

## **Standards, Assessments, and Accountability System Negotiated Rulemaking Committee**

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

### **Consensus Agreements**

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

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

### **Invocation**

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

### **Introductions**

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

### **Agenda Review and Meeting Logistics**

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

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

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

### **Purpose and Focus of this Rulemaking Committee**

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

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

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

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

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

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

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

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

### **Overview of Existing Regulations**

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

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

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

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

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

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

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

### **Committee Operating Protocols**

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

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

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

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

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

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

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

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

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

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

## **Day 2, September 26, 2018**

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

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

Committee members had the following reflections to share:

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

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

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

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

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

## **Overview of Standards, Assessments and Accountability System**

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

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

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

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

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

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

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

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

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

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

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

## **Non Federal Committee Members Caucus**

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

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

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

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

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

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

## **Call to Public for Public Comments**

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

## **Day 3, September 27, 2018**

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

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

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

### **Overview of Initial Framework for Draft Regulations**

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

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

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

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

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

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

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

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

### **Confirm Leadership Team Members**

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

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

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

### **Subcommittees: Tasks, Products, Members**

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

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

### *Technical Expertise*

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

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

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

### **Action Items**

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

### **Adjourn**

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

## **Attachments**

Appendix A – Attendees

Appendix B – Committee Expectations

Appendix C – Committee Courtesies

Appendix D – Committee primary objectives

Appendix E – Common themes of successful negotiations

Appendix F – Challenges of Current Regulations PowerPoint

Appendix G – Pros/Cons of Existing Regulations

Appendix H – Committee’s core values

Appendix I – Transition of the ESSA PowerPoint

Appendix J – Public comments

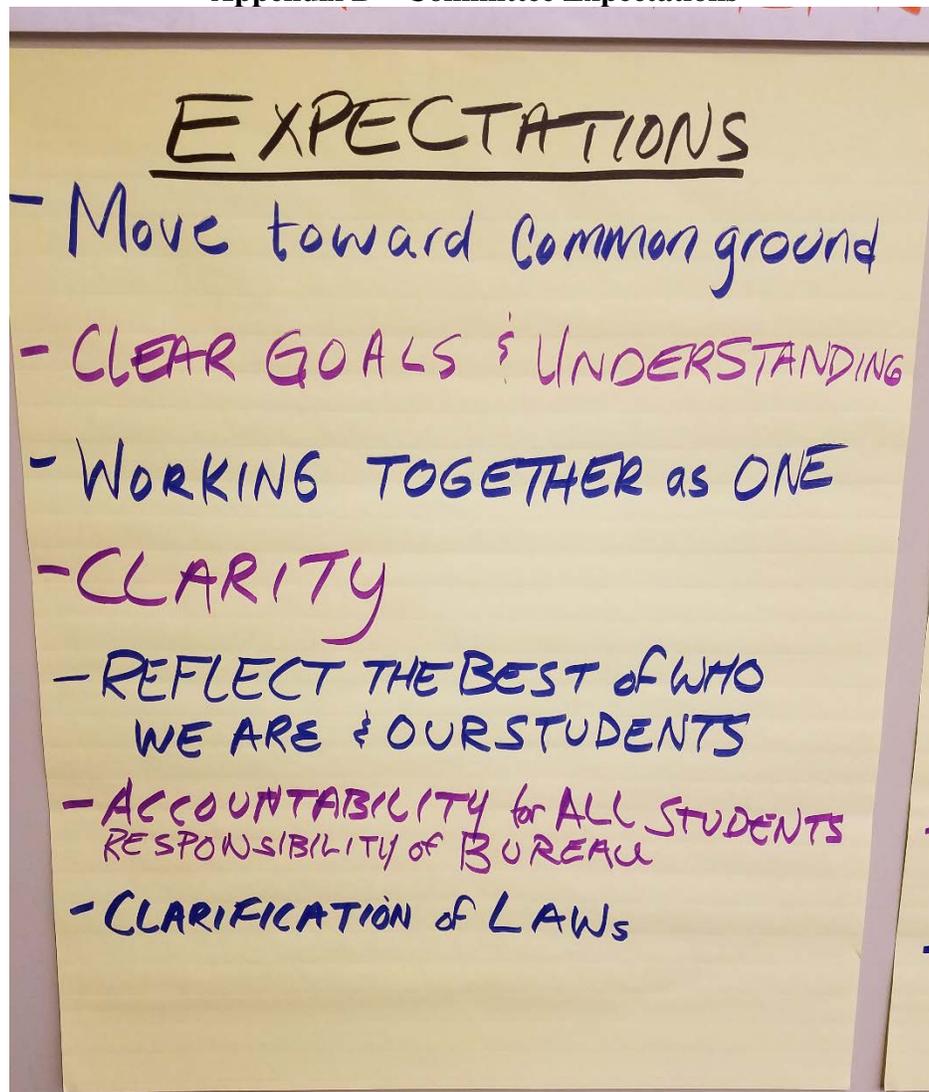
Appendix K – Report outline

Appendix L –Action items

## Appendix A – Attendees

Names	Organization	Attendance		
		25-Sep	26-Sep	27-Sep
<b>Non-Federal Committee</b>				
Charles Cuny Jr.	Little Wound School Board	Yes	Yes	Yes
Dr. Gloria Coats-Kitsopoulos	Oglala Sioux Tribe	Yes	Yes	Yes
Leslie Harper	Leech Lake Band of Ojibwe	Yes	Yes	Yes
Sherry Tubby	Mississippi Band of Choctaw Indians	Yes	Yes	Yes
Ron Etheridge	Cherokee Nation of Oklahoma	Yes	Yes	Yes
Michael Dabrieo	Santa Clara Pueblo	Yes	Yes	Yes
Patricia Sandoval	Pueblo of Laguna	Yes	Yes	Yes
Jennifer McLeod	Sault Ste. Marie Tribe of Chippewa	Yes	Yes	Yes
Dr. Rick St. Germaine	Mille Lacs Band of Ojibwe	Yes	Yes	Yes
Genevieve J. Jackson	Dine Bi Olta School Board Association, Inc.	Yes	Yes	Yes
Dr. Amy D. McFarland	Chief Leschi Schools	Yes	Yes	Yes
Frank No Runner	Northern Arapaho business Council	Yes	Yes	Yes
Lucinda Campbell	Dine Grant Schools Association	Yes	Yes	Yes
<b>Federal Committee</b>				
Regina Gilbert	Designated Federal Official (alt)	Yes	Yes	Yes
Jeffrey Hamley	Bureau of Indian Education	Yes	Yes	Yes
Jimmy Hastings	Bureau of Indian Education	Yes	Yes	Yes
Lora Braucher	Bureau of Indian Education	Yes	Yes	Yes
Brian Quint	Office of the Solicitor	Yes	Yes	Yes
Sarah Palmer	Facilitator	Yes	Yes	Yes
<b>Members of the Public</b>				
Cindy Fry	Paschal Sherman Indian School	Yes	Yes	Yes
Juanita Mendoza	BIE	Yes	Yes	Yes
Lisa Meissner	Hobbs Straus Dean and Walker	Yes	Yes	Yes
Diana Zephier	Oglala Sioux Tribe, Pine Ridge, SD	Yes	Yes	Yes
Jill Martin	U.S. Department of Education	Yes	Yes	Yes
Laura Kaloi	National Indian Education Association	Yes	Yes	Yes
Ahniwake Rose	National Indian Education Association	Yes	Yes	Yes
Adrienne Elliott	National Indian Education Association	Yes	Yes	Yes
Deb Sigman	Center on Standards and Assessment Implementation (CSAI)		Yes	

## Appendix B – Committee Expectations



## EXPECTATIONS

- FAIR & EQUITABLE RESOURCES
- FRAMEWORK & STANDARDS  
to INCORPORATE NATIVE LANG  
GROWTH MODELS
- ALWAYS INCL A PATH for CHILDREN  
& PARENTS VOICES
- START DIALOGUE to STREAMLINE  
ASSESSMENTS (CULTURALLY RELEVANT)
- CLARITY ON WHAT WE ARE DOING  
- FRAMEWORK, ROLES, OPPORTUNITIES
- FILL IN THE ROAD MAP

# EXPECTATIONS

## TREAT ALL THE SAME

- LEARN ABT WAIVERS ESP FOR ASSESSMENTS & WHAT DOES TECH. ASST. MEAN?
- BEGIN TO UNDERSTAND ASSESSMENTS
- CLEAR UNDERSTANDING & STND, ASSMT, ACCTN. & DIALOGUE

## Appendix C – Committee Courtesies

### Courtesies to Help Make the Meetings Productive

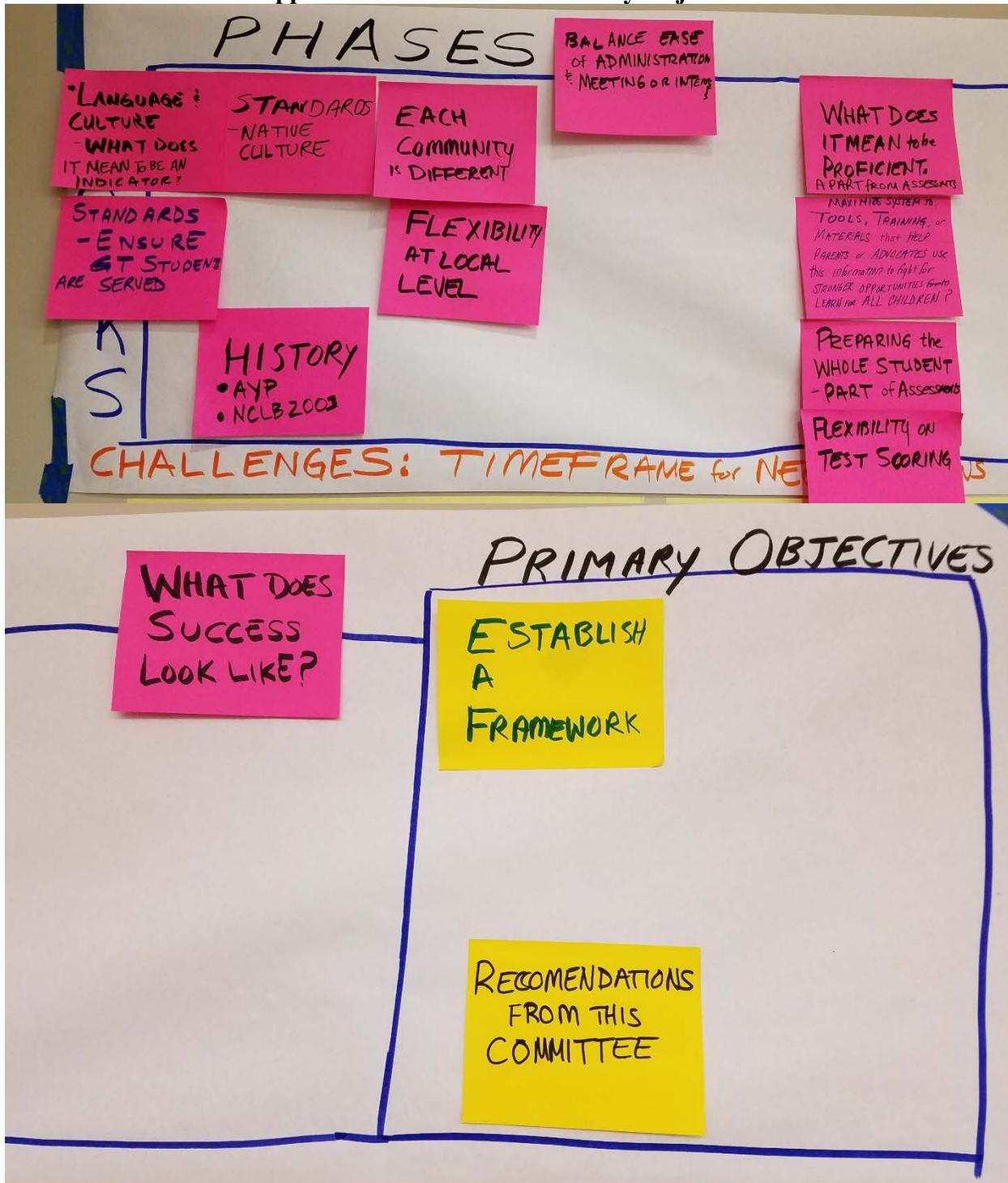
#### Proposed

1. Cell phones on vibrate. Step outside the room before answering.
2. Please be sure to read, and think about, materials that are distributed either between meetings, or on one day for consideration the next day of a meeting.
3. Please keep side bar discussions to a minimum. Feel free to call a caucus with anyone you wish, or simply excuse yourself from the room.
4. Audience members please do not whisper during Committee deliberations.
5. Meeting attendees who are not Committee members accept that the purpose of this meeting is to listen to different perspectives and interests shared during Committee deliberations and will not interrupt or interfere with the process.
6. Meeting attendees who are not Committee members will honor requests from the DFO and/or Facilitator

#### Groundrules for the Public and Observers

1. All attendees who are not Committee members will have an opportunity to provide written comments using the BIE email address: [BIComments@bia.gov](mailto:BIComments@bia.gov)
2. There will be time at each meeting for spoken public comment. Commentors must sign up to make spoken public comments.
3. Spoken public comments will be allocated time based on the number of people who have signed up to make comments. Only one person may speak during each time slot. Time may not be transferred, shared, traded, or accumulated.
4. Speakers will use respectful language, and will refrain from personal attacks or threats.
5. Speakers will be allowed to comment without interruption during their allotted time so long as these guidelines are honored.

Appendix D – Committee Primary Objectives



# Common Themes From Successful Negotiations

- Learn a lot
- Clear communication, clarifying the outcome
- Listening well
- Valuing , accountability, good people to call-give information
- Persuasion
- Respect
- Adults are hard...married to ideas
- Establish a shared vocabulary
- Good faith- commitment and intention to follow through
- Have a common objective, trust =listening, have own prejudices, listen with an open mind despite our biases
- Same information available to all
- All stakeholders present
- Know what is at stake, easier to put aside biases

*What from these characteristics do we want to memorialize for our negotiation process?*

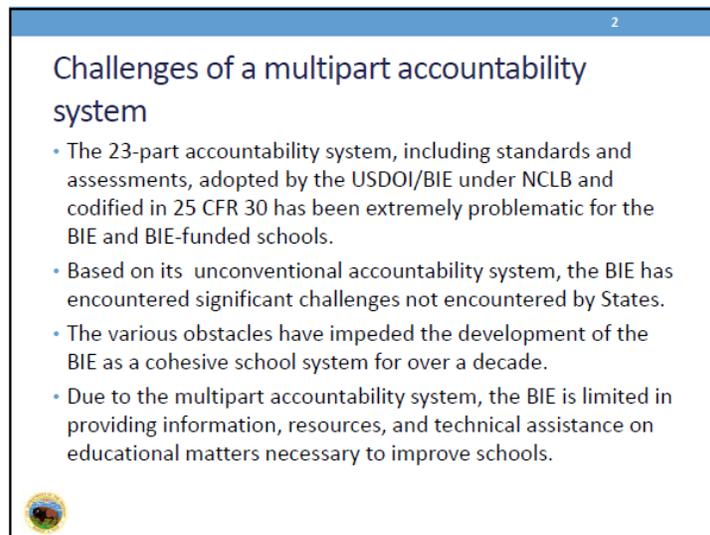
## Appendix F – Challenges of Current Regulations Power Point



Challenges of Current Regulations

Negotiated Rulemaking Committee -  
Standards, Assessments & Accountability System

September 25-27, 2018  
Billings, MT



2

Challenges of a multipart accountability system

- The 23-part accountability system, including standards and assessments, adopted by the USDOJ/BIE under NCLB and codified in 25 CFR 30 has been extremely problematic for the BIE and BIE-funded schools.
- Based on its unconventional accountability system, the BIE has encountered significant challenges not encountered by States.
- The various obstacles have impeded the development of the BIE as a cohesive school system for over a decade.
- Due to the multipart accountability system, the BIE is limited in providing information, resources, and technical assistance on educational matters necessary to improve schools.



## For consideration –

- BIE is the only school system in the United States with a multipart accountability system.
- The other federal school system – DODEA – utilizes a unified accountability system, not a multipart accountability system.
- The intent of Congress in ESEA, as amended, is for states, including BIE, to utilize a unified accountability system.
- Congressional language states:
  - Achievement standards and assessments “shall apply to all public schools and public school students in the State.”
- BIE has been on **corrective action** with USDEd for years due to the challenges created by a multipart accountability system.



## Summary of key challenges

- Collection of test results
- Accountability determinations
- EDFacts reporting
- State Report Cards
- Lowest performing schools dilemma
- Lack of assessment data to inform instruction and school improvement
- Lack of comparability of test results



## Collection of test results

- For states, the collection of test results is a straightforward matter. Test results include English/language arts, math, science, alternate assessments, and English language proficiency.
- States simply contact their vendor or a state office and request immediate access to uniform electronic data across all schools.
- For the BIE, test result collection is a protracted, complicated process, often taking years. ***Some data is never collected.***
- BIE must contact multiple states, state vendors, and individual schools for test data.
- The data comes in varied formats and means, including facsimile, PDF, and dissimilar electronic formats.



## Accountability determinations

- Typically states deliver accountability determinations (i.e., AYP under NCLB) before the start of the following schools year.
- BIE has never been able to make timely accountability determinations, throughout the history of NCLB.
- BIE's determinations are significantly delayed by many months, compared to a matter of weeks for states.
- Without a timely accountability status, schools cannot adequately plan education services for students in the coming school year.
- In other words, students are affected by the lack of information for a school to adequately plan.



## EDFacts reporting

- Reporting certain data to EDFacts is a statutory requirement. EDFacts is comprised of about 290 data files (i.e., varies by year). The type of data is varied, but key data is assessment related.
- As mentioned, for the BIE collecting 23 sets of assessment data is labor-intensive and time-consuming, sometimes taking two or more years to collect. **Some data is never collected.**
- In addition to the requirement to report the assessment data directly (i.e., proficiency), other EDFacts elements depend upon the assessment data (i.e., participation rate). Without essential data, the BIE is unable to submit timely and complete reports to EDFacts.
- Due to the difficulty in collecting assessment and other data, the BIE is behind several years in reporting data to EDFacts. BIE has been on **corrective action** with USDEd for many years.



## State Report Cards

- Annual publication of State Report Cards – system-wide and LEA/school – is a statutory requirement.
- Data included on report cards includes graduation rates and student achievement data for each subject area and grade-level tested by the all student group and subgroups.
- Report cards provide important information to stakeholders, including parents, tribal leaders, and community members about the education provided by the school.
- The BIE is behind several years in published the State Report Cards. Again, the BIE is on **corrective action** with USDEd for the failure to publish timely report cards.



## Lowest performing schools dilemma

- States are required to identify their lowest performing schools at least every three years using a statistically valid method.
- The purpose of identifying lowest performing schools is to prioritize support to the schools most in need of assistance.
- It is impossible for BIE to utilize a statistically valid method to rank schools in a multipart system, due to the non-comparability of state assessment scores across states.
- Although the BIE has devised a methodology to rank schools, it does not meet the standard of being statistically valid.
- BIE is on **corrective action** with USDEd regarding this issue.



## Lack of assessment data to inform instruction and school improvement

- Teachers and school administrators are at a distinct disadvantage without ready access to student test data. States provide test proficiency data to teachers and school administrators to inform instruction and for school improvement.
- States' student information systems have the capability to house student assessment scores. For BIE, with varied and incomparable data and no centralized data capability, the task of organizing test data for multiple uses and audiences is complex and currently unfeasible.
- Teachers and administrators lack necessary assessment information that can be used in planning for continuous school improvement to benefit students.



## Lack of comparability of test results

- For states, test results are comparable across all schools and all students, because they use the same tests.
- This data is invaluable for policymakers and school system to determine how the school system is functioning and to make course corrections to improve the system.
- Many support and interventions are the responsibility of the state school system, such as supports to the lowest performing schools.
- For the BIE, student test results on a range of tests is incomparable, due to its multipart system.



## Summary

- The multipart accountability system created by the rulemaking committee created myriad problems for BIE as a school system and its students, not experienced by any state.
- That system has hindered the development of the BIE school system and the delivery of continuous school improvement services to schools.
- BIE is in continuous **corrective action** with USDEd due to its unorthodox accountability system.
- The current negotiated rulemaking process presents an opportunity to create regulations for an accountability system, including standards and assessments, on the same level as state systems. That was the intent of Congress.



Standards, Assessments, and Accountability System Negotiated Rulemaking Committee Meeting #1

Themes from Discussion of Current Regulations (25 CFR Part 30)

What things work well, or are important to keep in the current regulations?	What are the challenges you experience with the current regulations?	Things to keep in mind as we negotiate.
This Committee has a right to shape the regulations.	State v Fed v Tribal	Focus on the whole student, creating, maintaining a climate of safety, health and wellness, trauma informed approaches. {Possible linkage to 5-year cohort for graduation rates} Think about how we describe student populations that have traumatic experiences. Prepare students to be life ready.
Get quick turn around on student assessment data from states.	Which statute are we following and when e.g., special education laws; teacher licensure	Chemawa Indian School focuses on whole student
Disaggregation of data enables us to talk about our students (important to maintain). Consider how we describe our student populations. Is there further disaggregation we need to do?	Grades and assessments – lack of valuing students and where they are from.	Consider a differentiated assessment model that integrates how we teach, test, score learning that integrates trauma informed learning.
Assessment systems are critical to a program (it is a system)	School boards are advisory to BIE	Keep in mind what obligations the new regulations create for Tribes and BIE.
Assessments are aligned with college/career readiness in the states which the schools are located.	Service areas are large. Complicates funding e.g. transportation needs force trade offs	
Assessment opt out provision – it exists and provides choice. This is a mobilization tool.	Instruction style is incongruent to students (non culturally or linguistically relevant). Result== student, family disengagement	
	Weight of taking assessments, put aside unique linguistic and cultural needs of students. Result in extreme is disengagement, falling enrollment	

## Appendix H – Composition and Grouping of Guiding Principals

Final

September 27, 2018

### **Bureau of Indian Education Standards, Assessments, and Accountability System Negotiated Rulemaking Committee Committee Core Principles**

Context: At its September meeting the negotiated rulemaking committee developed and reached consensus on the following principles to use as decision making criteria. The principles were organized into the groups identified below.

#### **Group I**

- Educational Sovereignty
- Student Centered: Meet the unique needs of our students/how will this be best for/benefit our students/ how will this hinder a student?
- Positive outcomes for ALL stakeholders (students, community, parents, school staff) / Community needs
- Fairness/ Compassion
- Honor Ojibwe / Indigenous thought

#### **Group II**

- Prayer/Meditation/Faith

#### **Group III**

- Challenge our assumptions/be open-minded
- Look for opportunity
- Logic not feelings- should guide big decisions- because feelings can change most logistics can't.

#### **Group IV**

- Tenacity/relentlessness

#### **Group V**

- Universal: balance regulations with unique situations and needs of local control

#### **Group VI**

- Unity/trust/truth/respect/make a strong commitment/honesty/integrity with each other

## Appendix I – Transitioning to the ESSA PowerPoint

**Transitioning to the  
Every Student Succeeds Act  
(ESSA):  
Standards, Assessments, &  
Accountability**

**Deb Sigman**

Billings, MT | September 26, 2018

THE CENTER ON  
STANDARDS &  
ASSESSMENT  
IMPLEMENTATION  
WestEd® CRESST

**Elementary and Secondary Education Act**

- Passed in 1965, ESEA is the biggest federal K12 education law in the U.S.
- ESEA set up the Title I program, which currently provides more than \$15 billion dollars to states to support the education of disadvantaged students.
- There have been many iterations of ESEA since the 1960s, and the law has changed over time
  - Initially – many requirements related to inputs (how money could be used, etc.)
  - Starting in 1994 – more flexibility regarding how money could be used, but an expectation of improved outcomes.

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STANDARDS &  
ASSESSMENT  
IMPLEMENTATION  
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## ESEA (Cont.)

- No Child Left Behind reauthorized the Elementary and Secondary Education Act in 2002.
  - Required that each State hold *all* students to the same high standards
  - Set the important expectation that schools must be making progress with all groups, not just some
- Every Student Succeeds Act (ESSA) was signed into law in December 2015, reauthorizing ESEA, replacing NCLB

## ESSA Maintains Core Ideas or Pillars of the Law

Promote Educational Excellence and Equity



Standards  
Assessment

Disaggregation, Transparency, and Accountability  
School Support and Interventions

## ESSA – What Has Changed?

Eliminated	Survived	New
<p><b>Adequate Yearly Progress (AYP)</b></p> <p>Automatic identification of schools that don't meet 95% participation requirement</p> <p>Mandate to achieve universal proficiency by a certain date</p> <p>Federally defined cascade of sanctions (including tutoring and school choice)</p> <p>School Improvement Grants (SIG) program</p>	<p>Requirement to adopt "challenging" state academic standards that apply to all public school students</p> <p>Annual testing in reading and math in grade 3-8 and high school</p> <p>Grade-span testing in science</p> <p>Disaggregated data by subgroups</p> <p>95% participation requirement for accountability (states determine consequence)</p>	<p>Standards must be aligned with credit-bearing courses in college</p> <p>Locally- and school-designed interventions</p> <p>Mandate for state-developed accountability systems with limited federal rules around goals, indicators, and school ratings</p>

Adapted from: Foundation for Excellence in Education, 2015

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## ESSA Shift in Balance of Power

**State and Local Autonomy**

**Federal Authority**

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- ### Academic Standards - Policy Lens
- Standards are statements of what students should know and be able to do at each grade level.
  - Having consistent, high expectations for all students is critical as a safeguard against some students being taught at a lower level or less rigorous content than other students.
- The slide has a light gray background with a green gradient at the bottom. A small logo and text are visible in the bottom left corner, and the number '8' is in the bottom right corner.

## Academic Standards Under ESSA

- States are required to adopt “challenging” statewide academic content and achievement standards in, at minimum, math, reading/language arts, and science.
- The state must set at least three levels of achievement standards (e.g., Advanced, Proficient, and Basic).
- ESSA requires that states ensure that these standards are aligned with entrance requirements for credit-bearing coursework in the public higher education system in the state, as well as with relevant career and technical education standards.

## Academic Standards Under ESSA

- The same standards must apply to all students in the state, except that states are allowed to set alternate academic achievement standards for students with the most significant cognitive disabilities.
- States must also put in place standards for English-language proficiency that address speaking, listening, reading, and writing, and are aligned with the state’s academic standards.

## Key Questions - Standards Under ESSA

- What is the benefit of having a uniform system of standards for BIE schools?
- What might the challenges be of having a uniform system of standards?
- How will a uniform system promote the academic achievement of all our students?
- How will a uniform system allow for communicating high expectations for all our students?
- How might the BIE demonstrate that academic content standards are aligned to entry requirements for higher education?
- Whose entry requirements (e.g. four-year institutions, community colleges) for credit-bearing coursework will the BIE align standards to?



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## Assessment - Policy Lens

- Annual assessments provide an objective measuring tool to determine student progress across classrooms, schools, and districts
- High-quality assessments:
  - Help expose gaps in performance between various student groups
  - Give schools and systems information they need to get better at educating all students
  - Can inform and improve teaching and learning



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## Assessment Under ESSA

- States are required to administer statewide assessments annually in both mathematics and reading/language arts to every student in grades 3–8 and once in high school, in addition to a science assessment once per grade span (elementary, middle, and high school).
- States must provide accommodations as needed for students with disabilities.
- Assessments must be aligned with state standards and provide information on whether a student is performing at grade level.
- States assessment systems must provide for the participation of all students.

## Assessment Under ESSA

- States must assess English learner (EL) students in grades K–12 annually for English language acquisition.
- States must include English learners in their academic assessments.
- Assessments may be delivered, in part, as projects, portfolios, and/or extended performance tasks.
- States are given the option to administer a single summative assessment or **multiple statewide interim assessments that result in a single summative score** about student achievement and growth.

## Assessment Under ESSA

- Districts are given the ability to use a nationally recognized high school assessment (e.g., ACT and SAT) in lieu of a state-developed assessment, **provided that the test provides comparable data and is approved by the state.** (Must meet Federal peer review requirements.)
- States may set a target limit on the aggregate amount of time spent administering assessments in each grade level.
- States may exempt 8<sup>th</sup> graders from middle grades math assessments if the students take the end-of-course high school math assessment the State uses for accountability.

## Assessment Under ESSA

- In assessing students with disabilities, there is a **1% cap at the state level on the number of students with the most significant cognitive disabilities who can take an alternate assessment in each tested subject.**
- If a district believes it will administer the alternate assessment to more than 1% of students, it must submit justification to the state. States may seek a waiver from the secretary of education if the overall 1% state cap is exceeded.

## Assessment Under ESSA

- For English learners (ELs) enrolled in a US school less than 12 months, State can either :
  - ✓ (1) exclude ELs from one administration of the reading or language arts assessment and exclude, for purposes of accountability, results on the math and reading or language arts assessment or EL proficiency assessment; or
  - ✓ (2) assess and report EL performance on reading or language arts and math and exclude results from accountability for the first year; include a measure of student growth for the second year; and include proficiency in the third year.

## Key Questions - Assessments Under ESSA

- What is the benefit of having a uniform system of assessments for the BIE schools?
- What might the challenges be of developing or selecting a uniform set of assessments?
- How will a uniform set of assessments promote the academic achievement of all BIE students?
- How will a uniform set of assessments allow for communicating high expectations for all BIE students?

## Key Questions - Assessments Under ESSA

- The use of interim assessments and nationally recognized assessments for accountability purposes may present concerns/questions about the validity, reliability, and consistency of tests with nationally recognized professional and technical testing standards; alignment of nationally recognized assessments with state standards; and comparability of assessment results.
- Why might it be important that the BIE can compare test scores of all BIE students?

## Accountability - Policy Lens

- Well-designed accountability systems:
  - Set a clear expectation that schools must raise the achievement of all of their students, not just some.
  - Focus attention and resources on the full range of student groups, including those who may be traditionally underserved.
  - Can signal priorities for the organization.
  - Prompt action when schools don't meet expectations for any group of students.

## Accountability Under ESSA

- The statewide accountability system shall be based on the **challenging State academic standards** for reading or language arts and mathematics to improve student academic achievement and school success
- States must provide a clear explanation for how they will factor the **95 percent participation requirement**, overall and by student group, into the school accountability system.

## Accountability Under ESSA

- States are required to **establish long-term goals that include measures of interim progress**, for student achievement, high school graduation rates, and English language proficiency.
- Goals have to set an **expectation that all groups that are behind will make significant progress in closing gaps** in achievement and graduation rates.

## Accountability Under ESSA - Indicators

- States are solely responsible for the development of accountability systems that include multiple measures:
  - Proficiency on annual assessments in reading and mathematics only
  - Academic success (which could include growth on statewide tests for elementary and middle schools; or include additional subject areas);
  - Graduation rates for high schools;
  - Progress in achieving English language proficiency; and
  - At least one additional factor of school quality or student success that allows for meaningful differentiation among student groups (e.g., student engagement, educator engagement, access to and completion of advanced coursework, school climate/safety, and college and career readiness).

## Accountability Under ESSA - Meaningful Differentiation

- States must establish a system of meaningfully differentiating, on an annual basis for public schools in the State:
  - Each of indicators 1 – 4 must be afforded “substantial weight”; and in the aggregate, much “greater weight” must be given to them (1-4) than the indicator or indicators described in 5.

### Accountability Under ESSA - Minimum Number of Students

#### With respect to disaggregation

- A minimum number of students to be included in the disaggregated groups must be established
  - Minimum number applies to all students and each subgroup of students
  - Must be statistically sound
  - Must not reveal any personally identifiable information

### Accountability Under ESSA - Low Performing Schools

**School identification:** The school accountability system has to identify, at minimum,

- **Comprehensive Support and Improvement Schools,** including:
  1. Title I schools that are in the lowest performing 5 percent of Title I schools in the state
  2. All high schools that fail to graduate one-third or more of their students
  3. Additional targeted support schools that do not meet the State's exit criteria

## Accountability Under ESSA - Low Performing Schools

- **Targeted Support and Improvement Schools:** Any school that is “consistently underperforming” for one or more student groups.
- **Additional Targeted Support Schools:** Any school whose results for any student subgroup meet the criteria for the lowest performing 5 percent of Title I schools in the state for students overall.

## Accountability Data & Reporting Under ESSA

- In addition to other requirements, State and local report cards must include the following information:
  - Disaggregated achievement in reading/language arts, math, and science at each achievement level
  - Disaggregated graduation rates
  - Disaggregated results for all accountability measures, with the exception of ELP
  - Disaggregated assessment participation rates
  - Disaggregated rates of exclusionary discipline and access to advanced coursework
  - If available, rate at which high school cohorts matriculate to higher education (disaggregated by subgroup)

### Key Questions - Accountability Under ESSA

- What is the benefit of having a uniform system of accountability for the BIE schools?
- What might the challenges be of developing or selecting a uniform accountability system?
- How will a uniform accountability system promote the academic achievement of all BIE students?
- How will a uniform accountability system allow for communicating high expectations for all BIE students?

### Key Questions - Accountability Under ESSA

- Beyond tests and graduation rates, what indicators will add to the transparent picture of school performance?
- What might constitute a rigorous definition of “consistently underperforming” for groups?
- What might be appropriate supports and interventions for the lowest performing schools?

## Key Questions - Accountability Under ESSA

- What measures could be used to meet the School Quality or Student Success indicator requirement in the accountability system?
- Consider what “much greater weight” or “substantial weight” mean?
- How might participation rate (95%) be accounted for in a uniform accountability system?
- How might BIE address schools with less than 95% participation rates?

## Key Questions - Accountability Under ESSA

- How can the data be presented in a way that is useful to parents and community leaders?
- What kinds of tools, training, or accompanying materials would help parents and advocates use this information to fight for stronger opportunities to learn for all children?

For more information, please contact:

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CSAI Help Desk  
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## Appendix J – Public Comments

### Verbal comments from Ahniwake Rose –

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

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

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

I will also suggest that as the next round of budgets that are coming out you strongly recommend in whatever way that you can as a Committee, than Interior not BIE but Interior specifically be appropriate funds to ensure that you can conduct this and conduct this appropriately. You should be able to go out and talk to NCAI. You should be able to go out and talk to Indian Country and let them know what you are doing. A 30-day notice in a Federal Register notice, as you all know, is not going to be acceptable to or leadership over what the next 10-years is going to look like under this Bill. This is going to require all of you to go out to your communities and having long standing conversations and that's what the states were allowed to do. The states were allowed to go out and within ESSA they were required to speak in full consultations with them and some of you actually participated with them in those consultations. There is no reason why you as Committee members should not have the same opportunity to go out and speak to your Tribal constituents and share that you have an opportunity to do that with your leadership and your council.

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

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

Lindy Fry  
Colville Conf. Tribes  
Paschal Sherman Indian School

## Appendix K – Report Outline

*Draft for Discussion Purposes*

*September 27, 2018*

+ <b>Report Outline</b>		
Recommendation on a Rule aka Regulation	Recommendations Regarding Definitions	Other Recommendations and Information
<p>A regulation or a rule is “a general statement issued by an agency that has the force and effect of law and is designed to implement, interpret, or prescribe law or policy.” Rules fill gaps left explicitly or implicitly in statutory law.</p>	<p>Things the Committee feels are important for the Secretary to consider, but that might be better left not specified in the recommended rule. In other words, what the Committee wants the Secretary to pay attention to in developing definitions or the “state plan.” For instance, recommendations for where there are options available (specific indicators or categories of possible “other” standards, for instance); where requirements for states in section 1111 do not make sense for BIE-funded schools; and where BIE should negotiate alternatives with Department of Education for inclusion in the MOA.</p>	<p>For instance, recommendations on rulemaking not authorized or required here, that the Secretary should engage in in the future.</p>

## Appendix L – Action Items

Draft for Discussion Purposes

October 1, 2018

### Standards, Assessments, and Accountability System Negotiated Rulemaking Committee Meeting #1 Action Items v3 corrected

Task	Lead	Complete by
<b>BIE and / or Legal Advisor</b>		
1. Post Meeting #1 presentations to website	Leonda	October 5, 2018
2. NWEA report	Jeff	October 5, 2018
3. Legal citation for EDFACTS	Brian	October 5, 2018
4. ED DOI MOA	Brian	October 1, 2018
5. Provide Joe H. ppt re GT Funding	Jeff	October 5, 2018
6. Provide compilation of State Plans	Jeff	October 5, 2018
7. Provide State plans that use portfolios	Deb Sigman	October 5, 2018
8. Language on 'shall', must, and will'	Brian/Regina	October 1, 2018
9. Budget for Reg-Neg and funding for Technical Experts	Jeff/ Regina	October 5, 2018
10. Send List of potential Technical Experts from ED	Jeff	October 5, 2018
<b>Facilitator</b>		
1. Send Doodle Poll to schedule LT & Subcommittee calls	Sarah	October 1, 2018
2. Disseminate Action Items and Accomplishments from Mtg #1	Sarah	October 1, 2018
3. Prepare draft meeting summary, circulate to Committee for review	Regina	October 15, 2018
4. Schedule Admin Webinar for Committee Facilitation	Regina	October 5, 2018
5. Send Mtg #2 Read Aheads to Committee	Sarah	October 23, 2018
6. Plan for Subcommittee meetings on Monday afternoon (October 29) of meeting #2	Sarah/Regina	October 23, 2018
<b>Committee Members</b>		
1. Sign and submit Mtg #1 Travel Voucher to Annette or Louie	Members	Completed
2. Check with attorneys re litigation with BIE and if it is an issue regarding participation in the Committee. Confer with Brian Quint.	Charles, Genevieve	October 30, 2018
3. Report out on conversation with Director Dearman	Jennifer	ASAP
4. Identify topics from list of experts who might be keynote speakers in ALBQ	Leadership Team with DFO, Facilitator	October 23, 2018

Action Items and Accomplishments V3corrected

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**Accomplishments from Meeting #1**

- Began forming as a Committee.
- Established and reached consensus on Committee Operating Protocols and Core Values to guide Committee decision making.
- Began to create a common understanding about the purpose and activities of the Committee.
- Began deliberations on draft regulations related to standards.
- Agreed on next steps for Committee deliberations as defined in Subcommittee tasks.