

TRIBAL LEADER CONSULTATION ON THE DRAFT  
MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE DEPARTMENT OF EDUCATION  
AND  
THE DEPARTMENT OF THE INTERIOR - BUREAU OF INDIAN  
EDUCATION

June 5, 2012  
Renaissance Inn, 611 Commerce Street,  
Nashville, Tennessee

---

VOWELL & JENNINGS, INC.  
Court Reporting Services  
207 Washington Square Building  
214 Second Avenue, North  
Nashville, Tennessee 37201  
(615) 256-1935

♀

2

1 APPEARANCES:

060512 66845 Bureau of Indian Education Nashville  
Panelists:

Brian Drapeaux, Chief of Staff,  
Bureau of Indian Affairs

William Mendoza, Executive Director  
White House Initiative on American Indian and  
Alaska Native Education

Brian Bough, Bureau of Indian Education

Dr. Jeffrey Hamley,  
Associate Deputy Director, DPA

Members at Large:

Quinton Roman Nose  
Walter E. Swan  
Katherine Webster  
David Germany  
Janice Jimmie  
Carl Bryant Rogers

Monitors:

Bruce MacAllister, J.D.  
Monique McKay

Also Present:

Yvonne Davis  
Isabella Anderson, Sound Mixer

\*\* [sic] Exactly as Stated  
\*\* (phonetic) As the Word Sounded

~\*~

♀

3

MR. MACALLISTER: Welcome, everybody, my  
name is Bruce MacAllister, I will be your meeting  
facilitator. I work with an organization called  
Business Excellence Solutions out of Santa Fe, New

060512 66845 Bureau of Indian Education Nashville  
5 Mexico. And this is my partner Monique McKay, who has  
6 worked with me now for almost eight years.

7 MS. MCKAY: He's like, way too long, I'm  
8 sure.

9 MR. MACALLISTER: I'll let you introduce  
10 yourself, Monique.

11 MS. MCKAY: Hi, I'm Monique McKay, I'm  
12 (inaudible) from Canada, but I live in Williamsburg,  
13 Virginia, now, (inaudible) for about five years now.  
14 Normally, we don't need two facilitators for a group  
15 like this, but we're both here to welcome everybody.

16 MR. MACALLISTER: Since this is a smaller  
17 group, I think what will make sense for the court  
18 reporter, for her convenience, is if we simply go  
19 around the room and do introductions, then we can  
20 start right after the introductions with the opening  
21 prayer, and then I will review a couple of ground  
22 rules and what the expectations are as far as the  
23 meeting goes, and we'll tie right into it. All right?

24 So, if you will, Brian.

25 MR. DRAPEAUX: Good afternoon, Brian

♀

4

1 Drapeaux, Chief of Staff, Bureau of Indian Education.

2 MR. MENDOZA: Good afternoon, William  
3 Mendoza, Director for the White House Initiative on  
4 American Indian and Alaska Native Education.

5 MR. BOUGH: I'm Brian Bough, I'm an  
6 educational research analyst with the Bureau of Indian  
7 Education and a member of the Sauk-Suiattle Indian

8 060512 66845 Bureau of Indian Education Nashville  
Tribe of Washington State.

9 MR. HAMLEY: Good afternoon, Jeff Hamley,  
10 Associate Deputy Director, Division of Performance and  
11 Accountability; Bureau, BID.

12 MR. ROGERS: I'm Brian Rogers, I'm an  
13 attorney from Sante Fe, New Mexico. Hello.

14 I represent the Mississippi Band of  
15 Choctaw Indians and a number of other tribally  
16 controlled schools, and have been asked by Chief  
17 Anderson to make a statement on their behalf today. I  
18 have a letter of authorization from her today. Thank  
19 you.

20 MS. JIMMIE: I'm Janice Jimmie, I'm from  
21 Mississippi Band of Choctaw Indians and serving as  
22 Division Director for Tribal Emergency Services.

23 MR. GERMANY: David Germany, I'm Director  
24 of Education for Mississippi Choctaw.

25 MR. SWAN: Walter Swan, Line Officer,

♀

5

1 Southeastern States Bureau of Indian Education.

2 MS. WEBSTER: Katherine Webster,  
3 Administrative Support Specialist, Bureau of Indian  
4 Education in Nashville.

5 MR. ROMAN NOSE: And I'm Quinton Roman  
6 Nose, I'm Cheyenne, and I'm a citizen of the Cheyenne  
7 and Arapahoe tribes, and I'm glad to be here. I was  
8 here this morning, I thought it started at eight  
9 o'clock.

10 I want to ask everybody a question before

060512 66845 Bureau of Indian Education Nashville  
11 I get started: How many of your brought your guitars  
12 and boots with you?

13 MS. MCKAY: I have.

14 MR. ROMAN NOSE: Somebody called and I  
15 was talking to him this morning, and he was wondering  
16 if I brought my boots and guitars.

17 Just glad to be here, and thank you for  
18 the honor of giving blessing, I'm Cheyenne, and my  
19 families are Native American Church people, and then  
20 we also have Sun Dance People, but I was raised as a  
21 Baptist with respect for all ways. My family still  
22 participates, go there all the time. So I'm not a  
23 chief or anything, I'm just a Brave.

24 So with that in mind, I offer this  
25 blessing and this prayer. Let's bow our heads.

♀

6

1 Dear Heavenly Father, thank you for this  
2 day you've given us to come here and share our ideals  
3 and make these comments on behalf of our Indian  
4 children -- teach our Indian children. Whatever  
5 direction it may be, Oh, Lord, I ask you to be with  
6 each and every one of us, give us wisdom, and courage,  
7 intelligence as we speak, Oh, Lord; let us speak on  
8 behalf of all our people, and let us go away from this  
9 meeting in a good way, with good thoughts, continue on  
10 this journey to help our young children. Ask this in  
11 your Son's name, amen.

12 MR. MACALLISTER: Thank you very much,  
13 sir, appreciate it.

060512 66845 Bureau of Indian Education Nashville  
14 Let me give you a little road map to the  
15 session this morning. Typically, because we've had  
16 varying sizes of turnouts everywhere, from over 100  
17 people to smaller meetings like this, we don't know  
18 what we may encounter and so we've been asking people  
19 to sign in if they want to speak. I think in this  
20 case, we've got that list; we'll definitely make sure  
21 that everybody has a chance to speak. I don't think  
22 that's going to be a problem for our session today.  
23 And the whole idea here is to give you  
24 the opportunity to hear a presentation about what is  
25 pending with the Bureau of Indian Education and its

♀

7

1 joint initiative with the Department of Education and  
2 some additional information on an initiative called  
3 the Flexibility Request which has to do with changing  
4 the approach for providing measurements and metrics  
5 for annual progress for our schools.

6 So we'll be sharing about approximately  
7 an hour's worth of information for you-all. We'll be  
8 then asking for your input and commentary.

9 The meeting is being fully transcribed  
10 word by word by a court reporter, so we're not going  
11 to worry too much about taking detailed notes on flip  
12 charts or things like that because we'll have it all  
13 word for word.

14 But one thing that we will ask you to be  
15 doing is, as we go from person to person, again, just  
16 for the record, if you'll state your name and tribal

060512 66845 Bureau of Indian Education Nashville  
17 affiliation or your tribal representative status, you  
18 know, if you're here as a representative, as some  
19 folks are, just get that into the record for us so  
20 that we keep who is giving what comments straight.

21           And if the court reporter doesn't catch  
22 something, she's probably going to prod me and ask me  
23 to ask you to repeat it for her so that she can get  
24 this important information down.

25           Rest rooms are right out the door and

♀

8

1 around by the escalators; of course, if there's an  
2 emergency, the exits are that way down to the lobby.

3           As far as the package of materials, we'll  
4 be going through that package as we get the  
5 presentation. But I hope you-all picked up a packet  
6 at the door, they're available for you, and I hope  
7 you-all signed in so that we have a record of that.

8           We'll be going through the presentation,  
9 and then there will be kind of a dialogue session.  
10 Feel free to ask questions in your window of time to  
11 speak. And if you have a specific question, the  
12 panelists will be happy to answer it if they can;  
13 otherwise, there is a process by which you can  
14 officially request -- lodge a question and have it  
15 then responded to formally by the Department of  
16 Education and the Bureau of Indian Education,  
17 depending on who is responsible for the particular  
18 issue that the question relates to.

19           Again, if we can just remind ourselves

060512 66845 Bureau of Indian Education Nashville  
20 that we're all going to be trying to listen to one  
21 another here and keep our cell phones in check and  
22 things like that, that will be great.

23 And with that, I'm going to turn it over  
24 to the panel. And we'll start, I believe, with  
25 Director Mendoza, who will give us an opening

♀

9

1 presentation, and then we'll move through the various  
2 panelists.

3 MR. MENDOZA: Thank you everybody, and  
4 thank you, of course, to Bruce and Monique for their  
5 help. It's always a difficult position that we put  
6 them in to facilitate, and especially glad to join  
7 them on this next leg of these consultations.

8 We're excited about being here from the  
9 Department of Education's standpoint, particularly  
10 because it's representative of not only the  
11 President's Executive Order and our continuing to  
12 engage tribal leaders, education stakeholders, and, of  
13 course, the broader public on these issues; but also  
14 that we're working on these issues side by side with  
15 the Department of Interior, Bureau of Indian Affairs,  
16 and Bureau of Indian Education in their critical role  
17 that they play in the education of our students.

18 The items that you're being asked to  
19 consult on today, you know, are certainly specific in  
20 the sense that one is the Memorandum of Understanding;  
21 the other is, of course, the Strategic Implementation  
22 of the Executive Order, and also added to the agenda



23 060512 66845 Bureau of Indian Education Nashville  
24 is the flexibility package that the Bureau of Indian  
25 Education has put forth in their proposal.

25 And those issues, you know, of course,

♀

10

1 have a lot of context to them as well and have  
2 different kinds of implications to them. And so we're  
3 here today to discuss, you know, your concerns, your  
4 ideas, and, you know, to really have this be a  
5 meaningful process to those policy, I guess, items  
6 that are going to continue to impact the experiences  
7 and outcomes of our students.

8 So we want to make sure that we are doing  
9 our best foot forward, if you will, to reaching out  
10 and in a way that -- ways that we can. Particular to  
11 the Executive Order, immediately the Executive Order  
12 calls for within 120 days the Memorandum of  
13 Understanding to be developed between the two  
14 agencies. And so part of building that Memorandum of  
15 Understanding was to seek insight from tribal leaders.

16 On December 1st, Secretary Salazar and  
17 Secretary Duncan brought together an intimate group of  
18 tribal leaders to express their concerns and  
19 commitment toward Indian education and the Indian  
20 students. And as a result of those conversations,  
21 tribal leaders expressed that there needed to be  
22 conversations with educators, that tribal leaders  
23 needed to be further engaged and to be provided with a  
24 venue where they can focus on these issues.

25 And so that was the inspiration behind

♀

11

1 trying to bring tribal leaders together, trying to  
2 bring educators together and addressing -- for those  
3 of us who know this work all too well -- the  
4 disconnect that sometimes exists between those two  
5 entities, certainly less so when we talk about travel  
6 grants and contract schools for the Bureau of Indian  
7 Education, but in many respects, especially so when we  
8 talked about the public schools and the experiences  
9 that the tribal leaders have or do not have within  
10 those schools.

11                   Quite frankly, as I've come to  
12 characterize it, we cut it with a knife and, say, 90  
13 percent of our students, as tribal leaders express, do  
14 not have a meaningful connection to those students or  
15 a meaningful role in those students' educational  
16 experience, and they want to have more of a role in  
17 there. So we're really looking at innovative ways,  
18 ways that have legs to them to get us beyond  
19 administration turnover, political turnover, to get at  
20 the core of these issues. If it's an issue of  
21 accountability, we need to address that. If it's an  
22 issue of resources, we need to examine that  
23 thoroughly. Does it have to deal with just not having  
24 not having enough resources, or are we not doing what  
25 we're supposed to with the money that we have?

♀

12

1                   Those are the kinds of critical  
2 questions, the kitchen table questions, if you will,  
3 from WBP, in that proverbial safe place for us to have  
4 these conversations. And although we are, you know,  
5 on public record here, we have to begin to push for  
6 those kinds of venues that we can then discuss these  
7 issues. And what is the role of the Federal  
8 Government? What is the role of the tribes? What are  
9 the role of states? And how we can work, as the  
10 best-case scenario, in all of the positive ways that  
11 can bring together the kinds of quality experiences  
12 for our students that we need, and, of course, the  
13 kind of outcomes that we desire. Because it's not so  
14 simple as saying, We need to create 21st Century  
15 citizens that are better equipped for today's job  
16 market.

17                   We know that language, history, and  
18 culture are an important part of that experience, and  
19 that is at its most core of fundamentally different  
20 educational mission -- if not different, then  
21 enhanced. You know, whatever your perspective is on  
22 that education, we need to address that responsibly.

23                   And coming from tribal leaders like  
24 yourself, we certainly appreciate our tribal leaders  
25 who are able to join us today, and especially our

♀

13

1 educators, you know, that's where's those innovations  
2 are going to come from, that's where those  
3 enhancements are going to come from. And we deal with

4 the whole system of accountability here all the way up  
5 to the American public.

6                   And so we know that there are other  
7 actors out that also have, if not more  
8 responsibility to these issues, an ability to impact  
9 them. We need to be engaging them either way, whether  
10 it's Congress, whether it's an education issue with  
11 the federal agencies, you know, talking to governors,  
12 talking to Chief State School Officers, on down to the  
13 tribal leaders. We're looking at doing as much as we  
14 can from that initiative standpoint to be strategic  
15 about those efforts.

16                   All of this is placed within the  
17 President's 2020 College Completion Goal, to be the  
18 first in the world in terms of college graduates by  
19 the year 2020. We have a tremendous ability to impact  
20 that goal from the standpoint of when we're talking  
21 about the achievement gap, our students are some of  
22 the most underserved and underrepresented in the  
23 country.

24                   How are we addressing that? Today we  
25 have addressed it in terms of silos (phonetic), we

♀

14

1 have looked at it through what I often dramatically  
2 characterize as the myopic lens of the Bureau of  
3 Indian Education and tribal colleges and universities  
4 which serve, although, a critical population of our  
5 students, a very extreme minority.

6                   If we are talking about nationhood, we

7 are talking about national building, and even if we're  
8 talking about providing our students with the  
9 knowledge and skills representative of the communities  
10 in which they live so that they can have the jobs that  
11 they view as being on track for their own success and  
12 achievement. We don't have control over a lot of  
13 that, and our student's needs are not being met in  
14 public schools in the way that they need to be.

15 So we need to be reaching out in ways  
16 that we haven't done before. And so from the  
17 Department of Education's standpoint, we want to do a  
18 better job of that. Secretary Duncan is committed to,  
19 you know, trying to address those issues head on, and  
20 he has said to tribal leaders, he has said  
21 consistently, that those ideas are going to come from  
22 you-all. And so we're particularly interested in  
23 those solutions and as much specificity as you could  
24 bring to us, we would appreciate it; if it's a  
25 resource issue, which resource issue, the title needs

♀

15

1 to be changed. If it's all of the ESEA, help us break  
2 those down individually in the way that you understand  
3 them and how they impact your communities.

4 You have within your packet, and I hope  
5 everyone has received a packet, of course, our agenda,  
6 which Mr. MacAllister will make sure that we go  
7 through in an appropriate fashion today. And you've  
8 also been provided with a copy of the President's  
9 Executive Order. We tend to take it for granted that

10 -- we -- these are our babies, in some respects, so we  
11 sometimes think everybody has studied these as much as  
12 we have, and they've gone through them, but just in  
13 case for your review, and, of course, as you take it  
14 home, we have that for you.

15 We also wanted to provide to you today,  
16 because we often face criticism for, We didn't know  
17 about this meeting, We didn't hear about this at all;  
18 we reach out through our various networks, whether  
19 it's through grand treaties, through public access in  
20 terms of website and federal registries; we also, you  
21 know, facilitate through our contractors, typically,  
22 making sure that we're sending out the LISTSERVS on  
23 the education side, we do what is called an Education  
24 Technical Assistance Day, usually around October; and  
25 we have a tremendous list from those registrations.

♀

16

1 And so we employ those mechanisms within each of our  
2 agencies; similar process to the Department of  
3 Interior mechanisms, to make sure that the word is  
4 getting out; namely, what has been the fundamental  
5 communication for this -- these sets of consultations  
6 has been this tribal leader letter. And so we want to  
7 make sure that you know that we've provided that to  
8 your leadership especially.

9 Also in here, I mentioned some of the  
10 other mechanisms, but we do release to the press these  
11 important events that we think we need to have  
12 people's opinions, thoughts, and ideas present. The

13 press releases it there. Also attached to that  
14 document is the Memorandum of Understanding Proposed,  
15 Memorandum of Understanding that we would like have  
16 your feedback on today.

17                 Within the Memorandum of Understanding,  
18 it's broken up into two sections, really, one is the  
19 policy aspect, and two is the funding aspect. In this  
20 2005 MOU is just that, it's not new, it's an  
21 ESEA-mandated Memorandum of Understanding that, when  
22 we looked at this through the lens of the President's  
23 Executive Order, we said, How can we bring this  
24 together in a different way versus address this in a  
25 way that we have with this funding mechanism? That's

♀

17

1 only one portion of that.

2                 We need to add in there some policy  
3 guidance, especially when we're thinking about the  
4 mechanisms that it creates. And that's what we ended  
5 up putting into the bulk of the front of the MOU, and  
6 the appendices encompasses a little more of the  
7 technical aspects of the funding that is involved with  
8 primarily ESEA title programs.

9                 The policy aspect of the MOU is driven by  
10 a mechanism that we have enhanced. There is currently  
11 a joint work group that exists between Department of  
12 Education and the Bureau of Indian Education, largely  
13 in part to address some of these specific funding,  
14 monitoring and enforcement aspects of ESEA.

15                 We would like to enhance that working  
Page 15

16 group to have, on a consistent basis, a quarterly  
17 basis, if you will, regular conversations about those  
18 policy and funding concerns. So this becomes, for the  
19 first time, a meaningful interaction between the two  
20 agencies on the issue of American Indian and Alaska  
21 Native students and how we can work together to garner  
22 the kinds of leadership within the agencies, and not  
23 just at an interior, but also call upon other agencies  
24 to partner with us in those efforts.

25 So that's one of the clear parts of the

♀

18

1 MOU that I want to draw to your attention.

2 Of course, you shouldn't take our word  
3 for it, but we wanted to provide you with a summary of  
4 what is encompassed in the MOU as well, and that is  
5 what you have characterized within the background and  
6 history to draft the MOU. It takes you point by point  
7 of the highlights that we think are important for you  
8 to consider and certainly to share with your  
9 constituencies.

10 We also have, of course, the summary of  
11 the Bureau of Indian Education, ESEA Flexibility  
12 Request, and they're going to be presenting on that  
13 specifically. But I want to speak to you to the  
14 education's responsibility in that regard is that we  
15 will be reviewing this process, and we have already  
16 looked into, you know, what it is between our agencies  
17 that we need to do to begin meaningful conversations  
18 around this now that we have a proposal from the



19 Bureau of Indian Education, and what that timeline  
20 might look like.

21 In general, that process is about a  
22 9-to-12 week process, and none of the applications  
23 that have come in from the States themselves did not  
24 go through some type of editing process where we  
25 needed to make sure that what their State put forward

♀

19

1 was consistent with the principles of the ESEA  
2 waivers. And Mr. Bough will discuss some of those  
3 principles in detail. At that time, you know, we'll,  
4 of course, be looking at additional outreach guidance  
5 as to that process that we're going to be engaging  
6 with the BIE.

7 Also there is the original Memorandum of  
8 Understanding for your consideration so that you can  
9 see how much has changed or not changed and, you know,  
10 to complement the course, the background of the MOU.

11 But I just want to say thank you to our  
12 tribal nations for allowing us to be in this area, as  
13 I always do characterize, the United States is and  
14 always will be Indian country. And so I just want  
15 to -- there's Oglala, Sicangu Oyate enrolled in Oglala  
16 that have deep roots in Pine Ridge and Rosebud, and if  
17 I don't claim both -- I will get beat up if I don't  
18 claim both. So I just want to acknowledge that we're  
19 guests here.

20 As to Quinton's question to who brought  
21 their cowboy boots and stuff, I mentioned to Brian, I

060512 66845 Bureau of Indian Education Nashville  
22 said, If there's a place that we can get into a fight  
23 tonight, it's probably here in Nashville, because all  
24 I've got is my braid. But thank you for having me  
25 here today.

♀

20

1 MR. DRAPEAUX: Thank you, Bill. I, on  
2 behalf of the Department of Interior, Secretary  
3 Salazar, Acting and Assistant Secretary "Del"  
4 Laverdure, Director Moore -- who was scheduled to be  
5 here today, but was called to a meeting with the  
6 Secretary today, had to change his travel plans last  
7 night -- would like to thank you for joining us today.

8 At the Bureau of Indian Education, we're  
9 excited I'm here with two colleagues, Brian Bough and  
10 Jeffrey Hamley, and we're really excited, in that, we  
11 feel like we've worked very hard with our colleagues  
12 at the U.S. Department of Ed, as well as with the  
13 Department of Interior, to really start raising the  
14 level and the conversation around Indian education.

15 It's not a new conversation, obviously,  
16 but it's one that we think requires the type of  
17 attention, especially at this day and age with the  
18 current evolution of education happening in the United  
19 States, that we in Indian country continue to move  
20 forward in our own plans and designs of how we want to  
21 operate our schools and what that looks like in terms  
22 of tribal self-determination,  
23 government-to-government, nation-to-nation, and the  
24 mechanisms in which tribes utilize in order to bring

25 those resources to bear in their own local

♀

21

1 communities, whether it's 100-297 Grant, or 638, or  
2 self-governance.

3           We want to work hard to support tribal  
4 communities in expanding those authorities and finding  
5 ways that we can, in the meantime or at the same time,  
6 reach the goals of educating our youth at a level that  
7 we're -- we as tribal leaders or community members are  
8 proud up of and happy with at the end of the day.

9           What you'll hopefully participate in  
10 today is -- and I'll just touch on it briefly as Bill  
11 did, the summary of the Bureau of Indian Education,  
12 ESEA Flexibility Request. Even though we're going to  
13 talk about it in the round of consultation, it's not  
14 being consulted upon. It's really something that we  
15 want to bring to the attention of educators and  
16 leaders across the country, that the Bureau of Indian  
17 Education is moving in this direction. And we'll get  
18 into the details, probably -- hopefully not too  
19 deep -- here in a little bit and make sure that we  
20 have real clarity to the issues and the emphasis  
21 behind why the BIE feels it necessary for us to move  
22 in a direction in terms of the Waiver of Flexibility  
23 package.

24           The MOU is something that was really  
25 evident to us at the BIE when it expired in 2010, that

♀

1 it was a document of opportunity; although, it was  
2 a -- from 2005 to 2010, it was a document used for,  
3 basically, a mechanism to move money and how that  
4 money should be accounted for and so on. What we were  
5 excited about was that we started to get secretarial  
6 and deputy secretary review of the work that we were  
7 doing. In fact, Deputy Secretary David Hayes, I  
8 think, made at least one trip over to the U.S.  
9 Department of Ed to his partner, equitable level, Tony  
10 Miller, I believe his name is, at the U.S. Department  
11 of Ed, have a dialogue around Indian education and  
12 what was being there.

13 And I know that Secretaries Salazar and  
14 Duncan have met at least three times face to face and  
15 other times on the phone to talk about Indian  
16 education and the need to get some concrete activities  
17 done.

18 We see the MOU that you'll look at today  
19 and that we'll talk about today as one of the  
20 mechanisms in which we will use to frame the  
21 strategies to implement the Executive Order that the  
22 president signed on December 2nd.

23 And we're glad that we do have a  
24 representative of the tribal government here. It's  
25 one of the areas in the Bureau of Indian Education

♀

1 that we think is -- that we're missing, we're missing

2           060512 66845 Bureau of Indian Education Nashville  
the opportunity on -- in that.

3                         In the Bureau of Indian Education, for  
4 example, in our budget cycle, we have a process in the  
5 Interior called TIBC, Tribal Interior Budget  
6 Committee. And that particular group is comprised of  
7 12 regions of BIA and two representatives from each  
8 region represent tribes on that, and other tribes,  
9 tribal leaders come and sit in the crowd. But they're  
10 comprised -- what they do is they talk about the BIA  
11 budget and what that looks like and the implications  
12 of budget changes that may be forthcoming. They  
13 talk -- they get into the weeds basically.

14                         In regards to the Bureau of Indian  
15 Education, the first thing we noticed in that process  
16 is that they talk about three particular programs in  
17 the BIE: They talk about Johnson-O'Malley, they talk  
18 about adult ed, and they talk about scholarships. And  
19 the reason they talk about those particular three  
20 items is because they are tribal priority allocation  
21 funds, they're dollars that tribes utilize and can  
22 manage through 638 and manage at the local tribal  
23 level. Which means, then, that those three programs  
24 comprise of less than 3 percent of BIE's overall  
25 budget.

♀

24

1                         So 97 percent of our budget never gets  
2 discussed by tribal leadership, and we saw that as a  
3 serious problem in terms of Indian education and  
4 highlighting the policy statements that we were

060512 66845 Bureau of Indian Education Nashville  
5 hearing from the Secretary of Interior and the  
6 Secretary of Education and the President himself, as  
7 they talked about those issues in regard to tribal  
8 youth and education.

9                   And so fortunately we have great  
10 leadership at the U.S. Department of Education in the  
11 form of Secretary Duncan and Bill Mendoza sitting  
12 here; that they continue to work with us and drive  
13 these issues forward and try to find a mechanism in a  
14 way to not only raise issue during this current  
15 administration, but in a sustained manner; that we get  
16 the attention and the resources and the -- all the  
17 bells and whistles that public school and other  
18 education entities receive in the United States.

19                   So we've worked really hard, I think,  
20 over the past two years within the Department of  
21 Interior to raise the issue of Indian education, it's  
22 reflected in the documents that you see before you  
23 with our partners at the U.S Department of Ed and  
24 their commitment to moving education forward.

25                   So we are excited about having this

♀

25

1 dialogue, we look forward to your comments, and  
2 hopefully we'll be able to answer to all your  
3 questions and concerns as we move throughout the  
4 today.

5                   So with that I'd again thank you and  
6 welcome you and look forward to the discussion today.

7                   MR. MACALLISTER: Mr. Bough.

8 MR. BOUGH: Good afternoon, everyone.  
9 It's a tremendous honor to be able to present this  
10 information to you today. Any time I get to speak  
11 with the tribal communities, I really relish the  
12 opportunity because I get to bring some information to  
13 them that they may not have access to or be able to  
14 ask questions about. So I encourage you to ask  
15 questions at any time.

16 It's your opportunity to learn, it's my  
17 opportunity to get feedback on what it is we're  
18 proposing in our accountability system and how we  
19 would like to see changes made. But by no means is  
20 this final; this is something where this is the point  
21 in the process where you could have a considerable  
22 amount of input and sway over what the Bureau of  
23 Indian Education does for accountability.

24 Again, my name is Brian Bough, I'm the  
25 program manager for the data accountability program

♀

26

1 within BIE. That means that I handle data collection  
2 and reporting to the U.S. Department of Ed, within  
3 Interior, the Office of Management and Budget, and  
4 pretty much anyone else who may be calling that wants  
5 to have access to that information, in some way, shape  
6 or form, I get to deal with them. It also means that  
7 I make the accountability determinations, that is,  
8 adequate yearly progress determinations. So I tend to  
9 be one of the most hated guys on the entire Bureau.  
10 At least I smile with people and treat them well.

11 We have to acknowledge that there are  
12 some problems that we have accountability over the  
13 last few years. And let me pass out these slides that  
14 we printed. These are select slides, and they are by  
15 no means all the ones that are included, but they're  
16 the most key ones that we have.

17 I've received a lot of recommendations to  
18 keep it short. I keep getting that recommendation  
19 presentation after presentation so I've chopped it  
20 down even further.

21 We're going to go through what No Child  
22 Left Behind is for the BIE, what it means to the BIE,  
23 how we implement it. We're going to go through very  
24 lightly and hit upon our Flexibility Waiver Request.

25 Again, this is a proposal. We want to

♀

27

1 have your input on this particular item, so comments  
2 are most certainly appreciated and will be taken into  
3 consideration. And then we're going to address some  
4 of the benefits that accrue from applying for Waiver  
5 of Flexibility as having it granted over the course of  
6 this year.

7 Back when No Child Left Behind was passed  
8 into law, the Bureau conducted a negotiated  
9 rule-making session that determined how we would  
10 implement No Child Left Behind for the Bureau of  
11 Schools, that is, schools funded by Bureau, ones that  
12 are directly operated and those that are tribally  
13 controlled.



14           060512 66845 Bureau of Indian Education Nashville  
              No Child Left Behind required all  
15 students to meet rigorous state testing targets in  
16 reading, language arts and mathematics. And it set  
17 the target at 100 percent student proficiency in  
18 reading and math by the year 2014.

19                       These are very lofty targets, and I can't  
20 speak as to the rationale as to why they were set so  
21 high, but that was what the policy said, and so what  
22 we're seeing right now is that states are starting to  
23 rebel against that. This was taking place across last  
24 year; we saw some states very overtly say, We're no  
25 longer going to participate in No Child Left Behind's

♀

28

1 mandates.

2                       And so Ed was given a big problem, How do  
3 we actually change this with uncooperative Congress?  
4 And so they set forth the waiver proposal system that  
5 allows states to opt out of No Child Left Behind's  
6 provisions, provided that they were going to implement  
7 other provisions that ensured accountability within  
8 the organization or within the state.

9                       For the BIE, the task was a little bit  
10 harder. The negotiated rule-making sessions  
11 determined that we were supposed to use the  
12 definitions of accountability for the state in which  
13 the funded school was located. So, for example, our  
14 schools in Mississippi, they used the Mississippi  
15 standards, assessment and accountability criteria for  
16 determining AYP; our schools in New Mexico used the

060512 66845 Bureau of Indian Education Nashville  
17 New Mexico criteria, so on and forth.

18           The final regulations came out in 2005,  
19 and it set us to using the state's definitions of AYP,  
20 their assessments and their academic content  
21 standards. Those are very important. That means that  
22 currently the BIE has 23 different ways to calculate  
23 AYP. So if you have 23 different standards for  
24 judging whether a school is successful, you don't have  
25 a single standard by which you can determine if the

♀

29

1 school's successful. There's been perceived  
2 unfairness in this system according to many of the  
3 states and tribes by which these determinations are  
4 given out.

5           Because of the complication in using a  
6 23-state system, the BIE wants to simplify things and  
7 move to a single system, that would be a single set of  
8 standards measured by a single assessment and having  
9 accountability determined by a single set of criteria.

10           In order to accomplish this, we must  
11 first amend 25 CFR, Section 30, 104 A, and that is the  
12 part which specifically says that we need to use the  
13 23 states' definitions of AYP, their academic content  
14 standards and their assessments; and we would move to  
15 a system where we have one set of standards based on  
16 the common core of standards developed by the states,  
17 have a single assessment by which those are standards  
18 are measured -- for contractual reasons, I can't say  
19 probably which assessment that's going to be -- and

20 060512 66845 Bureau of Indian Education Nashville  
21 then have a single set of accountability criteria by  
22 which all schools will be judged. And we're going to  
23 talk a little bit more detail about our proposal here  
24 in a moment.

25 So what we are seeking is really opinions  
of two areas: The first one is on changing the rule

♀

30

1 that currently allows us -- or requires us to use the  
2 23 different state standards and move into a single  
3 unitary standard; and the second is on the proposal  
4 itself, what it is that we would like to see happen,  
5 or whatever it is that you might want to see happen in  
6 the proposal for flexibility.

7 The waiver allows us to address several  
8 concerns. First and foremost, it will put student  
9 achievement back at the top of the list in terms of  
10 what is important to our organization. We saw No  
11 Child Left Behind do this to a certain degree because  
12 of its emphasis on student proficiency, but the way in  
13 which No Child Left Behind calculations are  
14 structured, it was based on a single point-of-failure  
15 concept. So no matter how well a school was doing in  
16 academic terms, if one subgroup of students -- special  
17 educations, limited English proficiency -- failed to  
18 meet an indicator on any one of the indicators, then  
19 the school was judged to be failing; in other words,  
20 you had to hit the targets for every single indicator  
21 in order for the school to be judged as making AYP.

22 So if the school decided to really

23 060512 66845 Bureau of Indian Education Nashville  
24 emphasize reading, and they decided not to emphasize  
25 math as much because they know that they're not doing  
so well in math, any surplus they had after hitting

♀

31

1 the target wouldn't be considered in the school's AYP  
2 determination. And so we're going to change from a  
3 system to one that gives the school credit for the  
4 level of achievement in reading, and it may come at  
5 the expense of math, but overall it might balance out.  
6 The theory behind this is that some schools will  
7 emphasize reading to get their math course to improve  
8 down the road, because then the students start doing  
9 better in terms of understanding the problems,  
10 especially word problems. And the schools that have  
11 tremendous growth in reading areas often see math grow  
12 in subsequent years because the students are better  
13 able to grasp and respond to the questions. It  
14 emphasizes narrowing achievement gaps across groups.

15 We're going to look at ways in which we  
16 can improve student achievement by looking at those  
17 subgroups and then intervening with the school as  
18 their assessment data comes in to help them address  
19 their specific students' needs.

20 We are going to increase the quality of  
21 instruction in the same manner. And as we get the  
22 test results in, we're going to turn them around more  
23 quickly and work with the schools, based on their  
24 students' achievement scores, to address areas of  
25 weaknesses that are identified on the assessments.

♀

32

1                   Finally, we're going to be able to see a  
2 way to formally incorporate up to 15 percent of the  
3 common core based on the tribally developed standards  
4 so that the things that the tribes find that are  
5 important -- language, culture, history, government --  
6 these kinds of things can be partly what their AYP --  
7 or their accountability determination will be based  
8 upon. In other words, the accountability  
9 determination will take into consideration what it is  
10 that the tribes value and help make that be part of  
11 judging whether the school is successful. This  
12 flexibility will build on the support of reforms  
13 already underway in the BIE.

14                   The principles in the waiver  
15 application -- and I have to be very clear here, the  
16 application itself was set out by the U.S. Department  
17 of Education, and so our duty in responding to this  
18 application is to go through it point by point and  
19 develop a system that addresses the needs identified  
20 by the U.S. Department of Education. So it's a very  
21 structured application process.

22                   So if you go to the U.S. Department of  
23 Education website and look up ESEA Flexibility, you  
24 will see state applications that are more or less  
25 going to align to these particular principles in very

♀

33

1 specific ways that answer specific set questions by  
2 the U.S. Department of Education.

3           The first principle is to set and  
4 establish college- and career-ready standards for all  
5 students. The way in which states have addressed this  
6 is by adopting the common core standards. Those  
7 common core standards were developed by two consortia,  
8 funded by the U.S. Department of Education, the  
9 SMARTER Balanced Assessment Consortia out on the West  
10 Coast and the Park Consortia here on the East Coast.

11           And what they're going to eventually do  
12 is develop assessments that measure those common core  
13 standards. The BIE will look for moving to a common  
14 core officially as a Bureau as a result of this  
15 application. This is also, in part, acknowledging  
16 that 18 of the 23 states where the BIE have schools  
17 have already applied for this kind of flexibility.  
18 All but one state is also proposing to move to the  
19 common core standards. So this is a way to formalize  
20 and render consistent across all Bureau schools the  
21 application and implementation of the common core.

22           Principle 2 is the development of a  
23 state-developed differentiated recognition  
24 accountability and support system. Differentiated  
25 recognition is sort of the new parlance for

♀

34

1 identification of schools and the school improvement  
2 statuses, or AYP statuses.

3           And so when we talked about a

4 differentiated recognition system, we're talking about  
5 assigning schools into a particular status, and the  
6 status conveying upon the school is either a certain  
7 recognition for a job well done or a certain help,  
8 support, that the BIE can provide to the schools and  
9 improve the academic outcome there.

10 Principle 3 is the support for effective  
11 instruction and leadership. The way in which states  
12 have tackled this problem is by using student  
13 achievement as a way to get at educator effectiveness.  
14 And the BIE has some problems with addressing  
15 Principle 3, and we'll talk about those just a little  
16 bit.

17 And finally Principle 4 talks about  
18 reduced duplication and unnecessary burden. As the  
19 person who reports and collects data, I can tell you  
20 there's a lot of duplicative reporting, and there are  
21 ways in which we can reduce the amount of reporting  
22 that we have to send off to the U.S. Department of  
23 Education. If you have ideas on how to do this,  
24 please, I'm interested in your comments.

25 This part of the application is one where

♀

35

1 we can make a tremendous amount of difference at  
2 school -- and like I said, I'm very sensitive to this  
3 because I'm the person that collects the data and I'm  
4 the person that reports it -- by identifying areas  
5 where we can improve efficiency in data collection and  
6 reporting.

7                   The new accountability system as  
8 proposed, all students should be prepared for college  
9 or career upon graduation from a Bureau school or a  
10 tribally controlled school -- I have to be very  
11 specific here. The BIE will adopt the common core  
12 standards as developed by the states, and we will use  
13 a single assessment for measuring whether students are  
14 achieving on this particular set of standards.

15                   The evaluations will be based on, first  
16 and foremost, proficiency, but also student progress  
17 on the academic standards. This has been conceived,  
18 in most states, as a student growth model. Under the  
19 BIE system, we're going to be equally weighting  
20 student proficiency on the standards with student  
21 growth.

22                   Now, you might ask, What's the  
23 difference? The way in which the Bureau will  
24 implement the assessment system is by testing students  
25 three times per year. On the first assessment we will

♀

36

1 generate a growth target for each student so that  
2 that's based on that particular student's level of  
3 achievement at the beginning of the year and sets a  
4 target for them at the end of the year. Whether a  
5 student hits that target determines whether that  
6 student has made an adequate amount of progress across  
7 an entire year.

8                   There are some business rules we'll have  
9 to put into place for students that transfer in and



10 students that transfer out, and so on and so forth.

11 Proficiency will be measured in the same  
12 way that it has always been measured, that's going to  
13 be the percent of students scoring "proficient" or  
14 "advanced" on their assessments.

15 Lastly, we're going to be looking at two  
16 rate measures, that is attendance rates and graduation  
17 rates. The U.S. Department of Education requires  
18 graduation rates be applied to high schools, so we're  
19 going to apply attendance rates to elementary and  
20 middle schools.

21 The idea behind our new accountability  
22 system here -- I want to see what's on the next slide  
23 -- is that we will take each of these indicators and  
24 we will incorporate it into what we call an  
25 "accountability index." We give schools credit for

♀

37

1 the degree to which they achieve on the proficiency  
2 measures or on the progress measures, not simply  
3 looking at whether they hit the target or not and  
4 saying yes or no. So if your school has 70 percent of  
5 its students proficient in math, you will get 70  
6 percent taken for that math indicator and incorporate  
7 it into the accountability system.

8 So if you're hitting the target in math  
9 but you're exceeding it, let's say the target is 65  
10 percent, you've exceeded it by 5; let's say your  
11 reading target is also 70 percent, but you only scored  
12 68, well those extra 5 points will help make up the

13 difference for the reading category, so that you can  
14 take some points from one area, apply to another area,  
15 and the school could be judged as making sufficient  
16 progress overall, they'll get a satisfactory  
17 accountability determination.

18 And there are some percentages that were  
19 in slides that were removed. I was told that I was  
20 being a little technical. So we can actually look at  
21 those a little bit later if you would like to look at  
22 those.

23 The idea being that we take an  
24 indicators, we weight them so that no one indicator is  
25 heavier than any other, and in the process we have a

♀

38

1 more well-rounded picture of what's actually taking  
2 place at the school, not a simple up-or-down  
3 determination like we had in No Child Left Behind on  
4 about 15 different areas, where any one of them would  
5 cause the school to fail if the school didn't meet it.

6 The benefits from flexibility is that we  
7 take student achievement and put it right back up at  
8 the top of the spectrum here. We're not looking at  
9 subgroups specifically; where we see subgroups  
10 dominating the AYP determination system based on their  
11 performance on an indicator, where if one subgroup  
12 failed to make the indicator in any one category, then  
13 the school is judged to be failing. We look at  
14 student achievement more generally: We want to know  
15 whether the students are achieving, and we're going to

16 set targets that are ambitious but achievable for each  
17 school. And the importance of this is that we're  
18 giving schools credit for the level of achievement  
19 that they are able to get from their students.

20                   Accountability determinations will be  
21 more reflective of student performance. The more  
22 measures you have of any one item -- in this case,  
23 school performance -- the better and more clear the  
24 picture is going to be. If you have just one measure  
25 of any one thing, unless that measure is absolutely

♀

39

1 that one thing particularly, you're not going to be  
2 capturing the full picture.

3                   In this case school performance is not  
4 something that can be captured by a single measure;  
5 we're looking at math and reading scores, not in terms  
6 of just proficiency, but also in terms of student  
7 growth towards meeting that proficiency level over  
8 time. So we're capturing more data elements that tell  
9 us more about how a school is actually performing.

10                   A single-standard assessment system and  
11 accountability criteria will level the playing field  
12 for all BIE schools; in other words, we'll be judging  
13 everybody on the same standards, using the same  
14 assessments and by the same criteria. That's very  
15 important for us as an organization.

16                   The realization is, on the other hand,  
17 the flip side, the 23 state definitions, the states  
18 that are applying for and receiving flexibility under

19 the current flexibility model have developed  
20 accountability systems that are so complicated, that  
21 it's difficult for the Bureau to replicate what a  
22 state does, and so it's not going to be something that  
23 we can tackle.

24 Having a single measure, a single  
25 standard, a single assessment, so on and so forth, is

♀

40

1 going to allow us to give out accountability  
2 determinations much more quickly that are also more  
3 meaningful and comparable across state lines.

4 The new accountability system will be  
5 less punitive. If you've read the state applications,  
6 the one thing that should stand out is that we're no  
7 longer just saying, We're going to identify schools  
8 for status, school improvement, corrective action,  
9 restructuring. It's more of a technical assistance  
10 model, where once we find out how a school is  
11 performing, we're able to craft the kind of support  
12 that school needs in order to improve student  
13 achievement over time. We're not going to be  
14 identifying schools for status as a punitive measure.

15 Finally, the alignment of resources will  
16 allow BIE to provide better technical assistance and  
17 professional development to schools. When we have a  
18 23-state system, the BIE is very fragmented in how it  
19 can provide support to its schools. So if you think  
20 about curriculum support or support in understanding  
21 standards or support with regards to addressing the

22 assessment, if you divide that by 23 -- I shouldn't  
23 say "divide" -- you should multiply that by 23, that  
24 fragments out the ability of the resources of the BIE  
25 to address any one of those areas.

♀

41

1 By unifying all the different  
2 accountability standards' assessments into one system,  
3 the BIE's resources are magnified, that is, we only  
4 have to worry about addressing those standards and  
5 that one assessment, and in doing so, we've magnified  
6 the ability of the BIE to provide services to schools.

7 The other benefits we have from the  
8 flexibility is that the waiver is an opportunity to  
9 effect significant reforms in BIE-funded schools  
10 consistent with the national reform movement.

11 I think if you looked at the Department  
12 of Education's website, you can read their blueprint  
13 for reform. I think that they're all laudable goals  
14 that they have, reducing the number of assessments  
15 or -- that you have taken, the amount of time spent  
16 out of class taking assessments, these kinds of  
17 things, looking at student achievement, and so on and  
18 forth. These are very important goals, and for us to  
19 be able to adopt those goals will improve our system.

20 For us, the most significant reform is  
21 the unification of the accountability system, moving  
22 from a model that uses the 23 different state  
23 definitions of AYP to a single model that has a common  
24 core set of standards, a common set of assessments for

25 all the schools and a common accountability

♀

42

1 methodology that levels the playing field for our  
2 accountability determinations.

3           And since this consultation, I think you  
4 guys will probably all be able to squeeze your  
5 comments in, but if there's something that occurs to  
6 you at a later point, this e-mail address above here,  
7 eseaconsultation@bid.edu is an e-mail address where  
8 you can send your comments.

9           And what is the deadline for that?

10           MR. HAMLEY: And also the core  
11 Flexibility Waiver in draft form is at [www.bie.edu](http://www.bie.edu) as  
12 well as a 13-page summary. Well, the date hasn't been  
13 set, but it's at least through June 30th. The Tribal  
14 Leader Letter is being drafted now to give tribes  
15 instructions on that. But it will be at least until  
16 June 30th, but I think it's probably going to run into  
17 July now, so you will be expecting that letter,  
18 hopefully, within a week or so.

19           MR. DRAPEAUX: Right. And I will say to  
20 that, part of our responsibility is state core input,  
21 and so we're looking at, in addition to consultation,  
22 ways that we can bring this process to you in the  
23 field to take a look at the actual draft.

24           And so one of the opportunities that I  
25 think we're going to employ is to have the waiver be

♀

1 managed at the local level by our education line  
2 officers, to invite school personnel into a single  
3 location for a period of time to actually redline the  
4 document, make comments into proposed language, to  
5 truly allow you the opportunity to sit and to talk  
6 through the 130-page document line by line, sentence  
7 by sentence if you like, to really get a sense of what  
8 it is that you think is important in this waiver  
9 flexibility package.

10                   It's a somewhat controversial document,  
11 I'll say, all the items and the highlights that Brian  
12 Bough talked about are really getting to the heart of  
13 what role the BIE should be playing in terms of  
14 education today. And to date, it's unclear what role  
15 that is. And so we're looking for opportunities to  
16 clarify our role, to assist you in education of  
17 children, and to really try to maximize resource  
18 opportunities that we have available to us in these  
19 current budget times, that I think are tentative, at  
20 best, across the United States and make sure that  
21 we're maximizing our opportunities with you.

22                   And so we see the Flexibility Waiver as  
23 an opportunity to engage you at the barest level, I  
24 guess, about how BIE-operated/BIE-funded schools  
25 should be governed. And this really comes down to

♀

1 governance, and it comes down to what is the role of

060512 66845 Bureau of Indian Education Nashville  
2 tribes in terms of Indian education. We're excited  
3 about the waiver in that, the 15 percent that's  
4 available to states today to highlight the things that  
5 are most important to them, we haven't hit a  
6 consultation yet or had meetings with tribal leaders  
7 yet where the issue of language and culture have been  
8 at the forefront of the discussion. And yet in the  
9 states that each of these tribes sit in, the  
10 opportunity, other than, perhaps, maybe South Dakota  
11 and Montana, there's a rare opportunity to provide  
12 real curriculum, real opportunity, real priority for  
13 those issues for tribal nations. And so we're looking  
14 for those opportunities, those vehicles that will  
15 provide that for you to highlight those areas that are  
16 important.

17 So you will get a letter, it will be this  
18 month. I don't know if the line office work will be  
19 done before the letter, it's something that we need to  
20 determine, but it will be forthcoming.

21 MR. MACALLISTER: One quick question: Is  
22 there a different deadline for the comment period for  
23 the MOU based on the Secretary's -- the joint letter  
24 from both the Secretary of Education and from the  
25 Secretary of the Interior -- for the MOU portion of

♀

45

1 this, is there any different deadline for that than as  
2 applies to the Flexibility Request?

3 MR. DRAPEAUX: I will say, as I stated  
4 earlier, that the flexibility is introductory;



5           060512 66845 Bureau of Indian Education Nashville  
6 although this is consultation, we want to introduce  
7 the concept to you and to alert you to its existence,  
8 to encourage you to go out and read it and to start  
9 formulating your own ideas and concepts around real  
10 major issues in terms of Indian education governance,  
11 and so there will be different timelines. Those  
12 timelines for the Flexibility Waiver have not been set  
13 yet; the timelines for the MOU have been set.

13                   MR. MACALLISTER: Thank you.

14                   Other comments from the panel before we  
15 open up the session for tribal consultation?

16                   All right. Well, typically with larger  
17 sessions, we've taken a break at this point because we  
18 want to give people the opportunity to kind of get  
19 their thoughts together and come back for a longer  
20 session. But at this stage, are we all comfortable  
21 that we can just kind of move into that and we'll play  
22 by ear, or would you prefer . . .

23                   MR. ROGERS: I would love to have a  
24 break.

25                   MS. MCKAY: Let's take our 15-minute

♀

46

1 break, we'll come back at ten after. I live to serve.

2                   (Brief recess was observed.)

3                   MR. MACALLISTER: The protocol, again,  
4 just to remind everyone, when you begin your address  
5 to the panel, please give your name and your title or  
6 your representative capacity, your tribal affiliation,  
7 whatever is appropriate to your particular

8 060512 66845 Bureau of Indian Education Nashville  
9 circumstance and, you know, just move from this end of  
10 the table, we can be fairly informal here. I think  
11 typically what we've been doing with larger groups is  
12 asking the panel to wait to give comments until after  
13 the -- everybody has had a chance to speak. But if  
14 there's a particular question or a dialogue that we  
15 need to have around a particular issue, a more  
16 detailed question for the Flexibility Waiver Request,  
17 things like that, I think we've got the flexibility  
18 here to be -- just allow a little more dialogue  
19 dynamic, and after all, that is what our objective is,  
20 to make sure that there is an actual, you know,  
21 vibrant consultative process.

22 So without further ado, sir, if you will.

23 MR. ROGERS: Good afternoon, I'm Bryant  
24 Rogers, I'm an attorney and I do work in the field of  
25 Indian law, I'm a board-certified Indian law  
specialist out of New Mexico. I've been asked to

♀

47

1 speak by Chief Anderson for Mississippi Choctaw,  
2 Mississippi Band of Choctaw Indians today in this  
3 consultation.

4 I wanted to ask, should we address the  
5 Flexibility issue first and then move to the MOU  
6 separately, or how do you-all want us to -- there are  
7 sort of two topics, they sort of overlap a little bit,  
8 but . . .

9 MR. MENDOZA: Whichever you deem --

10 MR. ROGERS: Okay. I'll talk a little

11 060512 66845 Bureau of Indian Education Nashville  
bit about the Flexibility first.

12 Let me just say one little thing about my  
13 background. I first started working for Mississippi  
14 Band of Choctaw Indians in 1971 as a planner. The job  
15 they hired me to do was to assist them to take over  
16 BIE programs that were being operated by the Agency.  
17 This was five years -- or four years before this  
18 93-638. We used the Buy Indian Act Authority to do  
19 it, and it's very grueling and difficult. I could  
20 tell you some stories that would make your hair stand  
21 on end about the way the Bureau resisted that effort  
22 and what efforts they took to prevent the tribe from  
23 achieving that. But we did achieve it.

24 So my whole sort of legal career, because  
25 I left to go to law school after that, has been

♀

48

1 focused on facilitating tribal decisions, either to  
2 take or not take federal programs and to otherwise  
3 exercise their rights and prerogatives under federal  
4 law and tribal law.

5 So this is not something that's just of  
6 academic interest to me, and part of the reason the  
7 tribe is asking me to speak on it is they know I have  
8 worked with them for so many years and helped them  
9 achieve what they want to achieve.

10 When we look at something like this  
11 flexibility plan, the first question that the tribe,  
12 you know, isolates is, Why? Why is it necessary? Is  
13 it a good idea? And the secondary question is can it

060512 66845 Bureau of Indian Education Nashville  
14 legally be imposed on them without their consent?

15 So let me start with the "why" and "is it  
16 a good idea."

17 They don't think so. If they thought it  
18 was a good idea, they'd already have the authority  
19 under the regulations at 130.105 and 130.104 to adopt  
20 their own AYP that would look like what y'all are  
21 proposing. They like being under the state AYP plan.  
22 It gives them a way to compare, for the parents, with  
23 the local public schools, it gives them a way to  
24 facilitate their accreditation through the state  
25 system and the regional system.

♀

49

1 The puzzling thing to the tribe is this:  
2 If the Bureau came up with a better mouse trap, a  
3 better AYP, and put it out on the table and said,  
4 Tribes, if you want to adopt this, you can do so, the  
5 regs already permit that, so that raises the question  
6 for them: Why is it being proposed that you would  
7 impose a uniform standard where they have no choice  
8 but to follow your standard rather than their choice  
9 to follow the state standard?

10 Well, that raises a spectre of --  
11 Mr. Drapeaux put his finger on it -- What is the role  
12 of BIE and Indian education governance? The answer to  
13 that question is very different for the tribally  
14 controlled schools than it is for the BIE-operated  
15 schools. You have every legitimate reason and concern  
16 to want to deliver a better product in the

060512 66845 Bureau of Indian Education Nashville  
17 BIE-operated schools. But how to achieve a better  
18 product has been turned over by Congress to the tribes  
19 and the tribally controlled schools. They want to  
20 control their schools; they don't want you telling  
21 them how to do that.

22 They have to follow the core minimum AYP  
23 standards, they don't dispute that; the regulations  
24 make that clear, they've never bucked against that.  
25 But they see no value -- no value -- in being forced

♀

50

1 to adhere to a BIE-implemented, standard AYP data  
2 collection. Because data, you know, that's the first  
3 step, is reporting, and then there's, you know,  
4 oversight and compliance and all the other things that  
5 go with it. We acknowledge that BIE, under the  
6 regulations, has the authority to impose sanctions  
7 against tribally operated schools who don't meet the  
8 standards. But the standards are up to them to decide  
9 under the regulations. So their basic premise or  
10 basic response is, No, this is not a good idea.

11 Now, there's two options that they would  
12 say are perfectly fine: Develop a model set of these  
13 standards, and if the tribes agree to adopt them, let  
14 them adopt them, they have the authority to do it  
15 already. The other option is develop and impose a  
16 unified standard but leave the tribes the option to  
17 either go with their state or go with their own  
18 system. They don't see any value in being forced to  
19 follow one uniform system. So that's the

060512 66845 Bureau of Indian Education Nashville  
20 fundamental -- Yes, sir.

21 MR. DRAPEAUX: I would like to respond to  
22 that. The points you are making are great points and  
23 points that we've talked about internally as we moved  
24 forward with this. One of the challenges that we have  
25 in terms of the BIE is really -- it comes down to,

♀

51

1 back in '02, '03, when the negotiating rule-making  
2 committee made the decision that they did, my  
3 question -- I'm a former vice chairman of my tribe,  
4 and I'm new to the Federal service, and so I look at  
5 things from a tribal governance perspective in the  
6 majority of the work that I do and what my  
7 responsibility is to tribes. And so if tribes choose  
8 to defer their sovereignty in terms of education to  
9 states, then they should be allowed to do that, we  
10 agree.

11 What we're proposing, and one of the  
12 terms that Bryant didn't use enough of was, was that  
13 we proposed this idea -- the models that you talked  
14 about are models that we're talking about which is  
15 that we need to put something on the table for those  
16 tribes and tribal governments that are losing their  
17 ability to choose and don't like the choices that  
18 they're left with in 23 separate states.

19 And so for those tribes that want to  
20 defer that, that's their right to do that. They have  
21 an option, however, if they want to, for example,  
22 maybe take a look at what we're proposing, what their

23 060512 66845 Bureau of Indian Education Nashville  
current state is proposing, but they like the 15  
24 percent piece to develop, then they should look at the  
25 model that we're putting on the table to help develop

♀

52

1 that, then, that 15 percent that's applicable to them  
2 and their particular tribe's needs.

3 So there will be no mandate for this.  
4 The mandate that we're proposing is our own mandate,  
5 the mandate to propose something that is an option for  
6 those tribes in the 23 different states that sit out  
7 there that are unhappy, or the issue of developing an  
8 alternative yearly AYP determination is not available  
9 to them, they either do not have the money or they do  
10 not have to manpower to do it. We should provide an  
11 option for them.

12 That's really what I think and what the  
13 director thinks that the role of the BIE is in this  
14 instance, that we should provide a viable option for  
15 tribes to consider. And then tribal sovereignty rules  
16 the roost, which is, they decide how they want to  
17 operate it, if they want to operate it.

18 What our goals under this director have  
19 been has been to identify so-called barriers and then  
20 attack them; right? And so one of the barriers that  
21 we see and that we hear about often is that the issue  
22 of language and culture is not addressed by states or  
23 by the BIE, for that matter. And so what we propose  
24 is an alternative to that.

25 We have given two specific groups within

♀

53

1 the United States money for AY -- alternative AYP  
2 determination. It's been a long and an arduous effort  
3 for them to develop something; to understand the  
4 intricacies of the process is probably overwhelming, I  
5 would say to them. And the models that we've taken a  
6 look at are probably not going to be accepted either  
7 by the BIE or the U.S. Department of Education, just  
8 because it would take us -- Mr. Mendoza talked about  
9 earlier -- more review, more edits, more work. So  
10 instead of working at 566 individual efforts, you  
11 know, and the movement of the United States in terms  
12 of education approach, we have to, at some point,  
13 align ourselves with that effort, we believe, and  
14 provide another option to tribes in terms of BIE as a  
15 quasi SEA, so this is our effort to do that.

16 MR. ROGERS: I guess that raises the  
17 question, then: Why do the regs need to be changed?  
18 Because it already says you're going to follow the  
19 state's AYP standards in your state, or an alternative  
20 AYP that the tribes would adopt, then why can't the  
21 tribes adopt -- the tribes that wish to, adopt your  
22 new model without changing the regulations?

23 MR. BOUGH: Well, I have a question that  
24 gets to the very first basic question is to why would  
25 you actually do this, and I'll just be very candid

♀

54



1 with you, because under the current 23 states' models  
2 we don't have the ability to replicate what AYP  
3 systems states are going to be implementing.

4           We have very good working relationship  
5 with our folks in the Public Education Department in  
6 New Mexico. They gave me a friendly heads-up in  
7 December when they realized that they were on the  
8 verge of getting a new accountability system approved  
9 by the U.S. Department of Education, and they said  
10 very calmly, Brian, you're not going to be able to  
11 replicate our system.

12           The prospect of looking at 23 different  
13 states and replicating the complexities of those  
14 states is enormous. One of the things that they also  
15 do in New Mexico, would require us to change our  
16 regulations to accommodate that very specific item, is  
17 teacher evaluations. How the BIE does its teacher  
18 evaluations for the federal employees is prescribed by  
19 the Office of Personnel Management, implemented by the  
20 Department of Interior, requiring tons of effort just  
21 to change the laws to do teacher evaluations and  
22 incorporate it into the accountability system. That's  
23 one reason why we don't have it in there.

24           The other reason is the tribally  
25 controlled schools evaluate their own teachers on an

♀

1 entirely separate schedule. So how can we reconcile  
2 this under a state's accountability system and do an  
3 accountability determination based on the what the

4 state is doing? The answer is you can't, I won't be  
5 able to do that.

6 MR. ROGERS: Now, for, if I may, if I  
7 understand this, when the BIE is operating in New  
8 Mexico, a BIE-operated school, you're also following  
9 the state AYP. I understand how this creates enormous  
10 difficulty for BIE, but because the tribes already  
11 have the option to opt out of that state AYP, and I  
12 understand it's not easy, but -- and let's take  
13 Louisiana, because I do work with Chitimacha also,  
14 Louisiana has just said they're not doing AYP in the  
15 same way anymore, what do those tribes do? And I  
16 haven't even had a chance to even have this discussion  
17 with Chitimacha. But one option they would have, I  
18 would think, is to adopt the same standard that state  
19 has now abandoned with the old AYP standard. It would  
20 seem to me the tribe could keep doing exactly what  
21 it's doing under the existing regulations, reporting  
22 it in the same way that they were doing before  
23 Louisiana decided to change. I think any tribe in New  
24 Mexico could do that.

25 Y'all's difficulty is you're not a tribe,

♀

56

1 and so you don't have the -- I can see why these regs  
2 need to be changed to let BIE function more  
3 efficiently for the BIE-operated schools. But, again,  
4 our concern is that this not be broadened to say,  
5 Tribes, even though you're operating the schools, you  
6 have to do the same.

7                   And I didn't hear -- I mean, I appreciate  
8 Mr. Mendoza's clarification on that, I don't see  
9 anything in this document that tells me that. So it's  
10 a huge red flag for them and for some of the other  
11 tribes that we represent.

12                   So if that could be clarified, I think  
13 you would find a lot more sympathy or empathy for your  
14 position and the goals that underlie it.

15                   I do not even begin to understand the  
16 difficulties of translating this into functional  
17 information, I mean, I'm not an educator. But the  
18 tribe is comfortable -- Choctaw is comfortable with  
19 the AYP standards that they're working toward; they  
20 made great progress in this regard, academically  
21 they've made AYP -- they can't see any value in  
22 changing that system for them, for their tribally  
23 operated schools. And they've been running these  
24 schools for over 20 years now, so they know how to run  
25 their school.

♀

57

1                   It is a fundamental philosophical, and  
2 legal problem here that they want less rather than  
3 more BIE involvement in their life, and that spills  
4 over to the MOU. I don't really have much more to  
5 say, they will do formal comments about the  
6 flexibility plan, but I have to say your comments are  
7 the most refreshing thing we've heard, Mr. Drapeaux,  
8 in terms of recognizing the tribal choice is still to  
9 be recognized.

10 Now, I did have one more question: If  
11 you are going to seek change in the Part 130  
12 regulations, are you going to do negotiated  
13 rule-making?

14 MR. DRAPEAUX: (Nods head up and down.)

15 MR. ROGERS: You are? That's also good.

16 MR. DRAPEAUX: We have some timelines  
17 that are problematic for us in dealing with this, in  
18 that, we're working with -- and just so you know, I  
19 mean, we want transparency here. We are working the  
20 Department of Interior Solicitor's Office as well as  
21 the Department of Education. There's been no  
22 determination by the U.S. Department of Education that  
23 we can even do this.

24 MR. ROGERS: Yes.

25 MR. DRAPEAUX: However, that should not

♀

58

1 stop us from creating a conversation around the very  
2 issue that everyone is going to run into at multiple  
3 levels within states as they attempt to educate their  
4 children. But we are looking at a way to, perhaps,  
5 put in an interim rule to the point of where we can do  
6 a negotiated rule-making. And so we're working with  
7 the solicitors to put the timelines together.

8 That's why Jeff was asking, you know,  
9 across the room, Have we sent the letter yet? Well,  
10 the answer is, no, we haven't sent the letter yet to  
11 tribes, because timing is everything, and we're  
12 running out of time, quite frankly, in certain states

13 that we need to do something. But there's just so  
14 many questions in the air, and we've got to negotiate  
15 with our colleagues at Ed, but we're going to continue  
16 to drive the discussion because we think it's worthy  
17 have to have.

18 MR. ROGERS: You've made a powerful case  
19 today for why BIE needs this change for BIE-operated  
20 schools.

21 MR. DRAPEAUX: Right.

22 MR. ROGERS: And as long as the tribes  
23 retain the choice to either use your new standards or  
24 to stick with the state's standards or develop their  
25 own standards, you're not going to have any objection

♀

59

1 from Mississippi Choctaw. It's only if they're being  
2 asked to forcibly to be -- to abandon their state  
3 standards that they have embraced and are working with  
4 that we would be objecting to.

5 MR. DRAPEAUX: We've made an effort on a  
6 number of programing areas as well as to -- the BIE  
7 historically were -- over a certain period of time,  
8 had gone to a very prescriptive approach to certain  
9 programs. We believe in local control, we believe  
10 that the best decisions are made at the local level.

11 And so we're, you know, trying take our  
12 hands off the wheel, so to speak, in terms of how  
13 money is allocated, how we are -- the rules around the  
14 programs that we're putting out into the field,  
15 whether they're reading or math programs, or what have

16 you, as much as we can from a Department of Interior  
17 perspective; of course, Department of Ed money is a  
18 whole different cup of tea for us.

19                   However, we hear what people are saying,  
20 and we respect it. There's more than one answer to  
21 the question. And so we want to move down that road  
22 with folks.

23                   MR. ROGERS: Good.

24                   MR. BOUGH: If I can add a couple things  
25 here, 104 Section B, the alternate AYP section, that's

♀

60

1 not going to be change. We recognize the value of  
2 having tribes develop their own accountability systems  
3 and we encourage them to do so. But the reality is  
4 for like, you know, our friends at Navajo have been  
5 working on it for quite a while, we require the same  
6 level of rigor in the development of an alternate AYP  
7 definition as is required in the states. And so  
8 that's extremely intensive in terms of time,  
9 resources, and money, frankly. And it's a very high  
10 target for them to hit, so that's why we don't have  
11 any alternate AYP definitions so far.

12                   The other suggestion you have, which is  
13 to implement the current accountability system, is  
14 pretty reasonable, but I'll just remind you that the  
15 one element as to why we've gotten to this point in  
16 the waiver application process is that without  
17 reauthorization, we see the timeline for the AMOs, the  
18 annual measurable objectives, for AYP are going to be

19 100 percent across every state by 2014. And that's  
20 something that most states have asked for relief from,  
21 virtually all of them now, I think, are going to ask  
22 for relief on using the flexibility system, they want  
23 to get out from that. And I guess the simple answer  
24 to that question is to look for reauthorization of the  
25 law, and that will solve a lot of these problems.

♀

61

1 MR. ROGERS: Okay.

2 MR. GERMANY: I want to ask one thing.  
3 From the information that I had heard, and it may be  
4 wrong, you were anticipating starting this, this very  
5 coming school year, is that right, the assessment? I  
6 don't see how that's at all possible or doable or good  
7 or anything.

8 MR. ROGERS: And this is David Germany  
9 from Choctaw, Director of Education.

10 MR. GERMANY: Yes. Choctaw, yes.  
11 Well, this year?

12 MR. HAMLEY: Well, that is what is in the  
13 current draft that's out there. And you're right,  
14 we're going to get a lot of comments on that. But  
15 that was written a while ago, and the timeline has  
16 gotten stretched out. Oh, by the way, this is Jeff  
17 Hamley.

18 The timeline has gotten stretched out, so  
19 that will be one of the factors, the reality check's  
20 in this.

21 MR. GERMANY: Okay.  
Page 55

22 MR. HAMLEY: I mean, the Department Ed is  
23 reviewing again in September. We're not on that  
24 timeline, we're going to -- when we submit, we'll  
25 request a review then. So there is another phase to

♀

62

1 it and will have to be factored into it.

2 So I really don't have an answer at this  
3 point, but we do hear your point.

4 MR. MACALLISTER: We'll continue with  
5 your comments.

6 Go ahead.

7 MR. BOUGH: Which is that the states are  
8 being required under the accountability systems that  
9 they've proposed, implement in 2012/2013 school year.  
10 So every state that has an approved accountability  
11 system flexibility, they're implemented next year, so  
12 that's part of the requirements of the application.

13 MR. GERMANY: Whether it works or not,  
14 that's what's coming down right now, I am glad to  
15 know.

16 MR. ROGERS: Let me turn to the MOU.  
17 Sometimes I feel like we're -- I want to say again I  
18 really appreciated what Mr. Drapeaux said earlier,  
19 because there's a fundamental tension in all of the  
20 existing BIE administration of Indian education as it  
21 relates to the tribally controlled schools that  
22 manifests itself in issues about reporting, issues  
23 about assurances, issues about grant conditions. It  
24 manifests itself in these MOU provisions, and so it's



25 the same -- it's who controls. Is it the tribe that's

♀

63

1 going to run the school and decide how they're going  
2 to teach the kids or is it the Bureau? And that  
3 permeates everything and it's never over.

4                   You know, I feel like I've been doing  
5 exactly the same thing since 1971, just divided  
6 (phonetic) by who makes the decisions on how to  
7 allocate resources, how to spend the money locally,  
8 who is going to decide, et cetera. And unfortunately,  
9 we're -- sometimes I feel like we're back in the  
10 pre- -- back pre-ISDA, pre 93-638 and pre-tribally  
11 controlled school grants in terms of what the tribes  
12 see, what Choctaw sees in the demands of BIE.

13                   I want to put in the record here two  
14 documents -- I don't know who I give them to. I'll  
15 give one to -- I would like Mr. Mendoza to have one  
16 and one for Mr. Drapeaux. I think Mr. Drapeaux might  
17 have seen some of these.

18                   But this is two things that were  
19 submitted -- and the reason I want to talk about them  
20 for just a minute, because they'll overlap when we get  
21 into the specifics about the MOU. But one of them is  
22 comments on the BIE streamlining on the assurances and  
23 on the MOU.

24                   We gave preliminary comments on the MOU,  
25 Chief Anderson filed this last Friday. And the theme

♀

1 basically is, again, concerns about BIE manifestations  
2 of control and desires to control these things and the  
3 tribes' resistance to that, both on a policy level and  
4 on a legal level.

5                   And then the second document is a letter  
6 to Stan Hogan responding to a letter from him,  
7 regarding 611, 111 grant funds, where they have asked  
8 the tribe to agree to special terms and conditions to  
9 another layer of assurances over and above the  
10 assurances they've given in their school grant, and  
11 which ignores the rule that all the money that they  
12 get in a school grant is going to be in one grant.  
13 They're not getting separate grants. And this is just  
14 an example, this 611 money, there's many examples.

15                   Every funding add-on seems to generate  
16 another set of reporting requirements, another set of  
17 assurances, and the statute doesn't permit that. The  
18 statute says, We're going to have all the money,  
19 including all the federal education money that is  
20 awarded by Interior in one grant, and that grant shall  
21 consist of the terms and conditions that are set out  
22 in the TCSA itself, in the TCSA regulations, period,  
23 unless we agree to more. "We" being the tribes,  
24 obviously.

25                   We understand that No Child Left Behind

1 added the AYP reporting and compliance component, they

2           060512 66845 Bureau of Indian Education Nashville  
3 consider that to be part of the annual report. The  
4 TCSA requires an annual financial report, an audit,  
5 student count. We again consider that to be modified  
6 by the AYP standards submission, which they do; they  
7 have an evaluations in the form of their  
8 accreditation, and that's it, no other reports.

9                   It doesn't matter where the money comes  
10 from, Congress has said the Bureau cannot require any  
11 additional recording, obligations, requirements by  
12 virtue of the fact that that money came from the  
13 Department of Ed. And the tribes' position is that  
14 the Department of Ed may not lawfully impose those  
15 requirements on BIE. You cannot condition granting  
16 the money to BIE on BIE being able to force the tribe  
17 to do what you want. Congress has said no.

18                   So our basic problem with the MOU is it  
19 takes all the difficulties we have today in disputes  
20 with BIE in reports and compliance requirements and  
21 multiplies it dramatically. And it's just not -- as a  
22 matter of policy, the tribe does not agree to that, it  
23 is not going to help them run a better school;  
24 diverting resources to more and more compliance  
25 reporting is not going to help them run a better  
school. But legally the tribes' position is neither

♀

66

1 agency has the legal authority to make them do this.

2                   Congress has said they're entitled to  
3 have this Department of Ed pass their money, add it to  
4 their grant, and BIE cannot add any other conditions

060512 66845 Bureau of Indian Education Nashville  
5 that relate to that. You will get an audit that shows  
6 how they spent the money, you will get AYP. They  
7 understand if they get extra money through Department  
8 of Ed that requires them to spend a certain amount of  
9 work on special ed, or something, they have to spend  
10 it for that purpose, and that's what the audit is for.

11 They're not fundamentally opposed to  
12 working out some data collection, they understand the  
13 importance of data, but right now one of the comments  
14 that Chief Anderson filed on Friday have a whole  
15 page of reports that are being required by BIE  
16 today -- we haven't even gotten to what the MOU would  
17 impose -- that are, in our view, completely illegal.  
18 They're beyond what you have the authority to impose.  
19 And that doesn't even include the FASA report, the  
20 Fiscal Self-Assessment, or whatever it's called,  
21 Fiscal Accountability Self-Assessment for Special Ed  
22 -- they don't do it. You've asked for it, they've  
23 refused. They think it is meaningless, they don't  
24 need it, and you're not legally entitled to it, so  
25 they don't give it to you. Many schools do sign it --

♀

67

1 do fill it out. Chitimacha tells me it's 80 pages  
2 long.

3 So they have -- Look, they're willing to  
4 work with y'all, they really are, to try to figure out  
5 some reasonable data collection that would be useful  
6 for everybody. But right now there's a complete  
7 hodgepodge of duplicative, overlapping, burdensome

8 060512 66845 Bureau of Indian Education Nashville  
reporting, and it is not -- they're struggling to do  
9 it. They're going to be taking another look at what  
10 they submit because they just don't want to spend any  
11 more resources doing stuff they're not required to do.

12 And I do represent a number of other  
13 tribes, one of them is a one-room, one-teacher school.  
14 They can't keep a teacher because the teacher spends  
15 all their time filling out reports. It's really  
16 gotten way beyond reasonable here.

17 So let me just look . . . This is going  
18 to be shorter, because I'm just talking  
19 contemporaneously, I'm not going to repeat what's in  
20 the written submissions. But, basically, the tribe is  
21 really committed to the principle that Congress  
22 authorized, which was tribal control of these schools.

23 Now, when Congress passed the TCSA, it's  
24 interesting, if you go back and look at the  
25 legislative history, Congress recognized that

♀

68

1 requiring reports was just another way of controlling  
2 the school operations. They specifically said in  
3 regard to the annual reports that are required under  
4 Section 2505 B that the Bureau is do nothing with  
5 these reports except stamp them (pounds table with  
6 fist) received. It is not to review them, not to  
7 analyze them, not to do anything with them. Why did  
8 they say that? Because, they said, this is a way to  
9 undermine tribal control, and that's why they put such  
10 draconian limits on what the Bureau can do.

060512 66845 Bureau of Indian Education Nashville  
Again, we recognize that the No Child

11  
12 Left Behind legislation is giving y'all more authority  
13 in regard to that annual report. But the notion -- I  
14 mean, there is a reason why Congress limited what  
15 reports you can require and why the regulations  
16 implementing the Act forbid BIE from adding anything  
17 to the grant conditions that isn't in the Act or the  
18 regs themselves, and that's because reporting and  
19 oversight and monitoring and all of that is another  
20 way of controlling.

21 And so y'all have your ideas about how to  
22 improve Indian education, both Department of ED and  
23 BIE, and it's perfectly appropriate to do that, to  
24 develop those and to impose them on your schools that  
25 you operate; it is not appropriate or useful or lawful

♀

69

1 to impose those ideas on the tribally controlled  
2 schools.

3 That's what the words mean, "tribally  
4 controlled," that means they get to decide how they  
5 run those schools. They don't have to explain it to  
6 you, they don't have to justify it to you. And that's  
7 a fundamental thing. So we -- you know, we go, we  
8 look at the statute and we look at the legislative  
9 history, we look at their history, and we look at this  
10 MOU, and what permeates the MOU is the premise that  
11 you know better than them, the premise that your  
12 education ideas should dominate the tribes' education  
13 ideas, and that you're going to impose the agreement

060512 66845 Bureau of Indian Education Nashville  
14 that the education department meets with BIE as a  
15 condition on all the flow-through funds from  
16 Department of Ed to the tribes. That's not permitted  
17 by the statute. Y'all may have the authority to do an  
18 MOU; you don't have authority to use an MOU to  
19 supersede the Tribally Controlled School Grants Act.  
20 You do not.

21 So our fundamental problem with this MOU  
22 is the whole thing is premised on the notion that  
23 y'all are going to decide what is best for the tribes,  
24 and you're going to tell them, You dance to our tune,  
25 or you don't get our money. But Congress has said,

♀

70

1 No, you can't do that. TCSA couldn't be clearer in  
2 prohibiting Department of Ed and BIE from imposing  
3 those kind of conditions.

4 So what do we do with this thing? From  
5 our viewpoint -- you know, and I appreciate, again,  
6 Mr. Drapeaux's candor in the issue, when you do tribal  
7 consultation, most tribal leaders involve tribes that  
8 don't run schools. And the school personnel and the  
9 school operators aren't at the table most of the time  
10 in those consultations, their voices are not heard.  
11 Their voices surely were not heard when this Executive  
12 Order was put together. We're not heard.

13 This MOU reflects nothing that a tribally  
14 controlled school would want. We are asking that you  
15 go back to the table and have tribal representatives  
16 that run schools at the table with you to look at this

060512 66845 Bureau of Indian Education Nashville  
17 MOU and figure out how could it be made compliant with  
18 the law and the policy that Congress has instructed  
19 you to follow, because this thing does not do that.

20 I mean it's almost every paragraph,  
21 Section 4 is the worst. Section 4 imposing, you know,  
22 all kind of reporting requirements and compliance  
23 requirements and, you know, coupled with sanctions if  
24 they're not done, the money stops and all that kind of  
25 thing. It's just not permitted by the statute.

♀

71

1 There's a section, a 2, Section 2 says  
2 that, All the transfers will be made pursuant to the  
3 terms of this agreement. Well, you can't amend the  
4 tribes' contracts with this agreement, you can't amend  
5 the statute with this agreement, you can't amend the  
6 regulations with this agreement. So by what authority  
7 are y'all going to do that?

8 You know, these are policy statements,  
9 you're not entitled to put your policy on the  
10 schools that run -- the tribes that run their own  
11 schools. They get to set their policy. So I mean,  
12 this thing is just, from sentence one to all the way  
13 through, it's just all on the assumption that y'all  
14 are going to decide what needs to be done and you're  
15 going to tell the tribes how to do it, and if they  
16 don't do it, they're not going to get their money.  
17 And that's just not acceptable.

18 Terms and Disagreements sets terms and  
19 conditions that set the framework for future transfers



060512 66845 Bureau of Indian Education Nashville  
20 of funds. Congress did that already in 2503 of the  
21 Act. It says, The grants provided in this chapter to  
22 an Indian tribe or a tribal organization for any  
23 fiscal year shall consist of the Title I -- I mean,  
24 the BIE regular ISEF money, they've got O&M money, and  
25 they've all the money they get from any other federal

♀

72

1 education law, and they're to be in one grant, under  
2 the same terms and conditions.

3 Indian Tribes and Tribal Organizations,  
4 this is 2503 B -- 1(b), Indian tribes and tribal  
5 organizations to which grants are provided under this  
6 part and tribally controlled schools for which grants  
7 are provided, shall not be subject to any  
8 requirements, obligations, restrictions, or  
9 limitations imposed by the Bureau that would otherwise  
10 apply solely by reason of the receipt of funds  
11 provided under any law referred to in clauses (i),  
12 (ii), or (iii) of Subparagraph A, and that's your ISEF  
13 money, your O&M money, ESEA money, Individual  
14 Disabilities Act money, and any other federal  
15 education law.

16 So the statute says the grant cannot  
17 contain additional terms and conditions that might  
18 apply if it came directly from the Department of Ed to  
19 the tribe. But Congress has decided they were really  
20 going to honor the notion of tribal control when this  
21 was passed; they were really going to let the tribes  
22 run the school and take all the resources that they

23 060512 66845 Bureau of Indian Education Nashville  
could otherwise get from Department of Ed and the  
24 BIE-run -- of course, there was no BIE when this was  
25 passed, but Interior -- and they're going to go

♀

73

1 through Interior, they're going to award it to the  
2 tribe and let them run the school with those  
3 resources.

4 That's why we so strenuously object to  
5 the MOU, the notion that somebody in DC is going to  
6 decide the terms and conditions that the tribes are  
7 going to follow, and they're not even at the table. I  
8 mean, I know this is consultation, but this could have  
9 been written very differently if tribes would have  
10 been listened to -- the tribally controlled schools  
11 would have been listened to when it was prepared.

12 And I know that there are allusions in  
13 here, there are acknowledgments that there are some of  
14 the legal restrictions on what BIE can do, and I  
15 appreciate that BIE probably worked hard to get those  
16 acknowledged. But it's like -- and this comment is  
17 really directed to the Department of Ed -- it's like  
18 y'all are lamenting the fact that these barriers to  
19 federal control exist. But they do exist and they  
20 exist for a reason.

21 Congress rejected the idea that the  
22 Federal Government should run these schools if the  
23 tribes chose to run them. Congress said the tribes  
24 are going to run them, tribes are going to set the  
25 policy. So you can't undo that with this MOU, it's

♀

74

1 just fundamentally the wrong direction, and it's --  
2 the comments that are in the letter that Chief  
3 Anderson sent yesterday regarding the 611 money would  
4 apply to a lot of the stuff that would emanate from  
5 this MOU. For instance, there is a set of assurances  
6 there that is just appalling, it's mostly 43 CFR  
7 Part 12. 43 CFR Part 12 is the Interior OMB Circular  
8 A-102 rule, it implements A-102. I don't remember the  
9 Department of Ed version of -- you've got your own  
10 A-102 regs. They don't apply to school regs, these  
11 aren't grants that are subject to those rules, these  
12 are really contracts. The label "grant" is there, but  
13 the statute makes clear that they are contracts.

14 We have a memo in the material that I  
15 gave Ms. Rena McCarthy (phonetic) two years ago  
16 explaining to her why the A-102 standards cannot  
17 lawfully be applied to these instruments, why 43 CFR  
18 Part 12 cannot be. And to the BIE's credit, they quit  
19 asserting that they could. But Department of Ed needs  
20 to understand the same thing: These are not to  
21 subject to those kinds of grant conditions. They're  
22 not grants.

23 Secondly, they have things in there like  
24 the anti-lobbying certification, the standard form,  
25 tribes that -- like this tribe that runs their

♀

75

1 schooling directly, they're not a separate tribal  
2 organization. They're not subject to those  
3 anti-lobbying certification requirements in the same  
4 way. We put a legal memo in the packet explaining  
5 that. And it was a memo from the Choctaw Attorney  
6 General's Office to EDA's attorneys who were insisting  
7 that the tribe had to sign this lobbying certification  
8 in order to get an EDA grant. They finally backed off  
9 and I have an e-mail from them agreeing, tribes aren't  
10 subject to those same rules.

11                   And there's things like -- I don't even  
12 understand how this happens -- how many times do they  
13 need to be told about drug-free workplace, how many  
14 times do they need to be told about seat belt use, and  
15 no texting while driving? How many times do they need  
16 to be told about 887 and 8133 circulars that are in  
17 the regulations, that they, you know, already have to  
18 abide with. We need to do something about going the  
19 other direction, which is simplifying the assurances  
20 down to the core of what the statute requires, not  
21 expanding them with more assurances, more reporting,  
22 more compliance and oversight.

23                   And let me talk about this idea that  
24 somehow, if you compare the assurances -- and I'm  
25 saying this because the MOU is going to generate

♀

76

1 another series of assurances and reporting, this is  
2 just as plain as it can be.

3                   If you look at the assurances that the  
Page 68

4 BIE currently uses, BIE for the schools, when you look  
5 at the assurances that came with that 611 packet,  
6 which, to me, is like, Why? You're going to mod  
7 (phonetic) the money in to the same instrument, why do  
8 you need another set of assurances? They're not even  
9 the same, but they're not the same for this reason:  
10 You can't -- I mean, there's a myriad of federal  
11 regulations out there and statutes, you know, it's a  
12 crime to kill somebody on an Indian school, right?  
13 Does that have to be a grant condition? Okay?

14                   The law applies whether it's a grant  
15 condition or not, it doesn't do any to do good to  
16 piecemeal and pick these little things here and there  
17 and say, Put them in there. What does it mean? But  
18 it may mean that you have some control, derivative of  
19 that, which we don't like. But it may mean, what, it  
20 means if it's not in there it doesn't apply? Well, it  
21 can't mean that; if it applies, it applies.

22                   So the tribes, Choctaw, has no problem  
23 acknowledging that where a federal law or regulations  
24 require them to do or not do something and it applies  
25 to them, they have a duty to respond to that or honor

♀

77

1 it. They do not agree you can make it a grant  
2 condition that they obey federal law. You're not the  
3 police. Congress did not give you the authority to  
4 pick and choose and enforce particular rules against  
5 them and use some kind of sanction mechanism because  
6 they violated the seat belt rule, okay?

7                   In fact, Congress specifically looked at  
8 this when they did the Tribally Controlled School  
9 Grants Act. There was a provision in the House bill  
10 that picked certain federal statutes on embezzlement,  
11 like 18 U.S. Code 1163 and other provisions, there's  
12 five or six, they were going to put in the bill, and  
13 they dropped that. In the House report, conference  
14 report, they dropped that provision and left it silent  
15 because those things apply or don't apply by their own  
16 force.

17                   So one of the reasons the tribe so  
18 strenuously objects to the assurances documents and  
19 the grant conditions, these general conditions that  
20 were put with the 611 money and would come with any Ed  
21 money, I suppose, is that they get transmuted from  
22 general federal law obligations into grant conditions.  
23 And you're not empowered to make those grant  
24 conditions, Congress has said, and your regulations  
25 say, The grant conditions are TCSA statute, TCSA regs,

♀

78

1 period.

2                   So we have that -- we're concerned that  
3 this MOU, because of the approach that it's taking and  
4 premises that underlie it, are going to just generate  
5 more of the problem that we already have. It isn't  
6 going to help anything for the tribally operated  
7 schools. And we really -- we've tried to have --  
8 we've asked for, three or four times over the last six  
9 years, an opportunity to really sit down with BIE and

10 work on standard grant conditions with a, you know,  
11 core set of assurances and things that are reasonable  
12 and so we don't get this myriad of things like a  
13 separate package for every add-on money, and, you  
14 know, we've certainly made some progress several years  
15 ago working jointly with the Solicitor's Office  
16 informally to get what was a 60-page grant instrument  
17 down to about 7 pages. But now it's the sort of  
18 battle about that it has shifted to the ed money, so  
19 now every time they get new money, they get this pile  
20 of stuff, which, it shouldn't be there. It should be  
21 built into the original grant -- we think it is  
22 already.

23                   And we would welcome the opportunity to  
24 work with y'all to get a better grant package that  
25 addresses and anticipates the ed money that we all

♀

79

1 know is going to come and how it gets worked in. We  
2 would love to sit down and work with you over the MOU  
3 approach. I mean, this MOU, frankly, needs to  
4 acknowledge that the BIE does not have the power over  
5 the TCSA schools that it has over the BIE-operated  
6 schools, and is never going to have it, unless  
7 Congress changes the law. And Ed needs to acknowledge  
8 that. It's unrealistic to expect BIE to do something  
9 legally prohibited from doing.

10                   If y'all expect that, you're going to be  
11 disappointed. The tribe is not going to agree to it.  
12 You can adopt all the MOUs you want. I mean, it's

13 just not going to happen. And I'm not -- this isn't  
14 just Choctaw -- every tribally controlled school that  
15 really thinks about this is going to have this same  
16 position, I can guarantee you. They're not going to  
17 give up what was a huge battle for them to achieve,  
18 which was tribal control. And we ask you to honor  
19 that and respect it, and we don't see it in here. All  
20 we see is that these are barriers to be overcome, the  
21 right of tribal control is a barrier to be overcome?

22 Where is the embracing of the  
23 Congressional policy of self-determination? It's like  
24 it's disdained in here. It's like, to be overcome,  
25 it's just -- I don't know. I'm almost done.

♀

80

1 MR. MACALLISTER: I do want to give the  
2 other participants an equal chance to have their say,  
3 so I'd rather if we can --

4 MR. ROGERS: I'll stop for now.

5 MR. MACALLISTER: Great. If we have time  
6 to cycle, we will certainly cycle, or if there's  
7 another key point.

8 MR. DRAPEAUX: Mr. Bryant [sic], just so  
9 you know, I mean, has valid points and points -- as I  
10 stated in my opening statement, we're excited about  
11 these consultations, because what you see is a  
12 conflict that's reflected in the MOU and it's really  
13 an opportunity to have a discussion like this. I know  
14 that the Department of Ed's lawyers and the  
15 Solicitor's lawyers have had a number of meetings



16 about this. And so that very issue that you're  
17 talking about, we as the people who execute budgets  
18 and have to deal with the day-to-day realities of the  
19 administrative portion of accountability, and under,  
20 you know, all guises of this system, would like a  
21 reduced burden as well, because we spend a tremendous  
22 amount of man hours, you know, trying to work on  
23 compliance.

24 And the piece behind the scene that no  
25 one ever sees is the pressure on the Bureau of Indian

♀

81

1 Education from other entities within the Department of  
2 Interior, as well as OMB, as well as Department of Ed,  
3 and others, to come into compliance, as they see it.  
4 And so we are at that point of push/pull in our  
5 responsibilities to serve all masters. And so that's  
6 where we find ourselves.

7 And so that's why we're here, we're here  
8 to have this dialogue, we're here to hear your input,  
9 we're here to, you know, further the opportunity and  
10 bring clarity to the position that tribes have.

11 And we've heard it all. You know, I've  
12 been on the road, I think, 12 weeks in a row on  
13 consultation, and so we've heard it up one side and  
14 down the another about this issue, but I don't know if  
15 anybody has articulated it as clearly as you have,  
16 quite frankly, which we appreciate. Because we would  
17 like to spend our time doing something other than what  
18 we've been doing. And the burden on schools, we're,

19 you know, administratively looking for ways to  
20 streamline our own document to relieve that burden.  
21 And nothing is more aggravating than the paperwork  
22 that we all have to go through, quite honestly,  
23 whether it's from -- no matter who the mandate is from  
24 to get it done today. So we appreciate it and we look  
25 forward to furthering this dialogue for sure.

♀

82

1 MR. ROGERS: Can I make one more point?

2 One of the funding problems the schools  
3 have is the limited administrative cost money, and  
4 it's a problem, it's 61 percent of need, lots of legal  
5 issues surrounding that, but that's not what I want to  
6 talk about.

7 I guess, anything that the agencies could  
8 do to get that appropriation up, whether it's through  
9 reprogramming. I mean one of the recommendations made  
10 in the comments we filed Friday, that Chief Anderson  
11 wrote Friday was, Cut down the accountability and  
12 performance, oversight, staff, and put that money into  
13 tribal administrative cost grants. I mean, that's  
14 where the rubber meets the road, they're running the  
15 schools, they need to money there, so . . .

16 MR. MACALLISTER: Mr. Mendoza, and then  
17 we'll move along, and hopefully we'll have time for  
18 more dialogue.

19 MR. MENDOZA: We're here until 5:00 and  
20 we're here until tomorrow, Brian and I, I don't know  
21 about the court reporter. I just committed Brian with

22 me.

23 MR. BOUGH: Once more -- One more  
24 education commitment. (Chuckles all around.)

25 MR. MENDOZA: That's exactly right.

♀

83

1 I certainly have a deep amount of respect  
2 for Mr. Rogers and how he articulated so well those  
3 dynamics which do truly exist, and we are trying to  
4 work through. And, although I would disagree with  
5 you, you know, the impact, we just came from  
6 Bloomington, Minnesota, where we heard from the Great  
7 Plains that this MOU was basically the 2005 MOU,  
8 what's the purpose? You know, so to hear from you how  
9 substantive this MOU is is, you know, a complete  
10 contrast to how this is being interpreted in other  
11 ways, you know, that this really isn't doing anything  
12 different than what has been placed on there. So I'd  
13 really like to hear expansion on your thoughts about  
14 how you view this, will create additional burdens in  
15 particular to compliance and reporting.

16 I guess more on the impact side,  
17 although -- and I'm trying to be careful with my words  
18 here, I have no doubt that there is -- positive that  
19 this is happening within this region. But by and  
20 large, as we have a discussion about growth, gains,  
21 quality of experiences, and especially the outcomes  
22 that our students are facing in Bureau of Indian  
23 Education schools, there's tremendous concern about  
24 that system.

25 And I've spoke to this before, that you

♀

84

1 have in this country, Asian-American Pacific  
2 Islanders, talk about it, a distorted, disaggregated  
3 generalization there itself. You have the rest of  
4 non-Indian, you know, mainstream America, and then you  
5 have within public schools -- talking about public  
6 schools here -- African-American, Hispanic, Latino,  
7 and American Indian, Native American, whatever  
8 definition we use. We could quibble over the race to  
9 the bottom at any point with those populations in  
10 public schools. And below that is our Bureau-operated  
11 schools, and below that the tribal grant contract  
12 schools.

13 And so the rate of reform to address that  
14 critical situation, from that sovereign standpoint, is  
15 tremendous. And it's not happening at the speed that  
16 everyday people, as we hear in these consultations,  
17 expressed concern to us. Our kids aren't safe,  
18 they're certainly not healthy and they're certainly  
19 not living in a well way that we would like them to,  
20 encompassing language, history, and culture in that;  
21 our schools aren't providing an expectations for them.  
22 They're not providing, you know, quality experiences  
23 for them. And they're especially not getting jobs;  
24 they're not contributing to our communities, when we  
25 talked to tribal leaders.

♀

1                   So there's a systemic concern with that  
2 dynamic as well.

3                   So we're trying to approach that  
4 responsibly while taking in those considerations. We  
5 are, we're working hard, and the people that aren't at  
6 this table, you know, we're going to push them on  
7 those issues. At the very least, we would like  
8 clarity on this. You got this push from this side and  
9 this side, and same thing from this side. We need to  
10 have clarity. Nobody's really nailed down these  
11 lawyers -- no disrespect in that respect -- you know,  
12 that we need to have some clarity there.

13                   And at the end of the day, tribal control  
14 should not equal mismanagement of funds, it shouldn't  
15 equal fiscal irresponsibility, it shouldn't equal a  
16 lack of quality services, period, regardless of  
17 education, health, you know, economic development. It  
18 shouldn't equal those things, and yet we hear about  
19 these pervasive concerns in those respects. So how  
20 are we addressing that? Together. Because there is,  
21 for all intents and purposes, as we deem it, trust  
22 responsibility in that regard, and trying to walk that  
23 balance of not overstepping that in the same way that  
24 that this dynamic exists between states and the  
25 Federal Government. These are the same exact

♀

1 conversations as I'm sitting in the Title I room,

060512 66845 Bureau of Indian Education Nashville  
2 Title VII room, whatever it is. Too much reporting,  
3 too much compliance; how can we simplify our lives to  
4 allow us to do the jobs that we need to.

5 Yet, when we walked into OMB, when we  
6 walked in to testify in front of the Senate Committee  
7 on Indian Affairs, they want accountability; how  
8 education relates to pension, they want  
9 accountability. You need to tie assurances to these  
10 dollars regardless of what previous Congresses have  
11 done. We need results under this context.

12 So I just -- you're of the level of  
13 understanding and intelligence that, you know, I just  
14 want to validate everything that you said, but just  
15 express that we too are thinking about those issues in  
16 the same way that you are, in the way that tribes are.  
17 But we're studying those, and with that study comes  
18 that realization that we know our communities, too,  
19 that we drive from. And so at the end of the day,  
20 there are tough conversations with ourselves versus  
21 just sign the check and get out of the way.

22 MR. ROGERS: Look, I don't know how many  
23 speakers we actually had signed up, but I need to  
24 respond to something Mr. Mendoza said, for the record.

25 We don't disagree that if a tribe is not

♀

87

1 performing, if they're not submitting the reports  
2 they're required to submit by the statute, if they're  
3 not making AYP over a period of time, the BIE has the  
4 legal authority to take action, to sanction those

5           060512 66845 Bureau of Indian Education Nashville  
tribes, to take over the schools, reassume the  
6 operation of the school, file contract disputes,  
7 there's audit -- high-risk impositions that can be  
8 made if they're not filing their audits.

9           In other words, nobody is advocating that  
10 schools should be free to misspend the money, embezzle  
11 it, run crappy schools and have no accountability,  
12 we're not advocating that. We know that if they don't  
13 perform, you have the legal authority and the duty to  
14 do something about it. But we're talking about a  
15 school that is performing. Chitimacha is another one,  
16 they're a model. They're smaller than Choctaw,  
17 they're two ends of the spectrum in terms of size.  
18 They both are performing and performing well, and they  
19 need to be allowed to do that without having further  
20 imposition on them.

21           You already have in the regulations the  
22 authority to sanction schools that don't meet the AYP  
23 over a period of time. You already have the authority  
24 to sanction them if they don't submit the required  
25 audits and the other reports. You don't need any more

♀

88

1 authority to do that.

2           Those troubled schools -- and I know some  
3 that haven't filed an audit in five years -- why are  
4 they still open? I mean, the Bureau has remedies. So  
5 don't make it harder for the schools that are  
6 performing because -- and look y'all are -- it's a  
7 resource issue here, if you took over every school

060512 66845 Bureau of Indian Education Nashville  
8 that wasn't performing, you wouldn't be able to handle  
9 it. I mean, there's a problem there, we agree with  
10 that, but they're not the problem. The tribes that  
11 are doing what they're supposed to do are not the  
12 problem, and we don't want that to be lost in the  
13 focus on the larger problem. Thank you.

14 MR. MACALLISTER: Thank you.

15 MR. MENDOZA: There's a direct  
16 correlation with what was in here, and me  
17 (indicating). We've gotten heat before about cell  
18 phone uses and bathroom breaks, but forgive me for the  
19 appropriateness, I need to step out for a second.

20 MS. MCKAY: Do you want to wait until he  
21 comes back?

22 MR. GERMANY: I have no comments.

23 MS. MCKAY: Do you want to wait, take a  
24 quick five-minute break?

25 MR. MACALLISTER: If I can get everybody

♀

89

1 back here in five minutes, we can take a break if  
2 people would like that. Let's take a break.

3 (Brief recess was observed.)

4 MR. MACALLISTER: What we're going to do  
5 is stick to our original ground rules game plan, which  
6 was go off of our sign-in list and then we'll cover  
7 everybody else. And I believe we'll have more time  
8 for dialogue, we just want to make sure we have  
9 everybody covered. So pardon my angst, that's why  
10 they pay me to worry about these things.



060512 66845 Bureau of Indian Education Nashville  
11 MS. MCKAY: If we don't get nervous,  
12 we're not doing our job.

13 MR. ROGERS: Well, when it is  
14 appropriate, there's one more response I want to make  
15 to something Mr. Mendoza said. I answered one of  
16 them, but there's a second one. He asked, Why do we  
17 think this MOU would exacerbate the problem beyond the  
18 existing MOU?

19 MR. MACALLISTER: Okay. We'll make sure  
20 we cycle back to you then.

21 And meanwhile, moving back to our list,  
22 the next person who had signed in to speak is Quinton  
23 Roman Nose. And if we could get to you, Quinton Roman  
24 Nose, right?

25 MR. ROMAN NOSE: Right. Thank you, sir.

♀

90

1 I'm Quinton Roman Nose, today I'm  
2 representing the National Indian Education  
3 Association, I'm the President for the organization,  
4 which, by the way, we're having a convention in  
5 Oklahoma City in October of 2012, hope to see  
6 everybody there.

7 But back to the letter. This is  
8 addressed to the BIE and also the Office of Indian  
9 Education, and I made a copy available to the  
10 recorders. And before I start this, you know, NIEA  
11 has a legislative committee, many conference calls, a  
12 lot of good discussion, and we looked at -- you know,  
13 we took this idea, we kind of tried to stretch it out

14 060512 66845 Bureau of Indian Education Nashville  
to a bunch of other stuff, so keep that in mind as you  
15 listen to the letter.

16 This letter is a response to the request  
17 for comments and consultation on the development of  
18 the MOU between Interior and Education, implementing  
19 the Executive Order.

20 Founded in 1970, NIEA is the largest  
21 Native education organization in the nation. NIEA is  
22 dedicated to promoting Native education issues and  
23 embraces every opportunity to advocate for the unique  
24 education and culturally related academic needs of  
25 Native students.

♀

91

1 Insert my own personal comment: I'm  
2 really glad to -- you know, consultation, as Bryant is  
3 going through, is a process that's new for a lot of  
4 individuals. And unfortunately, you know, a lot of  
5 tribes, you know, they don't have the resources to be  
6 here, a lot of other situations. But I'm glad it was  
7 put forth, the efforts to do all of these  
8 consultations, and I'm glad they're being made  
9 available in written text format at some future date.

10 The NIEA is pleased to submit testimony  
11 on the draft MOU to frame a partnership between  
12 Education and Interior to implement certain aspects of  
13 the Executive Order, the purpose of which is to expand  
14 educational opportunities and improve academic  
15 achievement for American Indians and Alaska Native  
16 students.

060512 66845 Bureau of Indian Education Nashville  
The Interior and Education departments  
state that the MOU seeks to close the achievement gap  
between Native students and non-Native students,  
decrease the alarmingly high dropout rates of all our  
American Indian and Alaska Native students, and help  
preserve and revitalize Native languages, histories,  
and cultures.

The Initiative and the Executive Order  
commits federal agencies to work closely with tribal

♀

92

governments and to use the full range of their  
education expertise, resources, and facilities to  
achieve the Initiative's goals.

In reviewing the draft MOU, the NIEA has  
some concerns. The majority of the MOU resembles more  
of a funding agreement, which it is, between Education  
and Interior, rather than reflecting the broad goals  
of the Executive Order. While NIEA understands the  
inherent limitations of the interagency MOU, we  
strongly urge both agencies to focus on the needs of  
Native schools from all school systems. What are the  
agencies doing with regard to all Native students who  
are included in the Executive Order?

The press release that accompanied the  
draft MOU and hearing notice contains some of the  
powerful language from Interior and Education in an  
effort -- in a joint effort of improving the education  
of all our Native children. Although the MOU outlines  
a number of strategies to work towards these goals,

060512 66845 Bureau of Indian Education Nashville  
20 both the Education and Interior Departments  
21 significantly limits the MOU in a manner that curtails  
22 the purpose and the spirit of the Executive Order in  
23 its potential for future success. NIEA believes the  
24 education of all Native students must be addressed in  
25 the Initiative and MOU.

♀

93

1 NIEA has reviewed the MOU and would like  
2 to share the following concerns/recommendations as you  
3 move forward in finalizing the MOU. We believe the  
4 MOU is perhaps a good beginning but needs a great deal  
5 of work to meet the goal of the White House Initiative  
6 and Executive Order.

7 Following are some specific concerns:

8 No. 1: Executive Order focuses on all  
9 Native students, not just those students in BIE  
10 schools, and the MOU must reflect this. 93 percent of  
11 Native students attend non-BIE schools, and the  
12 Executive Order and Initiative includes these  
13 students. The MOU should reflect an ongoing strategy  
14 for the success of all these students.

15 Urban and Native students are mentioned  
16 on page 3 of the MOU and then neglected to be  
17 discussed in any other section, they are still  
18 invisible, but they're included in the Executive  
19 Order. What efforts, if any, are being developed with  
20 regards to the majority of Native students, including  
21 urban Native students? For example, the JOM student  
22 count should include all Native students regardless of

23 060512 66845 Bureau of Indian Education Nashville  
where they attend school.

24 There is a definite need for a  
25 research -- No. 3: There is a definite need for a

♀

94

1 research component, and this is not mentioned. Data  
2 is listed as a goal on page 3, but needs to be  
3 expanded to outline the need to do research. Merely  
4 stating a Data Subcommittee will be formed to address  
5 problems that BIE may have with data submission is not  
6 enough. The MOU again seems to only address BIE  
7 responsibilities. The MOU must address the critical  
8 need for research and data on Native education that  
9 will further the overall initiative. The NIEA  
10 recommends the MOU include a section dedicated to data  
11 collection and submission, beyond the responsibilities  
12 of the BIE. Section 4 of the Executive Order requires  
13 that both Departments do just that, in quote: In  
14 carrying out this order, the Secretaries of Education  
15 and the Interior shall study and collect information  
16 on the education of Alaskan -- excuse me, the American  
17 Indian/Alaskan Native students, end quote. The  
18 Executive Order clearly intends that the Initiative  
19 address data and research on education of all Native  
20 students.

21 No. 4: The MOU shall seek to remain  
22 consistent in references to tribal education agencies,  
23 TEAs, and tribal education departments, TEDs. There  
24 are significant differences between the two kinds of  
25 tribal education entities. For example, under the

♀

1 current STEP pilot program, very few tribes will  
2 qualify to have a TEA, even if they have a TED. The  
3 MOU should address what actions will be taken to  
4 provide technical assistance to both TEAs and TEDs.  
5 For example, there has not been an appropriation for  
6 capacity-building for TEDs, child education  
7 departments, even though it's been in law for many  
8 years. The MOU should seek ways to advocate for such  
9 appropriations. Additionally, the MOU should seek  
10 building greater communication with tribes, informing  
11 them of their options to fund and/or build their own  
12 tribal education departments.

13           No. 5: In looking at future funds which  
14 will be made available to TEAs, the MOUs should avoid  
15 including funding streams that go directly to LEAs,  
16 i.e., Impact Aid and the Title VII funds, which is  
17 actually put forth in the regulations for the new STEP  
18 program. Those are not included in that STEP program.

19           No. 6: There is a need to outline  
20 efforts to ensure equitable funding for both on- and  
21 off-reservation Native children. Currently the  
22 funding is not equitable and not fair. For example, a  
23 Native student in one school district may receive  
24 Johnson-O'Malley funds and Title VII Indian education  
25 funds, while a student in another school off

♀

1 reservation may only receive only Title VII funds.  
2 Another example is Title VIII, Impact Aid,  
3 equalization of funds: Some states have elected to  
4 count all Native students statewide and distribute  
5 Title VIII funds equally among districts regardless of  
6 the presence of Native students in their particular  
7 districts. The result is not fair to Native students,  
8 and the federal agencies should be advocating the MOUs  
9 to fix this problem, especially because a statutory  
10 limit is needed. Agencies must be true partners with  
11 Native stakeholders if the goals of the Executive  
12 Order are going to be accomplished.

13           No. 7: Alternative definitions of AYP  
14 can and should be developed in certain instances;  
15 however, the MOU should address the timeliness of  
16 developing AYP definitions and imposing a time frame  
17 for approval of those AYP definitions by both the  
18 Secretaries of the Interior and Education. There must  
19 been an incentive to act on AYP decisions in a timely  
20 manner. Since the Native CLASS Act, which would solve  
21 this problem, is still being considered in Congress,  
22 the agencies should resolve to impose a requirement to  
23 act on their own accord. The MOU can and should do  
24 this -- which I think you're currently in the process.

25           No. 8: The MOU should reflect a strong

♀

1 commitment by the Department of Education to give the  
2 same level of support to BIE as the Department of  
3 Educational already gives to any other SEA under its

060512 66845 Bureau of Indian Education Nashville  
4 programs. This support should be institutionalized in  
5 the strongest manner possible so that BIE can always  
6 effectively access the expertise and resources of the  
7 Department of Education.

8 No. 9: The MOU should highlight and  
9 alert all stakeholders to the new programs within the  
10 scope of the MOU. Effective and timely communication  
11 from federal agencies to all stakeholders educating  
12 Native students should be a top priority.

13 The NIEA appreciates the opportunity to  
14 provide these comments on the draft MOU, and we look  
15 forward to a constructive dialogue so that all Native  
16 students can succeed. The NIEA looks forward to  
17 forging effective, powerful partnerships with the  
18 Department of Interior and the Department of  
19 Education. Signed, Quinton Roman Nose, President,  
20 NIEA. Thank you.

21 MR. MACALLISTER: Excellent, sir. Thank  
22 you.

23 Before we move on, I don't want to cut  
24 you-all off, if you want a quick comment.

25 MR. ROMAN NOSE: I've got an additional

♀

98

1 comment. You know, I'm just like everybody here, have  
2 been in a lot of meetings, you know, and every time I  
3 go to a meeting, I learn something new, that's really  
4 true. And I appreciate those comments. You need to  
5 come to Oklahoma and -- for the tribes -- but anyway,  
6 I appreciate your comments.



7                   Unfortunately, it seems that, you know,  
8 when we move forward in education, you know, we  
9 forget -- you know, we've got to look at the big  
10 picture, I mean, and there is a big picture for Indian  
11 education. You know, by these opportunities that are  
12 being presented, you know, through the Executive  
13 Order, through these consultation, through the policy  
14 administration, you know, we've got to take advantage  
15 of them. I mean, we can't put too many barriers. You  
16 know, we should put, you know, logical discussions,  
17 but, you know, we need to move forward united in  
18 education. I mean, we talk and we talk. I'm an old  
19 guy now, I mean, just like the gentleman over there, I  
20 remember we did our first 638 contract.

21                   MR. ROGERS: I can still walk.

22                   MR. ROMAN NOSE: Can still walk, yes.  
23 And essentially move forward, but then a lot of times  
24 we haven't moved forward. But I really appreciate the  
25 dialogue. I've never had an opportunity to be in

♀

1 consultations and to see some things happening. So  
2 let's not shoot ourselves in the foot. I mean, we do  
3 have perspectives; there are things going on in my  
4 particular area that, you know, unless you're from  
5 there, you don't know what's going on, you don't know  
6 the aspects of how it affects Indian education.

7                   It's great that, you know, your state  
8 over there has a great relationship with SEA, that's  
9 positive. I mean, you know, in our state, we've got

10 38 tribes, and, you know, it's almost impossible for  
11 the State to have a relationship with the tribes, and  
12 then we only have two BIE schools. And then the very  
13 little knowledge -- I know Alaska, you know, with the  
14 250 tribes up there, you know, think of the needs of  
15 the, you know, those students for Indian education.

16 So, you know, let's put forth good  
17 arguments. But let's not, you know, get in the way of  
18 this movement, and I hope when this administration can  
19 continue, that we make some progress and that we look  
20 back and say, Yes, yes, we did it, you know, back in  
21 2012, we had these consultations and we moved forward.  
22 So I'll stop right there.

23 MR. MACALLISTER: Thank you very much.

24 MR. DRAPEAUX: If I could, now, the key  
25 areas that you've mentioned, the MOU, that I think

♀

100

1 that are important, we at the BIE, I know Director  
2 Moore is excited about the expansion of the MOU and  
3 Executive Order talk about public school children.  
4 It's one of those conflicting areas in tribes, How do  
5 you serve everybody who is involved, who's enrolled,  
6 who is entitled?

7 And that's a difficult question. But  
8 what we've started to do in the BIE is to talk about  
9 three policy areas succinctly in dealing with the  
10 issues that are at hand. And the three policy areas  
11 that we've identified are BIE-operated, which are  
12 federal schools, tribal grant schools, and public

13 education students. And until we start talking about  
14 those three particular policy areas, which all are  
15 governed separately, right, and start working towards  
16 looking for a solution to address all of the needs of  
17 each of those three policy areas -- what I've been  
18 interested in through my whole life in working around  
19 tribes that, we've always talked in a very general way  
20 or two ways, and the general way is that we say  
21 "Indian education," and that just kind of encompasses  
22 everything. And then we've talked about specifically  
23 urban Indians, and I know that the Department of  
24 Education has just embarked or is just finishing on  
25 consultation or discussions, roundtable discussions,

♀

101

1 with urban Indian organizations to talk about Indian  
2 education. But what they're really talking about are  
3 public school kids, our Indian students at public  
4 schools -- not urban, not rural -- public school kids.

5           It's a policy area that's funded, it's a  
6 policy area that's identified. Our issue, as we've  
7 been here in the Department of Interior, is that we  
8 want to create a single point of accountability for  
9 our kids, that's it. We'll take the heat, we'll take  
10 all of the -- everything. But we need to be able to  
11 come to a place where the issues of Indian education  
12 policy that encompasses those three areas are  
13 addressed succinctly. Right now, we're all over the  
14 board, right? We're talking about SEAS. And one of  
15 the things that I wrote down that is talked about,

16 that's mentioned, but really not analyzed, and it's  
17 the structures in which education is governed, right?

18 So currently under the U.S. Department of  
19 Education, you have the SEA, which is a state  
20 education agency, which has very specific  
21 responsibilities, and then you have the LEA, under  
22 SEA, has very specific responsibility, and then you  
23 have the school. And in some circumstances, it gets a  
24 little murky, but for the most part, generally you  
25 can -- in that structure, you clearly identify the

♀

102

1 structures, and each has a responsibility toward  
2 education, administratively and practically.

3 When we talk about Indian education,  
4 those levels are not clear. TEAs don't exist in that  
5 structure. How do we do it? In our BIE structure,  
6 schools are LEAs, to me, that's a problem, that's a  
7 governance problem; the BIE is a quasi SEA, that's a  
8 governance problem, that's a funding problem.

9 And so the question is, How do we create  
10 an equitable structure that recognizes uniqueness of  
11 tribes in education and opens the doors to deal with  
12 the policy issues that you-all deal with daily and  
13 that we have to deal with daily at a different level?  
14 And that's the part that we hope to get to with the  
15 U.S. Department of Ed through these consultations and  
16 with our relationship with the Department of  
17 Education, to start dealing with the major policies  
18 and funding mechanisms that exist today that addresses

19 all three policy areas.

20                   The director of the BIE, Keith Moore,  
21 is -- we couldn't have been more excited about the  
22 expanded responsibility, because we can't go anywhere,  
23 we get letters once a month, at least, from tribes  
24 saying, How do we get back in your system, because  
25 what's happening in our community is terrible? Public

♀

103

1 schools are not accountable to us, we want language,  
2 we want culture, we want accountability. Wow, they're  
3 asking us? Right? I mean, that's quite a statement.  
4 But it's also the recognition of tribes of our  
5 responsibility as trustees to tribes, predominantly in  
6 the issue of education.

7                   The second piece is, is that the U.S.  
8 Department of Education, in all of its goodwill to  
9 expand and accept the responsibility of being a  
10 trustee, is not subject to either 93-638 or 100-297,  
11 which means, then, that tribes cannot succinctly take  
12 money from the U.S. Department of Ed under those  
13 structures, or self-governance, for that matter.

14                   So the Department of Interior's  
15 mechanisms to provide funding to tribes is also a --  
16 it's not a barrier, but it's an issue that has to be  
17 addressed at some level that, to further  
18 self-determination, we've got to look at the  
19 mechanisms which funding rolls down through and the  
20 laws and the regulations that allow tribes to govern  
21 those dollars and their responsibilities of those

22 dollars.

23 And so we have a very broad approach. I  
24 mean, these are serious, serious issues that, from an  
25 educational perspective, we think are important to

♀

104

1 talk about, and we greatly appreciate the U.S.  
2 Department of Ed's willingness to have these dialogues  
3 with us. We've taken these issues to the Office of  
4 Management and Budget, we've taken these issues to the  
5 White House, we've taken them to the U.S. Department  
6 of Education, and we're bringing them to you, because  
7 somebody got mad at us in one of our consultations,  
8 once we started talking about the JOM money and doing  
9 a student count and told us that it was criminal and  
10 disrespectful to use those counts from 1995 to today.  
11 I mean, this is a person that I know and have  
12 respected and admired and was a mentor at one time.  
13 And, you know, what I wanted to say, but I didn't get  
14 a chance to say in all of these discussions is, you  
15 know, Why is it taking 17 years for anyone to care, to  
16 bring this issue up to somebody? Right?

17 So it's our responsibility, through these  
18 consultations, to bring these issues to you and to  
19 take the heat as a result of past policies, past  
20 actions, current policies, current actions. We're  
21 excited about it. We appreciate NIEA's position, we  
22 appreciate the individual tribe's position. But  
23 appreciate our position as the BIE in that we are a  
24 national organization, responsible to the 565 tribes

25 that's been expanded to us. We're in 23 states, we

♀

105

1 have pre-K, K-12, and post-secretary institutions.

2                   And so our approach has to be a little  
3 macro. We appreciate specifics as opposed to general  
4 statements about things that matter to you, because we  
5 can glean some of those things out and use them  
6 practically in the work that we do in the BIE as we  
7 take a look at the institution as a whole.

8                   It's always been unclear, and it's been  
9 clear that it's been unclear in our consultations  
10 about what individuals and tribal perspectives, from a  
11 tribal leader to educators, what role BIE should be  
12 play in education. We're still looking for clarity.  
13 That's why we're here, and we appreciate your  
14 comments. But these structures that I have mentioned  
15 today are true governance structures that are not  
16 dealt with, and they have to be considered and need to  
17 talked about at the tribal level in order for us to  
18 move forward succinctly. Because quite honestly,  
19 without Congressional oversight, without Congressional  
20 input, all of this, we can do what we can  
21 administratively, but our hands are tied to a certain  
22 degree.

23                   I know that we get dinged because  
24 sometimes it seems like we talk too much, but I wanted  
25 to give you a little perspective about what it is that

♀

1 we're considering and the direction that we're going  
2 and what we hope to get done through these  
3 consultations.

4 Our staff is excited, they love the work  
5 they're doing. I mean, they're dedicated. Our line  
6 officers, our DPA staff. We hope that we have some  
7 fruit to bear at the end of this, some serious stuff  
8 that will help you run your school better, that will  
9 help you advise your clients in terms of governance,  
10 and to help you from a national perspective to frame  
11 the policies and the approach that Indian country can  
12 take in order to better the lives of our children.

13 Both Bill and I and a lot of the folks  
14 around these rooms, I grew up on my reservation, I'm a  
15 home product, school board member, tribal council  
16 member, I mean, these are real things that have real  
17 meaning because our relatives still live there, you  
18 know, and we get to hear about it because of positions  
19 that we hold. And so we don't take what we do  
20 lightly, and it has real meaning to us, to make sure  
21 that we're doing it well and we're doing it right and  
22 we're accountable for the work that we do.

23 And I appreciate your comments, Quinton,  
24 and I know that you've been to a number of our  
25 consultations across the country. We appreciate you

♀

1 kind of traipsing around with us and providing comment



2 060512 66845 Bureau of Indian Education Nashville  
to us, so thank you.

3 MR. MENDOZA: Real quickly, Bryant did a  
4 great job of articulating those nuances in the context  
5 that we're trying to address these things. I played a  
6 lot of ball with Quinton's son -- or Quinton's sons,  
7 and now I feel like I'm on the circuit with Quinton on  
8 the policy level, so it's pretty interesting from my  
9 dynamic. But thank you, Quinton, for all your  
10 leadership and contributions to keep NIEA's voice  
11 represented, you know, in all of these consultations  
12 around the country.

13 The only thing that I have to offer in  
14 that respect is just consistent with how expansive  
15 NIEA is approaching this. There exists a dynamic that  
16 the trust responsibility only rests within the  
17 Department of Interior. We have seen how, you know,  
18 this has become a mechanism of understanding for  
19 tribal leaders, for educators. And I put it in the  
20 scope of the BIE merger conversations, the BIE  
21 transfer conversations that developed after the Native  
22 CLASS Act provision to study such a move. And it just  
23 dawned on me, too, that this is probably the only  
24 consultation that we didn't have to address that  
25 specifically, or Bloomington, in terms of what tribal

♀

108

1 voice was in opposition to such a move.

2 But in the context of that was this issue  
3 of trust responsibility, you know, deriving from, of  
4 course, tribal sovereignty, self-determination, and

5           060512 66845 Bureau of Indian Education Nashville  
self-governance, and everything that goes into that.

6                   Taking trust responsibility and applying  
7 it on the federal agency and saying, You are  
8 responsible to think about these things in this way,  
9 whether or not you take the purist approach to that  
10 straight from the treaties, or you take the domestic  
11 dependent spectrum and how that plays out for the  
12 various level of programing, particularly as we talked  
13 about identity issues and who is Indian and who is  
14 not. And the Department of Education by and large  
15 holds one of broadest definitions of who is an Indian.

16                   So we as the initiative being the  
17 Executive Order and the focal point on federally  
18 recognized American Indian and Alaska Natives, you  
19 know, we delve into all of those issues at the  
20 Department of Education. And I will probably hold  
21 until -- knowing I'm a young man -- my dying day, that  
22 it's a fundamental flaw of our current leadership  
23 trajectory, that we isolate the trust responsibility  
24 to Interior alone. That is why the President chose  
25 this direction, that is why Secretary Duncan and

♀

109

1 Secretary Salazar approached this with the utmost  
2 diligence, in that we need to be thinking about this  
3 whole pie in a dramatically different way.

4                   I've been personally involved in six  
5 urban Native listening-and-learning sessions, trying  
6 to understand this dynamic, validating what I already  
7 know about them. And, essentially, whenever you take

060512 66845 Bureau of Indian Education Nashville  
8 away the city, it's just a like a reservation, our  
9 Natives are dispersed, they're being underserved,  
10 there's no representation, they're disconnected from  
11 municipalities, and, absent the infrastructure, it's  
12 the same issue, our kids are crying for their  
13 language, history, and culture. And that, to me, says  
14 that we don't have a mechanism for them to organize,  
15 to govern, and given that they are citizens of  
16 Nations, it's especially problematic.

17 And so we can't even get to that  
18 conversation without first having tribes recognize  
19 that responsibility, and that, when we talked about  
20 the delivery of services from a programmatic,  
21 regulatory, to a statutory line, by necessity it  
22 involves USDA, Labor, Department of Education, NSF,  
23 all 32 federal agencies, and not just states as well,  
24 the tribes and all of the resources that come with  
25 those different dynamics.

♀

110

1 So trying to piece all of that together  
2 is the foundation of the Interagency Working Group  
3 under the Executive Order.

4 Now this joint work group, taking into  
5 consideration that tribes do value the trust  
6 responsibility and how that has evolved within the  
7 Department of Interior, and saying that expertise,  
8 that understanding needs to inform other federal  
9 agencies, so I just want to kind of put that context  
10 out there and stop there. I'm sure we'll have more to

11 060512 66845 Bureau of Indian Education Nashville  
that effect.

12 MR. MACALLISTER: Thank you. Let's move  
13 on to our last signed-in speaker, and then take any  
14 open -- other comments from people who haven't had a  
15 chance to speak, and then we'll cycle back. Sound  
16 fair to everyone?

17 Our next speaker on the list is Janice  
18 Jimmie.

19 MS. JIMMIE: I usually don't need a  
20 microphone when I speak. I'm going to make my  
21 comments very brief.

22 First of all, I want to say ditto to  
23 everything that Bryant Rogers said, because I could  
24 not have done it as eloquently as he did in stating  
25 the position of the tribes. But the other thing that

♀

111

1 I want to add is that education of our children is  
2 very important to the Choctaw tribe. And this is  
3 evidenced by the supplementation that we give as a  
4 tribe through our educational system, because we don't  
5 get the kind of funding that we need to be able to  
6 teach the children as well as do the massive reporting  
7 that's required so that we meet the regulations that  
8 we need to meet.

9 I was really appalled by the numbers of  
10 reports that the Education Department is having to do  
11 each year for the moneys that we receive, and this was  
12 just really alarming to me. And when we speak in  
13 terms of more reporting and more regulations, then, of

060512 66845 Bureau of Indian Education Nashville  
14 course, you know, there's more alarms going off in my  
15 head.

16 But as a tribe, we are very interested in  
17 any models, any best-practice approaches to improving  
18 the education of our children. Any outcomes that we  
19 see that are beneficial, we are willing to take a look  
20 at to try to implement in our education programs,  
21 because that is what we want, very well educated  
22 children to lead the future of the tribe.

23 Fiscal responsibility is a stand that  
24 Chief Anderson has taken in her administration. So  
25 this is something else that we are focusing on to make

♀

112

1 sure that the moneys that we receive are well spent.  
2 So this is not anything that's new to us, this is  
3 something that we've been working on.

4 And I've seen the education system evolve  
5 over the many years. I was educated at the Choctaw  
6 schools that we have when we were -- I think I  
7 graduated when it was still a BIE school, to give you  
8 an idea how old I am. But back to my statement,  
9 education is important, we are open minded; however,  
10 we want to maintain the authority as a tribe to make  
11 those decisions for our people.

12 We come from a tradition of oral  
13 teaching, oral tradition in teaching our children,  
14 which means the parents and the families took  
15 responsibility for the teaching of their children.  
16 And this is something that is still inherent in us,

060512 66845 Bureau of Indian Education Nashville  
17 and we ask merely that you respect our authority to be  
18 able to do this. And that's all the comments that I  
19 will make. Thank you.

20 MS. MCKAY: Any response?

21 MR. MACALLISTER: Are there other people  
22 at the table who have not had a chance to speak who  
23 would like to speak?

24 All right, then, let's open it for just  
25 open dialogue, and we will -- I will be cutting it

♀

113

1 off, I will be giving us kind of a warning point as we  
2 ramp down towards five o'clock, but beyond that, we'll  
3 let it be an open dialogue.

4 MS. MCKAY: If anybody wants the mike  
5 just --

6 MR. MACALLISTER: Just raise your hand,  
7 I'll bring the mike to you. We have a spare mike so  
8 you don't have to drag cables around if there's a  
9 problem with that.

10 MR. ROGERS: Well, this is Bryant Rogers  
11 again, I wanted to respond to a couple of things that  
12 Mr. Mendoza said that I hadn't gotten to yet and also  
13 a couple things that the NIEA representative said.

14 One of the things Mr. Mendoza asked prior  
15 to the last break was, What is it about the new draft  
16 MOU that has caused Choctaw to sort of get its hackles  
17 up and concerns of about additional compliance and  
18 reporting, et cetera, as compared to the existing MOU?

19 I haven't done a redline, but I think

060512 66845 Bureau of Indian Education Nashville  
20 there are two factors, really three, that have caused  
21 this concern. Whatever the old MOU said, it hasn't  
22 been rigidly enforced, as far as we can tell. In  
23 other words, there may have been statements in the  
24 original MOU that said all of these were going to be  
25 conditions passed down to the tribes through the

♀

114

1 grants, they haven't been. So to the extent that this  
2 new one, you really mean it, then we're really  
3 concerned. (Laughter all around.)

4 MR. MACALLISTER: Just a little joke.

5 MR. ROGERS: So that's number one.

6 Number two, I don't believe that the original -- I may  
7 be mistaken, but I don't believe it emphasized the  
8 requirement of Department of Ed that the BIE actually  
9 start functioning like a real SEA. And that's a  
10 concern, because it is not a real SEA, as is  
11 acknowledged in the Flexibility document. It doesn't  
12 have the same authority as to the tribally controlled  
13 schools. Yes, it, as a practical matter, has the same  
14 status as an SEA as to the Bureau-operated schools  
15 because it's the boss of those schools, but it's not  
16 the boss of the tribally controlled schools. So to  
17 the extent Department of Ed is asking it to be the  
18 boss as an SEA, Choctaw adamantly oppose that, they  
19 don't want another "daddy," okay, they want to run the  
20 school.

21 Secondly, the ambiguity, the vacuum, if  
22 you will -- and I think this is what Mr. Drapeaux is

23 060512 66845 Bureau of Indian Education Nashville  
getting at, is the absence of an SEA for these  
24 schools, or the lack of clarity about it. We don't  
25 think it's a lack of clarity and we don't think it's

♀

115

1 an accident that you're not an SEA and that the  
2 Congress didn't give you that authority.

3 Congress decided that these schools, if  
4 the tribes wanted to run them, were going to be run by  
5 the tribes and that no real -- no real -- no policy  
6 role and no real control role for the BIA, they were  
7 going to be a funding mechanism. And to the extent  
8 MOU seeks to import governance roles for BIE that is  
9 not in the statute that, again -- and that's that SEA  
10 hat, that triggers the tribal concern.

11 Let me see, if I get my glasses, I might  
12 be able to read my note here. I'm not going to say  
13 much about this, but I just want to say that the, you  
14 know, the tribe has determined how to exercise its  
15 tribal control. Ms. Jimmie, they have an executive  
16 branch, they have a tribal council, they have an  
17 executive branch. The executive branch is under the  
18 chief, the chief has departments and divisions,  
19 division of tribal member services is -- that's the  
20 hat that Ms. Jimmie wears. Under her is a number of  
21 other programs, schools is one of them. Mr. Germany  
22 answers to her. They don't need a Department of  
23 Education, they don't want a Department of Education,  
24 they want a school program. They don't want to add  
25 another layer of tribal bureaucracy on top of the



♀

116

1 school operations.

2                   Now, we understand that there's some  
3 tribes that are large enough that it might make sense  
4 to have a Department of Ed, with multiple schools;  
5 although, I represent a number of those schools, and I  
6 can tell you the community-level school thinks that's  
7 a terrible idea. Because now they're going to have to  
8 answer to two bureaucracies: The BIA and the tribal  
9 bureaucracy. Some of these schools have been  
10 operating on their own as tribal-organized schools,  
11 tribal organizations, for 25 years. I think it would  
12 be a terrible idea to go that way. So I just want to  
13 throw that in. I didn't universally view it as a  
14 positive to fund a tribal education reform.

15                   The NIEA spokesman -- and I'm sorry, I  
16 didn't click on your name.

17                   MS. MCKAY: Quinton.

18                   MR. ROGERS: Quinton. What's your last  
19 name?

20                   MR. ROMAN NOSE: Roman Nose.

21                   MR. ROGERS: You mentioned something that  
22 relates to public schools that I just want to comment  
23 on briefly because I was involved in the U.S. Supreme  
24 Court case that addressed it, that's the Impact A  
25 allegation.

♀

117

1                   New Mexico is one of three states that  
2 does take credit for 75 percent of the Impact Aid  
3 money and spread it to every school district in the  
4 country. And they do it under an exception to the  
5 Impact Aid law that allows that to be done where the  
6 school -- the state school funding mechanism is,  
7 quote, equalized, closed quote, and that was the issue  
8 litigated in that case. That was our case, we lost  
9 five to four. We don't think we should have lost, but  
10 we did. However, the key thing is Department of Ed  
11 has the ability to change the rule that the Supreme  
12 Court upheld.

13                   And it's really amazing, if you read  
14 carefully that case and look at the history, you will  
15 see that Congress mandated that the Department of Ed  
16 change the way the equalization determination was  
17 made. And the Department of Ed issued a regulation  
18 after the law passed, and it said, Congress has told  
19 us we have to change the way the equalization  
20 determination is made; we're doing that, see attached  
21 Appendix A where they put the same appendix that was  
22 used prior to the law changing that had the  
23 calculation in it on how you determine whether a  
24 school is equalized, and if the school is equalized,  
25 then they're allowed to take that money that's

♀

118

1 supposed to go to the Indian kids and give it to  
2 everybody.

3                   So one thing you could do that would  
Page 106

4 dramatically help Indian education in public schools  
5 is to change the rule to conform to what Congress told  
6 you to do in the first place, and you got away with --  
7 not you personally -- the Department of Ed got away  
8 with pretending they had changed the rule without  
9 changing it. I mean, it was a travesty.

10                   So I would urge you to take the Zuni  
11 public -- Zuni Public School District No. 8, I think,  
12 versus U.S. Department of Education is the case, it  
13 was about five years ago. And if the Department of Ed  
14 would just relook at that rule, which you clearly have  
15 authority to do, because Congress authorized you to  
16 change it. You said you were changing it but, in  
17 fact, substantively you didn't change it.

18                   So if you did, it would really help keep  
19 the money from Impact Aid for Impact Aid and the  
20 schools where the Indian students are. It's being  
21 siphoned off. It's weird that only three states do  
22 this, I think it's Alaska, it's Kansas -- it's one of  
23 those Midwest states where they only have one school  
24 district for the whole state, so it's an anomaly --  
25 and New Mexico, which has many Indian students in

♀

119

1 public schools, so that would be a big help.

2                   The other reason why the MOU caused red  
3 flags is this: Completely independent of what y'all  
4 are doing on the MOU, what we've seen at BIE is a  
5 proliferation of compliance reports and assurances  
6 documents for the Department of Ed money that's

7 happening now before you even get to the MOU, and we  
8 just feel -- and we're going to resist that and fight  
9 that, but it's just going to be compounded when this  
10 is sort of reiterated that Department of Ed is  
11 expecting them to do it, and the little language in  
12 the MOU that says you might withhold money from the  
13 Interior if they don't do this. So all these things  
14 together make us more concerned than we were before,  
15 so . . . .

16 MR. DRAPEAUX: If I could, on the SEA  
17 section, as we've looked at the authority to offer any  
18 flexibility waiver as a quasi SEA, and you make the  
19 case that Congress didn't want the BIE to be an SEA,  
20 and that's more than likely true; although, we are  
21 given some SEA activities under certain titles.

22 As we look at the new emphasis, for  
23 example, of U.S. Department of Education, in terms of  
24 education policy and funding to support that policy,  
25 what we're seeing from a BIE perspective that's

♀

120

1 bothersome is that because we are only a quasi SEA, it  
2 leaves our schools, your schools, in the quandary of  
3 not being eligible for certain funding that other  
4 school districts in the United States are eligible for.

5 And it's an issue that we've raised with  
6 the U.S. Department of Education, in that, one of the,  
7 the issues that we're facing is the governance piece  
8 that allows SEA funding to go to only SEAs. So tribes  
9 have said to us, for example, We want to be the 51st

10 SEA, okay, let's just take the Navajo Nation, We want  
11 to be an SEA, we want to act as an SEA, we want to put  
12 forth our own waiver, et cetera, et cetera, which is  
13 fine. The problem is that they're not the 51st SEA.  
14 There are a lot of other SEAs sitting out there, but  
15 there's not one that represents Indian students.

16 What we believe in the BIE and the  
17 leadership with Director Moore, is that we need to  
18 create a single point of accountability for all things  
19 in Indian education. And that, although it may seem  
20 big and scary that the BIE may become an SEA or that  
21 we would like to put forth the concept to discuss  
22 about SEA activities, one of the positive byproducts,  
23 then, would be to align U.S. Federal education policy  
24 and Indian education policy to start addressing these  
25 issues in public schools, for example.

♀

121

1 I mean, in the state like South Dakota,  
2 where I'm from, what we do know is that issues like  
3 Title VII, Impact Aid, other dollars that are  
4 identified for Native Americans, there's some question  
5 about the fidelity of those funds to serve Indian  
6 students in those states and in those schools. Now,  
7 whose concern that; right?

8 One of the things that I like to hear  
9 from tribes and as they've said before and that I like  
10 to repeat is this: That tribal leaders can come to  
11 Washington D.C., as they did in December 1st, and meet  
12 with Secretary Salazar and Secretary Duncan and then

13 the next day meet with President Obama and talk about  
14 broad, vast issues of education and other  
15 infrastructure needs, but they can't get an audience  
16 with the local school board, public school board in  
17 their own states.

18 The issue of an SEA, in the way we see  
19 it, is that if we create an equitable playing field  
20 for dialogue for tribes, for tribes in states like  
21 Alaska, in states like Oklahoma and other states, is  
22 that we need to create an opportunity for tribal  
23 governments -- not schools -- tribal governments to  
24 have a discussion with their peers, which, even though  
25 they have a trusting relationship with the Federal

♀

122

1 Government, their peers are actually state  
2 governments.

3 And so the issue of SEA is to create an  
4 equitable discussion opportunity for tribes. In  
5 addition to that, we think that SEA -- creating an  
6 Indian SEA, whether it's the BIE or some other  
7 mechanism -- would create an opportunity for funds to  
8 come to Indian students.

9 So we had an experience with the U. S.  
10 Department of Education, the BIE has 60 federal  
11 schools, we have about 4,100 employees that are  
12 federal, a number of those are school teachers, we have  
13 a Union; the national movement in the country is to  
14 negotiate a collective bargaining agreement with  
15 teachers' unions in order to tie teacher performance

16 to student achievements, it is a national movement,  
17 ATF -- I think it's ATF -- is a armed -- FISE  
18 (phonetic) is a subgroup of ATF, ATF is amenable to  
19 it, we've met with the Union, we've negotiated a deal.  
20 All the while our colleagues at the U.S. Department of  
21 Ed -- not Mr. Mendoza, because he wasn't there yet --  
22 said to us, Hey, if you guys do this, you're meeting  
23 one of the pillars of reform that we're asking states  
24 to do, that would be fantastic; we'll incentivize your  
25 efforts through the Teacher Incentive Funds, and then

♀

123

1 you guys can work with the Union in your schools that  
2 are applicable and then start doing this great  
3 activity that you framed out, negotiated with the  
4 Union, so on and so forth. Awesome.

5                   So we did it: We negotiated a new  
6 collective bargaining agreement, put all of these  
7 components in place, we were very proud of ourselves.  
8 And then U.S. Department of Ed came back and said,  
9 Well, that money is only for SEAs, and you're not  
10 really an SEA, so we can't really give you this money.  
11 You might be able to apply for it, and we hope that  
12 you would qualify, but it has to be some sort of  
13 determination.

14                   Longitudinal database money, right,  
15 everybody is saying, Cradle to career. Really? I  
16 mean, how are we going to do that? How are we going  
17 to track that data? Trying to say we want FACA, we  
18 want to be able to access data that we're collecting

19 on their students, we agree; how are we going to do  
20 it? Not under the current funding mechanisms.

21 So my point is, is that an SEA, at a  
22 national level, would create an equitable dialogue  
23 opportunity for tribal leaders, would open up new  
24 funding mechanisms, perhaps, for an SEA, that would  
25 serve, not only BIE-operated tribal grant schools, but

♀

124

1 public school children as well, and that you would  
2 create a single point of accountability for the  
3 discussion of Indian education no matter where these  
4 kids are located, and that you could then start asking  
5 for accountability and fidelity of the funds in terms  
6 of what they're doing at the public school level.  
7 Because right now there isn't any. Tribes can't weigh  
8 in, if you go to your school board, if you don't like  
9 it, run for school board. You know, you just have all  
10 of this stuff that is local politics.

11 And there's states like South Dakota, and  
12 I don't know what it's like in other states because I  
13 wasn't raised there, but the long history of  
14 relationships between the Indian and non-Indian  
15 communities are difficult, in that those relationships  
16 do not lend themselves to the recognition of tribal  
17 sovereignty, which means, then, that the children that  
18 are attending public schools are kind of left to the  
19 wind, and each individual parent that we know in the  
20 communities that our people come from, that's a hard  
21 day on the best day.



22                   So are we -- as Billy alluded to earlier,  
23 Are we left to just leave that, you know, to the wind?  
24 We don't think so. We think that we need to have  
25 serious dialogue about how we create an equitable

♀

125

1 discussion opportunity for tribes in that scenario.

2                   So I just wanted to -- it's just not  
3 something that we're knee-jerk behind, it's not a  
4 power movement, but it's really to try to create an  
5 equitable opportunity for Indian students and for  
6 tribal governments to have a play in.

7                   One of the things we noticed very  
8 quickly is that, on December 1st and December 2nd,  
9 there were tribal leaders, elected tribal officials  
10 meeting with Secretary Duncan and Secretary Salazar --  
11 not superintendents, not principals, not teachers, not  
12 NIEA. On December 2nd, those -- another group of  
13 leaders met with the President, not the  
14 superintendents -- no disrespect to anybody -- but  
15 that's who is getting the ear of the highest elected  
16 officials and the policymakers in the United States.

17                   So we just can't ignore that  
18 relationship, we can't ignore that hierarchy of  
19 responsibility, quite frankly, that we recognize and  
20 that the issue of government to government is used so  
21 often that sometimes it seems like we miss the  
22 relationship. It's not government to school, it's  
23 government to government.

24                   And so if the government on the other

25 side wants to defer that authority and responsibility,

♀

126

1 as we have today, to their lawyer or to their school  
2 officials or other folks that are represented, that's  
3 fine, but we want to give that government the chance  
4 to put their position on the table as a government.

5           And that's has real meaning, I mean, to  
6 me, as a person that's been on that side of the table,  
7 that has absolutely real meaning to me, that we need  
8 to find a serious opportunity for tribal governments  
9 to have a play in this discussion.

10           So, you know, I appreciate the  
11 opportunity to put that on the record, and it's  
12 something that we're not afraid to talk about because  
13 we -- if this isn't it, then find us something; right?  
14 Because there's nothing that exists today that creates  
15 an equitable discussion opportunity for our Indian  
16 students. It's broken up and it's all over the place,  
17 funding comes from Ed, funding comes from Interior,  
18 secondary funding comes from Ag, it comes from all  
19 over the place. But there's not a single point of  
20 accountability which really allows everybody to kind  
21 of kick the can down the road; right? With everything  
22 being a punch line, Well, our children are sacred, and  
23 so -- but who do we hold accountable? I mean, from  
24 the BIE, what we're saying is, Hold us accountable on  
25 the issues that pertain to us.

♀

1                   This Executive Order expands our  
2 opportunity, hold us accountable on that as well;  
3 we're willing to take it, we want to take it, but we  
4 can only to it together in terms of how the policies  
5 are developed and how the funding mechanisms rule the  
6 tribes.

7                   Oh, and then my final comment is this:  
8 Is that Bill has mentioned U.S. Department of Ed and  
9 that trust responsibility, and that's an important  
10 aspect to understanding; however, until that trust  
11 relationship is reflective in the mechanisms to pull  
12 down money to local control, then other than having a  
13 relationship like this, or finding some way to do it,  
14 but the mechanisms for self-determination are detailed  
15 very, very specifically in the tools that currently  
16 exist. Either expand those tools or create new tools  
17 for tribes to access funds. So thank you.

18                   MR. ROGERS: A couple additional  
19 comments. First of all, I wanted to note that we are  
20 requesting that the materials I gave you be in the  
21 record. One of the materials is a tribal council  
22 resolution from Choctaw reaffirming the positions that  
23 we took today.

24                   MR. DRAPEAUX: Sure.

25                   MR. ROGERS: Secondly, one of the

♀

1 comments Chief Anderson put in her comments on Friday

060512 66845 Bureau of Indian Education Nashville  
2 is that, Whatever else is done, the tribe opposes any  
3 idea of moving the BIE to the Department of Ed. And  
4 why is that so -- such a clear and instinctive  
5 response? And it's this: As bad as the tribe's  
6 relations are sometimes with BIE, BIE, Department of  
7 Interior, at least the statutory frameworks, the trust  
8 responsibility understanding in the agency is deeper  
9 there than it is in other agencies.

10 Yes, Department of Ed is a part of the  
11 United States Government, it is the United States  
12 Government that has the trust responsibility, BIA and  
13 BIE are instruments of that. They're the sort of  
14 primary instruments, but they're not the only  
15 instruments. So we agree totally that the full U.S.  
16 has this trust obligation, the Department of Ed is  
17 part of the U.S. Government and it needs to honor  
18 that.

19 And I will give you -- I know the Bureau  
20 folks here are well aware of the litigation that's  
21 been ongoing that our firm and others have been  
22 handling that's in the U.S. Supreme Court now on  
23 indirect cost and disputes with the BIA and BIE over  
24 their duty to pay full indirect cost funding as a form  
25 of administrative support.

♀

129

1 We understand the agency's position, they  
2 can't write checks that they don't have. They believe  
3 that they're not obligated to obligate the United  
4 States to pay more. We believe the statute requires

5           060512 66845 Bureau of Indian Education Nashville  
that, and that's going to be decided in the Court.  
6 But the Department of Ed has a statute which Congress  
7 enacted many years ago that directs the Department of  
8 Ed to treat certain vocational ed money under the  
9 exact same rules that apply to the Indian  
10 Self-Determination Act with BIE money. And the  
11 Department of Ed has flatly refused to honor that law.

12                       So why in the world would a tribe want to  
13 move from a milieu -- at least where we can have a  
14 discussion on common ground, and we know we have a  
15 legal disagreement, but at least we know that, to  
16 extent the Bureau understands how to do it, they're  
17 honoring it, when Department of Ed refuses to honor  
18 the same statutory mandate. I'm astounded nobody has  
19 sued Department of Ed over that, I really am.

20                       But the other thing is this, and it's  
21 sort of the NIEA's point: Most Indian students are in  
22 public schools; the ones that aren't in public  
23 schools, lots of them are in BIA-operated schools.  
24 The numbers of Indian students in tribally controlled  
25 schools is very small, talking total numbers. It

♀

130

1 would be of no value to them to be moved over to  
2 Department of Ed and have to deal with us, the  
3 school -- the small number of schools in that huge  
4 bureaucracy whose most attention, properly, is on the  
5 public schools.

6                       And so that's another reason why the  
7 tribally controlled schools, and Choctaw in

8           060512 66845 Bureau of Indian Education Nashville  
particular, would oppose that. And there is some  
9 concern about BIE taking on the role as a major  
10 advocate for Indian ed in public schools, because it  
11 will inevitably, you know, consume you and take even  
12 the limited resources you have to deal with public  
13 schools when you can't really do what you need to do  
14 with the BIE-operated schools.

15                       So that's a concern. Without more money,  
16 I don't know how you can take on this role and do them  
17 both justice. That's obviously a problem, I mean, you  
18 need more resources, we understand that. We'd rather,  
19 though, you put more resources -- BIE resources in the  
20 schools, tribally controlled schools, than in the  
21 public schools. Department of Ed, work on those  
22 public schools.

23                       Oh, one other issue. The SEA point, you  
24 make good points about it, it's just there's not a  
25 level of trust that the authority won't be abused, and

♀

131

1 there needs to be carved out (phonetic), there needs  
2 to be some acknowledgment.

3                       This MOU, if it had acknowledged the  
4 right of the tribes to run the schools, for those  
5 tribes who have chosen to do so, in a favorable way,  
6 rather than viewing it a negative, we'd feel a whole  
7 lot better about giving more power to the BIE. So  
8 I'll leave it at that.

9                       MR. ROMAN NOSE: I just wanted to -- I  
10 got to say this: You made the point about your tribe

060512 66845 Bureau of Indian Education Nashville  
11 doesn't need a tribal education department, and that's  
12 the right of tribes to do so. I mean, as a matter of  
13 fact, you look at all of these entities, states, you  
14 know, the Federal Government, tribes, who has been  
15 here the longest? I mean, tribes, we've been here  
16 before Columbus. So whatever works, that's great.  
17 But, unfortunately, you know, we don't have the money,  
18 we don't have resources. And unfortunately, you can't  
19 keep the -- keep them on "the res" anymore. I mean  
20 our students are now going off reservation, off, you  
21 know, city limits and living in different towns. You  
22 know, you've got grand kids, you've got kids living in  
23 different states, you've got tribal members not only  
24 living in every state in the United States, you've got  
25 them living all over the world.

♀

132

1 And this is my personal belief -- and  
2 this is not NIEA-based, I'm the former president of  
3 Child Education Department Specialists. So the future  
4 is coming at us, and, you know, we're not ready for  
5 it. Our tribal members are getting so diverse,  
6 there's diversity among tribes now. They're moving  
7 all over the place. So how are we going to address  
8 that? If you don't have a real devoted -- shall we  
9 call it the Tribal Education Department or an entity  
10 of your -- whatever your division is called, you know,  
11 if you don't address the problems of the future --  
12 it's great that you have a school, but, unfortunately,  
13 your tribal members are living everywhere else.

14 So, you know, at some point in time, when  
15 do they stop being tribal citizens? When do they stop  
16 receiving, you know, the benefits? If you can't  
17 continue to put in a system in which you're going to  
18 develop and make your Nation stronger, you know,  
19 you're hurting yourself.

20 And unfortunately, tribes don't have the  
21 money to have schools, they don't have the political  
22 power to go to the state government and say, We want  
23 curriculum, we want our own specific tribal government  
24 classes, we want these things for tribes within  
25 states. They don't have that political power to do

♀

133

1 that. The State is a powerful entity in this  
2 education of our kids. And so unfortunately this  
3 example that -- I keep wanting to call you Frank.

4 MR. MACALLISTER: Bryant.

5 MR. ROGERS: That's my uncle.

6 MR. ROMAN NOSE: Brian mentioned the  
7 story about the meeting with tribal leaders, went to  
8 visit, you know, all of these secretaries, you know,  
9 Duncan and Salazar was there, and I wasn't there, but  
10 I was told that some of the tribal leaders would start  
11 asking Duncan, you know, What about Johnson-O'Malley?  
12 You know, Where is our money? And in the (inaudible),  
13 you know, rightfully so, that's a good question, but  
14 they were asking the wrong secretary, the department.  
15 And so you need highly qualified, highly  
16 knowledgeable, visionary tribal education department



060512 66845 Bureau of Indian Education Nashville  
17 people in order to catch up, adjust, and move forward.

18                   And right now -- I know we talked, and I  
19 know the Navajos, you know, want to be an SEA, and I  
20 agree, you can't be an SEA. You can be SEA-like, but  
21 you can't be an SEA, you're not a state. You just  
22 can't be SEA, but you can do a lot of things like they  
23 can do. And we need that. The majority of our tribes  
24 are not large enough to perform that. You know,  
25 majority of our tribes, I forget the cutoff figure,

♀

134

1 1,700, a high percentage of our tribal nations, you  
2 know, majority of them are 1,700 members or less. So  
3 we need something like that the BIE, you know, to step  
4 forward and to perform that function.

5                   And so we need to understand the  
6 advantages, disadvantages, the complexities as we move  
7 forward, and we need high-qualified people in  
8 education. We've got people coming into education,  
9 they may be in the public school system, they may have  
10 come from the BIE, they may come from higher ed,  
11 you've got some coming from early childhood, none of  
12 them know what a tribe is supposed to do, none of  
13 them -- they all have expertise in the areas, but we  
14 need to put those knowledgeable people in the tribal  
15 education department that's going to have vision for  
16 the future of the tribe, and not just say, We're going  
17 to give out per caps, or whatever, you know, the --  
18 that's not enough. That's not enough for our tribes  
19 to remain, you know, where we're at, for us to grow,

20 060512 66845 Bureau of Indian Education Nashville  
otherwise we're going to get, you know, swallowed up.  
21 And some tribes are getting swallowed up, if it wasn't  
22 for casinos, they probably wouldn't even be tribes  
23 anymore.

24 And unfortunately, the limited experience  
25 I've seen with tribes that don't have tribal education

♀

135

1 departments compared to the ones that do have, there's  
2 a wide range of abilities and resources, but the ones  
3 that do have are better off than the ones that don't.

4 And just for the fact I came from a tribe  
5 that's 638 contracting, indirect costs, all the  
6 indirect costs and money went into higher  
7 administration, education never saw a dime of it. And  
8 so that's where we need the more money for tribal  
9 education departments so they can fund the  
10 capacity of these tribal education departments so they  
11 can look at all spectrums of education so that we can  
12 move forward. So I'll stop right there.

13 By the way, one more thing. Dina  
14 (phonetic) has put forth the subject of FERPA, the  
15 data collection, we've been pushing that for years.  
16 We've promoted the state relationship. Oklahoma has  
17 now put on -- tribal education department directors on  
18 their state Indian Education Advisory Counsel, and I  
19 think other states are looking at that also. We're  
20 instrumental in getting the STEP program approved and,  
21 you know, Appropriations Bill; even though not  
22 everybody is ready for it, it's there. But I think

060512 66845 Bureau of Indian Education Nashville  
23 some tribes need help, they need help with building  
24 the capacity of the tribal education department.  
25 Research and development is definitely needed -- we

♀

136

1 definitely need to know where we're at and where we're  
2 going.

3 I would always ask this question when I  
4 attended the meetings, I said, you know, Can your  
5 tribe -- you know, if you're a large tribe, you  
6 probably can't do this -- Can your tribe tell me  
7 exactly what your graduation rate for all your members  
8 are, and they couldn't do it because they're all over  
9 the place, all those different systems. But if you're  
10 a small tribe, you probably could do it. I'll stop.  
11 That's it.

12 MR. ROGERS: If I can?

13 MR. MACALLISTER: Yes.

14 MR. ROGERS: Remember, I said I started  
15 off with Choctaw in '71. Well, one of the things they  
16 put in place was a planning department, I was the  
17 first one. But they've had a continued role for a  
18 planning department that does long-range assessment,  
19 et cetera, that have education people, health people,  
20 engineering people. And they're fortunate, they do  
21 have casinos, they are able to provide supplemental  
22 funding for this. I'm not saying that the role that  
23 you're talking about doesn't need to be performed if  
24 they have the resources, it does, but they don't need  
25 to be told that the only way you get it is to have

♀

137

1 something called a Tribal Department of Education.  
2 That's my point. They have other ways of achieving  
3 the same thing. And there's been several references  
4 to Oglala here and Pine Ridge, I actually negotiated  
5 the very first 638 school contract for the Loneman Day  
6 School in 1976, so I've seen this and worked at Little  
7 Wound up at Pine Ridge.

8                   You know, these schools -- all schools  
9 have problems, I mean, and I don't know where they are  
10 today, I haven't represented them in a while, I worked  
11 with Busby School in Northern Cheyenne. But, you  
12 know, they made a decision to try it and to do it on  
13 their own, and they read all Choctaw's messages, Don't  
14 forget that commitment that Congress has made to them;  
15 acknowledge that, build it into your systems, let them  
16 help you do it. Thank you.

17                   MR. MACALLISTER: Are there other  
18 comments from the attendees?

19                   Shall we move to closing comments from  
20 the panel?

21                   MR. DRAPEAUX: Thank you. I know that  
22 we're small, but meaningful. I really appreciate it,  
23 everybody coming today. This is our second  
24 consultation where we've had small numbers, but robust  
25 dialogue, and that's really what we're looking for,

♀

138

1 specifics in the work that we do.

2 I wanted to acknowledge Yvonne Davis as  
3 well, Yvonne is sitting back here. She's been here  
4 since Sunday. (Applause.) I came today, I flew in  
5 this morning and walked in the room and -- set up,  
6 good to go -- thank you Yvonne -- and the work that  
7 she's done establishing these -- doing all the  
8 logistics around it. It's meaningful work, and it  
9 makes it easy for you and for us to come in and sit  
10 down and do the work and to even -- not even to blink,  
11 so I would like to thank her for that, as well as our  
12 line office staff who had left earlier.

13 You know, this is -- Again, we're excited  
14 we're excited to create the dialogue, we're excited to  
15 have the dialogue, we think it's necessary. Over the  
16 past two years, since Director Moore has been in the  
17 BIE, we've heard and heard and heard, and we need to  
18 continue to create opportunities to have clear  
19 dialogue, and that's what we're committed to.

20 The issues of Indian education need to  
21 continue to be raised to the highest level of  
22 government and to really start pushing past the  
23 rhetorical part. My job as chief of staff of the  
24 Bureau of Indian Education is execution; right? It's  
25 our job to do execution, execute budgets, and to

♀

139

1 execute the pieces within the organization and ensure  
2 that it's getting done. And we have a lot of moving  
3 pieces, as you all know, and we have multiple groups

4 that call on us to be responsive and we work hard to  
5 do that.

6 I have a great appreciation for our  
7 staff, Brian Bough, who I think has done a really  
8 outstanding job of putting together the Waiver, the  
9 concept behind it, working with others, and we want to  
10 continue the dialogue because we need to continue the  
11 dialogue, Indian education, and creating a direction  
12 for us, and it won't happen unless we do it, unless we  
13 ask the question questions, unless we create the  
14 dialogue.

15 And so we're happy to do it. We're  
16 excited to do it, and it's meaningful to us. And we  
17 know it's meaningful to you. And for those of you  
18 who, like Quinton, who has been around, followed us  
19 around at and been in all the different kinds of  
20 consultations and roundtables that we've had, you  
21 know, we need to keep the momentum going. Because,  
22 you know, we're subject to change, and with change  
23 comes, you know, fear, and with fear comes indecision,  
24 and indecision, we get all locked up and kind of  
25 settled back into where we have been or where we get

♀

140

1 stalled at.

2 So we want to commit to continuing the  
3 movement forward with you. And we look forward to  
4 maybe seeing some of you next week at the Summer  
5 Institute that the BIE is hosting. We have about  
6 1,700 registered teachers, administrative school board

7 members and tribal leaders that will all come to  
8 Denver, it's our yearly event. We're excited about  
9 the agenda, we're excited about the 600 hours of  
10 continuing education that we'll be providing the  
11 teachers and administrators and the topics that will  
12 be highlighted there. I think Bill will be one of our  
13 keynote speakers, as well, Mr. Roman Nose as well. So  
14 we look forward to having you as our guests next week  
15 and hope to see those that are here there, all two of  
16 you. (Laughter all around.) But we appreciate it.

17                   And I'd like to thank our moderators,  
18 they've done an outstanding job. And even though it  
19 seems like, you know, it's a little overkill having  
20 two. You guys, we didn't know how unruly it was going  
21 to be so we wanted to make sure that we were well  
22 represented here. But they've done an outstanding job  
23 of planning, coordinating, providing feedback to us as  
24 the panel, and ensuring that we stay on message and  
25 that we stay on task and that we keep moving forward,

♀

141

1 that our level of professionalism stays high -- even  
2 though my ADD kicks in, I have a hard time doing that.  
3 But we look forward to reviewing your information.

4                   What will happen is that the documents  
5 and the comments that are gathered will be sorted  
6 through, they will be reviewed. We hope to put  
7 everything on the website, and I think it will cover a  
8 lot of the logistic pieces on how we're going to  
9 finalize. We'll set a date of final comments. Bill

10 will mention that in his closing comments today, when  
11 that will be.

12                   And if you have folks that still would  
13 like to make comment, we encourage you to do so.  
14 We're available to have a discussion at any point,  
15 that's one of the things that Director Moore has made  
16 clear to, not only our staff, but to tribal leaders  
17 and those of you that will want to continue a  
18 dialogue. So we know everybody is busy, as well as  
19 we, so we'll continue to work with you to keep this  
20 ticking along.

21                   So thank you from the Department of  
22 Interior, and I'd like to thank Bill and everybody  
23 else. I hope you guys have a safe trip home.

24                   MR. ROGERS: Could I ask a question  
25 quick, real short?

♀

142

1                   MR. DRAPEAUX: Sure.

2                   MR. ROGERS? Transcript. I don't know if  
3 it's possible to have it available before the  
4 June 15th comment deadline, the written comments, it  
5 would be helpful. I think there's a cost to do it  
6 quicker. She said normally it's ten days, and that  
7 would be one day before the comments. So if there's  
8 any way we could do a slightly expedited one so we  
9 could have access to this transcript, it might be  
10 helpful -- it would be helpful. I don't know if it's  
11 possible, so that's a point.

12                   MR. DRAPEAUX: We'll see. If it's



13 possible, we'll make it available. Thank you.

14 MR. ROGERS: Second thing is Chief  
15 Anderson asked for an opportunity to meet with the  
16 appropriate people at BIE to discuss those 611  
17 assurances --

18 MS. DRAPEAUX: Right.

19 MR. ROGERS: -- before something is done,  
20 we would reiterate that request.

21 MR. DRAPEAUX: Be happy to do it.

22 MR. MENDOZA: There's not much beyond  
23 what Brian expressed that I'm going to be taking  
24 about. I especially want to stress and echo his  
25 congratulations and thank-you's of the staff that

♀

143

1 brought us here together.

2 I often talk about when we were on these  
3 joint efforts, it's a good thing that I like these  
4 people because when you get two beastly agencies like  
5 Department of Interior and Department of Education  
6 together, things can get a little messy. So I really  
7 appreciate their patience and understanding. It truly  
8 does exhibit, you know, how much strong leadership and  
9 ability to have the same kind of level of passion and  
10 commitment for these issues, impacts our abilities to  
11 get these types of things done and the types of issues  
12 that they represent. So I can't say that enough about  
13 my colleagues here that I'm with today and those that  
14 aren't.

15 I especially want to thank everybody who  
Page 129

16 participated today. We do know that this takes  
17 tremendous resources to get here and to be able to  
18 kind of keep at this trail, this path, whatever  
19 analogy is appropriate. Some of you have been in this  
20 ball game for a long time and know exactly what is at  
21 stake.

22                   And I just want to speak to that  
23 understanding from a leadership standpoint, you know,  
24 bearing the responsibility of trying to pick up these  
25 issues where we all are with them, and the

♀

144

1 responsibility of the Federal Government, we truly are  
2 on the precipice of that decision-making with the  
3 reauthorization of ESEA, and (inaudible) and BIA, you  
4 know, changing from whatever executive authority into  
5 this term and hopefully next, who truly believe the  
6 President's commitment to these issues.

7                   And I couldn't stress more, you know, the  
8 words of Quinton, that we need to be together on this  
9 as Indian country. Wherever these conversations take  
10 us, we truly need to make sure that we follow them  
11 through with fidelity; otherwise, the forces that be  
12 will, not only be pleased with our inability to come  
13 to that point, but they will capitalize on it to the  
14 detriment of our Nations and, of course, to the  
15 detriment of those very students we advocate for.

16                   So I really appreciate your strong words;  
17 I would encourage you to continue to push on us. And  
18 we will be following up all the conversations that you

19 talked about, Mr. Rogers. Very sophisticated, not a  
20 disrespect to any of our other educators and leaders  
21 and representation. But I just, for one, truly  
22 appreciate it, you know, your characterization of  
23 them, the ways you put those together. So I will be  
24 following up with you on those critical points.

25 MR. ROGERS: Thank you.

♀

145

1 MR. MENDOZA: As to the conversation,  
2 time is of the essence, of course, appropriate time  
3 consistent with our policies. We have met our  
4 consultation policies in regards to how these  
5 proceedings have developed, but being meaningful in  
6 that is important to me as well, and I know it's  
7 important to the Bureau of Indian Education, and of  
8 course we represent that on behalf of the Secretaries  
9 and the President.

10 And so, you know, I think that we need to  
11 modify beyond the 15th, that is something that we  
12 haven't yet been able to discuss across the agencies.  
13 But considering where we're at, you know, I think we  
14 may have looked at National Congress of American  
15 Indian mediators as a potential point, you know, and  
16 if not that, you know, somewhere further out, maybe at  
17 the end of the month we will have more clarity, as we  
18 engage in the definition of this timeline, the  
19 flexibility, what might be a more appropriate timeline  
20 for MOU comments and to provide meaningful feedback as  
21 everybody is continually being informed by these

22 consul tations.

23                   We've seen how beneficial the roundtables  
24 were in that respect. We certainly value how these  
25 consul tations could further inform other tribes, other

♀

146

1 stakeholders' interests in the Memorandum of  
2 Understanding. So we're going to look at that. So  
3 the concrete, you know, June 15th deadline, I think,  
4 is one that we would like to have more conversations  
5 about.

6                   We, of course, have to talk to our  
7 superiors and make sure everybody is comfortable with  
8 that, and we'll proceed there. But I can't stress  
9 enough that we are missing out on opportunities at all  
10 of these levels without the establishment of this MOU  
11 and, of course, the responsibility the President has  
12 placed on us. It doesn't that say that we can't have  
13 these meetings and we can't move forward. But  
14 marching orders are always a lot stronger than what is  
15 currently being deliberated over.

16                   People do not want to make decisions on  
17 concrete principles as agreed on and how we're going  
18 to approach these matters. And that's exactly what  
19 the MOU establishes, it creates that mechanism that  
20 says, We have to respond now. The agencies have put  
21 this into motion.

22                   So we're going to push this as fast as we  
23 can to get this document through Interagency clearance  
24 between the two agencies and then move forward in the

25 interim with the ed committee to start engaging on

♀

147

1 some of these issues. And those conversations have  
2 already begun, especially in respect to the data  
3 subcommittee. And I agree there has to be other  
4 conversations around, How are we addressing these  
5 other critical components and demographics and  
6 populations. We can't, certainly, as a subcommittee  
7 ourselves do that in that respect, because after all,  
8 we want to have some collaborative conversations  
9 around the issues with as much senior leadership as  
10 possible, and that's what we're trying to create, and  
11 as much transparency around that as we can.

12                   These transcripts will, at the earliest  
13 convenience, be posted on -- or I shouldn't say  
14 "convenience," but at the earliest possible moment  
15 will be posted on respective websites for public  
16 scrutiny. The analysis of that will inform the  
17 Memorandum of Understanding, and I think a redline  
18 would be appropriate for not only how the 2005 MOU  
19 relates to the draft MOU, but especially, you know,  
20 what has been added after that.

21                   So we'll look into how that is  
22 communicated. And I would almost venture to guess  
23 that that would probably be placed within the website  
24 for access, and then we'll communicate through e-mail  
25 and other mechanisms, maybe the tribal leaders, you

♀

1 know, that final draft or final comment, whenever  
2 we'll close those comments off.

3           Again, just thank you to our host  
4 Nations, you know, here in Tennessee. We do our best  
5 to try to be in places that are logical and make  
6 sense. And, you know, so please convey to those who  
7 aren't here the e-mail addresses, the addresses --  
8 physical addresses of which people can communicate.

9           We at the Department of Ed have been  
10 trying to look at these, How can we garner the most  
11 access, How can we make it be a process that people  
12 can contribute to? And beyond notification, beyond  
13 trying to be out in Indian country under increasingly  
14 diminishing resources, you know, we're at a loss. So  
15 we're always welcoming of ways that you think that we  
16 could do better.

17           I think we should have had a greater  
18 turnout here, especially given the rich resources and  
19 in this region, especially, and the kinds of things  
20 that tribes may or may not have an appreciation for  
21 what's at stake. The comment was made it was smaller  
22 tribe (phonetic).

23           MR. BOUGH: Small and needy.

24           MR. MENDOZA: Small and needy. The  
25 majority of our tribes. Our nationhood is at risk;

♀

1 until we are approaching those vast majority of

060512 66845 Bureau of Indian Education Nashville  
2 tribes, that notion of 566 distinct Indian Nations as  
3 a political entity, is at risk. And we can't continue  
4 to hang our hat on the notion that treaties are the  
5 basis for that, because that, at its core, is  
6 susceptible to majority rule. And as numbers are  
7 bogging (phonetic), we're losing that battle. We need  
8 to focus on that substance of who we are and that  
9 education is -- someone smarter than I said, Education  
10 is the backbone of our Nation. And if every tribe  
11 thinks about it in that way, we should be going after  
12 that 90 percent, we should be addressing the 10  
13 percent that we arguably do have an impact on in a  
14 dramatically different way. Because all of that is  
15 tremendously disappointing.

16 So for whatever that is worth, I just  
17 want to thank you all for allowing me to be here, to  
18 express these words, as substantive or philosophical  
19 as they are, and a thank-you to my colleagues here.  
20 Thank you everyone.

21 MR. MACALLISTER: Brian?

22 MR. BOUGH: I have nothing to add.

23 MR. ROGERS: This being the last meeting,  
24 I have a few things to add. I would like to thank all  
25 the representatives who have been here from the

♀

150

1 Department of Interior, from the Bureau of Indian  
2 Education, from the Assistant Secretary of Indian  
3 Affairs, also the Department of Education and the  
4 President's Initiative.

060512 66845 Bureau of Indian Education Nashville  
5 It's been a great pleasure, and I am so  
6 grateful to you for taking the leap of faith, you  
7 didn't know either Ms. McKay or myself as  
8 facilitators, we hadn't worked together in the past.  
9 I would also like to thank Margaret Treadway, the  
10 Assistant Secretary of the Indian Affairs Office,  
11 Regulatory Compliance, Regulatory Affairs, and  
12 collaborative action who sponsored my firm, who, with  
13 whom I do work in the Assistant Secretary's Office,  
14 and allowing us to provide us the facilitative support  
15 to you all.

16 It's been a great pleasure to learn so  
17 much. I do have a background in education; I was the  
18 former vice president at the Santa Fe Community  
19 College for a number of years, and before that 20  
20 years with the University of California. So I've got  
21 a little bit of background there, as well as a long  
22 history of with working with the Native American  
23 Tribes since the late 1970s.

24 I'd also like to thank the nearly 200  
25 participants that we did have in these meetings. This

♀

151

1 meeting is not representative of the size of all of  
2 them. So Ms. McKay and I did earn our keep in some of  
3 the larger sessions. So I want you to have a sense of  
4 comfort that it wasn't just the government  
5 overspending to have us here for all the meetings. We  
6 did actually do some work. We did have to keep order  
7 in some of these.



8           060512 66845 Bureau of Indian Education Nashville  
          And I would certainly like to also echo  
9 the thanks to Yvonne Davis for her logistical support,  
10 all her patience and efforts to make sure that these  
11 meetings came off in a well organized and logistically  
12 comfortable way in venues scattered from Northern  
13 California to Nashville, Tennessee.

14                   So it's been a pleasure to work with  
15 you-all, and thank you for the opportunity.

16                   And certainly last, but not least, I  
17 would like to thank you my colleague, Monique McKay  
18 for her perspectives, her experience and her sense of  
19 connection with individuals, and sense of humor, as we  
20 have gone through these travel connections and things  
21 like that that make it a daily challenge. Thank you  
22 very much.

23                   Monique, would you like . . .

24                   MS. MCKAY: I get the last word today. I  
25 just want to first thank Bruce for inviting me to join

♀

152

1 this. When we first started talking about this, I was  
2 really excited. My dad founded, ran the first  
3 department of Native studies in Canada, and so I just  
4 grew up believing that everybody thought Indians  
5 should have sovereignty over education, or in Canada,  
6 all Native people should have sovereignty over  
7 education and Indian control over Indian education.  
8 That was just like a mantra growing up in our  
9 household.

10                   So I'm really excited to be at least a

060512 66845 Bureau of Indian Education Nashville  
11 little part of this initiative and just seeing how  
12 people have come and brought their passion and their  
13 expertise and experience over a long period of time to  
14 all talk about how we can make education better for  
15 our kids, how we can make sure that our kids  
16 contribute to our communities, keep our communities  
17 strong.

18 Thanks to these guys, it's interesting,  
19 as you go from meeting to meeting they hear sometimes  
20 almost the exactly opposite perspective coming from  
21 different people. And they've listened patiently and  
22 really thoughtfully. So I just thank everyone for  
23 putting their heart and soul into this effort.

24 MR. MACALLISTER: Thank you. And with  
25 that, I'd like to turn the session over to Mr. Roman

♀

153

1 Nose again. He's graciously agreed to give us the  
2 closing blessing as well.

3 MR. ROMAN NOSE: You asked me to do it,  
4 which I'm glad to do it. Usually with any meetings, I  
5 get personalized when I gave the prayer -- it reminded  
6 me of a story, about five years ago, one of the last  
7 few times I was on the basketball court, I went  
8 someplace and only had a few -- had some dollars; I  
9 knew what was on the menu at IHOP, I went in there and  
10 I got me a big breakfast. I got ready to pay the  
11 check, it was about half of what it was normally. I  
12 said, Are you sure this is right? She said, Yes, I  
13 gave you the senior discount. I didn't ask for it,

14 060512 66845 Bureau of Indian Education Nashville  
but thank you. I know you meant it in a good way.

15 Let's bow our heads. Dear Heavenly  
16 Father, we thank you for this wonderful day of work to  
17 come together and share our ideals. I'd ask that you  
18 bless us as we go out on our ways and empower us to go  
19 forth and do our business and do our work for our  
20 Native youth, Lord, and have each one of us be safe in  
21 our journeys home to our families, wherever they may  
22 be. Ask this in your Son's name, amen.

23 (Proceedings adjourned at this time.)

24  
25

♀

154

1 REPORTER'S CERTIFICATE

2 I certify that the foregoing proceeding was  
3 taken at the time and place therein named; that the  
4 proceeding was reported by me, a Shorthand Reporter  
5 and Notary Public of the State of Tennessee, and said  
6 testimony, pages 3 through 153, was thereafter  
7 transcribed into typewriting.

8 I further certify that I am not counsel or  
9 attorney for either or any of the parties to said  
10 proceeding, nor in any way interested in the outcome  
11 of the cause named in said proceeding.

12 IN WITNESS WHEREOF, I have hereunto set  
13 my hand the 18th day of June, 2012.

14  
15  
16

060512 66845 Bureau of Indian Education Nashville

17

18

19

20

21

22

23

24

25

Deborah M. Fernau, TLCR No. 306  
My commission expires: 07/06/2015

♀