

Assessments Subcommittee review of Section 1111(B)(2) Assessments

The Subcommittee reviewed and discussed each element under the Assessments in Section 1111 of ESSA. Member comments and questions are reflected below. Text in red are subcommittee comments received on October 25. Subcommittee comments and discussion with BIE on 11/20/18 are noted in the right hand column by date. BIE revisions in left hand column are in response to subcommittee discussion are noted in track changes. Yellow highlights reflect places where the Committee noted further discussion is needed on 12/05/18. Areas where the committee consensus was reached are noted in the left column in bold. Cross-reference this document with the file named: “Assessments consensus and pending questions 120618 “ to prepare the single text for assessments regulations.

Element in Section 1111 Assessments	Comments/Concerns
<p>2(A) IN GENERAL. Each State plan shall demonstrate that the State educational agency, The Bureau of Indian Education (BIE), in consultation with local educational agencies, has implemented will implement a set of high quality student academic assessments in mathematics, reading or language arts, and science. The State BIE retains the right to implement such assessments in any other subject chosen by the StateBIE. <u>Section 30.103 addresses the stakeholder engagement [120618]</u></p>	<p><u>Note: Change State to BIE throughout.</u> <u>Should Tribal Civic be included in assessments?</u></p> <p>Comments- Leslie: Ensure ‘State’ will consult with LEA individual schools. How will BIE consult with all of the ‘LEA’s to ensure maximum participation, least burdensome to BIE? Jim: BIE not a ‘state’ not sure the BIE plan is already developed.</p> <p><u>Ensure “State” (BIE) consults with tribally controlled schools as LEAs (ps)</u></p> <p>Questions- Leslie: Need a definition of ‘State’ in order to move forward with draft regulations. Either cmt propose a definition. Or, a definition is provided to the cmt in order to move forward.</p> <p><u>BIE acts as State is part of MOA between DoE and DoI (ps)</u> Last sentence: Is it broad enough to stand but allow for diversity of implementation of LEAs?</p> <p>11/20/18 Subcommittee Questions: What is the recourse if an LEA doesn’t agree with the BIE? What will the consultation process look like since there are two types of LEAs – tribally controlled and Bureau operated? The regulations need to say this, make distinct. Also make distinct – stakeholder and state consultation on the ‘state’ plan. Section 8538 in ESSA governs LEA consultations that needs to be clear. Would language that states the LEA will provide a statement of concurrence/non-concurrence be an over-reach? If LEAs disagree , would the follow 100.297 administrative appeal process ?</p> <p>BIE: When Sec prepares ‘state’ plan there will be a consultation process, but this is for tribes not LEAs. There will also be consultation on the draft</p>

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	<p>regulations. If DOI changes plan at any time it must go out to consultation. Action items for BIE: add language to the regulations that BIE will engage LEAs understanding that there are two types of LEAs. Action Item: Look up ESSA statute to draw language re consultation. Add potential language around what happens if an LEA disagrees.</p> <p><u>11-30-18 – Might be better to describe matters such as consultation requirements elsewhere (such as 30.103) to apply globally rather than provide for heightened processes for, say, assessments than standards.</u></p>
<p>2(B) REQUIREMENTS.—The assessments under subparagraph (A) shall—</p> <p>(i) except as provided in subparagraph (D) Alternate Assessments, be—</p> <p>(I) the same academic assessments used to measure the achievement of all public elementary school and secondary school<u>BIE-funded school</u> students in the State; and</p> <p>(II) administered to all public elementary school and secondary school<u>BIE-funded school</u> students in the State;</p> <p>(ii) be aligned with the challenging <u>State</u> academic standards, and provide coherent and timely information about student attainment of such standards and whether the student is performing at the student’s grade level;</p> <p>(iii) be used for purposes for which such assessments are valid and reliable, consistent with relevant, nationally recognized professional and technical testing standards, objectively measure academic achievement, knowledge, and skills, and be tests that do not evaluate or assess personal or family beliefs and attitudes, or publicly disclose personally identifiable information;</p> <p>(iv) be of adequate technical quality for each purpose required under this Act and consistent with the requirements of this section, the evidence of which shall be made public, including on the <u>BIE</u> website of the State educational agency;</p> <p><u>Assessments and assessment schedule will be developed for Tribal Civics at the conclusion of the processes described in Section 30.103.</u></p> <p>(v)(I) in the case of mathematics and reading or language arts, be administered—</p> <p>(aa) in each of grades 3 through 8; and</p> <p>(bb) at least once in grades 9 through 12;</p> <p>(II) in the case of science, be administered not less than one time during—</p> <p>(aa) grades 3 through 5;</p> <p>(bb) grades 6 through 9; and</p> <p>(cc) grades 10 through 12; and</p> <p>• <u>(III) Tribal Civics assessments and assessment schedule will be</u></p>	<p>11/20/18 Subcommittee Discussion Assessments language should mirror ED regulations regarding Native American students and immersion schools. See discussion on page</p> <p>Action Item for BIE: Should references to ‘all public elementary schools’ change to BIE funded schools.</p> <p>In (ii) the State will provide coherent and timely information – this is the responsibility of BIE correct? JH: It will be the BIE who does this - BQ: Clarification: the context of the language is that the assessments themselves are meant to provide coherent and timely rather than an entity.</p> <p><u>Discuss in Waivers: Process question: if a tribe waives an assessment, is the school required to use the existing assessment until the waiver is approved?</u> JH: yes, usually the approval letters specify a timeline for the new system to kick in. What is the timeline for creating assessments? A: typically several years.</p>

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developed at the conclusion of the processes described in Section 30.103. [consensus 120618]

in the case of any other subject chosen by the StateBIE, be administered at the discretion of the StateBIE;

(vi) involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding, which may include measures of student academic growth and may be partially delivered in the form of portfolios, projects, or extended performance tasks;

(vii) provide for—

(I) the participation in such assessments of all students;

(II) the appropriate accommodations, such as interoperability with, and ability to use, assistive technology, for children with disabilities (as defined in section 602(3) of the Individuals with Disabilities Education Act (20 U.S.C. 1401(3))), including students with the most significant cognitive disabilities, and students with a disability who are provided accommodations under an Act other than the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), necessary to measure the academic achievement of such children relative to the challenging State academic standards or alternate academic achievement standards described in paragraph (1)(E); and (III) the inclusion of English learners, who shall be assessed in a valid and reliable manner and provided appropriate accommodations on assessments administered to such students under this paragraph, including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what such students know and can do in academic content areas, until such students have achieved English language proficiency, as determined under subparagraph (G);

(viii) at the State's BIE's discretion—

(I) be administered through a single summative assessment; or

(II) be administered through multiple statewide interim assessments during the course of the academic year that result in a single summative score that provides valid, reliable, and transparent information on student achievement or growth;

(ix) ~~(aa)~~ notwithstanding clause (vii)(III), provide for assessments (using tests in English) of reading or language arts of any student who has attended school in the United States ~~(not including the Commonwealth of Puerto Rico)~~ for 3 or more consecutive school years, except that if the local educational agency determines, on a case-by-case individual basis, that academic assessments in another language or form would likely yield more accurate and reliable information on what such student knows and

Re: (vi) What are multiple up to date measures? Who develops these is it the BIE or the LEA?

If BIE is doing for BIE funded schools then BIE will do this, likely using a contractor.

If a tribe decides to waive and do its own assessments – then raises questions about who is responsible for creating those new assessments. Look at other entities such as ED on innovative assessment projects. Or look at states that did other assessments and how resourced. Keep regulations broad and not over burden the tribes.

Action item for BIE: Consider moving waiver language up to the 'general' section and make clear if a waiver is done it is responsibility of tribe /governing school board.

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can do, the local educational agency may make a determination to assess such student in the appropriate language other than English for a period that does not exceed 2 additional consecutive years, provided that such student has not yet reached a level of English language proficiency sufficient to yield valid and reliable information on what such student knows and can do on tests (written in English) of reading or language arts; (x) produce individual student interpretive, descriptive, and diagnostic reports, consistent with clause (iii), regarding achievement on such assessments that allow parents, teachers, principals, and other school leaders to understand and address the specific academic needs of students, and that are provided to parents, teachers, and school leaders, as soon as is practicable after the assessment is given, in an understandable and uniform format, and to the extent practicable, in a language that parents can understand;

~~(bb) Students who are attending schools in a Native American language or program.~~

(xi) enable results to be disaggregated within each State, local educational agency, and school by—

- (I) each major racial and ethnic group;
- (II) economically disadvantaged students as compared to students who are not economically disadvantaged;
- (III) children with disabilities as compared to children without disabilities;
- (IV) English proficiency status;
- (V) gender; and
- (VI) migrant status,

except that such disaggregation shall not be required in the case of a State, local educational agency, or a school in which the number of students in a subgroup is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student;

(xii) enable itemized score analyses to be produced and reported, consistent with clause (iii), to local educational agencies and schools, so that parents, teachers, principals, other school leaders, and administrators can interpret and address the specific academic needs of students as indicated by the students' achievement on assessment items; and (xiii) be developed, to the extent practicable, using the principles of universal design for learning.

(xiv) (I) except as provided in paragraph (xiv)(II) of this section, the BIE is not required to assess, using an assessment written in English, student achievement in meeting the challenging State academic standards in reading/language arts, mathematics, or science for a student who is

Questions from 10/29/18 or prior subcmt calls.

Section (vi) 'partially' delivered. Is partially defined in ESSA? Important to clarify for administration of assessments by LEAs. Assessment subcommittee: No, partially delivered is not defined in the law, BIE define what 'partially' means.

Are there valid, reliable assessments for reading/language arts and mathematics in Native languages? Leslie: Yes: Ojibwe immersion schools have such assessments.

What resources are available for LEAs to develop these assessments? (Don't need to put in regulations but flag for awareness of the need for the BIE to provide TA.)

I think the law says that assessments for math/ELA and science must still be assessed only in the native language, is this correct? (ps)

Propose: Section 2(B) (ix) add [to regulations] : "*Students who are attending schools in a Native American language or program*" (i.e., immersion school). Helps align with civil rights aspect of ESSA. Something similar is in ESSA ED Regs 200.6 includes a definition of Native Language or immersion programs

11/20/18 Subcommittee Discussion:

Action item for BIE: make (bb) a new subparagraph e.g., (xiv) defining native languages and programs (draw from DEPT ED language)

Discussion: concern about how assessments are funded. Need to look at big picture, number of schools, programs that are immersion schools is small, not all 500+ tribes. Would serve the bureau well to create language here for the immersion language.

ED regulations – define immersion school language as 51% of school day.

Where do we get the information on UDL?

A: Should be on BIE NRM website. *Action Item for Sarah: share information about UDL and website link provided by BIE.* See the following posted on the BIE NRM webpage:

- ESSA-UDL-Final

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<p><u>enrolled in a school or program that provides instruction primarily in a Native American language if – (aa) the BIE provides such an assessment in the Native American language to all students in the school or program, consistent with the requirements of 34 CFR 200.2; (bb) for an English learner, as defined in section 8101(20)(C)(ii) of the Act, the BIE continues to assess the English language proficiency assessment, and provides appropriate services to enable him or her to attain proficiency in English. (II) the BIE must assess using assessments written in English, the achievement of each student enrolled in such school or program in meeting the challenging State academic standards in reading/language arts, at a minimum, at least once in grades 9 through 12.</u></p>	<p><u>Universal Design for Learning in ESSA</u></p> <p>And: https://iris.peabody.vanderbilt.edu/module/udl/</p> <p>Section (xi) N-size is critical, how do we write the rule that allows for N size that is meaningful. <u>-Assessment subcommittee: Assigned to accountability group. Note: Address both accountability and reporting.</u></p> <p><u>11-30-18 – language on English language assessments at immersion schools from 34 CFR 200.6(j)-(k) edited. Note: peer review may or may not be required depending on the content of the new MOA with ED. As such language in the Department of Education’s regulation on a requirement for peer review was removed from here. If the Committee wants to include peer review in its recommendation on a rule, make sure that a peer review requirement appears consistently throughout.</u></p>
<p>2(C) Exception for Advance Mathematics in Middle School - <u>A State</u><u>The BIE</u> may exempt any 8th grade student from the assessment in mathematics described in subparagraph (B)(v)(I)(aa) if— (i) such student takes the end-of-course assessment the <u>State BIE</u> typically administers to meet the requirements of subparagraph (B)(v)(I)(bb) in mathematics; (ii) such student’s achievement on such end-of-course assessment is used for purposes of subsection (c)(4)(B)(i), in lieu of such student’s achievement on the mathematics assessment required under subparagraph</p>	<p><u>No comments</u></p> <p><u>Ensure State (BIE) maintains the option to exempt (ps); Assessment subcommittee: Yes, will maintain.</u></p> <p><u>Lora – How captured in accountability?</u></p> <p><u>12-02-18 – Was this matter addressed/answered sufficiently?</u></p>

<p>(B)(v)(I)(aa), and such student is counted as participating in the assessment for purposes of subsection (c)(4)(B)(vi); and (iii) in high school, such student takes a mathematics assessment pursuant to subparagraph (B)(v)(I)(bb) that—</p> <ul style="list-style-type: none">(I) is any end-of-course assessment or other assessment that is more advanced than the assessment taken by such student under clause (i) of this subparagraph; and(II) shall be used to measure such student’s academic achievement for purposes of subsection (c)(4)(B)(i).	
<p>2(D) Alternate Assessments for Student with the Most Significant Cognitive Disabilities –</p> <p>(i) ALTERNATE ASSESSMENTS ALIGNED WITH ALTERNATE ACADEMIC ACHIEVEMENT STANDARDS.—A State <u>may</u>The BIE will provide for alternate assessments aligned with the challenging State academic standards and alternate academic achievement standards described in paragraph (1)(E) for students with the most significant cognitive disabilities, if the State<u>BIE</u>—</p> <ul style="list-style-type: none">(I) consistent with clause (ii), ensures that, for each subject, the total number of students assessed in such subject using the alternate assessments does not exceed 1 percent of the total number of all students in the State<u>BIE-funded school system</u> who are assessed in such subject;(II) ensures that the parents of such students are clearly informed, as part of the process for developing the individualized education program (as defined in section 614(d)(1)(A) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)))—<ul style="list-style-type: none">(aa) that their child’s academic achievement will be measured based on such alternate standards; and(bb) how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma;(III) promotes, consistent with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), the involvement and progress of students with the most significant cognitive disabilities in the general education curriculum;	

(IV) describes ~~in the State plan~~ the steps the State has taken to incorporate universal design for learning, to the extent feasible, in alternate assessments;

(V) describes ~~in the State plan~~ that general and special education teachers, and other appropriate staff—

(aa) know how to administer the alternate assessments; and

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

(VI) develops, disseminates information on, and promotes the use of appropriate accommodations to increase the number of students with significant cognitive disabilities—

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

(bb) who are tested based on challenging State academic standards for the grade level in which the student is enrolled; and

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

(ii) SPECIAL RULES.—

(I) RESPONSIBILITY UNDER IDEA.—Subject to the authority and requirements for the individualized education program team for a child with a disability under section 614(d)(1)(A)(i)(VI)(bb) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)(i)(VI)(bb)), such team, consistent with the guidelines established by the ~~State BIE~~ and required under section 612(a)(16)(C) of such Act (20 U.S.C. 1412(c)(16)(C)) and clause (i)(II) of this subparagraph, shall determine when a child with a significant cognitive disability shall participate in an alternate assessment aligned with the alternate academic achievement standards.

(II) PROHIBITION ON LOCAL CAP.—Nothing in this subparagraph shall be construed to permit ~~the BIE to impose the Secretary or a State educational agency to impose on any local educational agency~~ a cap on the percentage of students administered an alternate assessment under this subparagraph, except that a ~~local educational agency~~ BIE-funded school exceeding the cap applied to the ~~State BIE~~ under clause (i)(I) shall submit information to the ~~State educational agency~~ BIE justifying the need to exceed such cap.

(III) ~~STATE BIE~~ SUPPORT.—~~A State~~ The BIE shall provide appropriate oversight, as determined by the ~~State BIE~~, of any ~~local educational agency~~ BIE-funded school that is required to submit

What would the LEA need to present to BIE if it exceeded the 1% cap. Put in BIE plan or in regulation?

Assessment subcommittee: The LEA might exceed the 1% cap, but the State/BIE cannot, and would want to talk to the LEA a y exceeding 1%.

Questions-
Section 2D.(ii).II - Prohibition on the local cap – Is there a regulation that needs

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<p>information to the State BIE under subclause(II). (IV) WAIVER AUTHORITY. This subparagraph shall be subject to the waiver authority under section 8401.</p>	<p>to be written to clarify what is needed for justifying the need to exceed the cap? Need to make sure that there is not a non-response situation. Is it clear how to apply for a waiver for a cap? Will the BIE Plan include steps for this process to make it clear? Action Item: BIE confirm that this is part of the BIE Plan.</p>
<p>2(E) State Authority—If a State educational agency provides evidence, which is satisfactory to the Secretary, that neither the State educational agency nor any other State government official, agency, or entity has sufficient authority, under State law, to adopt challenging State academic standards, and academic assessments aligned with such standards, which will be applicable to all students enrolled in the State’s public elementary schools and secondary schools, then the State educational agency may meet the requirements of this subsection by— (i) adopting academic standards and academic assessments that meet the requirements of this subsection, on a statewide basis, and limiting their applicability to students served under this part; or (ii) adopting and implementing policies that ensure that each local educational agency in the State that receives grants under this part will adopt academic content and student academic achievement standards, and academic assessments aligned with such standards, which— (I) meet all of the criteria in this subsection and any regulations regarding such standards and assessments that the Secretary may publish; and (II) are applicable to all students served by each such local educational agency.</p>	<p>Questions- 2(E) Does this section apply to BIE? What does this section mean? (Action Item: ask BIE and Brian Quint) <u>Assessment committee & Brian Q: No, the BIE has authority to adopt under section 8204.</u> <u>Also, renumbering required.</u></p>
<p>2(F) Language Assessments – (i) IN GENERAL.—Each State plan shall identify the languages other than English that are present to a significant extent in the participating student population of the State and indicate the languages for which annual student academic assessments are not available and are needed. <u>The BIE will define a methodology to identify the languages other than English that are present to a significant extent in the participating student population.</u> (ii) SECRETARIAL ASSISTANCE.—The State Bureau of Indian Education shall make every effort to develop such assessments and may request assistance from the Secretary <u>of Education</u> if linguistically accessible academic assessment measures are needed. Upon request, the Secretary <u>of Education</u> shall assist with the identification of appropriate academic assessment measures in the needed languages, but shall not mandate a specific academic assessment or mode of instruction.</p>	<p>Comments- Section 2(F) Language Assessments - How do we consider Native languages? Also civil rights assurance that Native languages are attended to...</p> <p>Questions- Section 2F(i): What is the State in this case? What does ‘present to a significant extent’ mean? <u>Assessment subcommittee: “State” is BIE.</u> What are our student populations that we are drawing from? <u>Assess. Sub.: BIE needs to define grades included.</u> How are numbers being identified? Is the Sec ED able to provide this type of TA to LEAs?</p>

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<p>2(G) Assessments of English Language Proficiency – (i) IN GENERAL.— Each State plan shall demonstrate that local educational agencies in the State<u>The BIE will ensure that BIE-funded schools</u> will provide for an annual assessment of English proficiency of all English learners in the schools served by the State educational agency<u>BIE</u>. (ii) ALIGNMENT.—The assessments described in clause (i) shall be aligned with the State’s BIE’s English language proficiency standards described in paragraph (1)(F).</p>	<p>Ensure BIE allows LEAs tribally controlled schools as LEAs to determine the assessment they will utilize. BIE is part of WIDA network. (ps) <u>Assessment subcommittee: BIE, as SEA, will select an EL assessment for BIE system. However, governing tribes or school boards can waiver Secretary’s EL assessment and use a different EL assessment, upon Secretary approval.</u> <u>Ensure the regulations ensure language that allow for waivers for EL assessments.</u></p>
<p>2(H) Locally Selected Assessment ASSESSMENT.— (i) IN GENERAL.—Nothing in this paragraph shall be construed to prohibit a local educational agency, tribal governing body or school board from administering a locally-selected assessment in lieu of the State<u>BIE</u>-designed academic assessment under subclause (I)(bb) and subclause (II)(cc) of subparagraph (B)(v), if the local educational agency selects a nationally-recognized high school academic assessment that has been approved for use by the State <u>BIE</u> as described in clause (iii) or (iv) of this subparagraph. (ii) STATE-BIE TECHNICAL CRITERIA.—To allow for State-BIE approval of nationally-recognized high school academic assessments that are available for local selection under clause (i), a State<u>the BIE</u> educational agency shall establish technical criteria to determine if any such assessment meets the requirements of clause (v). (iii) STATE-BIE APPROVAL.—If a State educational agency<u>the BIE</u> chooses to make a nationally-recognize high school assessment available for selection by a local educational agency, tribally governing body or school board under clause (i), which has not already been approved under this clause, such State educational agency<u>the BIE</u> shall— (I) conduct a review of the assessment to determine if such assessment meets or exceeds the technical criteria established by the State educational agency<u>BIE</u> under clause (ii); (II) submit evidence in accordance with subsection (a)(4) that demonstrates such assessment meets the requirements of clause (v); and (III) after fulfilling the requirements of subclauses (I) and (II), approve such assessment for selection and use by any tribally governing body or school board, local educational agency that requests to use such assessment under clause (i). (iv) tribally governing body or school board <u>LOCAL EDUCATIONAL AGENCY</u>-OPTION.— (I) tribally governing body or school board<u>LOCAL EDUCATIONAL</u></p>	<p>Comments- There are rights here for LEA’s— <u>Assess. Sub: BIE-funded schools are LEAs in BIE system. So it would be the tribally governing body or school board that would exercise this option for tribally controlled schools.</u> Ensure “State” (BIE) allows LEAs (tcs) option for portfolio, presentations, etc. (ps) Questions- Section 2(H) Locally Selected Assessments Is there enough information for an LEA to implement this option? <u>AC: Subcommittee will explore ED regs, because they clarified information on this topic. See 200.3.</u> What LEA assessments are currently being used? <u>AC: ACT and SAT.</u> What are the BIE tasks to administer this section, is it clear enough [in the regulations]? 11/20/18 Subcmt Discussion: If a tribe/School board want to use ACT they could, recent studies suggest it is not <u>well</u> aligned with State standards (there is partial alignment). Don’t limit regulatory language to a type of assessment. What are the other assessments aside from ACT, SAT? E.g., NAEP what is aligned to? (Possible question for Deb). This information should be available to tribes/school boards. Not enough. See https://www.air.org/news/press-release/new-study-examines-alignment-between-naep-and-common-core-state-standards-4th-8th from Jim Hastings.</p>

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<p>AGENCY.—If a tribally governing body or school board local educational agency chooses to submit a nationally recognized high school academic assessment to the State educational agencyBIE, subject to the approval process described in subclause (I) and subclause (II) of clause (iii) to determine if such assessment fulfills the requirements of clause (v), the State educational agencyBIE may approve the use of such assessment consistent with clause (i).</p> <p>(II) STATE EDUCATIONAL AGENCYBIE.—Upon such approval, the State educational agencyBIE shall approve the use of such assessment in any other tribally governing body or school board local educational agency in the State that subsequently requests to use such assessment without repeating the process described in subclauses (I) and (II) of clause (iii).</p> <p>(v) REQUIREMENTS.—To receive approval from the State educational agencyBIE under clause (iii), a locally selected assessment shall—</p> <p>(I) be aligned to the State’s BIE’s academic content standards under paragraph (1), address the depth and breadth of such standards, and be equivalent in its content coverage, difficulty, and quality to the StateBIE-designed assessments under this paragraph (and may be more rigorous in its content coverage and difficulty than such StateBIE-designed assessments);</p> <p>(II) provide comparable, valid, and reliable data on academic achievement, as compared to the StateBIE-designed assessments, for all students and for each subgroup of students defined in subsection (c)(2), with results expressed in terms consistent with the State’s BIE’s academic achievement standards under paragraph (1), among all local educational agencies within the StateBIE-funded schools;</p> <p>(III) meet the requirements for the assessments under subparagraph (B) of this paragraph, including technical criteria, except the requirement under clause (i) of such subparagraph; and</p> <p>(IV) provide unbiased, rational, and consistent differentiation between schools within the StateBIE-funded schools to meet the requirements of subsection (c).</p> <p>(vi) PARENTAL NOTIFICATION.—A tribally governing body or school boardlocal educational agency shall notify the parents of high school students served by the local educational agency—</p> <p>(I) of its request to the State educational agencyBIE for approval to administer a locally-selected assessment; and</p> <p>(II) upon approval, and at the beginning of each subsequent school year during which the locally selected assessment will be administered,</p>	<p><u>12-02-18. This section on locally-selected assessments might be redundant and possibly in conflict with the statutory provisions on the waiver/alternative proposal process in section 8204(c)(2). Recommend deletion.</u></p> <p><u>Discuss further – useful tool, option for LEAs. May be redundant but provides useful process guidance. Consider moving to waivers? Or reference here and link to the waivers.</u></p>
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<p>that the tribally governing body or school board local educational agency will be administering a different assessment than the State BIE designed selected assessments under subclause (I)(bb) and subclause (II)(cc) of subparagraph (B)(v).</p>	
<p>2(I) Deferral A State may defer the commencement, or suspend the administration, but not cease the development, of the assessments described in this paragraph, for 1 year for each year for which the amount appropriated for grants under part B is less than \$369,100,000.</p>	<p>Questions- Section 2(l) Deferral. How does this apply to BIE? Action Item for BIE/Brian Quint <u>ED: need not be in our regs.</u></p>
<p>2(J) Adaptive Assessments (i) IN GENERAL.—Subject to clause (ii), a State BIE retains the right to develop and administer computer adaptive assessments as the assessments described in this paragraph, provided the computer adaptive assessments meet the requirements of this paragraph, except that— (I) subparagraph (B)(i) shall not be interpreted to require that all students taking the computer adaptive assessment be administered the same assessment items; and (II) such assessment— (aa) shall measure, at a minimum, each student’s academic proficiency based on the challenging State academic standards for the student’s grade level and growth toward such standards; and (bb) may measure the student’s level of academic proficiency and growth using items above or below the student’s grade level, including for use as part of a State’s <u>the BIE’s</u> accountability system under subsection (c). (ii) STUDENTS WITH THE MOST SIGNIFICANT COGNITIVE DISABILITIES AND ENGLISH LEARNERS.—In developing and administering computer adaptive assessments— (I) as the assessments allowed under subparagraph (D), a State <u>the BIE</u> shall ensure that such computer adaptive assessments— (aa) meet the requirements of this paragraph, including subparagraph (D), except such assessments shall not be required to meet the requirements of clause (i)(II); and (bb) assess the student’s academic achievement to measure, in the subject being assessed, whether the student is performing at the student’s grade level; and (II) as the assessments required under subparagraph (G), a State shall ensure that such computer adaptive assessments— (aa) meet the requirements of this paragraph, including subparagraph (G), except such assessment shall not be required to meet the requirements of clause (i)(II); and (bb) assess the student’s language proficiency, which may include</p>	<p>Comments- Ensure “State” (BIE) retains the right to develop computer adaptive tests that meet the requirements of ESSA to demonstrate student growth (ps) Gives option to contract with NWEA or PARCC to develop interim assessments, provide summative, develop levels, demonstrate growth, etc. (ps) or any other assessment a tribe or school board selects (waiver) (ps) <u>A.Sub: Okay as is.</u></p>

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<p>growth towards such proficiency, in order to measure the student’s acquisition of English.</p>	
<p>2(K) Rule of Construction on Parental Rights –Nothing in this paragraph shall be construed as preempting <u>tribal law at tribally controlled contract or grant school</u>a State or local law regarding the decision of a parent to not have the parent’s child participate in the academic assessments under this paragraph.</p>	<p>Comments- Where there is an opt out provision it must be in plain language and clear to the parents that they maintain that right.</p> <p>Parents right to exempt out of assessment still holds school accountable for 95% participation rate (ps)</p> <p>Questions- If state and tribe are equal, should this part of the regulation Tribe or School Board can do this as well? Section 2(K) Rule of Construction. How does the opt out option of parents impact the participation rate requirements in the accountability section requiring 95% participation?</p> <p><u>Laura/NIEA: See 200.2. If state has an opt out law, does federal law preempt state law.</u></p> <p>11/22/18 Subcommittee Discussion: Action Item: BIE to draft proposed language. Need to discuss how it effects BIE since it is a reference to state or local law. Is this a provision that does not need to be in regulations since it is in statutory law? Subcmt: see concern re 95% participation rate.</p>
<p>2(L) Limitation on Assessment Time -- Subject to Federal or State requirements related to assessments, evaluations, and accommodations, each State. The Secretary may, at the sole discretion of such State, set a target limit on the aggregate amount of time devoted to the administration of assessments for each grade, expressed as a percentage of annual instructional hours.</p>	<p>Comments- Note: the limitation is couched as a ‘may’ == optional.</p> <p>Questions- Section 2(L) Who determines the time limits for assessments is it the LEA, or BIE? What does “expressed as a percentage of annual instructional hours” mean?</p> <p><u>See 25 CFR on instructional hours. Include reference in the regulation?</u> <u>Clarify if this part of the regulation is specific to assessments in HS, required assessments or all assessments of the school</u></p>
<p>3. Exception for Recently Arrived English Learners— (A) ASSESSMENTS.— With respect to recently arrived English learners who have been enrolled in a school in one of the 50 States in the United States or the District of Columbia for less than 12 months, a State may choose to— (i) exclude—</p>	<p>Comments- A: In Southwest very low to non-existent. In NM region there are a number of students there are ELL. Tribally controlled schools use other assessments.</p> <p>BIE uses WIDEA but it is time intensive.</p>

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~~(I) such an English learner from one administration of the reading or language arts assessment required under paragraph (2); and (H) such an English learner’s results on any of the assessments required under paragraph (2)(B)(v)(I) or (2)(G) for the first year of the English learner’s enrollment in such a school for the purposes of the State-determined accountability system under subsection (e); or (ii)(I) assess, and report the performance of, such an English learner on the reading or language arts and mathematics assessments required under paragraph (2)(B)(v)(I) in each year of the student’s enrollment in such a school; and (H) for the purposes of the State-determined accountability system— (aa) for the first year of the student’s enrollment in such a school, exclude the results on the assessments described in subclause (I); (bb) include a measure of student growth on the assessments described in subclause (I) in the second year of the student’s enrollment in such a school; and (cc) include proficiency on the assessments described in subclause (I) in the third year of the student’s enrollment in such a school, and each succeeding year of such enrollment.~~

~~(B)~~ (A) ENGLISH LEARNER SUBGROUP.—With respect to a student previously identified as an English learner and for not more than 4 years after the student ceases to be identified as an English learner, ~~a State~~ the BEI may include the results of the student’s assessments under paragraph (2)(B)(v)(I) within the English learner subgroup of the subgroups of students (as defined in subsection (c)(2)(D)) for the purposes of the ~~State~~ BIE-determined accountability system.

In WY don’t test ELL. In small districts the cost of testing ELL is an obstacle.

Questions-

Section 3. Exception for English Learners. How many ELs are in the BIE student population?

For sections that don’t apply state that the section does not apply rather than delete the section of the regulations.

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Additional Comments/Questions from Pat sent 10/25/18. 11/20/18 Per Pat, questions below addressed at ALBQ meeting

1. The same language that is used in the waiver, “Tribes and tribal school boards” should be referenced in each section.
2. Agree with Leslie, that there should be clarification on BIE as a state. There is no statute that actually states that they are the our state, regardless, in the greater discussion of sovereignty tribes have the same authority as states, so tribes should be able to make the same educational decisions – regulation should be explicit.
3. ESSA speaks specifically to measuring to demonstrate progress over time, so the assessment needs to provide the information required to measure growth. Right now, which of the assessments provide this information other than NWEA MAP. If a tribe seeks to utilize another assessment, the BIE will have to enter into a contract to create the assessment to meet the requirements of the law – interim assessments that result in a summative assessment, levels of achievement: basic, proficient, advanced, and itemized score analysis. BIE also needs to be responsible for supplying the supplemental materials also a requirement of the law. ESSA states that these types of reports need to be available for parents and administrators to make informed decisions. BIE will need to foot the bill for these as part of regulation as they are currently not doing it for the PARCC assessments.

4. There are a number of assessments that have been used in the past, prior to PARCC, for example the Stanford 9, ITBS, State assessments; what are the standards these other assessments are based on? **11/20/18 Need clarity on what assessments are aligned to what standards.**
5. In order to meet the requirement of the law the assessments there needs to be a set of “challenging standards.” If we are to replace the high school assessment with ACT or the SAT, what are the standards to which these are aligned if an LEA decides to utilize these assessments?
6. Do we still have a set of national standards?
7. Request information from PARCC that their assessment was actually tested on a population of Native students prior to the first time PARCC was utilized. The information probably came after. Assessments must have comparable validity and reliability with subgroups assessed.
8. Tribes and tribal school boards can “waive” any part so can they waive both the standards and the assessment. If this is the case, the tribes and/or school boards use any assessment but they must also meet the other qualifications (interim, summative, levels, cut scores); can these also be waived?