

**Standards, Assessments, and Accountability System Negotiated Rulemaking Committee  
Consensus Agreements regarding Waiver Language to Include in the Draft Regulations  
As of December 6, 2018**

Note: Due to time constraints the Committee did not review and deliberation on sections §30.112-§30.114 of the draft regulations.

1 **Title 25 – Indians**

2 **Chapter I – Bureau of Indian Affairs, Department of the Interior**

3 **Subchapter E – Education**

4 **Part 30 – Standards, Assessments, and Accountability System**

5 **Subpart B – Waiver of Definitions, Technical Assistance, and Approval of Waivers**

6 **§30.107. May a tribal governing body or school board waive the Secretary’s definition of**  
7 **standards, assessments, and accountability system?**

8  
9 Yes. A tribal governing body or school board may waive the Secretary’s definition of standards,  
10 assessments, and accountability system in part or in whole. However, unless an alternative  
11 proposal is approved the Secretary’s definitions apply.<sup>1</sup>

12  
13 **§30.108. How does a tribal governing body or school board waive the Secretary’s**  
14 **definitions?**

15  
16 (a) If a tribal governing body or school board determines the Secretary’s definition of  
17 standards, assessments, or accountability system to be inappropriate<sup>2</sup>, it may waive these  
18 definitions in part or in whole ~~in a manner consistent with applicable (Federal or~~  
19 ~~Tribal) law. How is this done? (11/15/18: ‘in a form appropriate /consistent with tribal~~  
20 ~~law’)~~ (b) The tribal governing body or school board must notify the Secretary and the  
21 Secretary of Education of the decision to waive a definition. (c) Within 60 days of the  
22 decision to waive a definition the tribal governing body or school board must submit to  
23 the Secretary a proposal for alternative definitions that are consistent with section 1111 of  
24 the Act and that take into account the unique circumstances and needs of such school or  
25 schools and the students served. (d) A tribal governing body or school board may request

<sup>1</sup> 20 U.S.C. §7824(c)(2). “The tribal governing body or school board of a school funded by the Bureau of Indian Affairs may waive, in part or in whole, the requirements established pursuant to paragraph (1) where such requirements are determined by such body or school board to be inappropriate. If such requirements are waived, the tribal governing body or school board shall, within 60 days, submit to the Secretary of [the] Interior a proposal for alternative standards, assessments, and an accountability system, if applicable, consistent with section 1111 [20 U.S.C. §6311], that takes into account the unique circumstances and needs of such school or schools and the students served. The Secretary of the Interior and the Secretary shall approve such standards, assessments, and accountability system unless the Secretary determines that the standards, assessments, and accountability system do not meet the requirements of section 1111 [20 U.S.C. §6311], taking into account the unique circumstances and needs of such school or schools and the students served.”

<sup>2</sup> As we discussed, the statute does not define “inappropriate.” As this is a matter left to Tribal governing bodies and school boards under the statute, it might not be appropriate to try to define the term in these regulations.

26 | [an extension of the 60 day deadline for the provision of technical assistance. \(e\) The](#)  
 27 | [Secretary will work with the Secretary of Education to develop and make available](#)  
 28 | [templates for alternative proposals. \[consensus on paragraph a 120618 as revised\]](#)  
 29 |

30 | **ACTION ITEM: BIE add a time-certain for BIE to respond. BIE: will work with ED on a**  
 31 | **timeline and provide the timeline for the Committee to respond. Note for FYI: ED Section**  
 32 | **8401 regarding state waivers, the Sec Ed must respond within 120 days. [consensus**  
 33 | **120618]**  
 34 |

35 | **§30.109. What should a tribal governing body or school board include in a waiver and**  
 36 | **alternative proposal?**

37 | [\(a\) Waivers ~~should~~ must](#) explain how the Secretary’s definition of standards, assessments, or  
 38 | accountability system are inappropriate. **[consensus 120618 as revised]**

39 | [\(b\) Alternative proposals ~~should~~ must](#) include an explanation how the alternative proposal ~~is~~  
 40 | [consistent with meets the requirements of](#) section 1111 of the Act ~~and meets the unique~~  
 41 | ~~circumstances and needs of the school(s) and students served.~~ **[consensus 120618 as revised]**

42 | [\(c\) Tribal governing bodies or school boards must engage with potentially effected stakeholders](#)  
 43 | [when considering a waiver and in the development of proposals for alternative definitions.](#)  
 44 | ~~[overreaching, imposing a regulation on tribes]~~ **[consensus 120618 as revised]**

45 | **§30.110. May a proposed alternative definition use parts of the Secretary’s definition?**  
 46 |

47 | Yes, a tribal governing body or school board may waive the Secretary’s definitions in part or in  
 48 | whole. Alternative proposals [will] ~~should, however,~~ clearly ~~incorporate~~ [identify] any retained  
 49 | portions of the Secretary’s definitions. **[consensus 120618 as revised]**  
 50 |

51 | **§30.111. Will the Secretary provide technical assistance to tribal governing bodies or**  
 52 | **school boards seeking a waiver?**  
 53 |

54 | ~~Yes,~~ The Secretary and the Secretary of Education are required by statute to provide technical  
 55 | assistance, upon request, either directly or through contract, to a tribal governing body or a  
 56 | school board that seeks a waiver.<sup>3</sup> A tribal governing body or school board seeking such  
 57 | assistance ~~should~~ [will] submit a request to the Director. [The Secretary will provide such](#)  
 58 | [technical assistance on an ongoing and timely basis.](#) **[consensus 120618 as revised]**  
 59 |

60 | **NOTE THE COMMITTEE DID NOT REVIEW AND DISCUSS THE REMAINING**  
 61 | **SECTIONS DUE TO TIME CONSTRAINTS ON 120618. The edits reflected below are**  
 62 | **were provided by Brian Q. to clarify subcommittee questions about the draft language.**  
 63 |

64 | **§30.112. What is the process for requesting technical assistance?**

<sup>3</sup> 20 U.S.C. §7824(c)(3). “Technical assistance. The Secretary of [the] Interior and Secretary shall, either directly or through a contract, provide technical assistance, upon request, to a tribal governing body or school board of a school funded by the Bureau of Indian Affairs that seeks a waiver under paragraph (2).”

65 (a) ~~A tribal governing body or school board requesting technical assistance should submit a~~  
 66 ~~written request to the Director, specifying the form of assistance that is being sought.~~ Requests  
 67 for Technical Assistance must be in writing from a tribal governing body or school board to the  
 68 Director.

69 (b) The Director, or designee, will acknowledge receipt within 10 days of a request for technical  
 70 assistance ~~and~~.

71 (c) No later than 30 days after receiving the original request, the Director will identify a point of  
 72 contact and technical assistance will begin, ~~This contact will immediately begin working with~~  
 73 ~~the tribal governing body or school board to jointly develop the specifics of the technical~~  
 74 ~~assistance, including identifying the form, substance, and timeline for the assistance.~~

75

76 **§30.113. When should the tribal governing body or school board request technical**  
 77 **assistance?**  
 78

79 A tribal governing body or school board ~~should~~ is encouraged to request technical assistance  
 80 before formally notifying the Secretary of its intention to issue a waiver in order to maximize the  
 81 time available for technical assistance.

82

83 **§30.114. How does the Secretary review and approve an alternative definition?**  
 84

85 (a) The tribal governing body or school board submits a proposed alternative definition to the  
 86 Director, within 60 days of its waiver.<sup>4</sup> The tribal governing body or school board may request  
 87 an extension of the 60 day deadline to allow for the provision of technical assistance.

88 (b) The Director will notify the tribal governing body or school board of:

89 (1) Whether the proposed alternative definition is complete; and

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<sup>4</sup> 20 U.S.C. §7824(c)(2). “The tribal governing body or school board of a school funded by the Bureau of Indian Affairs may waive, in part or in whole, the requirements established pursuant to paragraph (1) where such requirements are determined by such body or school board to be inappropriate. If such requirements are waived, the tribal governing body or school board shall, within 60 days, submit to the Secretary of [the] Interior a proposal for alternative standards, assessments, and an accountability system, if applicable, consistent with section 1111 [20 U.S.C. §6311], that takes into account the unique circumstances and needs of such school or schools and the students served. The Secretary of the Interior and the Secretary shall approve such standards, assessments, and accountability system unless the Secretary determines that the standards, assessments, and accountability system do not meet the requirements of section 1111 [20 U.S.C. §6311], taking into account the unique circumstances and needs of such school or schools and the students served.”

90 (2) If the proposed definition is complete, an estimated timetable for the final decision;  
91 or

92 (3) Will inform the tribal governing body or school board that more time is required to  
93 review the proposed alternative definition.

94 (4) The Director and a tribal governing body or school board are encouraged to communicate on  
95 a monthly basis.

96  
97 (c) If the proposed alternative definition is incomplete, the Director will provide the tribal  
98 governing body or school board with technical assistance to complete the proposed alternative  
99 definition, including identifying what additional items are necessary.

100

101 (d) If the proposed definition is complete, the Secretary will work with the Secretary of  
102 Education to review the proposed alternative definition to determine whether it meets the  
103 requirements of section 1111 of the Act, taking into consideration the unique circumstances and  
104 needs of the school or schools and the students served.

105

106 (f) If the Secretary and Secretary of Education approve the alternative definition:

107 (1) The Secretary shall promptly notify the tribal governing body or school board; and

108 (2) The ~~alternative definition will become~~ date on which the alternative proposal will be  
109 effective at the start of the following school year.

110

111 (g) An alternative definition will not be ~~disapproved~~ approved if it does not meet the  
112 requirements of section 1111, taking into consideration the unique circumstances and needs of  
113 the school or schools and the students served. If the alternative definition is disapproved, the  
114 tribal governing body or school board will be notified of the following:

115 (1) That the alternative definition has been disapproved; and

116 (2) The reasons why the alternative definition has been disapproved.

117

118 | (h) If a proposed alternative definition is ~~disapproved~~not approved under paragraph (g) of this  
119 section, the Secretary shall provide technical assistance to overcome the basis for the  
120 disapproval.

121