

Standards, Assessments, and Accountability System Negotiated Rulemaking Committee

*September 25-27, 2018 – Billings, MT
Meeting Summary*

Consensus Agreements

The Standards, Assessments, and Accountability System Negotiated Rulemaking Committee reached consensus on the following during the meeting:

1. The meeting courtesies to minimize meeting disruptions;
2. The list of themes of successful negotiations;
3. The list of what works well and the challenges of the current Part 30;
4. The Committee's Core Values;
5. Approved a non-Federal Committee member to contact the BIE Director to explain the impact of designations (i.e., primary and alternate members), the importance of improving Federal government cultural relations, explain what has taken place among the Committee, and will report back to the Committee;
6. The Operating Protocols as amended; and
7. Four subcommittees (i.e., Standards, Assessments, Accountability, and Waiver), the purpose of the work, and membership.

Invocation

Committee member Ron Etheridge opened the meeting with a prayer for all to work together in achieving a common goal. Committee member Leslie Harper offered tobacco and a blessing in her native Ojibway language for assistance in guiding the Committee on its journey. See Appendix A for a list of attendees.

Introductions

Sarah Palmer, Office of Collaborative Action and Dispute Resolution, asked the Committee to provide brief introductions, starting with name, affiliation and one item to be accomplished by the end of the meeting on Thursday as expectations of the Committee. Members of the public were also asked to provide a brief introduction to the Committee. See Appendix B for Committee expectations.

Agenda Review and Meeting Logistics

Ms. Palmer reviewed the meeting agenda, binder contents, and handouts for the Committee. The meeting objectives are to: create a common knowledge base about the purpose and activities of

the Committee, organize the Committee and reach agreement on key operational items, establish group norms and guiding principles for decision making, begin deliberations on draft regulations related to standards, assessments and accountability system, and agree on next steps for Committee deliberations.

Ms. Palmer reviewed the Committee's proposed courtesies to minimize disruptions of the Committee and discussed the use of Committee caucus during meetings that can be called by the DFO, facilitator, or a Committee member. A caucus can include technical experts. After a brief discussion, Ms. Palmer asked the Committee if there were any modifications and/or additions to the list of proposed Committee courtesies, there were none. Next Ms. Palmer asked for a consensus of the proposed Committee courtesies, the Committee agreed to the list of courtesies by consensus. See Appendix C for Committee courtesies.

Purpose and Focus of this Rulemaking Committee

Brian Quint, Attorney Advisory with the Office of the Solicitor provided an overview of the Charter to review the goals of this Committee and group discussion of what is expected.

Committee members had the following questions and comments about the Charter:

- New regulations were to be implemented in the 2017/2018 school year. What if it takes longer than the three month proposed timeline for the work of the Committee? *The Bureau of Indian Education (BIE) would like to have a regulation implemented as soon as possible as the original deadline stated in the statute has passed and the work of the Committee is very important to accomplish.*
- The length of time is a valid point since individual States took time to develop their own ESSA plan. What would happen if this Committee is unable to complete the work at the end of the third session? *The BIE is operating under a default spelled out in section 1111 which states current operations will continue under the status quo until BIE is able to implement a new rule. Ms. Palmer added, language is proposed in the Committee's operation protocols, if there is concurrence of the Committee, contingent on resources, the Committee may have additional meetings to complete its work.*
- Is there a \$495,000 budget for the process? *Yes, as stated in the Committee's charter.*
- Is there any funding available to support the outcome of the Committees decision for an assessment? *Right now it's not in the budget but following new rules, funding will be address to implement.*
- As were talking about the states accountability standards and what not, our Tribe developed their own accountability system, the standards, etc., that has went way beyond their timeline than we anticipated as well and is still in the process. The length of time to implement a replacement system is in reality longer than what could be outlined in a timeline. *Each Committee member has a purpose to advise the Secretary on the needs of the schools and the students served at the schools. Committee members are able to propose what is needed in the schools versus Tribes who have submitted waivers.*

- Should the BIE come up with their own plan, there is opportunity for other waivers that would allow schools moving towards a growth model, etc. The work of this Committee is very important for numerous Tribes.
- The work of this Committee is unrealistic for a three month timeline. Is it the role of this Committee to define the standards, assessments, and accountability? Or is the Committee creating an outline of how to create those standards? Or creating an outline of what those standards should embody? Need clarification of what the next few months of work will entail. *The purpose of this Committee is to develop new regulations that will be discussed further in the agenda. The Committee is not defining the standards, assessments, and accountability. However, the Committee can put together recommendations to the Secretary of the Interior on specific topics that are appropriate.*
- As a reflection based on the students served at an off-reservation boarding school representing 73 Tribes, the accountability system determined by this Committee will directly affect those students as this boarding school operates as a Bureau school and does not have the waiver option.
- The Committee will need to fully understand section 1111 and compare the differences among Bureau schools. *Section 1111 is included in the binder for further discussion on day two.*
- The process the Committee is going to undertake is a very important process for our students.

Ms. Palmer asked the Committee to discuss the primary objectives of this Committee and captured them on the roadmap. See Appendix D for Committee primary objectives.

How the Committee will Work Together: Approaches, Strategies to Mutual Gains Negotiation and Building Consensus

Ms. Palmer went over the material on Mutual Gains Negotiation to establish shared expectations about this negotiation and become familiar with the process. The Committee broke into small groups and discussed their experiences in a recent negotiation and what made it successful, what were the challenge(s), how did you overcome the challenge(s) and what could you have done to prevent the challenge(s)? The groups also discussed what it means to negotiate in good faith. Additional exercises focused on communication, creating options, and analyzing alternatives.

Ms. Palmer asked for a consensus on the Committees proposed themes of successful negotiations, the Committee agreed to the list of themes of successful negotiations by consensus. See Appendix E for Committee common themes of successful negotiations.

Overview of Existing Regulations

Dr. Hamley, Associate Deputy Director, Division of Performance and Accountability with the BIE provided a presentation and lead a group discussion about the challenges of the current regulations. See Appendix F for the Challenges of Current Regulations presentation.

Committee members had the following questions and comments about the challenges of the current regulation:

- How is NASIS reporting on the collection of test results? *When BIE collects assessment data it's not entered into NASIS. However, NASIS contract is coming up for renewal and this is one data element BIE is considering to be captured in NASIS for future use.*
- NWEA is a formative test and is trackable data with the schools that use the assessment. From my understanding the NWEA data is the most extensive data on Native American students and could be a good place to start as summative assessment? *BIE does review the NWEA data and will send the latest report to the Committee. [Provided to Committee October 1]*
- The MAP data is incredibly robust data available as they have so many years to get norms data. You can see the impact and correlations that are made for a student who plans to succeed for college and the type of score they need on their assessment.
- The Department of Education needs to hear most schools are Tribally controlled, and as Tribally controlled schools we are representing schools that have been taken over by a sovereign Nation who have freedom under P.L. 100-297 and P.L. 93-638 with specific outcomes to adhere to. The Department of Education, ESEA and ESSA maybe working against each other with the current Tribal laws the schools operate by and need to be reconciled with at some point, with the Tribally controlled schools; in my view the Tribally controlled schools will be opting into ESEA.
- Does a school publish their report cards? *Usually the states publish the schools report card and for the BIE schools, the BIE would publish the report card.*
- One slide indicates BIE will never obtain the data. *BIE is able to obtain data for the language, arts and math. It's the science and English language proficiency data BIE is unable to obtain.*
- The schools have not received clear guidance on what sections of NASIS is critical for data input as it has a lot of potential for providing reports. *BIE is working to provide meaningful technical assistance to the schools in reference to NASIS. In addition, NASIS is coming up for renewal on its contract and will go out for full and open competition. BIE is working on the proposal to identify what data is required to be captured in the new system to improve reporting factors in the schools.*
- There is big disconnect with Tribally controlled schools and BIE on data reporting and clarity is needed.
- Can you clarify where EdFacts is in statute? *BIE will clarify where the information is required to be collected and may be referenced in Section 1111.*
- I see the difficulties of the Bureau as to how we describe how our students are doing in our schools. A lot of the schools on the ground know what we are doing with data that is easily accessible.
- The last negotiated rulemaking had an opportunity to look at other factors that directly affect our schools now. Is this committee able to weigh in on those factors? *NCLB reg-neg committee was directed to work on a wide range of topics. However, this Committee, by statutory requirements, is to only focus on the standards, assessments, and accountability system.*

- It will be important for Tribally controlled schools to strengthen the relationship with BIE on what they need as it pertains to data (*i.e., statutory reporting requirements*). There is no guidebook.
- I understand the challenges BIE has with different schools in different states. Maybe BIE is measuring the wrong things and needs to look at not just achievements but are the schools meeting the achievements they are setting for themselves; rather than are they meeting BIE's definition of achievement. Until I understand what BIE needs, I'm not able to give you the data requested.
- When we've identified as common themes for successful negotiation, it's apparent we don't all have the same information. As stated, BIE is still operating under NCLB which now clarifies why my school is not being held to the expectations under the new law; an accountability loop hole. Every time we say there is no clarity, we are sending our students out into the world with no clarity.
- As a suggestion, can we have a follow-up sheet with items requested for the Committee to ensure the information is captured? *Yes, information is being captured and will be named action items for the Committee.*
- As a reflection, not all administrators are providing and/or have access to data to provide to BIE effectively. We are supposed to seek help from our sister schools to help develop each other's to better serve our students.
- Some schools do have clarity and are successful. As Tribally controlled schools we are trying to free ourselves from BIE. But how do we partner with BIE to support one another. The big question is how do we do that? I don't like the BIE is in corrective action because that's a reflection of the schools as being part of that state (BIE) since AYP.
- The friction we see are with other government programs the Tribes are working with today. The governments' success factors are not the same from a Tribal perspective. We need to define what we call success within our schools.
- It's a paradigm shift on BIE telling 'us' what the students need. We need to remove the barriers and work together for our students. *The interest based process of negotiations is separating the people from the issue.*
- Keep in mind under 20 U.S.C. 7824 discusses the negotiated rulemaking requirement that the definitions should be consistent with Section 1111, so there are some constraints on what the Committee can do. The other thing to consider is the Tribal waiver process is built into all of this; Tribes can always waive the definition in part or in whole.
- In terms of negotiated rulemaking / statute / the law, the schools having to follow the state in which they reside, is that BIE policy or statute? *It's in the current (AYP) regulation developed by the NCLB negotiated rulemaking committee in 2003.*

Ms. Palmer asked the Committee to discuss what works well under the existing regulations to carry forward into a new regulation. As well as, what topics require changes/explored into new regulations. Ms. Palmer asked for a consensus on the Committees proposed themes from discussion of the current regulations, the Committee agreed to the list of themes of Part 30 of what works well and the challenges by consensus. See Appendix G for the items that work well under the existing regulations and those that require change.

Committee members had the following questions and comments on the formulated list:

- There are outside factors that deeply affect the students being served that are behavior challenges and difficult to assess. Difficult for the schools to bridge the gap with other professional services (i.e., Indian Health Service, Child Protective Services, etc.). Trauma informed approaches.
- The expectation of students graduating in 4-years. Versus working with the students' needs to extend to 5-years or 6-years. *The Bureau recognizes the need for a different cohort model and there is flexibility under Section 1111.*
- Changing the language to address the students' needs (e.g., failing versus moving to 5-year cohort).
- It's inconsistent to teach one way and test in a different way. Let's look at other ways of assessing to match the teaching styles.
- Bureau schools need funding to support students in different ways that allows a student to succeed; focused on assessments in the core curriculum (e.g., funding for behavioral health, etc.). *The Bureau is working slowly and realizes behavioral health is critical for our schools towards a behavioral health model.*
- Alternative assessment versus standardize assessments are needed to meet the unique needs of our students; to be identified as a core value.
- Children have choices they are not aware of. Students are screened at the boarding school and placed into programs to meet the needs of the students; to serve the whole student.

Committee Operating Protocols

The Operating Protocols, as amended, were approved by consensus of the primary and alternate members of the Committee. The following discussion occurred over each of the three days of the meeting and is consolidated here for clarity.

Committee members reached consensus on the following revisions to the operating protocols:

- Section II.A.
 - change 'key parties' to 'non-Federal Tribal government or organization nominated Committee members'
 - change 'Tribes' to Tribal governing bodies or school boards'
- Section II.B.
 - add 'as indicated under Section III part F.'
 - *Tribal Members* – add 'and are authorized to negotiate on behalf of'
- Section II.C.
 - *Leadership Team* – add 'four' and new sentence 'A quorum shall constitute three LT.'
- Section B.6. *Technical Experts* – add 'will' after U.S. Department of Education, change 'providing' to 'provide' and add last sentence of 'In addition the Committee or Subcommittee may call upon other technical expertise or assistance upon consensus of the Committee or Subcommittee.'

- Section II.C.2. *Subcommittees* – add last sentence of ‘Subcommittees shall be responsible for providing a written summary of each meeting held outside of the duly convened Committee meetings as far in advance of the plenary meeting as possible.’
- Section II.D. *Schedule* – add ‘between September and December’ after three days, and delete ‘mutual agreement by all Committee members’ and replace with ‘consensus’.
- Section III.A.1. *Committee members*
 - a) – delete ‘mutually acceptable’ and replace with ‘consensus.’
 - b) – add ‘as applicable’ to the end of the sentence.
 - h) – delete ‘their’ and replace with ‘a designated.’ And make ‘In the event that a Committee member cannot attend a meeting, she/he should inform the Facilitator as early as possible about their absence’ as i).
 - j) – new language to read ‘Unless there is consensus with the Committee, decisions made at prior sessions will not be reopened.’
 - k) – new language to read ‘Take responsibility for getting caught up on deliberations and on decisions made at any meeting the member missed’
- Section III.A.2. *Alternate Committee members*
 - c) – delete ‘their’ and replace with ‘a’
 - delete ‘If a Committee member’s alternate has not attended Committee meetings on a regular basis, other Committee members are not obligated to use time dedicated for deliberations or problem solving sessions to backtrack and accommodate information needs of the alternate who has not attended prior meeting(s). Decisions made at prior sessions will not be reopened to accommodate concerns of alternates who did not attend these meetings, unless agreed upon by the Committee, as a whole.’
- Section III – How the Committee and its members will undertake their roles and responsibilities
 - 3 – *Designated Federal Official* – question to clarify, does a DFO need to be in attendance at subcommittee meetings.
 - B *Representation of Committee Members’ Interests* – delete ‘not restrict themselves to prior positions held by their organization or group. Instead, they should’.
 - C. *Disclosure of Information* – delete ‘by representatives of constituents that have been or may be involved in future legal proceedings.’ And delete last sentence of ‘Therefore, Committee Members agree not to use information revealed during the negotiations in any pending or future legal proceedings for any purpose.’
- Section II.B.6. *Technical Experts* – add ‘The BIE will provide resources for Technical Expertise as describe in the Committee Charter.’
 - F – *Attendance* – delete ‘principal’ and replace with ‘primary’.
- Section III – How the Committee and its members will undertake their roles and responsibilities
 - 3 – *Designated Federal Official* – add ‘and Subcommittee meetings’.
- Section III.A.2. *Alternate Committee members*
 - delete last paragraph ‘If a Committee member’s alternate has not attended Committee meetings on a regular basis, other Committee members are not obligated to use time dedicated for deliberations or problem solving sessions to

backtrack and accommodate information needs of the alternate who has not attended prior meeting(s). Decisions made at prior sessions will not be reopened to accommodate concerns of alternates who did not attend these meetings, unless agreed upon by the Committee, as a whole.’

- Section IV How the Committee will Make Decisions
 - A. *Definition of Consensus* – delete ‘principal’ and replace with ‘primary’ in two places.
- Section VI Committee Meetings
 - A. – add ‘fourteen days after each meeting. Members’ and strike ‘who’.
 - B. – delete ‘A member designated as an alternate will participate for the purpose of determining consensus in the absence of a member of his or her designated constituency.’
 - C. – delete ‘one’ and replace with ‘two’
 - E. – delete ‘Email’ and replace with ‘emailed to BIEdcomments@bia.gov’.
- Section VII Safeguards for Members
 - A. Member Participation – delete ‘Participation’ and replace with ‘Withdrawal’, and delete ‘All members and the organizations they represent shall act in good faith and all aspects of these negotiations.’

The Committee had extensive discussion on appointment of a primary versus an alternate member; if a primary member is automatically knocked out, an alternate does not automatically become a primary, instead the alternate’s role is to stand in for a primary when they are not available. In order for an alternate to become a primary, they would have to be appointed as a primary by the Secretary of the Interior. The discussion also included the alternate’s ability to be able to engage in consensus.

Ms. Palmer summarized the discussion of the Committee and asked the Federal team to seek clarification on the vacancy on the Committee and the replacement from a specific Tribe.

The other discussion is how Committee members are treated within the appointed roles. Given the rules and seeking consensus from alternate members, could the Committee seek clarification to explore a two part consensus where; all Committee members participate in the discussions regardless of their appointment, and when decision making occurs could the Committee have a two part process where primary members do a consensus and test the consensus among the alternates as well. The clarification would be on any legal restrictions to allow a two part consensus process. Also to seek clarification if there are other options available.

The Committee had comments on questions regarding the budget supporting the work of the Committee; if there are resources for technical experts and if needed, to have a fourth in-person meeting. There was also discussion on the timeline of the work of the Committee; to have a proposed rule completed within three in-person meetings and if that is realistic. The Federal team will provide the Committee the budget showing resources available and will discuss changing the forth meeting from a webinar into an in-person meeting.

Day 2, September 26, 2018

Welcome, Reflections from the Group, Confirm Today's Agenda

Regina Gilbert, alternate DFO welcomed the Committee to day-two and thanked the Committee for a warm blessing, sharing of the tobacco, and in-depth discussions of the Committee. Handouts provided to the Committee on day-two are, a revised agenda and current regulations / what works and its challenges. Ms. Palmer went over the changes to the agenda.

Committee members had the following reflections to share:

- Hopeful the group can move forward for the betterment of our students. And the frustration of providing data at the last minute; all schools share the same frustration. We all need to keep in mind the data tells the story and the need is all tied to funding. If we can't tell the story of our success through data or we can't tell our story of our needs through the data, then it affects the funding for all schools.
- Would like clarification on the word 'advisory' as we move forward. The school board is being told from BIE on whom they can/cannot hire and it's affecting the school board decision. *Ms. Palmer will flag and determine where it can be discussed further on the agenda.*
- On television there was a hearing on Every Students Succeeds Act implementation. There were Superintendents commenting and revolved around the same conversations that you have to have data for proof and determine what is/what is not working for the schools.

Decision-Making Criteria / guiding Principles Related to Standards, Assessments and Accountability System Regulations

Ms. Palmer asked the Committee to identify and agree upon guiding principles to use while making decisions and evaluating options. The Committee was asked to write down additional guiding principles that the group then consolidated. Committee members made the following points:

- The 'Sovereignty' issue is huge for Tribes; they will make decisions locally on what happens with their kids in the schools. Tribes still have to depend on Federal dollars but there is still the push and pull, and the schools still need to report. 'Tribal Sovereignty' and 'Integrity', 'Honest', and 'Truth' can be grouped together.
- 'Universal' was put up to reflect on individual Tribes best interest within their schools. Within ESSA you have the ability to apply for a waiver, but on the other hand, you have to pass the test with Department of Education. It's a challenge of what we are trying to do, maybe 'Universal' is more of a challenge. Challenges (*in Tribal Schools*) are much different than public schools.
- Looking back at our conversation of not being so highly descriptive in writing the regulations to not trap ourselves because the new regulations are going to be Universal applied where we can apply our unique situations. The regulations need to be written broadly enough to have local control and autonomy.

Ms. Palmer asked for consensus among the Committee to support the core values; alternate members were in consensus and primary members were all in consensus. See Appendix H for the composition and grouping of the guiding principles as consolidated.

Overview of Standards, Assessments and Accountability System

Deborah Sigman, Center on Standards and Assessment Implementation (CSAI) welcomed the Committee and provided a brief introduction of herself. Ms. Sigman presented information on what a standards, assessments, and accountability system is, how they work together and what purpose they serve in the context of BIE. See Appendix I for the presentation on Transitioning to the Every Student Succeeds Act: Standards, Assessments, and Accountability.

Committee members had the following questions and comments on the presentation:

- When you talk about an accountability system, can you provide an example of a full accountability system? *When we get to the accountability section of the slides we can discuss further. In ESSA there are required indicators, one of which are those assessments and there are other kinds of metrics as well; graduation data for example. And there are locally adopted indicators; attendance, suspensions, expulsions, also English language proficiency as indicators.*
- With relevant career and technical education standards, where do those come from? *Many states have adopted relevant career and technical standards. The word relevant is important in determining what that means for schools.*
- Our role as Tribally controlled grant schools, where do we stand, SEA or LEA? As a grant school we are able to create our standards, and thus becoming an SEA? This talks about how BIE can adopt but Tribes can waive that process. Where do Tribally controlled schools fit? *The Tribal governing bodies or school boards can waive the Secretary's definitions of standards, assessments and accountability system in part or in whole, and the waivers have to be accompanied by an alternative proposal that is consistent and meets the requirements of Section 1111; yes there is a SEA like authority but ultimately the funding comes through BIE as the statutory law is set. There's flexibility to pursue waivers.*
- When you talk about the state of California adopting relevant career and technical education standards. What if a Tribe becomes a state, can the Tribe create its own teaching standards to be certified within the Tribe? *Teaching standards are different than academic content standards. This pertains to the expectations of students, not the expectations of teachers.*
- Can a state allow 8th graders to take both middle grades math assessments and end-of-course high school math? *A state may but will have to determine which of the two will be calculated into your metrics for your accountability.*
- Who decides if an assessment is summative versus formative? *It's not formative but interim. For example you have an assessment every three months and would build to one single score. A state would make that decision to have a set of interim test that build to a single summative score; ESSA allows interims under the new law.*

- Under the English language learners (slide 17), you had the waiver of your first bullet and the second, is that also something you have to apply for every year and are you tracking that student? How is that working? *It's not a waiver, this is in the confines of the law so a state may choose how they are going to apply if they want to do either of these things in bullet one or in bullet two. A state would have to submit a state plan and within the state plan they would have to declare what they are going to do; option one or two.*
- With the assessment if you did an ACT, would that include the pre-ACT for juniors? Are you committing to the aspire testing? *The law requires a state to select an assessment tied to a high school nationally recognized test, such as SAT or ACT. A state itself can choose the assessment.*
- What are some of the multiple interim assessments models that results to one summative score? If this is within the law, how far can we know what these allowances are and how much technical assistance is BIE able to provide? *To date, I'm unaware of a testing company or a test that has proven this to be the case.*
- As a positive, this is an alternative to allow the use of a multiple interim assessments as flexibility to use in the schools. But the challenge is the resources and technical assistance to get it done. Question on assessments and accountability for high school, if the state decided to use the ACT, are there any constraints around what that looks like with regards to the reporting in the accountability? Is it a one-time only, is there flexibility within the system to allow for concordance scores, or to allow for multiple takes of the same assessment for a higher level of achievement? *There likely would be, those have to meet the requirements of ESSA to have an annual assessment for the state, within the context of the law.*
- When a Tribe submits a waiver, is it Department of Education's decision to approve the waiver? *When a Tribal governing body or school board makes a decision to waive part of the Secretary's definition of standards, assessments, or accountability system and submits an alternative proposal, it's sent initially to the Secretary of the Interior. Both the Secretary of the Interior and the Secretary of Education review the proposal and if the Secretary of Education determines the proposal do not meet the requirement of Section 1111 it will not be approved. Via the statute.*
- Would like to have a technical expert and technical advisory on the multiple state wide interim assessments that would be available to the states/Tribes. Would like to make space in the regulation for options of flexibility on an interim assessment.
- What do we need to do to ask BIE to move MAP away from a formative assessment and have it into an interim assessment for a summative score? Is it possible to go to NWEA to create an interim assessment and it becomes an option? *The Committee has the power to make the recommend to the Secretary of an interim assessment. As for NWEA, Nebraska has already broken ground. They worked with NWEA and have been peer reviewed and approved as in interim assessment.*
- In a regulatory stance, what are the technical deficiencies at this point with NWEA as the multiple interim assessment as it relates to the statute? Is it not aligned to the statute? Keep this as a consideration as an option. *Keep in mind, whatever assessments are chosen, they must be aligned to your standards.*

- Under accountability, we talked about those who are cognitively disabled, what about the top percent of students? If you have top student who has mastered the standards, what is there for them in the BIE system when there is so much focus on the underperforming? *ESSA requires the three levels of proficiency, you as an entity can determine you want five levels of proficiency for the top level to be designated for the high performing student. Does that mean they have a different path in their senior year, etc.? There are options outside of the law to honor the high level of achievement.*
- Where does GT funding originate in BIE? BIE had five categories for a student to qualify. *Between counting a student as a student in your classroom (1.15 / 1.3, whatever it is) and the gifted-talented, it adds up to 2 WSUs; it's a significant amount of funds. Two WSUs is well over \$10,000. It's in the regulation of how to identify the GT and BIE has a Power Point on the topic. If a student is identified in NASIS you get an ISEP additional amount for that student. Problem has been schools identify those students but have not identified a program to follow up with those students. There is a 15% cap on two of the five categories, and a set amount of funds that all schools can compete for.*
- Graduation rates, is that a 4-year cohort? *You can use a 5-year cohort in addition to 4-year and identify interim goals on both.*
- As a Committee we need to think of when it says 'States must establish' to also read it as 'BIE / qualified Tribes must establish' a system and is helpful to understand what is needed as we look at the presentation. Qualified Tribes to mean if they wish to pursue a waiver.
- Unless the parents and community buy into the future of our students, we are always going to be at this low level. What happens at home affects the students' success.
- We'll have two options, BIE ESSA state plan and to apply for the waiver. Does the individual Tribe/school have the capacity and resources to meet the requirements of the law? I see this as a challenge with a double edge sword.
- Are you aware of any states that have opted to allow for assessments partially in the form of portfolios, projects or performance tasks? *The only ones are doing so in their alternate assessments for significant cognitive disability students.*
- The importance of the waiver process is that it exists and is an option for the Tribes. Also understanding the proposal needs to meet the same standards.
- The importance of this Committee is to create a system that is agreed upon and if you choose to waive, you can still use parts of the Secretary's system.
- Is the Center on Standards and Assessment Implementation going to be made available to the Committee as a technical expert? *Yes, as a technical expert and will be available between meetings and at the next two in-person meetings.*

Overview of Initial Framework for Draft Regulations for Implementing a Standards, Assessments, and Accountability System.

Brian Quint, Attorney Advisory with the Office of the Solicitor provided an overview of a framework for draft regulations. As a best practice, BIE drafted a very broad framework of what a rule can look like and is a model for the Committee to start with.

The side-by-side handout (under tab 7) shows the existing regulation on the left and a draft proposed rule on the right. Within the proposed section is a series of questions, especially how the Secretary will define the standards, assessments, and accountability. What will make sense for BIE, options to be made available, and what can be included in the report of recommendations from the Committee to the Secretary. If there are places where the BIE is able to pursue things different from the statute, such as alternative indicators, those are the types of items to recommend. Also under tab 7 is the draft regulation that is not side-by-side for the Committee to look at for discussion.

Committee members had the following questions and comments on the framework for draft regulations:

- You talked about a MOU between Department of the Interior and Department of Education, regarding title funds? *Yes, the use of title funds and achievement measures. BIE can provide a copy of the MOA to the Committee.*
- Do the Tribes have any consultation in this process? And when was the last time of a consultation? *Yes, Tribal consultation is built into the statute. The last MOA agreement was in 2012 and as soon as this negotiated rulemaking is complete, Interior will renegotiate with the Department of Education on what should be in the MOA based on what the new regulations indicate, and that will go out for Tribal consultation; a separate consultation on the MOA.*
- Is there a distinction between the words: shall, must and will, and the directive of those words? *The Federal team will follow up to ensure we provide the correct meaning of the three terms. Provided to the Committee October 2.*
- Are you expecting the Committee to go word-for-word right now? *No, it's just to provide an overview as we discuss the various topics of each category.*
- If you look at NCLB it was mentioned that was a different rulemaking and they were able to look at things like attendance. Whereas, we are only limited to standards, accountability and assessments. But attendance can be one of your data pieces as an indicator.
- Attendance is a rule under 25 C.F.R. Can we make changes to that rule under this rulemaking committee? *The charter authorizing this Committee specifically reference Section 1111 for negotiated rulemaking on standards, assessments, and accountability. However, the Committee can recommend within their report what changes are needed with the other 25 C.F.R. parts relating to education as they are 15 years old; and agency can create a discretionary advisory committee. The Agency has to respond to the Committee's recommendations.*
- What should we be aware of before we begin; seeking clarity? *The Committee can address attendance as an indicator without impacting how attendance for ISEP is calculated; those are two separate things. Indicators are important to this process in negotiated rulemaking. Section 111 does indicate a state can periodically review and revise their state plan.*

Ms. Palmer indicated the Committee will need to review the document under tab 7 to begin discussion on day-three.

Non Federal Committee Members Caucus

Non Federal Committee members caucused without the facilitators, and Federal Committee members.

Upon reconvening the Committee meeting, the non-Federal Committee members sought clarification around: committee selection, roles of committee membership (i.e., primary and alternates), replacement of a committee member who is unable to participate, and technical assistance from other academic organizations other than through the Department of Education.

The Federal team discussed each topic with the Committee to provide clarification. It is the Secretary's discretion of committee membership and replacing a committee member through the same process as each appointed member as described in the Charter. Each member was appointed by the Secretary and their role on the committee (primary and alternate), as stated in the appointment letter signed by the Secretary. Within the Committees operating protocols, the alternates can have a voice in reaching consensus and can fill in for a Committee member if a primary member is not available to attend an in-person meeting. The legal advisor will check to ensure there is nothing legally restricting the voting rights of an alternate member. Technical assistance will be addressed in the Committee's operating protocols.

Brian Quint, legal advisor, subsequently clarified the issue of alternates being able to participate in consensus during deliberations and questions of elevating alternates to primary members. After receiving direction from the Office of the Executive Secretariat (via Office of the Secretary), it is possible to request alternates be elevated to be appointed as a primary member. If the Committee wants to pursue this, the Committee can draft a letter of justification stating why the alternates should be elevated to primary members and submit the justification letter to the Director of BIE, who will then submit to the Office of the Secretary for consideration. The request should be made before the next in-person meeting. However, it will leave this Committee with no alternates. The Federal team will research if another Federal Register notice will need to be published reflecting these changes. The Federal team does not need to make any changes to the Committee's Charter since the Federal alternate member will remain as appointed. Also, the Committee would need to ask the alternates if they want to be elevated as a primary member. Each non-Federal alternate was willing to become a primary member and also voiced that they were fine remaining as alternates.

The Committee affirmed that it is comfortable proceeding without any non-Federal alternates. The Committee did not reach consensus on preparing a justification letter to change the designation of the alternates to appointment primary members.

Instead of a letter, a non-Federal Committee member will reach out directly to the BIE Director and explain the impact of designations (i.e., primary and alternate members) and the interest of improving Federal government cultural relations to explain what has taken place among the Committee, and will report back to the Committee. The Committee was in agreement by consensus.

Call to Public for Public Comments

Ahniwake Rose, Executive Director for the National Indian Education Association provided comments to the Committee. In addition, Dr. Gloria Coats-Kitsopoulos read comments from Cindy Fry of the Colville Confederated Tribes representing the Paschal Sherman Indian School. See Appendix J for public comments. The Committee thanked those who provided comments as they are helpful to hear as negotiators.

Day 3, September 27, 2018

Welcome, Reflections from the Group, Confirm Today's Agenda

Regina Gilbert, alternate DFO welcomed the Committee to day-three and thanked the Committee for their patience and in-depth discussions of the Committee. Reflections shared were: seeking clarity to provide good understanding of the discussion on both sides, the Committee's request on seeking technical assistance and what resources will be made available for future in-person and subcommittee meetings and clarity on the roles of the Committee members of primary versus alternates. In response to the Committee's request to have an in-person meeting for meeting #4 instead of a webinar, the request is being considered and will be discuss further in the agenda. The in-depth discussions over the last two-days are a good reminder on how the Federal team can improve for future meetings to be successful. Later in the day we can discuss how material can be shared with the Committee members if they're any obstacles to be aware of. Also extended a thank you to the members of the public for attending the meeting and taking time out of their day and resources to be in attendance. And lastly, Annette Miller with BIE is in attendance and will provide additional information as it pertains to Committee travel.

Ms. Palmer went over the changes to the agenda for day-three.

Overview of Initial Framework for Draft Regulations

Brian Quint provided a brief overview with the Committee of the draft regulations. They also provided discussion around the work of the prior rulemaking committee. See Appendix K for the report outline.

Dr. Hamley added discussion of the work of the prior rulemaking committee. When the BIE created the flexibility waiver and worked with the Department of Education, Department of Education indicated BIE does not have a public system to higher education so this section does not apply to you. This is an option to the Committee of this section not applying to BIE of creating standards that are not college or career ready. An option for the Committee is to create a virtual public higher education system comprised of various state higher education institutions and use as a hypothetical measure. This is a topic to explore and seek clarification and assistance from Department of Education.

Committee members had the following questions and comments on the draft regulations:

- For clarification, was the contract, during the NCLB reg-neg, to develop standards for the BIE been completed? *The contract was only awarded and they were several months into the work when the contract was cancelled by the Assistant Secretary – Indian Affairs because the prior rulemaking committee decided not to go with developing its own standards and assessments. The prior rulemaking committee decided to use the states standards and assessments.*
- The schools have been using some form of the common core standards the states have used, and states have since removed/replaced parts which have been renamed. The concern is to keep in mind all of the school’s curriculum expenses are affected with a high dollar costs when there are changes to a new curriculum. Also, Bureau students transition into state high schools and we need to keep those things in mind that bureau students are not always going to stay in the bureau system.
- No all schools have been using the common core standards; there is a variety of approaches being used across the U.S. This is an overview of what to expect of the work of this Committee. It is really good background to know the Interior was looking into creating its own standards. It is complex with aligning with entrance requirements for post-secondary or career/technical education standards. The thing the Committee needs to keep in mind is not to be so highly prescriptive, but to write a regulation that allows for those options. If I understand correct, this Committee is not writing the BIE’s state plan the same time we are writing these regulations? *[Correct.]* And writing the state plan to fit those regulations is the Interior’s job. *The Interior has explored the State plan with the Department of Education. BIE did have a state plan under NCLB that was peer reviewed and all were agreement. Now under ESSA, it has been agreed upon BIE is not a state as defined in ESSA. Interior is not required to do a state plan. The Department of Education has told Interior its optional for BIE to have a state plan and the Director for BIE has decided there will be a state plan because BIE has to communicate to their constituency what will be done going forward. The work of this Committee is very important for the Secretary to determine what will be in the state plan. A transition from one system to the next will take years vs. months.*
- To clarify, this Committee is writing a regulation that is broad enough to allow for these options, yet not so highly prescriptive to bind us to something. The BIE is not technically recognized as required to have a state plan, not required by statute but is an internal determination/decision to have a state plan. But on our level, we hear the Bureau schools are waiting for guidance, waiting for this rulemaking Committee to convene to make some decisions and determinations, for the BIE to give guidance to their schools. The state plan is not necessarily a state plan, but will serve as one. This information is helpful to understand for clarity. *Within the draft regulations, there’s reference to a plan. However, since it was included in the MOA under NCLB it might not be appropriate to not put in the regulation. It would only cover in terms of the definitions of the standards, assessments and accountability system under Part 30, it would only apply to the title funding and not to other programs. The Committee will discuss further.*
- If the BIE is to build an accountability system under the assumption the majority of the BIE operated schools used NWEA testing, as used appropriately could be a plan worth constructing. On the other side if your Tribe is going to apply for the waiver there is specific structure and clearance your Tribe will have to seek and get from the Department

of Education. The challenge is does our Tribe have the resources or funding to make the waiver happen as an individual Tribe? *The regulations should be more general than to lock the Bureau schools down 10, 20-years to specifics. The waiver does come at a cost if a Tribe wants to develop a completely different set of standards and assessments, etc. Ultimately, it's Congress that makes the funding decisions.*

- Consider the regulations as a broad allowance/allowing authorization. Broad allowances within the regulation so we can envision what could be done for the best interest of our students. Under these regulations we are allowed to go 'this far' for our students. I know the resources are not there to provide the best, but that is the next step for our Tribes and communities to ask for more funding to implement.
- What additional funding did the states receive to implement ESSA? It's a question about resources and for planning. *The Federal team will put on their action item list.*
- The idea of a Bureau state plan is authorized in the MOA? That's where it sits? *The Department of Education has clarified BIE is not a state and not required under ESSA for a state plan; it's completely optional. It's the BIE Director decision to have a state plan for all the schools to have direction. The question then becomes, the option for BIE to have a state plan, should that be included in the regulations or within a MOA with the Department of Education. Under NCLB the Department of Education agreed to treat BIE like a state for certain purposes and as part of this agreement there was acknowledgement that BIE have a state plan that is not a requirement, and was included in a MOA. 20 U.S.C. 7824a requires the two entities (Interior and Department of Education) to enter into an agreement about how title funding will be used; legal authorization for BIE to have a state plan.*
- Could the Committee get a copy of the MOA? *Yes and will be added to the action items.*
- Obtaining a copy of the MOA and the understanding of what the authorization is for treating the Bureau as a state is going to go a long way towards our baseline knowledge.
- We need to focus to ensure our schools and children are not receiving sub-standards; that we're going to bring them up to the level of the state if not greater because they deserve it. We're not to worry about the funding, let those who go to fight with Congress fight with Congress. If we decide the equivalent of a state plan for our schools is necessary, then we should recommend that whether it's our authority to say or not, we are reflecting the voices of our constituencies.
- How much of the current Department of Education regulations is this Committee accessing and using, and how are these different? The Accountability sections were repealed but the Assessments held and could be used as a model as there is good information within them.
- As were looking at this and saying a uniform system of standards. To be fair to the student if they are doing well in their testing; 75% of your grading is based on your test scores and in the public schools 60% on test scores with 40%. Summative versus classroom, a student in one school is passing but when you change schools you're failing. *Those are two different things. Each state has their indicators and then they have the weight on it. There is wide disparity on how the students are graded in their schools. That is a different system than what we are describing here. You're describing a student measure, but we are describing a school measure.*

- With all the NWEA MAP testing, does BIA calculate the rip scores to be able to determine who is doing well and those who need improvement? I'm envisioning what a BIE state standard would look like and what would be the ramifications of one? *BIE does review those scores but we leave it up to the schools to look up the NWEA data. BIE can send out the most current NWEA report to the Committee.*

Brian Quint read a list of questions for the Committee to consider pertaining to standards provided in Ms. Sigman's presentation. The Committee may want to think about developing subcommittees to break out the work for discussion of standards for regulatory language, and recommendations around standards for the Secretary to emphasize while defining standards. To clarify, a subcommittee can focus on items that would not be codified into a regulation, items that could be helpful to recommend an academic system that works for the Native students who are served by BIE-funded schools.

Confirm Leadership Team Members

Ms. Palmer asked the Committee to review the roles in the approved Operating Protocols. As a reminder the Committee agreed to have up to six individuals; one-to-four non-Federal and one-to-two Federal members, excluding the DFO and the facilitator. Alternates can be members.

The following Committee members nominated and accepted by consensus to serve on the LT:

- Jennifer McLeod
- Charles Cuny Jr.
- Lora Braucher as a Federal representative Sherry Tubby Leslie Harper

Subcommittees: Tasks, Products, Members

The Committee discussed many topics and as a result created the following subcommittees: standards, assessments, accountability and waivers. Each subcommittee will: review the side-by-side of the draft regulations and Section 1111 - to identify concerns, questions, pros/cons, and identify where technical experts/assistance needed and report back to the Committee at meeting #2. Committee members identified which subcommittee they would like to participate on and a point of contact for each subcommittee was identified.

The four subcommittees and its membership was approved by the Committee. The Committee also agreed to use the Monday late afternoon prior to the October 2018 meeting for subcommittee work.

Technical Expertise

The Committee brainstormed the following topics where a technical expert is needed to provide additional information/clarification to the Committee:

- Universal Design for Learning (UDL) – in reference to special education.
- Comprehensive Centers.
- Multiple Interim Assessments – validity, reliability, and psycho-symmetric.
- Creative and innovative assessments – as indicated in Section 1111.
- NWEA – specifically on what opportunities have been made available (*state of Nebraska*) and constraints with the assessments.
- N-size determination / population and students – how a state determines that number.
- Vendors for standards creation.
- Languages other than English - Nation Center for Educational Outcomes at University of Minnesota / possible an Ed contractor already.
- Oral professional assessments for English / what are we doing for one plan; states uses a different assessments.
- Native language proficiencies assessments / language experts other than English.
- Weighting indicators – how indicators are being weighted.
- College entrance requirements.
- The standards are not culturally relevant – how standards are created using the population of the community to provide input as they are being developed.
- Culturally relevant standards / cultural knowledge standards – individuals were identified from University of New Mexico.

The BIE will submit the technical expert list to the Department of Education to receive feedback and follow up of whom an assist the Committee.

Action Items

Ms. Palmer reviewed the action items that emerged from the meeting presentations and discussions. See Appendix L for the list of the Committee’s action items.

Adjourn

Regina Gilbert, alternate DFO adjourn the meeting. The Committee called a caucus at the close of the meeting.