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
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
And this is my partner Monique McKay, who has worked with me now for almost eight years.

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

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

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

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

So, if you will, Brian.

MR. DRAPEAUX: Good afternoon, Brian

Drapeaux, Chief of Staff, Bureau of Indian Education.

MR. MENDOZA: Good afternoon, William

Mendoza, Director for the White House Initiative on American Indian and Alaska Native Education.

MR. BOUGH: I'm Brian Bough, I'm an educational research analyst with the Bureau of Indian Education and a member of the Sauk-Suiattle Indian
060512 66845 Bureau of Indian Education Nashville Tribe of Washington State.

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

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

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

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

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

MR. SWAN: Walter Swan, Line Officer, Southeastern States Bureau of Indian Education.

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

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

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

MR. MACALLISTER: Thank you very much, sir, appreciate it.
Let me give you a little road map to the session this morning. Typically, because we've had varying sizes of turnouts everywhere, from over 100 people to smaller meetings like this, we don't know what we may encounter and so we've been asking people to sign in if they want to speak. I think in this case, we've got that list; we'll definitely make sure that everybody has a chance to speak. I don't think that's going to be a problem for our session today.

And the whole idea here is to give you the opportunity to hear a presentation about what is pending with the Bureau of Indian Education and its joint initiative with the Department of Education and some additional information on an initiative called the Flexibility Request which has to do with changing the approach for providing measurements and metrics for annual progress for our schools.

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

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

But one thing that we will ask you to be doing is, as we go from person to person, again, just for the record, if you'll state your name and tribal
affiliation or your tribal representative status, you
know, if you're here as a representative, as some
folks are, just get that into the record for us so
that we keep who is giving what comments straight.

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

Rest rooms are right out the door and

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

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

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

Again, if we can just remind ourselves

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that we're all going to be trying to listen to one another here and keep our cell phones in check and things like that, that will be great.

And with that, I'm going to turn it over to the panel. And we'll start, I believe, with Director Mendoza, who will give us an opening presentation, and then we'll move through the various panelists.

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

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

The items that you're being asked to consult on today, you know, are certainly specific in the sense that one is the Memorandum of Understanding; the other is, of course, the Strategic Implementation of the Executive Order, and also added to the agenda
is the flexibility package that the Bureau of Indian Education has put forth in their proposal.

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

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

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

And so that was the inspiration behind

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

Quite frankly, as I've come to characterize it, we cut it with a knife and, say, 90 percent of our students, as tribal leaders express, do not have a meaningful connection to those students or a meaningful role in those students' educational experience, and they want to have more of a role in there. So we're really looking at innovative ways, ways that have legs to them to get us beyond administration turnover, political turnover, to get at the core of these issues. If it's an issue of accountability, we need to address that. If it's an issue of resources, we need to examine that thoroughly. Does it have to deal with just not having not having enough resources, or are we not doing what we're supposed to with the money that we have?
Those are the kinds of critical questions, the kitchen table questions, if you will, from WBP, in that proverbial safe place for us to have these conversations. And although we are, you know, on public record here, we have to begin to push for those kinds of venues that we can then discuss these issues. And what is the role of the Federal Government? What is the role of the tribes? What are the role of states? And how we can work, as the best-case scenario, in all of the positive ways that can bring together the kinds of quality experiences for our students that we need, and, of course, the kind of outcomes that we desire. Because it's not so simple as saying, We need to create 21st Century citizens that are better equipped for today's job market.

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

And coming from tribal leaders like yourself, we certainly appreciate our tribal leaders who are able to join us today, and especially our educators, you know, that's where's those innovations are going to come from, that's where those enhancements are going to come from. And we deal with
the whole system of accountability here all the way up to the American public.

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

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

How are we addressing that? Today we have addressed it in terms of silos (phonetic), we have looked at it through what I often dramatically characterize as the myopic lens of the Bureau of Indian Education and tribal colleges and universities which serve, although, a critical population of our students, a very extreme minority.

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

So we need to be reaching out in ways
that we haven't done before. And so from the
Department of Education's standpoint, we want to do a
better job of that. Secretary Duncan is committed to,
you know, trying to address those issues head on, and
he has said to tribal leaders, he has said
consistently, that those ideas are going to come from
you-all. And so we're particularly interested in
those solutions and as much specificity as you could
bring to us, we would appreciate it; if it's a
resource issue, which resource issue, the title needs
to be changed. If it's all of the ESEA, help us break
those down individually in the way that you understand
them and how they impact your communities.

You have within your packet, and I hope
everyone has received a packet, of course, our agenda,
which Mr. MacAllister will make sure that we go
through in an appropriate fashion today. And you've
also been provided with a copy of the President's
Executive Order. We tend to take it for granted that
-- we -- these are our babies, in some respects, so we sometimes think everybody has studied these as much as we have, and they've gone through them, but just in case for your review, and, of course, as you take it home, we have that for you.

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

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

Also in here, I mentioned some of the other mechanisms, but we do release to the press these important events that we think we need to have people's opinions, thoughts, and ideas present. The
press releases it there. Also attached to that
document is the Memorandum of Understanding Proposed,
Memorandum of Understanding that we would like have
your feedback on today.

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

only one portion of that.

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

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

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

So that’s one of the clear parts of the MOU that I want to draw to your attention.

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

We also have, of course, the summary of the Bureau of Indian Education, ESEA Flexibility Request, and they’re going to be presenting on that specifically. But I want to speak to you to the education’s responsibility in that regard is that we will be reviewing this process, and we have already looked into, you know, what it is between our agencies that we need to do to begin meaningful conversations around this now that we have a proposal from the
In general, that process is about a 9-to-12 week process, and none of the applications that have come in from the States themselves did not go through some type of editing process where we needed to make sure that what their State put forward was consistent with the principles of the ESEA waivers. And Mr. Bough will discuss some of those principles in detail. At that time, you know, we'll, of course, be looking at additional outreach guidance as to that process that we're going to be engaging with the BIE.

Also there is the original Memorandum of Understanding for your consideration so that you can see how much has changed or not changed and, you know, to complement the course, the background of the MOU. But I just want to say thank you to our tribal nations for allowing us to be in this area, as I always do characterize, the United States is and always will be Indian country. And so I just want to -- there's Oglala, Sicangu Oyate enrolled in Oglala that have deep roots in Pine Ridge and Rosebud, and if I don't claim both -- I will get beat up if I don't claim both. So I just want to acknowledge that we're guests here.

As to Quinton's question to who brought their cowboy boots and stuff, I mentioned to Brian, I
Mr. Drapeaux: Thank you, Bill. I, on behalf of the Department of Interior, Secretary Salazar, Acting and Assistant Secretary "Del" Laverdure, Director Moore -- who was scheduled to be here today, but was called to a meeting with the Secretary today, had to change his travel plans last night -- would like to thank you for joining us today.

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

It's not a new conversation, obviously, but it's one that we think requires the type of attention, especially at this day and age with the current evolution of education happening in the United States, that we in Indian country continue to move forward in our own plans and designs of how we want to operate our schools and what that looks like in terms of tribal self-determination, government-to-government, nation-to-nation, and the mechanisms in which tribes utilize in order to bring
those resources to bear in their own local communities, whether it's 100-297 Grant, or 638, or self-governance.

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

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

The MOU is something that was really evident to us at the BIE when it expired in 2010, that
it was a document of opportunity; although, it was
a -- from 2005 to 2010, it was a document used for,
basically, a mechanism to move money and how that
money should be accounted for and so on. What we were
excited about was that we started to get secretarial
and deputy secretary review of the work that we were
doing. In fact, Deputy Secretary David Hayes, I
think, made at least one trip over to the U.S.
Department of Ed to his partner, equitable level, Tony
Miller, I believe his name is, at the U.S. Department
of Ed, have a dialogue around Indian education and
what was being there.

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

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

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

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

So 97 percent of our budget never gets discussed by tribal leadership, and we saw that as a serious problem in terms of Indian education and highlighting the policy statements that we were
And so fortunately we have great leadership at the U.S. Department of Education in the form of Secretary Duncan and Bill Mendoza sitting here; that they continue to work with us and drive these issues forward and try to find a mechanism in a way to not only raise issue during this current administration, but in a sustained manner; that we get the attention and the resources and the -- all the bells and whistles that public school and other education entities receive in the United States.

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

So we are excited about having this dialogue, we look forward to your comments, and hopefully we'll be able to answer to all your questions and concerns as we move throughout the today.

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

MR. MACALLISTER: Mr. Bough.
It's a tremendous honor to be able to present this information to you today. Any time I get to speak with the tribal communities, I really relish the opportunity because I get to bring some information to them that they may not have access to or be able to ask questions about. So I encourage you to ask questions at any time. It's your opportunity to learn, it's my opportunity to get feedback on what it is we're proposing in our accountability system and how we would like to see changes made. But by no means is this final; this is something where this is the point in the process where you could have a considerable amount of input and sway over what the Bureau of Indian Education does for accountability.

Again, my name is Brian Bough, I'm the program manager for the data accountability program within BIE. That means that I handle data collection and reporting to the U.S. Department of Ed, within Interior, the Office of Management and Budget, and pretty much anyone else who may be calling that wants to have access to that information, in some way, shape or form, I get to deal with them. It also means that I make the accountability determinations, that is, adequate yearly progress determinations. So I tend to be one of the most hated guys on the entire Bureau. At least I smile with people and treat them well.
We have to acknowledge that there are some problems that we have accountability over the last few years. And let me pass out these slides that we printed. These are select slides, and they are by no means all the ones that are included, but they're the most key ones that we have.

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

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

Again, this is a proposal. We want to have your input on this particular item, so comments are most certainly appreciated and will be taken into consideration. And then we're going to address some of the benefits that accrue from applying for Waiver of Flexibility as having it granted over the course of this year.

Back when No Child Left Behind was passed into law, the Bureau conducted a negotiated rule-making session that determined how we would implement No Child Left Behind for the Bureau of Schools, that is, schools funded by Bureau, ones that are directly operated and those that are tribally controlled.
No Child Left Behind required all students to meet rigorous state testing targets in reading, language arts and mathematics. And it set the target at 100 percent student proficiency in reading and math by the year 2014.

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

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

For the BIE, the task was a little bit harder. The negotiated rule-making sessions determined that we were supposed to use the definitions of accountability for the state in which the funded school was located. So, for example, our schools in Mississippi, they used the Mississippi standards, assessment and accountability criteria for determining AYP; our schools in New Mexico used the
the final regulations came out in 2005, and it set us to using the state's definitions of AYP, their assessments and their academic content standards. Those are very important. That means that currently the BIE has 23 different ways to calculate AYP. So if you have 23 different standards for judging whether a school is successful, you don't have a single standard by which you can determine if the school's successful. There's been perceived unfairness in this system according to many of the states and tribes by which these determinations are given out.

Because of the complication in using a 23-state system, the BIE wants to simplify things and move to a single system, that would be a single set of standards measured by a single assessment and having accountability determined by a single set of criteria. In order to accomplish this, we must first amend 25 CFR, Section 30, 104 A, and that is the part which specifically says that we need to use the 23 states' definitions of AYP, their academic content standards and their assessments; and we would move to a system where we have one set of standards based on the common core of standards developed by the states, have a single assessment by which those are standards are measured -- for contractual reasons, I can't say probably which assessment that's going to be -- and
then have a single set of accountability criteria by which all schools will be judged. And we're going to talk a little bit more detail about our proposal here in a moment.

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

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

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

So if the school decided to really
emphasize reading, and they decided not to emphasize math as much because they know that they're not doing so well in math, any surplus they had after hitting the target wouldn't be considered in the school's AYP determination. And so we're going to change from a system to one that gives the school credit for the level of achievement in reading, and it may come at the expense of math, but overall it might balance out. The theory behind this is that some schools will emphasize reading to get their math course to improve down the road, because then the students start doing better in terms of understanding the problems, especially word problems. And the schools that have tremendous growth in reading areas often see math grow in subsequent years because the students are better able to grasp and respond to the questions. It emphasizes narrowing achievement gaps across groups.

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

We are going to increase the quality of instruction in the same manner. And as we get the test results in, we're going to turn them around more quickly and work with the schools, based on their students' achievement scores, to address areas of weaknesses that are identified on the assessments.
Finally, we're going to be able to see a way to formally incorporate up to 15 percent of the common core based on the tribally developed standards so that the things that the tribes find that are important -- language, culture, history, government -- these kinds of things can be partly what their AYP -- or their accountability determination will be based upon. In other words, the accountability determination will take into consideration what it is that the tribes value and help make that be part of judging whether the school is successful. This flexibility will build on the support of reforms already under way in the BIE.

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

So if you go to the U.S. Department of Education website and look up ESEA Flexibility, you will see state applications that are more or less going to align to these particular principles in very
specific ways that answer specific set questions by
the U.S. Department of Education.
The first principle is to set and
establish college- and career-ready standards for all
students. The way in which states have addressed this
is by adopting the common core standards. Those
common core standards were developed by two consortia,
funded by the U.S. Department of Education, the
SMARTER Balanced Assessment Consortia out on the West
Coast and the Park Consortia here on the East Coast.
And what they're going to eventually do
is develop assessments that measure those common core
standards. The BIE will look for moving to a common
core officially as a Bureau as a result of this
application. This is also, in part, acknowledging
that 18 of the 23 states where the BIE have schools
have already applied for this kind of flexibility.
All but one state is also proposing to move to the
common core standards. So this is a way to formalize
and render consistent across all Bureau schools the
application and implementation of the common core.
Principle 2 is the development of a
state-developed differentiated recognition
accountability and support system. Differentiated
recognition is sort of the new parlance for

identification of schools and the school improvement
statuses, or AYP statuses.
And so when we talked about a
differentiated recognition system, we're talking about assigning schools into a particular status, and the status conveying upon the school is either a certain recognition for a job well done or a certain help, support, that the BIE can provide to the schools and improve the academic outcome there.

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

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

This part of the application is one where we can make a tremendous amount of difference at school -- and like I said, I'm very sensitive to this because I'm the person that collects the data and I'm the person that reports it -- by identifying areas where we can improve efficiency in data collection and reporting.
The new accountability system as proposed, all students should be prepared for college or career upon graduation from a Bureau school or a tribally controlled school -- I have to be very specific here. The BIE will adopt the common core standards as developed by the states, and we will use a single assessment for measuring whether students are achieving on this particular set of standards.

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

Now, you might ask, What's the difference? The way in which the Bureau will implement the assessment system is by testing students three times per year. On the first assessment we will generate a growth target for each student so that that's based on that particular student's level of achievement at the beginning of the year and sets a target for them at the end of the year. Whether a student hits that target determines whether that student has made an adequate amount of progress across an entire year.

There are some business rules we'll have to put into place for students that transfer in and
students that transfer out, and so on and so forth. Proficiency will be measured in the same way that it has always been measured, that's going to be the percent of students scoring "proficient" or "advanced" on their assessments.

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

The idea behind our new accountability system here -- I want to see what's on the next slide -- is that we will take each of these indicators and we will incorporate it into what we call an "accountability index." We give schools credit for the degree to which they achieve on the proficiency measures or on the progress measures, not simply looking at whether they hit the target or not and saying yes or no. So if your school has 70 percent of its students proficient in math, you will get 70 percent taken for that math indicator and incorporate it into the accountability system.

So if you're hitting the target in math but you're exceeding it, let's say the target is 65 percent, you've exceeded it by 5; let's say your reading target is also 70 percent, but you only scored 68, well those extra 5 points will help make up the
difference for the reading category, so that you can take some points from one area, apply to another area, and the school could be judged as making sufficient progress overall, they'll get a satisfactory accountability determination.

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

The idea being that we take an indicators, we weight them so that no one indicator is heavier than any other, and in the process we have a more well-rounded picture of what's actually taking place at the school, not a simple up-or-down determination like we had in No Child Left Behind on about 15 different areas, where any one of them would cause the school to fail if the school didn't meet it.

The benefits from flexibility is that we take student achievement and put it right back up at the top of the spectrum here. We're not looking at subgroups specifically; where we see subgroups dominating the AYP determination system based on their performance on an indicator, where if one subgroup failed to make the indicator in any one category, then the school is judged to be failing. We look at student achievement more generally: We want to know whether the students are achieving, and we're going to
set targets that are ambitious but achievable for each school. And the importance of this is that we're giving schools credit for the level of achievement that they are able to get from their students.

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

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

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

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

The realization is, on the other hand, the flip side, the 23 state definitions, the states that are applying for and receiving flexibility under
the current flexibility model have developed accountability systems that are so complicated, that it's difficult for the Bureau to replicate what a state does, and so it's not going to be something that we can tackle.

Having a single measure, a single standard, a single assessment, so on and so forth, is going to allow us to give out accountability determinations much more quickly that are also more meaningful and comparable across state lines.

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

Finally, the alignment of resources will allow BIE to provide better technical assistance and professional development to schools. When we have a 23-state system, the BIE is very fragmented in how it can provide support to its schools. So if you think about curriculum support or support in understanding standards or support with regards to addressing the
assessment, if you divide that by 23 -- I shouldn't say "divide" -- you should multiply that by 23, that fragments out the ability of the resources of the BIE to address any one of those areas.

By unifying all the different accountability standards' assessments into one system, the BIE's resources are magnified, that is, we only have to worry about addressing those standards and that one assessment, and in doing so, we've magnified the ability of the BIE to provide services to schools. The other benefits we have from the flexibility is that the waiver is an opportunity to effect significant reforms in BIE-funded schools consistent with the national reform movement.

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

For us, the most significant reform is the unification of the accountability system, moving from a model that uses the 23 different state definitions of AYP to a single model that has a common core set of standards, a common set of assessments for
methodology that levels the playing field for our accountability determinations.

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

And what is the deadline for that?

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

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

And so one of the opportunities that I think we're going to employ is to have the waiver be
managed at the local level by our education line officers, to invite school personnel into a single location for a period of time to actually redline the document, make comments into proposed language, to truly allow you the opportunity to sit and to talk through the 130-page document line by line, sentence by sentence if you like, to really get a sense of what it is that you think is important in this waiver flexibility package.

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

And so we see the Flexibility Waiver as an opportunity to engage you at the barest level, I guess, about how BIE-operated/BIE-funded schools should be governed. And this really comes down to governance, and it comes down to what is the role of
tribes in terms of Indian education. We’re excited about the waiver in that, the 15 percent that’s available to states today to highlight the things that are most important to them, we haven’t hit a consultation yet or had meetings with tribal leaders yet where the issue of language and culture have been at the forefront of the discussion. And yet in the states that each of these tribes sit in, the opportunity, other than, perhaps, maybe South Dakota and Montana, there’s a rare opportunity to provide real curriculum, real opportunity, real priority for those issues for tribal nations. And so we’re looking for those opportunities, those vehicles that will provide that for you to highlight those areas that are important.

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

MR. MACALLISTER: One quick question: Is there a different deadline for the comment period for the MOU based on the Secretary’s -- the joint letter from both the Secretary of Education and from the Secretary of the Interior -- for the MOU portion of this, is there any different deadline for that than as applies to the Flexibility Request?

MR. DRAPEAUX: I will say, as I stated earlier, that the flexibility is introductory;
although this is consultation, we want to introduce the concept to you and to alert you to its existence, to encourage you to go out and read it and to start formulating your own ideas and concepts around real major issues in terms of Indian education governance, and so there will be different timelines. Those timelines for the Flexibility Waiver have not been set yet; the timelines for the MOU have been set.

MR. MACALLISTER: Thank you. Other comments from the panel before we open up the session for tribal consultation?

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

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

MS. MCKAY: Let's take our 15-minute break, we'll come back at ten after. I live to serve.

(Brief recess was observed.)

MR. MACALLISTER: The protocol, again, just to remind everyone, when you begin your address to the panel, please give your name and your title or your representative capacity, your tribal affiliation, whatever is appropriate to your particular
circumstance and, you know, just move from this end of
the table, we can be fairly informal here. I think
typically what we've been doing with larger groups is
asking the panel to wait to give comments until after
the -- everybody has had a chance to speak. But if
there's a particular question or a dialogue that we
need to have around a particular issue, a more
detailed question for the Flexibility Waiver Request,
things like that, I think we've got the flexibility
here to be -- just allow a little more dialogue
dynamic, and after all, that is what our objective is,
to make sure that there is an actual, you know,
vibrant consultative process.
So without further ado, sir, if you will.
MR. ROGERS:  Good afternoon, I'm Bryant
Rogers, I'm an attorney and I do work in the field of
Indian law, I'm a board-certified Indian law
specialist out of New Mexico. I've been asked to

speak by Chief Anderson for Mississippi Choctaw,
Mississippi Band of Choctaw Indians today in this
consultation.
I wanted to ask, should we address the
Flexibility issue first and then move to the MOU
separately, or how do you all want us to -- there are
sort of two topics, they sort of overlap a little bit,
but . . .
MR. MENDOZA:  Whichever you deem --
MR. ROGERS:  Okay. I'll talk a little
Let me just say one little thing about my background. I first started working for Mississippi Band of Choctaw Indians in 1971 as a planner. The job they hired me to do was to assist them to take over BIE programs that were being operated by the Agency. This was five years -- or four years before this 93-638. We used the Buy Indian Act Authority to do it, and it's very gruelling and difficult. I could tell you some stories that would make your hair stand on end about the way the Bureau resisted that effort and what efforts they took to prevent the tribe from achieving that. But we did achieve it.

So my whole sort of legal career, because I left to go to law school after that, has been focused on facilitating tribal decisions, either to take or not take federal programs and to otherwise exercise their rights and prerogatives under federal law and tribal law.

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

When we look at something like this flexibility plan, the first question that the tribe, you know, isolates is, Why? Why is it necessary? Is it a good idea? And the secondary question is can it
legally be imposed on them without their consent? 

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

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

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

Well, that raises a spectre of -- Mr. Drapeaux put his finger on it -- What is the role of BIE and Indian education governance? The answer to that question is very different for the tribally controlled schools than it is for the BIE-operated schools. You have every legitimate reason and concern to want to deliver a better product in the
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BIE-operated schools. But how to achieve a better product has been turned over by Congress to the tribes and the tribally controlled schools. They want to control their schools; they don't want you telling them how to do that.

They have to follow the core minimum AYP standards, they don't dispute that; the regulations make that clear, they've never bucked against that.

But they see no value -- no value -- in being forced to adhere to a BIE-implemented, standard AYP data collection. Because data, you know, that's the first step, is reporting, and then there's, you know, oversight and compliance and all the other things that go with it. We acknowledge that BIE, under the regulations, has the authority to impose sanctions against tribally operated schools who don't meet the standards. But the standards are up to them to decide under the regulations. So their basic premise or basic response is, No, this is not a good idea.

Now, there's two options that they would say are perfectly fine: Develop a model set of these standards, and if the tribes agree to adopt them, let them adopt them, they have the authority to do it already. The other option is develop and impose a unified standard but leave the tribes the option to either go with their state or go with their own system. They don't see any value in being forced to follow one uniform system. So that's the
MR. DRAPEAUX: I would like to respond to that. The points you are making are great points and points that we've talked about internally as we moved forward with this. One of the challenges that we have in terms of the BIE is really -- it comes down to, back in '02, '03, when the negotiating rule-making committee made the decision that they did, my question -- I'm a former vice chairman of my tribe, and I'm new to the Federal service, and so I look at things from a tribal governance perspective in the majority of the work that I do and what my responsibility is to tribes. And so if tribes choose to defer their sovereignty in terms of education to states, then they should be allowed to do that, we agree.

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

And so for those tribes that want to defer that, that's their right to do that. They have an option, however, if they want to, for example, maybe take a look at what we're proposing, what their
current state is proposing, but they like the 15 percent piece to develop, then they should look at the model that we're putting on the table to help develop that, then, that 15 percent that's applicable to them and their particular tribe's needs.

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

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

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

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

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

MR. BOUGH: Well, I have a question that
gets to the very first basic question is to why would
you actually do this, and I'll just be very candid
with you, because under the current 23 states' models we don't have the ability to replicate what AYP systems states are going to be implementing.

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

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

The other reason is the tribally controlled schools evaluate their own teachers on an entirely separate schedule. So how can we reconcile this under a state's accountability system and do an accountability determination based on the what the
state is doing? The answer is you can't, I won't be able to do that.

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

Y'all's difficulty is you're not a tribe, and so you don't have the -- I can see why these regs need to be changed to let BIE function more efficiently for the BIE-operated schools. But, again, our concern is that this not be broadened to say, Tribes, even though you're operating the schools, you have to do the same.
And I didn't hear -- I mean, I appreciate Mr. Mendoza's clarification on that, I don't see anything in this document that tells me that. So it's a huge red flag for them and for some of the other tribes that we represent.

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

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

It is a fundamental philosophical, and legal problem here that they want less rather than more BIE involvement in their life, and that spills over to the MOU. I don't really have much more to say, they will do formal comments about the flexibility plan, but I have to say your comments are the most refreshing thing we've heard, Mr. Drapeaux, in terms of recognizing the tribal choice is still to be recognized.
Now, I did have one more question: If you are going to seek change in the Part 130 regulations, are you going to do negotiated rule-making?

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

MR. ROGERS: You are? That’s also good.

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

MR. ROGERS: Yes.

MR. DRAPEAUX: However, that should not stop us from creating a conversation around the very issue that everyone is going to run into at multiple levels within states as they attempt to educate their children. But we are looking at a way to, perhaps, put in an interim rule to the point of where we can do a negotiated rule-making. And so we’re working with the solicitors to put the timelines together.

That’s why Jeff was asking, you know, across the room, Have we sent the letter yet? Well, the answer is, no, we haven’t sent the letter yet to tribes, because timing is everything, and we’re running out of time, quite frankly, in certain states.
that we need to do something. But there's just so
many questions in the air, and we've got to negotiate
with our colleagues at Ed, but we're going to continue
to drive the discussion because we think it's worthy
have to have.

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

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

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

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

And so we're, you know, trying take our
hands off the wheel, so to speak, in terms of how
money is allocated, how we are -- the rules around the
programs that we're putting out into the field,
whether they're reading or math programs, or what have
you, as much as we can from a Department of Interior perspective; of course, Department of Ed money is a whole different cup of tea for us.

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

MR. ROGERS: Good.

MR. BOUGH: If I can add a couple things here, 104 Section B, the alternate AYP section, that's not going to be change. We recognize the value of having tribes develop their own accountability systems and we encourage them to do so. But the reality is for like, you know, our friends at Navajo have been working on it for quite a while, we require the same level of rigor in the development of an alternate AYP definition as is required in the states. And so that's extremely intensive in terms of time, resources, and money, frankly. And it's a very high target for them to hit, so that's why we don't have any alternate AYP definitions so far.

The other suggestion you have, which is to implement the current accountability system, is pretty reasonable, but I'll just remind you that the one element as to why we've gotten to this point in the waiver application process is that without reauthorization, we see the timeline for the AMOs, the annual measurable objectives, for AYP are going to be
100 percent across every state by 2014. And that's something that most states have asked for relief from, virtually all of them now, I think, are going to ask for relief on using the flexibility system, they want to get out from that. And I guess the simple answer to that question is to look for reauthorization of the law, and that will solve a lot of these problems.

Mr. Rogers: Okay.

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

Mr. Rogers: And this is David Germany from Choctaw, Director of Education.

Mr. Germany: Yes. Choctaw, yes.

Well, this year?

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

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

Mr. Germany: Okay.
MR. HAMLEY: I mean, the Department Ed is reviewing again in September. We're not on that timeline, we're going to -- when we submit, we'll request a review then. So there is another phase to it and will have to be factored into it.

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

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

Go ahead.

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

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

MR. ROGERS: Let me turn to the MOU. Sometimes I feel like we're -- I want to say again I really appreciated what Mr. Drapeaux said earlier, because there's a fundamental tension in all of the existing BIE administration of Indian education as it relates to the tribally controlled schools that manifests itself in issues about reporting, issues about assurances, issues about grant conditions. It manifests itself in these MOU provisions, and so it's
going to run the school and decide how they're going
to teach the kids or is it the Bureau? And that
permeates everything and it's never over.

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

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

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

We gave preliminary comments on the MOU,
Chief Anderson filed this last Friday. And the theme
basically is, again, concerns about BIE manifestations of control and desires to control these things and the tribes' resistance to that, both on a policy level and on a legal level.

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

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

We understand that No Child Left Behind added the AYP reporting and compliance component, they
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consider that to be part of the annual report. The
TCSA requires an annual financial report, an audit,
student count. We again consider that to be modified
by the AYP standards submission, which they do; they
have an evaluations in the form of their
accreditation, and that's it, no other reports.
It doesn't matter where the money comes
from, Congress has said the Bureau cannot require any
additional recording, obligations, requirements by
virtue of the fact that that money came from the
Department of Ed. And the tribes' position is that
the Department of Ed may not lawfully impose those
requirements on BIE. You cannot condition granting
the money to BIE on BIE being able to force the tribe
to do what you want. Congress has said no.
So our basic problem with the MOU is it
takes all the difficulties we have today in disputes
with BIE in reports and compliance requirements and
multiplies it dramatically. And it's just not -- as a
matter of policy, the tribe does not agree to that, it
is not going to help them run a better school;
diverting resources to more and more compliance
reporting is not going to help them run a better
school. But legally the tribes' position is neither
agency has the legal authority to make them do this.
Congress has said they're entitled to
have this Department of Ed pass their money, add it to
their grant, and BIE cannot add any other conditions
that relate to that. You will get an audit that shows
how they spent the money, you will get AYP. They
understand if they get extra money through Department
of Ed that requires them to spend a certain amount of
work on special ed, or something, they have to spend
it for that purpose, and that's what the audit is for.

They're not fundamentally opposed to
working out some data collection, they understand the
importance of data, but right now one of the comments
that Chief Anderson filed on Friday have a whole
page of reports that are being required by BIE
today -- we haven't even gotten to what the MOU would
impose -- that are, in our view, completely illegal.
They're beyond what you have the authority to impose.
And that doesn't even include the FASA report, the
Fiscal Self-Assessment, or whatever it's called,
Fiscal Accountability Self-Assessment for Special Ed
-- they don't do it. You've asked for it, they've
refused. They think it is meaningless, they don't
need it, and you're not legally entitled to it, so
they don't give it to you. Many schools do sign it --
do fill it out. Chitimacha tells me it's 80 pages
long.

So they have -- Look, they're willing to
work with y'all, they really are, to try to figure out
some reasonable data collection that would be useful
for everybody. But right now there's a complete
hodgepodge of duplicative, overlapping, burdensome
reporting, and it is not -- they're struggling to do it. They're going to be taking another look at what they submit because they just don't want to spend any more resources doing stuff they're not required to do.

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

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

Now, when Congress passed the TCSA, it's interesting, if you go back and look at the legislative history, Congress recognized that requiring reports was just another way of controlling the school operations. They specifically said in regard to the annual reports that are required under Section 2505 B that the Bureau is do nothing with these reports except stamp them (pounds table with fist) received. It is not to review them, not to analyze them, not to do anything with them. Why did they say that? Because, they said, this is a way to undermine tribal control, and that's why they put such draconian limits on what the Bureau can do.
Again, we recognize that the No Child Left Behind legislation is giving y'all more authority in regard to that annual report. But the notion -- I mean, there is a reason why Congress limited what reports you can require and why the regulations implementing the Act forbid BIE from adding anything to the grant conditions that isn't in the Act or the regs themselves, and that's because reporting and oversight and monitoring and all of that is another way of controlling.

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

That's what the words mean, "tribally controlled," that means they get to decide how they run those schools. They don't have to explain it to you, they don't have to justify it to you. And that's a fundamental thing. So we -- you know, we go, we look at the statute and we look at the legislative history, we look at their history, and we look at this MOU, and what permeates the MOU is the premise that you know better than them, the premise that your education ideas should dominate the tribes' education ideas, and that you're going to impose the agreement...
that the education department meets with BIE as a condition on all the flow-through funds from Department of Ed to the tribes. That’s not permitted by the statute. Y'all may have the authority to do an MOU; you don't have authority to use an MOU to supersede the Tribally Controlled School Grants Act. You do not.

So our fundamental problem with this MOU is the whole thing is premised on the notion that y'all are going to decide what is best for the tribes, and you're going to tell them, You dance to our tune, or you don't get our money. But Congress has said, No, you can't do that. TCSA couldn't be clearer in prohibiting Department of Ed and BIE from imposing those kind of conditions.

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

This MOU reflects nothing that a tribally controlled school would want. We are asking that you go back to the table and have tribal representatives that run schools at the table with you to look at this.
MOU and figure out how could it be made compliant with
the law and the policy that Congress has instructed
you to follow, because this thing does not do that.

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

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

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

Terms and Disagreements sets terms and
conditions that set the framework for future transfers
education law, and they're to be in one grant, under the same terms and conditions.

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

So the statute says the grant cannot contain additional terms and conditions that might apply if it came directly from the Department of Ed to the tribe. But Congress has decided they were really going to honor the notion of tribal control when this was passed; they were really going to let the tribes run the school and take all the resources that they
could otherwise get from Department of Ed and the
BIE-run -- of course, there was no BIE when this was
passed, but Interior -- and they're going to go
through Interior, they're going to award it to the
tribe and let them run the school with those
resources.

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

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

Congress rejected the idea that the
Federal Government should run these schools if the
tribes chose to run them. Congress said the tribes
are going to run them, tribes are going to set the
policy. So you can't undo that with this MOU, it's
just fundamentally the wrong direction, and it's -- the comments that are in the letter that Chief Anderson sent yesterday regarding the 611 money would apply to a lot of the stuff that would emanate from this MOU. For instance, there is a set of assurances there that is just appalling, it's mostly 43 CFR Part 12. 43 CFR Part 12 is the Interior OMB Circular A-102 rule, it implements A-102. I don't remember the Department of Ed version of -- you've got your own A-102 regs. They don't apply to school regs, these aren't grants that are subject to those rules, these are really contracts. The label "grant" is there, but the statute makes clear that they are contracts.

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

Secondly, they have things in there like the anti-lobbying certification, the standard form, tribes that -- like this tribe that runs their
schooling directly, they're not a separate tribal organization. They're not subject to those anti-lobbying certification requirements in the same way. We put a legal memo in the packet explaining that. And it was a memo from the Choctaw Attorney General's Office to EDA's attorneys who were insisting that the tribe had to sign this lobbying certification in order to get an EDA grant. They finally backed off and I have an e-mail from them agreeing, tribes aren't subject to those same rules.

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

And let me talk about this idea that somehow, if you compare the assurances -- and I'm saying this because the MOU is going to generate another series of assurances and reporting, this is just as plain as it can be.

If you look at the assurances that the
BIE currently uses, BIE for the schools, when you look at the assurances that came with that 611 packet, which, to me, is like, Why? You’re going to mod (phonetic) the money in to the same instrument, why do you need another set of assurances? They’re not even the same, but they’re not the same for this reason:

You can't -- I mean, there's a myriad of federal regulations out there and statutes, you know, it's a crime to kill somebody on an Indian school, right? Does that have to be a grant condition? Okay?

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

So the tribes, Choctaw, has no problem acknowledging that where a federal law or regulations require them to do or not do something and it applies to them, they have a duty to respond to that or honor it. They do not agree you can make it a grant condition that they obey federal law. You’re not the police. Congress did not give you the authority to pick and choose and enforce particular rules against them and use some kind of sanction mechanism because they violated the seat belt rule, okay?
In fact, Congress specifically looked at this when they did the Tribally Controlled School Grants Act. There was a provision in the House bill that picked certain federal statutes on embezzlement, like 18 U.S. Code 1163 and other provisions, there's five or six, they were going to put in the bill, and they dropped that. In the House report, conference report, they dropped that provision and left it silent because those things apply or don't apply by their own force.

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

So we have that -- we're concerned that this MOU, because of the approach that it's taking and premises that underlie it, are going to just generate more of the problem that we already have. It isn't going to help anything for the tribally operated schools. And we really -- we've tried to have -- we've asked for, three or four times over the last six years, an opportunity to really sit down with BIE and
work on standard grant conditions with a, you know, core set of assurances and things that are reasonable and so we don't get this myriad of things like a separate package for every add-on money, and, you know, we've certainly made some progress several years ago working jointly with the Solicitor's Office informally to get what was a 60-page grant instrument down to about 7 pages. But now it's the sort of battle about that it has shifted to the ed money, so now every time they get new money, they get this pile of stuff, which, it shouldn't be there. It should be built into the original grant -- we think it is already.

And we would welcome the opportunity to work with y'all to get a better grant package that addresses and anticipates the ed money that we all know is going to come and how it gets worked in. We would love to sit down and work with you over the MOU approach. I mean, this MOU, frankly, needs to acknowledge that the BIE does not have the power over the TCSA schools that it has over the BIE-operated schools, and is never going to have it, unless Congress changes the law. And Ed needs to acknowledge that. It's unrealistic to expect BIE to do something legally prohibited from doing.

If y'all expect that, you're going to be disappointed. The tribe is not going to agree to it. You can adopt all the MOUs you want. I mean, it's
just not going to happen. And I’m not -- this isn’t just Choctaw -- every tribally controlled school that really thinks about this is going to have this same position, I can guarantee you. They’re not going to give up what was a huge battle for them to achieve, which was tribal control. And we ask you to honor that and respect it, and we don’t see it in here. All we see is that these are barriers to be overcome, the right of tribal control is a barrier to be overcome? Where is the embracing of the Congressional policy of self-determination? It’s like it’s disdained in here. It’s like, to be overcome, it’s just -- I don’t know. I’m almost done.

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

MR. ROGERS: I’ll stop for now.

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

MR. DRAPEAUX: Mr. Bryant [sic], just so you know, I mean, has valid points and points -- as I stated in my opening statement, we’re excited about these consultations, because what you see is a conflict that’s reflected in the MOU and it’s really an opportunity to have a discussion like this. I know that the Department of Ed’s lawyers and the Solicitor’s lawyers have had a number of meetings
about this. And so that very issue that you're talking about, we as the people who execute budgets and have to deal with the day-to-day realities of the administrative portion of accountability, and under, you know, all guises of this system, would like a reduced burden as well, because we spend a tremendous amount of man hours, you know, trying to work on compliance.

And the piece behind the scene that no one ever sees is the pressure on the Bureau of Indian Education from other entities within the Department of Interior, as well as OMB, as well as Department of Ed, and others, to come into compliance, as they see it. And so we are at that point of push/pull in our responsibilities to serve all masters. And so that's where we find ourselves.

And so that's why we're here, we're here to have this dialogue, we're here to hear your input, we're here to, you know, further the opportunity and bring clarity to the position that tribes have. And we've heard it all. You know, I've been on the road, I think, 12 weeks in a row on consultation, and so we've heard it up one side and down the another about this issue, but I don't know if anybody has articulated it as clearly as you have, quite frankly, which we appreciate. Because we would like to spend our time doing something other than what we've been doing. And the burden on schools, we're,
MR. ROGERS: Can I make one more point?

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

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

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

MR. MENDOZA: We're here until 5:00 and we're here until tomorrow, Brian and I, I don't know about the court reporter. I just committed Brian with
I certainly have a deep amount of respect for Mr. Rogers and how he articulated so well those dynamics which do truly exist, and we are trying to work through. And, although I would disagree with you, you know, the impact, we just came from Bloomington, Minnesota, where we heard from the Great Plains that this MOU was basically the 2005 MOU, what's the purpose? You know, so to hear from you how substantive this MOU is is, you know, a complete contrast to how this is being interpreted in other ways, you know, that this really isn't doing anything different than what has been placed on there. So I'd really like to hear expansion on your thoughts about how you view this, will create additional burdens in particular to compliance and reporting.

I guess more on the impact side, although -- and I'm trying to be careful with my words here, I have no doubt that there is -- positive that this is happening within this region. But by and large, as we have a discussion about growth, gains, quality of experiences, and especially the outcomes that our students are facing in Bureau of Indian Education schools, there's tremendous concern about that system.
And I've spoke to this before, that you have in this country, Asian-American Pacific Islanders, talk about it, a distorted, disaggregated generalization there itself. You have the rest of non-Indian, you know, mainstream America, and then you have within public schools -- talking about public schools here -- African-American, Hispanic, Latino, and American Indian, Native American, whatever definition we use. We could quibble over the race to the bottom at any point with those populations in public schools. And below that is our Bureau-operated schools, and below that the tribal grant contract schools.

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

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

And at the end of the day, tribal control should not equal mismanagement of funds, it shouldn't equal fiscal irresponsibility, it shouldn't equal a lack of quality services, period, regardless of education, health, you know, economic development. It shouldn't equal those things, and yet we hear about these pervasive concerns in those respects. So how are we addressing that? Together. Because there is, for all intents and purposes, as we deem it, trust responsibility in that regard, and trying to walk that balance of not overstepping that in the same way that this dynamic exists between states and the Federal Government. These are the same exact conversations as I'm sitting in the Title I room,
Title VII room, whatever it is. Too much reporting, too much compliance; how can we simplify our lives to allow us to do the jobs that we need to.

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

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

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

We don't disagree that if a tribe is not performing, if they're not submitting the reports they're required to submit by the statute, if they're not making AYP over a period of time, the BIE has the legal authority to take action, to sanction those
In other words, nobody is advocating that schools should be free to misspend the money, embezzle it, run crappy schools and have no accountability, we're not advocating that. We know that if they don't perform, you have the legal authority and the duty to do something about it. But we're talking about a school that is performing. Chitimacha is another one, they're a model. They're smaller than Choctaw, they're two ends of the spectrum in terms of size. They both are performing and performing well, and they need to be allowed to do that without having further imposition on them.

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

Those troubled schools -- and I know some that haven't filed an audit in five years -- why are they still open? I mean, the Bureau has remedies. So don't make it harder for the schools that are performing because -- and look y'all are -- it's a resource issue here, if you took over every school...
that wasn't performing, you wouldn't be able to handle it. I mean, there's a problem there, we agree with that, but they're not the problem. The tribes that are doing what they're supposed to do are not the problem, and we don't want that to be lost in the focus on the larger problem. Thank you.

MR. MACALLISTER: Thank you.

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

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

MR. GERMANY: I have no comments.

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

MR. MACALLISTER: If I can get everybody back here in five minutes, we can take a break if people would like that. Let's take a break.

(Brief recess was observed.)

MR. MACALLISTER: What we're going to do is stick to our original ground rules game plan, which was go off of our sign-in list and then we'll cover everybody else. And I believe we'll have more time for dialogue, we just want to make sure we have everybody covered. So pardon my angst, that's why they pay me to worry about these things.
MS. MCKAY: If we don't get nervous, we're not doing our job.

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

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

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

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

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

But back to the letter. This is addressed to the BIE and also the Office of Indian Education, and I made a copy available to the recorders. And before I start this, you know, NIEA has a legislative committee, many conference calls, a lot of good discussion, and we looked at -- you know, we took this idea, we kind of tried to stretch it out
This letter is a response to the request for comments and consultation on the development of the MOU between Interior and Education, implementing the Executive Order.

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

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

The NIEA is pleased to submit testimony on the draft MOU to frame a partnership between Education and Interior to implement certain aspects of the Executive Order, the purpose of which is to expand educational opportunities and improve academic achievement for American Indians and Alaska Native students.
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 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,
NIEA has reviewed the MOU and would like to share the following concerns/recommendations as you move forward in finalizing the MOU. We believe the MOU is perhaps a good beginning but needs a great deal of work to meet the goal of the White House Initiative and Executive Order.

Following are some specific concerns:

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

Urban and Native students are mentioned on page 3 of the MOU and then neglected to be discussed in any other section, they are still invisible, but they're included in the Executive Order. What efforts, if any, are being developed with regards to the majority of Native students, including urban Native students? For example, the JOM student count should include all Native students regardless of
There is a definite need for a research component, and this is not mentioned. Data is listed as a goal on page 3, but needs to be expanded to outline the need to do research. Merely stating a Data Subcommittee will be formed to address problems that BIE may have with data submission is not enough. The MOU again seems to only address BIE responsibilities. The MOU must address the critical need for research and data on Native education that will further the overall initiative. The NIEA recommends the MOU include a section dedicated to data collection and submission, beyond the responsibilities of the BIE. Section 4 of the Executive Order requires that both Departments do just that, in quote: In carrying out this order, the Secretaries of Education and the Interior shall study and collect information on the education of Alaskan -- excuse me, the American Indian/Alaskan Native students, end quote. The Executive Order clearly intends that the Initiative address data and research on education of all Native students.

No. 4: The MOU shall seek to remain consistent in references to tribal education agencies, TEAs, and tribal education departments, TEDs. There are significant differences between the two kinds of tribal education entities. For example, under the
current STEP pilot program, very few tribes will qualify to have a TEA, even if they have a TED. The MOU should address what actions will be taken to provide technical assistance to both TEAs and TEDs. For example, there has not been an appropriation for capacity-building for TEDs, child education departments, even though it's been in law for many years. The MOU should seek ways to advocate for such appropriations. Additionally, the MOU should seek building greater communication with tribes, informing them of their options to fund and/or build their own tribal education departments.

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

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

Another example is Title VIII, Impact Aid, equalization of funds: Some states have elected to count all Native students statewide and distribute Title VIII funds equally among districts regardless of the presence of Native students in their particular districts. The result is not fair to Native students, and the federal agencies should be advocating the MOUs to fix this problem, especially because a statutory limit is needed. Agencies must be true partners with Native stakeholders if the goals of the Executive Order are going to be accomplished.

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

No. 8: The MOU should reflect a strong commitment by the Department of Education to give the same level of support to BIE as the Department of Education already gives to any other SEA under its
programs. This support should be institutionalized in the strongest manner possible so that BIE can always effectively access the expertise and resources of the Department of Education.

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

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

MR. MACALLISTER: Excellent, sir. Thank you.

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

MR. ROMAN NOSE: I've got an additional comment. You know, I'm just like everybody here, have been in a lot of meetings, you know, and every time I go to a meeting, I learn something new, that's really true. And I appreciate those comments. You need to come to Oklahoma and -- for the tribes -- but anyway, I appreciate your comments.
Unfortunately, it seems that, you know, when we move forward in education, you know, we forget -- you know, we've got to look at the big picture, I mean, and there is a big picture for Indian education. You know, by these opportunities that are being presented, you know, through the Executive Order, through these consultation, through the policy administration, you know, we've got to take advantage of them. I mean, we can't put too many barriers. You know, we should put, you know, logical discussions, but, you know, we need to move forward united in education. I mean, we talk and we talk. I'm an old guy now, I mean, just like the gentleman over there, I remember we did our first 638 contract.

MR. ROGERS: I can still walk.

MR. ROMAN NOSE: Can still walk, yes.

And essentially move forward, but then a lot of times we haven't moved forward. But I really appreciate the dialogue. I've never had an opportunity to be in consultations and to see some things happening. So let's not shoot ourselves in the foot. I mean, we do have perspectives; there are things going on in my particular area that, you know, unless you're from there, you don't know what's going on, you don't know the aspects of how it affects Indian education.

It's great that, you know, your state over there has a great relationship with SEA, that's positive. I mean, you know, in our state, we've got
38 tribes, and, you know, it's almost impossible for the State to have a relationship with the tribes, and then we only have two BIE schools. And then the very little knowledge -- I know Alaska, you know, with the 250 tribes up there, you know, think of the needs of the, you know, those students for Indian education.

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

MR. MACALLISTER: Thank you very much.

MR. DRAPEAUX: If I could, now, the key areas that you've mentioned, the MOU, that I think that are important, we at the BIE, I know Director Moore is excited about the expansion of the MOU and Executive Order talk about public school children. It's one of those conflicting areas in tribes, How do you serve everybody who is involved, who's enrolled, who is entitled?

And that's a difficult question. But what we've started to do in the BIE is to talk about three policy areas succinctly in dealing with the issues that are at hand. And the three policy areas that we've identified are BIE-operated, which are federal schools, tribal grant schools, and public
education students. And until we start talking about those three particular policy areas, which all are governed separately, right, and start working towards looking for a solution to address all of the needs of each of those three policy areas -- what I've been interested in through my whole life in working around tribes that, we've always talked in a very general way or two ways, and the general way is that we say "Indian education," and that just kind of encompasses everything. And then we've talked about specifically urban Indians, and I know that the Department of Education has just embarked or is just finishing on consultation or discussions, roundtable discussions, with urban Indian organizations to talk about Indian education. But what they're really talking about are public school kids, our Indian students at public schools -- not urban, not rural -- public school kids. It's a policy area that's funded, it's a policy area that's identified. Our issue, as we've been here in the Department of Interior, is that we want to create a single point of accountability for our kids, that's it. We'll take the heat, we'll take all of the -- everything. But we need to be able to come to a place where the issues of Indian education policy that encompasses those three areas are addressed succinctly. Right now, we're all over the board, right? We're talking about SEAS. And one of the things that I wrote down that is talked about,
that's mentioned, but really not analyzed, and it's
determined that's the structures in which education is governed, right?

So currently under the U.S. Department of
Education, you have the SEA, which is a state
education agency, which has very specific
responsibilities, and then you have the LEA, under
SEA, has very specific responsibility, and then you
have the school. And in some circumstances, it gets a
little mirky, but for the most part, generally you
can -- in that structure, you clearly identify the
structures, and each has a responsibility toward
education, administratively and practically.

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

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

The director of the BIE, Keith Moore, is -- we couldn't have been more excited about the expanded responsibility, because we can't go anywhere, we get letters once a month, at least, from tribes saying, How do we get back in your system, because what's happening in our community is terrible? Public schools are not accountable to us, we want language, we want culture, we want accountability. Wow, they're asking us? Right? I mean, that's quite a statement. But it's also the recognition of tribes of our responsibility as trustees to tribes, predominantly in the issue of education.

The second piece is, is that the U.S. Department of Education, in all of its goodwill to expand and accept the responsibility of being a trustee, is not subject to either 93-638 or 100-297, which means, then, that tribes cannot succinctly take money from the U.S. Department of Ed under those structures, or self-governance, for that matter. So the Department of Interior's mechanisms to provide funding to tribes is also a -- it's not a barrier, but it's an issue that has to be addressed at some level that, to further self-determination, we've got to look at the mechanisms which funding rolls down through and the lays and the regulations that allow tribes to govern those dollars and their responsibilities of those
And so we have a very broad approach. I mean, these are serious, serious issues that, from an educational perspective, we think are important to talk about, and we greatly appreciate the U.S. Department of Ed's willingness to have these dialogues with us. We've taken these issues to the Office of Management and Budget, we've taken these issues to the White House, we've taken them to the U.S. Department of Education, and we're bringing them to you, because somebody got mad at us in one of our consultations, once we started talking about the JOM money and doing a student count and told us that it was criminal and disrespectful to use those counts from 1995 to today. I mean, this is a person that I know and have respected and admired and was a mentor at one time. And, you know, what I wanted to say, but I didn't get a chance to say in all of these discussions is, you know, Why is it taking 17 years for anyone to care, to bring this issue up to somebody? Right?

So it's our responsibility, through these consultations, to bring these issues to you and to take the heat as a result of past policies, past actions, current policies, current actions. We're excited about it. We appreciate NIEA's position, we appreciate the individual tribe's position. But we appreciate our position as the BIE in that we are a national organization, responsible to the 565 tribes.
that's been expanded to us. We're in 23 states, we
have pre-K, K-12, and post-secretary institutions.

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

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

I know that we get dinged because sometimes it seems like we talk too much, but I wanted to give you a little perspective about what it is that
we're considering and the direction that we're going
and what we hope to get done through these
consultations.

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

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

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

kind of traipsing around with us and providing comment
to us, so thank you.

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

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

But in the context of that was this issue
of trust responsibility, you know, deriving from, of
course, tribal sovereignty, self-determination, and
Taking trust responsibility and applying it on the federal agency and saying, You are responsible to think about these things in this way, whether or not you take the purist approach to that straight from the treaties, or you take the domestic dependent spectrum and how that plays out for the various level of programing, particularly as we talked about identity issues and who is Indian and who is not. And the Department of Education by and large holds one of broadest definitions of who is an Indian.

So we as the initiative being the Executive Order and the focal point on federally recognized American Indian and Alaska Natives, you know, we delve into all of those issues at the Department of Education. And I will probably hold until -- knowing I'm a young man -- my dying day, that it's a fundamental flaw of our current leadership trajectory, that we isolate the trust responsibility to Interior alone. That is why the President chose this direction, that is why Secretary Duncan and Secretary Salazar approached this with the utmost diligence, in that we need to by thinking about this whole pie in a dramatically different way.

I've been personally involved in six urban Native listening-and-learning sessions, trying to understand this dynamic, validating what I already know about them. And, essentially, whenever you take
away the city, it's just like a reservation, our Natives are dispersed, they're being underserved, there's no representation, they're disconnected from municipalities, and, absent the infrastructure, it's the same issue, our kids are crying for their language, history, and culture. And that, to me, says that we don't have a mechanism for them to organize, to govern, and given that they are citizens of Nations, it's especially problematic.

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

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

Now this joint work group, taking into consideration that tribes do value the trust responsibility and how that has evolved within the Department of Interior, and saying that expertise, that understanding needs to inform other federal agencies, so I just want to kind of put that context out there and stop there. I'm sure we'll have more to
MR. MACALLISTER: Thank you. Let's move on to our last signed-in speaker, and then take any open -- other comments from people who haven't had a chance to speak, and then we'll cycle back. Sound fair to everyone?

Our next speaker on the list is Janice Jimmie.

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

First of all, I want to say ditto to everything that Bryant Rogers said, because I could not have done it as eloquently as he did in stating the position of the tribes. But the other thing that I want to add is that education of our children is very important to the Choctaw tribe. And this is evidenced by the supplementation that we give as a tribe through our educational system, because we don't get the kind of funding that we need to be able to teach the children as well as do the massive reporting that's required so that we meet the regulations that we need to meet.

I was really appalled by the numbers of reports that the Education Department is having to do each year for the moneys that we receive, and this was just really alarming to me. And when we speak in terms of more reporting and more regulations, then, of
course, you know, there's more alarms going off in my head.

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

Fiscal responsibility is a stand that Chief Anderson has taken in her administration. So this is something else that we are focusing on to make sure that the moneys that we receive are well spent. So this is not anything that's new to us, this is something that we've been working on.

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

We come from a tradition of oral teaching, oral tradition in teaching our children, which means the parents and the families took responsibility for the teaching of their children. And this is something that is still inherent in us,
and we ask merely that you respect our authority to be able to do this. And that's all the comments that I will make. Thank you.

MS. MCKAY: Any response?

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

All right, then, let's open it for just open dialogue, and we will -- I will be cutting it off, I will be giving us kind of a warning point as we ramp down towards five o'clock, but beyond that, we'll let it be an open dialogue.

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

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

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

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

I haven't done a redline, but I think
there are two factors, really three, that have caused this concern. Whatever the old MOU said, it hasn't been rigidly enforced, as far as we can tell. In other words, there may have been statements in the original MOU that said all of these were going to be conditions passed down to the tribes through the grants, they haven't been. So to the extent that this new one, you really mean it, then we're really concerned. (Laughter all around.)

MR. MACALLISTER: Just a little joke.

MR. ROGERS: So that's number one.

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

Secondly, the ambiguity, the vacuum, if you will -- and I think this is what Mr. Drapeaux is
getting at, is the absence of an SEA for these schools, or the lack of clarity about it. We don't think it's a lack of clarity and we don't think it's an accident that you're not an SEA and that the Congress didn't give you that authority.

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

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

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

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

MS. MCKAY: Quinton.

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

MR. ROMAN NOSE: Roman Nose.

MR. ROGERS: You mentioned something that relates to public schools that I just want to comment on briefly because I was involved in the U.S. Supreme Court case that addressed it, that's the Impact A allegation.
New Mexico is one of three states that does take credit for 75 percent of the Impact Aid money and spread it to every school district in the country. And they do it under an exception to the Impact Aid law that allows that to be done where the school -- the state school funding mechanism is, quote, equalized, closed quote, and that was the issue litigated in that case. That was our case, we lost five to four. We don't think we should have lost, but we did. However, the key thing is Department of Ed has the ability to change the rule that the Supreme Court upheld.

And it's really amazing, if you read carefully that case and look at the history, you will see that Congress mandated that the Department of Ed change the way the equalization determination was made. And the Department of Ed issued a regulation after the law passed, and it said, Congress has told us we have to change the way the equalization determination is made; we're doing that, see attached Appendix A where they put the same appendix that was used prior to the law changing that had the calculation in it on how you determine whether a school is equalized, and if the school is equalized, then they're allowed to take that money that's supposed to go to the Indian kids and give it to everybody.

So one thing you could do that would
dramatically help Indian education in public schools is to change the rule to conform to what Congress told you to do in the first place, and you got away with -- not you personally -- the Department of Ed got away with pretending they had changed the rule without changing it. I mean, it was a travesty.

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

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

The other reason why the MOU caused red flags is this: Completely independent of what y'all are doing on the MOU, what we've seen at BIE is a proliferation of compliance reports and assurances documents for the Department of Ed money that's
happening now before you even get to the MOU, and we just feel -- and we're going to resist that and fight that, but it's just going to be compounded when this is sort of reiterated that Department of Ed is expecting them to do it, and the little language in the MOU that says you might withhold money from the Interior if they don't do this. So all these things together make us more concerned than we were before, so...

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

As we look at the new emphasis, for example, of U.S. Department of Education, in terms of education policy and funding to support that policy, what we're seeing from a BIE perspective that's bothersome is that because we are only a quasi SEA, it leaves our schools, your schools, in the quandary of not being eligible for certain funding that other school districts in the United States are eligible for.

And it's an issue that we've raised with the U.S. Department of Education, in that, one of the issues that we're facing is the governance piece that allows SEA funding to go to only SEAs. So tribes have said to us, for example, We want to be the 51st
SEA, okay, let's just take the Navajo Nation. We want to be an SEA, we want to act as an SEA, we want to put forth our own waiver, et cetera, et cetera, which is fine. The problem is that they're not the 51st SEA. There are a lot of other SEAs sitting out there, but there's not one that represents Indian students.

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

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

One of the things that I like to hear from tribes and as they've said before and that I like to repeat is this: That tribal leaders can come to Washington D.C., as they did in December 1st, and meet with Secretary Salazar and Secretary Duncan and then...
the next day meet with President Obama and talk about broad, vast issues of education and other infrastructure needs, but they can't get an audience with the local school board, public school board in their own states.

The issue of an SEA, in the way we see it, is that if we create an equitable playing field for dialogue for tribes, for tribes in states like Alaska, in states like Oklahoma and other states, is that we need to create an opportunity for tribal governments -- not schools -- tribal governments to have a discussion with their peers, which, even though they have a trusting relationship with the Federal Government, their peers are actually state governments.

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

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

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

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

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

Longitudinal database money, right,
everybody is saying, Cradle to career. Really? I
mean, how are we going to do that? How are we going
to track that data? Trying to say we want FACA, we
want to be able to access data that we're collecting
on their students, we agree; how are we going to do it? Not under the current funding mechanisms.

So my point is, is that an SEA, at a national level, would create an equitable dialogue opportunity for tribal leaders, would open up new funding mechanisms, perhaps, for an SEA, that would serve, not only BIE-operated tribal grant schools, but public school children as well, and that you would create a single point of accountability for the discussion of Indian education no matter where these kids are located, and that you could then start asking for accountability and fidelity of the funds in terms of what they're doing at the public school level. Because right now there isn't any. Tribes can't weigh in, if you go to your school board, if you don't like it, run for school board. You know, you just have all of this stuff that is local politics.

And there's states like South Dakota, and I don't know what it's like in other states because I wasn't raised there, but the long history of relationships between the Indian and non-Indian communities are difficult, in that those relationships do not lend themselves to the recognition of tribal sovereignty, which means, then, that the children that are attending public schools are kind of left to the wind, and each individual parent that we know in the communities that our people come from, that's a hard day on the best day.
So are we -- as Billy alluded to earlier, are we left to just leave that, you know, to the wind? We don't think so. We think that we need to have serious dialogue about how we create an equitable discussion opportunity for tribes in that scenario.

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

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

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

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

So, you know, I appreciate the opportunity to put that on the record, and it's something that we're not afraid to talk about because we -- if this isn't it, then find us something; right? Because there's nothing that exists today that creates an equitable discussion opportunity for our Indian students. It's broken up and it's all over the place, funding comes from Ed, funding comes from Interior, secondary funding comes from Ag, it comes from all over the place. But there's not a single point of accountability which really allows everybody to kind of kick the can down the road; right? With everything being a punch line, Well, our children are sacred, and so -- but who do we hold accountable? I mean, from the BIE, what we're saying is, Hold us accountable on the issues that pertain to us.
This Executive Order expands our opportunity, hold us accountable on that as well; we're willing to take it, we want to take it, but we can only do it together in terms of how the policies are developed and how the funding mechanisms rule the tribes.

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

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

MR. DRAPEAUX: Sure.

MR. ROGERS: Secondly, one of the comments Chief Anderson put in her comments on Friday
is that, Whatever else is done, the tribe opposes any
idea of moving the BIE to the Department of Ed. And
why is that so - such a clear and instinctive
response? And it's this: As bad as the tribe's
relations are sometimes with BIE, BIE, Department of
Interior, at least the statutory frameworks, the trust
responsibility understanding in the agency is deeper
there than it is in other agencies.

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

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

We understand the agency's position, they
can't write checks that they don't have. They believe
that they're not obligated to obligate the United
States to pay more. We believe the statute requires
that, and that's going to be decided in the Court.

But the Department of Ed has a statute which Congress enacted many years ago that directs the Department of Ed to treat certain vocational ed money under the exact same rules that apply to the Indian Self-Determination Act with BIE money. And the Department of Ed has flatly refused to honor that law.

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

But the other thing is this, and it's sort of the NIEA's point: Most Indian students are in public schools; the ones that aren't in public schools, lots of them are in BIA-operated schools. The numbers of Indian students in tribally controlled schools is very small, talking total numbers. It would be of no value to them to be moved over to Department of Ed and have to deal with us, the school -- the small number of schools in that huge bureaucracy whose most attention, properly, is on the public schools.

And so that's another reason why the tribally controlled schools, and Choctaw in
particular, would oppose that. And there is some concern about BIE taking on the role as a major advocate for Indian ed in public schools, because it will inevitably, you know, consume you and take even the limited resources you have to deal with public schools when you can't really do what you need to do with the BIE-operated schools.

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

Oh, one other issue. The SEA point, you make good points about it, it's just there's not a level of trust that the authority won't be abused, and there needs to be carved out (phonetic), there needs to be some acknowledgment.

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

MR. ROMAN NOSE: I just wanted to -- I got to say this: You made the point about your tribe
doesn't need a tribal education department, and that's
the right of tribes to do so. I mean, as a matter of
fact, you look at all of these entities, states, you
know, the Federal Government, tribes, who has been
here the longest? I mean, tribes, we've been here
before Columbus. So whatever works, that's great.

But, unfortunately, you know, we don't have the money,
we don't have resources. And unfortunately, you can't
keep the -- keep them on "the res" anymore. I mean
our students are now going off reservation, off, you
know, city limits and living in different towns. You
know, you've got grand kids, you've got kids living in
different states, you've got tribal members not only
living in every state in the United States, you've got
them living all over the world.

And this is my personal belief -- and
this is not NIEA-based, I'm the former president of
Child Education Department Specialists. So the future
is coming at us, and, you know, we're not ready for
it. Our tribal members are getting so diverse,
their diversity among tribes now. They're moving
all over the place. So how are we going to address
that? If you don't have a real devoted -- shall we
call it the Tribal Education Department or an entity
of your -- whatever your division is called, you know,
if you don't address the problems of the future --
it's great that you have a school, but, unfortunately,
your tribal members are living everywhere else.
So, you know, at some point in time, when do they stop being tribal citizens? When do they stop receiving, you know, the benefits? If you can't continue to put in a system in which you're going to develop and make your Nation stronger, you know, you're hurting yourself.

And unfortunately, tribes don't have the money to have schools, they don't have the political power to go to the state government and say, We want curriculum, we want our own specific tribal government classes, we want these things for tribes within states. They don't have that political power to do that. The State is a powerful entity in this education of our kids. And so unfortunately this example that -- I keep wanting to call you Frank.

MR. MACALLISTER: Bryant.

MR. ROGERS: That's my uncle.

MR. ROMAN NOSE: Brian mentioned the story about the meeting with tribal leaders, went to visit, you know, all of these secretaries, you know, Duncan and Salazar was there, and I wasn't there, but I was told that some of the tribal leaders would start asking Duncan, you know, What about Johnson-O'Malley? You know, Where is our money? And in the (inaudible), you know, rightfully so, that's a good question, but they were asking the wrong secretary, the department. And so you need highly qualified, highly knowledgeable, visionary tribal education department
And right now -- I know we talked, and I know the Navajos, you know, want to be an SEA, and I agree, you can't be an SEA. You can be SEA-like, but you can't be an SEA, you're not a state. You just can't be SEA, but you can do a lot of things like they can do. And we need that. The majority of our tribes are not large enough to perform that. You know, majority of our tribes, I forget the cutoff figure, 1,700, a high percentage of our tribal nations, you know, majority of them are 1,700 members or less. So we need something like that the BIE, you know, to step forward and to perform that function. And so we need to understand the advantages, disadvantages, the complexities as we move forward, and we need high-qualified people in education. We've got people coming into education, they may be in the public school system, they may have came from the BIE, they may come from higher ed, you've got some coming from early childhood, none of them know what a tribe is supposed to do, none of them -- they all have expertise in the areas, but we need to put those knowledgeable people in the tribal education department that's going to have vision for the future of the tribe, and not just say, We're going to give out per caps, or whatever, you know, the -- that's not enough. That's not enough for our tribes to remain, you know, where we're at, for us to grow.
otherwise we're going to get, you know, swallowed up.

And some tribes are getting swallowed up, if it wasn't for casinos, they probably wouldn't even be tribes anymore.

And unfortunately, the limited experience I've seen with tribes that don't have tribal education departments compared to the ones that do have, there's a wide range of abilities and resources, but the ones that do have are better off than the ones that don't.

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

By the way, one more thing. Dina (phonetic) has put forth the subject of FERPA, the data collection, we've been pushing that for years. We've promoted the state relationship. Oklahoma has now put on -- tribal education department directors on their state Indian Education Advisory Counsel, and I think other states are looking at that also. We're instrumental in getting the STEP program approved and, you know, Appropriations Bill; even though not everybody is ready for it, it's there. But I think
some tribes need help, they need help with building the capacity of the tribal education department. Research and development is definitely needed -- we definitely need to know where we're at and where we're going. I would always ask this question when I attended the meetings, I said, you know, Can your tribe -- you know, if you're a large tribe, you probably can't do this -- Can your tribe tell me exactly what your graduation rate for all your members are, and they couldn't do it because they're all over the place, all those different systems. But if you're a small tribe, you probably could do it. I'll stop. That's it.

MR. ROGERS: If I can?

MR. MACALLISTER: Yes.

MR. ROGERS: Remember, I said I started off with Choctaw in '71. Well, one of the things they put in place was a planning department, I was the first one. But they've had a continued role for a planning department that does long-range assessment, et cetera, that have education people, health people, engineering people. And they're fortunate, they do have casinos, they are able to provide supplemental funding for this. I'm not saying that the role that you're talking about doesn't need to be performed if they have the resources, it does, but they don't need to be told that the only way you get it is to have
something called a Tribal Department of Education.
That's my point. They have other ways of achieving the same thing. And there's been several references to Oglala here and Pine Ridge, I actually negotiated the very first 638 school contract for the Loneman Day School in 1976, so I've seen this and worked at Little Wound up at Pine Ridge.

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

MR. MACALLISTER: Are there other comments from the attendees?
Shall we move to closing comments from the panel?

MR. DRAPEAUX: Thank you. I know that we're small, but meaningful. I really appreciate it, everybody coming today. This is our second consultation where we've had small numbers, but robust dialogue, and that's really what we're looking for,
specifics in the work that we do.

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

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

The issues of Indian education need to continue to be raised to the highest level of government and to really start pushing past the rhetorical part. My job as chief of staff of the Bureau of Indian Education is execution; right? It's our job to do execution, execute budgets, and to
that call on us to be responsive and we work hard to
do that.

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

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

So we want to commit to continuing the
movement forward with you. And we look forward to
maybe seeing some of you next week at the Summer
Institute that the BIE is hosting. We have about
1,700 registered teachers, administrative school board
members and tribal leaders that will all come to Denver, it's our yearly event. We're excited about the agenda, we're excited about the 600 hours of continuing education that we'll be providing the teachers and administrators and the topics that will be highlighted there. I think Bill will be one of our keynote speakers, as well, Mr. Roman Nose as well. So we look forward to having you as our guests next week and hope to see those that are here there, all two of you. (Laughter all around.) But we appreciate it.

And I'd like to thank our moderators, they've done an outstanding job. And even though it seems like, you know, it's a little overkill having two. You guys, we didn't know how unruly it was going to be so we wanted to make sure that we were well represented here. But they've done an outstanding job of planning, coordinating, providing feedback to us as the panel, and ensuring that we stay on message and that we stay on task and that we keep moving forward, that our level of professionalism stays high -- even though my ADD kicks in, I have a hard time doing that. But we look forward to reviewing your information.

What will happen is that the documents and the comments that are gathered will be sorted through, they will be reviewed. We hope to put everything on the website, and I think it will cover a lot of the logistic pieces on how we're going to finalize. We'll set a date of final comments. Bill
will mention that in his closing comments today, when
that will be.

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

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

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

MR. DRAPEAUX: Sure.

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

MR. DRAPEAUX: We'll see. If it's
possible, we'll make it available. Thank you.

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

MS. DRAPEAUX: Right.

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

MR. DRAPEAUX: Be happy to do it.

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

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

I especially want to thank everybody who
participated today. We do know that this takes tremendous resources to get here and to be able to kind of keep at this trail, this path, whatever analogy is appropriate. Some of you have been in this ball game for a long time and know exactly what is at stake.

And I just want to speak to that understanding from a leadership standpoint, you know, bearing the responsibility of trying to pick up these issues where we all are with them, and the responsibility of the Federal Government, we truly are on the precipice of that decision-making with the reauthorization of ESEA, and (inaudible) and BIA, you know, changing from whatever executive authority into this term and hopefully next, who truly believe the President's commitment to these issues.

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

So I really appreciate your strong words; I would encourage you to continue to push on us. And we will be following up all the conversations that you
talked about, Mr. Rogers. Very sophisticated, not a
disrespect to any of our other educators and leaders
and representation. But I just, for one, truly
appreciate it, you know, your characterization of
them, the ways you put those together. So I will be
following up with you on those critical points.
MR. ROGERS: Thank you.

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

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

We've seen how beneficial the roundtables were in that respect. We certainly value how these consultations could further inform other tribes, other stakeholders' interests in the Memorandum of Understanding. So we're going to look at that. So the concrete, you know, June 15th deadline, I think, is one that we would like to have more conversations about.

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

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

So we're going to push this as fast as we can to get this document through Interagency clearance between the two agencies and then move forward in the
some of these issues. And those conversations have already begun, especially in respect to the data subcommittee. And I agree there has to be other conversations around, How are we addressing these other critical components and demographics and populations. We can't, certainly, as a subcommittee ourselves do that in that respect, because after all, we want to have some collaborative conversations around the issues with as much senior leadership as possible, and that's what we're trying to create, and as much transparency around that as we can.

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

So we'll look into how that is communicated. And I would almost venture to guess that that would probably be placed within the website for access, and then we'll communicate through e-mail and other mechanisms, maybe the tribal leaders, you
know, that final draft or final comment, whenever we'll close those comments off.

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

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

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

MR. BOUGH: Small and needy.

MR. MENDOZA: Small and needy. The majority of our tribes. Our nationhood is at risk; until we are approaching those vast majority of
that notion of 566 distinct Indian Nations as a political entity, is at risk. And we can't continue to hang our hat on the notion that treaties are the basis for that, because that, at its core, is susceptible to majority rule. And as numbers are bogging (phonetic), we're losing that battle. We need to focus on that substance of who we are and that education is -- someone smarter than I said, Education is the backbone of our Nation. And if every tribe thinks about it in that way, we should be going after that 90 percent, we should be addressing the 10 percent that we arguably do have an impact on in a dramatically different way. Because all of that is tremendously disappointing.

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

MR. MACALLISTER: Brian?

MR. BOUGH: I have nothing to add.

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

Department of Interior, from the Bureau of Indian Education, from the Assistant Secretary of Indian Affairs, also the Department of Education and the President's Initiative.
It's been a great pleasure, and I am so grateful to you for taking the leap of faith, you didn't know either Ms. McKay or myself as facilitators, we hadn't worked together in the past. I would also like to thank Margaret Treadway, the Assistant Secretary of the Indian Affairs Office, Regulatory Compliance, Regulatory Affairs, and collaborative action who sponsored my firm, who, with whom I do work in the Assistant Secretary's Office, and allowing us to provide us the facilitative support to you all.

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

I'd also like to thank the nearly 200 participants that we did have in these meetings. This meeting is not representative of the size of all of them. So Ms. McKay and I did earn our keep in some of the larger sessions. So I want you to have a sense of comfort that it wasn't just the government overspending to have us here for all the meetings. We did actually do some work. We did have to keep order in some of these.
And I would certainly like to also echo the thanks to Yvonne Davis for her logistical support, all her patience and efforts to make sure that these meetings came off in a well organized and logistically comfortable way in venues scattered from Northern California to Nashville, Tennessee.

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

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

Monique, would you like . . .

MS. MCKAY: I get the last word today. I just want to first thank Bruce for inviting me to join this. When we first started talking about this, I was really excited. My dad founded, ran the first department of Native studies in Canada, and so I just grew up believing that everybody thought Indians should have sovereignty over education, or in Canada, all Native people should have sovereignty over education and Indian control over Indian education. That was just like a mantra growing up in our household.

So I'm really excited to be at least a
little part of this initiative and just seeing how people have come and brought their passion and their expertise and experience over a long period of time to all talk about how we can make education better for our kids, how we can make sure that our kids contribute to our communities, keep our communities strong.

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

MR. MACALLISTER: Thank you. And with that, I'd like to turn the session over to Mr. Roman Nose again. He's graciously agreed to give us the closing blessing as well.

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

Let's bow our heads. Dear Heavenly

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

(Proceedings adjourned at this time.)

REPORTER'S CERTIFICATE

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

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

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

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