

1 UNITED STATES DEPARTMENT OF THE INTERIOR

2 BUREAU OF INDIAN EDUCATION

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9 TRIBAL CONSULTATION

10 on the

11 BIE ESEA Flexibility Request

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17 Flagstaff, Arizona
18 July 20, 2012

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24 HELD AT:
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8 MR. KILLSBACK: Well, good morning,
9 everybody. We're going to go ahead and get started
10 with our presentation. On the agenda, there is an
11 opening blessing, and I'm going to do that on behalf
12 of the Interior. So what I'm going to ask folks to
13 do here is if they could rise with me, and I'll give
14 the blessing for this consultation on the draft ESEA
15 request here on behalf of the United States
16 Department of Interior, and I'll give it in my
17 native tongue. So join us in the blessing.

18 (Silent Blessing Given)

19 MR. KILLSBACK: Good morning, everyone.
20 I'm going to give some introductions, and I'll ask
21 my colleagues to introduce themselves, as well. So
22 I'm going to start of with this fine gentleman here
23 to my left to introduce himself.

24 MR. BOUGH: Good morning, everyone. I am
25 Brian Bough. I work with the Division of

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1 Performance & Accountability within the Department
2 of Indian Education.

3 MR. HAMLEY: Good morning. Jeff Hamley,
4 Associate Deputy Director, Division of Performance &
5 Accountability with BIE.

6 MR. KILLSBACK: Good morning. My name is
7 Dion Killisback. I am a Counselor for the Assistant
8 Secretary of Indian Affairs. The Acting Assistant
9 Secretary of Indian Affairs is Del Laverdure who is
10 a member of the Crow Nation. Myself, I am a member
11 of the Northern Cheyenne Nation from Montana. I am
12 an Attorney and one of his Counselors, and one of
13 the important priorities I have been tasked with to
14 handle on behalf of the Assistant Secretary is
15 education, along with other issues, as well.

16 So today we have an important topic of
17 discussion, which is the draft ESEA flexibility
18 request, and what we have for presentation today is
19 a Powerpoint presentation, and I'll be going through
20 that.

21 Real quickly, I would like to pass along
22 words on behalf of my boss Dale Laverdure. In June,
23 the Assistant Secretary issued a "Dear Tribal
24 Leaders" letter inviting tribal nations to engage in
25 consultations on BIE education and the Elementary

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1 and Secondary Education Act and the flexibility
2 waiver.

3 This is an ongoing effort that the
4 administration of the Assistant Secretary Del
5 Laverdure has engaged with at a high level with the
6 Department of Education in the Secretary Arne
7 Duncan's office who is in the Department of
8 Education.

9 Part of this, it was a roll-out in
10 December where President Barack Obama, along with
11 his Secretaries, Secretary of the Interior Salazar
12 and Secretary of Education Duncan, pledged to do
13 better for Indian Country and Indian students in
14 regards to performing at adequate levels and be
15 prepared for college, and also emphasize the need
16 for emphasizing tribal history, tribal culture, and
17 most importantly tribal language.

18 So with that thought, I have been
19 tasked, along with Jeff and Brian, as well as Former
20 Director BIE Keith Moore, and now Acting Director
21 Brian Drapeaux to follow through with that
22 objective, and that's taken numerous meetings and
23 numerous consultations and listening sessions.

24 So we understand that we've been in
25 Flagstaff before and we have discussed a range of

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1 topics with regard to BIE education, be it the MOU
2 between the Department of Education and the Bureau
3 of Indian Education, be it the streamlining, and be
4 it what we're talking about today, the flexibility
5 waiver.

6 Generally speaking, the three
7 highlights from today's presentation, what I would
8 like the audience members to take away from this
9 are; one, educational sovereignty; two, as I
10 mentioned before, which is tribal ability to
11 emphasize culture, language and history; and then

12 third, curriculum training, curriculum training with
13 regard to tribes asserting their educational
14 sovereignty.

15 With that, I'll go to the first slide,
16 and this is a breakdown of the presentation,
17 essentially a snapshot of what the presentation will
18 encompass. First, we will go through a bit of
19 background behind the No Child Left Behind, NCLB,
20 and then the ESEA, which is the Elementary Secondary
21 Education Act.

22 The we'll talk a little bit about the
23 challenges for the BIE under the No Child Left
24 Behind Act, as well as the ESEA and negotiated
25 rule-making, and then we'll talk about the request

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1 for an ESEA flexibility waiver and the Department of
2 Education's offer for that waiver, and then we'll
3 talk about the highlights, the principles, behind
4 the request, and then we'll go over the request, the
5 flexibility request and discuss the BIE's new
6 accountability system, and then we'll discuss from
7 that the benefits of the flexibility waiver for BIE,
8 and then we would like to conclude with where to
9 access -- where you folks can access the waiver
10 proposal and help folks submit comments.

11 So with that, let's talk about what I
12 said the highlight was. Strengthening Tribal
13 Education. The vision that the Acting Assistant
14 Secretary Del Laverdure envisioned, as well Keith

15 Moore, Former Director, and now Brian Drapeaux, the
16 Acting Director of BIE, is that we want to empower
17 tribes to exercise greater control over education.

18 The BIE's flexibility request
19 reestablishes tribal sovereignty in two ways.

20 Before I get into these two aspects, I want to draw
21 two parallels. One of the big things that we handle
22 in Indian Affairs is tribal conflict between
23 non-Indian and state jurisdictions with regard to
24 criminal jurisdiction, as well as civil
25 jurisdiction, whether that is law enforcement

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1 officers coming on reservation lands from the state,
2 from the sheriff, to try to issue traffic citations
3 or speeding tickets, or, you know, folks trying to
4 sue tribal members on reservations for things that
5 are happening on reservations.

6 And, you know, every tribe has tribal
7 attorneys and lawyers that work there to advocate
8 for tribal sovereignty and self-determination.

9 Well, in that same vein, we think that educational
10 sovereignty is a type of jurisdiction there where
11 tribes should have the ability to exercise full
12 tribal sovereignty.

13 So within these flexibility requests,
14 the way we see -- the BIE sees the request for
15 reestablishing tribal sovereignty is tribes may
16 reassert sovereignty by moving away from state
17 standards and assessments.

18 In other words, what tribes are now is
19 that they have essentially agreed to abide by state
20 standards and state assessments. Second, tribes,
21 through adoption of common core state standards and
22 develop tribally focused standards addressing
23 language, culture and history.

24 So besides the ability of tribes to
25 move away from state standards and assessments,

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1 tribes now have the ability to establish their own
2 standards but they also emphasize language, culture,
3 and history. So there are two aspects I would like
4 to emphasize.

5 Now, what we see at BIE throughout
6 Indian Country is that students possessing a more
7 culturally-relevant education are more likely to do
8 better. In other words, if a Cheyenne or a Lakota
9 or a Navajo or a Hopi, sees someone teaching them
10 about Navajo history or Hopi history or Cheyenne
11 history, they become more engaged, there is more
12 interest, and there is more relevance to that
13 education.

14 This is a sharp contrast obviously
15 from the previous United States policies of past, of
16 assimilation, where the old adage of doing away with
17 Indian culture and immersing and trying to cram down
18 the throats of Indians non-Indian culture and
19 history. So to us we see this as being very
20 significant and very important for success going

21 forward.

22 Now, the No Child Left Behind and the
23 Elementary and Secondary Education Act. The No
24 Child Left Behind Act was the 2001 authorization of
25 the Elementary and Secondary Education Act. That

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1 was originally enacted in 1965. So the NCLB

2 reauthorizes the 1965 Act of the ESEA.

3 Now, this established the school
4 accountability system based primarily on state
5 standards assessments. So it required all students
6 to meet rigorous testing targets in reading,
7 language arts, and mathematics, and set the 2014
8 standard of a hundred percent proficiency for those
9 subject areas of reading, language arts, and
10 mathematics, and I think as educators, this target
11 date for 13 years later with the reauthorization,
12 see the difficulty with that.

13 And the challenges with that is that
14 the No Child Left Behind Act mandated a new
15 negotiated rule-making process to decide how BIE
16 would implement the No Child Left Behind Act. The
17 negotiated rule-making final regulations directed
18 the BIE to use academic context standards,
19 assessments, and accountability criteria of the
20 state where the school is located. Essentially what
21 it says is that all BIE schools within the state
22 that they are in must comply with the State
23 standards that they are located.

24 Now, the BIE has schools in 23
25 different states, so that means that the BIE has 23

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1 different definitions of adequate yearly progress.
2 So 23 different standards. So you can see the
3 enormity and the complexity and how that makes it
4 very difficult to be successful.

5 So the ESEA flexibility request, under
6 the ESEA, the reauthorization is now five years
7 overdue. The Secretary of Education Duncan offered
8 flexibility from the No Child Left Behind and ESEA
9 provisions to states. Now, in exchange for these
10 waivers, the states committed to bold reforms around
11 standards and accountability, such as raising
12 standards, improving accountability, and improving
13 effectiveness.

14 Now, this aspect is pretty important,
15 and I think I want to talk a little bit more about
16 that. When Secretary of Education Arne Duncan
17 offered flexibility from the No Child Left Behind
18 Act provision for the states, he saw that states
19 themselves, non-Indian entities were not being able
20 to meet these proficiency targets of a hundred
21 percent by 2014, and that consequently states were
22 rigging their accountability and reporting systems
23 in order to try to achieve the AYPs, and
24 consequently the standards and the proficiency
25 ratings disservice to students that were graduating

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1 from high school. It meant that they were no longer
2 being prepared for college and for careers, but
3 technically under the law they were meeting the
4 annual AYP targets, and the school was essentially
5 in compliance with the law and would not be subject
6 to penalties for failing to meet the standards.

7 So essentially what you had was across
8 the board through the states, as well the BIE, is
9 that the law ended up doing more harm than good for
10 students in terms of providing adequate education
11 standards and preparing them for life, whether it be
12 college or preparing them for work outside and after
13 graduation from high school. So 19 of the 23 states
14 where the BIE schools exist now have a plan for or
15 receive flexibility.

16 So that is significant. That is
17 almost 95 percent -- 90 percent of the BIE schools.

18 Now, the ESEA flexibility has four principles. The
19 BIE's flexibility request demonstrates how it will
20 use this flexibility using the following principles.

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22 Principle 1, and I just touched on
23 this. College and career-ready expectations for all
24 students. This principle is what the original
25 intent for Elementary and Secondary Education Act

1 was set out, was that students after receiving their
2 high school diploma, should be ready to work in the
3 community that they live and be able to make a

4 minimum type of standard of living to provide for
5 himself or herself.

6 Second, principle 2. State developed
7 differentiated recognition, accountability, and
8 support. What this is, is the principle that the
9 states don't necessarily have the expertise, wisdom,
10 or knowledge to know what happens on reservations
11 for BIE schools or tribally-controlled schools, and
12 that those communities are better suited, based on
13 their historic and cultural surroundings, to develop
14 their own recognition accountability support systems
15 for that particular school.

16 Principle 3, support for effective
17 instruction and leadership. This is something that
18 plagues school systems throughout the country. We
19 have teacher unions that set the minimum standards
20 in order to accomplish education, whether it be a
21 cap on the amount of hours that the teachers can
22 stay at school, whether they need specific
23 permission and a vote of the union in order to
24 volunteer, and the bargaining leverage that the
25 teacher unions ever over schools in terms of

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1 employee benefits and work hours, and things of that
2 sort, where essentially education seems to be
3 falling to the wayside, and it's more about
4 contractor relationships between the school board
5 and the teachers union.

6 What we want to see is from the top

7 down a system in place that there is accountability,
8 and the only successful type of grading that a
9 teacher, a principle, and a superintendent will
10 receive will be based on the success of their
11 students.

12 Principle 4, reducing duplication and
13 unnecessary burden. When we talk about duplication,
14 what we talk about is reporting. There are numerous
15 reporting requirements in this state and numerous
16 data calls that tribes have to go through and
17 BIE-controlled schools must go through in order to
18 conduct assessments, reporting, and tracking
19 progress in order to test for proficiency. There is
20 multitudes of duplication and inefficiency that is
21 unnecessary.

22 What principle 4 wants to do is reduce
23 that, take the administrative burden, overhead, out
24 of the equation. Recognize that it is important,
25 but minimize it as much as possible.

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1 Principle 1: The standards and
2 assessments. Adopt common core standards, initially
3 in reading, language arts, and mathematics. Up to
4 15 percent of the standards to reflect tribal
5 values. So if you take a math curriculum, and
6 instead of talking about beans or birds, we could
7 talk about things that are historically
8 tribally-significant to that individual tribal
9 school.

10 Where I come from in Montana, instead
11 of talking about, you know, trucks and -- and school
12 lunch -- lunch pails, and stuff like that, what we
13 can implement is talk about our own culture. We can
14 talk about eagle, eagle feathers. We can talk about
15 bison. We can talk about numerous districts on
16 housing, or TVs, or anything like that, that is
17 significant where we can make education more
18 relevant, and that's just math.

19 I find that in a discussion with the
20 students, they're more interested in learning not
21 necessarily about the multiplication or the math of
22 calculating how many bison it would take to feed a
23 village or a chapter of a couple hundred. They're
24 more interested in the hunt of the bison. So that's
25 what the hook is. That's what is relevant to tribal

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1 schools.

2 Employing a single assessment system
3 for all BIE-funded schools. That's part of
4 Principle 1, and the single assessment system means
5 that, instead of 23 different assessment systems, we
6 have one assessment system for all BIE schools in
7 all 23 states. That makes sense.

8 Now, the assessment will assess all
9 students three times a year, and obviously we know
10 where that is. That's when they come in from the
11 summer, mid year and winter at the peak of the
12 holiday season, and at the end of the year in the

13 spring time. That would be assessing grades three
14 through the sophomore year, and then we would need
15 the assessments to establish core targets for each
16 of those assessments in each of those grade levels.

17 Principle 2: Differentiated
18 Recognition, Accountability, and Support Systems.
19 New differentiated recognition system establishes
20 reward, focus, and priority. What we're talking
21 about is new accountability index scoring
22 indicators. Proficiency. Student performance on
23 academic assessments relative to a standard. This
24 is what I talked about earlier, the ability of the
25 students to be proficient in order to be successful,

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1 not necessarily being sufficient in order to meet
2 AYP state standards, just for the purpose of
3 checking a box and making sure that you're not out
4 of compliance. This is about seeing that you're
5 actually prepared to go to college and take
6 college-level courses after graduating high school,
7 or being able to take a job that may pay minimum
8 wage, but it is only what the student is required to
9 have, a high school diploma. That's what we're
10 talking about in proficiency.

11 Progress. Growth in student
12 achievement across the academic year. What we're
13 talking about here is making sure that once a
14 proficient level is established, that that's not the
15 bottom, that's not the ceiling. You want to make

16 that the basic standard. Just because a student is
17 proficient, we want to make sure that we don't
18 necessarily say that our hands are clean, we don't
19 have anything else to do. Why? Because you're your
20 proficient.

21 We want to do better. You're
22 proficient now. How far can you go. We want to see
23 you do better. If you're in seventh grade and
24 you're reading at a seventh grade level, great, it
25 means you're on track. Why not try to read at

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1 eighth grade or ninth grade level? That's what
2 we're talking about progress, and that's throughout
3 the year.

4 We understand that students, once they
5 understand and when teachers understand where a
6 student or a class is at in terms of their
7 proficiency, and once they're caught up, it is much
8 easier for them to progress further after reaching
9 proficiency. So that's what we're talking about.
10 Proficiency as a basic standard.

11 Attendance. K through 8 and the
12 graduation rates. This is what we talk about in the
13 accountability index. Indian country, tribal
14 schools, BIE schools, tribal grant schools, we need
15 to do better in attendance. Part of our culture --
16 part of our Indian culture evolves around values
17 that are significant culturally to ceremonies
18 annually or seasonally, but culturally as a people,

19 we need to make sure that education is also a
20 priority, and how to balance that, through the 15
21 percent window that we have to fuse and incorporate
22 language, culture, and history. That's how we
23 bridge that gap.

24 BIE schools, tribally-controlled grant
25 schools are not baby-sitting centers. It takes a

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1 community, teacher and student, and parental
2 involvement. A lot of times it is a grandparent
3 carrying that water. So attendance is key in order
4 for us to establish accountability in this.

5 We see graduation a direct correlation
6 to those students, to those schools that have high
7 attendance records, high attendance compliance for
8 their school standards. We understand it is
9 difficult, but we can do it. We see schools that
10 are successful.

11 Reset annual measurable objectives,
12 AMO. Provide supports for lowest performing schools
13 and rewards for high-performing schools. What that
14 means is that where we have the influx, where we see
15 a school struggling in all aspects, we will direct
16 attention. However, we will also reward schools
17 that are performing at a high level of achievement.

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19 That means that we're not going to
20 forget that schools that are successful are by
21 themselves and out there. They're doing a good job

22 and need to be acknowledged and receive those
23 rewards.

24 Teachers and principals. This is what
25 I talked about earlier. Develop evaluation and

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1 support systems and focus on effectiveness of
2 teachers and principals, and inform professional
3 development and improved practice.

4 I think that we are all aware that
5 reservation schools are in need of teachers, and I
6 understand that in some states, maybe even in
7 Arizona, that teaching certificates aren't required
8 to teach on reservations. Teaching certificates or
9 teaching degrees aren't required. Why? Because
10 they're on reservations, they are Indians. That is
11 unacceptable.

12 We need to develop standards, and even
13 if we have these reservation schools, it seems like
14 on reservations we always get those kind of
15 out-there teachers that maybe aren't making it in
16 non-Indian communities and go try to find themselves
17 on the reservation, and they may have the
18 credentials, but they may not have the people skills
19 or social skills to be successful in a school, and
20 they would go and try to work somewhere else, and
21 where do they go? To the reservations where they
22 can be accepted. Why? Because we have such a need
23 for teachers with education. And we can't have them
24 holding hostage education of our Indian students

25 just because they have those credentials.

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1 So that's why we are proposing
2 evaluation and support systems for BIE-operated
3 schools. Optional for tribally-controlled schools,
4 except recipients of certain funds, and that's --

5 MR. HAMLEY: School improvement grant.

6 MR. KILLSBACK: School improvement grant.
7 School improvement grant Student growth data on
8 current students. Teachers of reading, language
9 arts, and mathematics. These growth acts on the
10 students, this is where we're able to track the
11 progress of students and where they're at, and these
12 three, meaning the first.

13 Principle 4, Reducing Duplication and
14 Unnecessary Burden. As I mentioned before, the plan
15 is to evaluate current ESEA administrative
16 requirements that impact reporting requirements with
17 little or no impact on student output, meaning that
18 the administrative overhead for reporting or
19 monitoring or gathering data that has no impact or
20 makes no difference in whether or not that person or
21 that student is going to be proficient. We're going
22 to try to eliminate that. Why? Because it is
23 burdensome for our schools and it makes no sense to
24 do that.

25 And we're going to make them based on

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1 the outcome of the evaluation, and remove
2 duplicative and burdensome reporting requirements
3 and lessen the burden on schools.

4 Now, I'm going to get into the
5 overview of the BIE Flexibility Waiver Request. The
6 BIE intended to apply for a Flexibility Waiver.
7 However, the BIE must first amend 25 CFR 30.104(a)
8 which requires the use of the 23-state
9 accountability system.

10 Now, this is to be distinguished from
11 25 CFR 30.104(b), just so we're clear. Instead, BIE
12 wants to implement single bureau-wide
13 accountability, and as stated, 23 different state
14 accountability systems makes absolutely no sense.
15 State input and tribal consultation are key
16 components, and that's what we are engaged in right
17 now, seeking tribal input as we engage in this
18 request.

19 So BIE seeks input from tribal leaders
20 about amending 25CFR30 and initiating a unified
21 accountability standard.

22 Student achievement becomes the
23 focus. Throughout this presentation, I've been
24 emphasizing the need for the attention to be put
25 back on the student achievement. So we're looking

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1 the accountability determinations which would be
2 more reflective of school performance.

3 Under the current No Child Left Behind

4 and annual progress reports reporting, the standard
5 was meeting meet AYP. AYPs are a standard where
6 administratively schools can fudge their proficiency
7 ratings in order to sound like they are proficient,
8 and that unfortunately leads to unprepared students
9 for college and unprepared life skills for students
10 who graduate from high school.

11 We want to change that. We want to
12 make sure that the accountability determinations are
13 adequate so that students will be prepared for
14 college, or will be prepared as a person that has a
15 high school diploma be ready for the workforce, and
16 doing that, we're going to unify the accountability
17 system for all BIE schools across the 23 states for
18 the standards, assessments, and accountability
19 criteria, and essentially we'll make it a level
20 playing field for all BIE schools. The
21 accountability system will credit successful efforts
22 and be less punitive.

23 Now, this is a distinction that BIE
24 can make whether it is good or bad instead of from
25 the state. There are schools throughout Indian

1 Country that don't have 50 students, don't have 30
2 students, but the United States has an obligation, a
3 Trust obligation to have these schools because of
4 treaties, because of agreements, because of the
5 tribe's ability to negotiate those language in their
6 treaties. So it is an obligation that will never

7 end.

8 So when we look at state schools, you
9 hear state schools shutting down all the time
10 because they're not able to meet AYP. It now
11 becomes a funding mechanism or excuse or reason for
12 shutting down schools that don't meet AYPs. That's
13 why school administrations around the country have
14 engaged in an administrative effort to doctor their
15 AYP proficiency standards in order to achieve AYPs.
16 As I stated, that doesn't help students. That hurts
17 students.

18 The significance for Indian schools
19 and tribally-controlled schools and BIE schools is
20 they have an obligation no matter what. The BIE has
21 an obligation to fund these schools and operate
22 these schools, and because if they don't meet AYP,
23 it doesn't mean the school would be shut down.

24 So we need standards that are
25 reflective of the proficiency that is needed in

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1 order for students to be successful in college or
2 after they graduate from high school. No matter how
3 many students are there, no matter how big or small
4 the school is.

5 Alignment in accountability will allow
6 BIE to better leverage technical assistance and
7 professional development resources. If a school in
8 one state has an issue with a language standard and
9 wants to seek technical assistance in how to improve

10 proficiency, under the old rule you would need that
11 state and that professional -- that technical
12 assistance to be directed for that one state.

13 The BIE administratively would have to
14 go through an RFP process, an accumulative process,
15 in order to get it accomplished for that one state
16 and maybe one school. Unfortunately, we have
17 proficiency problems in all 23 states, so that would
18 meant it would be an advocacy of the RFP process
19 for 23 different professionals to do one thing to
20 address proficiency in language, or math or science,
21 whatever.

22 It is a totally inefficient and total
23 waste of resources or funds and totally
24 ineffective. When you get one standard for all 23
25 states, it takes one RFP. It makes it that much

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1 more simple in order to address an issue that can
2 plague the entire BIE school system. That's what
3 we're talking about. Leveraging technical assistance
4 and professional development resources.

5 The waiver is an opportunity to effect
6 significant reforms in BIE-funded schools,
7 consistent with national reform movement. This is
8 significant because Secretary Arne Duncan is charged
9 with changing education in America. There is a
10 large fraction of the United States that believe
11 that public school systems and No Child Left Behind
12 demonstrate that state governments and tribal

13 governments do not know how to run educational
14 systems to provide successful students to be members
15 contributing to their society.

16 Secretary Duncan is engaged with --
17 directly with these school administrations
18 throughout the country to change that. He wants to
19 see the United States and schools in Indian Country
20 to be now top-tier schools. We are ranked at the
21 bottom rung now in terms of education. Other
22 countries are surpassing the United States, but
23 schools in the United States need change, and this
24 is an opportunity and this is a way we can see the
25 change happening through the flexibility waiver.

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1 The most significant reform is a
2 unified accountability system. As I said, common
3 core standards, common assessments, and a common
4 accountability methodology.

5 I would like to conclude with any
6 questions or clarifications from folks here at the
7 table engaging in and on behalf of the tribes and
8 tribal government. The web sites provided on the
9 screen are available to see the flexibility waiver
10 request.

11 Yvonne, do we have the flexibility
12 request out here available?

13 MS. DAVIS: We have the summary which is
14 the 13-page summary that you have in your packet.
15 We have the flexibility draft that can be accessible

16 on the BIE web site under consultation, but also on
17 the front page.

18 MR. KILLSBACK: Just for folks'
19 information, this is a 129-page flexibility waiver
20 request. We have the summary right here in the
21 15-page summary. So this on my right summarizes.
22 This on your left. But if you want to read this,
23 knock yourselves out. Good reading for nighttime.

24 But that's available online on the
25 web site provided. Also, there is a dedicated web

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1 email address for any comments to this waiver
2 request. eseaconsultation@bie.edu.

3 Okay. At this time we would like to
4 open up the floor for comments and questions from
5 folks at the table here. Excuse me. I want to
6 invite any tribal leaders or folks representing
7 tribal governments to come up on behalf of their
8 tribes to join us at the table. This will be part
9 of the formal consultation, government to
10 government, with the United States.

11 And then afterwards, we'll take a
12 short break, and then when we return, we will engage
13 in public comment where folks in the audience, if
14 they have comments or questions, they can do that.
15 But let's get into questions or comments from the
16 tribal leaders.

17 When you speak, we have a Court
18 Reporter here. If you could provide your name and

19 what tribe you are from and what entity or
20 organization that you're speaking on behalf of, that
21 would be important for our consultation record
22 purposes, and I'll remind folks again when we do the
23 comment period.

24 Well, with that, I will turn it over
25 to folks with questions.

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1 MR. HALE: Good morning, Bureau Indian
2 Education staff. Good morning, ladies and
3 gentlemen. My name is Jonathan Hale, Chairperson of
4 Health, Education, and Human Services Committee,
5 Great Navajo Nation, and in regards to this
6 discussion and BIE attempt at this point to
7 consolidate its responsibilities from 23 to 1, it
8 somewhat mirrors my previous predecessor's intent,
9 from what I've seen and what I have or I have been
10 shown in archives of my previous predecessor's
11 education committee, Navajo Nation Council,
12 developing and improving educational endeavor on
13 behalf of the Navajo people.

14 So with all of this consultation,
15 which you all have to do, I'm wondering and I'm
16 thinking where is Navajo in on this whole
17 discussion? From what I've been told repeatedly,
18 your previous predecessors, the 20th and 21st Navajo
19 Nation Council, passed a law which they basically
20 said that the Navajo Nation will take care of its
21 own at this point.

22 It is codified in our codes. It
23 exists, and recent documentations were developed and
24 given through BIE in the form of an accountability
25 workbook. I can't go back and change history, but

29

1 I'm wondering and I'm watching and I'm analyzing if
2 the Bureau of Indian Affairs, Bureau of Indian
3 Education are paying attention to these situations.

4 And this goes into other areas. This
5 is only but a small portion as far as education is
6 concerned. I see the interaction of the top
7 officials. Written documentation were submitted to
8 these entities, and I do believe I have written and
9 gave a document to Mr. Brian Drapeaux, I believe,
10 and at the time Mr. Keith Moore, and this was the
11 meeting that was held in Fort McDowell, and I have
12 not received no written feedback on those little
13 simple requests or clarifications to those
14 documentations.

15 In that it is creating a paper trail,
16 and noticing that BIE's nonadherence to those
17 questions falls on deaf ear, which on my end as a
18 tribal leader, I really don't understand BIE. If
19 you can't respond back to those simplest terms of
20 questions for clarity in which I'm responsible for,
21 I'm only one person on that particular committee and
22 one person on the 24 Council, but it will come back,
23 and it's already coming back in the form of
24 questions from my colleagues.

1 session for the Navajo Nation Tribal Council, and
2 we've completed our agenda. In those sessions, we
3 were talking about scholarship. We were talking
4 about education on our reservation, the need to have
5 the BIE involved and paying attention to what's
6 being discussed, and this all goes to forward
7 funding from the federal government, et cetera, et
8 cetera.

9 But just standing there listening to
10 my colleagues, it is like where are we headed with
11 this. Navajo Nation submitted their own books, in
12 which they were explained to me, it was supposed to
13 be only a certain number of days to get feedback,
14 and it's coming on a year now -- two years.

15 So where is that book? What are we
16 doing here? So I kind of see the federal government
17 as throwing bait out there, luring in the Native
18 Americans, so to speak, saying this is a good idea,
19 but nobody is coming back to say, "Oh, by the way,
20 Navajo Nation, we got your book, we read it," and
21 that bait is over there and there is no response
22 back to us.

23 So it leaves us sitting over here. So
24 me as a tribal leader, my previous predecessor
25 already approved that, and it has to go that way.

1 The plan is already set. The dialogue was made.

2 At one point or another, to really exercise
3 sovereignty, I think we need that affordability to
4 do such.

5 So I was just sitting here thinking
6 about that, and where is that on the BIE's radar?
7 Does it exist anymore, or is it left in the air? Is
8 it all words? What can we do here to bring out this
9 issue? Do we have to pass a resolution again?

10 And I remember -- the Council itself,
11 they can be stern. They can get right to the
12 point. I remember when you were there on a
13 particular water issue, it was the same thing. They
14 came right out and said, "This is the way it is, A,
15 B, C, D. That's it."

16 So amongst all that feedback and
17 clarity, I want to say at that time, that maybe it
18 was all there for a record. You all were there for
19 a record. There wasn't a report, but in the same
20 instance, that's what is going to happen again. So
21 if this issue were to come before the Council, the
22 same thing is going to be acknowledged.

23 So I think Navajo at this point is
24 waiting for feedback and clarity. We need to move
25 forward. I only have basically two more years left

1 in this position. I didn't go to school for
2 politics. I went to school for animal science. I'm
3 here now trying to make a difference, trying to make
4 a dent in the world of youth on our reservation,

5 trying to excel not going by state standards.
6 That's too high. We're talking reservation, and if
7 you go out to the back areas of the reservation, it
8 is like total neglect. There is different
9 varieties of situations out there that you only see
10 like the joke on the issue with the Kyl legislation
11 reservation, 2109 concerning the water and the
12 wagon.

13 That's kind of how I see BIE. That's
14 how I see the federal government, picking on my
15 people like that, and I for one don't appreciate
16 it. How dare they come and do that. How dare they
17 pick on my people as such. Nobody speaks up for
18 those people. So I'm here on their behalf to say
19 such. So I just want that clarity from their
20 standards, and maybe the Honorable Vice President
21 can say a few words on that, as well.

22 MR. KILLSBACK: Thank you, Councilman Hale
23 on behalf of the Council. I appreciate those
24 words. I would like to respond a little bit, and
25 have my colleague, Deputy Director Jeff Hamley,

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1 respond, as well.

2 First of all, I appreciate the words.
3 Like I said, they were definitely important for us
4 to hear, and the consultations where you submitted
5 information to our BIE director either Keith Moore,
6 as well as Brian Drapeaux at Fort McDowell, as you
7 stated, we have been engaged in what seems like a

8 whole slew of different consultations on BIE, and
9 its intent is to improve Indian education.

10 Now, we're at the Navajo Nation, the
11 Dine' Nation. How that affects the Dine' Nation is
12 that the Dine' Nation has such a large reservation
13 and has over 60 schools. It is a significant --
14 almost a quarter, if not a third of BIE-funded
15 schools, either the direct funding as a BIE-run
16 school or a tribally-controlled school where the
17 tribe runs it itself.

18 So in terms of significance, you're
19 absolutely right. It is very significant, and where
20 the BIE's obligation is, is to provide the funding
21 for the education, but also for the facilities. It
22 is in line with the obligations that the Nation has
23 with the United States. The 1863 -- Treaty of 1869
24 stated that.

25 So the laws that go along with that,

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1 as well as the Indian education laws and 25CFR, are
2 a minutia of red tape, but as you stated, tribes
3 have the ability through their inherent sovereignty
4 to pass laws, resolutions, to accept their own
5 standards in order to make their goals part of their
6 own tribal achievement record.

7 And so what we're trying to do is,
8 recognizing that the Navajo Nation has
9 significant -- being with the schools and the breath
10 of the area that the Navajo Nation covers, with the

11 other 23 states, the Navajo Nation has schools in
12 Utah, Arizona, and New Mexico. So you have three --
13 three different states just for the Navajo Nation
14 itself with three different standards, and they're
15 all different.

16 What we're saying if for BIE schools
17 and tribally-controlled schools, we want one
18 standard for those schools on the Navajo
19 Reservation. Now, that doesn't mean that the BIE is
20 going to impose these standards. What we're going
21 to do is we're going to work with the tribes to
22 develop those education standards for proficiency
23 and develop curriculum. To us, this is the most
24 sufficient step we can do to achieve better scores
25 for schools and for students in making sure that

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1 they're prepared for college, as well as prepared to
2 enter the workforce after graduation and after
3 receiving the high school diploma.

4 The book -- I haven't obviously seen
5 the book that the Navajo Nation passed, but I will
6 follow-up with that, and Brian Drapeaux, who is the
7 Acting BIE Director, and I think for the 566 tribes
8 out there, the Navajo Nation here stands to gain a
9 lot, but I understand that from being the Chair of
10 Education and making sure that you are doing all
11 that you can for your people and your students, this
12 is something that we will take back to DC and make
13 sure that it is not just words, it is not just air,

14 it is not something we do to check the box, that
15 we're going to follow through with it, and my
16 charge, being one of the lawyers for the Assistant
17 Secretary of the Indian Affairs, is to make sure
18 that the message carries through to DC and that we
19 follow through with that.

20 So I'm going to turn over the floor to
21 the Deputy Director here for the Bureau of Indian
22 Education to handle the more technical aspects of
23 your question, because they're important.

24 So, Jeff, if you can answer.

25 MR. HAMLEY: I can speak directly on the

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1 accountability workbook. The accountability
2 workbook that you submitted has been reviewed by
3 BIE, and it has also been reviewed by the Department
4 of Education at your request, the Navajo Nation's
5 request. So that's done.

6 We met with them a couple weeks ago,
7 and now we're doing a joint letter that will be
8 submitted to Navajo Nation. So that will be
9 concluded soon. But -- and then we think that
10 discussions will probably take place afterwards
11 because the workbook was done in advance of the
12 flexibility request, and there is some overlap
13 there.

14 So I think that will create an
15 opportunity for discussion, and maybe things have
16 changed with the Navajo Nation about their

17 accountability workbook. Maybe they want to make
18 changes. Maybe they don't. But the two should be
19 looked at together now and see how that works.

20 So that is in process. We realize
21 it's taking a long time, and in working with federal
22 bureaucracies, essentially you know how it is. It
23 takes a long time. The Department of Ed has
24 reviewed it, though, and we have their comments and
25 we're drafting a response letter to you now. So

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1 we'll try to get that to you as quickly as
2 possible.

3 MR. KILLSBACK: That will come to me and
4 the Acting Assistant Secretary Del Laverdure for
5 final signature. As Jeff pointed out, one of the
6 biggest difficulties we that we had is we had two
7 departments -- two really big departments reviewing
8 that, and so it takes essentially twice the time,
9 and it's already taken a lot of time with the
10 Department of Interior, obviously.

11 But the significance of the Navajo
12 Nation in providing that document itself is a
13 testament to the commitment that you all have to
14 creating an Indian education program the Dine'
15 people.

16 And so we're going to do our due
17 diligence to make sure that our comments are
18 submitted and they've addressed certain things that
19 you have raised. So unfortunately it is the nature

20 of the federal government working. I mean, you get
21 five or six attorneys reading from one department
22 and five or six from another, and we have to come up
23 with one response, and that is difficult.

24 So I'll turn it back to Vice
25 President.

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1 VICE PRESIDENT JIM: Ya'at'eeh hey. Good
2 morning. I am Rex Lee Jim, Vice President of the
3 Navajo Nation, charged with education on the
4 Navajo. The goal of the Navajo Nation is to develop
5 an educational system that endorses its culture,
6 sustains its language, and promotes the academic
7 success of its children and adults. The Navajo
8 Nation is taking initiatives to develop a functional
9 department of education that would implement
10 initiatives and policies as a Sovereign State. As
11 such, the Navajo Nation does not support the Bureau
12 of Indian Education's flexibility NCLB waiver.

13 The Navajo Nation outlines three major
14 reasons why I do not support the BIE's NCLB
15 flexibility waiver. One, federal law stipulates
16 that flexibility waivers are only available to state
17 educational agencies; the BIE is not
18 federally-recognized state educational agency. The
19 BIE's oversight of NCLB accountability for
20 BIE-funded schools comes from a 2001 agreement
21 between the Departments of Interior and Education
22 which grants BIE responsibilities comparable to

23 those of a state educational agency and shall remain
24 in effect for the period for which the NCLB
25 reauthorizes the ESEA. NCLB has not been

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1 reauthorized since 2008, which raises questions
2 about whether authority for the agreement is still
3 legal. More, Section 9401 of NCLB, which BIE
4 references in its flexibility waiver as the
5 authority for its proposal, extends the same right
6 for waivers to LEAs, Indian Tribes, and schools as
7 BIE notes in footnote 5 of its document. The
8 Navajo Nation's position is that the BIE does not
9 have the authority to apply for a flexibility waiver
10 under current law.

11 Two, the U.S. Department of Interior with
12 its administration of BIE has failed the Navajo
13 Nation. BIE schools on the Navajo Nation continue
14 to fail the students and Navajo communities. During
15 the school year 2010 to 2011, 64 percent of BIE
16 schools on the Navajo Nation have not met Adequate
17 Yearly Progress, AYP.

18 Three, the BIE flexibility waiver
19 fails to address the needs of American Indian
20 students and is not representative of current issues
21 impacting American Indian students. Since the
22 Government Accountability Office's report of 2009
23 citing BIE failure to help schools, the BIE
24 flexibility waiver does not address the concerns
25 raised in the report. The BIE continues to fail to

1 help schools, tribes and students. Not
2 representative of current issues impacting American
3 Indian students. Since the government
4 accountability office of 2009 citing BIE failure to
5 help schools, the BIE flexibility waiver does not
6 address the concerns raised in the report, that the
7 BIE continues to fail to help schools, tribes and
8 students.

9 The following points elaborates the
10 rationale for not supporting the BIE ESEA
11 flexibility waiver: One, the vast majority of
12 Navajo students in the BIE schools, 65 percent, do
13 not meet academic standards as spelled out by NCLB
14 law. The flexibility waiver does not describe a
15 plan to address this issue. The flexibility waiver
16 is broad and ambitious without specific information
17 to meet student needs.

18 Two, the flexibility waiver fails to
19 describe how students will be college and
20 career-ready when there is explanation of college
21 and career-ready outside of academics. Most BIE
22 schools are K-6 and K-8. There is no discussion on
23 how these schools will work with state public
24 schools for seamless transitions of students into
25 the public system.

1 Three, BIE opted not to write the

2 state accountability plan. Instead, they directed
3 their schools to implement and use the criterion
4 reference test of the state accountability plan of
5 which they were located. The flexibility waiver is
6 unclear as to what is being waived in the state
7 accountability plan and assessments and AYP.

8 Four, the BIE plan is vague in terms
9 of coordination between teacher preparation and
10 transition to the common core, how their plan will
11 be implemented and sustained.

12 Five, there is no discussion why BIE
13 will use an interim assessment instead of using
14 current state CRTs. The proposed interim assessment
15 developed by Northwest Evaluation Association, NWEA,
16 has not been peer-reviewed or approved by U.S.
17 Department of Education. This is out of order.

18 Six, there is no discussion of the
19 relative differences or merits of the NWEA, state
20 assessments, PARCC or SBAC assessments.

21 Now we get to the Navajo Sovereignty
22 in Education. In 2005, the Navajo Nation's Tribal
23 Council passed the Sovereignty in Education Act,
24 which explicitly recognizes the authority and
25 responsibility of the Navajo government for the

1 education of its people.

2 Two, the successful education of
3 Navajo children will require the engaged commitment
4 of parents and communities embedded in the culture

5 and values of the Dine' People. The Navajo Nation's
6 Department of Dine' Education has been developing
7 Navajo curriculum related to key Navajo standards:
8 Culture, language, history, governance, and
9 character (ke').

10 Three, the Navajo Nation has
11 submitted, through the BIE, a Consolidated
12 Accountability Workbook to the U.S. Department of
13 Education on May 28th, 2009. The BIE has completed
14 its peer review process and the Navajo Nation has
15 responded to comments of the peer review committee
16 and has rewritten and resubmitted the accountability
17 workbook. The BIE has not responded to the Navajo
18 Nation rewrite to the Navajo Nation accountability
19 workbook.

20 Four, the Navajo Nation accountability
21 workbook gives the Department of Dine' Education
22 authority that would explicitly oversee the 34
23 tribally-controlled BIE grant schools located within
24 the boundaries of the Navajo Nation.

25 Five, in closing, western education

1 through the BIE and state public school system have
2 been on the Navajo Nation for 142 years. We need to
3 take more responsibility for our students to ensure
4 that they receive a quality education because of the
5 mere fact that these students are our future. When
6 a quality education is absent from the lives of the
7 students, it seriously impacts the livelihood of the

8 Navajo Nation. Our people need the basic academic
9 skills to raise healthy families and to make
10 positive contributions to our Navajo communities and
11 society. The Navajo Nation absorbs the impact to the
12 education of our people. We seek more control of
13 our destiny and our Nation through the development
14 of a Navajo education system that preserves our
15 language and culture, while providing a sound core
16 academic content in reading, writing, math and
17 science. As such, the Navajo Nation does not
18 support the BIE NCLB flexibility waiver request.

19 MR. KILLSBACK: Thank you for those
20 comments, Vice President. That was quite a list, so
21 I don't think I would be able to respond
22 substantively to all the items which you raise, but
23 since it is part of the record, we will obviously
24 address them at a later time in a more comprehensive
25 format.

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1 MR. BOUGH: I think your points are very
2 well made, and I think they're very important for us
3 to actually consider in getting our flexibility
4 request together, because I don't think that our
5 positions are really all that far apart.

6 I believe much of what we've
7 encountered with regards to having trouble approving
8 the Navajo request for an alternate definition of
9 AYP, is that we have to satisfy an extremely high
10 mark to keep the Department of Education funds

11 flowing into the bureau, and that high mark is that
12 we would need to comply with every single
13 requirement that is imposed on states' creation of
14 the accountability workbook in support of their
15 accountability system, and that is an incredibly
16 high mark for states to make.

17 When the negotiated rule-making went
18 into place in 2005, part of that was the BIE did not
19 have the capacity to put together such an
20 accountability workbook, and for that reason, we see
21 one of the reasons why sovereignty was deferred to
22 the states, because the states have the ability to
23 put the accountability workbooks together, and so we
24 deferred the sovereignty of our tribes in reference
25 to our tribes to the states for the purpose of

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1 carrying out education and accountability processes.

2

3 In particular, we see now that we're
4 more or less in the same situation, where the BIE
5 has come to understand that the state accountability
6 systems are not adequate or accurate reflections of
7 our own students' needs. What we have today on the
8 table is a request to change 25 CFR to have a
9 unification of the accountability system, to have
10 consolidated standards and assessments so we can
11 bring together all the different states under one
12 system with one single standard for accountability.

13 I understand that is one of the

14 primary problems we have on Navajo, in particular.
15 The desire of Dine' Education, the Dine' Department
16 of Education to unify its accountability system, to
17 bring together the schools across the three states
18 where you have them, is extremely important and
19 extremely valuable. The first and most relevant
20 starting point for any school system is to have
21 accurate and reliable data on its students.

22 Reliance on different state standards
23 and different state assessments makes it impossible
24 for you to compare your own students in Utah, New
25 Mexico, and Arizona simply because you cannot

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1 compare one assessment in one state with a different
2 student's achievement and assessment in a different
3 state.

4 What we propose to do is unify the
5 accountability system in this regard in terms of
6 standards and assessments, and, you know, I think
7 Dr. Hamley said it very well earlier. We borrowed
8 liberally from your alternate AYP request in this
9 particular flexibility request.

10 For the purpose of unifying this
11 across the board, and when Mr. Killisback spoke
12 earlier about incorporating the 15 percent of
13 tribally-developed standards into the accountability
14 system, that is one of our major selling points.
15 Suddenly we are going to start talking about
16 accountability in the BIE in terms of what it is

17 that is important to tribes.

18 I think that we have demonstrated our
19 capacity to support tribes in this area specifically
20 through the granting of 61-11 monies to help
21 tribally-relevant assessments of oral language.
22 This has been done with Navajo. This has been done
23 with our friends down in Choctaw, Mississippi. It's
24 been done with our Osack (phonetic) friends up in
25 South Dakota. We have stood up many grants to help

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1 the tribes development these standards with regard
2 specifically to development of oral language
3 assessments and standards surrounding those
4 assessments.

5 So I think that really your criticisms
6 are all very relevant. They are all very to the
7 point, and they're ones that we're taking pains to
8 address with this accountability request. So your
9 comments today are ones that will be helpful to us
10 in terms of recrafting the flexibility request,
11 itself, to meet many of your concerns, if not all of
12 them, and we would appreciate having further
13 concerns addressed in the document down the road in
14 the spirit of working with the Navajo, rather than
15 working against you, and I think that we're really
16 not that far apart.

17 One other comment I would like to make
18 with regards to the assessment -- well, two things.
19 First is that the AYP systems that we're currently

20 using for the states, are designed for state
21 schools, not BIE schools. Mr. Killback spoke
22 earlier about the population sizes in our schools.

23 In the State of Arizona, if you go
24 below a certain number of students in your grades on
25 an annual basis, they close the schools down because

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1 they're not cost-effective to operate. That minimum
2 number required for accountability purposes in
3 Arizona is 40 students per grade to do an AYP
4 determination.

5 Almost none of our schools on Navajo
6 meet that. Tuba City Boarding School does. So you
7 get a sense of the size of school that is required
8 to do that.

9 The natural result of having the state
10 determine what the accountability standards look
11 like, is that public schools are far more likely to
12 make AYP than those funded by Bureau of Indian
13 Education, and we see a lot of schools are
14 identified as failing that maybe are not failing,
15 and, in fact, I think when last year we lowered the
16 minimum from 40 to 15 to acknowledge that we had
17 smaller schools on the Navajo Reservation.

18 We saw more schools make AYP because
19 we were considering them on a single years worth of
20 data, rather than three years worth of data. I know
21 that's a bit of a technical explanation for what's
22 going on, but I think many schools are identified as

23 failing on Navajo, and the assessment that we plan
24 to use, you alluded to it, is the NWA assessment,
25 but we're looking at one specific flavor of it, and

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1 that is the blended model, based partly on
2 standards-based assessment, and criteria referenced
3 and it's partly formative.

4 The first two administrations of the
5 assessment will be the formative version you're
6 talking about. This is not going to clear peer
7 review with the U.S. Department of Education. What
8 they will be interested in is that third assessment,
9 and this is already the one -- the blended model
10 that is in use in the State of Utah and the pilot
11 study, specifically for the measurement of student
12 growth across the academic year.

13 This is one of the areas where our
14 schools have been requesting to have some credit
15 given to them. They get students to come in at
16 proficiency levels that are extremely far below
17 grade level, and the teachers, they teach these kids
18 as best they can, but they may not be performing on
19 grade level at the end of the year, and it's not
20 really a good expectation to bring the student along
21 that far. That kind of academic progress is, but
22 when we look just at proficiency, and we don't
23 consider student growth across the year and progress
24 made. We are leaving out a major portion of how it
25 is we should be measuring schools, and that's one of

1 the major features of the new flexibility request
2 put out by the Secretary of Education is to start
3 looking at growth across the academic year as more
4 pertinent measure of how we see students growing and
5 how schools are performing.

6 So I think that we can see the
7 possibility of that NWA assessment, the one that is
8 in use in Utah as a pilot model for the study of
9 student growth, clearing the peer-review process
10 with the Department of Education, and we're hitching
11 our wagons to that in this proposal because we feel
12 it's the best and most accurate way for us to
13 measure student growth and because we can align it
14 to the common core standards the most quickly of any
15 assessment.

16 We see that all the states are
17 actually proposing an interim assessment for the
18 next two-year period of time because the developed
19 assessments for the consortium for the common core
20 standards, the smarter balanced assessment
21 consortium out west, and the partnership for the
22 assessment of readiness for college and careers out
23 east, their assessments won't be ready until the
24 2015 school year.

25 So all the states are pretty much

1 moving to an interim model. The difference between
2 the models that are offered by the states and the

6 of information. On the common core assessments and
7 that transition, we're working very closely with the
8 ADD Monte Russell, and he's working also with the
9 entire bureau to make that transition. The waivers
10 that have been given have caught the entire country
11 -- put the entire country in a position, all the
12 states, of transition. So we're all trying to deal
13 with a difficult situation.

14 The assessments aren't ready. They
15 won't be ready for two years. The states now are
16 rushing to try and implement -- they've adopted, but
17 they haven't implemented the common core standards.

18 So we're all working on that
19 together. We're working collaboratively with the
20 Navajo schools and with the ADD. So on that issue,
21 that is sort of the status of it.

22 But I think -- I want to raise one
23 point, rather than getting into all your points,
24 which are well-taken and we will definitely consider
25 those, is that the main thing with the flexibility

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1 request for the bureau, is that there is a national
2 reform movement going on in the country now. It has
3 been for quite awhile. But the common core
4 standards, for example, started with the National
5 Governors Association, and then the chief state
6 school officers took it up.

7 So there really is a major grassroots
8 reform movement, but too often BIE-funded schools

9 get left out of these reform movements. For
10 example, The Race to the Top. That's where a lot of
11 the proposals and initiatives were put into that the
12 best thinkers in the country wanted to make
13 available to states, but we were left out of that.

14 Then there was a teacher incentive
15 proposal by the Department of Education, and we
16 realized that we would like to see that, too, but we
17 were left out of that. So now here is the next very
18 big one, the flexibility request.

19 I guess the question is are the
20 bureau-funded schools going to always lag behind the
21 country 10 or 20 years and not join in reform
22 efforts, or are we going to be part of this? And
23 that's sort of what we're trying to propose, is that
24 the bureau schools join in the national reform
25 effort and try and improve.

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1 And your points are very well-taken
2 about the proficiency of bureau-funded schools. It
3 is not good. It is both tribal and bureau. They're
4 both equally not good, and something dramatic has to
5 happen, and that's how we see this flexibility
6 request, is a very bold and dramatic action forward,
7 but it's going require the support of the governing
8 school boards and the giving tribes to happen.

9 That's what we are proposing. What is
10 on the street right now is a draft. It's out there
11 for discussion. It's out there for critique -- hard

12 critique, and we would like to look at all the
13 critique we get, and based on that, revise the
14 flexibility request.

15 So I would just ask that everybody
16 keep an open mind, and maybe with further discussion
17 and critique, something can be developed that will
18 help move bureau schools into the mainstream of
19 reform efforts and move them forward, because what
20 we have been doing has not been working.

21 VICE PRESIDENT JIM: Thank you for your
22 response. We appreciate it. One, we are interested
23 in working together. When the director of BIE comes
24 to the Navajo Nation Council and tells the Council
25 that they will not support the Navajo Nation's

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1 request, that is not working together. To us, that
2 is pitting the Council against the department. So
3 we need to be careful how we address those issues.
4 So that's one issue.

5 The other issue is when you talk about
6 going with reform, grassroot, I would like to think
7 that the Navajo Nation is coming from that
8 perspective, a grassroot level, saying that Navajo
9 students are our children. We have the right to
10 have first access to their minds, and we are in a
11 better position to do that than any other group,
12 including the BIE.

13 And the second is when you say BIE,
14 you're covering the 540-plus nations. That is

15 making the assumption that all nations are the same,
16 and therefore one type will fit all of them.
17 Unfortunately, that is not the case.

18 The different tribal nations are as
19 different, perhaps more so than the 50 states that
20 we're dealing with. The Navajo Nation is also
21 taking that bold move saying, "Hand us over that
22 authority to run our own schools, to be in charge of
23 that," and that's what we're asking.

24 And so when you talk about reform and
25 you're talking about taking responsibility and

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1 talking about bold steps, that's what the Navajo
2 Nation is doing, and that's what we are interested
3 in.

4 MR. KILLSBACK: Thank you. I would like
5 to respond to that a little bit, Vice President,
6 before the next comment. I think that you're
7 absolutely right, that we need to work together, and
8 before any decisions are made, like I said, we're
9 going through a consultation. Nothing is set in
10 stone right now.

11 It has taken time, but I think the
12 Navajo Nation's goals, as well as the Department of
13 Interior and Bureau of Education, have the same
14 goals; improving education for Indians. And you're
15 absolutely right; one thing may work for one tribe,
16 and it may not work for another.

17 But what we're trying to do, as Jeff

18 pointed out, is we're trying to take advantage of
19 the opportunity that the Department of Education has
20 in terms of significant and meaningful reform to
21 make those improvements, and part of the partnership
22 with the Department of Education is that in a public
23 school system they have these opportunities, and
24 unfortunately tribal schools -- BIE schools have
25 always been left to the side, saying, "You know

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1 what, Department of Interior, Department of
2 Education, you have it your way," and we see the
3 opportunity because the Department of Education has
4 those same exact issues in rural America, as well as
5 in the urban area where there are impoverished or
6 under-privileged minorities, as well.

7 So the Department of Education Arne
8 Duncan sees similarities between the failing school
9 systems in the urban areas where the minorities are,
10 as well as the rural areas where the Native
11 Americans are, and how does the Department of
12 Education want to handle that? They want to partner
13 with the Department of Interior to address that.

14 So what we're engaged with is
15 essentially options where doors are going to be made
16 open to walk through at the BIE's request so that we
17 can try to make -- take advantage of those
18 opportunities that the Department of Education has.

19

20 The criticisms systems and the

21 comments that you have are the exact types of
22 criticisms that we need to hear, and we may not have
23 your support today, Vice President, but we are
24 shooting for it, and those comments are going to be
25 significant for us when we address those adequately

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1 so we can get Navajo Nation support on this.

2 And I want to say we're committed to
3 that, and the Assistant Secretary Del Laverdure is
4 committed to that, as well as Secretary of Interior
5 Salazar. We know it is frustrating, and you have
6 been dealing with this for years, but we're
7 dedicated to it, as well, and we're going to
8 continue to do that.

9 So I think we'll finish with that and
10 move on to your comments.

11 MR. WHITE: Yes. Thank you. My name is
12 Calvin White. I work for the Department of
13 Education. I administer a program -- science and
14 technology program. I have a vested interest in
15 what we're doing here. I always think and look at
16 education as being one of the -- not just in terms
17 of words, but one of the significant factors that
18 will help our people survive. I used to be a middle
19 school counselor, and I taught in middle school, and
20 three things I want to point out.

21 One thing, I guess from an Indian
22 perspective, nice to meet you Mr. Killback, and I
23 have met several other attorneys within the

24 Department of Interior that address this same issue,
25 and your face is new to me, but the previous people

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1 that have come along to help us, there was reference
2 sometimes we put on our Indian thinking cap, and we
3 need to think Indian when we think about our people
4 and our communities back home, because what I see is
5 that the public systems on the Navajo Nation, they
6 have about 254 schools that service the Navajo
7 children -- 254 schools, 172 are physically located
8 on Navajo, and out of that 172, 66 are BIE-funded,
9 and there is a distinction between BIE-operated and
10 tribally-controlled schools.

11 So one of my questions comes, this
12 consolidated plan here, is it for BIE-funded --
13 BIE-operated schools? Tribal schools, there's a
14 reason why these schools waive to come out of BIE to
15 the tribe. In this case, Navajo Nation may have
16 schools -- 34 schools, more pending, that are opting
17 to waive authority from BIE to come to Navajo.

18 What does that really mean? To go to
19 a government with the local control. How far do you
20 take that? That was the analysis of the
21 predecessors on the Tribal Council. A lot of these
22 schools come under the tribal system. It is the
23 tribal system. It is not state or BIE. It is the
24 tribal system.

25 Therefore, the emergence of the Navajo

1 Nation to work with. So we have some of the
2 cultural, all which you cited, all which you read,
3 all which you wrote, have been presented in our --
4 that's a reflection of our accountability plan. To
5 me, you're talking about that.

6 We've been in negotiation with BIE
7 since 2004, 2005, but the flexibility or the waiver
8 of AYP was allowed for tribes. That's how long I've
9 been working at it, and the way we were informed it
10 had to be scientifically-based, following a
11 scientific methodology and reading, and we've down
12 that, and I believe that Navajo has exercised that.

13 So in that regard, I stand on the
14 words of the Navajo, stand big and ready to
15 implement. So that question comes, if this
16 flexibility waiver is for BIE, or is it for
17 tribally-controlled schools?

18 Secondly, I was at the meeting when
19 Salazar and Duncan met in December. Vice President
20 here and myself were at that meeting, and one of the
21 things that Duncan said at that time, "We want
22 something that is ready to go." I guess Obama's
23 term, "Shovel ready." Ready to implement now,
24 today. He asked the tribal leaders that.

25 A lot of the tribal leaders said, "We

1 need to go back and have a consultation. We need to
2 go back and consult with schools and the people,"

3 and Duncan stood up and said, "No, that takes too
4 long. We will only be here for three or four
5 months. We want something now," and that's when
6 Navajo stood up and said, "We're ready to go," and
7 here we stand.

8 Let us implement our accountability
9 workbook. That's the plan. That's based on tribal
10 law. That is the exercise of sovereignty. You
11 referenced that you want to increase sovereignty,
12 and that's what we're doing in our professional
13 judgment. So what is the barrier there?

14 I think that in order -- we're at this
15 point right now where sometimes we go out into our
16 communities, and I guess you're going to look at
17 assimilation skills. How assimilated are we in
18 terms of Indian people? And I think that we have
19 enough educators on Navajo to really make this
20 successful, to make it work, because once those
21 kids, students graduate from high school, BIE is not
22 concerned about them. Public education isn't
23 concerned about them. They've done their job, you
24 might say.

25 Us right here, because those are our

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1 relatives, those are our people, if they don't have
2 the academic skill, if they don't have the basic
3 fundamental skill to get a job, then they start
4 having a family. Then they need a place to live.
5 Then they need an income. That's how we absorb

6 them, and that is the reality of what we're talking
7 about.

8 So it seems like the education system
9 goes only up to maybe age 18, and then from there,
10 Navajo -- "All right Navajo, here they are right
11 here," and we have a lot of problems on the nation,
12 and I'm sure you're aware of that from your side,
13 from your people, but we are not exempt from that.

14 So that's what we're talking about.
15 We want our people to be skilled and capable to
16 survive because we see them walking up and down the
17 street, hitchhiking with families. Some people
18 graduated last year can't get a job. They come to
19 Vice President's office or Delegates Hale that they
20 need assistance to pay for their life. That's the
21 reality.

22 So this plan we're executing, we're
23 serious about it. To us, it is no play thing.
24 We're serious about it, and we want to move forward.
25 I made a suggestion to BIE at several meetings, "Let

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1 us run with our plan, you guys do your plans. In
2 three years, let's compare notes, what worked and
3 what didn't work, and maybe you can use Navajo as a
4 model," and the Obama administration, the blueprint
5 of education highlights culture, and the things
6 we're doing highlights that.

7 But the scary point to me, what I
8 really get afraid of -- I don't get scared at too

9 many things at a congressional level. So I know
10 you -- you're the federal programs are the diversity
11 at a congressional level, when they say Indian
12 students, academic performance is bismol. When they
13 say Indian tribes can't do nothing about it, when
14 they say that -- when they go through all the
15 consultations like here, like the previous
16 consultations that the U.S. Department of Education
17 had, and you get all that from all tribes, and then
18 a lawmaker comes and wipes that clean and says,
19 "Well, we want to go this way because the Indian
20 tribes, the data say they cannot perform."

21 That is the scary part to me, and I
22 believe that you're at the diversity of them, as
23 well as other federal agencies. The thought is to
24 put BIE under U.S. Department of Education, as
25 Duncan and Salazar. That's what they were talking

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1 about, and the way we conceptualize it is you take
2 away that Indian child and pass them between two
3 federal agencies.

4 Us tribal leaders, all we hear is,
5 "Give that child back to us, we'll educate him and
6 he will be a survivor and be a good, productive U.S.
7 citizen."

8 So with that, it is frustrating in
9 some ways and there's always that -- I guess, that
10 way out with these -- the federal bureaucracy, but I
11 think that we need to be expeditious about what

12 we're trying to do here, and this way our people
13 are -- Duncan asked who has the answer to Indian
14 education. We have that answer. Us. Indians have
15 the answer. And I think that's something that we
16 need to materialize.

17 So my point, I think my tribal leaders
18 are going to be good, that your flexibility waiver,
19 we reviewed it. That 29-page document, we read it
20 over and over, and compared it to other states,
21 too. So we know what we're talking about, and when
22 we compare it to ours, this reflects what we're
23 doing here.

24 Why is BIE holding off on ours, when
25 they're running with theirs, and we kind of put it

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1 in that framework. So with that, I wanted to make
2 those statements here and on behalf of our Assistant
3 Superintendent here, he will address some issues, as
4 well.

5 MR. KILLSBACK: Okay. I'll respond to
6 your comments, Mr. White, first, and I'll have Jeff
7 respond to the question you have with regard to the
8 tribally-controlled school versus the BIE school.

9 My understanding is that it becomes
10 part of the tribal system -- tribal school system
11 that the Navajo has, and I think that your -- your
12 depiction of the -- what the Navajo Nation is going
13 to be able to do with its schools is significant and
14 of note, and I think that in terms of being the

15 model -- wanting to be the model for Indian Country
16 and how Indian Country can do better with Indian
17 education, I think that you are. The Navajo Nation
18 is the model.

19 So the work that you've done and that
20 your tribal leaders have done, as I stated, are
21 leading the charge, not only for your people, but
22 also for Indian Country. The idea that the Bureau
23 of Indian Education and our folks in DC, we need to
24 put our hats on and think Indian, that's the only
25 reason I went to DC.

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1 As an attorney working in New Mexico,
2 as well as in Montana, I didn't want to go to DC,
3 but my boss said, "We need Indian attorneys that
4 think Indian and are not going to be part of the
5 bureaucracy, and I want you to make significant
6 changes for Indian people. You can do a lot of work
7 for Indian people as a tribal attorney."

8 You have attorneys obviously on the
9 Navajo Nation, as well as other tribes throughout
10 the country, and my boss said, "Why help out one or
11 two tribes when one or two tribes are your clients
12 when you can make changes for all Indian people in
13 the short amount of time that we have, this
14 opportunity."

15 His charge to me was, "I want you to
16 handle Indian water and I want you to handle
17 education and try to get things done for Indian

18 people out there because I trust you and your heart
19 is where it needs to be in terms of making changes
20 for the federal government."

21 So that's why I'm there, and otherwise
22 I would love to be back here in the west where it is
23 nice and dry, and you can see the stars and know
24 where you're at when you're driving instead of
25 relying on GPS and I don't know where the sky

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1 exists, so I enjoy coming back here.

2 The BIE and the Department of
3 Education, that idea of rolling the Bureau of Indian
4 Education and Department of Education, none of it
5 has been in the press and hasn't been talked about a
6 lot, and I think that your ideas and your thoughts
7 on that are, you know, a topic of discussion, and
8 they will continue to be a topic of discussion, but
9 I think from the Department of Interior's view that
10 the Bureau of Indian Education, have the concern
11 that if we're not doing a good job, then you know
12 what, it is easy to cut off that funding and get out
13 of the business of Indian education.

14 I think that you expressed that fear
15 that the non-Indian thought, maybe even some of the
16 elected leaders of this country, they think that why
17 are we pumping over a billion dollars -- 1.1 billion
18 dollars into education when they're failing? We can
19 find a better use of that money. I think that's a
20 concern, and I'm glad you raised that in your

21 comments. So that's going to be something in your
22 comments and it will be a point of discussion when
23 we go back to DC.

24 We'll say, "You know what, Bureau of
25 Education, you're not doing enough of a good job,

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1 you're not moving fast enough, and you need to do
2 this in Indian Country," and so Secretary Duncan's
3 comments were right. We need to make change --
4 significant change as quickly as we can to address
5 these problems, and so in that line, that's where we
6 are administratively. We're trying to get that
7 done, and that's the reason for our consultation.
8 That's why I welcome the comments and the
9 constructive criticism. Our charge is to address
10 comments and get that accomplished.

11 So Jeff had an answer with regard to
12 the BIE versus tribally-controlled schools.

13 MR. HAMLEY: Your first question, is the
14 flexibility request written for BIE and
15 tribally-operated, or -- right now -- and that is an
16 issue that is on the table. Right now it is written
17 broadly to include both BIE schools and
18 tribally-operated. But, like I said, that's an
19 issue on the table. It is a draft, so it's up for
20 discussion as to what schools -- tribes feel about
21 that issue. So it could be redrafted to look
22 different on that.

23 And just on your -- on your other

24 point about the discussion here has underscored the
25 importance of your accountability workbook. So we

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1 will communicate with the Department of Ed to ask
2 them to expedite this process and get that response
3 back to you.

4 MR. BOUGH: I'll make very clear here, I'm
5 very interested in hearing what Mr. Benally has to
6 say here in a moment, but we did borrow very
7 liberally from your accountability workbook, and I
8 think what we're seeing is reflecting of the fact
9 that No Child Left Behind has very extremely,
10 stringent standards by which it judged
11 accountability workbooks.

12 When we look at the flexibility
13 request process, it is not quite as stringent. It
14 gives states much more leeway in their applications
15 to do whatever they need to do to reflect what
16 educational opportunities are in their system and
17 how education takes place. So it made sense to us
18 to do the things that you were asking for; unifying
19 your accountability system across the three states
20 where you had schools, unifying the standards,
21 unifying the assessments, and these are extremely
22 important features of our flexibility request, but
23 you have to remember that they're being judged by
24 different standards.

25 The alternate AYP definition that you

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1 have for us is being reviewed by No Child Left
2 Behind standards. They're extremely stringent, and
3 the U.S. Department of Education makes it clear to
4 us that they have to meet those standards of peer
5 review in order for it to go into place. Otherwise,
6 we risk possibly losing or having withheld those
7 ESEA funds.

8 So we might as well take it and go
9 where we can have the lower standards and
10 flexibility request portion, and try to get the
11 items that you're looking for. Maybe we're not
12 going to get 100 percent of what you're looking for,
13 but if we can get 75 or 80 or 90 percent of what
14 you're looking for, I think that we're all better
15 off at that point.

16 MR. BENALLY: Good morning. Three
17 questions. One is an explanation.

18 MR. KILLSBACK: I'm sorry. I don't mean
19 to interrupt. For our stenographer, can you state
20 your name.

21 MR. BENALLY: Oh, do you guys want my
22 clan?

23 THE REPORTER: Sure.

24 MR. BENALLY: My name is Ken Benally. I
25 am the Assistant Secretary of the Department of

1 Education. Three -- two questions, and the other
2 one I want to clarify that. This 15-85 percent.
3 Let say there is 200 questions. Let's say there is

4 100 math question and 100 reading questions.

5 So from Killback's comments, he is
6 talking about math. Does that mean there will be 15
7 percent of the questions on the math section that
8 would be culturally and tribally appropriate? To me
9 that means 15 percent out of the 200 questions,
10 there is going to be 30 questions that will be
11 language and culture. Is that what I'm hearing?

12 And then the other one is that as far
13 as the calculating AYP with the 564 tribes, plus or
14 minus. So to calculate that, to calculate that 15
15 percent, in Navajo we have this many schools on
16 Navajo. We have this many schools and this many
17 states, and they cannot make up between the tribe.
18 Within the tribe is a little bit -- there is a
19 little bit of change to that, but we can go over
20 that count.

21 So my point is the calculation of AYP
22 are going to say there is going to be a longitudinal
23 goals assessment. Is that be going to be
24 complicated now from going from 23 to 564. So where
25 is the BIA thinking on that?

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1 And then the other one is that I know
2 that BPA, they have -- because on page 4 it talks
3 about that. BPA -- they get all this money to do
4 this, but the tribe, we don't get any money to do
5 that, but the tribe has tribally-controlled
6 schools. Yet, BIE retains the tribe's -- the BIE

7 and the tribal schools funds to do this type of
8 school -- this type of professional development,
9 planning, assessment, carry-out, and training. Yet,
10 on the one we have oversight for, we don't see any
11 of those funds from the BIE.

12 Where does those funds go? Because
13 they only go for -- on here, I know it's optional.
14 On some of the schools, it is optional. We don't
15 know when we go over there, we don't know if we're
16 in or out as far as the tribe is concerned. We
17 don't get any of the money to plan with it. We want
18 that money to plan with them. So if this waiver
19 with our input -- if it goes through, if it moves
20 forward, all of those -- we're going to need those
21 funds to plan with our schools.

22 So that was what I was going to -- two
23 questions that I wanted to put on the table. Thank
24 you.

25 MR. HAMLEY: Brian and I may have both

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1 comments on this, but the 15 percent, that comes out
2 of the common core standards that are written now
3 that they're proposing a 15-percent local option,
4 and I don't think that they've -- it is a general
5 concept, is my understanding of it.

6 Nobody has sort of done the math of
7 how many standards they are, because when you start
8 counting the standards and then say, well, that
9 means we have X number of standards to go, I think

10 it is more of a general concept of -- with the idea
11 of giving local communities some control and input
12 over to the standards that they want to define.

13 What we see is this is a perfect
14 opportunity to sort of model what the Navajo Nation
15 has been doing in developing standards that are
16 relevant to your community in several areas in
17 language, culture, history, government, and like
18 that.

19 So we saw that it really works well
20 for tribal communities to use the common core
21 standard 15 percent comment, but at this point we're
22 not really counting how many total standards and
23 what would be 15 percent. We're just thinking that
24 if it adds up to 98 percent, or 105 percent, that it
25 is not that important at this point.

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1 So that's our understanding of it.
2 Did you, Brian -- is that pretty much the same
3 understanding?

4 MR. BOUGH: Yes. I was going to
5 elaborate. We weren't looking at the development of
6 500 standards. We would simply be doing standards
7 for any tribe that controls a school. So we would
8 have a maximum of 174 standards, but obviously with
9 the 60 or so schools that you control, they would
10 only have one set of standards that would be
11 implemented. They would be reflective of the 15
12 percent that you're looking at having some influence

13 over.

14 MR. HAMLEY: We're making a point when we
15 talk to stakeholders and also when we go through
16 consultations and listening sessions, and also at
17 the Department of Ed, to point out that this is
18 specifically what we are thinking, is that this is a
19 great opportunity, and we are pointing out that some
20 communities, tribes and tribal communities, have
21 been very active in this area, and it's really a
22 good thing. So that's been the message that we've
23 been delivering.

24 Let's see. Let me talk --

25 MR. KILLSBACK: Let me talk on that

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1 point. Mr. Benally, I'm curious. Simple math, 15
2 percent -- 15 questions out of 100, and 30 out of
3 200, you get into quantification, and I was kind of
4 getting the sense that that is something that would
5 be very easily discernible in terms of number-wise,
6 but in terms of the bureau standpoint, we wanted to
7 make sure that we heard comments on that or maybe
8 your preference on what you would envision that
9 being. Because as I said, we're in a consultation
10 process and have haven't set anything down, yet. We
11 would be very interested in your thoughts on that,
12 if that would be something that would be acceptable,
13 or unacceptable, or something in between, that you
14 could elaborate on, maybe not now, or maybe now, but
15 maybe later on, as well.

16 But the point that Jeff was trying to
17 make is that the charge that we have from Salazar,
18 as well as Del Laverdure, is that we need to
19 emphasize tribal language, tribal history and tribal
20 culture, and it needs to be part of the equation,
21 and so that is the 15 percent.

22 We recommend that, as my colleague
23 stated. So how we do that and how we go about
24 that? We're really looking to the tribal leaders
25 such as yourselves to help us do that.

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1 MR. HAMLEY: And your point about the
2 funding is well-taken, as well. What I can say
3 about that is that is the way that the No Child Left
4 Behind is written now, is that percentages will be
5 held back for ESEA to fulfill specific
6 responsibilities.

7 Now -- but I think that's an area that
8 should be revisited, certainly under
9 reauthorization, but to see what flexibility we have
10 right now to share those points, but that point has
11 been raised in other listening sessions. That is an
12 issue. It is understood by the tribal schools that
13 the bureau does withhold those percentages, but it
14 is by law that we do that. So our hands are tied at
15 this point, but we need to explore what flexibility,
16 but I think that we should also be creative in
17 looking at what other options there are for funds.

18 I know that -- I believe that

19 Mr. Moore and Mr. Drapeaux have talked to the Navajo
20 Nation about the single tribe concept, and there
21 might be a way there to provide additional funds for
22 operation. So I'm just suggesting, not particularly
23 that vehicle, but we may need to put our heads
24 together and come up with some other solutions.

25 MR. KILLSBACK: Vice President, you had

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1 additional comments or questions for us?

2 VICE PRESIDENT JIM: Thank you. What this
3 really comes down to, the Navajo Nation would like
4 to go at 100 percent. There is no reason why math,
5 science, history, whether it's Arizona history or
6 U.S. history, world history, cannot be taught in the
7 Navajo language, and I just don't like this idea
8 when you say "lower standards".

9 How can you be lowering standards when
10 the Navajo Nation sits here and says that we are
11 going to implement the core -- the common core, as
12 well? In addition to that, you want to introduce a
13 second language -- another language which is Navajo,
14 which means we would be fluent and literal to know a
15 whole body of literature as Navajo stories, to have
16 additional knowledge about not only Navajo history,
17 but tribal history and Indian history and laws.

18 How could that be a lower standard? I
19 just don't understand that concept. Certainly, the
20 NCLB is more stringent, but being stringent applies
21 to a certain way of knowing and restrictive to a set

22 of standards and skills, and that is one way of
23 saying that anything y'all have that is not fitting
24 into that, we consider that lower and substandard.

25 That's an attitude that we're trying

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1 to address and overcome so that those kinds of ideas
2 are not passed on to our children. To de-colonize
3 that kind of colonization.

4 So I would appreciate it if from here
5 on that we speak of these in terms of different
6 standards, which are just as important as what NCLB
7 is talking about. So when we are making public
8 comments and we say lower standards, that's just not
9 right --

10 MR. BOUGH: I think I need to be a little
11 more clear.

12 VICE PRESIDENT JIM: Let me finish. Thank
13 you. But that's how we perceive it, and that's what
14 I'm hearing, and I'm certain other people are
15 hearing it that way. That perception is so
16 important, so we need to address it and make sure we
17 don't say stuff like that. We mean something else,
18 and let's be clear about it. Thank you.

19 MR. KILLSBACK: Thank you, Vice President,
20 and let me apologize if that came across as
21 disrespectful to you and your thoughts on
22 education. As part of our presentation -- I think
23 you came a little later and I went into a detailed
24 explanation on AYPs and states and the way that

25 tribes, when they agree to adopt a new state

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1 standard, that part of that -- annual, yearly
2 progress requirement that tribes agreed to, and by
3 agreed to, a state standard or assessment, is that
4 states have unfortunately engaged in a practice
5 of -- in order to meet AYPs, of lowering their
6 standards in terms of meeting proficiencies.

7 In other words, in terms of meeting
8 high school expectations for reading, math, and
9 language arts, instead of graduating at a twelfth
10 grade level, they reduce their proficiency standards
11 to maybe a tenth great level in order for schools
12 across that state to meet AYPs, and unfortunately
13 tribes that have schools in that state, are also
14 subject to that same standard.

15 And so when I say that
16 administratively that No Child Left Behind Act, what
17 that does is it unfortunately administratively
18 created a system or a scheme of schools to engage in
19 changing their standards in order to meet AYPs, and
20 the persons that suffered that would be the students
21 because they are not going to be graduating ready to
22 go to college, to be reading at a college level, and
23 then if they don't go to college, they're not going
24 to be ready to be working at a person that would
25 have a twelfth grade education.

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1 So with regards to tribes and
2 developing their own common core standards, we
3 absolutely 100 percent agree that proficiency needs
4 to be at a twelfth grade level when they graduate,
5 and also at the grade that they need to be to
6 promote to the next level.

7 And tribes, through their own
8 determination and assessments, can develop those,
9 and that proficiencies would be developed at a
10 basement. That means that the Indian tribes can set
11 whatever they want, and that the lowering of
12 standards was a system or institution that was
13 created by the No Child Left Behind and those states
14 tried to circumvent in order to be in compliance.

15 So that is a little clarification
16 there, and I know that you may have come in later,
17 and that's the -- there is no disrespect, and I
18 totally understand and I apologize if there was a
19 viewpoint that we were indicating that Indian
20 standards or tribal standards or Navajo standards
21 were below or inadequate.

22 So, Brian?

23 MR. BOUGH: Yes, and it pains me greatly
24 to think you that you were offended by my remarks
25 because of lack of clarity. I was not referring to

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1 the Navajo standards or any other standards
2 developed for the purpose of measuring academic
3 achievement. I was referring to the standards by

4 which accountability systems are judged.

5 The No Child Left Behind standards for
6 judging accountability system is the peer review
7 process set forth by the U.S. Department of
8 Education. It says such things that if you don't
9 have a standards-based assessment, and only a
10 standards-based assessment is the basis of your
11 accountability system, we will not approve it.

12 It says things like you have to have a
13 series of peer-reviewed, scientifically-developed
14 standards of mathematics and reading, otherwise you
15 cannot be approved. It says you have to apply it to
16 100 percent of the schools in your state, or your
17 cannot be approved. You have to have 95 percent of
18 your students tested, or you cannot be approved.
19 You cannot look at student growth, or any number of
20 other things.

21 The standards for putting together an
22 accountability system for the purpose of getting an
23 adequate yearly progress definition in place under
24 No Child Left Behind were extremely stringent. They
25 did not allow states any leeway. They all had to

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1 terminate with an annual measurable objective of 100
2 percent by 2014, no exceptions.

3 So whenever I talk about having less
4 stringent standards, that's going to applied to the
5 flexibility request where states are able to recraft
6 the annual measurable objectives, not be 100 percent

7 by 2014, but to be on a different time line where
8 you can look at measures of student growth, where
9 you can look at additional information besides
10 standards-based assessments which is a formative
11 assessment, something that is norm referenced.

12 So I was simply talking about the
13 accountability system proposals. By including many
14 of the facets of your proposal and ours, we know
15 that we can get it through the peer-review process
16 of the U.S. Department of Education a lot more
17 easily because we're not going to be expected to
18 comply with the very stringent standards that were
19 applied in No Child Left Behind systems.

20 The Secretary of Education's
21 flexibility standards are lower in the sense that
22 they are not as stringent, they give the states more
23 leeway, and it was not my intention to say that
24 Navajo standards or any other standards would be
25 lower. In fact, I think that what you have on the

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1 table in terms of your educational system is going
2 to be leading the entire bureau if we can get to the
3 point that it can be implemented, simply because
4 you're starting to do things in the native language
5 and are starting restoring it, and that is going to
6 be a major challenge that no other state will have
7 on the table.

8 Again, I'm very sorry if I offended
9 you. It was not my intention to talk about the

10 quality of the academic content standards, as much
11 as it was to talk about the standards by which the
12 accountability systems were judged. And so I am
13 sorry, and I hope this clarification is helpful, but
14 it was not my intent to offend anyone, and certainly
15 not you, Mr. Vice President.

16 MR. KILLSBACK: Thanks. Do we have any
17 more questions or comments from the tribal leaders?

18 (No response)

19 MR. KILLSBACK: If not, then what I would
20 like to do is take a, 10 or 15-minute break, and
21 when we reconvene, we'll open up the microphones for
22 public comment, as well. So let's take a 15-minute
23 break so we can give our stenographers a chance to
24 rest their fingers.

25 (Break taken at 10:14 o'clock a.m.)

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1 * * * * *

2 (Proceedings resume at 10:42 o'clock a.m.)

3 MR. KILLSBACK: Good morning. We're going
4 to go ahead and get started. What I would like to
5 do now is I would like to open up the floor for
6 comments from the audience, and we have mics up
7 here, if you would like to sit down. We also have a
8 roaming mic up there if you just want to stand. You
9 have the opportunity now to ask us questions, or
10 just make general comments.

11 As a way of protocol, I ask that you
12 first state your name. Second, who you represent

13 and which tribe, and then you can ask a question or
14 provide a comment. So we'll leave that open for now
15 until we don't think that any other comments or
16 questions are going to be made here.

17 So before we open, the mics are up
18 here.

19 MR. FRED COHO: Hello. My name is Fred
20 Coho, C-o-h-o. I'm with the Pine Hill Schools in
21 New Mexico. My current job there is acting
22 superintendent, and I've been in the education
23 business for the past 30 years, working as a
24 teacher, Title I director currently, and now I'm
25 acting.

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1 In my capacity, Pine Hill Schools has
2 always had a vision of student achievement, and one
3 of the things that we've been doing is we've always
4 been improving somewhat in reading and math, even
5 though we might be at this point -- an example, at
6 35 in reading for one year, and we improve up to
7 that for our 15 percent, but that's never been
8 recognized as an improving school. It's always been
9 considered as a failure because we never reach NLCB,
10 No Child Left Behind level for that particular
11 year.

12 So in that instance, we would request
13 from you to recognize those schools that are making
14 improvements, even though it might not be at the
15 level that is stated for that year. That would be

16 my one recommendation.

17 The other thing is attendance. There
18 is so many barriers that schools face in terms of
19 student attendance, and the -- even with the
20 graduation rates, student mobility is a big problem
21 in our schools. It seems like the students go from
22 one school to another. They jump to the public
23 schools, back and forth, and I don't see any kind of
24 control for that.

25 I know at the tribal level, our tribal

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1 leaders have not really addressed that as such, to
2 the point where there should be some sort of
3 agreement with our tribal leaders and the community
4 where there should be some sort of an enforcement.
5 Otherwise, we would still have the same old thing
6 where students would not be achieving as well
7 because of student attendance. That's a big
8 barrier.

9 Other barriers that we see in our
10 communities, and we all see that, is the drugs
11 that's being used in the schools, and that is
12 hindering our school achievement. So all of those
13 are Title IV funds that we have been receiving by
14 BIE. That went down. I don't know what happened.
15 We're not receiving any funds from Title IV. That
16 was a good program for drug prevention and
17 awareness.

18 And so my recommendation also is to

19 revive that program and make it as a priority,
20 because that's one of the big barriers, is drug
21 awareness for the students, and such. Those are the
22 two comments that I wanted to make at this time.

23 MR. KILLSBACK: Thank you for those
24 comments. I think that you touch on a very
25 important aspect of the flexibility waiver. The

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1 first one is being able to reward schools and not
2 necessarily focus on the schools that are
3 struggling.

4 I think in part of the presentation,
5 we touched upon the concept that resources would be
6 directed to schools that weren't meeting the
7 standards, but also that we also need to reward
8 schools that were meeting standards, and then
9 schools that were seemingly deficient, we meet those
10 standards, and also significant progress should be
11 rewarded as well.

12 So in a sense, we are recognizing
13 those schools that are improving and those schools
14 that are operating at a high level. We're also
15 paying attention to schools that need work, and I
16 think to follow-up to your other comment about the
17 attendance aspect.

18 I touched upon that, that in Indian
19 Country, and because of our culture, it evolves so
20 much around ceremonies and the season, season,
21 season, that education and the BIE have tried to

22 control schools. The attendance has always been a
23 factor that needs improvement on. I think that
24 we're all aware that non-Indian school systems and
25 public school systems, they have very strict

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1 attendance requirements, and even to the point where
2 if you miss X amount of days, they tell you don't
3 even bother coming back. Why? Because you're not
4 going to meet the requirements to be promoted to the
5 next grade level.

6 And BIE and tribal-controlled schools
7 don't have those, and have some flexibility in that,
8 but I think the flexibility needs to be implemented,
9 but not to the point where you're doing a
10 dis-service to the student, where they're promoting
11 them and they're not meeting the proficiency
12 standards, but that they build in attendance
13 policies where they're accommodating to tribal
14 doings, but remember, though, that the purpose of
15 the educational facility is to provide an education,
16 and that there's going to need to be that balance
17 that needs to be struck between the community, the
18 school, and the family, and the students at that
19 school.

20 And it's going to take work, but it is
21 doable. I've seen it done before.

22 MR. BOUGH: I think you're absolutely
23 right. When it comes to acknowledging whether
24 schools are making progress with their students, the

25 flexibility request looks at two areas. First would

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1 be proficiency, which is the one area that you're
2 used to. By changing the more measurable objectives
3 in such a way that would be reflective of what
4 progress would constitute in that school, we're not
5 going to have a single, extremely hard target to hit
6 for every state where we have a school.

7 So in New Mexico where we see the
8 standards have been increasing up to stratospheric
9 levels, and the school has not been able to obtain
10 those levels, it really beats down the teachers and
11 the staff when they do a good job, and then they
12 turn around and are given an AYP determination
13 saying you're not doing a good job, and the person
14 who is in charge of giving out that AYP
15 determination, it is extremely difficult for me to
16 see progress but not be able to reward that process
17 because of those requirements of the regulations
18 themselves.

19 So I think by changing in that one
20 way, we can look at something more than just
21 proficiency, but we also consider proficiency. We
22 look at student growth across the academic year. In
23 your case, I think the Pine Hill Schools will see
24 tremendous growth across the year. You may not
25 result in a proficiency, but it gets the students

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1 closer to proficiency. I think the schools need to

2 have that be considered as part of their
3 accountability determination.

4 I think folks like you and Leo Pino
5 that comes out to these events, they go to the
6 Navajo School Board meetings, and I know Fernie
7 Yazzie was here earlier. Put together, it shows the
8 dedication and the care that you have for your
9 students, for your school, and it shows the
10 dedication of the staff, and I understand how
11 frustrating it can be to see a policy such as this
12 continually telling you one thing, when you know
13 something different is going on in the school.

14 I greatly appreciate your comments and
15 I greatly appreciate your presence here today to
16 deliver those comments to us, and we understand
17 where you're coming from and we want to be as
18 accommodating as we can, incorporating your
19 perspective into the flexibility request.

20 MR. KILLSBACK: We have some folks that
21 have joined us at the table. Thank you. Welcome.

22 MR. BENNIE COHO: Good morning. My name
23 is Bennie Coho. I'm here with Mr. Fred Coho. One
24 of the original founding board members, also by the
25 name of Coho, which was my father Chavez Coho.

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1 But Ramah Navajo Community is
2 separated from the main Navajo Nation Reservation,
3 and out of that, there is another area under the
4 Navajo Agency that is a checker board, land base,

5 and from there we're geographically separated as a
6 satellite community.

7 There is three community that is in
8 that status; Ramah Navajo Community, Alamo, and
9 Tohatchi, and these are the three communities that
10 have strived to develop or tried to make progress in
11 undertaking the federal legislation which became law
12 which is Indian self-determination and education,
13 and we've been practicing that in Ramah Navajo
14 Community.

15 Our first initial contract was started
16 back in 1970 after a local community school board
17 was incorporated late 1969. So we -- those leaders
18 had meetings with then, Commissioner Louis Bruce in
19 Washington to execute a contract under BOT Indian
20 Act at that time.

21 The reason that was done was that the
22 only local public school that was available to us in
23 Ramah area was closed in 1968. Soon after that, we
24 pursued to get the public school reopened, but we
25 failed. So we took two legal action. We took over

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1 the public school district, and then we also
2 included the State Department of Education, but the
3 only solution that we were able to arrive to was to
4 have our kids bussed out of the community into
5 another district, and we could not solicit any help
6 or assistance from the BIA or either the Navajo
7 Nation government at that time.

11 goes through Ramah Navajo Community, and we came to
12 where we were able to make some improvement and gain
13 some gravel roads, but they are not passable
14 year-round because the road maintenance fund has
15 drastically been cut. It has been cut from where it
16 was to now less than a hundred thousand dollars for
17 the whole year. We have close to 300 miles of
18 student transportation route that needs to be
19 maintained and also to be opened during the
20 wintertime. That's part of the reason why we failed
21 in the area of maintaining student attendance in our
22 school.

23 We have no running water to the homes
24 that are there. Our parents and community are
25 scattered out in about 300 square miles, and they

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1 don't live in close proximity.

2 So it was costly to stretch water
3 lines to each home, and the Ramah Navajo are not in
4 the setting where they have to live close to one
5 another because they mainly depend on livestock
6 operation for their income, so they have to be
7 spread out, and because they have a certain
8 customary grazing area that they have to tend their
9 livestock.

10 So we also lack electrical power to
11 come to these homes. We don't have housing that are
12 heated the way they should be. They're not lit.
13 There is no land line for communication systems. We

14 don't have telephones. Our cell phones don't
15 operate because we don't have towers in close
16 proximity to have communications, and because of the
17 bad economy, community members and parents can't
18 call their kids. We don't always have food on the
19 table. We have an unemployment rate of over 75
20 percent in our community.

21 And those are the problems that we
22 come up against and those are challenges we still
23 have not been able to overcome, and we take our
24 student education very seriously. But, again, right
25 now our family stability is being challenged by many

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1 means for this. Drug abuse, whether there is
2 domestic violence. We have a huge socioeconomic
3 problem, and now we still lack proper structures.
4 Our infrastructure, our treatment centers to where
5 we could send our people to to keep up with the
6 means to educate our kids.

7 And when we hear that there's going to
8 be additional requirement for accountability and
9 management, but that doesn't bring along with it the
10 dollars we need to educate our kids. So you pile
11 more bureaucracy on top of more controls that we
12 have, and there is a tug of war that I see from our
13 local levels where we are.

14 We heard from our tribal government
15 this morning, and where I'm coming from is a lower
16 echelon level from the grass roots level. We just

17 had a government above us with authority and more
18 authority, and as it goes all the way up to
19 Washington, and we're left with no tools, no means,
20 no way of financially making any dent or improvement
21 in the way of our getting our kids properly
22 educated, because we're just being bogged down with
23 duplication of unnecessary requirement.

24 And I think that's one of the goal
25 that you had written, was that these would be

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1 reduced in your schedule. But it's going to take
2 more than that. You will have to go back and refund
3 all of the infrastructure needs that we have in
4 these isolated, rural communities, to bring them up
5 to par so that the kids can be brought to school or
6 be able to come to school by busses. That's our
7 major concern right now, as it is.

8 So then we talk -- we hear about
9 plans, and tribal government talking to the federal
10 government, government to government type of
11 communication, but we hear nothing of it at our
12 level. Our own tribe has not had any consultation
13 meetings with us at our own local community and our
14 school as to what plan they have taken to Washington
15 as to how they would do the improvements, and as
16 long as I have been involved in the local community
17 education going back to 1970, our own nation, our
18 own government, has not given our local community
19 any amount of dollars to maintain our school

20 structure or either to fund a school building or our
21 in-classroom supplies to improve education in our
22 community.

23 So we've been relying on Congress.
24 We've been relying on BIE to make ends meet, and
25 when those plans come down in way of BIE

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1 reorganization, realignment, restructuring, and
2 streamlining, that means at every route less money
3 for our community.

4 Because of the streamline you planned,
5 we have a local agency that is already impacted.
6 That agency is going to close. So that means
7 that -- who's going to man our road maintenance
8 program where we have a school bus route that
9 stretches and crisscrosses within our community that
10 is sitting on 300 square miles, and we have over a
11 couple hundred miles of school bus route, and that
12 means that those school bus routes are not going to
13 be maintained, the kids are going miss more school
14 because of the high elevation that we are situated.
15 Our community is situated over 7000 square foot,
16 close to 8000 square foot. So winters are
17 treacherous in our areas. That hinders the
18 education programs, as well as other human services
19 that we have in way of our rural health centers are
20 concerned.

21 So I just want to make that knowing to
22 you so we are already impacted by the streamlining

23 that has been scheduled, and in order for any plan
24 to go through and to be approved, you know that
25 everybody has to be aboard. Me, the schools, the

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1 local governments, and even parents.

2 When you have a law that is written
3 that says that you have parental choice as to where
4 and how your kids are going to be educated, then I
5 just want to remind you that that still needs to be
6 done before we are all aboard with the plans that
7 are being discussed today.

8 Thank you for your attention and thank
9 you for allowing me to speak to this issue. Thank
10 you very much.

11 MR. KILLSBACK: Thank you, Mr. Coho, for
12 those comments, and, Brian, you have a response?

13 MR. BOUGH: I do have one question. Which
14 BIE-funded schools serve your community?

15 MR. COHO: We are under New Mexico South
16 out of the Albuquerque Regional Office.

17 MR. BOUGH: Thank you.

18 MR. KILLSBACK: Anybody else have
19 comments? We have a couple more.

20 MS. LARGIE: Okay. Good morning,
21 Mr. Killisback, and Dr. Hamley, and Mr. Bough, and
22 members of the Navajo Education Department and
23 Navajo Schools. I am Dr. Elvira Largie, and I'm
24 here representing the Northern Cheyenne Tribal
25 Schools. Good morning.

1 I have a question regarding your
2 agenda, and I am under challenges from BIE under
3 NCLB and ESEA Act. Under the negotiated rule-making
4 process, where are we at and when do we expect to
5 get new schools funded? And that's my interest;
6 where are we in that whole process. It is a whole
7 another perhaps piece in itself, but that's my
8 question. That's one of the first questions I
9 have.

10 Of course, certainly there's other
11 questions regarding the curriculum, the requirement,
12 and how we are obligated to the BIE still, and at
13 the same time to the OPI, and in the State of
14 Montana. How do we really become a sovereign school
15 and where are we at in that stage?

16 I saw the -- I heard the frustration
17 over the Navajo Education Department where we're at
18 as far as really taking the reins and is BIE really
19 going to allow us to do that, because I know that in
20 a previous school I worked, we were inundated every
21 day with reporting requirements, and then we were
22 even threatened at some point in time, and you
23 talked also extensively about some of the reasons
24 for failing schools, and it is because of the
25 administrative turnover, and part of that is lots of

1 non-support to perhaps the BIE.

2 She's sitting here as a BIE official,
3 and I know she can't make any comment in her
4 capacity, but those are all important things. When
5 do we stop feeling repressed, and when do we stop
6 repressing one another as native people, and I know
7 there's lots of questions I'm asking, and that's my
8 position, and thank you for the opportunity to allow
9 us to sit around the table with you.

10 MR. KILLSBACK: Can I have your name
11 again.

12 MS. LARGIE: Elvira Largie.

13 MR. KILLSBACK: Great. Great to meet
14 you. I heard a lot of things. You probably know my
15 brother Jason. Since you're talking about the
16 Northern Cheyenne Tribal Schools, are you the
17 superintendent now?

18 MS. LARGIE: Yes.

19 MR. KILLSBACK: With regard to the
20 construction, I believe that is the aspect you're
21 speaking about, I think that's a little on the --
22 not necessarily with this flexibility waiver
23 administratively, but that's on a different track,
24 but I'll address you on that shortly.

25 But to address the overall concern

1 about the ability of the Northern Cheyenne Tribal
2 School as a treaty school -- the only treaty school
3 in Montana and the ability of the school to
4 determine its own destiny, I think that what you

5 heard today was that the Northern Cheyenne Tribal
6 School, being the only BIE school -- grant school in
7 Montana, is part of the Montana State AYP No Child
8 Left Behind structure, and so therefore it has
9 agreed to abide by the standards and accountability.

10

11 What BIE is proposing is that through
12 the flexibility waiver, to be become part of the BIE
13 system where the BIE would be developing its own
14 standards and accountability for education
15 purposes.

16 Now, with that, part of this
17 consultation will lead to the ability of the tribe
18 to set its own standards in terms of curriculum.
19 When you talk about curriculum, that's the aspect
20 where the 15 percent of language, culture, history,
21 becomes part of that discussion.

22 Now, in a sense what we're trying to
23 do is to see if the tribes are interested in this,
24 and that's why it's important to hear from the
25 tribes and their administrators, is that -- whether

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1 this is something they want to do, and as we
2 discussed in our discussion this morning, there has
3 been a reform behind the No Child Left Behind,
4 because it would be an unlikely success of maybe 100
5 percent proficiency by 2014 in those three areas,
6 and I think in language arts and reading, and we
7 understand that as with every reservation in

8 Montana, the reservation schools are the ones that
9 are the ones that are not meeting those AYPs, and
10 for the state purposes, that really doesn't matter
11 because the schools are -- are treated as islands,
12 and I think you understand the concept that they're
13 islands up to themselves, and it's up to the tribes
14 to figure that out for themselves.

15 Unfortunately, since most of the
16 schools in Montana are part of the public school
17 system. That would be part of the OPI and for
18 Montana to address.

19 What we can do for the BIE facilities
20 is see that it would become part -- with the tribe's
21 comments and constructive criticism, see how that
22 would take place.

23 I would like to have Jeff discuss the
24 construction aspect that you asked about, but for
25 all our purposes here, we are advocates of tribes

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1 asserting their sovereignty by determining its own
2 curriculum and standards for accountability and
3 proficiency.

4 MR. HAMLEY: On your first point, I think
5 you're referring to -- there's a separate tribal
6 consultation that goes on for facilities. That is
7 different than this one that we're involved in now.
8 So that is an ongoing process.

9 We will have to get back to you and
10 report to you specifically on that. Michelle Singer

11 used to facilitate that, and she has since moved on
12 to Trust, but I know they have a new person. So let
13 me get you an update on what that is. So that's
14 separate than these sessions that we're doing now.
15 That's been going on for quite a long time, for -- I
16 don't know how many consultations, whether they've
17 done one or several, but we can update you on that.

18 On the second point as far as
19 sovereignty, the tribe has taken the first step by
20 becoming a grant school, and as Dion says, we're
21 supportive of the schools' self-determination and
22 the schools controlling their own destinies and
23 being sovereign.

24 So we -- more schools are considering
25 going grant. Not so much contract, but grant, and

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1 that's consistent with self-determination and
2 exercising sovereignty. We support that.

3 But one thing about this flexibility
4 request that does support sovereignty, is that right
5 now under No Child Left Behind with negotiated
6 rule-making and using the State's standards and
7 assessments, the school is very tied to the state,
8 and that's what we're proposing, is to -- is to
9 break that linkage to the states and go in with the
10 federal government since we support the Indian Trust
11 relationship, and that is what the flexibility
12 request would do, is that we would get away from
13 using state standards and state assessments and

14 requiring the schools to meet all the state
15 requirements.

16 Now, that doesn't mean there wouldn't
17 be new requirements because the funds come from the
18 Department of Education under ESEA, also known as No
19 Child Left Behind. So the requirements will never
20 go away, but the state requirements will. So that's
21 one of the pieces of the flexibility request that
22 we're proposing.

23 MR. BOUGH: And the last little area there
24 is not one that is not worth mentioning here,
25 because it is Principle 4 under the flexibility

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1 request, is Unnecessary Duplicative and Burdensome
2 Reporting Requirements.

3 I've been in my position in the
4 Division of Performance & Accountability now for
5 four years. The person I originally worked for was
6 pretty aggressive with the schools about getting
7 data in the system and reporting, and unfortunately
8 this has been something that is fairly common with
9 BIE. That's not really a policy change that needs
10 to take place, but that is an attitude change, and
11 one of the things I've really emphasized as I've
12 taken over the data collection and reporting aspect
13 which is required by BPA, is emphasize working with
14 schools as opposed to working against them and to
15 take much more conciliatory approach to it.

16 The one thing I observed is schools

17 want to get their data in and they want to do so in
18 a time-effective manner so they can all go on summer
19 vacation, and so to be hassled about it is way
20 counter-productive to the entire intent of the
21 organization.

22 So I and my staff have helped schools
23 get the information in the system and helped them
24 understand the reporting requirements, and that's
25 what we're going to do. We have also realized other

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1 efficiencies in that process such as reusing data
2 that is already collected in NASIS to repopulate the
3 annual report system. Reusing that same data to
4 generate student child counts for NASIS ISEP
5 purposes, but for special education part B
6 identification.

7 And any number of other ways when you
8 look to NASIS and the data that are already being
9 collected first, and then we look to ask schools if
10 we have to follow up with that information, and one
11 of the things you're going to see is the
12 long-awaited for revision of the annual report will
13 accommodate allowing schools to enter data all year
14 long, and this is going to be something that is
15 major important to us because one of the areas where
16 we have problems complying with the U.S. Department
17 of Education for reporting, and I'll just pick this
18 out, is in the reporting of staff -- staff at the
19 school.

20 This report is due in May of the
21 school year in which it is being collected on. So
22 the BIE has never been in compliance with the U.S.
23 Department of Education's time line in that regard.
24 So it changed the annual reports so that the schools
25 can report their teacher and staff composition in

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1 the fall, and we can collect that data and we don't
2 have to wait till June or July to get them, which is
3 already after the annual reporting went through.

4 So we're going to try to use as much
5 data as possible. We're going to try to make it
6 easier to report the data. We're going to spread
7 out the reporting time line such that it's not a big
8 burden on the schools to do it at any one point in
9 time, and one of the things we really like to
10 collect here, if you don't mind me asking you for
11 another data collection, is a list of data
12 collections that we can improve upon or eliminate
13 entirely.

14 So if you can provide such a list to
15 us, either spoken here with the Court Reporter, or
16 at the ESEA consultation email address behind us,
17 we'll try to consider that and put it into our
18 waiver request, because this goes to the U.S.
19 Department of Education for review. We may not get
20 what we're asking for, but let's ask for some
21 things. This will make the reporting burdens a lot
22 less on the schools and allow you to focus more on

23 instruction and achievement.

24 MR. KILLSBACK: That's the point we hear
25 is that the duplication of the reporting

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1 requirements, and that you may have a skeleton crew
2 there to administer and teach, but if the skeleton
3 crew is spending 60 to 70 percent of the time doing
4 data collection, it defeats the purpose of having a
5 school.

6 And so what Brian says is absolutely,
7 100-percent correct, and the our goal is to look at
8 what makes sense so we eliminate them or minimize
9 them. We'll go to the Department of Education and
10 say, "Here's all the data our schools are going
11 through we would like to be exempt from." At least
12 we'll ask for all of them. We'll do the ones that
13 are necessarily required, but we're not going to get
14 all of them, but we can get close -- 60, 70, 80, 90
15 percent. If we can do that, that means 60, 70
16 percent of the time that your staff is working on
17 data collection, is now reduced to 20 or 10 percent,
18 and that means that 50 or 40 percent is going to
19 spent in the classroom with students one on one, and
20 that's the idea.

21 MS. LARGIE: Okay. I -- perhaps, our BIE
22 official here can give us a list of the data that
23 we're supposed to report, and I don't know, I'll be
24 happy to do that as a follow-up to this meeting. I
25 don't know right off the top of my head what kind of

1 reports I don't want to do or want to do.

2 MR. KILLSBACK: Well, you can go through
3 Barbara, and I'll be out there next week.

4 MS. LARGIE: Okay.

5 MR. KILLSBACK: I'll give you a card.

6 MS. LARGIE: I think that sounds good.

7 MR. KILLSBACK: I'll put you in touch with
8 Brian and Jeff.

9 MS. LARGIE: I asked another question
10 about the time line and what you're looking at for
11 this flexibility waiver to be implemented.

12 MR. KILLSBACK: I'll defer to my doctor,
13 and Brian here to answer that because I -- I
14 actually wanted this yesterday.

15 MR. HAMLEY: Well, the Department of
16 Education has created windows for submission. There
17 was one last fall, and one in the spring, and the
18 third one is in September. So the way things have
19 unfolded, we're following into the September
20 submission.

21 But so for those states that have
22 already been approved or are in the process of being
23 approved, they plan to implement as much as they can
24 in school year 12-13. For those who got approved
25 initially, it's easier. They can do more. But for

1 those just getting approved at this very late date,
2 they'll have to pick out pieces they can implement

3 and they can't.

4 For the September group, we're going
5 to try and implement as well in 12-13 as much as we
6 can. For example, the common core standards have
7 been adopted by pretty much all the states, and the
8 bureau is also following suit.

9 The standards are changing. The
10 states are abandoning their old state standards and
11 they're adopting the common core standards. So even
12 without the flexibility request, we would have to
13 move in that direction, anyway, to -- because we
14 want to keep current with the country.

15 Other aspects with the assessment part
16 is, well, if everybody is sort of caught in a bind
17 on that, and that the assessments won't be ready for
18 two years, so everybody has got to go with the
19 current assessments they have. Now, we're proposing
20 an interim assessment and not the states'
21 assessment, and that's where we're proposing with
22 the flexibility request, is that we adopt a uniform
23 assessment system-wide, and we would like to do that
24 as well in 12-13.

25 The other -- that captures probably 75

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1 percent of that answer of what -- of your question,
2 I think. The other piece is the personnel system.

3 The Department of Ed wanted -- wants the states to
4 implement that immediately, and it's -- we're a
5 federal agency, we're not a state, so it's taking us

6 a little longer, but we would like to have --
7 develop that in 12-13, and pilot-test it -- I think
8 they're putting the proposal in 13-14. So the
9 personnel assessment piece will come a little later,
10 but essentially we're going to -- the short answer
11 is we're going to implement as much as we can
12 beginning in 12-13, understanding that we may not
13 get a decision until October.

14 MS. LARGIE: Okay. Dr. Hamley,
15 Mr. Killstack, and Mr. Bough, thank you for your
16 comments. I do have another question. How is the
17 BIE -- how are you going to strategically address
18 the fact that the common core standards are really
19 taking a step up in what the standards are right
20 now, most state standards that are out there, and
21 there will be -- and I'm predicting and anticipating
22 that right now our students aren't meeting those
23 standards and are not doing well and are continuing
24 to lack behind as far as assessments are concerned
25 and testing are concerned. But the common core

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1 standards and the launching of that, from what I
2 saw, they're very intense, and it is taking the
3 knowledge level, higher level thinking skills are
4 going to be required, and if our students are
5 still -- already lagging behind, and the standards
6 are being raised to the intellectual capability
7 expectations are being heightened, and what are we
8 going to do? How is the BIE going to strategically

9 and cleverly help the native schools, because it's
10 going to come back as being -- if we're not in
11 agreement on which assessment we're going to be
12 using, it is going to look like they're really
13 failing.

14 I hope I've articulated that question
15 relatively well, because that's my concern. You
16 know, the bar is being raised through those common
17 core standards. If you look at the knowledge base
18 that our students need, the skills they need, the
19 intellectual level, and the intensity of the
20 standards, and as well as the expectations of
21 teachers, it's a whole -- it is good. We're raising
22 the bar, it is good.

23 However, are we prepared, and what are
24 we going to do when there is kind of like an
25 epidemic or some type of notion of failure of our

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1 tribal schools throughout the country. That's my
2 concern on a general level.

3 MR. HAMLEY: I can answer, if you like,
4 and actually that's an excellent question and
5 fortunately I have a good answer. When we have to
6 rely on state standards, the bureau did not take an
7 active -- proactive robust role because there
8 were -- we had 23 standards, and the relationship
9 was with the schools and the states.

10 But the common core actually has
11 presented an opportunity where we've already done a

12 lot of work in defining a new role for the bureau,
13 and how we're going to actively support our getting
14 the standards out there, provide professional
15 development of the student information system we
16 use. We're going to embed those standards in NASIS
17 so that they will be available to everyone.

18 So moving to a single standard has
19 actually given us an opportunity to very
20 aggressively support teacher development, curriculum
21 development in supporting student learning in a way
22 that we have never been able to do before. So we do
23 have a contract that we're getting through the
24 process right now that will begin providing that
25 professional development.

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1 One thing I wanted to comment on also
2 is that we have moved to common core, but people
3 have been saying for a long time that essentially
4 the states where -- there already was a de facto
5 common core standard, in that when you look to
6 different states, the standards say in math and
7 reading, we're not that much different. So it
8 wasn't really a dramatic shift to develop a common
9 core in those areas, but I think you're right. I
10 think that the common core -- now that we are at
11 common core standards, they're going to be more
12 rigorously developed, and I think that there will be
13 some more complexity to them.

14 But we're happy to say that we're in a

15 position for the first time really to step up to the
16 plate and to support our schools and student
17 learning in a way that we couldn't do with 23 state
18 standards before.

19 MR. BOUGH: There are two ways in which
20 the states have kind of disguised the issue of
21 proficiency with regards to student achievement.
22 The first is by back-loading the annual measurable
23 objectives to only start raising up towards a 100
24 percent closer to 2014, and so you can see a
25 curvilinear path line from the initial

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1 implementation of No Child Left Behind AYP systems
2 in 2002, all the way to 2014.

3 They didn't think the law would still
4 be in effect at this point. They figured if they
5 get up to 75, 80, 85, 90, 100 percent in the last
6 two or three or four years of the accountability
7 system, then they could kind of disguise the fact
8 that a lot of students weren't scoring proficiently
9 on the assessment.

10 The other way is that if you can rig
11 the assessment in such a way that it is not obvious
12 to people who are not attuned to such rigging, which
13 is that you gradually lower the proficiency
14 standards, the necessary test scores by which
15 proficiency is judged in the assessment, and some
16 states have engaged in this activity to where it
17 disguises the fact that the students aren't really

18 doing that well proficiently, but, it's, you know,
19 kind of notional as anecdotal of where do you find
20 that, what you make of it, and this is how you
21 arrive at 50 percent accountability systems printed
22 in every state. You ask a statistician what's the
23 best way to do an accountability system, and no two
24 are ever going to agree. So you have all these
25 people also serving to justify what it is that

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1 constitutes proficiency on the assessments.

2 I think that we really have to go --
3 and you're going to see major achievement problems
4 identified in our students when we move to the
5 common core standards and the common core
6 assessments, because they are rigorous, because
7 they're extremely hard for us to hit, and because we
8 have not been prepared to do so.

9 So these first couple years of the
10 accountability system, we need to brace ourselves to
11 have our accountability shortcomings laid bare, but
12 if we don't do that, we're just deluding ourselves
13 as to what our level of achievement really is and
14 how to improve upon it.

15 So we may as well take the hit early,
16 find out exactly where our students are achieving,
17 make these goals very rigorous, make the
18 accountability system such a way -- and this is the
19 way we have it in the request -- that we can set
20 intermediate goals for the schools that are

21 attainable, so we can talk about rewarding schools
22 for making those minor improvements in achievement
23 that the gentleman Mr. Coho was talking about. So
24 we can actually say the schools are doing a good job
25 improving their levels of achievement.

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1 So this is going to be a different
2 approach than the No Child Left Behind approach,
3 which to go out and penalize schools, to condemn
4 them as failing, to say that their students aren't
5 proficient, and make judgments about the staff and
6 the administration there that aren't necessarily
7 warranted, and so I think we really have to go out
8 and find out where our students are achieving in
9 order to get them to improve.

10 MR. KILLSBACK: I'll add a final comment
11 to that, is that the fear, I guess, or the anxiety
12 with regard to these standards, we anticipate that
13 the faculty and staff are going to be unappreciative
14 of what the BIE is proposing for the very reasons
15 that you set out, that it is much easier to stay
16 where we are and what we're doing. It's much
17 easier, because you run against the very thing that
18 BIE is trying to fulfill. It is a commitment to
19 meaningful education for the students on
20 reservations, and right now what we see is the
21 disconnect between the state standards and the
22 tribes and reservations, is the standards that only
23 allows the cycle of poor Indian education on the

24 reservations to continue, and we're going to try to
25 change that, and with that change, it takes reform,

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1 and this is one special reform that we believe is
2 appropriate, and as a superintendent, I can
3 understand and appreciate the position you're in,
4 especially with those Cheyenne because, as you know,
5 the community of Busby, that's the only place of
6 employment for a majority of those people, in Busby,
7 and even the surrounding communities of Muddy, Lame
8 Deer, Kirby, and even Crow and Hardin, and the
9 students come from Crow now. So I'm aware of that,
10 but that's why you're the superintendent.

11 MR. BOUGH: One last thing I forgot to
12 add. These standards are going to be very tough and
13 rigorous. They will be exposing our gaps in student
14 achievement. Our kids are definitely up to the
15 task. Right now our system is defeating our ability
16 to achieve. It is time for us to move away from
17 systems that penalize and hold schools accountable
18 for all the wrong reasons, and import systems that
19 rewards schools for success, and it's important to
20 realize our kids can achieve like any other kids in
21 the nation. We just have to give them that
22 opportunity.

23 MS. LARGIE: I would like to say thank
24 you. Contrary to what my colleagues say on the
25 Navajo Nation -- I support them, as well. They're

1 always on the forefront of proclaiming what needs to
2 happen, but my position, I think that what I see is
3 good, and I see that the consultations that we're
4 having are -- that we're on the road to trying to
5 find common ground for Indian education. I think
6 that's important, and I think that as we go along,
7 we can improve the system.

8 So I want to say thank you, and from
9 me as a professional person, and also representing
10 the Northern Cheyenne Tribal Schools.

11 MR. KILLSBACK: Thank you. I really
12 appreciate it, that we actually got a southerner
13 come up and show us how it is done.

14 DR. MANSON: I want to introduce myself.
15 I know I can't talk. My name is Dr. Dolly Manson.
16 I'm here because I was asked to come here yesterday
17 and represent Dr. Russell's office. Today they're
18 all in Window Rock having a meeting on realigning
19 and the common core standards we've been training
20 on.

21 We had three days of training
22 yesterday, or it ended yesterday in Tuba City, and I
23 feel that everything is moving right along in Window
24 Rock with the Navajo Nation, and we -- and
25 Dr. Russell wanted us to have a jump-start and

1 that's what is going on out there, and I am glad to
2 be here, and thank you for also coming here to --

3 from various places out there.

4 MR. KILLSBACK: Thank you. Well, I think
5 that if we don't have any more comments or
6 questions, I think this will conclude the formal
7 consultation. I'll leave it open for a minute or
8 two, but at this time I would like to thank the
9 folks in attendance, and also the individuals that
10 did come that had to leave. I know they are
11 time-pressed and tribal officials have places to be
12 and can't control when they come.

13 So after that, our office will give a
14 closing blessing after a minute or so.

15 Okay. If we don't have any more
16 questions or comments, I'll go ahead and give our
17 closing blessing here for the group. So if you guys
18 would join me in that closing blessing.

19 (Silent closing blessing given)

20 MR. KILLSBACK: Thank you.

21 (Consultation concluded at 11:40 a.m.)

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