

Tony Dearman, Director  
Bureau of Indian Education  
Department of the Interior

April 1, 2019

Dear Director Dearman:

The Bureau of Indian Education (BIE) Standards, Assessments and Accountability Negotiated Rulemaking Committee (Committee) was established under the Elementary and Secondary Education Act (ESEA) of 1965, as amended by Every Student Succeeds Act, and the Negotiated Rulemaking Act of 1996. The Committee's purpose was to develop consensus language for proposed regulations to fulfill the Secretary's responsibility to define standards, assessments, and accountability system consistent with ESEA Section 1111, as amended, for schools funded by the BIE on a national, regional, or Tribal basis, as appropriate, taking into account the unique circumstances and needs of such schools and the students served by such schools and the process for requesting a waiver for these definitions.

As the Designated Federal Officer for the Committee, I am pleased to submit the Committee's Final Report. This report includes the Committee's consensus recommendations on proposed regulations for standards, accountability system and waivers (Section III). The Committee was unable to reach consensus on regulatory language for assessments and the differing views are provided in the report.

~~The Committee's Final Report includes consensus recommendations on a number of topics that~~ it considers critical for BIE, Indian Affairs, and the Secretary to take into account when developing the Bureau's definitions and its Standards, Assessments and Accountability Plan (SAAP) for the anticipated unified system. These recommendations are in Section IV. During its deliberations the Committee identified several topics that were outside of its scope that may be impacted by the new regulations and SAAP and consequently merit consideration by the BIE, Indian Affairs and the Secretary. Section V of the Committee report identifies these topics. In addition to consensus recommendations each section of the report documents the Committee concerns, chief among these the compressed timeframe for negotiations.

The Committee recognizes and appreciates your leadership and the leadership of the Office of the Assistant Secretary for Indian Affairs in support of the Committee's deliberations during this process.

If you have any questions regarding this report or its contents please contact me.

Sincerely,



Sue Bement  
Designated Federal Officer

Cc: SAA Negotiated Rulemaking Committee  
Juanita Mendoza

**STANDARDS, ASSESSMENTS, AND ACCOUNTABILITY  
SYSTEM NEGOTIATED RULEMAKING COMMITTEE  
FINAL CONSENSUS REPORT**

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Submitted to:

**DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN EDUCATION**

April 1, 2019

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## **I. INTRODUCTION AND CONTEXT**

### **Overview**

In 2005, Bureau of Indian Affairs (BIA) promulgated regulations at 25 CFR Part 30 that require BIE-funded schools to use the standards, assessments and accountability system of the State in which a BIE-funded school is located. There are BIE-funded schools in 23 different States; and each State has its own accountability system. As a result, each State system produced student achievement data that cannot be directly compared with data from other States. This created problems for the BIE in identifying under-performing schools and in directing resources effectively.

The 2015 Every Student Succeeds Act (ESSA) reauthorizes and amends the 1965 Elementary and Secondary Education Act (ESEA). Section 8007 of ESSA amends ESEA Section 8204, and directs the Secretary of the Interior, in consultation with the Secretary of Education, if so requested, to use a negotiated rulemaking process to develop regulations for implementation of the Secretary of the Interior's obligation to define the standards, assessments, and an accountability system that will be utilized at BIE-funded schools.

The regulations, along with any necessary revisions to 25 CFR Part 30 generally, will replace the existing 25 CFR Part 30 and will define the standards, assessments, and an accountability system consistent with ESEA, for BIE-funded schools on a national, regional, or Tribal basis. The regulations will be developed in a manner that considers the unique circumstances and needs of such schools and the students served by such schools. These definitions will be implemented in the 2019-2020 school year.

ESEA Section 8204 also provides that if a Tribal governing body or school board of a BIE-funded school determines the requirements established by the Secretary of the Interior are inappropriate, they may waive, in part or in whole, such requirements. Where such requirements are waived, the Tribal governing body or school board shall submit to the Secretary of the Interior a proposal for alternative standards, assessments, and an accountability system, if applicable, consistent with ESEA Section 1111. The proposal must take into account the unique circumstances and needs of the school or schools and the students served. The proposal will be approved by the Secretary of the Interior and the Secretary of Education, unless the Secretary of Education determines that the proposed standards, assessments, and accountability system do not meet the requirements of ESEA Section 1111. Additionally, a Tribal governing body or school board of a BIE-funded school seeking a waiver may request, and the Secretary of the Interior and the Secretary of Education will provide, technical assistance.

To fulfill the requirements for negotiated rulemaking, BIE convened a negotiated rulemaking Committee comprised of stakeholders representing students, parents, teachers, administrators and other stakeholders of BIE-funded schools. This Committee met four times to learn about the requirements of Section 1111 of ESEA as amended and to negotiate proposed regulations. The Committee reached consensus on proposed regulations for standards, accountability and waivers but did not reach consensus on assessments. Section III highlights the Committee's deliberations

regarding the proposed regulations. The proposed regulations can be read in their entirety in **Appendix E**.

## **Alignment of Regulations to BIE’s Mission and Strategic Direction**

In 2018 the BIE published its Strategic Direction, including a revised mission statement, “*to provide students at BIE-funded schools with a culturally relevant, high-quality education that prepares students with the knowledge, skills, and behaviors needed to flourish in the opportunities of tomorrow, become healthy and successful individuals, and lead their communities and sovereign nations to a thriving future that preserves their unique cultural identities.*” The Negotiated Rulemaking Committee notes the importance of aligning the Bureau of Indian Education’s Standards, Assessments and Accountability work to its mission and Strategic Direction. Significantly relevant to the Committee’s work are the following strategic goals:

*Goal 3: K -12 Instruction and high academic standards. All students will develop the knowledge, skills, and behaviors necessary to progress successfully through school and be prepared for postsecondary education and/or career opportunities.*

*Goal 4: Postsecondary and Career Readiness. All students will graduate high school ready to think globally and succeed in postsecondary study and careers.*

*Goal 5: Self –Determination. All students will develop the knowledge, skills, and behaviors needed to lead their sovereign nations to a thriving future through self-determination.*

*Goal 6: Performance Management. All students will benefit from an education system that is effective, efficient, transparent, and accountable.*

## **Report Organization**

During Committee negotiations, discussions specific to the 25 CFR, Part 30 regulations brought about concerns and recommendations for other related 25 CFR parts developed in 2005 after the No Child Left Behind Act was enacted. While not the specific charge of this Committee, members agreed to the importance of documenting all its concerns and recommendations. Thus this report is organized first by the Committee background, highlights of consensus language for the proposed regulations, followed by its concerns and recommendations for the Secretary’s definitions and development of the Standards, Assessments and Accountability Plan (SAAP) and ending with concerns and recommendations apart from, yet related to, the Committee’s charge.

## II. COMMITTEE BACKGROUND

### Authority

The Bureau of Indian Education Standards, Assessments and Accountability Negotiated Rulemaking Committee (hereafter Committee) was established under the Elementary and Secondary Education Act of 1965, as amended (ESEA)<sup>1</sup> and the Negotiated Rulemaking Act of 1996<sup>2</sup>. The Committee is regulated by the Federal Advisory Committee Act (FACA)<sup>3</sup>.

### Scope and Objectives

The Secretary of the Interior chartered the Committee to provide advice through the BIE and the Assistant Secretary-Indian Affairs on the development of regulations to fulfill the Secretary's responsibility to define standards, assessments, and accountability system consistent with ESEA Section 1111<sup>4</sup>, as amended, for schools funded by BIE on a national, regional, or Tribal basis, as appropriate, taking into account the unique circumstances and needs of such schools and the students served by such schools and the process for requesting a waiver for these definitions. The recommendations focus on the regulations found at 25 C.F.R. Part 30, Adequate Yearly Progress. The Committee acted solely in an advisory capacity. The final regulations will describe how to execute the Secretary's responsibility to define the standards, assessments, and an accountability system consistent with ESEA Section 1111, for schools funded by the BIE. Additionally, the Committee provided recommendations that encourage the exercise of the authority of Tribes to adopt their own standards, assessments, and an accountability system, as well as to provide recommendations on how BIE could best provide technical assistance under ESEA Section 8204(c)(3).

### Formation and Operation

On November 9, 2015, BIE published in the Federal Register, a notice of intent<sup>5</sup> requesting nominations for a negotiated rulemaking Committee to recommend revisions to the existing regulations for BIE's accountability system. The Every Student Succeeds Act (ESSA), Pub. L. 114-95 then became law, requiring an update to the subject, scope, and issues that the Committee would address.

On April 14, 2016, BIE announced its intent to expand the scope of the Committee and reopened the comment and nomination period<sup>6</sup>, requesting comments and nominations by May 31, 2016. The request for nominations was extended on August 17, 2016,<sup>7</sup> and on January 18, 2017, a

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<sup>1</sup> 20 U.S.C. §6301 *et seq.*

<sup>2</sup> 5 U.S.C. §561 *et seq.*

<sup>3</sup> 5 U.S.C. Appendix 2

<sup>4</sup> 20 U.S.C. §6311

<sup>5</sup> 80 FR 69161

<sup>6</sup> 81 FR 22039

<sup>7</sup> 81 FR 54768

notice of proposed membership, request for nomination, and a request for comments was published in the Federal Register<sup>8</sup>.

Taking into consideration the interests of the new Administration in participating in this process, the Department decided that a new negotiated rulemaking process, as required by the ESEA, should begin and a new request for nominations was published in fall of 2017<sup>9</sup>. On April 17, 2018, a Notice of Proposed Membership and Call for Nominations<sup>10</sup> was published and the final Notice of Establishment of the appointed Committee members was published in the Federal Register on August 2, 2018.<sup>11</sup> The Charter was signed by the Secretary of the Interior on July 26, 2018. The Committee met in September, October, December 2018 and March 2019. Each meeting was open to the public and the public had the opportunity to provide comment at each meeting as well as between meetings via email. **See Appendix D. Public Comment** for a list of the comments provided through March 14, 2019.

### ***Committee Membership***

Members of the Committee included representatives from BIE-funded schools such as administrators, teachers, parents, and school board representatives. Tribal representatives appointed to the Committee were nominated by one or more Tribal governments. Federal members of the Committee included two representatives from BIE. A full list of Committee members and alternates can be found in **Appendix A. Committee Membership**.

BIE undertook this effort with the assistance of the Office of Regulatory Affairs and Collaborative Action in Indian Affairs and the Office of Collaborative Action and Dispute Resolution in the Office of the Secretary which provided impartial collaboration, consensus building facilitation support to the Committee.

### ***Consensus Decision Making***

The Committee operated by consensus, which is defined in the Negotiated Rulemaking Act<sup>12</sup>, as unanimous concurrence of the primary Members, or in the absence of the primary, his or her alternate. Reaching consensus required all group members to educate each other about their important needs, interests, and concerns, and develop an integrative solution or agreement that addresses and satisfies both individual and group interests to the greatest extent possible. A consensus decision is an outcome that *all group members can support*. However, at a minimum, a consensus agreement may be a compromise that *all group members can accept*, “live with” and will not oppose.

### ***Timeframe for Deliberations***

The BIE needed to have in place regulations for the 2019 school year. In order for BIE to meet this deadline the Committee negotiations were initially compressed into four meetings in a five-

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<sup>8</sup> 82 FR 5473

<sup>9</sup> 82 FR 43199

<sup>10</sup> 83 FR 16806

<sup>11</sup> 83 FR 37822

<sup>12</sup> 5 USC 562 (2)

month period of time. The Committee’s meeting schedule and deliberations were delayed due to the lapse in Federal appropriations from December 22, 2018 to January 25, 2019. To expedite its work, the Committee organized several subcommittees tasked with developing proposals for the full Committee’s consideration and decision making.

### **Approach to Negotiations**

To facilitate the Committee’s deliberation of draft regulations, the BIE provided a draft framework of regulations providing existing language from 25 CFR Part 30 adjacent to proposed draft rule language based on Section 1111 of ESEA. The Committee and subcommittees used the draft language in what was referred to as the ‘side-by-side document’ as a starting point for deliberations. In addition to the draft regulations, the Committee identified several topics that are important for the Secretary to consider in developing the BIE’s Standards, Assessments, and Accountability Plan (SAAP). These recommendations are presented in Section V of this report.

### **Principles**

At its first meeting the Committee reached consensus to adopt the following principles to use as decision making during negotiations. These principles are listed in the side-bar.

**Decision Making Principles**

- Educational Sovereignty
- Student Centered: Meet the unique needs of our students. How will this benefit our students? How will this hinder a student?
- Positive outcomes for ALL stakeholders (students, community, parents, school staff)
- Fairness/ Compassion
- Honor Indigenous thought
- Prayer/Meditation/Faith
- Challenge our assumptions, be open-minded
- Look for opportunity
- Logic not feelings should guide big decisions. Feelings can change most logic can’t.
- Tenacity/relentlessness
- Universal: balance regulations with unique situations and needs of local control
- Unity, trust, truth, respect, make a strong commitment to honesty and integrity with each other

## **III. RECOMMENDATIONS RELATED TO DRAFT REGULATIONS**

This section describes key aspects of the proposed regulations and their importance to the Committee.

### **Key Broad Elements**

#### **Overarching Policy Statement**

It was the consensus of the Committee that the regulations include a strong statement that reaffirms the importance of tribal sovereignty and the unique relationship between Tribes and the Federal government. The statement is as follows:

*“Recognizing the special rights of Indian Tribes and Alaska Native entities and the unique government-to-government relationship of Indian Tribes and Alaska Native villages with the Federal Government as affirmed by the United States Constitution, U.S. Supreme Court decisions, treaties, Federal statutes, and Executive Orders, and as set out*

*in the Congressional declaration in sections 2 and 3 of the Indian Self-Determination and Education Assistance Act (Pub.L. 93-638; 88 Stat. 2203; 25 U.S.C. 450 and 450a), it is the responsibility and goal of the Federal government to provide comprehensive education programs and services for Indians and Alaska Natives. As acknowledged in section 5 of the Indian Child Welfare Act of 1978 (Pub. L. 95-608; 92 Stat. 3069; 25 U.S.C. 1901), in the Federal Government's protection and preservation of Indian Tribes and Alaska Native villages and their resources, there is no resource more vital to such Tribes and villages than their young people and the Federal Government has a direct interest, as trustee, in protecting Indian and Alaska Native children, including their education. The mission of the Bureau of Indian Affairs, Office of Indian Education Programs, is to provide quality education opportunities from early childhood through life in accordance with the Tribes' needs for cultural and economic well-being in keeping with the wide diversity of Indian Tribes and Alaska Native villages as distinct cultural and governmental entities. The Bureau shall manifest consideration of the whole person, taking into account the spiritual, mental, physical and cultural aspects of the person within family and Tribal or Alaska Native village contexts.” 25 CFR 32.3*

The Committee agreed, by consensus, to shorten the above language §30.100 of the proposed regulations to: *“In carrying out activities under this Part the Secretary will be guided by the policies stated in 25 C.F.R. Part 32.”*

### ***Creating a Unified System***

The BIE currently uses a 23-part accountability system created during Negotiated Rulemaking for No Child Left Behind (NCLB) in 2005. This current system has proven itself ineffective due to its complexity, resulting in a lack of comparative data across the BIE and preventing school classifications for the purpose of support and school improvement funding. Furthermore, a multipart accountability system has prevented the BIE from making timely accountability determinations. The Committee came to consensus that the BIE create a single, unified system for academic standards, assessments, and accountability system aligned to ESEA as amended. This means the Secretary will be responsible for identifying a set of standards, assessments, and an accountability system that all BIE-funded schools will adhere to unless they participate in the waiver process.

### ***BIE Standards, Assessments and Accountability Plan (SAAP)***

Since the BIE is not considered a State, it is not required by statute to complete a State Plan as described in Section 1111. The Committee was in consensus that the Bureau of Indian Education develops such a plan in accordance with Section 1111 of ESEA and be named the Standards Assessment and Accountability Plan (SAAP).

### ***Ongoing Stakeholder Engagement and Periodic Review***

Several Committee members voiced concerns regarding the lack of stakeholder input, meaningful tribal consultation, and transparency in creation and implementation of BIE plans and programs, and in its communications with the Department of Education. As a result of these

discussions, the Committee reached consensus on the following language to be included in Section 30.103 of the proposed regulations:

*(a) The Secretary, through the Director, must define the standards, assessments, and accountability system for use at BIE schools in accordance with this Part.*

*(b) The Secretary, or his/her designee will provide Indian tribes, parents and other stakeholders with quality, transparent information about how the Act will be implemented for BIE schools. Information, at a minimum, to include the standards, assessments and accountability system consistent with Section 1111.*

*The Director will implement a Standards Assessments and Accountability Plan that will provide Indian tribes, parents, and other stakeholders with quality, transparent information about how the Act will be implemented at BIE Schools.*

*The Secretary will ensure meaningful, ongoing consultation with a diverse group of stakeholders inclusive of parents, educators (such as administrators and educators from BIE operated schools and tribally controlled grant schools), tribal governments, students and community members. Such consultations will ensure input is considered in the creation, implementation, review and revision of standards, assessments, and accountability system. These stakeholder consultations will include transparent reporting, recording and responding to input obtained therein.*

*(c) The Secretary shall engage in active consultation with tribes and other potentially affected stakeholders when defining or revising definitions of standards, assessments, and accountability system.*

This theme was reiterated in the accountability section of the proposed regulations (30.106) where the Committee, by consensus, agreed to the following language excerpted here:

*“Develop and implement a single, Bureau-wide accountability system in consultation with tribes and stakeholders (such as parents, educators etc.) that:*

- ... Will be reviewed in consultation with tribes and stakeholders for continuous improvements as necessary, but not less often than every four years beginning on the date the plan is implemented”.*

The purpose of the stakeholder engagement in the accountability system is to identify successes as well as unintended consequences of a new, one-part system, and how it impacts the various types of schools, staff, students, families and tribal communities implemented therein, to determine if necessary amendments to the accountability system are needed, and to solicit recommendations for such amendments.

## **Challenging Academic Standards**

It is the consensus of the Committee that the Secretary defines a single set of academic standards for Bureau-funded schools, taking into account the unique circumstances and needs of such schools and the students served by such schools by:

- Adopting challenging academic content standards and
- Aligned academic achievement standards consistent with section 1111(B)(1) of the Act.

Academic achievement standards shall include the same types of knowledge, skills, and levels of achievement expected of all students at Bureau-funded schools. With cultural relevance as a guiding principle in the standards development process, challenging, academic standards will be developed for the following subjects:

- Mathematics
- Reading or Language Arts
- Science, and
- Tribal Civics

Such standards must be aligned to entrance requirements for credit-bearing coursework in higher education and relevant career and technical education standards except tribal civics. These standards shall apply to all Bureau-funded schools and students at those schools, unless the standards have been waived by a tribal governing body or school board and an alternative proposal has been approved.

### ***Tribal Civics as a Challenging Academic Standard***

The importance of tribal sovereignty and student lack of knowledge on topics related to sovereignty was discussed at length by the Committee. A Tribal Civics standard, aligns with BIE's Strategic Direction, Strategy 5.4: *"When the BIE, in partnership with Tribes, supports education needed to increase students' knowledge of Tribal sovereignty, then students will have supports needed to help them become contributing members of Tribal communities and all students will develop the knowledge, skills, and behaviors needed to lead their sovereign nations to a thriving future through self-determination."*

It was the consensus of the Committee that BIE implement Tribal Civics as challenging, academic standard. It is recommended that these standards be created and implemented for grades K-12 and are inclusive of elements such as: tribal sovereignty, self-determination, treaty law, land and water rights, laws based on tribal customs and beliefs, tribal and state relations local tribal government processes, contemporary issues such as gaming, rights around taxation, and sacred lands as well as historical events and policies that have impacted native peoples from a Native American perspective, including ideas on colonization, termination, Manifest Destiny, etc. Standards around tribal civics are not meant to be cultural in nature, but rather focus on those ideas, laws, and treaties that distinguish tribes as sovereign nations.

The Tribal Civics course would be required for grades K-12. The BIE will develop the standards for the Tribal Civics course once the regulations have been approved.

### ***Students with Significant Cognitive Disabilities***

The Secretary must adopt alternate academic achievement standards for students with the most significant cognitive disabilities.

### ***English Language Proficiency***

The Secretary must adopt English language proficiency standards that (i) are derived from the four recognized domains of speaking, listening, reading, and writing; (ii) address the different proficiency levels of English learners; and (iii) are aligned with the BIE's challenging academic standards.

### ***Native American Language***

Tribal governing bodies or school boards may create their own Native American language academic standards and Native American language academic assessments. The Secretary shall not have the authority to mandate, direct, control, coerce, or exercise any direction or supervision over such standards or assessments or require the submission of such standards and assessments to the Secretary for review or approval. The Bureau will provide Technical Assistance to the Tribe if requested.

## **Accountability**

### ***Use of Extended Year Adjusted Cohort Graduation Rate***

The Committee recognizes the unique needs of and barriers to success experienced by Native American students, often resulting in a delay in academic achievement and/or graduation. To improve accuracy of statistical data representing student success and graduation rates, the Secretary will use the extended year adjusted cohort graduation rate in addition to the four-year adjusted cohort graduation rate.

### ***Incorporation of Science in the Accountability System***

The Committee recognizes the importance of science education and achievement in an increasingly STEM (Science, Technology, Engineering, Math) focused world. It also recognizes current barriers to science achievement across BIE funded schools. It is the consensus of the Committee that science be included in the accountability system. The purpose for incorporating science into the accountability system is to focus attention, resources and supports to schools in order to improve science academic achievement across Indian country. The Secretary's discretion will determine the specifics as to how science is incorporated into the accountability system and plan.

### ***Incorporation of Tribal Civics in the Accountability System***

The Committee reached consensus as to the importance of Tribal Civics and its incorporation in the accountability system and SAAP. Understanding that the establishment of appropriate standards and assessments will require additional time for implementation, it is the Committee's recommendation that Tribal Civics be phased in as a part of the accountability system. Following the establishment of standards for Tribal Civics courses, it is recommended to be incorporated as a School Quality Success Indicator. Review of its incorporation will continue to

be revisited as implementation occurs with the possibility of Tribal Civics becoming an Academic Achievement Indicator.

## Waivers

In its negotiations, the Committee strove for process clarity about the steps a tribal governing body or school board would take to waive and seek approval for alternative requirements for standards, assessments or accountability system from those of the Secretary. The Committee reached consensus language that remained consistent with the requirements and language in Section 8204 of ESEA while supporting tribal sovereignty. The Committee also reached consensus on language that clarified that both DOI and Department of Education would provide technical assistance to a requesting tribal governing body or school board that was developing alternative definitions of standards, assessments, or accountability in part or in whole from those of the Secretary of the Interior.

The Committee contemplated how BIE-funded schools, currently under State systems, would transition to a unified BIE system. The Committee reached consensus on the following language in Section §30.108:

*During the transition to the Secretary's requirements for standards, assessments, under this Part, or at any time thereafter, where a Tribal governing body or school board elects to use the standards, assessments of a state, they may do so without submitting such standards, assessments, under the waiver process after the Secretary's requirements under this Part are final, provided the Secretary is notified of this and provided that the state agrees to allow the use of such standards, assessments.*

To help facilitate a well ordered and more expedient review process of alternative plans submitted by a tribal governing body or school board, the Committee reached consensus on language directing the BIE and Department of Education to develop and provide templates for plans submitted to the Secretaries of the Interior and Education.

## Considerations and Concerns

The Committee did not reach consensus in two areas of the draft regulations: §30.105. Academic Assessments as a whole and different subsections of §30.108 regarding waivers as described in more detail below.

### *Academic Assessments*

The Committee was unable to reach consensus for recommendations for regulations regarding assessments as described in Section 1111 of ESEA. Some members of the Committee expressed disappointment. There were several compounding factors that contributed to this outcome including but not limited to:

- The read ahead documents the Committee received erroneously indicated that the Committee had reached consensus on the draft assessments portion of the regulations. As a result, the March meeting agenda did not provide adequate time for consensus to be reached on assessments.
- Department of Education assessment regulations were provided to the non-Federal Committee members during its final meeting on March 13, 2019. After the Department of Education assessment regulations were reviewed and cross-referenced with the draft regulations the Committee had been working on, there were several gaps found between them (see Appendix B).
- Upon identifying the differences in regulations, there was insufficient time for the Committee to evaluate both the Department of Education and BIE draft assessment regulations, provide input, and adequately deliberate language that would close any gaps. Despite having some draft language prepared, Committee members felt it was not in the best interest of their constituencies to come to consensus on recommended regulations for assessments as described in Section 1111 of ESEA given the new information; doing so would potentially create unintended gaps and discrepancies for Bureau-funded schools.
- The Committee was under resourced in time and access to subject matter experts that contributed to having baseline knowledge to deliberate.
- The Committee requested to have a conference call meeting after the final March 2019 Rulemaking meeting for members to review, provide input, and adequately deliberate language around assessments, but the overall time constraint placed upon the Committee for the entire Negotiated Rule Making process prevented the Committee from doing so.

The BIE notes that the charge of the committee pursuant to Section 8204 of the Act was to recommend regulations consistent with Section 1111 of the Act, taking into account the unique circumstances and needs of BIE funded schools and the students served at such schools, and not the regulations of the Department of Education. The BIE respectfully disagrees with this statement the implication that it was deficient in supporting the Committee.

During negotiations at its third meeting the Committee reached initial consensus on the following language for subsections in the assessments section of the proposed regulations:

- “Retain in the academic assessments regulations placeholders for sections of text that are currently proposed for deletion, sections such as 2E State Authority, 2I Deferral, and 3 Exception for Recently Arrived English Learners, just in case those items become relevant to BIE in the future.”

#### Tribal Civics Assessments

- Understanding the complex and monumental task of creating a unified Standards, Assessments and Accountability System consensus for Tribal Civics assessments and assessment schedules will be phased in and implemented at the conclusion of the adoption of the subject area standards.

However, because there was not consensus on the assessment regulations as a whole, this language is not reflected in the consensus proposed regulations of the Committee (Appendix E).

## **WAIVERS**

There was an interest among some representatives on the Committee to include language in the regulations that encouraged tribal governing bodies or school boards to engage local communities and stakeholders who would be impacted by a waiver and alternative proposed definition. However, other members of the Committee felt community engagement was a matter to be left up to each tribal government. Consequently, there was not consensus to include the concept of community engagement in the regulations pertaining to waivers.

### ***Timeline for Review of Alternate Plans***

Many members of the Committee wanted to include in the regulations a timeframe by which the Departments of the Interior and Education would complete their review of a tribal governing body or school board's alternative definitions for standards, assessments, or accountability system. Having a finite review time would help the Tribe, and its BIE-funded schools, budget and plan in a timely way to ensure a smooth transition to the Tribe's plan once approved. Other Committee members could not support a timeframe, indicating that plans submitted by tribal governing bodies are unique and vary in complexity. The preference instead is for the Departments to negotiate a timeline on a tribe-by-tribe basis. Consequently, there was not consensus on language regarding a timeline for review of alternate plans.

### ***Orderly Transition***

During its deliberations regarding waivers during the transition from a State system to a unified BIE system, the Committee discussed several scenarios that might emerge:

1. Tribal governing bodies with a currently approved alternate plan under NCLB and
2. Tribal governing bodies currently preparing an alternative plan that is unique from the State system in which the Tribe currently uses.

The Committee discussed but did not reach consensus on language that would provide the clarity desired by some Committee members without being too open-ended for other Committee members.

## **IV. RECOMMENDATIONS RELEVANT TO THE SECRETARY'S DEFINITIONS OF AND/OR DEVELOPMENT OF BIE STANDARDS, ASSESSMENTS AND ACCOUNTABILITY PLAN**

### **Overarching Approach**

#### ***Evaluation of Existing CFR Parts for Alignment***

Proposed changes to regulations of CFR 25 Part 30, may impact other regulations outlined in the 25 CFR. An evaluation of other existing 25 CFR parts to determine alignment with this

proposed regulation and action to address any dissonance is recommended by the Committee. Specifically recommended is the evaluation of Part 36 (Minimum Academic Standards for the Basic Education of Indian Children and National Criteria for Dormitory Situations) for alignment to proposed regulations and inclusion of Tribal Civics and Part 38 (Educator Personnel).

### ***Impact of Uniform System on Accreditation and Educator Qualifications***

Under current regulations and policies, Bureau-funded schools adhere to the standards, assessments and accountability of the state in which the school is located. Following, educators in Bureau funded schools are required to be certified in the state in which the school is located. The Committee recommends that an analysis be conducted to determine the impact of implementing a uniform system on regional school accreditation and educator qualifications.

### ***SAAP Periodic Review in Consultation with Stakeholders***

Meaningful, continuous engagement such as inter-tribal working group and other stakeholder engagement is recommended in the creation of the Secretary's definitions of Standards, Assessments and Accountability and in creation of the SAAP plan, prior to implementation.

## **Academic Standards**

In the current 23-part system, BIE funded schools refer to the states in which they are located for academic standards, assessments and accountability. If a unified system of standards, assessments and accountability is implemented for BIE funded schools, then it would follow that schools would look to the Bureau of Indian Education, rather than the states, unless specifically expressed otherwise, to provide standards for all subject areas including, Language Arts, Mathematics, Science, Tribal Civics, as well as, ELP standards and assessments.

### ***Other Core Academic Courses***

It was recommended by the Committee that minimally, in addition to the adopted and assessed standards, the BIE develop and implement a unified set of academic standards for social studies (all levels), and high school math and science courses. This would ensure that all Bureau funded students are taught with the same academic standards in all core, academic courses instead of 23 different standards for essential or required core academic courses.

### ***Elective Courses***

Following, it is recommended by the Committee that the BIE also adopt standards for all other courses, including electives, thus fully unifying standards across schools, creating equity in access for all students in BIE funded schools. These would also be inclusive of career technical courses and programming.

## **Academic Assessments**

In the drafting of the SAAP, the Committee recommends that BIE give full consideration of the unique needs and circumstances of students and a thorough evaluation and clear guidance on how to implement assessments.

## **Accountability**

### ***N- Size***

In consideration of a probable N-size to be used for Bureau of Indian Education, Appendix C was reviewed. Due to the vast majority of Bureau-funded schools having smaller student populations, it is recommended that a smaller N-size be utilized. The purpose of this is to gain more accurate information in regard to student growth and achievement, in addition to excluding as few schools as possible from accountability of smaller subgroups, while balancing the need to maintain student privacy. There are two N-size considerations discussed by the Committee, one for reporting and one for accountability. The Committee recommends BIE take into consideration a smaller N-size for smaller schools for reporting.

### ***Academic Indicators***

It is recommended that significant weight be assigned to the academic growth indicators in the accountability system and plan. Several members of the Committee advocate for a weighting of 50% be assigned to reflect the importance of meeting students where they are and growing them to succeed. One Committee member advocates for special consideration or provision be given to Off- Reservation Boarding schools to address their unique needs, lack of feeder program and low student retention rates as schools of choice. It is recommended that the Bureau conduct a thorough review of growth models.

### ***Student Success Quality Indicators***

Several recommendations were brought forth by Committee members regarding Student Success Quality Indicators. The following are recommended for consideration:

- participation in Native American language immersion or Native American language programs, and
- student engagement to include extra-curricular participation

Specifically recommended for consideration in high schools are:

- participation or completion of college level coursework,
- participation or completion of Advanced Placement or gifted and talented programs, International Baccalaureate programs,
- participation or completion of vocational certification programs, or
- other college readiness markers such as ACT/SAT achievement or growth.

Last, it is recommended that the BIE do a thorough review of Student Success and Quality Indicators (SSQI) used by states.

## **Waivers**

In addition to the consensus language in the proposed regulations, the Committee recommends the BIE and Department of Education work together to develop a timeline for review and determination of alternate plan submissions through the waiver process.

Provide an appropriate transition timeline from when the regulations are final to implementation appropriate transition timeline is provided by the BIE from when the regulations are final to implementation of the waiver process.

## **Considerations and Concerns**

Throughout the Committee deliberation process, several Committee members voiced concern that equal time for the development of an accountability plan be provided for the BIE that the Department of Education granted to States.

## **V. RECOMMENDATIONS AND OTHER INFORMATION APART FROM THE COMMITTEE'S CHARGE**

### **Considerations and Concerns**

The Committee was made aware of the timelines prescribed by the Department of Education that the Standards, Assessment and Accountability System of the BIE must be in accordance with ESEA Section 111 and implemented by the 2019-2020 school year. The majority of the Committee has voiced concern about the short timeframe and its impact on quality deliberations. The lapse in Federal appropriations from December 22, 2018 to January 25, 2019 resulted in additional delays. Further, in light of the amount of time states have taken to develop accountability systems, the Committee is highly concerned that the short time frame the BIE will have to develop a unified system/plan will result in the implementation of an inadequate plan, thereby further negatively impacting student and organizational success.

### **Recommendations**

#### ***Negotiated Rule Making Committee for other 25 CFR Parts Related to Bureau Funded Schools***

As required by the No Child Left Behind Act of 2001, the Secretary of the Interior developed proposed regulations using negotiated rulemaking in 2005 that addressed the following issues:

- defining adequate yearly progress,
- establishing separate geographic attendance areas for Bureau-funded schools,
- establishing guidelines to ensure Constitutional and Civil Rights of Indian students, and
- establishing a method for administering grants to tribally-controlled schools.

These efforts resulted in a revision and re-designation of the following in 2005:

- 25 CFR Part 36 Minimum Graduation Requirements
- 25 CFR Part 37 Geographic Boundaries
- 25 CFR Part 39 The Indian School Equalization Program
- 25 CFR § 39.106 Eligibility for Special Education Funding – establishes the date for when students enter kindergarten.
- 25 CFR Part 42 Student Rights
- 25 CFR Part 44 Grants Under the Tribally Controlled Schools Act
- 25 CFR Part 47 Uniform Direct Funding and Support for Bureau Operated Schools

This Committee was tasked with making recommendations for proposed rules for 25 CFR Part 30 only. The Committee recommends that a Negotiated Rulemaking Committee be established to review and make recommendations for proposed rules for the remaining parts as listed above which reference the repealed No Child Left Behind Act of 2001.

### ***Development of Teacher Education Programs***

Committee discussion regarding the need to improve student academic achievement in STEM (Science, Technology, Engineering and Math) areas, also led to discussion of the current lack of qualified, Native educators in related fields. It is the consensus recommendation of the Committee that the Bureau focus resources to further development of teacher education programs, most specifically in Math and Science to also include “Grow Your Own” Teacher Initiative Programs.

### ***Harmonize the Regulations, SAAP and BIE Strategic Direction Document***

The BIE's Strategic Direction emphasizes a "culturally relevant, high-quality education" with goals and strategies centered on student needs. There is a focus on continuous improvement, gathering stakeholder feedback, along with providing appropriate technical assistance to tribes in meeting these goals. In order to achieve coherence, the Committee recommends that the development of the SAAP and forthcoming regulations maintain harmony with this Strategic Direction, and that revisions to the SAAP align with revisions to the Strategic Direction over time. Through ongoing communication and support, the BIE upholds its responsibility to tribes and maintains a unified process for truly improving the school system for all BIE students.

**APPENDIX A – COMMITTEE MEMBERSHIP**

<b>Member</b>	<b>Nominated by</b>	<b>Geographic Location</b>	<b>Primary/Alternate</b>
Lora Braucher	BIE Off-reservation Boarding Schools	OR	P
Lucinda Campbell	Diné Grant Schools Association	AZ and NM	A
Dr. Gloria Coats-Kitsopoulos	Oglala Sioux Tribe	SD	P
Charles Cuny Jr.	Little Wound School Board and Oglala Sioux Tribe	SD	P
Michael Dabrieo	Santa Clara Pueblo	NM	P
Ron Etheridge	Cherokee Nation of Oklahoma	OK	P
Jeffrey Hamley	BIE Division of Performance and Accountability	WDC	P
Leslie Harper	Leech Lake Band of Ojibwe	MN	P
Jimmy Hastings	BIE Education Program	AZ	A
Genevieve J. Jackson	Diné Bi Olta School Board Association, Inc.	AZ	P
Frank No Runner	Northern Arapaho Business Council	WY	A
Dr. Amy D. McFarland	Chief Leschi Schools	WA	P
Jennifer McLeod	Sault Ste. Marie Tribe of Chippewa	MI	P
Tasha Racawan	Navajo Nation	AZ	P
Patricia Sandoval	Pueblo of Laguna	NM	P
Dr. Rick St. Germaine	Mille Lacs Band of Ojibwe	MN	P
Sherry Tubby	Mississippi Band of Choctaw Indians	MS	P

Sue Bement, Designated Federal Officer, BIE - Primary

Regina Gilbert, Designated Federal Officer, RACA – Alternate

Brian Quint, attorney, legal advisor, DOI

## APPENDIX B – COMPARISON OF DRAFT BIE ASSESSMENT AND DEPARTMENT OF EDUCATION ASSESSMENT REGULATIONS

<p>The following table maps sections of the Department of Education Assessments Regulations to the BIE assessments draft language. This information was provided to the Committee at their request to ensure any key elements are included in the BIE assessments regulations. Rows in grey reflect differences in language and/or gaps. Some gaps may be because the language in the Education regulations is not applicable to BIE schools.</p>	
BIE	ED
105A	200.2 (a)
105 B	B(i)
105B(v)(I) B(vii)(I)	B(ii)
	<p>200.2 (b)(2)</p> <p>(ii) Be administered to all students consistent with § 200.5(a), including the following highly-mobile student populations as defined in paragraph (b)(11) of this section:</p> <p>(A) Students with status as a migratory child.</p> <p>(B) Students with status as a homeless child or youth.</p> <p>(C) Students with status as a child in foster care.</p> <p>(D) Students with status as a student with a parent who is a member of the armed forces on active duty or serves on full-time National Guard duty;</p>
105B(ii)	<p>b(3)(i)(A)</p> <p>b(3)(i)(B)</p> <p>B(ii)A(1)</p>
Depth and breadth not included	<p>(2) With respect to alternate assessments for students with the most significant cognitive disabilities, measure student performance based on alternate academic achievement standards defined by the State consistent with section 1111(b)(1)(E) of the Act that reflect professional judgment as to the highest possible standards achievable by such students to ensure that a student who meets the alternate academic achievement standards is on track to pursue postsecondary education or competitive integrated employment, consistent with the purposes of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act, as in effect on July 22, 2014;</p>

104(b) (Under standards reg, not assessments reg)	(b)(3)(ii)(B)(1)
Does not appear	(b)(3)B(2)
105(B)(iii)	(b)(4)(i) and (ii)
105(B)(iv)	(b)(5)(i) and (ii)
B(v)(I)	(b)(6)
B(vi) (Language missing around complex problem solving)	<p>(b)(7) (b)(7)(ii)</p> <p>(7) Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills—such as critical thinking, reasoning, analysis, complex problem solving, effective communication, and understanding of challenging content—as defined by the State. These measures may—.... (ii) Be partially delivered in the form of portfolios, projects, or extended performance tasks;</p>
Not in the regs	<p>(b)(7)(i)</p> <p>(7) Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills—such as critical thinking, reasoning, analysis, complex problem solving, effective communication, and understanding of challenging content—as defined by the State. These measures may— (i) Include valid and reliable measures of student academic growth at all achievement levels to help ensure that the assessment results could be used to improve student instruction; and</p>
B(iii)	(b)(8)
Not in the regs	<p>(b)(8)(i) and (ii)</p> <p>(8) Objectively measure academic achievement, knowledge, and skills without evaluating or assessing personal or family beliefs and attitudes, except that this provision does not preclude the use of— (i) Constructed-response, short answer, or essay questions; or (ii) Items that require a student to analyze a passage of text or to express opinions;</p>
Not included, but may be covered elsewhere	<p>(b)(9)</p> <p>(9) Provide for participation in the assessments of all students in the grades</p>

	assessed consistent with §§ 200.5(a) and 200.6;
105B(viii)	200.2(b)(10) and (i) and (ii)
B(xi)	(b)(11)
Need to check	<p>(b)(11) A-I</p> <p>(11)(i) Consistent with sections 1111(b)(2)(B)(xi) and 1111(h)(1)(C)(ii) of the Act, enable results to be disaggregated within each State, LEA, and school by—</p> <p>(A) Gender;</p> <p>(B) Each major racial and ethnic group;</p> <p>(C) Status as an English learner as defined in section 8101(20) of the Act;</p> <p>(D) Status as a migratory child as defined in section 1309(3) of the Act;</p> <p>(E) Children with disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act (IDEA) as compared to all other students;</p> <p>(F) Economically disadvantaged students as compared to students who are not economically disadvantaged;</p> <p>(G) Status as a homeless child or youth as defined in section 725(2) of title VII, subtitle B of the McKinney-Vento Homeless Assistance Act, as amended;</p> <p>(H) Status as a child in foster care. “Foster care” means 24-hour substitute care for children placed away from their parents and for whom the agency under title IV–E of the Social Security Act has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, tribal, or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made; and</p> <p>(I) Status as a student with a parent who is a member of the armed forces on active duty or serves on full-time National Guard duty, where “armed forces,” “active duty,” and “full-time National Guard duty” have the same meanings given them in 10 U.S.C. 101(a)(4), 101(d)(1), and 101(d)(5).</p>

	(ii) Disaggregation is not required in the case of a State, LEA, or school in which the number of students in a subgroup is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student.
B(x)	(b)(12)
B(xii)	(b)(13)
105J	200.2(c)(1) and (2)
Not in the regs	200.2 (d) (d) A State must submit evidence for peer review under section 1111(a)(4) of the Act that its assessments under this section and §§ 200.3, 200.4, 200.5(b), 200.6(c), 200.6(f), 200.6(h), and 200.6(j) meet all applicable requirements.
105H	200.3
H(ii)	(b)(1)
H(v)	(b)(1)(i) and (ii) and (iii)
Not in	(b)(1)(iii)(A – C) (iii) Is equivalent to or more rigorous than the statewide assessments under § 200.5(a)(1)(i)(B) and (a)(1)(ii)(C), as applicable, with respect to— (A) The coverage of academic content; (B) The difficulty of the assessment; (C) The overall quality of the assessment; and
(H)(v)(III)	(b)(1)(iii)(D)
H(v)(II)	(b)(1)(v)
?	(b)(1)(v)A, B (A) Are comparable to student academic achievement data for all high school students and each subgroup of high school students produced by the statewide assessment at each academic achievement level; (B) Are expressed in terms consistent with the State’s academic achievement standards under section 1111(b)(1)(A) of the Act; and
H(v)(IV)	(b)(1)(v)C
Not in	(b)(2) and (3) (2) Before approving any nationally recognized high school academic assessment for use by an LEA in the State— (i) Ensure that the use of appropriate accommodations under § 200.6(b) and (f) does not deny a student with a

	<p>disability or an English learner—</p> <p>(A) The opportunity to participate in the assessment; and</p> <p>(B) Any of the benefits from participation in the assessment that are afforded to students without disabilities or students who are not English learners; and</p> <p>ii) Submit evidence to the Secretary in accordance with the requirements for peer review under section 1111(a)(4) of the Act demonstrating that any such assessment meets the requirements of this section; and</p> <p>(3)(i) Approve an LEA’s request to use a locally selected, nationally recognized high school academic assessment that meets the requirements of this section;</p> <p>(ii) Disapprove an LEA’s request if it does not meet the requirements of this section; or</p> <p>(iii) Revoke approval for good cause.</p> <p>(c) <i>LEA applications.</i> (1) Before an LEA requests approval from the State to use a locally selected, nationally recognized high school academic assessment, the LEA must—</p> <p>(i) Notify all parents of high school students it serves—</p> <p>(A) That the LEA intends to request approval from the State to use a locally selected, nationally recognized high school academic assessment in place of the statewide academic assessment under § 200.5(a)(1)(i)(B) and (a)(1)(ii)(C), as applicable;</p> <p>(B) Of how parents and, as appropriate, students, may provide meaningful input regarding the LEA’s request; and</p> <p>(C) Of any effect of such request on the instructional program in the LEA; and</p> <p>(ii) Provide an opportunity for meaningful consultation to all public charter schools whose students would be included in such assessments.</p>
H(vi)	(c)(1)(i)
Not in the regs	<p>(c)(1)(ii)</p> <p>ii) Submit evidence to the Secretary in accordance with the requirements for peer review under section 1111(a)(4) of the Act demonstrating that any such assessment meets the requirements of this section; and</p>
Not in the regs	<p>(c)(2) – (5)</p> <p>(2) As part of requesting approval to</p>

	<p>use a locally selected, nationally recognized high school academic assessment, an LEA must—</p> <p>(i) Update its LEA plan under section 1112 or section 8305 of the Act, including to describe how the request was developed consistent with all requirements for consultation under sections 1112 and 8538 of the Act; and</p> <p>(ii) If the LEA is a charter school under State law, provide an assurance that the use of the assessment is consistent with State charter school law and it has consulted with the authorized public chartering agency.</p> <p>(3) Upon approval, the LEA must notify all parents of high school students it serves that the LEA received approval and will use such locally selected, nationally recognized high school academic assessment instead of the statewide academic assessment under § 200.5(a)(1)(i)(B) and (a)(1)(ii)(C), as applicable.</p> <p>(4) In each subsequent year following approval in which the LEA elects to administer a locally selected, nationally recognized high school academic assessment, the LEA must notify—</p> <p>(i) The State of its intention to continue administering such assessment; and</p> <p>(ii) Parents of which assessment the LEA will administer to students to meet the requirements of § 200.5(a)(1)(i)(B) and (a)(1)(ii)(C), as applicable, at the beginning of the school year.</p> <p>(5) The notices to parents under this paragraph (c) of this section must be consistent with § 200.2(e).</p> <p>(d) <i>Definition.</i> ‘‘Nationally recognized high school academic assessment’’ means an assessment of high school students’ knowledge and skills that is administered in multiple States and is recognized by institutions of higher education in those or other States for the purposes of entrance or placement into courses in postsecondary education or training programs.</p>
105(B)(v)(I)	200.5 (a)(1)
Not in the regs	<p>200.5(a)(2)</p> <p>a (2) A State must administer the English language proficiency assessment required under § 200.6(h) annually to all English learners in schools served by the State in all grades in which there are English learners, kindergarten through grade 12.</p>

Somewhere	(a)(3) (3) With respect to any other subject chosen by a State, the State may administer the assessments at its discretion.
105(C)	200.5(b)
105(C)	(1), (2), (3)(i)(A)
Not in the regs	(3)(i)(B) (3) In high school— (i) The student takes a State administered end-of-course assessment or nationally recognized high school academic assessment as defined in § 200.3(d) in mathematics that— (B) Provides for appropriate accommodations consistent with § 200.6(b) and (f);
Yes for measuring but not for participation	(3)(ii) (ii) The student’s performance on the more advanced mathematics assessment is used for purposes of measuring academic achievement under section 1111(c)(4)(B)(i) of the Act and participation in assessments under section 1111(c)(4)(E) of the Act; and
Not in the regs	(4) (4) The State describes in its State plan, with regard to this exception, its strategies to provide all students in the State the opportunity to be prepared for and to take advanced mathematics coursework in middle school.
	200.6
Not in regs, but may be in other places	200.6(a) (a) <i>Students with disabilities in general.</i> (1) A State must include students with disabilities in all...
105(B)(vii)	(b)(1)
105(D)(i)(VI) (page 11)	(b)(2)(i) a-c
105(D)(i)(v) (not all of it)	(b)(2)(ii) (ii) Ensure that general and special education teachers, paraprofessionals, teachers of English learners, specialized instructional support personnel, and other appropriate staff receive necessary training to administer assessments and know how to administer assessments, including, as necessary, alternate assessments under paragraphs (c) and (h)(5) of this section, and know how to make use of appropriate accommodations during assessment for all students with disabilities, consistent

	with section 1111(b)(2)(B)(vii)(III) of the Act.
Not in the regs	<p><b>(b)(3)</b></p> <p>(3) A State must ensure that the use of appropriate accommodations under this paragraph (b) of this section does not deny a student with a disability—</p> <p>(i) The opportunity to participate in the assessment; and</p> <p>(ii) Any of the benefits from participation in the assessment that are afforded to students without disabilities.</p>
105(D)	<b>(c)</b>
Not in the regs	<p><b>(c)(3) – (6)</b></p> <p>(3) A State must—</p> <p>(i) Not prohibit an LEA from assessing more than 1.0 percent of its assessed students in any subject for which assessments are administered under § 200.2(a)(1) with an alternate assessment aligned with alternate academic achievement standards;</p> <p>(ii) Require that an LEA submit information justifying the need of the LEA to assess more than 1.0 percent of its assessed students in any such subject with such an alternate assessment;</p> <p>(iii) Provide appropriate oversight, as determined by the State, of an LEA that is required to submit information to the State; and</p> <p>(iv) Make the information submitted by an LEA under paragraph (c)(3)(ii) of this section publicly available, provided that such information does not reveal personally identifiable information about an individual student.</p> <p>(4) If a State anticipates that it will exceed the cap under paragraph (c)(2) of this section with respect to any subject for which assessments are administered under § 200.2(a)(1) in any school year, the State may request that the Secretary waive the cap for the relevant subject, pursuant to section 8401 of the Act, for one year. Such request must—</p> <p>(i) Be submitted at least 90 days prior to the start of the State’s testing window for the relevant subject;</p> <p>(ii) Provide State-level data, from the current or previous school year, to show—</p> <p>(A) The number and percentage of students in each subgroup of students defined in section 1111(c)(2)(A), (B), and (D) of the Act who took the alternate assessment aligned with alternate academic achievement</p>

	<p>standards; and</p> <p>(B) The State has measured the achievement of at least 95 percent of all students and 95 percent of students in the children with disabilities subgroup under section 1111(c)(2)(C) of the Act who are enrolled in grades for which the assessment is required under § 200.5(a);</p> <p>(iii) Include assurances from the State that it has verified that each LEA that the State anticipates will assess more than 1.0 percent of its assessed students in any subject for which assessments are administered under § 200.2(a)(1) in that school year using an alternate assessment aligned with alternate academic achievement standards—</p> <p>(A) Followed each of the State’s guidelines under paragraph (d) of this section, except paragraph (d)(6); and</p> <p>(B) Will address any disproportionality in the percentage of students in any subgroup under section 1111(c)(2)(A), (B), or (D) of the Act taking an alternate assessment aligned with alternate academic achievement standards;</p> <p>(iv) Include a plan and timeline by which—</p> <p>(A) The State will improve the implementation of its guidelines under paragraph (d) of this section, including by reviewing and, if necessary, revising its definition under paragraph (d)(1), so that the State meets the cap in paragraph (c)(2) of this section in each subject for which assessments are administered under § 200.2(a)(1) in future school years;</p> <p>(B) The State will take additional steps to support and provide appropriate oversight to each LEA that the State anticipates will assess more than 1.0 percent of its assessed students in a given subject in a school year using an alternate assessment aligned with alternate academic achievement standards to ensure that only students with the most significant cognitive disabilities take an alternate assessment aligned with alternate academic achievement standards. The State must describe how it will monitor and regularly evaluate each such LEA to ensure that the LEA provides sufficient training such that school staff who participate as members of an IEP team or other placement team understand and implement the guidelines established by the State under paragraph (d) of this section so that all students are appropriately assessed; and</p>
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	<p>(C) The State will address any disproportionality in the percentage of students taking an alternate assessment aligned with alternate academic achievement standards as identified through the data provided in accordance with paragraph (c)(4)(ii)(A) of this section; and</p> <p>(v) If the State is requesting to extend a waiver for an additional year, meet the requirements in paragraph (c)(4)(i) through (iv) of this section and demonstrate substantial progress towards achieving each component of the prior year’s plan and timeline required under paragraph (c)(4)(iv) of this section.</p> <p>(5) A State must report separately to the Secretary, under section 1111(h)(5) of the Act, the number and percentage of children with disabilities under paragraph (a)(1)(i) and (ii) of this section taking—</p> <p>(i) General assessments described in § 200.2;</p> <p>(ii) General assessments with accommodations; and</p> <p>(iii) Alternate assessments aligned with alternate academic achievement standards under paragraph (c) of this section.</p> <p>(6) A State may not develop, or implement for use under this part, any alternate or modified academic achievement standards that are not alternate academic achievement standards for students with the most significant cognitive disabilities that meet the requirements of section 1111(b)(1)(E) of the Act.</p>
105(J)(ii)	(c)(7)
Not in the regs	<p>(d)(1), (2)</p> <p>(d) <i>State guidelines for students with the most significant cognitive disabilities.</i> If a State adopts alternate academic achievement standards for students with the most significant cognitive disabilities and administers an alternate assessment aligned with those standards, the State must—</p> <p>(1) Establish, consistent with section 612(a)(16)(C) of the IDEA, and monitor implementation of clear and appropriate guidelines for IEP teams to apply in determining, on a case-by-case basis, which students with the most significant cognitive disabilities will be assessed based on alternate academic achievement standards. Such guidelines must include a State definition of</p>

	<p>“students with the most significant cognitive disabilities” that addresses factors related to cognitive functioning and adaptive behavior, such that—</p> <p>(i) The identification of a student as having a particular disability as defined in the IDEA or as an English learner does not determine whether a student is a student with the most significant cognitive disabilities;</p> <p>(ii) A student with the most significant cognitive disabilities is not identified solely on the basis of the student’s previous low academic achievement, or the student’s previous need for accommodations to participate in general State or districtwide assessments; and</p> <p><small>with RULES5</small></p> <p>(iii) A student is identified as having the most significant cognitive disabilities because the student requires extensive, direct individualized instruction and substantial supports to achieve measurable gains on the challenging State academic content standards for the grade in which the student is enrolled;</p> <p>(2) Provide to IEP teams a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on alternate academic achievement standards, including any effects of State and local policies on a student’s education resulting from taking an alternate assessment aligned with alternate academic achievement standards, such as how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma;</p>
105(D)(i)(II)	(d)(3)
105(D)(i)(III)	(d)(4) and (5)
105(D)(i)(IV)	(d)(6)
(D)(i)(VI)	(d)(7)
Not in the regs (Definitions)	<p>(e)</p> <p>(e) <i>Definitions with respect to students with disabilities.</i> Consistent with 34 CFR 300.5, “assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically</p>

	implanted, or the replacement of such device.
(B)(vii)(III)	(f)(1)(i)
Not in the regs	(f)(1)(i)(A-C) (f) <i>English learners in general.</i> (1) Consistent with § 200.2 and paragraphs (g) and (i) of this section, a State must assess English learners in its academic assessments required under § 200.2 in a valid and reliable manner that includes— (i) Appropriate accommodations with respect to a student’s status as an English learner and, if applicable, the student’s status under paragraph (a) of this section. A State must— (A) Develop appropriate accommodations for English learners; (B) Disseminate information and resources to, at a minimum, LEAs, schools, and parents; and (C) Promote the use of such accommodations to ensure that all English learners are able to participate in academic instruction and assessments; and
(B)(vii)(III)	(f)(1)(ii)
(B)(vii)(III)	(f)(2)(i)
(F)	(f)(2)(ii)(A)
Not in the regs	(f)(2)(ii)(B) and (C) f2(ii)(B) Identify any existing assessments in languages other than English, and specify for which grades and content areas those assessments are available; (C) Indicate the languages identified under paragraph (f)(2)(ii)(A) of this section for which yearly student academic assessments are not available and are needed; and
F(ii)	(f)(2)(ii)(D)
Not in the regs	(f)(2)(ii)(D)(1 – 3) (1) The State’s plan and timeline for developing such assessments, including a description of how it met the requirements of paragraph (f)(4) of this section; (2) A description of the process the State used to gather meaningful input on the need for assessments in languages other than English, collect and respond to public comment, and consult with educators; parents and families of English learners; students, as appropriate; and other stakeholders; and

	(3) As applicable, an explanation of the reasons the State has not been able to complete the development of such assessments despite making every effort.
105(F)(ii)	(f)(3)
Not in the regs	(f)(4) (all sections) (4) In determining which languages other than English are present to a significant extent in a State’s participating student population, a State must, at a minimum— (i) Ensure that its definition of ‘languages other than English that are present to a significant extent in the participating student population’ encompasses at least the most populous language other than English spoken by the State’s participating student population; (ii) Consider languages other than English that are spoken by distinct populations of English learners, including English learners who are migratory, English learners who were not born in the United States, and English learners who are Native Americans; and (iii) Consider languages other than English that are spoken by a significant portion of the participating student population in one or more of a State’s LEAs as well as languages spoken by a significant portion of the participating student population across grade levels.
105(B)(ix)	(g)(1) and (2)
Not in the regs	(g)(3) (3) The requirements in paragraph (g)(1)–(2) of this section do not permit a State or LEA to exempt English learners from participating in the State assessment system.
105(G) (part but not all)	(h)(1)(i) (h) <i>Assessing English language proficiency of English learners</i> (1) Each State must— (i) Develop a uniform, valid, and reliable statewide assessment of English language proficiency, including reading, writing, speaking, and listening skills; and
Some, but not the four domains	(h)(1)(ii) (ii) Require each LEA to use such assessment to assess annually the English language proficiency, including reading, writing, speaking, and listening

	skills, of all English learners in kindergarten through grade 12 in schools served by the LEA.
105 (G)	(h)(2)(i)
Not in the regs	(h)(2)(ii) and (iii) H(2) (ii) Be developed and used consistent with the requirements of § 200.2(b)(2), (4), and (5); and (iii) Provide coherent and timely information about each student’s attainment of the State’s English language proficiency standards to parents consistent with § 200.2(e) and section 1112(e)(3) of the Act.
105(J)	(h)(3)
105(B)(vii) (missing language about ELP standards and proficiency)	(h)(4)(i) A State must provide appropriate accommodations that are necessary to measure a student’s English language proficiency relative to the State’s English language proficiency standards under section 1111(b)(1)(F) of the Act for each English learner covered under this paragraph (a)(1)(i) or (iii) of this section.
Not in the regs	(4)(ii) 4(ii) If an English learner has a disability that precludes assessment of the student in one or more domains of the English language proficiency assessment required under section 1111(b)(2)(G) of the Act such that there are no appropriate accommodations for the affected domain(s) (e.g., a non-verbal English learner who because of an identified disability cannot take the speaking portion of the assessment), as determined, on an individualized basis, by the student’s IEP team, 504 team, or by the individual or team designated by the LEA to make these decisions under title II of the ADA, as specified in paragraph (b)(1) of this section, a State must assess the student’s English language proficiency based on the remaining domains in which it is possible to assess the student.
Not in the regs	(5) (5) A State must provide for an alternate English language proficiency assessment for each English learner covered under paragraph (a)(1)(ii) of this section who cannot participate in the assessment under paragraph (h)(1) of this section even with appropriate accommodations.

<p>105(J) (page 15) – a lot missing</p>	<p><b>200.6(i)(1) – (3)</b>                  (i) <i>Recently arrived English learners.</i>                  (1)(i) A State may exempt a recently arrived English learner, as defined in paragraph (k)(2) of this section, from one administration of the State’s reading/language arts assessment under § 200.2 consistent with section 1111(b)(3)(A)(i)(I) of the Act.                  (ii) If a State does not assess a recently arrived English learner on the State’s reading/language arts assessment consistent with section 1111(b)(3)(A)(i)(I) of the Act, the State must count the year in which the assessment would have been administered as the first of the three years in which the student may take the State’s reading/language arts assessment in a native language consistent with paragraph (g)(1) of this section.                  (iii) A State and its LEAs must report on State and local report cards required under section 1111(h) of the Act the number of recently arrived English learners who are not assessed on the State’s reading/language arts assessment.                  (iv) Nothing in this section relieves an LEA from its responsibility under applicable law to provide recently arrived English learners with appropriate instruction to enable them to attain English language proficiency as well as grade-level content knowledge in reading/language arts, mathematics, and science.                  (2) A State must assess the English language proficiency of a recently arrived English learner pursuant to paragraph (h) of this section.                  (3) A State must assess the mathematics and science achievement of a recently arrived English learner pursuant to § 200.2 with the frequency described in § 200.5(a).</p>
<p>105B(xiv)</p>	<p><b>200.6(j)(1) and (2) except for</b></p>
<p>Not in the regs</p>	<p><b>J(1)(ii)</b>                  J1 (ii) The State submits evidence regarding any such assessment in the Native American language for peer review as part of its State assessment system, consistent with § 200.2(d), and receives approval that the assessment meets all applicable requirements;</p>
<p>Not in the regs (definitions)</p>	<p><b>(k)</b>                  (k) <i>Definitions with respect to English</i></p>

	<p><i>learners and students in Native American language schools or programs.</i> For the purpose of this section—</p> <p>(1) “Native American” means “Indian” as defined in section 6151 of the Act, which includes Alaska Native and members of Federally recognized or State-recognized tribes; Native Hawaiian; and Native American Pacific Islander.</p> <p>(2) A “recently arrived English learner” is an English learner who has been enrolled in schools in the United States for less than twelve months.</p> <p>(3) The phrase “schools in the United States” includes only schools in the 50 States and the District of Columbia.</p>
105(B)(x)	200.8 (a)
(B)(xii)	(b)

1 **APPENDIX C – BIE N-SIZE ANALYSIS CHART (CREATED DECEMBER 2018)**  
 2

**N-Size Impact for BIE School-Level Student Demographics (17-18)**

Demographic	Total Students	Total Schools	N30	N20	N15	N10
American Indian	45,149	174	-	-	-	-
English Learner	7,296	174	41	30	26	19
Economically Disadvantaged	45,149	174	-	2	-	-
Students with Disabilities	6,191	174	98	59	42	24

3



5

- BIE School-Level Student Demographics (17-18)  
 Exclusion of Schools with N-Sizes of 10 and 20**
- English Learners
    - N = 10 (excludes 19 schools)
    - N = 20 (excludes 30 schools)
  - Economically Disadvantaged
    - N = 10 (excludes 0 schools)
    - N = 20 (excludes 2 schools)
  - Students with Disabilities
    - N = 10 (excludes 24 schools)
    - N = 20 (excludes 59 schools)
- 4
- 
- 6

## **APPENDIX D – PUBLIC COMMENTS RECEIVED THROUGH MARCH 14, 2019**

### **Public Comments from Meeting #1, Billings MT, September 25-27, 2018**

#### Verbal comments from Ahniwake Rose –

Good afternoon everyone, I'm Ahniwake Rose, the Executive Director for the National Indian Education Association. First I want to say thank you, to be able to listen to you all is an honor to hear how seriously you're taking the process and I personally appreciate it and want to thank you on behalf of our organization. If there is anything we can continue to do to assist you please call upon us.

My question for you in listening to the process and thinking about things and the equability that the Tribes are being held to states. The timeline that (they) are requesting you follow is so hyper aggressive, that there's no way you're going to be able to do this in a way that I think that I'm hearing. I'm requesting that you think about the equitable fairness in how the states were being allowed to draft their plan versus what you've been told to do based on an Administration that choose not to follow its own guidelines and procedures. Not only to be able to request, if you wish, an extended timeline that the states were given to be able to develop your own plan. But also some real clarity about any punishments, if any and what the repercussions would be for Interior, because it's Interior's responsibility or BIE and how that will not go down to the schools; if you choose to do so.

And also thinking about the timeline, I have a lack of clarity around the consultation process and procedure. I see the timeline is built in really clear processes or consultation. However, there is no response back to the consultation. We all know that our Tribal leaders want to clearly hear and to have their voices heard. They want to be able to see their comments have been heard, respected, and how they are going to be reacted to. So if you're going to provide a 30-day open comment period and you are going to go out for consultation, how is Interior and BIE going to reflect on those comments? And what is going to happen if the comments are not reflective of what you all as negotiators have come up with? How are you going to balance what that looks like and how are you going to be able to respond to them? There's no clarity, I don't see in the process yet about how you're going to be able to react provide additional support either to the Tribes or not.

I will also suggest that as the next round of budgets that are coming out you strongly recommend in whatever way that you can as a Committee, that Interior not BIE, but Interior specifically, be appropriated funds to ensure that you can conduct this and conduct this appropriately. You should be able to go out and talk to NCAI. You should be able to go out and talk to Indian Country and let them know what you are doing. A 30-day notice in a Federal Register notice, as

you all know, is not going to be acceptable to our leadership over what the next 10-years is going to look like under this Bill. This is going to require all of you to go out to your communities and having long standing conversations and that's what the states were allowed to do. The states were allowed to go out and within ESSA they were required to speak in full consultations with them and some of you actually participated with them in those consultations. There is no reason why you as Committee members should not have the same opportunity to go out and speak to your Tribal constituents and share that you have an opportunity to do that with your leadership and your council.

So I would just request that when you're going through and thinking about some of these items for clarity that you think about how that's all going to be built into the process. Someone else's timeline should not be put upon you because there was a failure and you need to have some clarity as sovereigns about how that is going to be managed within your expectations and your timeline. NIEA is really happy to support you in whatever you like. Thank you.

As an Assessment Coordinator/Proctor, I test classes on average 75-80 school days per year. The students and parents are showing desensitization to these tests and therefore, the data gathered is not valid. We are a contract school and we test NWEA MAPS three times per year for 3 subjects, SBAC once per year for 2 subjects + NAEP once every four years for math. I hope to see testing dialed back to make the scores more real.

Cindy Fry  
Colville Conf. Tribes  
Paschal Sherman Indian School

## **Public Comments from Meeting #2, Albuquerque, NM October 30-November 1, 2018**

Comment from Dr. Bordeaux:

Just one small comment when your drafting the standards for reading, math and science, I would suggest you take a look at what is in a website: [www.acts-tribal.org](http://www.acts-tribal.org) and under resources there is a set of standards from the creating scared places for children project that is just going from K-3 in reading but I have a whole booklet which is probably a foot long at least for almost all content areas. It includes content standards with resources and suggested ways of implementation. And we professed at the time we did that project with the Department of Education that it is culturally relevant. It will give you an opportunity to take a look at it.

Comment from Deborah Bordeaux:

I couldn't hear the full conversation around Native languages but I did hear Dr. Hamley talk about peer review and I don't know if it fits in what's going on with what's there but I just think that it's important to encourage and support Tribes in the development of their languages. And I know that this assessment is intended for math, reading, language arts, this type of stuff and science, but I hope that we can encourage the support for Native language, especially from an oral perspective. Our people are more oral communicators than they were of being written and so it's just not always there; to have that oral perspective and if it isn't written than we need to work together and develop so it's universal to our people so that we can have something like that. I felt discouraged after the conversations so I just would encourage that we try to stay focused on positive and move forward on something. One more thing, in the future get microphones so people can hear what's going on.

**No public comments were received at meeting #3.**

## **Public Comments from Meeting #4, Phoenix AZ, March 12-14, 2019**

### **Public Comment to the Committee on Tuesday, March 12, 2019 (Phoenix, AZ)**

Jack Sharma – Principal of the Blackwater Community School

Good afternoon everybody. My name is Jack Sharma, Principal of the Blackwater Community School. My question actually does not actually count as a question for the BIE officials. The person was pertaining to the Ed Title 1 funding when it comes to the BIE submitting the plan. And what we've been hearing of different versions of the letter that was written to the Bureau I guess from the U.S. Department of Education. The question is are there going to be any funding cuts when it comes to the schools? Or would that be at the BIE level? But it will not affect in any way shape or form on the schools.

### **Public Comment to the Committee on Wednesday, March 13, 2019 (Phoenix, AZ)**

Lillian Kim Franklin, Principal at the Casa Blanca Community School –

Good afternoon and I very much doubt if I truly need the microphone. They say I have a voice that you can hear in Scottsdale, so we'll see. My name is Lillian Kim Franklin I'm the Principal at Casa Blanca Community School which is the smallest of the three Bureau of Indian Education schools on Gila River Indian Community. My first thing that I want to express is gratitude. I've watched for two-days, I can't imagine the magnitude of the work that has gone into this process, the amount of time and effort, and on behalf of the children and the families in my community I want to say thank you to everybody because I know that it's not easy, it's a very, very big task. Ms. Campbell, today I almost don't need to say anything because you spoke for me and for the parents at my school. My families were not aware that this was happening and quite frankly I wasn't aware that this was happening until sometime in December. And I am a new principal, so it is possible that perhaps communication crossed or whatever it is but my first indication about what you all are doing came when Mr. Dabrieo presented on a webinar call in December. And there were many other schools on that call that was just as surprised as my school. So I went out and started talking to my families and letting them know because that is exactly and they were shocked, they had no idea. The State of Arizona had fairly recently within three-years or so changed from AIMS to AZ Merit and they have gone through this very large turmoil while there children were changing systems and they were very concerned and to know that there might be a new system that was unknown where their children would be evaluated. And then our school goes from K-4, so my children go from me into the public system and there are questions with thinks like; how will this work? And what will the public schools say? And can my children go from one to the other, and how will I know what is happening? And I had no answers. And these to me when we do this, and I have been at this a long time, you can tell from the grey hair. I think this is, maybe 40-years of education all of it in Native American schools, Navajo Nation, Muckleshoot Tribal School, Gila River Indian Community, working on grades K-4. In my heard of hearts I don't like to think of compliance as a game. I don't like to think that what were doing is a paper game, it has to have some purpose. It drives so much of what we do. So this has to be for the kids and if it has to be for the kids what is going to happen to us when this is all happening in July. I listened yesterday and one of my biggest concerns, and I shared it with several people here is in my head there's a clock ticking. And I'm thinking OK on the compliance side were doing all of this and this is going to move forward to the to the consultations and then were going to be moving ahead and in my mind its like, ok, this is the middle of March, April, May, were supposed to be implementing and rolling out in September and then if our school wants a waiver or if our community wants a waiver now were at 120-days. Am I remembering that correctly from yesterday? And how long is that going to take and then I heard the most alarming thing yesterday that was truly frightening. The one truly frightening thing sitting in the back was, well if they are still in the waiver process the default will be the BIE process and then they will do that till the waiver gets done and then we'll go on. And that seems like such a calm and rational idea unless you're the principal of school who is trying to tell the data story of your students with tests that don't align to each other. And so when my parents say how are they doing? And if we had to take a different test it the middle of our testing cycle because our waiver didn't get approved, what does that do and how does that help us to improve the education for our kids. What is that doing to move that ball down the road? So I am worried. And I think that I truly do believe that there are other principals out there and I'm just one tiny little school. I'm a small school even among small school I'm a small school, 250 kids. Best most marvelous children and families anywhere, except for your communities which all have the same thing,

right. But what story am I telling the families and what is this compliance piece doing to help us improve the education. And in your recommendations and within your thoughts I know there's principals sitting here, you got the same problem I do, the exact same problem. So as we are doing this and I guess maybe I'm addressing the folks who are going to be taking this back and who are going to be helping us with the implementation, please, please, please, remember us out in the field. And for each of you, I have no doubt in my mind not one after having been here for two-days that the children are in your hearts and the children are in your heads as your deliberating on this. Just keep that where it is because we need your help, we desperately need your help. If we're going to do this and were going to do this in a meaningful way we are going to need more time, we just are. Thinking that we're going to roll this out in July. Well. So, I appreciate you all being willing to listen to me today. I want to thank you again and welcome you to Arizona. I so sad, usually its sunny and 90 degrees outside and it's cold and windy and I'm going to sit down now because I promised myself I wouldn't take very long. I tried for 5 minutes, I don't know what my time was. But please just remember that what this does and how it impacts our kids. And again, I very much appreciate your work. Thank you.

The following was read into the record by Committee member Tasha Racawan on March 13, 2019.



## DEPARTMENT OF DINÉ EDUCATION

THE NAVAJO NATION

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### Navajo Nation Position Statement on Indian Education: Diné School Accountability Plan

December 12, 2018

The goal of the Navajo Nation is to develop an educational system that endorses its culture, sustains its language, and promotes the academic success of its children and adults. The Navajo Nation is taking initiatives to develop an effective department of education that can implement initiatives and policies as a Sovereign State. As such the Navajo Nation the Navajo provides the following statement:

1. The U.S. Department of Education entered into a Memorandum of Understanding (MOU) with the Bureau of Indian Education (BIE) in December of 2012 to assume functions as a State Educational Agency (SEA) and to administer school improvement initiatives, related to Every Student Succeeds Act (ESSA), Title 1 Part and B. The BIE has, for years, tried to address these federal requirements. But, as of this date, the BIE does not have an accountability plan that holds BIE schools accountable to these requirements. This is clearly outlined in the December 28, 2018 letter from the DOE to BIE that cites BIE's failure to fulfill the conditions and terms of the MOU as it relates to implementing Title 1 Part A and B of ESSA. The Navajo Nation seeks to enter into a MOU with DOE to assume the responsibilities of a SEA for BIE funded schools operating within the boundaries of the Navajo Nation.
2. The U.S. Department of Education and U.S. Department of Interior has approved the Navajo Nation's Diné School Accountability Plan (DSAP) up to June 2019. The approval clearly provides the Navajo Nation the opportunity to develop decision rules, school interventions, and school report cards to fulfill the federal requirements of Title 1 Part A and B. The Navajo Nation has completed these tasks. The DSAP details school improvement initiatives for all BIE funded schools located on the Navajo Nation. Federal funding to implement Title 1 Part A and B is required for the Navajo Nation to fulfill the federal requirements of DSAP.
3. The U.S. Department of Interior with its administration of BIE has failed the Navajo Nation. BIE schools on the Navajo Nation continue to fail the students and Navajo communities they serve. Since the implementation of the federal statute No Child Left Behind, 74% of the BIE schools on the Navajo Nation have failed to meet Adequate Yearly Progress (AYP) as defined by the law. With the reauthorization of NCLB to ESSA, the BIE continues to fail Navajo students because it does not have a consistent academic improvement plan for schools and students. Rather, they rely on the academic accountability plan of the state the BIE school is located in-ESSA supports tribal control of tribal controlled schools. For the Navajo Nation this means 61 schools impact over 16,000 students. Therefore, the Navajo Nation stands ready to implement DSAP to improve the quality of education for our Navajo students.
4. The Navajo Nation is pursuing State Education Agency status as a sovereign state to improve the academic achievement of students attending BIE funded schools on the Navajo Nation. The Navajo Nation Council has authorized such policies in the Navajo Sovereignty Education Act of 2005. This is a tribal statute, authorizing the Department of Diné Education to develop a Navajo education system to meet the needs of our Navajo students. Without fundamental academic skills, students struggle to survive in a challenging world. The Navajo Nation strongly believes that we need to help ourselves to improve our student's academic achievement. Presently, tribes, with education responsibilities for tribally controlled schools, are not recognized as State Educational Agencies because they lack an academic accountability plan. Instead, these tribes are recognized as Tribal Education Agencies in title only. Tribal Education Agencies are not endowed with equal responsibilities of SEA. Navajo Nation has the capacity and desire to serve as a SEA for all BIE-funded schools on the Navajo Nation.



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### Navajo Sovereignty in Education

1. In 2005 the Navajo Nation's Tribal Council passed the *Sovereignty in Education Act*, which explicitly recognizes the authority and responsibility of the Navajo government for the education of its people.
2. The successful education of Navajo children will require the engaged commitment of parents and communities embedded in the culture and values of the Diné People. The Navajo Nation's Department of Diné Education has been developing Navajo curriculum related to key Navajo standards: culture, language, history, governance, and character (ké).
3. The Navajo Nation is ready to implement DSAP.
4. DSAP gives the Department of Diné Education regulatory authority to oversee BIE funded schools located within the boundaries of the Navajo Nation.
5. In closing Western education, through the BIE, has overseen the operation of BIE schools on the Navajo Nation for 150 years. The BIE has failed the Navajo Nation. The Navajo Nation is prepared to take responsibility for our students to ensure that they receive a quality education, which is critical because these students are our future. When a quality education is absent from the lives of the students it seriously impacts the livelihood of the Navajo Nation. Our people need the basic academic skills to raise healthy families and to make positive contributions to our Navajo communities and society.
6. The Navajo Nation seeks control of the development and progress of the educational system within the boundaries of the reservation to preserve our language and culture while providing a sound core academic content in reading, writing, math and science.
7. Navajo Nation does not support the BIE's SEA oversight of BIE-funded schools within the boundaries of the reservation. The Navajo Nation supports the purpose of Every Child Achieves Act to govern tribally controlled schools in furthering the education of Navajo children independent of BIE control. This is further stipulated to in tribal, state and federal statute to support self-determination in Tribes and governance of their sovereignty.

Signatures:

Russell Begay, President of the Navajo Nation

Dr. Tommy Lewis Jr., Superintendent of Schools, Navajo Nation

The following statement was made by Mr. Franklin on March 13, 2019.

**NIEA Talking Points – Darrick Franklin**

**Bureau of Indian Education Negotiated Rulemaking Committee**

**Phoenix, AZ | March 13, 2019**

**Introduction**

- Good afternoon and thank you for the opportunity to provide comments to the Committee today.
- **[Please introduce yourself as you feel comfortable, including your name and tribal affiliation].**
- As a member of the Board of Directors for the National Indian Education Association, I am here today to provide comments on behalf of NIEA.
- NIEA is the nation’s most inclusive national organization advancing comprehensive, culture-based educational opportunities for American Indians, Alaska Natives, and Native Hawaiians.
- Since September, NIEA has provided resources and technical assistance to support negotiators as they develop regulations to support highly effective, culturally relevant education systems for Native students under the Every Student Succeeds Act.
- NIEA urges the Bureau of Indian Education to uphold the federal trust responsibility by respecting the role of tribal negotiators in the negotiated rulemaking process. Tribes have carefully selected negotiators for their experience as tribal leaders, educators, and parents. Tribal voices are critical to developing highly effective education systems that fully serve the unique needs of Native students across the nation.
- In reviewing the draft regulations and listening over these past 7 months, we recommend the following:
  - First, the regulations must establish high standards that support a robust assessment and transparent accountability system that appropriately measures student growth and provides effective interventions and supports. Such systems, closely aligned to the Department of Education’s assessment regulations for states under 34 CFR, must include testing and reporting measures that ensure equity

for all students, including students with disabilities, English language learners, migrant students, homeless children, children in foster care, children with parents in the military, and other vulnerable groups of students.

- Education systems that include tribal civics education and flexibility for Native language and culture enable our schools to provide culturally appropriate programs and services for Native students.
  - NIEA urges the Committee to ensure reciprocity in the government-to-government relationship, providing specific language that clarifies a mutually agreeable process for tribal waivers and holds the BIE accountable for working with tribes to finalize alternative education plans in a timely manner. Tribes must also have the flexibility to exercise sovereignty when they have concerns regarding this process, whether through tribal consultation or through an inter-tribal working group.
  - We must remember that tribes know our students, schools, and communities best. The process to develop highly effective, culturally appropriate systems of standards, assessments, and accountability is iterative and must include tribal leaders, educators, and communities at every step. From development to implementation, reporting, and revision of education systems under ESSA, tribes and Native communities must be considered partners in ensuring equity in the education of Native students.
  - Finally, NIEA urges the Bureau of Indian Education to establish a second negotiated rulemaking committee to evaluate regulations that may be impacted by the outcome of this rulemaking process, as occurred under No Child Left Behind. Such regulations for review should include funding through the Indian School Equalization Program in 25 CFR Part 39 and minimum graduation requirements in 25 CFR Part 36.
- Timeline*
- NIEA remains concerned regarding the timelines provided to negotiators and the Bureau of Indian Education for implementation of regulations under ESSA. We urge the federal government to support a process for finalization of these regulations as well as development and implementation of the resulting standards, assessments, and accountability systems upholds tribal sovereignty in Native education.

- NIEA is disappointed in the lack of acknowledgement of the impact of other federal and tribal ~~statutes~~<sup>laws</sup> or this process, ~~from~~<sup>including</sup> PL 93-638, PL 100-297, PL 95-561,
- Healthy education systems are key to thriving tribal nations and ED's Assessment communities. This Committee has a key opportunity to ensure that Native students have access to the support and resources necessary to thrive. IDEA, and me
- Thank you for this opportunity to speak before the committee. NIEA is committed to the ongoing and dedicated work to expand education systems that support quality and culturally appropriate Native education. Our students deserve nothing less.

The following was read into the record by Committee member Lucinda Campbell on March 14, 2019.

## Final Report

Concerns expressed by community, staff and myself. Thanks for sharing and seeking input from us in the field.

- What is the alignment of the BIE accountability system with the DoDE DSAP. (Department of Dine' Education/Dine' Standards & Accountability Plan)
- In light of NM public school doing away with PARCC and AZ reviewing the merits of the AZ merit. What test will the schools who supported NM in doing away with PARCC, use. Will they be forced to continue with BIEs PARCC use, NN PARCC use. If NM & AZ change the assessment tool, will it change the accountability workbook. An update on the DoDE DSAP would be helpful and training on this new alignment on the Navajo Nation with the BIE before this whole plan is passed and put on an Administrators desk to implement. What is the intent for the BIE operated schools on NN? Will they be subject to the new BIE SAAP or the NN DSAP?
- The Students on Navajo Nation move from school system to school system. What will prevent parents from playing the system to get better results in one school over another to get better results from a less rigorous test. Will Universities and secondary education institutes continue to accept all students regardless of the school system they attend?
- What are the real support systems that will be in place and provided to the many schools on the NN by the BIE and DoDE, if we continue to be underperforming or receive an F?
- When one understands the complexity of the 'letter grade' process it opens up so much for which section of curriculum should be weighted heavily over other sections, which should be minimized? When knowledge of the AZ state accountability system regarding letter grades assigned to schools, it is doubtful our schools will be 'A' schools. I just hope there will be data available that will allow us to focus our efforts on reaching that point but not label us negatively as F schools.  
A terrible example would be to use Dine Bizaad ability as a section that would influence your letter grade a school earns. If the Dine Bizaad is only measured on 'yes' they speak the language or 'no' they do not speak the language then the school is penalized for the failure of teaching the language, especially when it is not reinforced at home. There are so many components that must be considered just for this section. Lots of time and money needed, how did you guys get through it? Of course, it is a priority to save our Native Languages but true language courses should be implemented with fidelity and based on research before it can be recognized as a potential language program. Currently, there are no funds available to implement such programs effectively. Hopefully this new plan will help alleviate these shortages.

Respectfully,  
Mr. Lemuel Adson  
leadson@shontoprep.org

*Final Report*

Shonto Preparatory School  
Shonto, AZ, Navajo Nation

The following was read into the record by Committee member Tasha Racawan on March 14, 2019.



## 24<sup>th</sup> Navajo Nation Council

March 13, 2019

BIE Negotiated Rulemaking Committee Members  
Phoenix, Arizona

Dear Members of the BIE Negotiated Rulemaking Committee:

As the Chairman of the Health, Education, and Human Services Committee of the Navajo Nation Council, I am writing to express the Committee's support of the Diné School Accountability Plan ("DSAP").

The United States Department of Education and the United States Department of Interior have approved DSAP through June 2019. The DSAP includes school improvement initiatives for all BIE funded schools located on the Navajo Nation. Moreover, DSAP will establish a single accountability system for BIE funded schools.

Students in BIE schools within the Navajo Nation continue to struggle academically. Since the implementation of the No Child Left Behind Act, seventy-four percent of the BIE schools on the Navajo Nation have failed to meet the adequate yearly progress standards, as defined by the law. In order to provide the best opportunities for our Navajo students to succeed, the Navajo Nation seeks to control the development and progress of the educational system within the boundaries of the reservation.

To that end, the Navajo Nation is ready to assume the functions of a State Education Agency (SEA) in order to implement school improvement initiatives. Currently, tribes with education responsibilities for tribally controlled schools are not recognized as SEA's because they lack an accountability plan. The Navajo Nation, with the implementation of DSAP, will be able to serve as a SEA for all BIE funded schools within the Navajo Nation.

The implementation of DSAP is critical to the development and education of our young Navajo students. I respectfully request the BIE Negotiated Rulemaking Committee Members support the implementation of DSAP.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Tso".

Delegate Daniel Tso  
Health, Education and Human Services Committee, Chairman  
24<sup>th</sup> Navajo Nation Council

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## Public Comments Received via US Mail and/or Email



November 1, 2018

[BIComments@bia.gov](mailto:BIComments@bia.gov)

RE: BIE Indian Education Standards, Assessments, and Accountability System  
Negotiated Rulemaking

Greetings:

The Pueblo of Laguna submits the following comments regarding the Negotiated Rulemaking currently in progress on BIE Indian Education Standards, Assessments, and Accountability Systems. First, I'd like to point out that for many tribes, the decision to become tribally controlled is not done in haste and occurs with discussion within the community. A decision to come out of the umbrella of the BIE was a difficult decision and was undertaken even though we were aware that the Pueblo would receive less financial support from BIE. However, the opportunity to exercise educational sovereignty within our schools took precedence.

With this in mind, the comments from the Pueblo of Laguna follow:

1. Allow the time necessary for the Committee to prepare the necessary regulations, particularly the time needed to prepare the regulations related to the flexibility options and waivers for tribes and tribal school boards.
2. Continue to recognize the rights of the tribes and tribal school boards to oversee and administer their own schools as P.L. 93-638 and 100-297 schools and ensure that the tribal sovereignty is recognized through the development of these regulations.
3. The BIE Strategic Plan was presented at both the NIEA and NCAI sessions. The BIE Plan should have resources that allow schools to implement these goals if the goals align with the improvement plans and strategic plans of the tribally controlled school and school board. However, at the same time, the BIE cannot mandate these goals.

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Our understanding is that the negotiated rulemaking sessions are only related to Standards, Assessment, Accountability, and Waivers. The last rulemaking session focused on the regulations that directly impact the schools. We are requesting that another rulemaking session be established to re-visit those regulations and that sufficient time be allowed for school leaders to provide input.

Thank you for the opportunity to provide comments. If you have any questions, please contact Natalie Martinez, Ph.D., Chair, Pueblo of Laguna Education Priority Team, via email at [nataliecmzt@gmail.com](mailto:nataliecmzt@gmail.com).

Sincerely,

PUEBLO OF LAGUNA



Virgil A. Siow  
Governor

cc: Wilfred Herrera, 1st Lt. Governor, Pueblo of Laguna  
Natalie Martinez, Chair, Education Priority Team, Pueblo of Laguna  
Patricia Sandoval, LDOE Superintendent  
Jim Hooper, Chief Operations Officer, Pueblo of Laguna  
Ethel J. Abeita, Government Affairs Director, Pueblo of Laguna

## **APPENDIX E - CONSENSUS PROPOSED REGULATIONS**

Attached are the Committee’s final consensus recommendations on the regulations implementing the requirements of the *Elementary and Secondary Education Act of 1965*, as amended by the *Every Student Succeeds Act*, applicable to the Secretary of the Interior and Bureau of Indian Education-funded schools.

### **§30.100. What is the purpose of this Part?**

This Part establishes regulations regarding the definition of standards, assessments, and accountability system at Bureau-funded schools consistent with section 1111 of the Elementary and Secondary Education Act of 1965. Nothing in this Part:

- (a) Diminishes the Secretary’s trust responsibility for Indian education or any statutory rights in law;
- (b) Affects in any way the sovereign rights of tribes; or
- (c) Terminates or changes the trust responsibility of the United States to Indian Tribes or individual Indians.

In carrying out activities under this Part the Secretary will be guided by the policies stated in 25 C.F.R. Part 32.

### **§30.101. What definitions apply to terms in this part?**

“Act” means the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, Public Law 114-95, enacted December 10, 2015.

“Bureau” means the Bureau of Indian Education.

“BIE-funded school(s)” means a school funded by the Bureau of Indian Education and includes Bureau-operated schools, tribally-controlled P.L. 93-638 contract schools, or P.L. 100-297 grant schools.

“Bureau Operated school” means a school operated by the Bureau of Indian Education.

“Department” means the Department of the Interior.

“Director” means the Director of the Bureau of Indian Education.

“Secretary” means the Secretary of the Interior or a designated representative.

“Subgroup of students” means a) economically disadvantaged students; b) students from major racial and ethnic groups; c) children with disabilities; and d) English learners.

“Standards, Assessments, and Accountability Plan” means a document that will provide Indian tribes, parents, and other stakeholders with quality, transparent information about how standards, assessments, and accountability system will be implemented at BIE Schools.

“Tribally controlled school” means a school operated under a P.L. 93-638 contract or P.L. 100-297 grant.

“Tribal governing body or school board” means, with respect to waiver and submission of alternative plans of the Secretary's definitions of standards, assessments, and accountability system at P.L. 100-297 grant or P.L. 93-638 contract schools, the entity authorized under applicable Tribal or Federal law to waive the Secretary's definitions and negotiate an alternative plan with the Secretary.

### **§30.102. What does the Act require of the Secretary?**

The Act requires the Secretary to define standards, assessments, and accountability system consistent with section 1111 of the Act for schools on a national, regional, or tribal basis, as appropriate, taking into account the unique circumstances and needs of such schools and the students served by such schools, using regulations developed through a negotiated rulemaking process.

A tribal governing body or school board may waive these requirements, in part or in whole, and submit a plan for alternative definitions within 60 days, which the Secretary and the Secretary of Education will approve unless the Secretary of Education determines that the plan does not meet the requirements of section 1111, taking into account the unique circumstances and needs of such school or schools and the students served.

The Act further requires the Secretary and the Secretary of Education to provide technical assistance, upon request, either directly or through a contract, to a tribal governing body or school board.

### **§30.103. How will the Secretary implement the Standards Assessments and Accountability System?**

(a) The Secretary, through the Director, must define the standards, assessments, and accountability system for use at BIE schools in accordance with this Part.

(b) The Secretary, or his/her designee will provide Indian tribes, parents and other stakeholders with quality, transparent information about how the Act will be implemented for BIE schools. Information, at a minimum, to include the standards, assessments and accountability system consistent with Section 1111.

The Director will implement a Standards Assessments and Accountability Plan that will provide Indian tribes, parents, and other stakeholders with quality, transparent information about how the Act will be implemented at BIE Schools.

The Secretary will ensure meaningful, ongoing consultation with a diverse group of stakeholders inclusive of parents, educators (such as administrators and educators from BIE operated schools and tribally controlled grant schools), tribal governments, students and community members. Such consultations will ensure input is considered in the creation, implementation, review and revision of standards, assessments, and accountability system. These stakeholder consultations will include transparent reporting, recording and responding to input obtained therein.

(c) The Secretary shall engage in active consultation with tribes and other potentially affected stakeholders when defining or revising definitions of standards, assessments, and accountability system.

(d) The Director may voluntarily partner with States, or Federal agency, to develop and implement challenging academic standards and assessments.

**§30.104. How will the Secretary define standards?**

(a) The Secretary will define academic standards for Bureau-funded schools on a national, regional, or tribal basis, as appropriate, taking into account the unique circumstances and needs of such schools and the students served by such schools by:

- adopting challenging academic content standards and
- aligned academic achievement standards (standards) consistent with section 1111(b)(1) of the Act.

That shall include at least three levels of achievement and are described collectively in the Act as “challenging State academic standards.”

(b) The academic standards will apply to all Bureau-funded schools and the students served at such schools in the absence of approved alternative requirements, and will include:

- mathematics
- reading or language arts
- science, and
- Tribal civics

Phase in tribal civics assessment and accountability system starting as a school quality indicator and revisit as implemented. Assessments and assessment schedule will be developed for Tribal Civics at the conclusion of the processes described in Section 30.103.

- And may have such standards for any other subject determined by the Secretary.

Such standards, except Tribal civics, must be aligned to entrance requirements for credit-bearing coursework in higher education and relevant career and technical education standards. These standards shall apply to all Bureau-funded schools and students at those schools, unless the standards have been waived by a tribal governing body or school board and an alternative plan approved.

(c) Academic achievement standards for students with the most significant cognitive disabilities. Academic achievement standards shall include the same types of knowledge, skills, and levels of achievement expected of all students at Bureau-funded schools.

The Secretary must, through a documented and validated standards-setting process, adopt alternate academic achievement standards for students with the most significant cognitive disabilities, provided those standards—

- (I) are aligned with the challenging BIE academic content standards under subparagraph (A);
- (II) promote access to the general education curriculum, consistent with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);
- (III) reflect professional judgment as to the highest possible standards achievable by such students;
- (IV) are designated in the individualized education program developed under section 614(d)(3) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(3)) for each such student as the academic achievement standards that will be used for the student; and
- (V) are aligned to ensure that a student who meets the alternate academic achievement standards is on track to pursue postsecondary education or employment, consistent with the purposes of Public Law 93–112, as in effect on July 22, 2014.

(f) English language proficiency standards. The Secretary must adopt English language proficiency standards that (i) are derived from the four recognized domains of speaking, listening, reading, and writing; (ii) address the different proficiency levels of English learners; and (iii) are aligned with the BIE’s challenging academic standards.

(g) Native American Language. Tribal governing bodies or school boards may create their own Native American language academic standards and Native American language academic assessments. The Secretary shall not have the authority to mandate, direct, control, coerce, or exercise any direction or supervision over such standards or assessments or require the submission of such standards and assessments to the Secretary for review or approval. The Bureau will provide Technical Assistance to the Tribe if requested.

**§30.105. How will the Secretary define assessments? Note: Although there was initial tentative consensus on subsections of 30.105, the Committee was unable to reach consensus on this section as a whole.**

**§30.106. How will the Secretary define accountability system?**

- (a) The Secretary will incorporate science in the accountability system.
- (b) Phase in tribal civic assessment and accountability system starting as a school quality indicator and revisit as implemented.
- (c) The Secretary shall define an accountability system for Bureau-funded schools consistent with section 1111(c)-(d) of the Act, including provisions for a single Bureau-wide accountability system and school support and improvement activities.
- (d) To improve student academic achievement and school success among all elementary and secondary schools within the Bureau-funded school system the Secretary will:
  - Develop and implement a single, Bureau-wide accountability system in consultation with tribes and stakeholders (such as parents, educators etc.) that:
    - Is based on the Bureau’s challenging academic standards and academic assessments;
    - Is informed by ambitious long-term goals and measurements of interim progress;
    - Includes all section 1111(c)(4)(B)-consistent accountability indicators;
    - Takes into account the achievement of all elementary and secondary school students within the Bureau-funded school system;
    - Is the same accountability system used to annually meaningfully differentiate all schools within the Bureau-funded school system and the same accountability system used to identify schools for comprehensive and targeted support and improvement; and
    - Includes the process that the Bureau will use to ensure effective development and implementation of school support and improvement plans, including evidence-based interventions, to hold all schools within the Bureau-funded school system accountable for student academic achievement and school success.
    - Will be reviewed in consultation with tribes and stakeholders for continuous improvements as necessary, but not less often than every four years beginning on the date the plan is implemented.
- (e) For all students and separately for each subgroup of students within the Bureau-funded school system the Bureau’s long-term goals and measurements of interim progress will:
  - (1) include, at a minimum, improved academic achievement, as measured by proficiency on the Bureau’s annual assessments in mathematics and reading or language arts under section 1111(b)(2)(B)(v)(I), and high school graduation rates, including the four-year adjusted cohort graduation rate and the extended-year adjusted cohort graduation rate, except that the Secretary shall set a more rigorous long-term goal for such graduation rate as compared to the long-term goal set for the four-year adjusted cohort graduation rate;

(2) have the same multi-year length of time set to meet such goals for all students and for each subgroup of students within the Bureau-funded school system;

(3) take into account for subgroups of students who are behind on the measurements of academic achievement and high school graduations rates the improvement necessary on such measures to make significant progress in closing Bureau-wide proficiency and graduation rate gaps; and

(4) will include for English learners a measurement of increases in the percentage of such students making progress in achieving English language proficiency as defined by the Secretary and measured by the assessments under section 1111(b)(2)(G) within a timeline determined by the Secretary.

(f) For all students and separately for each subgroup of students within the Bureau-funded school system, the Bureau's accountability indicators will at a minimum include distinct indicators for each school that, except for the English language proficiency indicator, will:

(1) measure performance for all students and separately for each subgroup of students;

(2) use the same measures within each indicator for all schools within the Bureau-funded school system except that measures within the Academic Progress and School Quality or Student success indicators may vary by each grade span; and

(3) incorporate an Academic Achievement indicator, an Academic Progress indicator, a Graduation rate indicator, a Progress in Achieving English Language Proficiency indicator, and one or more indicators of School Quality or Student Success.

(g) The Bureau's accountability system will annually measure the achievement of at least 95% of all students, and 95 percent of each subgroup of students, who are enrolled in schools within the Bureau-funded school system on the Bureau's assessments. The denominator for the purpose of measuring, calculating, and reporting on each indicator shall be the greater of:

(1) 95 percent of all students, or 95 percent of each subgroup of students; or

(2) the number of students participating in the assessments.

(h) The performance of students that have not attended the same Bureau-funded school for at least half of a school year will not be used in the system of meaningful differentiation of school for such school year, but will be used for the purpose of reporting on the Bureau and school report cards for such school year. In calculating the high school graduation rate, a high school student who has not attended the same school for at least half of a school year and has exited high school without a regular high school diploma and without transferring to another high school that grants a regular high school diploma during such a school year shall be assigned to the high school at which the student was enrolled for the greatest proportion of school days while

enrolled in grades 9 through 12, or to the high school in which the student was most recently enrolled.

**§30.107. May a tribal governing body or school board waive the Secretary's definition of standards, assessments, and accountability system?**

Yes. A tribal governing body or school board may waive the Secretary's definition of standards, assessments, and accountability system in part or in whole. However, unless a tribal governing body or school board's alternative plan (hereafter plan) is approved, the Secretary's definitions apply.

**§30.108. How does a tribal governing body or school board waive the Secretary's definitions?**

- (a) A tribal governing body or school board may waive the Secretary's requirements for standards, assessments, and accountability system, in part or in whole. Bureau operated school boards are not eligible for waivers.
- (b) The tribal governing body or school board must notify the Secretary and the Secretary of Education of the decision to waive the Secretary's requirements in part or in whole.
- (c) Within 60 days of the decision to waive the Secretary's requirements in part or in whole the tribal governing body or school board must submit to the Secretary for review, and in coordination with the Secretary of Education, approval, a plan for alternative requirements that are consistent with section 1111 of the Act and that take into account the unique circumstances and needs of such school or schools and the students served. The Secretary encourages a tribal governing body or school board to request and receive technical assistance, consistent with §30.111, well in advance of submission of a plan to the Secretary for review. A tribal governing body or school board must continue to follow the Secretary's requirements for standards, assessments and accountability system until a plan for alternative requirements has been approved and until alternative requirements become effective except in case of (g1) below.
- (d) A tribal governing body or school board may request an extension of the 60 day deadline for the provision of technical assistance.
- (e) A tribal governing body or school board must use this process anytime a tribal governing body or school board proposes alternative requirements for standards, assessments, and accountability.
- (f) The Secretary will work with the Secretary of Education to develop and make available templates for plans for alternative requirements that tribal governing bodies and school boards may use to assist in the development of such plans for alternative requirements.
- (g) During the transition to the Secretary's requirements for standards, assessments, under this Part, or at any time thereafter, where a Tribal governing body or school board elects to use the standards, assessments of a state, they may do so without submitting such standards,

assessments, under the waiver process after the Secretary's requirements under this Part are final, provided the Secretary is notified of this and provided that the state agrees to allow the use of such standards, assessments.

**§30.109. What should a tribal governing body or school board include in a waiver and alternative plan?**

Alternative plans must include an explanation how the alternative plan meets the requirements of section 1111 of the Act, taking into consideration the unique circumstances and needs of such schools and students served.

**§30.110. May a plan's alternative definition use parts of the Secretary's definition?**

Yes, a tribal governing body or school board may waive the Secretary's definitions in part or in whole. Alternative plans will clearly identify any retained portions of the Secretary's definitions.

**§30.111. Will the Secretary provide technical assistance to tribal governing bodies or school boards seeking a waiver?**

The Secretary and the Secretary of Education are required by statute to provide technical assistance, upon request, either directly or through contract, to a tribal governing body or a school board that seeks a waiver. A tribal governing body or school board seeking such assistance will submit a request to the Director. The Secretary will provide such technical assistance on an ongoing and timely basis.

**§30.112. What is the process for requesting technical assistance?**

- (a) Requests for Technical Assistance must be in writing from a tribal governing body or school board to the Director of BIE.
- (b) The Director, or designee, will acknowledge receipt of a request for technical assistance.
- (c) No later than 30 days after receiving the original request, the Director will identify a point of contact and technical assistance will begin. The Director and requesting tribe shall work together to identify the form, substance, and timeline for the assistance.

**§30.113. When should the tribal governing body or school board request technical assistance?**

A tribal governing body or school board may request technical assistance at any time before or during this process. A tribal governing body or school board is welcomed and encouraged to request technical assistance before formally notifying the Secretary of its intention to issue a waiver in order to maximize the time available for technical assistance.

**§30.114. How does the Secretary review and approve alternative requirements?**

- (a) The Secretary and the Secretary of Education shall jointly approve plans for alternative requirements for standards, assessments, and accountability unless a determination is made that the proposed alternative requirements do not meet the requirements of section 1111 of the Act.
- (i) Secretary will consult with the Secretary of Education through the review of a plan for alternative requirements. (ii) Upon receipt of a plan for alternative requirements for standards, assessments, and accountability system, in part or in whole, the Secretary shall begin coordination with the Secretary of Education on review and approval of the plan. (iii) The Secretary shall provide a status update regarding the processing of the plan within 120 days of receipt of the plan and every thirty days thereafter to discuss the stage of the review process.
- (b) If the Secretary and the Secretary of Education approve a plan for alternative requirements, the Secretary will (i) promptly notify the Tribal governing body or school board; and (ii) shall indicate the date for which the alternative plan will be effective.
- (c) If a plan for alternative requirements is not approved, the Tribal governing body or school board will be notified that (i) the plan has not been approved; and (ii) the reasons why the alternative plan was not approved.
- (d) If a plan for alternative requirements is not approved, the Secretary shall provide technical assistance to overcome the reasons why the alternative plan was not approved.
- (e) If a plan for alternative requirements is not approved, or is not moving forward, then the Tribes may individually request formal consultation with the Secretary and Secretary of Education.