



[4337-15-P]

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**25 CFR Part 30**

**[190D0102DR/DS5A300000/DR.5A311.IA000119]**

**RIN 1076-AF13**

**Standards, Assessments, and Accountability System**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Proposed rule and Tribal consultation.

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**SUMMARY:** The Bureau of Indian Education (BIE) is proposing a rule developed using a negotiated rulemaking process, as required by the 2015 Every Student Succeeds Act (ESSA), for implementation of the Secretary of the Interior’s obligation to define the standards, assessments, and accountability system consistent with ESSA for BIE-funded schools.

**DATES:** Please submit comments by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Please see “V. Consultation Schedule” of this preamble for dates of consultation sessions on this proposed rule.

**ADDRESSES:** You may submit comments by any of the following methods:

- Federal rulemaking portal: <http://www.regulations.gov>. The rule is listed under the agency name “Bureau of Indian Affairs” under Docket BIA-2016-0005.

- E-mail: [comments@bia.gov](mailto:comments@bia.gov). Include the number 1076-AF13 in the subject line of the message.

- Mail: Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street, N.W., Mail Stop 4660, Washington, DC 20240. Include the number 1076-AF13 in the subject line of the message.

- Hand delivery: Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street, N.W., Mail Stop 4660, Washington, DC 20240. Include the number 1076-AF13 in the subject line of the message.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and search for Docket Number BIA-2016-0005. We cannot ensure that comments received after the close of the comment period (see DATES) will be included in the docket for this rulemaking and considered.

Comments on the information collections contained in this proposed regulation (see “Paperwork Reduction Act” section, below) are separate from those on the substance of the rule. Send comments on the information collection burden to OMB by facsimile to (202) 395-5806 or e-mail to the OMB Desk Officer for the Department of the Interior at [OIRA\\_DOCKET@omb.eop.gov](mailto:OIRA_DOCKET@omb.eop.gov). Please send a copy of your comments to the person listed in the FOR FURTHER INFORMATION CONTACT section of this notice.

Please see “V. Consultation Schedule” of this preamble for addresses of consultation sessions on this proposed rule.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273-4680; [elizabeth.appel@bia.gov](mailto:elizabeth.appel@bia.gov).

**SUPPLEMENTARY INFORMATION:**

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## **I. Background**

The Office of Indian Education Programs (OIEP), now the BIE, published the existing rule for Adequate Yearly Progress (AYP), codified at 25 CFR part 30 (part 30), in the Federal Register on April 28, 2005 (70 FR 22178), effective May 31, 2005. The Elementary and Secondary Education Act of 1965 (ESEA), as amended and reauthorized by the No Child Left Behind Act of 2001 (NCLB), Pub. L. 107-110, required the Secretary of the Interior (Secretary) to engage in a negotiated rulemaking process to define AYP. NCLB required that AYP be defined on a regional or Tribal basis, as appropriate, taking into account the unique circumstances and needs of BIE-funded schools and the students served by those schools and provided further that, consistent with the negotiated rulemaking requirement, the Secretary could use State definitions of AYP. The NCLB Negotiated Rulemaking Committee ultimately recommended a rule requiring the BIE to use the definition of AYP of the State in which a BIE-funded school is located, with the option for a Tribal governing body or school board to develop and

implement alternative definitions of AYP. The existing part 30 resulted from that recommendation.

There are BIE-funded schools in 23 different States, each State having its own accountability system. As a result, under the existing rule, each State system has produced student achievement data for BIE-funded schools that is not comparable with data from BIE-funded schools following the requirements of other States. This outcome has created problems for the BIE in identifying under-performing schools, reporting, and in directing resources effectively.

On November 9, 2015, BIE published a notice of intent requesting nominations for members of a proposed negotiated rulemaking committee to recommend revisions to the existing part 30 AYP regulations (80 FR 69161). On December 10, 2015, ESEA was reauthorized and amended by the ESSA (Pub. L. 114-95). The ESSA requires the Secretary to use a negotiated rulemaking process to develop regulations to implement the Secretary's responsibility to define the standards, assessments, and accountability system, consistent with ESEA section 1111, for BIE-funded schools on a national, regional, or Tribal basis, as appropriate, taking into account the unique circumstances and needs of the schools and the students served by the schools. The requirement that the Secretary define the standards, assessments, and accountability system marks a significant expansion of requirements in the ESEA as amended by NCLB. The reauthorization of ESEA therefore required an update to the subject, scope, and issues that the proposed committee would address. On April 14, 2016, BIE announced its intent to expand the scope of the work of the committee and reopened the comment and nomination period, requesting comments and nominations by May 31, 2016 (81 FR 22039). The request for

nominations was extended on August 17, 2016 (81 FR 54768). On January 18, 2017, a notice of proposed membership, request for nominations, and a request for comments was published (82 FR 5473). On September 14, 2017, taking into consideration the interests of the new Administration in participating fully in the negotiated rulemaking process, BIE published a new request for nominations and notice of intent to establish a negotiated rulemaking committee (82 FR 43199). On April 17, 2018, the BIE published a notice of proposed membership of the committee and a request for further nominations (83 FR 16806).

On July 26, 2018, the Secretary signed a charter for the Bureau of Indian Education Standards, Assessments, and Accountability System Negotiated Rulemaking Committee (Committee). The Secretary established the Committee to advise the Secretary, through the BIE and the Assistant Secretary-Indian Affairs, on the development of regulations to fulfill the Secretary's responsibility to define the standards, assessments, and accountability system consistent with ESEA section 1111, 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 BIE-funded schools and the students served, and the process for waiving certain requirements, with a focus on the regulations in part 30, Adequate Yearly Progress. On August 2, 2018, the BIE published a notice of the Committee's establishment and a notice of meetings (83 FR 37822). The Committee first met in September of 2018 and agreed on protocols and a definition of consensus. The Committee met again in October and December of 2018. On February 11, 2019, the BIE published a notice announcing a fourth public Committee meeting that was held in March 2019 (84 FR 3135). In compliance with the Negotiated Rulemaking Act and the

Federal Advisory Committee Act, the meetings were open to the public to provide the public with an opportunity to participate in the rulemaking process.

There were a combined 17 primary and alternate members of the Committee, consisting of both Federal and non-Federal members. Members of the Committee consisted of representatives capable of representing the interests of students enrolled at the 174 BIE-funded schools<sup>1</sup>, parents of such students, school administrators, Tribes, the Indian communities served by BIE-funded schools, and the U.S. Government. A third-party neutral facilitator led all of the meetings, coordinated caucuses, provided the official minutes, and drafted the final report.

The work of the Committee required committee members to develop an understanding of the technical aspects of the topics of standards, assessments, and accountability systems. The Committee divided itself into subcommittees tasked with developing recommendations and reporting back to the Committee as a whole for each of the topics of standards, assessments, accountability systems, and waivers and technical assistance. The Committee focused on establishing a rule that would provide a framework in which the Secretary could develop or adopt requirements for standards, assessments, and accountability system and which would provide flexibility in implementing these requirements in order to allow for periodic revision of requirements as necessary consistent with the provision in ESEA section 1111 requiring the periodic review and revision of such requirements by States. During Committee discussion, some Committee members expressed concerns related to certain parts of title 25 of the Code of Federal Regulations (CFR) relating to the BIE for which the NCLB Rulemaking

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<sup>1</sup> This number excludes nine BIE-funded peripheral dormitories near reservations for students attending public schools

Committee made recommendations, but that were unrelated to the BIE Standards, Assessments, and Accountability System Committee's charge. While not within the scope of the Committee's charge, the Committee documented its concerns and recommendations on those items in the final report.

BIE commends the Committee for their dedicated work on developing an understanding of a complicated subject matter and for reaching consensus on recommendations for many aspects of regulations necessary to implement requirements for standards, assessments, and accountability system at BIE-funded schools. The members' work resulted in the development of a recommendation on a rule that would ensure that, through a unified system of requirements, both BIE-funded schools and the students served by those schools receive all of the support and guidance that they need to provide for a high-quality education at BIE-funded schools. In addition, the Committee reached consensus on recommendations to assure that Tribal governing bodies or school boards that waive the Secretary's requirements and submit proposals for alternative requirements are properly supported in their efforts to do so.

## **II. General Description of the Proposed Rule**

In April 2019, the Committee transmitted the Standards, Assessments, and Accountability System Negotiated Rulemaking Committee Final Consensus Report (report) to the Secretary summarizing recommendations on which the Committee reached consensus for regulations that would allow the Secretary to implement unified requirements for standards, assessments, and accountability system for BIE-funded schools and also support Tribal governing bodies or school boards that wish to pursue

requirements alternative to the ones established by the Secretary. The report forms the basis for this proposed rule and is an essential part of the history for this proposed rulemaking. The Committee's recommendations to revise existing part 30, is found in Appendix E of the report. You can find the report, along with the minutes and other supporting materials for all meetings at the Committee's Web site at <https://www.bie.edu/Resources/NRMC/index.htm>.

The Secretary is mandated by section 8204 of ESEA to establish requirements for standards, assessments, and accountability system for BIE-funded schools consistent with ESEA section 1111, as amended, on a national, regional, or Tribal basis, as appropriate, taking into account the unique circumstances and needs of BIE-funded schools and the students served by those schools. Within this context, the purpose of this negotiated rulemaking is to ensure that the Secretary and BIE are able to meet this requirement and their obligations to both BIE-funded schools and the children served by such schools. It is the intent of this proposed rule to provide simplicity, certainty, clarity, and consistency for the 174 BIE-funded schools, the students served by those schools, the parents of those students, school administrators, Tribes, and the Indian communities served by BIE-funded schools.

Among other things, the proposed rule would:

- Require the Secretary to be guided by the principles described in 25 CFR part 32 when engaging in activities under the proposed part 30;
- Require the BIE to develop a Standards, Assessments, and Accountability Plan in consultation with stakeholders that would provide Indian Tribes, parents, and

stakeholders with quality, transparent, information about how the requirements of ESEA, as amended, will be implemented at BIE-funded schools;

- Reflect the language and requirements of section 1111 of ESEA for the standards, assessments, and accountability system, taking into account the unique circumstances and needs of BIE-funded schools and the students served by those schools;

- Require standards and assessments in Tribal civics;

- Incorporate Tribal civics and science into the accountability system of BIE-funded schools;

- Recognize the right of Tribal governing bodies or school boards to use Native American languages as a medium of instruction at BIE-funded immersion schools;

- Incorporate certain provisions from U.S. Department of Education regulations relating to assessments;

- Generally require BIE-funded schools to follow the requirements established by the Secretary for the standards, assessments, and accountability system unless those requirements have been waived by a Tribal governing body or school board and a proposal for alternative requirements has been approved by the Secretary and the Secretary of Education, as described in section 8204(c)(2) of ESEA;

- Require the Secretary to respond to proposals for alternative requirements in a timely manner;

- Require the Secretary to provide technical assistance to Tribal governing bodies or school boards in the development of proposals for alternative requirements and to respond to such requests in a timely manner;

- Include provisions on school supports and interventions; and

- Modify language in the current regulations not directly addressed by the Committee to align with the requirements of ESEA, as amended by ESSA.

### **III. Section-by-Section Analysis**

Before reading the additional explanatory information below, please turn to the proposed rule language that immediately follows the “List of Subjects in 25 CFR part 30” in this document. DOI will codify this language in the CFR if we finalize the proposed rule as written. After you have read the proposed rule language, please return to the preamble discussion below. The preamble contains additional information about this proposed rule, such as why language might differ from the recommendation, why we defined a term in a certain manner, or why a specific standard was chosen.

BIE proposes to amend part 30 as a whole. The title of part 30 would change from “Adequate Yearly Progress” to “Standards Assessments, and Accountability System.” Some of the provisions are similar in substance, the same, or mostly the same as in the existing rule. However, the increase in scope of subject matter to be covered in the proposed rule over the existing rule required replacing certain sections and adding others. The main substantive change is the elimination of sections describing the definition of AYP and consequences for failing to make AYP, and replacing them with sections describing rules for defining the standards, assessments, and accountability system and school supports and intervention. The proposed rule would largely refer to “requirements” as opposed to “definitions” as used in the existing part 30 to provide for more accuracy and clarity.

**What is the purpose of this part? (Section 30.100)**

This proposed section would be substantially the same as the current § 30.100, “What is the purpose of this part?” However, we propose to change a reference to AYP to reflect the new requirement that the Secretary define the standards, assessments, and accountability system for BIE-funded schools. Further, the Committee reached consensus on including language regarding the responsibilities of the BIE with regard to providing a high-quality education for students served at BIE-funded schools. The Committee liked the language found in 25 CFR 32.3, containing the mission statement for the BIE, but felt that the text, including legal citations, was distracting. We propose to incorporate a statement that in carrying out activities under part 30 the Secretary will be guided by the policies described throughout 25 CFR part 32, which have the status of codified law through 25 U.S.C. 2003.

**What definitions apply to terms in this part? (Section 30.101)**

As proposed, this section would be substantially the same as the current § 30.101, “What definitions apply to terms in this part?” However, we propose to update the terms to refer to the “Bureau of Indian Education” as opposed to the “Office of Indian Education Programs” or “Bureau of Indian Affairs.” We also propose to add definitions for “Alternative proposal,” “Foster care,” “Native American language,” “Standards, Assessments, and Accountability Plan,” “Tribal governing body or school board,” and “Waiver.” These new definitions are proposed for addition in response to recommendations from Committee members, or are intended to address issues raised by Committee members.

### **Standards, Assessments, and Accountability System Requirements (Subpart A)**

This proposed Subpart would be similar to the existing §§ 30.102 through 30.104 of Subpart A, “Defining Adequate Yearly Progress,” of part 30. As proposed, this subpart will contain the rules for how the Secretary will develop or implement requirements for standards, assessments, and accountability system at BIE-funded schools.

### **What does the Act require of the Secretary? (Section 30.102)**

This proposed section would be similar to the existing § 30.102, “Does the Act require the Secretary of the Interior to develop a definition of AYP for Bureau-funded schools?” It describes what ESEA, as amended, requires of the Secretary.

### **How will the Secretary implement standards, assessments, and accountability system requirements? (Section 30.103)**

This proposed section would replace the existing § 30.103, “Did the Committee consider a separate Bureau definition of AYP?” As proposed, this section would describe a process for developing a Standards, Assessments, and Accountability Plan that would provide Indian Tribes, parents, and other stakeholders with quality, transparent, information about how the Act will be implemented for BIE-funded schools. The proposed section would require periodic review and revision of the Secretary’s requirements established under part 30 as is required of States in ESEA section 1111. The proposed section describes ongoing and meaningful consultation with a diverse group of stakeholders. In parity with State authorities, the proposed section also would allow the

BIE to voluntarily partner with States or Federal agencies in the development or implementation of challenging academic standards and assessments. This proposed section would incorporate language recommended by the Committee recognizing the right of Tribal governing bodies or school boards to use Native American languages as a medium of instruction at BIE-funded immersion schools but moving the proposed subsection from § 30.104(g) to § 30.103(e). BIE proposes to omit language recommended by the Committee for the proposed § 30.103(e) stating that the BIE would provide technical assistance if requested because BIE and the Department of Education are required under section 8204 of the ESEA to provide technical assistance within the context of the waivers and alternative requirements. The rule as proposed eliminates some redundancies in the language recommended by the Committee by consolidating the Committee's recommendations on paragraphs (b) and (c) and paragraphs (d) and (e) into paragraphs (b) and (c), but retains the meaning intended by the Committee.

**How will the Secretary implement requirements for standards? (Section 30.104)**

This and the following three proposed sections would replace the existing § 30.104, "What is the Secretary's definition of AYP?" They would describe the parameters around which the Secretary will develop or implement requirements for the standards, assessments, and accountability system and largely mirror the requirements of section 1111 of the Act. As proposed this section would describe how the Secretary will develop or implement requirements for standards at BIE-funded schools.

The rule as proposed would delete language recommended by the Committee regarding the implementation of standards "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” both because the general requirements of section 8204 of the ESEA are already described in the proposed 25 CFR 30.102, and also because the Committee expressed an interest in national requirements subject to the process for waiving such requirements and approval of proposed alternative requirements. As proposed, the rule would specify a gradual requirement to have an “other” standard in Tribal civics. The Tribal civics standards would, as described by the Committee in the final report, be created and implemented for grades K-12 and would encompass elements such as Tribal sovereignty, self-determination, treaty law, land and water rights, laws based on Tribal customs and beliefs, Tribal and State relations, 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, and Manifest Destiny. As proposed, the Tribal civics standards would be developed after the regulations in this part are final. As noted above, the rule as proposed would move the Committee’s recommendation on § 30.104(g) to § 30.103(e).

**How will the Secretary implement requirements for assessments? (Section 30.105)**

The Committee did not reach consensus on a recommendation with regard to assessments. The BIE proposes to separate into two sections the general requirements for assessments and provisions on the inclusion of all students in assessments. As proposed, this section would describe how the Secretary would develop or implement requirements

for assessments at BIE-funded schools. The section would gradually require assessments in Tribal civics.

The proposed section would omit a provision discussed by the Committee that would have been similar to a provision in the Department of Education's regulations. *See* 34 CFR. 200.6(j)-(k). The Department of Education provision says that States are not required to use assessments written in English to assess student achievement in meeting State academic standards in read/language arts, mathematics, or science for a student who is enrolled in a school or program that provides instruction primarily in a Native American language, provided certain additional requirements have been met. BIE proposes to omit this language from § 30.105 because § 30.105 addresses how the Secretary would implement requirements for assessments for BIE-funded schools and not what a Tribal governing body or school board might accomplish through a proposal for alternative requirements as described in subpart B. Further, it is already the established policy of the United States to encourage and support the use of Native American languages as a medium of instruction. The omission does not limit the options available to Tribal governing bodies or school boards proposing alternative requirements.

As proposed, this section would incorporate certain sections within the Department of Education's regulations of which the Committee took note during the fourth Committee meeting. As proposed, the section would also delete language discussed by the Committee regarding locally selected assessments. BIE proposes to omit this language because this provision might conflict with the process described in section 8204(c) of the ESEA for waiving requirements established by the Secretary and for approval of alternative requirements, including the role of the Secretary of Education in

the process. Omitting this language will not limit the options that are available for alternative requirements since the use of such locally selected assessments could be proposed as an alternative requirement. As proposed, the section also clarifies that all required BIE assessments must undergo peer review.

**How will the Secretary provide for the inclusion of all students in assessments?**

**(Section 30.106)**

As proposed, this section would describe how the Secretary would provide for the inclusion of all students in assessments.

**How will the Secretary include students with disabilities in assessments? (Section**

**30.107)**

As proposed, this section would describe how the Secretary would provide for the inclusion of all students with disabilities in assessments and have appropriate accommodations. This section would also incorporate information conforming to certain sections of the Department of Education's regulations highlighted by the Committee during the fourth Committee meeting.

**How will the Secretary provide for alternative assessments for students with the**

**most significant cognitive difficulties? (Section 30.108)**

As proposed, this section would describe how the Secretary would align alternative assessments for students with the most significant cognitive difficulties with alternate academic achievement standards. This section would also incorporate

information conforming to certain sections of the Department of Education's regulations highlighted by the Committee during the fourth Committee meeting.

**How will the Secretary include English learners in content assessments? (Section 30.109)**

As proposed, this section would describe how the Secretary would include English learners in content assessments, this section would incorporate information conforming to certain sections of the Department of Education's regulations highlighted by the Committee during the fourth Committee meeting. This section would also clarify the requirements for English learners, and that the BIE may ask for the assistance of the Secretary of Education to meet such requirements.

**How will the Secretary ensure BIE-funded schools will provide for annual assessments of English language proficiency for English learners? (Section 30.110)**

As proposed, this section would describe how the Secretary would provide for annual assessments of English language proficiency for English learners. This section would also incorporate information conforming to certain sections of the Department of Education's regulations highlighted by the Committee during the fourth Committee meeting.

**How will the Secretary implement requirements for accountability system? (Section 30.111)**

As proposed, this section would describe how the Secretary would develop or implement accountability system requirements at BIE-funded schools. As proposed, the section would gradually incorporate Tribal civics into the BIE-funded school accountability system as a School Quality and Student Success (SQSS) indicator. The proposed rule would require the review of the use of Tribal civics as an SQSS and allow for the later implementation of Tribal civics as an Academic Achievement Indicator. The Committee discussed the inclusion of science in the BIE's accountability system, but did not discuss how. As such, the proposed section would incorporate science into the BIE's accountability system and would provide the Secretary with discretion as to how to incorporate science. As proposed, the section would use the extended-year adjusted cohort graduation rate in addition to the four-year adjusted cohort graduation rate for long-term goals.

#### **Waiver of Requirements, Technical Assistance, and Approval of Alternative Requirements (Subpart B)**

This proposed subpart would be similar to the existing §§ 30.105-30.113 in the existing subpart A of part 30 regarding alternative definitions of AYP, technical assistance, and approval of alternative definitions. Throughout this subpart, the BIE proposes to change the use of the word “plan” as recommended by the Committee to “proposal” to better align the language of the proposed rule with the language of section 8204(c)(2) of the ESEA describing submission of proposals for alternative requirements.

**May a Tribal governing body or school board waive the Secretary’s requirements for the standards, assessments, and accountability system? (Section 30.112)**

This proposed section would be similar to the existing § 30.105, “May a Tribal governing body or school board use another definition of AYP?” As proposed, this section confirms that Tribal governing bodies and school boards at Pub. L. 100-297 grant or Pub. L. 93-638 contract schools may waive the Secretary’s requirements in part in or whole. As proposed, this section would also clarify that the Secretary’s requirements apply until the Secretary and the Secretary of Education have approved an alternative proposal, unless a BIE-funded school is following a State system as described in § 30.113.

**How does a Tribal governing body or school board waive the Secretary’s requirements? (Section 30.113)**

This proposed section would be similar to the existing § 30.106, “How does a Tribal governing body or school board propose an alternative definition of AYP?” As proposed, this section deletes language recommended by the Committee to the effect that “Bureau-operated schools are not eligible for waivers.” This proposed section omits this language because the definition of “Tribal governing body or school board” provided in the proposed § 30.101 would exclude Bureau-operated school boards. This proposed section would describe a process for submission of notice of a waiver to the Secretary and the Secretary of Education, and submission of a proposal for alternative requirements within the statutorily prescribed 60 days of notice of a waiver. The proposed section would encourage Tribal governing bodies or school boards to request technical assistance

in advance of providing notice of a waiver. The section would authorize a Tribal governing body or school board to request an extension of the statutory 60-day timeline for submission of proposals for alternative requirements. The section would explain that this process applies anytime a Tribal governing body or school board proposes alternative requirements, or proposes changes to approved alternative requirements. The section provides that the Secretary will work with the Secretary of Education to develop templates to assist in the development of alternative requirements.

As proposed, the section would provide that during the transition to the Secretary's requirements established under this part, and at any time thereafter, a Tribal governing body or school board may elect to follow the standards and assessments of a State without having to submit such requirements under the process for approval of alternative requirements, provided that the Secretary is notified of this intention and provided that the State agrees.

**What should a Tribal governing body or school board include in an alternative proposal? (Section 30.114)**

This proposed section would be similar to the existing § 30.107, "What must a Tribal governing body or school board include in its alternative definition of AYP?" As proposed, this section would require proposals for alternative requirements to include an explanation of how the alternative proposal meets the requirements of ESEA section 1111, taking into account the unique circumstances and needs of BIE-funded schools and the students served at those schools.

**May proposed alternative requirements use parts of the Secretary’s requirements?  
(Section 30.115)**

This proposed section would be similar to the existing § 30.108, “May an alternative definition of AYP use parts of the Secretary’s definition?” As proposed, this section would explain that proposals for alternative requirements may use parts of the Secretary’s requirements and that, where these are incorporated, the alternative proposal should identify those requirements.

**Will the Secretary provide technical assistance to Tribal governing bodies or school boards seeking to develop alternative requirements? (Section 30.116)**

This section would be similar to the existing § 30.109, “Will the Secretary provide assistance in developing an alternative AYP definition?” As proposed, this section would explain that the Secretary and the Secretary of Education are required to provide technical assistance. The section would require a Tribal governing body or school board to submit a request for technical assistance to the Director of the BIE and would provide for technical assistance on an ongoing and timely basis.

**What is the process for requesting technical assistance? (Section 30.117)**

This section would be similar to the existing § 30.110, “What is the process for requesting technical assistance to develop an alternative definition of AYP?” As proposed, this section would require requests for technical assistance to be in writing to the Director of the BIE from a Tribal governing body or school board. It would provide that the Director would acknowledge receipt of such a request and identify a point of

contact within 30 days. The section would also provide that the Director and a Tribal governing body or school board would work together to identify the form, substance, and timeline for providing technical assistance.

**When should a Tribal governing body or school board request technical assistance?**

**(Section 30.118)**

This section would be similar to the existing § 30.111, “When should the Tribal governing body or school board request technical assistance?” As proposed, this section would provide that a Tribal governing body or school board may request technical assistance at any time, and would encourage Tribal governing bodies or school boards to request technical assistance prior to providing notice of a waiver. The section as proposed would alter wording recommended by the Committee slightly from “to issue a waiver” to “to waive the requirements established by the Secretary” for clarity.

**How does the Secretary review and approve proposals for alternative requirements?**

**(Section 30.119)**

This section would be similar to the existing § 30.113, “How does the Secretary review and approve an alternative definition of AYP?” As proposed, this section would describe the process for review and approval of proposals for alternative requirements by the Secretary and the Secretary of Education. It would also describe that such proposals would be approved unless the Secretary of Education determines that the alternative requirements do not meet the requirements of section 1111 of ESEA, taking into account the unique circumstances and needs of BIE-funded schools and the students served at

those schools. The section would describe how the Secretary would begin to coordinate with the Secretary of Education upon receipt of a proposal for alternative requirements. The section would require the Secretary to provide a status update within 120 days of receipt of a proposal for alternative requirements and every 30 days thereafter. The section would explain that Tribal governing bodies or school boards would be notified promptly of approval of a proposal for alternative requirements as well as the effective date of such alternative requirements. The section would provide for technical assistance and an explanation if a proposal for alternative requirements is not approved. Finally, the section would provide that a Tribe could request formal consultation if a proposal for alternative requirements is not approved or if progress is not being made towards approval.

### **Support and Improvement (Subpart C)**

This proposed subpart would be analogous to the existing subpart B, “Assessing Adequate Yearly Progress,” and subpart C, “Failure to make Adequate Yearly Progress” of the existing part 30, §§ 30.114-30.125. As proposed, the subpart would describe requirements for comprehensive support and improvement for schools as well as targeted support and improvement for schools.

### **How will the Secretary implement school support and improvement activities?**

#### **(Section 30.120)**

This section would provide that the Secretary would notify BIE-funded schools identified for comprehensive support and improvement.

**How will the Secretary implement comprehensive support and improvement?**

**(Section 30.121)**

This section would provide for the development, implementation, and monitoring of comprehensive support and improvement plans.

**How will the Secretary implement targeted support and improvement? (Section 30.122)**

This section would provide that the Secretary would notify schools in which any subgroup of students is currently underperforming and would provide for the development and implementation of targeted support and improvement plans.

**How will the Secretary implement additional targeted support? (Section 30.123)**

This section would provide that where a school is, for any subgroup, within the lowest-performing 5 percent of all schools within the BIE-funded school system using the BIE's system for annual meaningful differentiation, the targeted support and improvement plan would also identify resource inequalities to be addressed through implementation of the plan. For the first year of implementation of the Secretary's requirements, the section would provide that the Secretary will identify any BIE-funded school in which any subgroup of students on its own would lead to identification because it would be within the lowest-performing 5 percent of all schools.

**How will the Secretary implement continued support for BIE-funded schools and school improvement? (Section 30.124)**

This section would provide that the Secretary would establish exit criteria for schools identified for comprehensive support and improvement and schools identified for additional targeted support. The section would also provide for the periodic review by the Secretary of resource allocations to support school improvement.

**Responsibilities and Accountability (Subpart D)**

This proposed subpart would be similar to the existing subpart D, “Responsibilities and Accountability,” §§ 30.126 and 30.150.

**What is required for the Bureau to meet its report responsibilities? (Section 30.125)**

This section would be similar to the existing § 30.126, “What is required for the Bureau to meet its reporting responsibilities?” regarding BIE reporting requirements, but updated to reflect current requirements.

**Information Collection (Section 30.126)**

This section would be similar to the existing § 30.150, “Information collection,” regarding the collection of information by the BIE.

**IV. Other Proposed Changes Under Consideration**

*A. Standards, Assessments, and Accountability Plan*

BIE is considering the advisability of, and whether and to what extent, a requirement for a Standards, Assessments, and Accountability Plan as described in § 30.103(b) of this proposed rule should be incorporated into the final rule and welcomes comments, including comments on whether such a requirement should be regulatory or addressed elsewhere (such as in the agreement with the Secretary of Education required by section 8204(a) of ESEA).

*B. Ongoing stakeholder consultation and transparency*

BIE is considering whether and to what extent stakeholder consultation as described in § 30.103(c) of this proposed rule should be incorporated into the final rule. For instance, such requirements could be duplicative of, or in conflict with, existing Departmental policies and statutory responsibilities, or might require statutory authorization. BIE welcomes comments on these matters.

*C. Tribal civics standards, assessments, and accountability*

The BIE is considering whether and to what extent to specify Tribal civics as described in §§ 30.104(c)(1)(iv), 30.105(a), and 30.111(d) in the final rule. For instance, the regulation would otherwise authorize the Secretary to implement “other” requirements without having to specify the other requirements in regulation. Further, the BIE thinks that it might be more appropriate for Tribal civics to be implemented by a Tribal governing body or school board through a proposal for alternative requirements as described in subpart B of the proposed rule.

#### *D. Science and accountability*

The Committee recommended the incorporation of science into the BIE's accountability system, but did not specify how it should be incorporated. BIE is considering whether and to what extent to specify the incorporation of science into the Secretary's accountability system as described in § 30.111(c). As with Tribal civics, the regulation would otherwise authorize the Secretary to incorporate science and other subjects into the accountability system without having to specify such other requirements in regulation. Also as with Tribal civics, a Tribal governing body could accomplish incorporation of science into the requirements applicable at a particular school or school board through a proposal for alternative requirements as described in subpart B of the proposed rule, as the Miccosukee Tribe of Indians of Florida did under the NCLB regulations.

Some States have incorporated science into their accountability systems. However, the majority of States have not. In ESEA, as amended, States are required to adopt challenging science academic content standards and to implement aligned science assessments in selected grades, and in this proposed rule BIE would also be held to those requirements. Science requires higher-level literacy and numeracy skills, which students in low performing schools generally require support to accomplish. Including science as an academic indicator could therefore raise the threshold of success for certain students and schools. One committee member voiced the opinion that science should be included as a weighted indicator because of the importance of the subject. BIE agrees with the Committee with regard to the importance of science and notes that Congress has also recognized the importance of the subject by making it a requirement for all schools in the

nation. BIE welcomes comments on these matters and on the effect of a requirement to incorporate science into the accountability system. BIE also welcomes comments on specifying a weight in the regulation for a proposed academic indicator for science.

*E. Tribal civics and science as school quality and student success indicators*

The rulemaking committee recommended two School Quality and Student Success (SQSS) indicators: Tribal civics and science. BIE welcomes comments on whether, to what extent, and the appropriate method for, the inclusion of such indicators. The proposed regulation would otherwise require periodic review and revision of the Secretary's requirements generally, and would otherwise authorize the Secretary to exercise discretion in the inclusion of other subjects into the accountability system. BIE notes that some Committee members expressed an interest in ensuring that BIE would be held to the same or similar requirements as States, and that States generally have discretion in the selection and implementation of indicators such as SQSS in response to the interests of students. In addition, as with Tribal civics and science generally, a Tribal governing body or school board wishing to implement Tribal civics and science could likely propose doing so in a variety of ways through a proposal for alternative requirements as described in Subpart B of the proposed rule.

*F. Native American languages and the standards, assessments, and accountability system*

Section 30.104(f) of the proposed rule contains provisions describing the right of Tribal governing bodies or school boards to use Native American languages as a medium of instruction. BIE is considering whether, how, and to what extent Native American

languages should be described in the proposed rule. The Committee did not fully explain the concepts that they wished to recommend be incorporated into the proposed rule in regards Native American languages. There is a chance of conflict with other statutory and regulatory authorities describing the importance and status of Native American languages, such as those already supportive of the use of Native American languages as a medium of instruction. BIE welcomes comments on these and other related matters.

#### *G. School supports and interventions*

The Committee did not discuss school supports and interventions as described in the proposed rule at subpart C, §§ 30.120 through 30.124. However, BIE is considering whether and to what extent to incorporate school supports and interventions into the final rule and welcomes comments on the provisions included in this proposed rule, or whether such matters should be addressed elsewhere such as in the Secretary's Standards, Assessments, and Accountability Plan or in the ESEA section 8204(a) agreement with the Secretary of Education. BIE also welcomes comment on the amount of autonomy BIE-operated schools should have under this process.

#### *H. State standards and assessments opt-in during transition*

The proposed provisions in § 30.112(g) regarding an option for Tribal governing bodies of school boards to opt in to State requirements apart from the waiver and alternative proposal process described in the proposed subpart B, §§ 30.112 through 30.119, might conflict with statutory intent in ESEA section 8204(c) regarding the approval of alternative requirements, including the statutorily prescribed role of the

Secretary of Education. In addition, the Committee expressed an interest in the establishment of a unified system of accountability for BIE-funded schools, and this or similar opt-out provisions might conflict with that goal and complicate efforts to hold schools accountable. BIE welcomes comments on whether or how to incorporate this or similar concepts.

*I. Waivers, timelines for waivers, and processing of proposals alternative requirements*

BIE is considering changes to the timelines recommended by the Committee for waivers and the processing of proposals for alternative requirements described in subpart B, §§ 30.112 through 30.119, and welcomes comments on the proposed timelines. For instance, the requirement for status updates on the processing of a proposal for alternative requirements every 30 days might require unnecessary or redundant communication with a Tribal governing body or school board even if there, for instance, is robust and ongoing communication. The BIE is further considering changes to the proposed § 30.118 to more closely reflect the language of the existing § 30.115 or generally amend the language for clarity. The BIE may also omit § 30.119(e) from the final rule as it may be duplicative of or in conflict with the Department's existing Tribal consultation policies.

*J. Supports and interventions*

The proposed rule contains a subpart C, "Support and Improvement," intended to be similar to the existing subpart B, "Assessing Adequate Yearly Progress," and subpart C, "Failure to make Adequate Yearly Progress." The BIE is still considering whether or how these or similar provisions should be included in the final rule and welcomes

comments on this topic. If these provisions are included, they may also be included after § 30.111, “How will the Secretary implement requirements for accountability system?” and before subpart B, “Waiver of Requirements, Technical Assistance, and Approval of Proposals for Alternative Requirements.”

## **V. Consultation Schedule**

The BIE will conduct a series of consultation sessions regarding its proposed rule. The Committee provided advice to the Secretary on a proposed rule that would provide a framework around which the Secretary could develop requirements for the standards, assessments, and accountability system and which would provide flexibility in implementing these requirements in order to allow for periodic revision of requirements as necessary consistent with the provisions in ESEA section 1111 requiring the periodic review and revision of the requirements. The interests that are likely to be significantly affected by the proposed rule are: students enrolled, or parents of students enrolled at the 174 BIE-funded schools, school teachers and administrators, Tribes, and Indian communities served by these schools.

The BIE will conduct five on-site consultation sessions and one telephonic sessions. The on-site consultation sessions will be held at geographically diverse locations across the country to maximize input. BIE will accept both oral and written comments. The following table lists dates and locations for the consultations. You can find additional information, along with the minutes and other supporting materials for all meetings at the Committee's website at <https://www.bie.edu/Resources/NRMC/index.htm>. The BIE strongly recommends

interested parties review the proposed rule prior to attending a consultation session. The consultation sessions scheduled to date are as follows:

<b>DATE</b>	<b>TIME (local time zone)</b>	<b>Location Information*</b>
Thursday, July 11, 2019	8:30 a.m. – 5 p.m.	Southwestern Indian Polytechnic Institute (SIPI) 9169 Coors Blvd Albuquerque, NM 87120
Tuesday, July 16, 2019	8:30 a.m. – 5 p.m.	Arizona (specific venue TBD)
Thursday, July 18, 2019	8:30 a.m. – 5 p.m.	Oglala Lakota College 490 Piya Wiconi Road Kyle SD, 57752
Tuesday, July 23, 2019	8:30 a.m. – 5 p.m.	2001 Killebrew Drive Minnesota Room Bloomington, MN 55425
Friday, July 26, 2019	1 p.m. – 5 p.m.	Teleconference or webinar
Tuesday, July 30, 2019	8:30 a.m. – 5 p.m.	Washington (specific venue TBD)

\* Please refer to this website for specific and updated information:

<https://www.bia.gov/as-ia/raca/regulations-development-and-or-under-review/BIE-SAA>

Additional consultation sessions will be announced on the website above.

## **VI. Procedural Requirements**

### **A. Regulatory Planning and Review (E.O. 12866 and 13563)**

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are

relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The BIE has developed this proposed rule in a manner consistent with these requirements. In addition, section 8204 of the ESEA, as amended, 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 accountability system that will be utilized at BIE-funded schools. This rule is also part of the Department's commitment under the Executive Order to reduce the number and burden of regulations.

#### **B. Reducing Regulations and Controlling Regulatory Costs (E.O. 13771)**

E.O. 13771 of January 30, 2017, directs Federal agencies to reduce the regulatory burden on regulated entities and control regulatory costs. E.O. 13771, however, applies only to significant regulatory actions, as defined in Section 3(f) of E.O. 12866. Therefore, E.O. 13771 does not apply to this rule.

#### **C. Regulatory Flexibility Act**

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### **D. Small Business Regulatory Enforcement Fairness Act**

This rule would not be a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more

because it is the responsibility and goal for the Federal government to provide comprehensive education programs and services for Indian Tribes and Alaska Natives.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, Indian or local government agencies, or geographic regions because this proposed rule affects only the children served at BIE-funded schools.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises because this rule affects only the children served at BIE-funded schools.

#### **E. Unfunded Mandates Reform Act**

This rule would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The proposed rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) would not be required.

#### **F. Takings (E.O. 12630)**

Under the criteria in section 2 of E.O. 12630, this rule would not have any significant takings implications. This rule would not impose conditions or limitations on the use of any private property or otherwise have taking implications under Executive Order 12630 because this rule does not affect individual property rights protected by the Fifth Amendment or involve a compensable "taking." A takings implication assessment is not required.

#### **G. Federalism (E.O. 13132)**

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rulemaking would not substantially and directly affect the relationship between the Federal and State government. The Secretary of the Interior is responsible for managing BIE-funded schools and interacting with Tribal governments or Tribal organizations operating Tribally-controlled grant and contract schools. Because this rule would not alter that relationship, a Federalism summary impact statement is not required.

#### **H. Civil Justice Reform (E.O. 12988)**

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation.

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

#### **I. Consultation with Indian Tribes (E.O. 13175)**

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty.

Under the Department's consultation policy and the criteria in E.O. 13175, we evaluated this rule and determined that it would have no Tribal implications that would impose substantial direct compliance costs on Indian Tribal governments.

Also, under this consultation policy and Executive Order criteria with Indian Tribes and other individual stakeholders, BIE has scheduled consultations that are listed in Section V. Consultation Schedule.

#### **J. Paperwork Reduction Act**

This rule contains information collections requiring approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq. The Department is seeking approval for a new OMB Control Number.

*OMB Control Number:* 1076–NEW.

*Title:* Standards, Assessments, and Accountability System Waiver.

*Brief Description of Collection:* This information collection is necessary to implement the ESSA. The ESSA requires all schools, including BIE-funded and operated schools, to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging academic achievement standards and assessments. In order to accomplish these goals, the Secretary would develop or implement accountability system requirements at BIE-funded schools. Tribal governing bodies and school boards at Pub. L. 100-297 grant or Pub. L. 93-638 contract schools will be able to waive the Secretary's requirements in part in or whole and will be required to submit a proposal for alternative requirements.

*Type of Review:* Existing collection in use without OMB control number.

*Respondents:* BIE-funded schools.

*Number of Respondents:* Two on average (each year).

*Number of Responses:* Two on average (each year).

*Frequency of Response:* On occasion.

*Estimated Time per Response:* 500 hours.

*Estimated Total Annual Hour Burden:* 1,000 hours.

*Estimated Total Non-Hour Cost:* \$0.

#### **K. National Environmental Policy Act**

This rule would not constitute a major Federal action significantly affecting the quality of the human environment. We are not required to provide a detailed statement under the National Environmental Policy Act of 1969 (NEPA) because this rule qualifies for categorical exclusion under 43 CFR 46.210(f) and (i) and the DOI Departmental Manual, part 516, section 15.4.D: (f) - (i). We have also determined that this rulemaking is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

#### **L. Effects on the Energy Supply (E.O. 13211)**

This rule would not be a significant energy action under the definition in Executive Order 13211, and therefore, would not require a Statement of Energy Effects.

#### **M. Clarity of this Regulation**

We are required by Executive Orders 12866 (section 1(b)(12)), and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;

- (d) Be divided into short sections and sentences; and,
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the "ADDRESSES" section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

**N. Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**List of Subjects in 25 CFR part 30**

Elementary and secondary education, Grant programs-Indians, Indians-education, Schools.

For the reasons set forth in the preamble, the Department of the Interior, Bureau of Indian Affairs, proposes to revise 25 CFR part 30 to read as follows:

**PART 30—STANDARDS, ASSESSMENTS, AND ACCOUNTABILITY SYSTEM**

Sec.

- 30.100           What is the purpose of this part?
- 30.101           What definitions apply to terms in this part?

*Subpart A – Standards, Assessments, and Accountability System Requirements*

- 30.102           What does the Act require of the Secretary?

- 30.103 How will the Secretary implement Standards, Assessments and Accountability requirements?
- 30.104 How will the Secretary implement requirements for standards?
- 30.105 How will the Secretary implement requirements for assessments?
- 30.106 How will the Secretary provide for the inclusion of all students in assessments?
- 30.107 How will the Secretary include students with disabilities in assessments?
- 30.108 How will the Secretary provide for alternative assessments for students with the most significant cognitive difficulties?
- 30.109 How will the Secretary include English learners in content assessments?
- 30.110 How will the Secretary ensure BIE-funded schools will provide for annual assessments of English language proficiency for English learners?
- 30.111 How will the Secretary implement requirements for accountability system?

*Subpart B – Waiver of Requirements, Technical Assistance, and Approval of Proposals for Alternative Requirements*

- 30.112 May a Tribal governing body or school board waive the Secretary’s requirement for standards, assessments, and accountability system?
- 30.113 How does a Tribal governing body or school board waive the Secretary’s requirements?
- 30.114 What should a Tribal governing body or school board include in an alternative proposal?
- 30.115 May proposed alternative requirements use parts of the Secretary’s requirements?
- 30.116 Will the Secretary provide technical assistance to Tribal governing bodies or school boards seeking to develop alternative requirements?
- 30.117 What is the process for requesting technical assistance?
- 30.118 When should the Tribal governing body or school board request technical assistance?
- 30.119 How does the Secretary review and approve alternative requirements?

*Subpart C – Support and Improvement*

- 30.120 How will the Secretary implement school support and improvement activities?
- 30.121 How will the Secretary implement comprehensive support and improvement?
- 30.122 How will the Secretary implement targeted support and improvement?
- 30.123 How will the Secretary implement additional targeted support?
- 30.124 How will the Secretary implement continued support for Bureau-funded schools and school improvement?

*Subpart D – Responsibilities and Accountability*

- 30.125 What is required for the Bureau to meet its reporting responsibilities?  
30.126 What information collections have been approved?

AUTHORITY: Pub. L. 114-94, 129 Stat. 1312, 20 U.S.C. 6311 *et. seq.*; 20 U.S.C. 7824(c).

**§ 30.100 What is the purpose of this part?**

(a) This part establishes regulations regarding standards, assessments, and accountability system at BIE-funded schools consistent with section 1111 of the Elementary and Secondary Education Act of 1965. Nothing in this part:

(1) Diminishes the Secretary's trust responsibility for Indian education or any statutory rights in law;

(2) Affects in any way the sovereign rights of Indian Tribes; or

(3) Terminates or changes the trust responsibility of the United States to Indian Tribes or individual Indians.

(b) In carrying out activities under this part, the Secretary will be guided by the policies stated in 25 CFR 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.

*Alternative proposal* means a proposal submitted by a Tribal governing body or school board for requirements, in whole or in part, alternative to the ones adopted by the Secretary for standards, assessments, or accountability system at Pub. L. 100-297 grant or Pub. L. 93-638 contract schools under this part.

*BIE-funded school(s)* means a school funded by the Bureau of Indian Education and includes Bureau-operated schools and Tribally controlled schools.

*Bureau* or *BIE* means the Bureau of Indian Education.

*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.

*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.

*Native American language* means the historical, traditional languages spoken by members of federally recognized Indian Tribes.

*Secretary* means the Secretary of the Interior or a designated representative.

*Subgroup of students* means

- (1) Economically disadvantaged students;
- (2) Students from major racial and ethnic groups;
- (3) Children with disabilities; and
- (4) English learners.

*Standards, Assessments, and Accountability Plan* means a document that will provide Indian Tribes, parents, and stakeholders with quality, transparent information

about how a standards, assessments, and accountability system will be implemented at a BIE-funded school.

*Tribally controlled school* means a school operated under a Pub. L. 93-638 contract or Pub. L. 100-297 grant.

*Tribal governing body or school board* means, with respect to waiver and submission of proposals for requirements alternative to the Secretary's requirements for standards, assessments, and accountability system at Tribally controlled schools, the entity authorized under applicable Tribal or Federal law to waive the Secretary's requirements and propose alternative requirements.

*Waiver* means the exercise of authority by a Tribal governing body or school board for Tribally controlled schools to elect to implement requirements, in part or in whole, alternative to the ones adopted by the Secretary pursuant to this part at schools that are under the Tribal governing body's or school board's jurisdiction following approval of the proposal for alternative requirements by the Secretary and the Secretary of Education pursuant to section 8204 of the Act.

*Subpart A – Standards, Assessments, and Accountability System Requirements*

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

(a) The Act requires the Secretary to define a 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 the schools and the students served, using regulations developed through a negotiated rulemaking process.

(b) If it has determined that the requirements described in paragraph (a) are inappropriate, a Tribal governing body or school board may waive these requirements, in part or in whole, and propose alternative requirements for standards, assessments, and accountability system that meets the requirements of section 1111 of the Act, taking into account the unique circumstances and needs of the school or schools and the students served.

(c) The Secretary and the Secretary of Education will 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 Standards, Assessments, and Accountability System requirements?**

(a) The Secretary, through the Director, must prescribe requirements for standards, assessments, and accountability system for use at BIE-funded schools in accordance with this part. The Secretary must periodically review and revise these requirements.

(b) The Director will implement a Standards, Assessments, and Accountability Plan that will provide Indian Tribes, parents, and stakeholders with quality, transparent information about how the Act will be implemented at BIE-funded schools, including the requirements that have been established for standards, assessments, and accountability system for BIE-funded schools.

(c) The Secretary will engage in active, 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), students and

community members, and government-to-government consultation with Tribal governments, when creating, implementing, reviewing, and revising the requirements for standards, assessments, and accountability system for BIE-funded schools. These stakeholder and government-to-government consultations will include transparent reporting, recording, and responding to input obtained therein.

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

(e) Tribal governing bodies or school boards may create their own Native American language academic standards and Native American language assessments in addition to those required by section 1111 of the Act. 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.

**§ 30.104 How will the Secretary implement requirements for standards?**

(a) The Secretary will implement requirements for academic standards for BIE-funded schools by adopting:

(1) Challenging academic content standards, and

(2) Aligned academic achievement standards consistent with paragraph (c) of this section.

(b) The requirements for academic standards include at least three levels of achievement and are hereinafter collectively referred to as “challenging academic standards.”

(c) The academic standards will apply to all BIE-funded schools and the students served at those schools unless the standards have been waived by a Tribal governing body or school board and a proposal for alternative requirements approved.

(1) The academic standards will include:

(i) Mathematics;

(ii) Reading or Language Arts;

(iii) Science;

(iv) Tribal civics; and

(v) Any other subject determined by the Secretary.

(2) Tribal civics will be phased into the Secretary's requirements for assessments and accountability system starting as a school quality indicator and revisited as implemented. Assessments and an assessment schedule will be developed for Tribal civics at the conclusion of the processes described in § 30.103.

(d) The standards, except Tribal civics, must be aligned to entrance requirements for credit-bearing coursework in higher education and relevant career and technical education standards.

(e) This paragraph applies to academic achievement standards for students with the most significant cognitive disabilities. The Secretary must, through a documented and validated standards-setting process, adopt alternate academic achievement standards for students with the most significant cognitive disabilities that:

(1) Are aligned with the challenging BIE academic content standards under paragraphs (a) and (b) of this section;

(2) Promote access to the general education curriculum, consistent with the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 et seq.);

(3) Reflect professional judgment as to the highest possible standards achievable by the students;

(4) Are designated in the individualized education program developed under section 614(d)(3) of IDEA (20 U.S.C. 1414(d)(3)) for each such student as the academic achievement standards that will be used for the student; and

(5) Are aligned 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.

(f) The Secretary will adopt English language proficiency standards that:

(1) Are derived from the four (4) recognized domains of speaking, listening, reading, and writing;

(2) Address the different proficiency levels of English learners; and

(3) Are aligned with the BIE's challenging academic standards.

### **§ 30.105 How will the Secretary implement requirements for assessments?**

(a) The BIE will implement a set of high quality student academic assessments in mathematics, reading or language arts, science, and Tribal civics. Tribal civics assessments and an assessment administration schedule will be developed at the conclusion of the processes described in § 30.103, except that the Secretary will phase in

the requirement for assessments aligned with the Tribal civics standards. The BIE retains the right to implement the assessments in any other subject chosen by the BIE.

(b) The assessment requirements must:

(1) Except with respect to alternate assessments for students with the most significant cognitive disabilities, be:

(i) The same academic assessments used to measure the achievement of all BIE-funded school students; and

(ii) Administered to all BIE-funded school students, including the following highly-mobile student populations:

(A) Students with status as a migratory child;

(B) Students with status as a homeless child or youth;

(C) Students with status as a child in foster care;

(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;

(2) Be aligned with the BIE's challenging academic standards, and provide coherent and timely information about student attainment of such standards and whether the student is performing at the student's grade level;

(3) Be used for purposes for which such assessments are valid and reliable, consistent with relevant, nationally recognized professional and technical testing standards; objectively measure academic achievement, knowledge, and skills; and use tests that do not evaluate or assess personal or family beliefs and attitudes, or publicly disclose personally identifiable information, 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;

(4) Be of adequate technical quality for each purpose required under the Act and consistent with the requirements of this section, the evidence of which shall be made public, including on the BIE website;

(5) Be administered:

(i) In the case of mathematics and reading or language arts:

(A) In each of grades three (3) through eight (8); and

(B) At least once in grades nine (9) through twelve (12);

(ii) In the case of science, not less than one time during:

(A) Grades three (3) through five (5);

(B) Grades six (6) through nine (9); and

(C) Grades ten (10) through twelve (12);

(iii) In the case of any other subject chosen by the BIE, at the discretion of the BIE; and

(6) 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, which 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

(ii) Be partially delivered in the form of portfolios, projects, or extended performance tasks;

(7) At the BIE's discretion, be administered through:

(i) A single summative assessment; or

(ii) Multiple Bureau-wide interim assessments during the course of the academic year that result in a single summative score that provides valid, reliable, and transparent information on student achievement or growth;

(8) Produce individual student interpretive, descriptive, and diagnostic reports, consistent with paragraph (b)(3) of this section, regarding achievement on such assessments that allow parents, teachers, principals, and other school leaders to understand and address the specific academic needs of students, and that are provided to parents, teachers, and school leaders, as soon as is practicable after the assessment is given, in an understandable and uniform format, and to the extent practicable, in a language that parents can understand;

(9) Enable results to be disaggregated:

(i) Within the Bureau and each BIE-funded school by:

(A) Each major racial and ethnic group;

(B) Economically disadvantaged students as compared to students who are not economically disadvantaged;

(C) Children with disabilities as compared to children without disabilities;

(D) English proficiency status;

(E) Gender;

(F) Migrant status;

(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;

(H) Status as a child in foster care; and

(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.

(ii) Disaggregation is not required in the cases 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.

(10) Enable itemized score analyses to be produced and reported, consistent with paragraph (b)(3) of this section, to BIE-funded schools, so that parents, teachers, principals, other school leaders, and administrators can interpret and address the specific academic needs of students as indicated by the students’ achievement on assessment items; and

(11) Be designed and developed:

(i) To be valid and accessible for use by all students, including students with disabilities and English learners; and

(ii) To the extent practicable, using the principles of universal design for learning. For the purposes of this section, “universal design for learning” means a scientifically valid framework for guiding educational practice that:

(A) Provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and

(B) Reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and English learners.

(c) *Exception for Advanced Mathematics in Middle School.* The BIE may exempt any eighth (8<sup>th</sup>) grade student from the assessment in mathematics ordinarily administered in grade eight (8) if:

(1) The student takes the mathematics assessment required to be administered at least once in grades nine (9) through twelve (12);

(2) The student's performance on the high school assessment is used in the year in which the student takes the assessment in mathematics ordinarily administered in grade eight (8) for purposes of measuring academic achievement in mathematics, and participation in assessments is used for purposes of § 30.111(e)(4); and

(3) In high school, such student takes a mathematics assessment required to be administered at least once in grades nine (9) through twelve (12) that:

(i) Is any end-of-course assessment or other assessment that is more advanced than the assessment required to be administered at least once in grades nine (9) through twelve (12);

(ii) Shall be used to measure such student's academic achievement for purposes of § 30.111(e)(1);

(iii) Provides for appropriate accommodations; and

(iv) The student's performance on the more advanced mathematics assessment is used for purposes of measuring academic achievement under § 30.111(e) and participation in assessments under § 30.111(g).

(4) The BIE will describe in its Standards, Assessments, and Accountability Plan, with regard to this exception, its strategies to provide all students at BIE-funded schools the opportunity to be prepared for and to take advanced mathematics coursework in middle school.

(d) *Adaptive Assessments.* (1) BIE retains the right to develop and administer computer adaptive assessments as the assessments described in this section, provided the computer adaptive assessments meet the requirements of this section, except that:

(i) The requirement that the same academic assessments must be used to measure the achievement of all BIE-funded school students and that the assessments must be administered to all BIE-funded school students may not be interpreted to require that all students taking the computer adaptive assessment be administered the same assessment items; and

(ii) Such assessment:

(A) Must measure, at a minimum, each student's academic proficiency based on the BIE's challenging academic standards for the student's grade level and growth toward such standards; and

(B) May measure the student's level of academic proficiency and growth using items above or below the student's grade level, including for use as part of the BIE's accountability system.

(2) In developing and administering computer adaptive assessments for students with the significant cognitive disabilities and English learners:

(i) The BIE will ensure that the computer adaptive assessments for students with the most significant cognitive disabilities:

(A) Assess a student's academic achievement based on the challenging academic content standards for the grade in which the student is enrolled;

(B) Meet the requirements of this section and §§ 30.106 through 30.110, including § 30.108, except the assessments are not required to meet the requirements of § 30.108(a)(4); and

(C) Assess the student's academic achievement to measure, in the subject being assessed, whether the student is performing at the student's grade level; and

(ii) The BIE will ensure that computer adaptive assessments for English learners:

(A) Meet the requirements §§ 30.106 through 30.110, including § 30.108, except the assessments are not required to meet the requirements of § 30.108(a)(4); and

(B) Assess the student's English language proficiency, which may include growth towards such proficiency, in order to measure the student's acquisition of English.

(e) All required BIE assessments must undergo peer review to ensure that the assessments meet all applicable requirements.

(f) *Rule of Construction on Parental Rights.* Nothing in this section may be construed as preempting Tribal law at a Tribally controlled school regarding the decision of a parent to not have the parent's child participate in the academic assessments under this paragraph.

(g) *Limitation on Assessment Time.* The Secretary may set a target limit on the aggregate amount of time devoted to the administration of assessments for each grade, expressed as a percentage of annual instructional hours.

**§30.106 How will the Secretary provide for the inclusion of all students in assessments?**

Assessments must provide for:

- (a) The participation of all students;
- (b) The participation of students with disabilities, as detailed in § 30.107 and § 30.108; and
- (c) The participation of English learners, as detailed in § 30.109.

**§ 30.107 How will the Secretary include students with disabilities in assessments?**

(a) The Secretary must include students with disabilities in all assessments, with appropriate accommodations. For purposes of this section, students with disabilities, collectively, are:

- (1) All children with disabilities as defined under section 602(3) of the IDEA;
  - (2) Students with the most significant cognitive disabilities who are identified from among the students in paragraph (a)(1) of this section; and
  - (3) Students with disabilities covered under other acts, including:
    - (i) Section 504 of the Rehabilitation Act of 1973, as amended; and
    - (ii) Title II of the Americans with Disabilities Act (ADA), as amended.
- (b) *Alignment of assessments.* (1) Except as provided below, a student with a disability must be assessed with an assessment aligned with the BIE's challenging academic standards for the grade in which the student is enrolled.

(2) A student with the most significant cognitive disabilities may be assessed with:

(i) The general assessment under § 30.106(b); or

(ii) The alternate assessment under § 30.108 aligned with the BIE's challenging academic content standards for the grade in which the student is enrolled and the BIE's alternate academic achievement standards.

(c) The BIE must ensure that students with disabilities have the appropriate accommodations, such as interoperability with, and ability to use, assistive technology, for students with disabilities, including students with the most significant cognitive disabilities, necessary to measure the academic achievement of such children relative to the BIE's challenging academic standards or alternate academic achievement standards described in § 30.104(d) and § 30.104(e).

(d) The BIE must 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, 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.

(e) The BIE must ensure that the use of appropriate accommodations under paragraph (c) of this section does not deny a student with a disability:

(1) The opportunity to participate in the assessment; and

(2) Any of the benefits from participation in the assessment that are afforded to students without disabilities.

**§ 30.108 How will the Secretary provide for alternative assessments for students with the most significant cognitive difficulties?**

(a) Alternative assessments aligned with alternate academic achievement standards. The BIE will provide for alternate assessments aligned with the BIE's challenging academic content standards and alternate academic achievement standards described in § 30.104(d) and § 30.104(e) for students with the most significant cognitive disabilities. The BIE must:

(1) Consistent with paragraph (b) of this section, ensure that, for each subject, the total number of students assessed in the subject using the alternate assessments does not exceed one (1) percent of the total number of all students in the BIE-funded school system who are assessed in the subject;

(2) With regard to the percentage of students assessed under this paragraph:

(i) Not prohibit a BIE-funded school from assessing more than one (1) percent of its assessed students in any subject for which assessments are administered with an alternate assessment aligned with alternate academic achievement standards;

(ii) Require that a BIE-funded school submit information justifying the need of the BIE-funded school to assess more than one (1) percent of its assessed students in any such subject with such an alternate assessment;

(iii) Provide appropriate oversight of a BIE-funded school that is required to submit information to the BIE; and

(iv) Make the information submitted by a BIE-funded school under paragraph (a)(2)(ii) of this section publicly available, provided that such information does not reveal personally identifiable information about an individual student.

(3) With regard to Individual Education Plan (IEP) teams:

(i) 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 BIE definition of “students with the most significant cognitive disabilities” that addresses factors related to cognitive functioning and adaptive behavior, such that:

(A) 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;

(B) 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 BIE assessments; and

(C) 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 BIE's challenging academic content standards for the grade in which the student is enrolled;

(ii) 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 BIE and BIE-funded school 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.

(4) Ensure that the parents of such students are clearly informed, as part of the process for developing the individualized education program (as defined in section 614(d)(1)(A) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A))):

(i) That their child's academic achievement will be measured based on the alternate standards; and

(ii) How participation in the assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma;

(5) Promote, consistent with the IDEA (20 U.S.C. 1400 et seq.), the involvement and progress of students with the most significant cognitive disabilities in the general education curriculum;

(6) Describe the steps the Bureau has taken to incorporate universal design for learning, to the extent feasible, in alternate assessments;

(7) Describe that general and special education teachers, and other appropriate staff:

(i) Know how to administer the alternate assessments; and

(ii) Make appropriate use of accommodations for students with disabilities on all assessments required under this paragraph;

(8) Develop, disseminate information on, and promote the use of appropriate accommodations to increase the number of students with significant cognitive disabilities:

(i) Participating in academic instruction and assessments for the grade level in which the student is enrolled; and

(ii) Who are tested based on the BIE's challenging academic standards for the grade level in which the student is enrolled; and

(9) Not preclude a student with the most significant cognitive disabilities who takes an alternate assessment based on alternate academic achievement standards from attempting to complete the requirements for a regular high school diploma.

(b) Responsibility under IDEA. Subject to the authority and requirements for the IEP team for a child with a disability under section 614(d)(1)(A)(i)(VI)(bb) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)(i)(VI)(bb)), such team, consistent with the guidelines established by the BIE and required under section 612(a)(16)(C) of such Act (20 U.S.C. 1412(c)(16)(C)) and paragraph (a)(1) of this section, will determine when a child with a significant cognitive disability shall participate in an alternate assessment aligned with the alternate academic achievement standards.

**§ 30.109 How will the Secretary include English learners in content assessments?**

(a) *English learners.* English learners must be:

(1) Assessed in a valid and reliable manner; and

(2) Provided appropriate accommodations on assessments administered under this paragraph, including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what the students know and can do in academic content areas, until the students have achieved English language proficiency, consistent with standardized BIE-determined exit procedures.

(b) *Language or form of assessment.* Notwithstanding paragraph (a)(2) of this section, BIE-funded schools must provide for assessments (using tests in English) of reading or language arts of any student who has attended school in the United States for three (3) or more consecutive school years, except that if the BIE-funded school determines, on a case-by-case individual basis, that academic assessments in another language or form would likely yield more accurate and reliable information on what the student knows and can do, the BIE-funded school may make a determination to assess the student in the appropriate language other than English for a period that does not exceed two (2) additional consecutive years, provided that the student has not yet reached a level of English language proficiency sufficient to yield valid and reliable information on what the student knows and can do on tests (written in English) of reading or language arts. This requirement does not permit either the BIE or BIE-funded schools to exempt English learners from participating in the BIE's assessment system.

(c) *BIE responsibilities.* The BIE must:

(1) Disseminate information and resources regarding English learners to, at a minimum, BIE-funded schools, and parents; and

(2) Promote the use of accommodations for English learners to ensure that all English learners are able to participate in academic instruction and assessments.

(d) *Exception for recently arrived English learners.* With respect to recently arrived English learners who have been enrolled in a school in one of the 50 States in the United States or the District of Columbia for less than twelve (12) months, the BIE may choose to:

(1) Exclude:

(i) The English learner from one administration of the reading or language arts assessment required under § 30.105; and

(ii) The English learner's results on any of the assessments required under § 30.105(b)(5)(i) or § 30.110 for the first year of the English learner's enrollment in the school for the purposes of the BIE-determined accountability system under § 30.111; or

(2) Or the BIE may choose to:

(i) Assess, and report the performance of, the English learner on the reading or language arts and mathematics assessments required under § 30.105(b)(5)(i) in each year of the student's enrollment in such a school; and

(ii) For the purposes of the BIE-determined accountability system:

(A) For the first year of the student's enrollment in the school, exclude the results on the assessments described in paragraph (d)(1)(i) of this section;

(B) Include a measure of student growth on the assessments described in paragraph (d)(1)(i) of this section in the second year of the student's enrollment in the school; and

(C) Include proficiency on the assessments described in paragraph (c) of this section in the third year of the student's enrollment in such a school, and each succeeding year of enrollment.

(e) *English learner subgroup.* With respect to a student previously identified as an English learner and for not more than four (4) years after the student ceases to be identified as an English learner, the BIE may include the results of the student's academic content assessments within the English learner subgroup of the subgroups of students (as defined in § 30.101) for the purposes of the BIE-determined accountability system.

**§ 30.110 How will the Secretary ensure BIE-funded schools will provide for annual assessments of English language proficiency for English learners?**

(a) The BIE will ensure that BIE-funded schools will provide for an annual assessment of English proficiency of all English learners in the schools served by the BIE.

(b) The BIE will require BIE-funded schools to use the assessments to assess annually the English language proficiency, including reading, writing, speaking, and listening skills, of all English learners in kindergarten through grade twelve (12).

(c) The English language proficiency assessment must be aligned with the BIE's English language proficiency standards described in § 30.104(f).

(d) The assessments will be implemented, developed, and used consistent with the requirements of this section.

(e) The assessments will provide coherent and timely information about each student's attainment of the BIE's English language proficiency standards to parents.

(f) If an English learner has a disability that precludes assessment of the student in one or more domains of the English language proficiency assessment 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 BIE-funded school to make these decisions under title II of the ADA, then the BIE must assess the student's English language proficiency based on the remaining domains in which it is possible to assess the student.

(g) The BIE must provide for an alternate English language proficiency assessment for each English learner covered under this section who cannot participate in the assessment under this paragraph even with appropriate accommodations.

**30.111 How will the Secretary implement requirements for accountability system?**

(a) The Secretary will define accountability system for BIE-funded schools consistent with this section and subpart C, including provisions for a single Bureau-wide accountability system and school support and improvement activities, taking into account the unique circumstances and needs of BIE-funded schools and the students served by BIE-funded schools.

(b) To improve student academic achievement and school success among all elementary and secondary schools within the BIE-funded school system, the Secretary will develop and implement a single, Bureau-wide accountability system in consultation with Tribes and stakeholders (parents, educators, etc.) that:

(1) Is based on the Bureau's challenging academic standards and academic assessments;

(2) Is informed by ambitious long-term goals and measurements of interim progress;

(3) Includes all of the accountability indicators described paragraph (f) of this section;

(4) Takes into account the achievement of all elementary and secondary school students within the BIE-funded school system;

(5) Is the same accountability system used to annually, meaningfully differentiate all schools within the BIE-funded school system and the same accountability system used to identify schools for comprehensive and targeted support and improvement;

(6) 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 BIE-funded school system accountable for student academic achievement and school success; and

(7) Will be reviewed in consultation with Tribes and stakeholders for continuous improvements as necessary, but not less often than every four (4) years beginning on the date the plan is implemented.

(c) The Secretary will incorporate science in the accountability system.

(d) Tribal civics will be phased into the Secretary's requirements for accountability system starting as a school quality indicator and will be revisited as the accountability system is implemented.

(e) For all students and separately for each subgroup of students within the BIE-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 § 30.105(b)(5)(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 will set a more rigorous long-term goal for the 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 goals for all students and for each subgroup of students within the BIE-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 to make significant progress in closing Bureau-wide proficiency and graduation rate gaps; and

(4) Include a measurement of increases in the percentage of English learner students making progress in achieving English language proficiency as defined by the Secretary and measured by the assessments under § 30.105(f) within a timeline determined by the Secretary.

(f) For all students and separately for each subgroup of students within the BIE-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 BIE-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 ninety-five (95) percent of all students, and ninety-five (95) percent of each subgroup of students, who are enrolled in schools within the BIE-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) Ninety-five (95) percent of all students, or ninety-five (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 BIE-funded school for at least half of a school year will not be used in the system of meaningful differentiation of school for that school year, but will be used for the purpose of reporting on the Bureau and school report cards for that 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 will be assigned to the high school at which the student was enrolled for the greatest proportion of school days while enrolled in grades nine (9) through twelve (12), or to the high school in which the student was most recently enrolled.

*Subpart B – Waiver of Requirements, Technical Assistance, and Approval of Proposals  
for Alternative Requirements*

**§ 30.112 May a Tribal governing body or school board waive the Secretary's requirements for standards, assessments, and accountability system?**

Yes. A Tribal governing body or school board may waive the Secretary's requirements for standards, assessments, and accountability system in part or in whole, and the Tribal governing body or school board's alternative will apply if approved by the Secretary. If the Secretary does not approve the Tribal governing body or school board's alternative proposal, the Secretary's requirements apply.

**§30.113 How does a Tribal governing body or school board waive the Secretary's requirements?**

(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.

(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 sixty (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 proposal for alternative requirements that are consistent with section 1111 of the Act and that take into account the unique circumstances and needs of the 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 § 30.115, well in advance of submission of a plan to the Secretary for review. The Tribal governing body or school board must continue to follow the Secretary's requirements for standards, assessments and

accountability system until a proposal for alternative requirements has been approved and until alternative requirements become effective, except in the case described in paragraph (g) of this section.

(d) A Tribal governing body or school board may request an extension of the sixty (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 system, or proposes changes to approved alternative requirements.

(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 proposals for alternative requirements.

(g) During the transition to the Secretary's requirements for standards and assessments under this part, or at any time thereafter, a Tribal governing body or school board may elect to use the standards and assessments of a State without submitting such standards and assessments for approval as an alternative proposal under paragraph (c) of this section, provided that the Tribal governing body or school board notifies the Secretary of the intention to use the State standards and assessments and the State agrees to allow the use of its standards and assessments.

**§ 30.114 What should a Tribal governing body or school board include in an alternative proposal?**

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

**§ 30.115 May proposed alternative requirements use parts of the Secretary's requirements?**

Yes, a Tribal governing body or school board may use the Secretary's requirements in part or in whole. Alternative proposals must clearly identify any retained portions of the Secretary's requirements.

**§ 30.116 Will the Secretary provide technical assistance to Tribal governing bodies or school boards seeking to develop alternative requirements?**

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 to develop alternative requirements. A Tribal governing body or school board seeking such assistance must submit a request to the Director. The Secretary will provide such technical assistance on an ongoing and timely basis.

**§ 30.117 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 thirty (30) days after receiving the original request, the Director will identify a point of contact and begin the process of providing technical assistance.

The Director and requesting Tribal governing body or school board will work together to identify the form, substance, and timeline for the assistance.

**§ 30.118 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. A Tribal governing body or school board is welcomed and encouraged to request technical assistance before formally notifying the Secretary of its intention to waive the requirements established by the Secretary in order to maximize the time available for technical assistance.

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

(a) The Secretary and the Secretary of Education will jointly approve plans for alternative requirements for standards, assessments, and accountability system or determine that the proposed alternative requirements do not meet the requirements of section 1111 of the Act.

(1) The Secretary will consult with the Secretary of Education through the review of a proposal for alternative requirements.

(2) Upon receipt of a proposal for alternative requirements for standards, assessments, and accountability system, in part or in whole, the Secretary will begin coordination with the Secretary of Education on review and approval of the proposal.

(3) The Secretary will provide a status update regarding the processing of the proposal within 120 days of receipt of the proposal and every thirty (30) days thereafter to discuss the stage of the review process.

(b) If the Secretary and the Secretary of Education approve a proposal for alternative requirements, the Secretary will:

- (1) Promptly notify the Tribal governing body or school board; and
- (2) Indicate the date for which the alternative proposal will be effective.

(c) If a proposal for alternative requirements is not approved, the Tribal governing body or school board will be notified that:

- (1) The proposal has not been approved; and
- (2) The reasons why the alternative proposal was not approved.

(d) If a proposal for alternative requirements is not approved, the Secretary will provide technical assistance to the Tribal governing body or school board to help to overcome the reasons why the alternative proposal was not approved.

(e) If a proposal for alternative requirements is not approved, or is not moving forward, then Tribes may individually request formal consultation with the Secretary and Secretary of Education.

### *Subpart C – Support and Improvement*

#### **§ 30.120 How will the Secretary implement school support and improvement activities?**

The Secretary will notify each BIE-funded school that has been identified for comprehensive support and improvement.

#### **§30.121 How will the Secretary implement comprehensive support and improvement?**

(a) Once notified that it has been identified for comprehensive support and improvement, each BIE-funded school is required to develop and implement, in partnership with stakeholders (including principals and other school leaders, teachers, and parents), a comprehensive support and improvement plan to improve student outcomes consistent with the Act. The comprehensive support and improvement plan must be approved by the school and the BIE. Once approved and implemented, the comprehensive support and improvement plan will be monitored and periodically reviewed by the BIE.

(b) In regards to high schools that have been identified as having failed to graduate one-third or more of their students, the BIE may:

(1) Permit differentiated improvement activities that use evidence-based interventions in the case of a school that predominantly serves students:

(i) Returning to education after having exited secondary school without a regular high school diploma, or

(ii) Who, based on their grade or age, are significantly off track to accumulate sufficient academic credits to meet high school graduation requirements; and

(2) In the case of a school that has a total enrollment of fewer than 100 students, permit the BIE-funded school to forego implementation of improvement activities.

**§ 30.122 How will the Secretary implement targeted support and improvement?**

(a) Using the system of annual meaningful differentiation of schools, the Secretary will notify each BIE-funded school in which any subgroup of students is consistently underperforming.

(b) Each school that has been notified must develop and implement, in partnership with stakeholders (including principals and other school leaders, teachers, and parents), a school-level targeted support and improvement plan to improve student outcomes based on the BIE's indicators for each subgroup of students that was the subject of such notification consistent with the Act. Targeted support and improvement plans must include evidence-based interventions, will be approved by the BIE prior to implementation, and will be monitored by the BIE upon submission and implementation. Targeted support and improvement plans must result in additional action following unsuccessful implementation of the plan after a number of years as determined by the BIE.

**§ 30.123 How will the Secretary implement additional targeted support?**

Where a school would be identified for comprehensive support and improvement because, for any subgroup, it is within the lowest-performing five (5) percent of all schools in the BIE system using the BIE's system of annual meaningful differentiation of schools, a school-level targeted support and improvement plan must also identify resource inequities (which may include a review of BIE-funded school level budgeting), to be addressed through implementation of the plan.

**§ 30.124 How will the Secretary implement continued support for Bureau-funded schools and school improvement?**

(a) The Secretary will establish exit criteria for:

(1) Schools identified for comprehensive support and improvement, which, if not satisfied within a BIE-determined number of years (not to exceed four (4) years), will result in more rigorous BIE-determined action, such as implementation of interventions

(which may include addressing school-level operations); and

(2) Schools identified for additional targeted support.

(b) The Secretary will also periodically review resource allocation to support school improvement.

*Subpart D – Responsibilities and Accountability*

**§ 30.125 What is required for the Bureau to meet its reporting responsibilities?**

The Bureau is required to prepare and disseminate widely to the public an annual report card for the BIE-funded school system as a whole, and also report cards for individual BIE-funded schools, consistent with the requirements of section 1111(h) of the Act. The BIE's annual report card will be made available on the internet along with all BIE-funded school report cards.

**§ 30.126 What information collections have been approved?**

The collections of information in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076-NEW. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Dated: May 31, 2019.

**Tara Sweeney,**

*Assistant Secretary – Indian Affairs.*

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