical assistance is just getting off the ground

1 with those. But that was a concern about this one.

2 Additional proposed section. Next slide.

3 It's number 15.

4 Support and improvement -- comprehensive

5 support and improvement. Now, the Section 1111

6 contains a section on support and improvement.

7 However, the committee did not comment on this. And

8 so we're relying basically upon what's in ESSA.

9 But the section in ESSA is fairly clear. So

10 it's not certain that there needs to be a rule on

11 support and improvement. The committee could have

12 acted on this, but they didn't choose to do so.

13 Here is the consultation schedule. We're at

14 the second from the bottom, the webinar today.

15 There's one more left on July 30th -- Tuesday, July

16 30th -- at Wa He Lut School in Olympia, Washington.

17 So that will be the final consultation.

18 So we are seeking comments. Well, no. This

19 is just additional information. Here are the websites

20 for additional information. And there are also -- the

21 information is also on our website at [bie.edu](http://bie.edu).

22 I guess -- so the main point is that the

1 deadline for proposed rule comments is August 9th,  
2 2019, midnight, Eastern Time. So there are two  
3 methods to submit. You can use an email or online at  
4 regulations.com. The email address is  
5 consultation@bie.gov. And the online regulations is  
6 go to www.regulations.com -- .gov -- excuse me.

7 So we solicit comments via those ways --  
8 methods or here today. They can be oral or written,  
9 so -- and comments from everybody, the public.

10 Next steps after this is that the comments  
11 will be reviewed. They'll make changes to the  
12 Register as appropriate based on the comments. And  
13 the final rule will be published in the Federal  
14 Register. And I believe 30 days after that  
15 publication, it becomes a final rule.

16 Did you remember (inaudible - off mic).

17 MS. MENDOZA: So thank you, everyone. And  
18 thank you for your patience with the technical issues.

19 I want to go ahead. There were some chats  
20 that came through during the presentation. So I  
21 wanted to just see -- let's see. Let me go ahead and  
22 read the comment that Mr. Moran said.

1           Or Mr. Moran, if you would like to speak  
2 that, that is fine, too.

3           MR. MORAN: Hello?

4           MS. MENDOZA: Yes. Thank you.

5           MR. MORAN: Hey, yeah.

6           MS. MENDOZA: Thank you.

7           MR. MORAN: Thanks.

8           MS. MENDOZA: If you could give your  
9 affiliation, that would be helpful. Thank you.

10          MR. MORAN: Sure. Just real quick. I don't  
11 want to take too much of your time. My name is Joe  
12 Moran. I work for the South Dakota Department of  
13 Education. And obviously, we have a lot of back-and-  
14 forth between private, public, BIE tribal out here in  
15 South Dakota. So this was a really interesting call  
16 for me to understand some of those nuances.

17          The comment that I made was I do appreciate  
18 the recognition of self-determination and tribal  
19 sovereignty that were brought up, although it might  
20 not be as strong as an issue where tension across the  
21 United States. Out here, it's an issue that I  
22 actually engage in regularly. And in a recent civics

1     summit that we out here in South Dakota, we kind of  
2     navigated some of those issues in terms of what does  
3     statewide civics mean and to whom does it mean.  
4     There's -- you know, many of our citizens here across  
5     the state have dual citizenship. And what does that  
6     mean? How does that interact with their communities  
7     and their civic engagement at home?

8             So it was a really interesting piece. And  
9     when we start to interlay that and the intrinsic  
10    motivators behind civics, the discussion of  
11    standardized testing becomes very gray. So it's an  
12    interesting pool that you guys are starting with. You  
13    know, many of our states started with math, ELA, and  
14    then just kind of kept plugging along. But you guys  
15    are kind of starting with some interesting topics.

16            MS. MENDOZA: Thank you.

17            Do you want to respond? Does anybody want to  
18    respond?

19            (No audible response.)

20            MS. MENDOZA: I'm checking to see if there  
21    are any more comments in the chatroom. Nothing?

22            So we can go ahead and open it up to

1 questions from other attendees. Just if you could,  
2 again, say your name; if it's a complex name, spell  
3 it; and give us your affiliation.

4 MR. MORAN: Hi. This is Joe again.

5 MS. MENDOZA: Thank you, Joe.

6 MR. MORAN: Yeah. I just -- I might have  
7 missed it as I had to bounce out for a little bit.  
8 What -- is there any understanding of (inaudible) how  
9 BIE's considering (inaudible) --

10 MS. MENDOZA: I'm sorry. I'm --

11 MR. MORAN: -- any progress in terms of what  
12 tests you guys are considering developing from the  
13 ground up?

14 AUTOMATED VOICE SYSTEM: Muted.

15 MR. MORAN: Hey, can you hear me now?

16 AUTOMATED VOICE SYSTEM: Unmuted.

17 MS. MENDOZA: Hello. Hello. Can people hear  
18 me?

19 UNIDENTIFIED FEMALE SPEAKER: Yes. I can --  
20 we can hear you, Juanita.

21 MS. MENDOZA: Okay. Thank you.

22 Mr. Moran, if you could ask your question

1 again. Sorry about that.

2 MR. MORAN: No, that's okay. Can you guys  
3 hear me?

4 MS. MENDOZA: Yes.

5 MR. MORAN: Okay. So I was just wondering  
6 (inaudible).

7 MS. MENDOZA: If folks could put their phones  
8 on mute, that would be very helpful.

9 UNIDENTIFIED MALE SPEAKER: (inaudible - off  
10 mic).

11 MR. MORAN: Can you hear me now?

12 MS. MENDOZA: Yes, we can.

13 MR. MORAN: Okay. So my one question is: Is  
14 there something in mind that BIE is moving toward in  
15 terms of test development? As far as I understand,  
16 you guys are part of the Smarter Balanced Consortium.  
17 Is that something you're working on? Or -- and maybe  
18 that's way in the future. I just didn't know if you  
19 guys had any idea where you were headed, if you were  
20 developing from the ground up, or joining forces with  
21 the existing structure.

22 DR. HAMLEY: This is Jeff Hamley. Well,



1 we're -- we definitely have been in internal  
2 discussions and then, also, in the Tribal Consultation  
3 process. And also, the committee that -- I mean the  
4 rulemaking meetings that happened, that was a topic of  
5 discussion.

6 But for the purpose of the rule, we're just  
7 establishing a legal framework consistent with 1111  
8 that we will adopt challenging academic standards and  
9 assessment. So we've been having discussions, but it  
10 won't be part of the rule. It won't be confined to  
11 the rule. But we have a group that's working on that.  
12 Dr. Tamarah Pfeiffer is the Acting Chief Academic  
13 Officer, is leading that group.

14 About -- and so we're actively pursuing, you  
15 know, what we will do regarding adoption of standards  
16 and assessments at this point. So -- but we're not  
17 ready to announce any kind of decision.

18 MR. MORAN: Gotcha. I appreciate the  
19 clarification.

20 MS. MENDOZA: Do the attendees have any  
21 additional comments? Do ...

22 UNIDENTIFIED MALE SPEAKER: No, I don't have

1 any.

2 MS. HAINES: This is Bonnie Haines --

3 MS. MENDOZA: Hello.

4 MS. HAINES: -- Education Specialist with the  
5 Sisseton-Wahpeton Oyate Tribal Education Department,  
6 Agency Village, South Dakota.

7 MS. MENDOZA: Thank you, Bonnie.

8 MS. HAINES: To take you back off of what Joe  
9 was asking -- and I know that it was said that Tamarah  
10 and the committee are working on this -- and having  
11 spent the last two and a half years working on  
12 standards for our tribe to use as a part of moving  
13 towards an accountability plan for our own tribe, it  
14 seems to me that we are under an extreme deadline, if  
15 that is not correct, that we have to have something in  
16 place by the start of the '20-'21 school year.

17 MS. MENDOZA: You want to --

18 DR. HAMLEY: Yeah. This is Jeff Hamley.

19 Tamarah, feel free to jump in at any time.

20 Yes. We are looking towards the '20-'21  
21 school year.

22 MS. HAINES: So is that legally required, or

1 is that just what you all are hoping to have in place?

2 DR. HAMLEY: Interesting question. Yes.

3 It's by statute. It's -- for states -- Deb, help me  
4 on this -- it was required in -- I don't know the year  
5 -- '17-'18 maybe. But the Bureau was given an  
6 extension from the Department of Education. And but  
7 now, as it stands, it's '20-'21 that we would  
8 implement our new standards, assessments, and  
9 accountability system.

10 So we would have a school year '19-'20 to do  
11 the work -- to do that, to acquire -- to adopt and  
12 acquire standards and the assessments and to put  
13 together the accountability system, and also to get  
14 stakeholder input into all of that.

15 So we're -- we are on a tight timeline. But  
16 as we said before, I mean, we -- even though we're  
17 not, you know, publishing in the paper everything  
18 we're doing, we're -- we are actively discussing this  
19 internally, you know, about what the options are and  
20 what we might do. So I think after the final rule is  
21 published, we will -- you know, we will have some  
22 movement to make direct about what we're going to do.

1 But you're right. The timeline is tight.

2 MS. HAINES: Okay. Thank you, Jeff.

3 So I guess that lends me to kind of what my  
4 comment was going to be and the fact that knowing that  
5 the development of standards and then selecting an  
6 assessment for that -- for those particular standards  
7 is not something that's easily done in a one-year time  
8 frame. So it's probably, you know, incorrect for me  
9 to make an assumption, but I would assume that we're  
10 probably -- we being the Bureau of Indian Education --  
11 are going to be looking at something that's already in  
12 place, be it Common Core as the standards, be it  
13 Smarter Balanced or PARCC for the assessment. Is that  
14 a correct assumption?

15 DR. HAMLEY: Well, we're -- so I think it --  
16 yeah, that could be an assumption. But what we would  
17 like to do is that we will go out -- as a federal  
18 agency, we're going to have to go out how -- at least  
19 for the assessments on -- for a full and open  
20 solicitation. So we're going to let vendors propose  
21 to us, you know, what they have.

22 And you know, the -- in the world of

1 assessments, I mean, initially, there was the  
2 consortia developments and the standard and Smarter  
3 Balance, in part. But things have evolved, you know,  
4 much beyond that now where there is monetized (ph)  
5 systems of assessment. Some of them draw from PARCC;  
6 some draw from Smarter Balance. And there are other  
7 vendors.

8           So there are things out there that have --  
9 that we wouldn't necessarily have to develop  
10 completely from scratch. We could, you know, put  
11 together. But we'll -- we're going to get input from  
12 our vendors to do that.

13           And just as an aside, I'll mention that there  
14 is another federal school system, and that is the  
15 Department of Defense. It's called DoDEA, Department  
16 of Defense Education Agency. And so when they adopted  
17 a few years ago their standards and assessments, they  
18 adopted standards which what a lot -- which is what a  
19 lot of the states have done, which became a modified  
20 Common Core. It's not Common Core, but it's -- they  
21 have a different name for it. I think they call it  
22 College and Career Ready Standards. But it was a

1 modified system based on existing standards that were  
2 out there, which we could do, hypothetically.

3 And then they put out on the street because  
4 they're a federal agency, presumably, you know, what  
5 vendors could provide. And in the end, they selected  
6 PARCC, you know.

7 So we'll have to go through a similar  
8 process. But things have evolved from even when they  
9 did it, you know. We have -- I won't mention any  
10 vendors, but there's several other vendors out there  
11 that are providing assessments.

12 So I think we have very viable options out  
13 there when we do get the solicitation out on the  
14 street. So I think that, you know, things may  
15 progress, you know, more quickly than, you know, you  
16 might assume.

17 MS. HAINES: Thank you, Jeff. I appreciate  
18 that. I was not aware, I guess, of all of those  
19 options, so I appreciate you sharing that. Thank you.

20 DR. HAMLEY: Okay. You're welcome.

21 MS. MENDOZA: So folks, I have the  
22 presentation up. So if you need me to go back to a

1 slide, just ask me. But we -- we're still open to  
2 hearing comments.

3 There's a question from Cherie Farlee. She's  
4 asking: It is my understanding the schools will  
5 follow the state for this school year; is that  
6 correct?

7 DR. PFEIFFER: Cherie, I've already sent out  
8 something through the ADDs (ph) that speaks to the NRM  
9 and the status quo that we're going to be in for '19-  
10 '20. And I'm also, state by state, sending out those  
11 letters as well to acknowledge to the state.

12 So Joe, I just had a meeting this morning  
13 with Becky (ph) and Roxanne (ph) and shared that  
14 letter as well.

15 MS. MENDOZA: For the court reporter, that  
16 was Dr. Tamarah Pfeiffer.

17 DR. HAMLEY: Cherie, does that answer your  
18 question?

19 MS. HAINES: This is Bonnie Haines again.

20 MS. MENDOZA: Yes, please.

21 MS. HAINES: I'm seeing in the Part 30 at the  
22 end it's talking about the annual report card, which

1 is something that, obviously, BIE has been very  
2 neglectful of for the last couple of years. Do we  
3 know -- I mean, we've got to have things in place,  
4 obviously, before we determine what is going to be in  
5 that annual report card. But are there certain things  
6 that mandatorily have to be in there, like attendance,  
7 graduation rate, the number of students enrolled and  
8 what their demographic breakdown is? What all are we  
9 going to be anticipating as a result of this report  
10 card?

11 DR. HAMLEY: Deb, did you want to take that?  
12 I can if you don't want to.

13 MS. SIGMAN: No. I -- I'm sorry. I was  
14 unmuting.

15 So the -- what's required in the report card  
16 is in statute. So it's really -- it's not -- I  
17 wouldn't say it's outside of the scope, but it  
18 certainly is there, you know. You will have to  
19 continue to report the things that you have reported.  
20 I don't have the list in front of me on the call. I  
21 can look for it quickly and send a text to everyone.

22 DR. HAMLEY: Right. And that's what I --



1 MS. SIGMAN: Do you want to add anything?

2 Jeff --

3 DR. HAMLEY: That's why I --

4 MS. SIGMAN: -- did you --

5 (Crosstalk.)

6 DR. HAMLEY: That's why I punted to Deb  
7 because I don't have the list in front of me. But it  
8 is a defined list. It's -- it'll be -- it's clear to  
9 everyone in the law what needs to be included.

10 But I mean, just generally, off the top of my  
11 head, now, it's changed a little bit from No Child  
12 Left Behind to ESSA. I think teacher qualifications  
13 is a major change. And -- but it's proficiency in  
14 English language arts and math and science and also by  
15 subgroup, graduation rates for high school. It's  
16 participation rates in those assessments. And there  
17 are probably another dozen things. But off the top of  
18 my head, I don't recall them all right now.

19 MS. HAINES: So is there in the law -- and so  
20 I'm sorry. I don't have the law in front of me. But  
21 is there in the law something that says when this has  
22 to be out and given to the schools and the states?

1 Or, you know, it's -- the BIE is a state. But when  
2 does it have to be disseminated through the schools?

3 DR. HAMLEY: Well, in -- this actually came  
4 up in the last consultation at Bloomington. And I  
5 know from my memory of No Child Left Behind is the  
6 language is -- I'll paraphrase -- but it's by the  
7 beginning of the following school year. So Congress  
8 didn't set a definite date, but they want it  
9 available, you know, at the beginning of the school  
10 year so the school can take into consideration what  
11 their level of determination is and have information  
12 about how they've done. And also, the community will  
13 know.

14 But so I don't know if the ESSA and -- I'll -  
15 - well, we'll check -- I'll check on that -- has the  
16 exact same language. But that's the intent, is that  
17 the letter of determination be delivered to the  
18 schools, you know, before the beginning of the school  
19 year, so sometime, you know, in September or August,  
20 and that a report card also be published on a timely  
21 basis. So I have to admit I don't know the exact  
22 language in the statute.

1 MS. SIGMAN: So Jeff, I just posted a link to  
2 all the requirements, including timelines and so  
3 forth, that was put out by U.S. Department of Ed after  
4 ESSA. So folks can take a look at that. I just  
5 posted it in the chat.

6 DR. HAMLEY: Okay. Thanks, Deb.

7 MS. MENDOZA: Thank you, Deb.

8 MS. SIGMAN: You're welcome.

9 MS. HAINES: Thank you. I think that answers  
10 my question.

11 DR. HAMLEY: Now, can I just say, Bonnie,  
12 that, I mean, reflecting on No Child Left Behind, I  
13 mean, one of the -- and you're absolutely right. The  
14 Bureau has not been able to make any kind of timeline  
15 at all both in the letter of determinations and the  
16 report cards. And -- but the challenge for the Bureau  
17 has been -- was the requirement that we use a 23-part,  
18 you know, accountability system.

19 So you know, in the beginning of No Child  
20 Left Behind, you know, there were -- there was great  
21 range -- it was basically state assessments. And then  
22 it became -- there were fewer assessments with PARCC

1 and Smarter Balance. But now we've moved back to a  
2 lot more state assessments.

3 But in all -- under No Child Left Behind and  
4 currently today, you know, the -- those assessments  
5 are the states'. They're not the Bureau's. So we  
6 have -- it's a challenge for us to get the assessment  
7 scores from the state or the states' vendors. Or in  
8 some cases, the state doesn't want to give it to us,  
9 so we have to go to the schools.

10 So there's always, you know -- for states to  
11 get their assessment scores in the spring, it's --  
12 usually, they can, you know, have an arrangement with  
13 their vendor that, if the testing is done, complete,  
14 by May 30th, you know, that at some point in June, a  
15 few weeks later -- this is all hypothetical -- that  
16 they will get the assessment scores, you know. So  
17 then they can begin the determinations and the  
18 creation of the report cards.

19 But for us, it's like we're spending the next  
20 several months, usually, trying to collect the  
21 assessments. And I know in one case, you know, it  
22 took, literally, years to get the assessment data. So

1 for us, it's a huge challenge under the 23-part  
2 assessment system. And that's why, you know, this  
3 discussion in the rulemaking committee that the  
4 committee agreed to adopt a unified system where the  
5 Bureau would have one standards, one assessments in  
6 each subject. But that -- we -- and the implication  
7 is that we would also control the assessments. We  
8 would administer them. We would have our vendor.  
9 We'd be able to begin to meet these critical timelines  
10 for delivering letters of determination and also to  
11 post to the public website the report cards.

12 So you know, that's something we advocated  
13 for, and the committee agreed. So we are moving in  
14 that direction. At least that's what the committee --  
15 now, we are acknowledging, you know, always that the -  
16 - in statute, Congress put the right of tribal  
17 governing bodies and school boards to waive in full or  
18 part the Secretary's, you know, accountability system.  
19 So we're acknowledging that at every step. And we  
20 realize that that may happen, and that may change the  
21 concept of a unified system.

22 But at this point, we're hoping to put a

1 unified system into the rule. But also equally, it's  
2 already in statute that a tribe can waive that. So if  
3 a tribe doesn't like the unified system, they can  
4 submit a waiver, and it will be reviewed by the  
5 Department of Education and the Department of Interior  
6 and then decided upon.

7 MS. HAINES: Thank you, Jeff.

8 MS. MENDOZA: Remember, folks, if you would  
9 like to submit a question via the chat, please feel  
10 free to do that as well.

11 DR. HAMLEY: Is there -- while people are  
12 thinking of any questions, but is there anything  
13 that's unclear that you want clarification on? And I  
14 realize that you haven't had a chance, probably, to --  
15 many to delve into the rule. And hopefully, following  
16 this, you will, and then you'll prepare your comments  
17 for the -- for public submission. But at this point,  
18 is there -- if there's anything that you want  
19 clarification on, please feel free to speak up.

20 MS. MENDOZA: Hello. Did someone just join?

21 MR. WILLIAMS: Yes. This is Thomas from the  
22 (inaudible). I keep fading in and out. So sorry.

1 MS. MENDOZA: No problem. Could you spell  
2 your last name, please?

3 MR. WILLIAMS: W-I-L-L-I-A-M-S.

4 MS. MENDOZA: Okay. Thank you.

5 MR. WILLIAMS: No problem.

6 MS. MENDOZA: So for -- if you have just  
7 joined, we went through several presentations. And so  
8 we're at the point where we've opened it up to the  
9 attendees to submit -- you know, submit comments or  
10 ask for clarification or questions.

11 We have the PowerPoint. I have that  
12 available. I can go back to slides, if necessary. So  
13 ...

14 MR. WILLIAMS: I would have to apologize to  
15 everyone. I'm not at my desk. I'm just listening in  
16 on my phone as I'm driving back to the office.

17 MS. MENDOZA: Okay. Appreciate it. Thank  
18 you.

19 MS. HAINES: This is Bonnie again.

20 MS. MENDOZA: Hi, Bonnie. Thank you.

21 MS. HAINES: Looking at 30.110 where it talks  
22 about how the Secretary ensured BIE-funded schools

1 will provide for annual assessments the English  
2 language proficiency for English learners, has that  
3 definition of an English language for an English  
4 learner changed from No Child Left Behind?

5           And so I guess what I'm remembering from No  
6 Child Left Behind is if the school had a suspicion or  
7 thought that a student was not English as their first  
8 language or were -- was not a proficient English  
9 speaker, then they would give an assessment. Is that  
10 what this is still talking about?

11           MS. SIGMAN: Jeff, do you want me to try to  
12 answer that?

13           DR. HAMLEY: Yes, go ahead. Go ahead, Deb.  
14 Thank you.

15           MS. SIGMAN: So I'm not -- so the states do  
16 this a number of ways. But generally, they're more  
17 than a suspicion. They generally have a survey, often  
18 called the Home Language Survey, that is provided to  
19 any student that comes into the system. And based on  
20 the responses to that survey, that would determine  
21 whether or not that student would then be given the  
22 language proficiency exam. And if, in fact, that



1 student scored in a particular way that would identify  
2 them as an English learner, then that identification  
3 would be made for that student.

4 So it's the assessment that actually concerns  
5 the identification. All students are provided this  
6 home language survey that asks questions about what  
7 language is spoken in the home, what language did you  
8 first learn, that kind of thing, to get -- and if, in  
9 fact, there -- it is answered a particular way, then  
10 that starts the process of identification with the  
11 assessment.

12 Does that make sense?

13 MS. HAINES: So just for clarification -- I  
14 don't know if I heard you correctly at the beginning -  
15 - I think you had said that there are places that do  
16 that. That isn't a requirement that a survey needs to  
17 be given. Am I correct on that?

18 MS. SIGMAN: I -- you know what? I'll look  
19 in the law right now.

20 And Brian Quint, if you have a ready answer  
21 to that -- but I will look. I believe it is a law  
22 that you have to have some mechanism by which to

1 determine which students are assessed. But I will  
2 look in the law right now.

3 MS. HAINES: Okay.

4 MS. SIGMAN: Do you -- Brian Quint, do you  
5 have a response to that?

6 MS. MENDOZA: Brian, you may be on mute.

7 MS. SIGMAN: Maybe he's not here.

8 DR. HAMLEY: Well, while Deb's looking, let  
9 me -- I -- my understanding is exactly what Deb's is,  
10 is that there's, you know, a process of the Home  
11 Language Survey. And that will determine whether the  
12 student is an English language -- there are English  
13 language proficiencies. But like Deb, I'm not -- I  
14 don't know whether -- I haven't compared No Child Left  
15 Behind to ESSA.

16 So Bonnie, is that something -- if we don't  
17 address that in this meeting, we will follow up with  
18 you personally.

19 MS. HAINES: Okay. Thank you.

20 DR. HAMLEY: But I'll just say -- this is  
21 Jeff -- I mean, part of this rule is also proposing  
22 that we adopt the uniform standards and assessments

1 for English language proficiency in the Bureau system  
2 because that's one thing where the Bureau has not been  
3 able to collect uniform data. So we don't have a good  
4 sense because the state -- even though it wasn't  
5 required in No Child Left Behind that they use the  
6 states' English language proficiency standards and  
7 assessments, that's what the schools have done. And  
8 actually, the Bureau issued a memo in 2005 which  
9 recommended that the schools do that.

10 So you know, but the end result is that we  
11 don't have uniform data, and we also don't have a  
12 uniform approach. And so some states -- some schools  
13 in some states have been able to work closely with  
14 their states to adopt the standards and assessments  
15 and even be part of the training that goes on. But in  
16 other states, they have not, you know. So it's been  
17 kind of a hit and miss.

18 So part of this rule is also to adopt uniform  
19 standards and assessments for English language  
20 proficiency and the Bureau to step up its role in  
21 providing, you know, robust training in that area for  
22 the schools about how to administer those assessments

1 and to develop a language program -- English language  
2 proficiency program.

3 MS. HAINES: I agree whole-heartedly in what  
4 you're saying, that there needs to be some  
5 consistency.

6 And Deb, thank you for sharing that  
7 information.

8 And I guess the thing that kind of -- and  
9 this should be in the chat for everyone -- but the  
10 thing that kind of stands out in regard to this is, at  
11 the very end, that it says, "Including an assurance  
12 that all students who may be EL are assessed." I  
13 guess that "maybe" is what has me kind of -- you know,  
14 kind of confused from, you know, the way that it was  
15 interpreted or it was done through the No Child Left  
16 Behind, was that suspicion. There was no formal  
17 assessment or a survey or procedure or process for  
18 that. So I guess there's -- that all needs to be  
19 defined, which is kind of what Jeff is saying.

20 MS. SIGMAN: Right. But I would say that the  
21 "maybe" is there because you don't know a child is an  
22 English learner until they're assessed with what you

1 all consider to be a language -- a measure of language  
2 proficiency. But I also can tell you that certainly -  
3 - and I was -- worked at the Department of Ed for  
4 California. Every school for every student that came  
5 in was administered this statewide language -- Home  
6 Language Survey. And that is -- I don't know of a  
7 state that doesn't have a similar kind of survey that  
8 actually does that.

9 So it's -- again, there are reasonable  
10 questions that you can ask to, you know, say, okay,  
11 this is someone -- this is a child who we think may be  
12 acquiring this language, and so we're going to give  
13 them that assessment. That's where the "maybe" comes  
14 in because --

15 UNIDENTIFIED MALE SPEAKER: (inaudible - off  
16 mic).

17 MS. SIGMAN: -- until you give that  
18 assessment, you won't know whether or not they're  
19 actually identified as an English learner.

20 I'm going to provide another website that  
21 gives you information about the Home Language Survey  
22 from the Department of Education. So I'll do that for

1 you all.

2 MS. HAINES: So again, this is Bonnie.

3 And I guess, Jeff, this is a question for  
4 you, that, you know, I see that this says the Title  
5 III grants. Do we -- are there opportunities? I  
6 guess I haven't seen a Title III grant for our  
7 schools, but I haven't worked real closely with -- in  
8 a school that may have wanted to apply for this. So  
9 does the BIE offer the schools the opportunity to  
10 apply for a Title III grant?

11 DR. HAMLEY: No. Title III is one of the  
12 titles that the Bureau is not eligible for. So we  
13 don't have -- we don't receive as a grantee Title III  
14 funding. And in turn, we can't turn those funds to  
15 subgrantees. So that -- that's -- yeah, that's -- and  
16 that's just the way a determination was made, I guess,  
17 by Congress, that the Bureau doesn't -- is not  
18 eligible for Title III funding.

19 MS. HAINES: Okay, which lends the question  
20 then, according to the thing that was posted earlier  
21 that Deb posted, it talks about this being a  
22 requirement if they receive Title III grants to do

1 this. And I'm in full agreement, Jeff, in what you're  
2 saying about we need to get a handle on who our  
3 English language learners are. But I don't know if  
4 what I'm seeing here that this really held the BIE  
5 based on what I just saw posted there that they have  
6 to do that.

7 MS. SIGMAN: Well, let me just say that Title  
8 -- the assessment of language proficiency was moved  
9 into Title I. Title III was moved into Title I. So  
10 there still is the requirement regardless to measure  
11 English language proficiency. So that does fall into  
12 the -- your requirements.

13 DR. HAMLEY: Yeah. Thanks, Deb.

14 I had -- that was a little detail I had  
15 forgotten over time. But that's --

16 MS. SIGMAN: Yeah.

17 DR. HAMLEY: -- incredibly important that  
18 it's now moved into Title I.

19 And then also, I mean, you can say that  
20 English language proficiency has been elevated in ESSA  
21 from No Child Left Behind, that it's now an indicator.  
22 So it's critically important that the Bureau have a

1 uniform method to address it and then, you know, in  
2 addition, provide support to schools who work with  
3 their -- with the students who are English language --  
4 on English language proficiency.

5 MS. HAINES: Thank you.

6 And what you just provided, Deb, I think is  
7 very helpful in terms of that little piece of  
8 information, the tools and resources. So thank you.

9 MS. SIGMAN: You're very welcome.

10 MS. HAINES: Well, this is Bonnie again. In  
11 looking at the 30.113, which is talking about the  
12 opportunity for the governing body or school board to  
13 waive the requirements -- and I think, Jeff, we've had  
14 this discussion before, and I think that that's what I  
15 see here, that when you do a way where you can waive  
16 just certain parts of it. And --

17 DR. HAMLEY: Correct.

18 MS. HAINES: -- then you, you know, work  
19 towards whatever you want to do in terms of it -- that  
20 -- waiving that.

21 And so, like, if we're waiving, let's say,  
22 the assessment part, we have that opportunity to have



1 our own assessment to work with our own standards and  
2 do our own thing as a tribal entity; is that correct?

3 DR. HAMLEY: Well, you can waive in whole or  
4 part, so standards, assessments, or some element of  
5 the accountability system. So yes, you can -- if you  
6 choose assessments -- for example, under both -- under  
7 the prior waivers under No Child Left Behind, but this  
8 process is the same under the ESSA -- both Miccosukee  
9 and Navajo chose the assessment part to waive. Of  
10 course, that also includes standards but -- because  
11 they have to be aligned.

12 But the -- so Miccosukee switched from the  
13 Florida, the (inaudible) -- the Florida assessment  
14 because they had issues with who (inaudible) hear  
15 about that assessment -- those assessments. And they  
16 chose Smarter Balanced. And then, also, for  
17 alternates and English language proficiency and  
18 science, they made selections.

19 But -- and then for Navajo, their big issue  
20 was that they are located -- their schools are located  
21 in three states. And they wanted a common assessment,  
22 which is also, you know, parallel to what the Bureau

1 is doing right now. So they chose to move from Utah's  
2 and New Mexico's to Arizona's -- well, not New Mexico  
3 -- but to Arizona's to PARCC. Now, New Mexico was  
4 using -- is using PARCC, so it wasn't a big switch in  
5 those schools. But the -- but for Utah and Arizona,  
6 it was a big switch. But they wanted comparable data  
7 for all their students across, you know, three states.  
8 And so that's an example of assessments.

9 Now, in that case, they chose existing  
10 assessments. So that was just a matter of contracting  
11 issue for the Bureau to quickly acquire those  
12 assessments on behalf of those schools.

13 But you know, I think a new question, and  
14 what you may be asking, is: What if a tribal  
15 governing body chooses to not adopt something that's  
16 existing and go -- and choose something that's  
17 completely brand new? Well, that would be -- I mean,  
18 that would be a harder question to -- for the Bureau -  
19 - I mean for Department of Interior/Bureau and  
20 Department of Ed to consider. And so we're not there  
21 yet. We'll just have to wait and see if that proposal  
22 was made by a tribe.

1           But you know, to develop assessments from the  
2 ground up is a very -- a time-consuming and extremely  
3 expensive proposition. I mean, I -- I'm not an expert  
4 in this, but I understand it's in the several million  
5 dollars. So I mean, that might be a barrier to a  
6 governing tribe or school board deciding to develop  
7 assessments from the ground up.

8           But we're -- we haven't crossed that bridge  
9 yet. So you know, we'll -- if it comes up, we will  
10 discuss it fully with the particular body at that  
11 point.

12           MS. HAINES: Thank you. And yes, I totally  
13 agree. Having us, you know, working on our own  
14 standards and concerning (ph) an assessment, we know  
15 that we do not have any of the funding or enough of  
16 the funding to really go forward with that. So I --  
17 yes, I'm in full agreement that it's not something  
18 that's easily done to have an assessment developed.

19           DR. HAMLEY: But there still are options, you  
20 know, because there are a lot of vendors out there now  
21 with assessments. And then one of the things that  
22 we're talking about in the Bureau is that whatever

1 assessments we eventually adopt, that we want to  
2 review them over time, like in summers, to -- and  
3 involve the school communities, the teachers  
4 especially, and the review of those assessments and  
5 standards and make changes to -- so that they're more  
6 relevant to the student populations we serve.

7           So DoDEA is doing a similar thing. We -- in  
8 our discussions with them, we really like that idea  
9 where they're engaging with their stakeholders to have  
10 input into the standards and assessments that they're  
11 using.

12           MS. HAINES: Which I think has probably been  
13 a question that's been asked probably numerous times  
14 already, is NWEA MAP assessment, does it meet the  
15 letter of the law based on the fact that it's a growth  
16 assessment?

17           DR. HAMLEY: Well, I mean, Tamarah or Deb --  
18 I mean, but let me take a first attempt.

19           As it currently exists, no. And again, I'm  
20 not a technical expert. Deb is much more than I am.  
21 And -- but no. We couldn't just, you know, decide  
22 that, okay, we're going to -- there are a lot of

1 different vendors out here. But that is one  
2 assessment that we couldn't just take off the shelf  
3 and plug into the Bureau and say, hey, we're doing  
4 this for '20-'21. It wouldn't pass peer review at  
5 this point.

6 So some form of an assessment from that  
7 vendor could be developed, too. But if it were  
8 similar to the existing NWEA MAPs, it would have to go  
9 through peer review, and that would take, you know,  
10 quite a bit of time.

11 Deb, did you want to address that?

12 MS. SIGMAN: Well, yeah. I'll just add. So  
13 currently, NWEA, as Jeff has stated, has not been --  
14 it has not passed peer review. And assessments that  
15 are used by states have to be peer-reviewed and  
16 accepted.

17 I would also just remind folks that if, in  
18 fact, you choose to -- BIE chooses to use some kind of  
19 growth attribute in their accountability system, that  
20 can be done with a variety of assessments. Many  
21 states include a growth attribute or a growth element  
22 in their accountability system and don't use that

1 particular assessment, but use a variety of  
2 assessments that you can employ some measure of  
3 growth.

4 DR. HAMLEY: Right. And just let me follow  
5 up on that. I mean, from the discussions we have had  
6 with tribes at this point is to -- that they are very  
7 interested in a growth model and especially one that  
8 gives credit to schools for the growth they're making.  
9 So you know, when we develop the accountability model,  
10 I mean, grow -- growth models are something we will  
11 definitely be looking at.

12 MS. HAINES: Thank you.

13 DR. PFEIFFER: This is Tamarah Pfeiffer.

14 Bonnie, with the conversation that is  
15 occurring, again, I think if you have any specifics  
16 that you would like to add or recommend to the rule  
17 around growth, we'd really appreciate it.

18 MS. HAINES: Okay. Thank you.

19 DR. HAMLEY: Yeah. I mean, to follow up on  
20 what Tamarah said, I mean, everybody remember. I  
21 mean, you -- so you have the opportunity to provide  
22 formal input in writing. So you know, I encourage you

1 to exercise that opportunity, you know, by August 9th.

2 So Bonnie, what page are you on now?

3 MS. HAINES: I think I'm nearly finished,  
4 Jeff.

5 MS. MENDOZA: And if it would make things  
6 easier, I could bring up the actual rule if other  
7 people on the phone -- if it would be helpful.

8 Okay. Should I just go ahead? Yeah. I'll  
9 just do it.

10 Okay. Let's go ahead and take a 10-minute  
11 break. So I'm going to put that up on the screen, the  
12 slide that shows what comments are due. And we can  
13 come back at, say 3:13.

14 (Break.)

15 MS. MENDOZA: Thank you for returning if you  
16 had left on the break, we are going to go ahead and  
17 keep the consultation moving forward for another 15  
18 minutes. And if we don't receive questions or we  
19 don't receive comments, then we will go ahead and end  
20 the session at 3:30. So please ask for any  
21 clarifications, you know, make comments, et cetera.

22 MR. CURLING: Hello?

1 MS. MENDOZA: Yes. This is Juanita. Please  
2 say your name and your affiliation.

3 MR. CURLING: Hi. My name is Delor Curling  
4 (ph). I am a part of the Cogito (ph) Boarding School  
5 School Board. I'm currently the secretary on that  
6 board.

7 I just wanted to know. Are we asking  
8 questions pertaining to the comments in the standard  
9 and assessment document? Or what type of information  
10 could I speak on, on behalf of ...

11 DR. HAMLEY: Hi. This is Jeff Hamley.

12 We're asking your comments for the record  
13 regarding the draft proposed rule, which was published  
14 on June 10th, 2019. And I don't know if you have  
15 that. Or we're also just answering questions that  
16 people may have about the rule.

17 Do you have a copy of the rule available to  
18 you?

19 MR. CURLING: I don't have any of that  
20 available to me. I'm looking on the BIE website and -  
21 - or the BIA website under this BIE Standards,  
22 Accountability -- Assessments and Accountability. And



1 all I see is the Negotiated Rulemaking Committee Final  
2 Report Section 1111, Section 8208. And then that's  
3 all I see on here.

4 DR. HAMLEY: Sure --

5 MR. CURLING: But I guess my question would  
6 be -- I guess if we're just asking general questions,  
7 or whatnot -- but my question would be: What is the  
8 Bureau's -- I guess the Bureau's oversight -- or  
9 oversight into a -- actually having a school meet AYP?  
10 So let's say if school is not meeting AYP and it has  
11 been a number of years, what is the Bureau of Indian  
12 Education actually doing to try to correct that type  
13 (ph), ensuring that there's enough material for that  
14 one school in order to accomplish AYP?

15 DR. HAMLEY: Okay.

16 MR. CURLING: And I understand that you guys  
17 had, like, all these other assessments, like the  
18 growth assessments, the NWEA scores, and whatnot. And  
19 I guess, wouldn't the BIE be utilizing those test  
20 scores to, I guess, get a general idea as to how  
21 they're doing in that -- on the academic level and  
22 that they're meeting AYP? And also, would that be

1 used as an official sort of document to say, you know,  
2 this school is not meeting AYP according to NWEA  
3 scores, and this is what the Bureau of Indian  
4 Education should try to implement in order to get AYP?

5 DR. HAMLEY: Okay. Let me take the second  
6 question first. And that is: Do we -- what scores do  
7 we use? Well, we -- we're required by law to -- by  
8 ESSA to reuse the state assessments.

9 So Cogito -- you're in Arizona?

10 MR. CURLING: Yes. We're in the northern  
11 part of Arizona, yes, on the Navajo Nation.

12 DR. HAMLEY: Okay. So yeah. We would use  
13 the Arizona. Under the previous rulemaking, 25 CFR,  
14 the rulemaking committee under -- for No Child Left  
15 Behind decided that we -- that our schools would use  
16 the standards and assessments of the school in which  
17 they're located.

18 So under No Child Left Behind, we use the --  
19 we would use the Arizona assessments for -- to  
20 determine your academic status under -- for AYP. So  
21 it's the state assessments, not the NWEA. The NWEA is  
22 just a supplemental assessment that many schools have

1 liked and used. Not all of them have used it. But  
2 they especially like the growth portion of it. But  
3 it's not the assessment that we use to determine AYP.  
4 We use the state assessment, so that answering that  
5 question.

6 Now, under the new rule, we're proposing that  
7 the Bureau move away from using the state assessments  
8 and to adopt its own assessment, a uniform assessment.  
9 So under those circumstances, hypothetically, you  
10 would not be -- your school would not use the Arizona  
11 assessment. You would use whatever the Bureau  
12 adopted.

13 But the governing tribe or school boards  
14 could still waive that requirement. And for example,  
15 if you wanted to use the state assessment, you could  
16 request a waiver on that. So --

17 MR. CURLING: And that would be acceptable  
18 for all Bureau-operated schools -- the Bureau-operated  
19 schools, not grant schools?

20 DR. HAMLEY: You're Bureau-operated?

21 MR. CURLING: Yes, I am.

22 DR. HAMLEY: Okay. Okay. That would be

1 different. Under the definitions in the proposed  
2 rule, the waiver is available to tribally controlled  
3 schools, not Bureau-operated schools.

4 And Brian Quint, are you on?

5 MR. CURLING: So I guess my question --  
6 another question then after that would be, you know, I  
7 know that there's a difference between a Bureau-  
8 operated school and a grant school. Grant schools  
9 have more flexibility in determining what they can or  
10 what they can offer to their students as far as, you  
11 know, programs and whatnot. And Bureau-operated is  
12 extremely limited.

13 What I was wanting to know if in the future  
14 with this assessment that this rule -- in this  
15 rulemaking that you mentioned that you're wanting to  
16 go ahead and nationalize it or standardize it  
17 nationally. I guess a new question would be: How  
18 would that work, you know, for a Navajo school?

19 DR. HAMLEY: Okay. That -- that's a great  
20 question because you're --

21 MR. CURLING: So how would you -- oh, go  
22 ahead.

1 DR. HAMLEY: -- because under the waiver  
2 under --

3 (Cell phone ringing.)

4 MR. CURLING: No, I'm sorry.

5 DR. HAMLEY: Great. Under the waiver for No  
6 Child Left Behind, at that point, we did allow Bureau-  
7 operated schools to be included in that waiver. But  
8 however, under the new rulemaking, we're separating  
9 the tribal schools versus the Bureau schools.

10 So is that your understanding? Let me look.

11 UNIDENTIFIED FEMALE SPEAKER: The waiver?

12 DR. HAMLEY: Yeah, I'm looking at the --

13 MR. CURLING: Okay.

14 DR. HAMLEY: -- here. I believe that the  
15 Bureau school would not be included in the Navajo  
16 Nation's waiver. And so that would --

17 MR. CURLING: All right. So --

18 DR. HAMLEY: -- a departure from the prior  
19 waiver.

20 MR. CURLING: So I guess, basically, how is  
21 that going to really improve -- if you're going to  
22 have a national test, how is that going to work for a

1 Navajo Nation school who has their own problems, and  
2 then you have another school from another state --  
3 (inaudible) South Dakota or something like that --  
4 they're having some other different type of issue that  
5 wouldn't really be similar, I guess you could say, and  
6 you're trying to have it -- nationalize it into  
7 standardized tests?

8           So I think maybe having the Bureau-operated  
9 schools have -- or, actually, some of the governing  
10 bodies actually have some voice in this since we're  
11 apparently in an advisory committee. You know, I  
12 think maybe it would be best that you guys would be  
13 able to give them that opportunity.

14           DR. HAMLEY: And that's why we're here today,  
15 is to -- you know, I mean, you don't have to, like,  
16 you know, have a final statement on what your  
17 recommendation is. But we're encouraging everyone to  
18 submit their written statement. So you can go back to  
19 and talk to your colleagues in the community and see  
20 what you want to recommend for -- by the August 9th  
21 deadline on -- you know, regarding.

22           But those are great questions. So you know,

1 I -- we already know that Navajo was interested based  
2 on their waiver for No Child Left Behind in having a  
3 uniform standard assessments across all Navajo  
4 schools. And I think -- I mean, I think they've  
5 indicated that they want to continue with that  
6 principle under the ESSA. So we will likely see a  
7 waiver request from them to incorporate that.

8 But at this point, the Secretary hasn't  
9 announced what standards and assessments he's going to  
10 adopt. So you know, we won't know that until sometime  
11 after the final rule is published. And at that point,  
12 then I think everybody can get ready to consider what  
13 their waivers are, although we are taking requests for  
14 technical assistance right now from any governing  
15 tribal or school board. And we've gotten a number.  
16 We are willing to come out and talk or over the phone  
17 to explore options in advance of the final rule being  
18 published.

19 But great questions about, you know, how this  
20 is going to affect Navajo schools. And I admit I  
21 don't have all the answers, but we're going to work  
22 through -- you know, we will work through all those

1 issues so that something can be implemented in '20-  
2 '21.

3 MR. CURLING: Okay, great. And also, is  
4 there a way or somewhere I can look online to possibly  
5 get this rulemaking you're talking about so that way -  
6 -

7 DR. HAMLEY: Yeah.

8 MR. CURLING: -- could also go ahead and  
9 input my voice?

10 MS. MENDOZA: Let me -- I'm going to put it  
11 into the chat section, okay?

12 MR. CURLING: Okay.

13 DR. HAMLEY: But it is on bie.edu when -- our  
14 --

15 MR. CURLING: Okay.

16 DR. HAMLEY: -- front (inaudible) page. If  
17 you go to the right, you'll see Rulemaking, our  
18 Consultation. Click on that, and there's a webpage  
19 with all our documents on there. And there are a lot  
20 of them, but there is this rule, June 10th, 2019,  
21 that's listed there.

22 MS. MENDOZA: See, I think (inaudible) --



1 DR. HAMLEY: Okay. It may be --

2 MS. MENDOZA: It's embedded in the paragraph  
3 of the --

4 DR. HAMLEY: And yeah, some people are going  
5 to bia.gov. So that -- the Assistant Secretary of  
6 Indian Affairs also has a webpage on this, so it's  
7 also on that page.

8 To go back to your first question about, you  
9 know, if a school does not make AYP, I mean, that's a  
10 great question, too. Now, we have switched away from  
11 AYP. I mean, AYP went away under ESSA. But so now  
12 we're using the term, you know, "accountability," you  
13 know, our accountability determination.

14 So well, the state education agency has a  
15 responsibility under No Child Left Behind. It was  
16 called, you know, a system of support. But we have a  
17 responsibility to have an approach to help schools  
18 improve that are not making proficiency levels. So  
19 we're required by law to have a better approach and to  
20 work with schools to have a plan.

21 Deb, I don't know if you want to say any more  
22 about this or ...

1 MR. CURLING: Okay. So okay. So it's my  
2 understanding that the State of Arizona is supposed to  
3 be working hand-in-hand with the Bureau of Indian  
4 Education to meet certain AYP or academic goals. It -  
5 - am I understanding that correctly?

6 DR. HAMLEY: Well, it's not specified in law  
7 that the BIE and the State of Arizona will work hand-  
8 in-hand on that.

9 MR. CURLING: So how is it --

10 DR. HAMLEY: We --

11 MR. CURLING: -- that you're saying that, you  
12 know, it's supposed to be the state's responsibility  
13 to assist the school, but yet it's not in the law or  
14 we're not going to practice? And I guess it -- I'm  
15 just kind of confused as to how this whole thing is  
16 going to go. And --

17 DR. HAMLEY: Well, I think that --

18 MR. CURLING: -- that basically how we're  
19 going to improve our students' achievement -- improve  
20 our students' academics.

21 DR. HAMLEY: Well, it's not the state's  
22 responsibility to improve the academics of BIE-funded

1 schools. It's the BIE's responsibility because the  
2 BIE is the quasi-state education agency for our  
3 schools. So --

4 MR. CURLING: Okay.

5 DR. HAMLEY: -- it's the BIE's responsibility  
6 to work with schools. And we do that through,  
7 primarily, the Associate Deputy Director's Office on  
8 Navajo. I mean, I think there is some partnership  
9 activity with the -- with DoDEA, the Department -- the  
10 main (ph) Department of Education. But it's the  
11 Bureau's responsibility to work with schools to  
12 improve. I mean, it's -- we're just using the state's  
13 assessments, you -- the Arizona assessment. That's  
14 all. And --

15 MR. CURLING: Okay.

16 DR. HAMLEY: -- they don't have  
17 responsibility.

18 That's not to say that many of the schools in  
19 the states we have, have a very good working  
20 relationship with their states. So I think in some  
21 states the state is actually assisting schools to help  
22 improve, but I'm -- you know, but not all states. And

1 they don't have --

2 MR. CURLING: Okay.

3 DR. HAMLEY: -- a legal responsibility to do  
4 so. That's the Bureau's legal responsibility.

5 MR. CURLING: Okay. And so I guess another  
6 thing would be, I guess, if you go back to my first  
7 question, is to -- is there an independent committee  
8 or is there an independent department within the  
9 Bureau of Indian Education to determine whether, you  
10 know, AYP is actually being met at these Bureau-  
11 operated schools?

12 DR. HAMLEY: Well, the --

13 (Crosstalk.)

14 MR. CURLING: -- committee, or something like  
15 that, I guess what I'm trying to get to --

16 DR. HAMLEY: Yeah, I can --

17 MR. CURLING: -- ensure that --

18 DR. HAMLEY: Hmm?

19 MR. CURLING: Okay.

20 DR. HAMLEY: Okay. Well, in -- under No  
21 Child Left Behind, well, it wasn't exactly a  
22 committee, but we had an office, the Division of

1 Performance and Accountability that made the  
2 accountability determination and issued the  
3 determination letters to schools using the state  
4 assessments. And because we're using the state  
5 assessments, that was a lengthy process because it  
6 took time to get the -- I'm not talking about Arizona,  
7 in particular, but generally about all the states --  
8 it took time to get the assessments. It took time to  
9 assemble all the elements to make the determination.  
10 But we did deliver those letters. So that was -- we  
11 had an office within the Division of Performance and  
12 Accountability that did that. So it wasn't -- it was  
13 -- I mean, I guess you could consider them a  
14 committee.

15 So in the end, they would have -- at the end  
16 of the school year, they would have a list of who made  
17 AYP, who did not make AYP. I mean, I -- I've seen  
18 that list many times. It was compiled into an Excel  
19 sheet on a year-by-year basis and what the standing of  
20 each school was. And then it's also on the Bureau's  
21 webpage published as a report card. And that's a  
22 statutory requirement. Now, we're behind in

1 publishing those report cards. But we -- as we gear  
2 up under ESSA, we will again start publishing those  
3 report cards.

4 Now, under the BIE reorganization, this  
5 activity, however, has been -- has shifted from DPA to  
6 -- Division of Performance and Accountability to an  
7 academic affairs -- I mean Assessments and  
8 Accountability Office, I think they're called. And  
9 that's under the chief academic officer.

10 So the people doing it and the office doing  
11 it will change under the Every Student Succeeds Act.  
12 But the process will be the same. And the process is  
13 defined in statute that we have to make annual  
14 determinations to schools about their academic status.  
15 And then we also need to publish information about  
16 that status in a report card and publish it to our  
17 website and then also publish a summary of all the  
18 schools into a BIE report card. So the -- it -- those  
19 were defined in statute in the No Child Left Behind  
20 and now in ESSA. The only difference is that the  
21 people do -- the office doing it within the Bureau  
22 will have changed.

1           Now, since ESSA has passed, we -- and AYP has  
2           been suspended, we haven't made levels of  
3           determination for a few years. But once the Secretary  
4           adopts standards, assessments, and accountability, we  
5           will commence that system again and, hopefully, be  
6           able to make -- deliver those determination letters  
7           before the beginning of the school year.

8           Now, that -- now, for '19-'20, we're going to  
9           go status quo. So there probably -- there will not be  
10          a letter based on spring 2019, but for -- or probably  
11          to spring 2020. But beginning in spring 2021, we will  
12          issue those letters again.

13                 MR. CURLING: Okay.

14                 DR. HAMLEY: I know it's a lot of information  
15          and may be hard to follow, but I hope that was  
16          understandable.

17                 MR. CURLING: No, it was. I was just ...

18                 MS. MENDOZA: So we went past the 3:30 time,  
19          and we still have a few people logged in. So I'll  
20          wait 10 more minutes, and then we will end the  
21          session.

22                 (Pause.)

1 UNIDENTIFIED MALE SPEAKER: Navajo.

2 MS. MENDOZA: Hello, everyone. Thank you so  
3 much for participating in today's consultation.  
4 Please be sure to submit your comments if you choose  
5 to at the two sites that are on the screen. And  
6 recall that all comments must be received by August  
7 9th by midnight Eastern Time.

8 Thank you, everyone.

9 UNIDENTIFIED MALE SPEAKER: Thank you.

10 UNIDENTIFIED FEMALE SPEAKER: Thank you.

11 THE COURT REPORTER: Hello. This is the  
12 court reporter. Is anyone still there?

13 (No audible response).

14 (Whereupon, the meeting was concluded.)

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## CERTIFICATE OF NOTARY PUBLIC

I, Nate Riveness, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Nate Riveness

Notary Public in and for the

Washington, D.C.

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## CERTIFICATE OF TRANSCRIBER

I, Karynn Willman, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Karynn Willman

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