TESTIMONY
OF
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CHIEF, DIVISION OF PERFORMANCE AND ACCOUNTABILITY
BUREAU OF INDIAN EDUCATION
DEPARTMENT OF THE INTERIOR
AT THE HEARING
CONCERNING THE
GAO REPORT
ON THE
BUREAU OF INDIAN EDUCATION SCHOOLS (GAO-08-679)
BEFORE THE
HOUSE EDUCATION AND LABOR
SUBCOMMITTEE ON EARLY CHILDHOOD, ELEMENTARY
AND SECONDARY EDUCATION

September 9, 2008

Good morning, Mr. Chairman and Members of the Committee. My name is Stan Holder, and I am the Chief, Division of Performance and Accountability for the Bureau of Indian Education at the Department of the Interior (Department). I am pleased to be here today to speak on behalf of the Department about the recent GAO report entitled, *Bureau of Indian Education Schools: Improving Interior's Assistance Would Help Some Tribal Groups Implement Academic Accountability Systems.* (GAO-08-679)

Background

The Bureau of Indian Education (BIE) was established on August 29, 2006. The BIE is the former Office of Indian Education Programs, which was renamed in 2006 to reflect the parallel purpose and organizational structure BIE has in relation to other programs within Indian Affairs. The BIE supports education programs and manages residential facilities for Indian students of federally recognized tribes at 184 elementary and secondary schools, and dormitories. The BIE operates 59 schools and dormitories with the remaining 125 operated by the tribes through contracts or grants. These schools are located on 63 reservations in 23 states. The BIE has the responsibilities of a State Educational Agency (SEA) for this nationwide school system.

During the 2007 to 2008 school year, BIE-funded schools served approximately 44,000 Indian students and residential boarders; however, less than 10 percent of all American Indian children in the United States attend BIE-funded schools. Approximately 5,000 teachers, professional staff, principals, school administrators, and support personnel work within the BIE-operated schools.

GAO Report

The "No Child Left Behind Act of 2001" (NCLB), which reauthorized the Elementary and Secondary Education Act of 1965 (ESEA), emphasizes accountability for results in improving the academic success of students served by these programs. The statute requires schools receiving ESEA, Title I funds to achieve adequate yearly progress (AYP) based on annual targets towards the goal of all students achieving academic proficiency in reading and mathematics by school year 2013-2014. Under the statute, a school's achievement of its annual AYP targets is based primarily on student assessment results broken out by race and ethnicity, poverty, disability status, and limited- English- proficiency status.

The NCLB required the Department of the Interior to undertake formal negotiated rulemaking to create regulations in certain areas, including regulations defining AYP for BIE-funded schools. A team comprised of federal officials, tribal leaders, and Indian education professionals developed the regulations through "consensus" decision-making. All twenty-five committee members agreed to the final negotiated product. These regulations became effective on May 31, 2005.

The regulations defining AYP, mentioned above, provided that tribally-controlled schools would implement the definition of the State in which the particular school was located but could waive all or part of the State definition and propose an alternative definition. The alternative definition would be subject to approval of the Secretaries of the Interior and Education.

On June 27, 2008, the Government Accountability Office (GAO) issued a report entitled *Improving Interior's Assistance Would Help Some Tribal Groups Implement Academic Accountability Systems*. The report identifies the challenges associated with the implementation of the AYP final rule. It also included four recommendations that I would like to discuss briefly.

Recommendation – establish Memoranda of Understanding with States that lack agreements with the BIE

There are currently 23 different State definitions of AYP being applied throughout the BIE school system, leaving the BIE without a single standard AYP determination process. Instead, the BIE's responsibility was to approach the States with the expectation that the States would enter into a written agreement to provide assessments and scoring results, and, in some cases provide AYP determinations for BIE-funded schools in their respective States.

Currently, the BIE has 11 MOUs in place with the following states: Idaho, Iowa, Kansas, Maine, Montana, Nevada, North Dakota, Oregon, South Dakota, Washington, and Wyoming. The BIE continues to pursue MOUs with the following 12 states: Arizona, California, Florida, Louisiana, Michigan, Minnesota, Mississippi, New Mexico (once signed and then rescinded), North Carolina, Oklahoma, Utah, and Wisconsin, in order to complete an MOU with each.

One of the recommendations contained in the GAO report is that the BIE finalize the remaining 12 MOUs. GAO is concerned that States without an MOU could change policies regarding access to State assessments and scoring services. The BIE agrees that MOUs should be entered

into with the remaining States. We are working with tribal governments in pursuing negotiations with these States.

Recommendation – provide assistance to tribally controlled schools seeking a different definition of AYP

Another issue raised by the GAO is its concern regarding the assistance provided to Tribes that would prefer to pursue an alternate AYP definition waiver. Two tribes, the Navajo Nation and the Miccosukee Tribe, and one tribal consortium, the Oceti Sakowin Education Consortium (OSEC), have begun to develop alternatives to State AYP definitions, in part, to make standards and assessments reflect their tribal culture. The report states that the two tribes and the tribal consortium identified a lack of federal guidance and communication, including having received limited technical assistance from the BIE.

In response, the BIE has contracted with Research in Action, Inc to provide technical assistance to the Navajo Nation and OSEC to organize the Tribes alternate AYP definition initiatives and expedite the process. The contractor has identified the need for both the OSEC and the Navajo Nation to develop focused purposes, expected outcomes, and the administrative infrastructure needed to work with an assessment vendor. This development structure will also assist tribal groups in understanding the need for an administrative infrastructure to initiate and maintain an assessment system.

Navajo Nation

The Navajo Nation submitted a request for an alternate AYP definition waiver request to BIE in November 2007. BIE responded and attempted to set a date for an initial meeting with the Navajo Nation on November 15, 2007. Representatives from the BIE and the Department of Education met with Navajo Nation representatives on March 6, 2008, as an initial step in the technical-assistance process. The Department of Education's representatives explained the requirements for developing, administering, and maintaining a standards and assessment system, including the external peer review of each assessment system to ensure that it meets the requirements of the ESEA.

The Navajo Nation discussed the conceptual framework they would use to assess students. The frame work was based on standards and assessments that would have the results weighted on social pathology that exists in reservation communities. Both BIE and the Department of Education provided guidance as to the difficulty that would be embedded in such an approach. Also expressed was the concern that adding weight based upon the proposed process would minimize the identification of these social issues and could possibly decrease efforts to address the therapeutic and rehabilitative services to address them. The BIE has not received further correspondence or requests from the Navajo Nation for alternate AYP definition waiver purposes. The BIE consultant, Research In Action is still available to the Navajo Nation for technical assistance, upon request.

Oceti Sakowin Education Consortium (OSEC)

OSEC made its initial request on August 6, 2006. BIE staff have met with OSEC to explain the process and to establish tasks and timelines to facilitate its request. We are waiting for the OSEC to provide a focused process that would pass the peer review process in the Standards and Assessment Peer Review Guidance dated April 2004 (and updated December 2007) and distributed by the U.S. Department of Education (Education) for all State and tribe standards and assessments systems..

Extensive discussions have taken place between the BIE and OSEC to arrive at objectives that are in compliance with statute and can be accomplished and supported by the current structure of the BIE. For example, OSEC's most recent request is to (1) extend the time frame for all students to be proficient by 2014 to 2018; and (2) extend the Annual Measurable Objectives (AMO) to reflect this change These changes are statutory and would require amendments to the ESEA.

Miccosukee Tribe

The Miccosukee Tribe submitted a request for an alternate AYP definition waiver to BIE in 2007. The Tribe also requested that the school be held harmless for AYP-determination purposes until the alternate AYP definition was granted. The BIE has honored this request with the expectation that the Tribe would move quickly to request the amendment to the State Accountability Workbook, develop standards and assessments, and prepare for peer review.

The BIE and the Department of Education met with the Miccosukee Tribe in the State of Florida on November 20, 2007, and again on February 8, 2008, to provide technical assistance and an overview of the requirements for a standards and assessment system, and an overview of the peer review requirements . In addition, the BIE has offered ongoing technical assistance to the Tribe through a the BIE contractor, Research in Action.

The Miccosukee Tribe has communicated verbally to the BIE that it does not need further technical assistance in the form of funding or contractual support and that the Tribal Council has determined that the Tribe will absorb the cost and be responsible for developing the request. As of this date, BIE has not received any further information. However, a determination will have to be made concerning how long a school can be held harmless for an AYP determination.

Recommendation – provide guidelines and training to tribally controlled schools seeking an alternative definition of AYP

Another recommendation in the GAO report was for the BIE to provide guidelines and training to tribally controlled schools on the process for seeking and approving alternatives to defining AYP. As mentioned above, we are assisting tribally controlled schools in pursuing alternate AYP definition waivers. We are providing guidance and training through presentations at national education meetings and conferences throughout Indian Country. In addition the BIE is

working on formalizing its guidance and training and will provide it to the public on its website when ready.

Recommendation – BIE should establish internal response time frames and process to ensure timely responses to tribal groups requesting assistance

The GAO recommended that the BIE establish internal response times and processes. The BIE is logging in all correspondence and responses, including e-mails, regarding technical assistance requests. Upon the receipt of a technical assistance request, the BIE will identify and provide a point person to work with the Tribe on its request. A consultant will provide guidance and a project- management document identifying the activities and timelines for the technical assistance with the tribal entity. BIE will require that a progress report be provided at regular intervals and Education Line Officers will receive training on standards, assessments, and accountability expectations for alternate AYP definitions.

Conclusion

In closing, I would like to state that the education of our children is everyone's responsibility. Assessments, and the resulting AYP determinations, are one important measure used to determine the quality education children are receiving. They provide administrators and teachers the opportunity to improve and tailor instruction to raise achievement and close achievement gaps.. NCLB has provided the frame work and goals to facilitate this process. It is up to us, working together, to set the standards and use the information we receive from assessments, to facilitate improved instruction and truly close the achievement gap for Indian students.

Thank you for the opportunity to appear before you today. I will be happy to answer any questions you may have.