UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN EDUCATION

TRIBAL CONSULTATION

on the

BIE ESEA Flexibility Request

Flagstaff, Arizona
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APPEARANCES:

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

(Silent Blessing Given)

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

MR. BOUGH: Good morning, everyone. I am Brian Bough. I work with the Division of Performance & Accountability within the Department of Indian Education.

MR. HAMLEY: Good morning. Jeff Hamley, Associate Deputy Director, Division of Performance & Accountability with BIE.
MR. KILLSBACK: Good morning. My name is Dion Killsback. I am a Counselor for the Assistant Secretary of Indian Affairs. The Acting Assistant Secretary of Indian Affairs is Del Laverdure who is a member of the Crow Nation. Myself, I am a member of the Northern Cheyenne Nation from Montana. I am an Attorney and one of his Counselors, and one of the important priorities I have been tasked with to handle on behalf of the Assistant Secretary is education, along with other issues, as well.

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

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

This is an ongoing effort that the administration of the Assistant Secretary Del Laverdure has engaged with at a high level with the Department of Education in the Secretary Arne Duncan's office who is in the Department of Education.
Part of this, it was a roll-out in December where President Barack Obama, along with his Secretaries, Secretary of the Interior Salazar and Secretary of Education Duncan, pledged to do better for Indian Country and Indian students in regards to performing at adequate levels and be prepared for college, and also emphasize the need for emphasizing tribal history, tribal culture, and most importantly tribal language.

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

So we understand that we've been in Flagstaff before and we have discussed a range of topics with regard to BIE education, be it the MOU between the Department of Education and the Bureau of Indian Education, be it the streamlining, and be it what we're talking about today, the flexibility waiver.

Generally speaking, the three highlights from today's presentation, what I would like the audience members to take away from this are; one, educational sovereignty; two, as I mentioned before, which is tribal ability to emphasize culture, language and history; and then
third, curriculum training, curriculum training with regard to tribes asserting their educational sovereignty.

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

The we'll talk a little bit about the challenges for the BIE under the No Child Left Behind Act, as well as the ESEA and negotiated rule-making, and then we'll talk about the request for an ESEA flexibility waiver and the Department of Education's offer for that waiver, and then we'll talk about the highlights, the principles, behind the request, and then we'll go over the request, the flexibility request and discuss the BIE's new accountability system, and then we'll discuss from that the benefits of the flexibility waiver for BIE, and then we would like to conclude with where to access -- where you folks can access the waiver proposal and help folks submit comments.

So with that, let's talk about what I said the highlight was. Strengthening Tribal Education. The vision that the Acting Assistant Secretary Del Laverdure envisioned, as well Keith
Moore, Former Director, and now Brian Drapeaux, the Acting Director of BIE, is that we want to empower tribes to exercise greater control over education.

The BIE's flexibility request reestablishes tribal sovereignty in two ways. Before I get into these two aspects, I want to draw two parallels. One of the big things that we handle in Indian Affairs is tribal conflict between non-Indian and state jurisdictions with regard to criminal jurisdiction, as well as civil jurisdiction, whether that is law enforcement officers coming on reservation lands from the state, from the sheriff, to try to issue traffic citations or speeding tickets, or, you know, folks trying to sue tribal members on reservations for things that are happening on reservations.

And, you know, every tribe has tribal attorneys and lawyers that work there to advocate for tribal sovereignty and self-determination. Well, in that same vein, we think that educational sovereignty is a type of jurisdiction there where tribes should have the ability to exercise full tribal sovereignty.

So within these flexibility requests, the way we see -- the BIE sees the request for reestablishing tribal sovereignty is tribes may assert sovereignty by moving away from state standards and assessments.
In other words, what tribes are now is that they have essentially agreed to abide by state standards and state assessments. Second, tribes, through adoption of common core state standards and develop tribally focused standards addressing language, culture and history.

So besides the ability of tribes to move away from state standards and assessments, tribes now have the ability to establish their own standards but they also emphasize language, culture, and history. So there are two aspects I would like to emphasize.

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

This is a sharp contrast obviously from the previous United States policies of past, of assimilation, where the old adage of doing away with Indian culture and immersing and trying to cram down the throats of Indians non-Indian culture and history. So to us we see this as being very significant and very important for success going
Now, the No Child Left Behind and the Elementary and Secondary Education Act. The No Child Left Behind Act was the 2001 authorization of the Elementary and Secondary Education Act. That was originally enacted in 1965. So the NCLB reauthorizes the 1965 Act of the ESEA. Now, this established the school accountability system based primarily on state standards assessments. So it required all students to meet rigorous testing targets in reading, language arts, and mathematics, and set the 2014 standard of a hundred percent proficiency for those subject areas of reading, language arts, and mathematics, and I think as educators, this target date for 13 years later with the reauthorization, see the difficulty with that.

And the challenges with that is that the No Child Left Behind Act mandated a new negotiated rule-making process to decide how BIE would implement the No Child Left Behind Act. The negotiated rule-making final regulations directed the BIE to use academic context standards, assessments, and accountability criteria of the state where the school is located. Essentially what it says is that all BIE schools within the state that they are in must comply with the State standards that they are located.
Now, the BIE has schools in 23 different states, so that means that the BIE has 23 different definitions of adequate yearly progress. So 23 different standards. So you can see the enormity and the complexity and how that makes it very difficult to be successful.

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

Now, this aspect is pretty important, and I think I want to talk a little bit more about that. When Secretary of Education Arne Duncan offered flexibility from the No Child Left Behind Act provision for the states, he saw that states themselves, non-Indian entities were not being able to meet these proficiency targets of a hundred percent by 2014, and that consequently states were rigging their accountability and reporting systems in order to try to achieve the AYPs, and consequently the standards and the proficiency ratings disservice to students that were graduating.
from high school. It meant that they were no longer being prepared for college and for careers, but technically under the law they were meeting the annual AYP targets, and the school was essentially in compliance with the law and would not be subject to penalties for failing to meet the standards. So essentially what you had was across the board through the states, as well the BIE, is that the law ended up doing more harm than good for students in terms of providing adequate education standards and preparing them for life, whether it be college or preparing them for work outside and after graduation from high school. So 19 of the 23 states where the BIE schools exist now have a plan for or receive flexibility. So that is significant. That is almost 95 percent -- 90 percent of the BIE schools. Now, the ESEA flexibility has four principles. The BIE's flexibility request demonstrates how it will use this flexibility using the following principles.

Principle 1, and I just touched on this. College and career-ready expectations for all students. This principle is what the original intent for Elementary and Secondary Education Act was set out, was that students after receiving their high school diploma, should be ready to work in the community that they live and be able to make a
minimum type of standard of living to provide for himself or herself.

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

Principle 3, support for effective instruction and leadership. This is something that plagues school systems throughout the country. We have teacher unions that set the minimum standards in order to accomplish education, whether it be a cap on the amount of hours that the teachers can stay at school, whether they need specific permission and a vote of the union in order to volunteer, and the bargaining leverage that the teacher unions ever over schools in terms of employee benefits and work hours, and things of that sort, where essentially education seems to be falling to the wayside, and it's more about contractor relationships between the school board and the teachers union.

What we want to see is from the top
down a system in place that there is accountability, and the only successful type of grading that a teacher, a principle, and a superintendent will receive will be based on the success of their students.

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

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

Principle 1: The standards and assessments. Adopt common core standards, initially in reading, language arts, and mathematics. Up to 15 percent of the standards to reflect tribal values. So if you take a math curriculum, and instead of talking about beans or birds, we could talk about things that are historically tribally-significant to that individual tribal school.
Where I come from in Montana, instead of talking about, you know, trucks and -- and school lunch -- lunch pails, and stuff like that, what we can implement is talk about our own culture. We can talk about eagle, eagle feathers. We can talk about bison. We can talk about numerous districts on housing, or TVs, or anything like that, that is significant where we can make education more relevant, and that's just math.

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

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

Now, the assessment will assess all students three times a year, and obviously we know where that is. That's when they come in from the summer, mid year and winter at the peak of the holiday season, and at the end of the year in the
spring time. That would be assessing grades three
through the sophomore year, and then we would need
the assessments to establish core targets for each
of those assessments in each of those grade levels.

Principle 2: Differentiated
Recognition, Accountability, and Support Systems.
New differentiated recognition system establishes
reward, focus, and priority. What we're talking
about is new accountability index scoring
indicators. Proficiency. Student performance on
academic assessments relative to a standard. This
is what I talked about earlier, the ability of the
students to be proficient in order to be successful,
not necessarily being sufficient in order to meet
AYP state standards, just for the purpose of
checking a box and making sure that you're not out
of compliance. This is about seeing that you're
actually prepared to go to college and take
college-level courses after graduating high school,
or being able to take a job that may pay minimum
wage, but it is only what the student is required to
have, a high school diploma. That's what we're
talking about in proficiency.

Progress. Growth in student
achievement across the academic year. What we're
talking about here is making sure that once a
proficient level is established, that that's not the
bottom, that's not the ceiling. You want to make
that the basic standard. Just because a student is proficient, we want to make sure that we don't necessarily say that our hands are clean, we don't have anything else to do. Why? Because you're your proficient.

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

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

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

Attendance. K through 8 and the graduation rates. This is what we talk about in the accountability index. Indian country, tribal schools, BIE schools, tribal grant schools, we need to do better in attendance. Part of our culture -- part of our Indian culture evolves around values that are significant culturally to ceremonies annually or seasonally, but culturally as a people,
we need to make sure that education is also a priority, and how to balance that, through the 15 percent window that we have to fuse and incorporate language, culture, and history. That's how we bridge that gap. BIE schools, tribally-controlled grant schools are not baby-sitting centers. It takes a community, teacher and student, and parental involvement. A lot of times it is a grandparent carrying that water. So attendance is key in order for us to establish accountability in this.

We see graduation a direct correlation to those students, to those schools that have high attendance records, high attendance compliance for their school standards. We understand it is difficult, but we can do it. We see schools that are successful. Reset annual measurable objectives, AMO. Provide supports for lowest performing schools and rewards for high-performing schools. What that means is that where we have the influx, where we see a school struggling in all aspects, we will direct attention. However, we will also reward schools that are performing at a high level of achievement.

That means that we're not going to forget that schools that are successful are by themselves and out there. They're doing a good job
and need to be acknowledged and receive those
rewards.

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

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

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

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

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

MR. HAMLEY: School improvement grant.

MR. KILLSBACK: School improvement grant.

School improvement grant Student growth data on current students. Teachers of reading, language arts, and mathematics. These growth acts on the students, this is where we're able to track the progress of students and where they're at, and these three, meaning the first.

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

And we're going to make them based on
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
26 the accountability determinations which would be
27 more reflective of school performance.
28 Under the current No Child Left Behind
and annual progress reports reporting, the standard was meeting AYP. AYPs are a standard where administratively schools can fudge their proficiency ratings in order to sound like they are proficient, and that unfortunately leads to unprepared students for college and unprepared life skills for students who graduate from high school.

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

Now, this is a distinction that BIE can make whether it is good or bad instead of from the state. There are schools throughout Indian Country that don't have 50 students, don't have 30 students, but the United States has an obligation, a Trust obligation to have these schools because of treaties, because of agreements, because of the tribe's ability to negotiate those language in their treaties. So it is an obligation that will never
So when we look at state schools, you hear state schools shutting down all the time because they're not able to meet AYP. It now becomes a funding mechanism or excuse or reason for shutting down schools that don't meet AYPs. That's why school administrations around the country have engaged in an administrative effort to doctor their AYP proficiency standards in order to achieve AYPs. As I stated, that doesn't help students. That hurts students.

The significance for Indian schools and tribally-controlled schools and BIE schools is they have an obligation no matter what. The BIE has an obligation to fund these schools and operate these schools, and because if they don't meet AYP, it doesn't mean the school would be shut down. So we need standards that are reflective of the proficiency that is needed in order for students to be successful in college or after they graduate from high school. No matter how many students are there, no matter how big or small the school is.

Alignment in accountability will allow BIE to better leverage technical assistance and professional development resources. If a school in one state has an issue with a language standard and wants to seek technical assistance in how to improve
proficiency, under the old rule you would need that state and that professional -- that technical assistance to be directed for that one state.

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

It is a totally inefficient and total waste of resources or funds and totally ineffective. When you get one standard for all 23 states, it takes one RFP. It makes it that much more simple in order to address an issue that can plague the entire BIE school system. That's what we're talking about. Leveraging technical assistance and professional development resources.

The waiver is an opportunity to effect significant reforms in BIE-funded schools, consistent with national reform movement. This is significant because Secretary Arne Duncan is charged with changing education in America. There is a large fraction of the United States that believe that public school systems and No Child Left Behind demonstrate that state governments and tribal
governments do not know how to run educational systems to provide successful students to be members contributing to their society.

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

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

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

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

MS. DAVIS: We have the summary which is the 13-page summary that you have in your packet. We have the flexibility draft that can be accessible
on the BIE web site under consultation, but also on
the front page.

MR. KILLSBACK: Just for folks'
information, this is a 129-page flexibility waiver
request. We have the summary right here in the
15-page summary. So this on my right summarizes.
This on your left. But if you want to read this,
knock yourselves out. Good reading for nighttime.
But that's available online on the
web site provided. Also, there is a dedicated web

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

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

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

When you speak, we have a Court
Reporter here. If you could provide your name and
what tribe you are from and what entity or
organization that you're speaking on behalf of, that
would be important for our consultation record
purposes, and I'll remind folks again when we do the
comment period.

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

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

So with all of this consultation,
which you all have to do, I'm wondering and I'm
thinking where is Navajo in on this whole
discussion? From what I've been told repeatedly,
your previous predecessors, the 20th and 21st Navajo
Nation Council, passed a law which they basically
said that the Navajo Nation will take care of its
own at this point.
It is codified in our codes. It exists, and recent documentations were developed and given through BIE in the form of an accountability workbook. I can't go back and change history, but I'm wondering and I'm watching and I'm analyzing if the Bureau of Indian Affairs, Bureau of Indian Education are paying attention to these situations. And this goes into other areas. This is only but a small portion as far as education is concerned. I see the interaction of the top officials. Written documentation were submitted to these entities, and I do believe I have written and gave a document to Mr. Brian Drapeaux, I believe, and at the time Mr. Keith Moore, and this was the meeting that was held in Fort McDowell, and I have not received no written feedback on those little simple requests or clarifications to those documentations.

In that it is creating a paper trail, and noticing that BIE's nonadherence to those questions falls on deaf ear, which on my end as a tribal leader, I really don't understand BIE. If you can't respond back to those simplest terms of questions for clarity in which I'm responsible for, I'm only one person on that particular committee and one person on the 24 Council, but it will come back, and it's already coming back in the form of questions from my colleagues.
Yesterday was the ending of our summer session for the Navajo Nation Tribal Council, and we've completed our agenda. In those sessions, we were talking about scholarship. We were talking about education on our reservation, the need to have the BIE involved and paying attention to what's being discussed, and this all goes to forward funding from the federal government, et cetera, et cetera.

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

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

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

The plan is already set. The dialogue was made.
At one point or another, to really exercise sovereignty, I think we need that affordability to do such.

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

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

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

So I think Navajo at this point is waiting for feedback and clarity. We need to move forward. I only have basically two more years left in this position. I didn't go to school for politics. I went to school for animal science. I'm here now trying to make a difference, trying to make a dent in the world of youth on our reservation,
trying to excel not going by state standards.
That's too high. We're talking reservation, and if
you go out to the back areas of the reservation, it
is like total negligence. There is different
varieties of situations out there that you only see
like the joke on the issue with the Kyl legislation
reservation, 2109 concerning the water and the
wagon.
That's kind of how I see BIE. That's
how I see the federal government, picking on my
people like that, and I for one don't appreciate
it. How dare they come and do that. How dare they
pick on my people as such. Nobody speaks up for
those people. So I'm here on their behalf to say
such. So I just want that clarity from their
standards, and maybe the Honorable Vice President
can say a few words on that, as well.
MR. KILLSBACK: Thank you, Councilman Hale
on behalf of the Council. I appreciate those
words. I would like to respond a little bit, and
have my colleague, Deputy Director Jeff Hamley,
respond, as well.
First of all, I appreciate the words.
Like I said, they were definitely important for us
to hear, and the consultations where you submitted
information to our BIE director either Keith Moore,
as well as Brian Drapeaux at Fort McDowell, as you
stated, we have been engaged in what seems like a
whole slew of different consultations on BIE, and its intent is to improve Indian education.

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

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

So the laws that go along with that, as well as the Indian education laws and 25CFR, are a minutia of red tape, but as you stated, tribes have the ability through their inherent sovereignty to pass laws, resolutions, to accept their own standards in order to make their goals part of their own tribal achievement record.

And so what we're trying to do is, recognizing that the Navajo Nation has significant -- being with the schools and the breath of the area that the Navajo Nation covers, with the
other 23 states, the Navajo Nation has schools in Utah, Arizona, and New Mexico. So you have three -- three different states just for the Navajo Nation itself with three different standards, and they're all different.

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

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

The book -- I haven't obviously seen the book that the Navajo Nation passed, but I will follow-up with that, and Brian Drapeaux, who is the Acting BIE Director, and I think for the 566 tribes out there, the Navajo Nation here stands to gain a lot, but I understand that from being the Chair of Education and making sure that you are doing all that you can for your people and your students, this is something that we will take back to DC and make sure that it is not just words, it is not just air,
it is not something we do to check the box, that we're going to follow through with it, and my charge, being one of the lawyers for the Assistant Secretary of the Indian Affairs, is to make sure that the message carries through to DC and that we follow through with that.

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

So, Jeff, if you can answer.

MR. HAMLEY: I can speak directly on the accountability workbook. The accountability workbook that you submitted has been reviewed by BIE, and it has also been reviewed by the Department of Education at your request, the Navajo Nation's request. So that's done.

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

So I think that will create an opportunity for discussion, and maybe things have changed with the Navajo Nation about their
accountability workbook. Maybe they want to make
changes. Maybe they don't. But the two should be
looked at together now and see how that works.
So that is in process. We realize
it's taking a long time, and in working with federal
bureaucracies, essentially you know how it is. It
takes a long time. The Department of Ed has
reviewed it, though, and we have their comments and
we're drafting a response letter to you now. So

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

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

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

And so we're going to do our due
diligence to make sure that our comments are
submitted and they've addressed certain things that
you have raised. So unfortunately it is the nature
of the federal government working. I mean, you get 
five or six attorneys reading from one department 
and five or six from another, and we have to come up 
with one response, and that is difficult. 
So I'll turn it back to Vice 
President.

VICE PRESIDENT JIM: Ya'at'eeh hey. Good 
morning. I am Rex Lee Jim, Vice President of the 
Navajo Nation, charged with education on the 
Navajo. The goal of the Navajo Nation is to develop 
an educational system that endorses its culture, 
sustains its language, and promotes the academic 
success of its children and adults. The Navajo 
Nation is taking initiatives to develop a functional 
department of education that would implement 
initiatives and polices as a Sovereign State. As 
such, the Navajo Nation does not support the Bureau 
of Indian Education's flexibility NCLB waiver. 
The Navajo Nation outlines three major 
reasons why I do not support the BIE's NCLB 
flexibility waiver. One, federal law stipulates 
that flexibility waivers are only available to state 
educational agencies; the BIE is not 
federally-recognized state educational agency. The 
BIE's oversight of NCLB accountability for 
BIE-funded schools comes from a 2001 agreement 
between the Departments of Interior and Education 
which grants BIE responsibilities comparable to
those of a state educational agency and shall remain in effect for the period for which the NCLB reauthorizes the ESEA. NCLB has not been reauthorized since 2008, which raises questions about whether authority for the agreement is still legal. More, Section 9401 of NCLB, which BIE references in its flexibility waiver as the authority for its proposal, extends the same right for waivers to LEAs, Indian Tribes, and schools as BIE notes in footnote 5 of its document. The Navajo Nation's position is that the BIE does not have the authority to apply for a flexibility waiver under current law.

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

Three, the BIE flexibility waiver fails to address the needs of American Indian students and is not representative of current issues impacting American Indian students. Since the Government Accountability Office's report of 2009 citing BIE failure to help schools, the BIE flexibility waiver does not address the concerns raised in the report. The BIE continues to fail to
help schools, tribes and students. Not representative of current issues impacting American Indian students. Since the government accountability office of 2009 citing BIE failure to help schools, the BIE flexibility waiver does not address the concerns raised in the report, that the BIE continues to fail to help schools, tribes and students.

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

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

Three, BIE opted not to write the
state accountability plan. Instead, they directed
their schools to implement and use the criterion
reference test of the state accountability plan of
which they were located. The flexibility waiver is
unclear as to what is being waived in the state
accountability plan and assessments and AYP.

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

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

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

Now we get to the Navajo Sovereignty
in Education. In 2005, the Navajo Nation's Tribal
Council passed the Sovereignty in Education Act,
which explicitly recognizes the authority and
responsibility of the Navajo government for the
education of its people.

Two, the successful education of
Navajo children will require the engaged commitment
of parents and communities embedded in the culture
and values of the Dine' People. The Navajo Nation's Department of Dine' Education has been developing Navajo curriculum related to key Navajo standards: Culture, language, history, governance, and character (ke').

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

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

Five, in closing, western education through the BIE and state public school system have been on the Navajo Nation for 142 years. We need to take more responsibility for our students to ensure that they receive a quality education because of the mere fact that these students are our future. When a quality education is absent from the lives of the students, it seriously impacts the livelihood of the
Navajo Nation. Our people need the basic academic skills to raise healthy families and to make positive contributions to our Navajo communities and society. The Navajo Nation absorbs the impact to the education of our people. We seek more control of our destiny and our Nation through the development of a Navajo education system that preserves our language and culture, while providing a sound core academic content in reading, writing, math and science. As such, the Navajo Nation does not support the BIE NCLB flexibility waiver request.

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

MR. BOUGH: I think your points are very well made, and I think they're very important for us to actually consider in getting our flexibility request together, because I don't think that our positions are really all that far apart. I believe much of what we've encountered with regards to having trouble approving the Navajo request for an alternate definition of AYP, is that we have to satisfy an extremely high mark to keep the Department of Education funds
flowing into the bureau, and that high mark is that we would need to comply with every single requirement that is imposed on states' creation of the accountability workbook in support of their accountability system, and that is an incredibly high mark for states to make.

When the negotiated rule-making went into place in 2005, part of that was the BIE did not have the capacity to put together such an accountability workbook, and for that reason, we see one of the reasons why sovereignty was deferred to the states, because the states have the ability to put the accountability workbooks together, and so we deferred the sovereignty of our tribes in reference to our tribes to the states for the purpose of carrying out education and accountability processes.

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

The desire of Dine' Education, the Dine' Department of Education to unify its accountability system, to bring together the schools across the three states where you have them, is extremely important and extremely valuable. The first and most relevant starting point for any school system is to have accurate and reliable data on its students.

Reliance on different state standards and different state assessments makes it impossible for you to compare your own students in Utah, New Mexico, and Arizona simply because you cannot compare one assessment in one state with a different student's achievement and assessment in a different state.

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

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

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

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

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

One other comment I would like to make with regards to the assessment -- well, two things. First is that the AYP systems that we're currently
using for the states, are designed for state
schools, not BIE schools. Mr. Killsback spoke
earlier about the population sizes in our schools.

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

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

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

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

We saw more schools make AYP because
we were considering them on a single years worth of
data, rather than three years worth of data. I know
that's a bit of a technical explanation for what's
going on, but I think many schools are identified as
failing on Navajo, and the assessment that we plan
to use, you alluded to it, is the NWA assessment,
but we're looking at one specific flavor of it, and

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

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

This is one of the areas where our
schools have been requesting to have some credit
given to them. They get students to come in at
proficiency levels that are extremely far below
grade level, and the teachers, they teach these kids
as best they can, but they may not be performing on
grade level at the end of the year, and it's not
really a good expectation to bring the student along
that far. That kind of academic progress is, but
when we look just at proficiency, and we don't
consider student growth across the year and progress
made. We are leaving out a major portion of how it
is we should be measuring schools, and that's one of
the major features of the new flexibility request put out by the Secretary of Education is to start looking at growth across the academic year as more pertinent measure of how we see students growing and how schools are performing.

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

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

So all the states are pretty much moving to an interim model. The difference between the models that are offered by the states and the
model that is offered by the BIE, is the one offered
by the BIE with NWA should be aligned to the common
core standards this coming school year, so we can
move to it more quickly.

I know that Dr. Hamley may have a few
more things to talk about with regards to alignment
of common core assessment and rolling out common
core standards across this school year, but we are
very much committed to that. If we continue under
25CFR30.104(a) as we need to, we see that 19 out of
the 23 states where we have schools have adopted the
common core standards, and the BIE needs to provide
the professional development necessary to get our
teachers trained to that level in the coming school
year.

If we cannot get out of the current
accountability system, our teachers and our students
still need to be prepared for the state
accountability systems to which they will still be
subject. Again, I -- I say this with tremendous
respect. You point out some major issues that we
have to address, and I would rather continue hearing
collaborations on your issues so we can take into
consideration and craft our request in such a way
that it addresses your concerns.

Again, I thank you very much for those
very pertinent points you have made.

MR. HAMLEY: I think Brian covered a lot
of information. On the common core assessments and that transition, we're working very closely with the ADD Monte Russell, and he's working also with the entire bureau to make that transition. The waivers that have been given have caught the entire country -- put the entire country in a position, all the states, of transition. So we're all trying to deal with a difficult situation.

The assessments aren't ready. They won't be ready for two years. The states now are rushing to try and implement -- they've adopted, but they haven't implemented the common core standards. So we're all working on that together. We're working collaboratively with the Navajo schools and with the ADD. So on that issue, that is sort of the status of it.

But I think -- I want to raise one point, rather than getting into all your points, which are well-taken and we will definitely consider those, is that the main thing with the flexibility request for the bureau, is that there is a national reform movement going on in the country now. It has been for quite awhile. But the common core standards, for example, started with the National Governors Association, and then the chief state school officers took it up.

So there really is a major grassroots reform movement, but too often BIE-funded schools
get left out of these reform movements. For example, The Race to the Top. That's where a lot of the proposals and initiatives were put into that the best thinkers in the country wanted to make available to states, but we were left out of that.

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

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

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

That's what we are proposing. What is on the street right now is a draft. It's out there for discussion. It's out there for critique -- hard
critique, and we would like to look at all the
critique we get, and based on that, revise the
flexibility request.

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

VICE PRESIDENT JIM: Thank you for your response. We appreciate it. One, we are interested in working together. When the director of BIE comes to the Navajo Nation Council and tells the Council that they will not support the Navajo Nation's request, that is not working together. To us, that is pitting the Council against the department. So we need to be careful how we address those issues.

So that's one issue.

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

And the second is when you say BIE, you're covering the 540-plus nations. That is
making the assumption that all nations are the same,
and therefore one type will fit all of them.
Unfortunately, that is not the case.
The different tribal nations are as
different, perhaps more so than the 50 states that
we're dealing with. The Navajo Nation is also
taking that bold move saying, "Hand us over that
authority to run our own schools, to be in charge of
that," and that's what we're asking.
And so when you talk about reform and
you're talking about taking responsibility and
talking about bold steps, that's what the Navajo
Nation is doing, and that's what we are interested
in.
MR. KILLSBACK: Thank you. I would like
to respond to that a little bit, Vice President,
before the next comment. I think that you're
absolutely right, that we need to work together, and
before any decisions are made, like I said, we're
going through a consultation. Nothing is set in
stone right now.
It has taken time, but I think the
Navajo Nation's goals, as well as the Department of
Interior and Bureau of Education, have the same
goals; improving education for Indians. And you're
absolutely right; one thing may work for one tribe,
and it may not work for another.
But what we're trying to do, as Jeff
pointed out, is we're trying to take advantage of the opportunity that the Department of Education has in terms of significant and meaningful reform to make those improvements, and part of the partnership with the Department of Education is that in a public school system they have these opportunities, and unfortunately tribal schools -- BIE schools have always been left to the side, saying, "You know what, Department of Interior, Department of Education, you have it your way," and we see the opportunity because the Department of Education has those same exact issues in rural America, as well as in the urban area where there are impoverished or under-privileged minorities, as well. So the Department of Education Arne Duncan sees similarities between the failing school systems in the urban areas where the minorities are, as well as the rural areas where the Native Americans are, and how does the Department of Education want to handle that? They want to partner with the Department of Interior to address that. So what we're engaged with is essentially options where doors are going to be made open to walk through at the BIE's request so that we can try to make -- take advantage of those opportunities that the Department of Education has. The criticisms systems and the
comments that you have are the exact types of
criticisms that we need to hear, and we may not have
your support today, Vice President, but we are
shooting for it, and those comments are going to be
significant for us when we address those adequately
so we can get Navajo Nation support on this.

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

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

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

One thing, I guess from an Indian
perspective, nice to meet you Mr. Killsback, and I
have met several other attorneys within the
that have come along to help us, there was reference
sometimes we put on our Indian thinking cap, and we
need to think Indian when we think about our people
and our communities back home, because what I see is
that the public systems on the Navajo Nation, they
have about 254 schools that service the Navajo
children -- 254 schools, 172 are physically located
on Navajo, and out of that 172, 66 are BIE-funded,
and there is a distinction between BIE-operated and
tribally-controlled schools.

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

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

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

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

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

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

A lot of the tribal leaders said, "We need to go back and have a consultation. We need to go back and consult with schools and the people,"
and Duncan stood up and said, "No, that takes too
long. We will only be here for three or four
months. We want something now," and that's when
Navajo stood up and said, "We're ready to go," and
here we stand.

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

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

Us right here, because those are our

relatives, those are our people, if they don't have
the academic skill, if they don't have the basic
fundamental skill to get a job, then they start
having a family. Then they need a place to live.
Then they need an income. That's how we absorb
them, and that is the reality of what we're talking about.

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

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

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

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

But the scary point to me, what I really get afraid of -- I don't get scared at too
many things at a congressional level. So I know you -- you're the federal programs are the diversity at a congressional level, when they say Indian students, academic performance is bismol. When they say Indian tribes can't do nothing about it, when they say that -- when they go through all the consultations like here, like the previous consultations that the U.S. Department of Education had, and you get all that from all tribes, and then a lawmaker comes and wipes that clean and says, "Well, we want to go this way because the Indian tribes, the data say they cannot perform."

That is the scary part to me, and I believe that you're at the diversity of them, as well as other federal agencies. The thought is to put BIE under U.S. Department of Education, as Duncan and Salazar. That's what they were talking about, and the way we conceptionalize it is you take away that Indian child and pass them between two federal agencies.

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

So with that, it is frustrating in some ways and there's always that -- I guess, that way out with these -- the federal bureaucracy, but I think that we need to be expeditious about what
we're trying to do here, and this way our people
are -- Duncan asked who has the answer to Indian
education. We have that answer. Us. Indians have
the answer. And I think that's something that we
need to materialize.

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

Why is BIE holding off on ours, when
they're running with theirs, and we kind of put it
in that framework. So with that, I wanted to make
those statements here and on behalf of our Assistant
Superintendent here, he will address some issues, as
well.

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

My understanding is that it becomes
part of the tribal system -- tribal school system
that the Navajo has, and I think that your -- your
depiction of the -- what the Navajo Nation is going
to be able to do with its schools is significant and
of note, and I think that in terms of being the
model -- wanting to be the model for Indian Country
and how Indian Country can do better with Indian
education, I think that you are. The Navajo Nation
is the model.

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

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

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

His charge to me was, "I want you to
handle Indian water and I want you to handle
education and try to get things done for Indian
people out there because I trust you and your heart is where it needs to be in terms of making changes for the federal government."

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

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

I think that you expressed that fear that the non-Indian thought, maybe even some of the elected leaders of this country, they think that why are we pumping over a billion dollars -- 1.1 billion dollars into education when they're failing? We can find a better use of that money. I think that's a concern, and I'm glad you raised that in your
comments. So that's going to be something in your comments and it will be a point of discussion when we go back to DC.

We'll say, "You know what, Bureau of Education, you're not doing enough of a good job, you're not moving fast enough, and you need to do this in Indian Country," and so Secretary Duncan's comments were right. We need to make change -- significant change as quickly as we can to address these problems, and so in that line, that's where we are administratively. We're trying to get that done, and that's the reason for our consultation.

That's why I welcome the comments and the constructive criticism. Our charge is to address comments and get that accomplished.

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

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

And just on your -- on your other
point about the discussion here has underscored the importance of your accountability workbook. So we
will communicate with the Department of Ed to ask them to expedite this process and get that response back to you.

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

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

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

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

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

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

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

THE REPORTER: Sure.

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

Education. Three -- two questions, and the other
one I want to clarify that. This 15-85 percent.
Let say there is 200 questions. Let's say there is
100 math question and 100 reading questions.

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

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

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

And then the other one is that I know that BPA, they have -- because on page 4 it talks about that. BPA -- they get all this money to do this, but the tribe, we don't get any money to do that, but the tribe has tribally-controlled schools. Yet, BIE retains the tribe's -- the BIE
and the tribal schools funds to do this type of
school -- this type of professional development,
planning, assessment, carry-out, and training. Yet,
on the one we have oversight for, we don't see any
of those funds from the BIE.
Where does those funds go? Because they only go for -- on here, I know it's optional.
On some of the schools, it is optional. We don't
know when we go over there, we don't know if we're
in or out as far as the tribe is concerned. We
don't get any of the money to plan with it. We want
that money to plan with them. So if this waiver
with our input -- if it goes through, if it moves
forward, all of those -- we're going to need those
funds to plan with our schools.
So that was what I was going to -- two
questions that I wanted to put on the table. Thank
you.
MR. HAMLEY: Brian and I may have both

comments on this, but the 15 percent, that comes out
of the common core standards that are written now
that they're proposing a 15-percent local option,
and I don't think that they've -- it is a general
concept, is my understanding of it.
Nobody has sort of done the math of
how many standards they are, because when you start
counting the standards and then say, well, that
means we have X number of standards to go, I think
it is more of a general concept of -- with the idea
of giving local communities some control and input
over to the standards that they want to define.

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

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

So that's our understanding of it.

Did you, Brian -- is that pretty much the same
understanding?

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

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

Let's see. Let me talk --

MR. KILLSBACK: Let me talk on that point. Mr. Benally, I'm curious. Simple math, 15 percent -- 15 questions out of 100, and 30 out of 200, you get into quantification, and I was kind of getting the sense that that is something that would be very easily discernible in terms of number-wise, but in terms of the bureau standpoint, we wanted to make sure that we heard comments on that or maybe your preference on what you would envision that being. Because as I said, we're in a consultation process and have haven't set anything down, yet. We would be very interested in your thoughts on that, if that would be something that would be acceptable, or unacceptable, or something in between, that you could elaborate on, maybe not now, or maybe now, but maybe later on, as well.
But the point that Jeff was trying to make is that the charge that we have from Salazar, as well as Del Laverdure, is that we need to emphasize tribal language, tribal history and tribal culture, and it needs to be part of the equation, and so that is the 15 percent. We recommend that, as my colleague stated. So how we do that and how we go about that? We're really looking to the tribal leaders such as yourselves to help us do that.

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

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

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

Mr. Killsback: Vice President, you had additional comments or questions for us?

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

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

How could that be a lower standard? I just don't understand that concept. Certainly, the NCLB is more stringent, but being stringent applies to a certain way of knowing and restrictive to a set
of standards and skills, and that is one way of saying that anything y'all have that is not fitting into that, we consider that lower and substandard. That's an attitude that we're trying to address and overcome so that those kinds of ideas are not passed on to our children. To de-colonize that kind of colonization.

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

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

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

MR. KILLSBACK: Thank you, Vice President, and let me apologize if that came across as disrespectful to you and your thoughts on education. As part of our presentation -- I think you came a little later and I went into a detailed explanation on AYPs and states and the way that
tribes, when they agree to adopt a new state

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

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

And so when I say that
administratively that No Child Left Behind Act, what
dois is it unfortunately administratively
created a system or a scheme of schools to engage in
changing their standards in order to meet AYPs, and
the persons that suffered that would be the students
because they are not going to be graduating ready to
go to college, to be reading at a college level, and
then if they don't go to college, they're not going
to be ready to be working at a person that would
have a twelfth grade education.
So with regards to tribes and developing their own common core standards, we absolutely 100 percent agree that proficiency needs to be at a twelfth grade level when they graduate, and also at the grade that they need to be to promote to the next level.

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

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

So, Brian?

MR. BOUGH: Yes, and it pains me greatly to think you that you were offended by my remarks because of lack of clarity. I was not referring to the Navajo standards or any other standards developed for the purpose of measuring academic achievement. I was referring to the standards by
which accountability systems are judged.

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

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

The standards for putting together an accountability system for the purpose of getting an adequate yearly progress definition in place under No Child Left Behind were extremely stringent. They did not allow states any leeway. They all had to terminate with an annual measurable objective of 100 percent by 2014, no exceptions.

So whenever I talk about having less stringent standards, that's going to applied to the flexibility request where states are able to recraft the annual measurable objectives, not be 100 percent
by 2014, but to be on a different time line where
you can look at measures of student growth, where
you can look at additional information besides
standards-based assessments which is a formative
assessment, something that is norm referenced.
So I was simply talking about the
accountability system proposals. By including many
of the facets of your proposal and ours, we know
that we can get it through the peer-review process
of the U.S. Department of Education a lot more
easily because we're not going to be expected to
comply with the very stringent standards that were
applied in No Child Left Behind systems.
The Secretary of Education's
flexibility standards are lower in the sense that
they are not as stringent, they give the states more
leeway, and it was not my intention to say that
Navajo standards or any other standards would be
lower. In fact, I think that what you have on the
table in terms of your educational system is going
to be leading the entire bureau if we can get to the
point that it can be implemented, simply because
you're starting to do things in the native language
and are starting restoring it, and that is going to
be a major challenge that no other state will have
on the table.
Again, I'm very sorry if I offended
you. It was not my intention to talk about the
quality of the academic content standards, as much
as it was to talk about the standards by which the
accountability systems were judged. And so I am
sorry, and I hope this clarification is helpful, but
it was not my intent to offend anyone, and certainly
not you, Mr. Vice President.

MR. KILLSBACK: Thanks. Do we have any
more questions or comments from the tribal leaders?
(No response)

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

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

* * * * *

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

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

As a way of protocol, I ask that you
first state your name. Second, who you represent
and which tribe, and then you can ask a question or
provide a comment. So we'll leave that open for now
until we don't think that any other comments or
questions are going to be made here.

So before we open, the mics are up
here.

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

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

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

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

I know at the tribal level, our tribal leaders have not really addressed that as such, to the point where there should be some sort of agreement with our tribal leaders and the community where there should be some sort of an enforcement. Otherwise, we would still have the same old thing where students would not be achieving as well because of student attendance. That's a big barrier.

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

And so my recommendation also is to
revive that program and make it as a priority, because that's one of the big barriers, is drug awareness for the students, and such. Those are the two comments that I wanted to make at this time.

MR. KILLSBACK: Thank you for those comments. I think that you touch on a very important aspect of the flexibility waiver. The first one is being able to a reward schools and not necessarily focus on the schools that are struggling.

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

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

I touched upon that, that in Indian Country, and because of our culture, it evolves so much around ceremonies and the season, season, season, that education and the BIE have tried to
control schools. The attendance has always been a factor that needs improvement on. I think that we're all aware that non-Indian school systems and public school systems, they have very strict attendance requirements, and even to the point where if you miss X amount of days, they tell you don't even bother coming back. Why? Because you're not going to meet the requirements to be promoted to the next grade level.

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

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

MR. BOUGH: I think you're absolutely right. When it comes to acknowledging whether schools are making progress with their students, the
flexibility request looks at two areas. First would
be proficiency, which is the one area that you're
used to. By changing the more measurable objectives
in such a way that would be reflective of what
progress would constitute in that school, we're not
going to have a single, extremely hard target to hit
for every state where we have a school.

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

So I think by changing in that one
way, we can look at something more than just
proficiency, but we also consider proficiency. We
look at student growth across the academic year. In
your case, I think the Pine Hill Schools will see
tremendous growth across the year. You may not
result in a proficiency, but it gets the students
closer to proficiency. I think the schools need to
have that be considered as part of their accountability determination.

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

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

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

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

But Ramah Navajo Community is separated from the main Navajo Nation Reservation, and out of that, there is another area under the Navajo Agency that is a checker board, land base,
and from there we're geographically separated as a satellite community.

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

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

The reason that was done was that the only local public school that was available to us in Ramah area was closed in 1968. Soon after that, we pursued to get the public school reopened, but we failed. So we took two legal action. We took over the public school district, and then we also included the State Department of Education, but the only solution that we were able to arrive to was to have our kids bussed out of the community into another district, and we could not solicit any help or assistance from the BIA or either the Navajo Nation government at that time.
So we struggled, so we had to go
directly to Washington to get assistance to reopen
an education for our community. Our community has a
population of 4000 -- 3500, and then with other
Native American areas, there are about 4000 members
altogether.

So we have been struggling most of the
year, and then to come to where we are today, what
we're talking about, we're talking about No Child
Left Behind Act, and what happened, why we're not
proficient in the areas that we're supposed to be as
it states in the law.

We -- we, meaning the -- I knew the
way it was written, we were set up for failure
because we're in a very rural, isolated area, and
these laws were written for concentrated
municipalities where people have a different look on
education, versus what we were confronted with in a
rural, isolated area.

We lack proper structural and
infrastructural support, meaning that, yes, there
may be money set aside to take care of education
through ISA formula, but that's the education side
of it, BIE side of it. Now you have to also
incorporate support. There has to be close
collaboration with the BOT side. The monies were
not there. We lack transportation funding problems.

Today there is only one paved road that
goes through Ramah Navajo Community, and we came to
where we were able to make some improvement and gain
some gravel roads, but they are not passable
year-round because the road maintenance fund has
dragically been cut. It has been cut from where it
was to now less than a hundred thousand dollars for
the whole year. We have close to 300 miles of
student transportation route that needs to be
maintained and also to be opened during the
wintertime. That's part of the reason why we failed
in the area of maintaining student attendance in our
school.

We have no running water to the homes
that are there. Our parents and community are
scattered out in about 300 square miles, and they
don't live in close proximity.

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

So we also lack electrical power to
come to these homes. We don't have housing that are
heated the way they should be. They're not lit.
There is no land line for communication systems. We
don't have telephones. Our cell phones don't operate because we don't have towers in close proximity to have communications, and because of the bad economy, community members and parents can't call their kids. We don't always have food on the table. We have an unemployment rate of over 75 percent in our community.

And those are the problems that we come up against and those are challenges we still have not been able to overcome, and we take our student education very seriously. But, again, right now our family stability is being challenged by many means for this. Drug abuse, whether there is domestic violence. We have a huge socioeconomic problem, and now we still lack proper structures. Our infrastructure, our treatment centers to where we could send our people to to keep up with the means to educate our kids.

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

We heard from our tribal government this morning, and where I'm coming from is a lower echelon level from the grass roots level. We just
had a government above us with authority and more
authority, and as it goes all the way up to
Washington, and we're left with no tools, no means,
no way of financially making any dent or improvement
in the way of our getting our kids properly
educated, because we're just being bogged down with
duplication of unnecessary requirement.

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

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

So then we talk -- we hear about
plans, and tribal government talking to the federal
government, government to government type of
communication, but we hear nothing of it at our
level. Our own tribe has not had any consultation
meetings with us at our own local community and our
school as to what plan they have taken to Washington
as to how they would do the improvements, and as
long as I have been involved in the local community
education going back to 1970, our own nation, our
own government, has not given our local community
any amount of dollars to maintain our school
structure or either to fund a school building or our 
in-classroom supplies to improve education in our 
community.

So we've been relying on Congress.

We've been relying on BIE to make ends meet, and 
when those plans come down in way of BIE reorganization, realignment, restructuring, and 
streamlining, that means at every route less money 
for our community.

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

So I just want to make that knowing to 
you so we are already impacted by the streamlining
that has been scheduled, and in order for any plan
to go through and to be approved, you know that
everybody has to be aboard. Me, the schools, the

local governments, and even parents.

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

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

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

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

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

MR. BOUGH: Thank you.

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

MS. LARGIE: Okay. Good morning,
Mr. Killsback, and Dr. Hamley, and Mr. Bough, and
members of the Navajo Education Department and
Navajo Schools. I am Dr. Elvira Largie, and I'm
here representing the Northern Cheyenne Tribal
Schools. Good morning.
I have a question regarding your agenda, and I am under challenges from BIE under NCLB and ESEA Act. Under the negotiated rule-making process, where are we at and when do we expect to get new schools funded? And that's my interest; where are we in that whole process. It is a whole another perhaps piece in itself, but that's my question. That's one of the first questions I have.

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

I saw the -- I heard the frustration over the Navajo Education Department where we're at as far as really taking the reins and is BIE really going to allow us to do that, because I know that in a previous school I worked, we were inundated every day with reporting requirements, and then we were even threatened at some point in time, and you talked also extensively about some of the reasons for failing schools, and it is because of the administrative turnover, and part of that is lots of non-support to perhaps the BIE.
She's sitting here as a BIE official, and I know she can't make any comment in her capacity, but those are all important things. When do we stop feeling repressed, and when do we stop repressing one another as native people, and I know there's lots of questions I'm asking, and that's my position, and thank you for the opportunity to allow us to sit around the table with you.

MR. KILLSBACK: Can I have your name again.

MS. LARGIE: Elvira Largie.

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

MS. LARGIE: Yes.

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

But to address the overall concern about the ability of the Northern Cheyenne Tribal School as a treaty school -- the only treaty school in Montana and the ability of the school to determine its own destiny, I think that what you
heard today was that the Northern Cheyenne Tribal
School, being the only BIE school -- grant school in
Montana, is part of the Montana State AYP No Child
Left Behind structure, and so therefore it has
agreed to abide by the standards and accountability.

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

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

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

this is something they want to do, and as we
discussed in our discussion this morning, there has
been a reform behind the No Child Left Behind,
because it would be an unlikely success of maybe 100
percent proficiency by 2014 in those three areas,
and I think in language arts and reading, and we
understand that as with every reservation in
Montana, the reservation schools are the ones that are the ones that are not meeting those AYPs, and for the state purposes, that really doesn't matter because the schools are -- are treated as islands, and I think you understand the concept that they're islands up to themselves, and it's up to the tribes to figure that out for themselves.

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

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

I would like to have Jeff discuss the construction aspect that you asked about, but for all our purposes here, we are advocates of tribes asserting their sovereignty by determining its own curriculum and standards for accountability and proficiency.

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

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

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

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

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

But one thing about this flexibility
request that does support sovereignty, is that right
now under No Child Left Behind with negotiated
rule-making and using the State's standards and
assessments, the school is very tied to the state,
and that's what we're proposing, is to -- is to
break that linkage to the states and go in with the
federal government since we support the Indian Trust
relationship, and that is what the flexibility
request would do, is that we would get away from
using state standards and state assessments and
requiring the schools to meet all the state requirements.

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

MR. BOUGH: And the last little area there is not one that is not worth mentioning here, because it is Principle 4 under the flexibility request, is Unnecessary Duplicative and Burdensome Reporting Requirements.

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

The one thing I observed is schools
want to get their data in and they want to do so in a time-effective manner so they can all go on summer vacation, and so to be hassled about it is way counter-productive to the entire intent of the organization.

So I and my staff have helped schools get the information in the system and helped them understand the reporting requirements, and that's what we're going to do. We have also realized other efficiencies in that process such as reusing data that is already collected in NASIS to repopulate the annual report system. Reusing that same data to generate student child counts for NASIS ISEP purposes, but for special education part B identification.

And any number of other ways when you look to NASIS and the data that are already being collected first, and then we look to ask schools if we have to follow up with that information, and one of the things you're going to see is the long-awaited for revision of the annual report will accommodate allowing schools to enter data all year long, and this is going to be something that is major important to us because one of the areas where we have problems complying with the U.S. Department of Education for reporting, and I'll just pick this out, is in the reporting of staff -- staff at the school.
This report is due in May of the school year in which it is being collected on. So the BIE has never been in compliance with the U.S. Department of Education's time line in that regard. So it changed the annual reports so that the schools can report their teacher and staff composition in the fall, and we can collect that data and we don't have to wait till June or July to get them, which is already after the annual reporting went through. So we're going to try to use as much data as possible. We're going to try to make it easier to report the data. We're going to spread out the reporting time line such that it's not a big burden on the schools to do it at any one point in time, and one of the things we really like to collect here, if you don't mind me asking you for another data collection, is a list of data collections that we can improve upon or eliminate entirely. So if you can provide such a list to us, either spoken here with the Court Reporter, or at the ESEA consultation email address behind us, we'll try to consider that and put it into our waiver request, because this goes to the U.S. Department of Education for review. We may not get what we're asking for, but let's ask for some things. This will make the reporting burdens a lot less on the schools and allow you to focus more on
MR. KILLSBACK: That's the point we hear is that the duplication of the reporting requirements, and that you may have a skeleton crew there to administer and teach, but if the skeleton crew is spending 60 to 70 percent of the time doing data collection, it defeats the purpose of having a school.

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

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

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

MS. LARGIE: Okay.

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

MS. LARGIE: I think that sounds good.

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

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

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

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

But so for those states that have already been approved or are in the process of being approved, they plan to implement as much as they can in school year 12-13. For those who got approved initially, it's easier. They can do more. But for those just getting approved at this very late date,
and they can't.

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

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

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

The other -- that captures probably 75 percent of that answer of what -- of your question, I think. The other piece is the personnel system. The Department of Ed wanted -- wants the states to implement that immediately, and it's -- we're a federal agency, we're not a state, so it's taking us
a little longer, but we would like to have --
develop that in 12-13, and pilot-test it -- I think
they're putting the proposal in 13-14. So the
personnel assessment piece will come a little later,
but essentially we're going to -- the short answer
is we're going to implement as much as we can
beginning in 12-13, understanding that we may not
get a decision until October.

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

standards and the launching of that, from what I
saw, they're very intense, and it is taking the
knowledge level, higher level thinking skills are
going to be required, and if our students are
still -- already lagging behind, and the standards
are being raised to the intellectual capability
expectations are being heightened, and what are we
going to do? How is the BIE going to strategically
and cleverly help the native schools, because it's going to come back as being -- if we're not in agreement on which assessment we're going to be using, it is going to look like they're really failing.

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

However, are we prepared, and what are we going to do when there is kind of like an epidemic or some type of notion of failure of our tribal schools throughout the country. That's my concern on a general level.

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

But the common core actually has presented an opportunity where we've already done a
lot of work in defining a new role for the bureau, and how we're going to actively support our getting the standards out there, provide professional development of the student information system we use. We're going to embed those standards in NASIS so that they will be available to everyone.

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

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

But we're happy to say that we're in a
position for the first time really to step up to the
plate and to support our schools and student
learning in a way that we couldn't do with 23 state
standards before.

MR. BOUGH: There are two ways in which
the states have kind of disguised the issue of
proficiency with regards to student achievement.
The first is by back-loading the annual measurable
objectives to only start raising up towards a 100
percent closer to 2014, and so you can see a
curvilinear path line from the initial
implementation of No Child Left Behind AYP systems
in 2002, all the way to 2014.

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

The other way is that if you can rig
the assessment in such a way that it is not obvious
to people who are not attuned to such rigging, which
is that you gradually lower the proficiency
standards, the necessary test scores by which
proficiency is judged in the assessment, and some
states have engaged in this activity to where it
disguises the fact that the students aren't really
doing that well proficiently, but, it's, you know, kind of notional as anecdotal of where do you find that, what you make of it, and this is how you arrive at 50 percent accountability systems printed in every state. You ask a statistician what's the best way to do an accountability system, and no two are ever going to agree. So you have all these people also serving to justify what it is that constitutes proficiency on the assessments. I think that we really have to go -- and you're going to see major achievement problems identified in our students when we move to the common core standards and the common core assessments, because they are rigorous, because they're extremely hard for us to hit, and because we have not been prepared to do so. So these first couple years of the accountability system, we need to brace ourselves to have our accountability shortcomings laid bare, but if we don't do that, we're just deluding ourselves as to what our level of achievement really is and how to improve upon it. So we may as well take the hit early, find out exactly where our students are achieving, make these goals very rigorous, make the accountability system such a way -- and this is the way we have it in the request -- that we can set intermediate goals for the schools that are
attainable, so we can talk about rewarding schools
for making those minor improvements in achievement
that the gentleman Mr. Coho was talking about. So
we can actually say the schools are doing a good job
improving their levels of achievement.

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

MR. KILLSBACK: I'll add a final comment
to that, is that the fear, I guess, or the anxiety
with regard to these standards, we anticipate that
the faculty and staff are going to be unappreciative
of what the BIE is proposing for the very reasons
that you set out, that it is much easier to stay
where we are and what we're doing. It's much
easier, because you run against the very thing that
BIE is trying to fulfill. It is a commitment to
meaningful education for the students on
reservations, and right now what we see is the
disconnect between the state standards and the
tribes and reservations, is the standards that only
allows the cycle of poor Indian education on the
reservations to continue, and we're going to try to
change that, and with that change, it takes reform,
and this is one special reform that we believe is
appropriate, and as a superintendent, I can
understand and appreciate the position you're in,
especially with those Cheyenne because, as you know,
the community of Busby, that's the only place of
employment for a majority of those people, in Busby,
and even the surrounding communities of Muddy, Lame
Deer, Kirby, and even Crow and Hardin, and the
students come from Crow now. So I'm aware of that,
but that's why you're the superintendent.

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

MS. LARGIE: I would like to say thank
you. Contrary to what my colleagues say on the
Navajo Nation -- I support them, as well. They're
always on the forefront of proclaiming what needs to happen, but my position, I think that what I see is good, and I see that the consultations that we're having are -- that we're on the road to trying to find common ground for Indian education. I think that's important, and I think that as we go along, we can improve the system.

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

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

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

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

that's what is going on out there, and I am glad to be here, and thank you for also coming here to --
that if we don't have any more comments or
topics. I'll leave it open for a minute or
two, but at this time I would like to thank the
folks in attendance, and also the individuals that
did come that had to leave. I know they are
time-pressed and tribal officials have places to be
and can't control when they come.

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

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

(Silent closing blessing given)

MR. KILLSBACK: Thank you.

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

* * * * *
CERTIFICATION

I, LERRYN HORTON ROBERDS, RPR, Arizona Certified Court Reporter, Certificate No. 50400, having been first duly appointed as Official Court Reporter herein, do hereby certify that the foregoing pages numbered 2 to 120, inclusive, constitute a full, true, and accurate transcript of the proceedings had in the above-entitled matter, all done to the best of my skill and ability.

DATED this ____ day of ____________, 2012.

__________________________________________
Lerryn Horton Roberds, RPR
Arizona Certified Court Reporter
Certificate No. 50400