

**Title 25 – Indians**  
**Chapter I – Bureau of Indian Affairs, Department of the Interior**  
**Subchapter E – Education**

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<p><b><i>Alternative Definition of AYP.</i></b></p> <p><b>§30.105.</b> May a tribal governing body or school board use another definition of AYP?</p> <p><b>§30.106.</b> How does a tribal governing body or school board propose an alternative definition of AYP?</p> <p><b>§30.107.</b> What must a tribal governing body or school board include in its alternative definition of AYP?</p> <p><b>§30.108.</b> May an alternative definition of AYP use parts of the Secretary's definition?</p> <p><b><i>Technical Assistance.</i></b></p> <p><b>§30.109.</b> Will the Secretary provide assistance in developing an alternative AYP definition?</p> <p><b>§30.110.</b> What is the process for requesting technical assistance to develop an alternative definition of AYP?</p> <p><b>§30.111.</b> When should the tribal governing body or school board request technical assistance?</p> <p><b><i>Approval of Alternate Definition.</i></b></p> <p><b>§30.113.</b> How does the Secretary review and approve an alternative definition of AYP?</p> <p><b>Subpart B – Assessing Adequate Yearly Progress.</b></p> <p><b>§30.114.</b> Which students must be assessed?</p> <p><b>§30.115.</b> Which students' performance data must be included for purposes of AYP?</p> <p><b>§30.116.</b> If a school fails to achieve its annual measurable objectives, what other methods may it use to determine whether it made AYP?</p> <p><b>Subpart C – Failure to Make Adequate Yearly Progress.</b></p> <p><b>§30.117.</b> What happens if a Bureau-funded school fails to make AYP?</p>	<p><b>Subpart B – Waiver of Definitions, Technical Assistance, and Approval of Waivers.</b></p> <p><b>§30.107.</b> May a Tribal governing body or school board waive the Secretary's definition of standards, assessments, and accountability system?</p> <p><b>§30.108.</b> How does a Tribal governing body or school board waive the Secretary's definitions?</p> <p><b>§30.109.</b> What should a Tribal governing body or school board include in a waiver and alternative proposal?</p> <p><b>§30.110.</b> May a proposed alternative definition use parts of the Secretary's definition?</p> <p><b>§30.111.</b> Will the Secretary provide technical assistance to Tribal governing bodies or school boards seeking a waiver?</p> <p><b>§30.112.</b> What is the process for requesting technical assistance?</p> <p><b>§30.113.</b> When should the Tribal governing body or school board request technical assistance?</p> <p><b>§30.114.</b> How does the Secretary review and approve an alternative definition?</p>	<p><b>Opportunity:</b> Is there anything to learn in the pros and cons of the process used for previous waivers to note or turn into a question?</p> <p><b>Consider:</b> How does the Secretary review and approve alternative academic standards, academic assessments and accountability systems?</p> <p><b>Consider:</b> Adding a section regarding implementation of the accountability system in Bureau-funded schools, similar to Subpart B in the existing regulations. Questions to consider include:</p> <ul style="list-style-type: none"> <li>• “What is the process for determining schools in need of comprehensive support and improvement?”</li> </ul>
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<p><b>§30.118.</b> May a Bureau-funded school present evidence of errors in identification before it is identified for school improvement, corrective action, or restructuring?</p> <p><b>§30.119.</b> Who is responsible for implementing required remedial actions at a Bureau-funded school identified for school improvement, corrective action or restructuring?</p> <p><b>§30.120.</b> Are Bureau-funded schools exempt from offering school choice and supplemental educational services when identified for school improvement, corrective action, and restructuring?</p> <p><b>§30.121.</b> What funds are available to assist schools identified for school improvement, corrective action, or restructuring?</p> <p><b>§30.122.</b> Must the Bureau assist a school it identified for school improvement, corrective action, or restructuring?</p> <p><b>§30.123.</b> What is the Bureau's role in assisting Bureau-funded schools to make AYP?</p> <p><b>§30.124.</b> Will the Bureau apply for funds that are available to help schools that fail to meet AYP?</p> <p><b>§30.125.</b> What happens if a State refuses to allow a school access to the State assessment?</p> <p><b>Subpart D – Responsibilities and Accountability.</b></p> <p><b>§30.126.</b> What is required for the Bureau to meet its reporting responsibilities?</p> <p><b>§30.150.</b> Information collection.</p>	<p><b>Subpart C – Responsibilities and Accountability.</b></p> <p><b>§30.126.</b> What is required for the Bureau to meet its reporting responsibilities?</p> <p><b>§30.150</b> Information collection.</p>	<ul style="list-style-type: none"> <li>• What is the process for determining schools in need of targeted support and improvement?</li> </ul>
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PART 30 – ADEQUATE YEARLY PROGRESS	PART 30 – STANDARDS, ASSESSMENTS, AND ACCOUNTABILITY SYSTEM	
EXISTING REGULATIONS	PROPOSED REGULATIONS	OPPORTUNITIES AND CONSIDERATIONS
<p><b>§30.100. What is the purpose of this part?</b> This part establishes for schools receiving Bureau funding a definition of "Adequate Yearly Progress (AYP)." Nothing in this part:</p> <p>(a) Diminishes the Secretary's trust responsibility for Indian education or any statutory rights in law;</p> <p>(b) Affects in any way the sovereign rights of tribes; or</p> <p>Terminates or changes the trust responsibility of the United States to Indian tribes or individual Indians.</p>	<p><b>§30.100. What is the purpose of this part?</b> This part establishes regulations regarding the definition of standards, assessments, and accountability system at Bureau-funded schools consistent with section 1111 of the Elementary and Secondary Education Act of 1965. Nothing in this part:</p> <p>(a) Diminishes the Secretary's trust responsibility for Indian education or any statutory rights in law;</p> <p>(b) Affects in any way the sovereign rights of tribes; or</p> <p>(c) Terminates or changes the trust responsibility of the United States to Indian Tribes or individual Indians</p>	
<p><b>§30.101. What definitions apply to terms in this part?</b> Act means the No Child Left Behind Act, Public Law 107-110, enacted January 8, 2002. The No Child Left Behind Act reauthorizes and amends the Elementary and Secondary Education Act (ESEA) and amends the Education Amendments of 1978.</p> <p>Bureau means the Bureau of Indian Affairs in the Department of the Interior.</p> <p>Department means the Department of the Interior.</p> <p>OIEP means the Office of Indian Education Programs in the Bureau of Indian Affairs.</p>	<p><b>§30.101. What definitions apply to terms in this part?</b> "Act" means the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, Public Law 114-95, enacted December 10, 2015.</p> <p>"Bureau" means the Bureau of Indian Education.</p> <p>"Department" means the Department of the Interior.</p> <p>"Director" means the Director of the Bureau of Indian Education.</p>	<p><b>Consider:</b> Adding all other definitions as included in P.L. 114-95.</p>

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<p>School means a school funded by the Bureau of Indian Affairs.</p> <p>Secretary means the Secretary of the Interior or a designated representative.</p> <p>Secretaries means the Secretary of the Interior and the Secretary of Education.</p>	<p>“BIE School(s)” means a school funded by the Bureau of Indian Education.</p> <p>“Secretary” means the Secretary of the Interior or a designated representative.</p> <p>“Subgroup of students” means</p> <ul style="list-style-type: none"> <li>a) economically disadvantaged students;</li> <li>b) students from major racial and ethnic groups;</li> <li>c) children with disabilities; and d) English learners.</li> </ul> <p>1</p> <p>“Indian Education Plan” means a document that will provide Indian tribes, parents, and other stakeholders with quality, transparent information about how the Act will be implemented at BIE Schools.</p> <p>“Tribally controlled school” means a school operated under a P.L. 93-638 contract or P.L. 100-297 grant.</p> <p>“Bureau Operated school” means a school operated by the Bureau of Indian Education.</p>	
SUBPART A – DEFINING ADEQUATE YEARLY PROGRESS	SUBPART A – DEFINING STANDARDS, ASSESSMENTS, AND ACCOUNTABILITY SYSTEM	
<p><b>§30.102. Does the Act require the Secretary of the Interior to develop a definition of AYP for Bureau-funded schools?</b></p> <p>Yes, the Act requires the Secretary to develop a definition of AYP through negotiated rulemaking. In developing the Secretary's definition of AYP, the No Child Left Behind Negotiated Rulemaking Committee (Committee) considered a variety of options. In choosing the definition in § 30.104, the Committee in no way intended to diminish the Secretary's trust</p>	<p><b>§30.102. What does the Act require of the Secretary?</b></p> <p>The Act requires the Secretary to define standards, assessments, and accountability system consistent with section 1111 of the Act for schools on a national, regional, or tribal basis, as appropriate, taking into account the unique circumstances and needs of such schools and the students served by such schools,</p>	<p><b>Consider:</b> Amending language to align with ESSA. ESSA uses the terms ‘challenging academic standards’ and ‘academic assessments’.</p>



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<p>responsibility for Indian education or any statutory rights in law. Nothing in this part:</p> <p>(a) Affects in any way the sovereign rights of tribes; or</p> <p>(b) Terminates or changes the trust responsibility of the United States to Indian tribes or individual Indians.</p>	<p>using regulations developed through a negotiated rulemaking process.<sup>2</sup></p> <p>A tribal governing body or school board may waive these requirements, in part or in whole, and submit a proposal for alternative definitions within 60 days, which the Secretary and the Secretary of Education will approve unless the Secretary of Education determines that the proposal does not meet the requirements of section 1111, taking into account the unique circumstances and needs of such school or schools and the students served.<sup>3</sup></p> <p>The Act further requires the Secretary and the Secretary of Education to provide technical assistance, upon request, either directly or through a contract to a tribal governing body or school board that seeks a waiver.<sup>4</sup></p>	
<p><b>§30.103. Did the Committee consider a separate Bureau definition of AYP?</b></p> <p>Yes, the Committee considered having the Bureau of Indian Affairs develop a separate Bureau definition of AYP. For a variety of reasons, the Committee reached consensus on the definition in §30.104. This definition is in no way intended to diminish the United States' trust responsibility for Indian education nor is it intended to give States authority over Bureau-funded schools.</p>	<p><b>§30.103. How will the Secretary implement the requirements of the Act?</b></p> <p>(a) The Secretary, through the Director, must define the standards, assessments, and accountability system for use at BIE schools in accordance with this Part.<sup>5</sup></p> <p>(b) The Director will implement an Indian Education Plan<sup>6</sup> that will provide Indian tribes, parents, and other stakeholders with quality, transparent information about how the Act will be implemented at BIE Schools.</p> <p>(c) The Director shall review and revise the Indian Education Plan periodically as necessary to reflect changes in the Bureau's strategies and programs.<sup>7</sup> The Secretary shall engage in active consultation with tribes and other interested parties while</p>	<p><b>Consider:</b> Adding "challenging academic standards" and "academic assessments"</p> <p><b>Opportunity:</b> Is this sufficient for a description? Negotiators may want to consider stronger guardrails surrounding the Indian Education Plan (i.e. BIE State ESSA Plan), including meaningful tribal consultation, a timeline for completion, and process for revision following tribal feedback.</p> <p><b>Consider:</b> ESSA includes strong language requiring states and LEAs to engage in meaningful consultation. Negotiators may consider amending language in this section to</p>



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	<p>engaged in review and revision of the Indian Education Plan.<sup>8</sup></p> <p>(d) The Director may voluntarily partner with States to develop and implement State standards and assessments.<sup>9</sup></p>	<p>include statutory language regarding ‘meaningful consultation’?</p>
<p><b>§30.104. What is the Secretary's definition of AYP?</b> The Secretary defines AYP as follows. The definition meets the requirements in <sup>123</sup> U.S.C. 6311(b).</p> <p>(a) Effective in the 2005-2006 school year, the academic content and student achievement standards, assessments, and the definition of AYP are those of the State where the school is located, unless an alternative definition of AYP is proposed by the tribal governing body or school board and approved by the Secretary.</p> <p>(1) If the geographic boundaries of the school include more than one State, the tribal governing body or school board may choose the State definition it desires. Such decision shall be communicated to the Secretary in writing.</p> <p>(2) This section does not mean that the school is under the jurisdiction of the State for any purpose, rather a reference to the State is solely for the purpose of using the State's assessment, academic content and student achievement standards, and definition of AYP.</p>	<p><b>§30.104. How will the Secretary define standards?</b></p> <p>(a) The Secretary will define academic standards for Bureau-funded schools on a national, regional, or tribal basis, as appropriate, taking into account the unique circumstances and needs of such schools and the students served by such schools by:</p> <ul style="list-style-type: none"> <li>• adopting challenging academic content standards and</li> <li>• aligned academic achievement standards (standards) consistent with section 1111(b)(1) of the Act.<sup>10</sup></li> </ul> <p>Described collectively in the Act as “challenging State academic standards.”</p> <p>(b) The academic standards will include:</p> <ul style="list-style-type: none"> <li>• mathematics</li> <li>• reading or language arts, and</li> <li>• science</li> <li>• And may have such standards for any other subject determined by the Secretary.<sup>11</sup></li> </ul>	<p><b>Consider:</b> adding ‘challenging academic standards’</p> <p><b>Consider:</b> There is no discussion here of how the BIE will fulfill or waive the requirement to align standards with college entrance requirements and career and technical education standards.</p>



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<p>(3) The use of the State's definition of AYP does not diminish or alter the Federal Government's trust responsibility for Indian education.</p> <p>(b) School boards or tribal governing bodies may seek a waiver that may include developing their own definition of AYP, or adopting or modifying an existing definition of AYP that has been accepted by the Department of Education. The Secretary is committed to providing technical assistance to a school, or a group of schools, to develop an alternative definition of AYP.</p>	<p>These standards shall apply to all Bureau-funded schools and students at those schools.</p> <p>(c) Academic achievement standards Academic achievement standards shall include the same knowledge, skills, and levels of achievement expected of all students at Bureau-funded schools. The Secretary may adopt alternate academic achievement standards for students with the most significant cognitive disabilities.<sup>12</sup></p> <p>(d) The Secretary will support assessment of students with cognitive disabilities with the administration of a uniform exam.</p> <p>(e) The academic standards must be aligned with entrance requirements for credit-bearing coursework at institutions of higher education and relevant career and technical education standards.<sup>13</sup> The Secretary will select an assessment that indicates college readiness for credit bearing coursework.</p> <p>(f) The Secretary must adopt English language proficiency standards that (i) are derived from the four recognized domains of speaking, listening, reading, and writing; (ii) address the different proficiency levels of English learners; and (iii) are aligned with the challenging State academic standards.</p>	<p><b>Consider:</b> Amending language to align with ESSA. (d) should read as “students with significant cognitive disabilities”.</p> <p><b>Consider:</b> What does ‘support assessment’ mean? Negotiators may consider adding more guardrails to ensure that students with the most significant cognitive disabilities are fully served in BIE schools. Such measures may include:</p> <ul style="list-style-type: none"> <li>• The statutory 1 percent cap on alternate assessments for students with the most significant cognitive disabilities</li> </ul> <p><b>Consider:</b> Integrating standards for students with ‘the most significant cognitive disabilities’ throughout.</p>
	<p><b>§30.105. How will the Secretary define assessments?</b></p> <p>(a) The Secretary shall define assessments for Bureau-funded schools by:</p>	<p><b>Consider:</b> Is define the right verb? What about define and implement assessments?</p> <p><b>Opportunity:</b> Negotiators have an opportunity to build on existing regulations implemented by the Department of</p>





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	<p>(i) implementing a set of high-quality student academic assessments consistent with section 1111(b)(2) of the Act.</p> <p>(b) These assessments will be aligned to the Bureau's challenging academic standards in:</p> <ul style="list-style-type: none"> <li>• Mathematics</li> <li>• Reading or Language Arts, and</li> <li>• Science</li> </ul> <p>And in any other subject chosen by the Secretary taking into account the unique circumstances and needs of Bureau-funded schools and the students served by such schools.<sup>14</sup></p> <p>(c) These assessments will be administered to all elementary and secondary school students at Bureau-funded schools as required under section 1111(b)(2)(B)(v)<sup>15</sup>, except in the event that the Secretary provides for the exemption of any 8<sup>th</sup> grade student from the assessment in mathematics under section 1111(b)(2)(C).</p> <p>(d) The Secretary's high-quality student academic assessments may, at the Secretary's discretion, be administered through a single summative assessment or 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.<sup>16</sup></p> <p>(e) The Secretary shall provide for the participation of all such students in those assessments and ensure, except in the case of students with the most significant cognitive difficulties, that the same assessments will be used to measure the</p>	<p>Education, which define the responsibilities of a state to assess students.</p> <p>See §200.2 State responsibilities for assessment. Also, §200.3, §200.5, §200.6. <a href="https://www.gpo.gov/fdsys/pkg/CFR-2018-title34-vol1/pdf/CFR-2018-title34-vol1-part200-subpartA.pdf">https://www.gpo.gov/fdsys/pkg/CFR-2018-title34-vol1/pdf/CFR-2018-title34-vol1-part200-subpartA.pdf</a></p> <p><b>Consider:</b> Adding a section regarding the requirement for assessment results to be disaggregated and reported based on:</p> <ul style="list-style-type: none"> <li>• each major racial and ethnic group,</li> <li>• low income students,</li> <li>• students with disabilities,</li> <li>• English language learners,</li> <li>• gender, and</li> <li>• migrant status</li> </ul> <p><i>Note: Negotiators have an opportunity to determine the definitions for each disaggregated student group.</i></p>
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	<p>achievement of all elementary and secondary school students at Bureau-funded schools.<sup>17</sup></p> <p>(f) The Secretary shall ensure that the assessments meet the requirements described in section 1111(b)(2)(B)(ii)-(xiii) including that the assessments provide coherent and timely information about student attainment of such standards and whether the student is performing at the student's grade level;<sup>18</sup> that the assessments involve multiple up-to-date measures of student academic achievement;<sup>19</sup> that the assessments produce individual student interpretive, descriptive, and diagnostic reports regarding achievement on the assessments;<sup>20</sup> that the assessments enable results to be disaggregated;<sup>21</sup> that the assessments enable itemized score analyses;<sup>22</sup> and that the assessments be developed, to the extent practicable, using the principles of universal design for learning.<sup>23</sup></p> <p>(g) The Secretary may provide for alternate assessments aligned with the challenging State academic standards and alternate academic achievement standards for students with the most cognitive disabilities if the requirements of Section 1111(b)(2)(D) are met.<sup>24</sup></p> <p>(h) The Secretary shall identify the languages other than English that are present to a significant extent in the student population and indicate the languages for which annual student academic assessments are not available and are needed.<sup>25</sup> The Secretary shall make every effort to develop such assessments.<sup>26</sup></p>	<p><b>Consider:</b> ESSA stipulates that no more than 1 percent of the total student population may be assessed utilizing alternate assessments for students with the most significant cognitive disabilities.</p> <p><b>Consider:</b> For the BIE, what are these languages? What is the process for determining these languages? How will the BIE address Native language assessments?</p> <p><b>Consider:</b> Will the BIE include a waiver on English-language assessments for language immersion schools in the BIE, similar to that in Section 200.7 of the Department of Education's regulations?</p> <p><b>Opportunity:</b> ESSA provides flexibility for LEAs to establish local assessments in lieu of state assessments. States are required to</p>
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	<p>(i) The Secretary will provide for an annual assessment of English proficiency of all English learners at BIE schools.<sup>27</sup> Such assessments shall be aligned with the Secretary's English proficiency standards.<sup>28</sup></p> <p>(j) The Secretary may develop and administer computer adaptive assessments.<sup>29</sup></p> <p>(i) Computer adaptive assessments are not required to be the same for all students taking such assessments.<sup>30</sup> Such assessments (i) must at a minimum measure each student's academic proficiency based on the challenging State academic standards for the students grade level and growth toward such standards; and (ii) may measure the student's level of academic proficiency and growth using items above or below the student's grade level, including for use as part of the Secretary's accountability system.<sup>31</sup></p> <p>(ii) The Secretary shall ensure that in developing and administering computer adaptive assessments they meet the requirements for alternative assessments for students with the most severe cognitive disabilities as well as for assessments of English proficiency of all English learners.<sup>32</sup></p> <p>(k) The Secretary may, subject to Federal requirements related to assessments, evaluations, and accommodations, 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.<sup>33</sup></p>	<p>establish criteria for evaluation of local assessments. Negotiators have an opportunity to consider a process for evaluation and implementation of local assessments.</p>
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	<p><b>§30.106. How will the Secretary define accountability system?</b></p> <p>(a) The Secretary shall define an accountability system for Bureau-funded schools consistent with section 1111(c)-(d) of the Act, including provisions for a single statewide accountability system and school support and improvement activities.<sup>34</sup></p> <p>(b) To improve student academic achievement and school success among all elementary and secondary schools within the Bureau-funded school system the Secretary will:</p> <p>(1) Develop and implement a single, Bureau-wide accountability system that:</p> <ul style="list-style-type: none"> <li>○ Is based on the Bureau’s challenging academic standards and academic assessments;</li> <li>○ Is informed by ambitious long-term goals and measurements of interim progress;</li> <li>○ Includes all section 1111(c)(4)(B)-consistent accountability indicators;</li> <li>○ Takes into account the achievement of all elementary and secondary school students within the Bureau-funded school system;</li> <li>○ Is the same accountability system used to annually;</li> <li>○ meaningfully differentiate all schools within the Bureau-funded school system and the same accountability system used to identify schools for comprehensive and targeted support and improvement;<sup>35</sup> and</li> <li>○ Includes the process that the Bureau will use to ensure effective</li> </ul>	<p><b>Consider:</b> What is the minimum N-size used to meaningfully differentiate all schools within the BIE system? Negotiators may consider the following language: “BIE will set the minimum number of students necessary for disaggregation of information by each subgroup of students as required by P.L. 114-95 Sec. 1111 (3) at 15”.</p> <p>For reference, statutory language is:  <b>(3) MINIMUM NUMBER OF STUDENTS.</b>—Each State shall describe— (A) with respect to any provisions under this part that require disaggregation of information by each subgroup of students— (i) the minimum number of students that the State determines are necessary to be included to carry out such requirements and how that number is statistically sound, which shall be the same State-determined number for all students and for each subgroup of students in the State; (ii) how such minimum number of students was determined by the State, including how the State collaborated with teachers, principals, other school leaders, parents, and other stakeholders when determining such minimum number; and (iii) how the State ensures that such minimum number is sufficient to not reveal any personally identifiable information.</p>
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development and implementation of school support and improvement plans, including evidence-based interventions, to hold all schools within the Bureau-funded school system accountable for student academic achievement and school success.

(c) For all students and separately for each subgroup of students within the Bureau-funded school system the Bureau's long-term goals and measurements of interim progress will:

- (1) include, at a minimum, improved academic achievement, as measured by proficiency on the Bureau's annual assessments in mathematics and reading or language arts under section 1111(b)(2)(B)(v)(I), and high school graduation rates, including the four-year adjusted cohort graduation rate and, at the Secretary's discretion, the extended-year adjusted cohort graduation rate, except that the Secretary shall set a more rigorous long-term goal for such graduation rate as compared to the long-term goal set for the four-year adjusted cohort graduation rate;<sup>36</sup>
- (2) have the same multi-year length of time set to meet such goals for all students and for each subgroup of students within the Bureau-funded school system;<sup>37</sup>
- (3) take into account for subgroups of students who are behind on the measurements of academic achievement and high school graduation rates the improvement necessary on such measures to make significant

**Consider:** What graduation rate will the Secretary use to measure student progress?

**Consider:** What does this time frame and process look like to ensure English Learners are fully included?

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progress in closing Bureau-wide proficiency and graduation rate gaps;<sup>38</sup> and

(4) will include for English learners a measurement of increases in the percentage of such students making progress in achieving English language proficiency as defined by the Secretary and measured by the assessments under section 1111(b)(2)(G) within a timeline determined by the Secretary.<sup>39</sup>

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

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

(2) use the same measures within each indicator for all schools within the Bureau-funded school system except that measures within the Academic Progress and School Quality or Student success indicators may vary by each grade span;<sup>40</sup> and

(3) incorporate an Academic Achievement indicator,<sup>41</sup> an Academic Progress indicator,<sup>42</sup> a Graduation rate indicator,<sup>43</sup> a Progress in Achieving English Language Proficiency indicator,<sup>44</sup> and one or more indicators of School Quality or Student Success.<sup>45</sup>

(e) The Bureau's accountability system will annually measure the achievement of at least 95% of all students, and 95 percent of each subgroup of

**Consider:** What additional indicator(s) for school quality and/or student success will the BIE consider?

**Consider:** What happens if a Bureau-funded school is identified for comprehensive support and improvement?

**Consider:** What happens if a Bureau-funded school is identified for targeted support and improvement?

**Consider:** "May a Bureau-funded school present evidence of errors in identification before it is identified for comprehensive support and improvement?"

**Consider:** "Who is responsible for implementing an improvement plan for schools identified for comprehensive support and improvement?"

**Consider:** "Who is responsible for implementing an improvement plan for schools identified for targeted support and improvement?"

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	<p>students, who are enrolled in schools within the Bureau-funded school system on the Bureau's assessments.<sup>46</sup> The denominator for the purpose of measuring, calculating, and reporting on each indicator shall be the greater of:</p> <ul style="list-style-type: none"> <li>(1) 95 percent of all students, or 95 percent of each subgroup of students; or</li> <li>(2) the number of students participating in the assessments.<sup>47</sup></li> </ul> <p>(f) The performance of students that have not attended the same Bureau-funded school for at least half of a school year will not be used in the system of meaningful differentiation of school for such school year, but will be used for the purpose of reporting on the Bureau and school report cards for such school year.<sup>48</sup> In calculating the high school graduation rate, a high school student who has not attended the same school for at least half of a school year and has exited high school without a regular high school diploma and without transferring to another high school that grants a regular high school diploma during such a school year shall be assigned to the high school at which the student was enrolled for the greatest proportion of school days while enrolled in grades 9 through 12, or to the high school in which the student was most recently enrolled.<sup>49</sup></p>	<p><b>Consider:</b> "Are Bureau-funded schools exempt from offering school choice when identified for comprehensive support and improvement?"</p> <p><b>Consider:</b> How will BIE develop and provide funding to carry out its responsibilities under section 1111(d) for schools in need of comprehensive support and improvement or targeted support and improvement?</p> <p><b>Consider:</b> "Must the BIE assist a school it has identified for comprehensive support and improvement?"</p> <p><b>Consider:</b> "Must the BIE assist a school it has identified for targeted support and improvement?"</p> <p><b>Consider:</b> Negotiators may consider a section titled "What is the Bureau's role in assisting Bureau-funded schools identified for comprehensive support and improvement?"</p> <p><b>Consider:</b> "What is the Bureau's role in assisting Bureau-funded schools identified for targeted support and improvement?"</p> <p><b>Consider:</b> Negotiators may consider adding a section holding the BIE accountable for requesting funds from the Department of Education and from Congress to support schools identified for comprehensive support and improvement under the accountability system.</p>
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SUBPART A – DEFINING ADEQUATE YEARLY PROGRESS, ALTERNATIVE DEFINITION OF AYP	SUBPART B – WAIVER OF DEFINITIONS, TECHNICAL ASSISTANCE, AND APPROVAL OF WAIVERS	
<p><b>§30.105. May a tribal governing body or school board use another definition of AYP?</b></p> <p>Yes. A tribal governing body or school board may waive all or part of the Secretary's definition of academic content and achievement standards, assessments, and AYP. However, unless an alternative definition is approved under § 30.113, the school must use the Secretary's definition of academic content and achievement standards, assessments, and AYP.</p>	<p><b>§30.107. May a tribal governing body or school board waive the Secretary's definition of standards, assessments, and accountability system?</b></p> <p>Yes. A tribal governing body or school board may waive the Secretary's definition of standards, assessments, and accountability system in part or in whole. However, unless an alternative proposal is approved the Secretary's definitions apply.<sup>50</sup></p>	
<p><b>§30.106. How does a tribal governing body or school board propose an alternative definition of AYP?</b></p> <p>If a tribal governing body or school board decides that the definition of AYP in § 30.104 is inappropriate, it may decide to waive all or part of the definition. Within 60 days of the decision to waive, the tribal governing body or school board must submit to the Secretary a proposal for an alternative definition of AYP. The proposal must meet the requirements of 20 U.S.C. 6311(b) and 34 CFR 200.13-200.20, taking into account the unique circumstances and needs of the school or schools and the students served</p>	<p><b>§30.108. How does a tribal governing body or school board waive the Secretary's definitions?</b></p> <p>If a tribal governing body or school board determines the Secretary's definition of standards, assessments, or accountability system to be inappropriate,<sup>51</sup> it may waive these definitions in part or in whole. Within 60 days the tribal governing body or school board must submit to the Secretary a proposal for alternative definitions that are consistent with section 1111 of the Act and that take into account the unique circumstances and needs of such school or schools and the students served.</p>	
<p><b>§30.107. What must a tribal governing body or school board include in its alternative definition of AYP?</b></p> <p>(a) An alternative definition of AYP must meet the requirements of <u>20 U.S.C. 6311(b)(2)</u> of the Act and <u>34 CFR 200.13-200.20</u>, taking into account the unique circumstances and needs of the school or schools and the students served.</p>	<p><b>§30.109. What should a tribal governing body or school board include in a waiver and alternative proposal?</b></p> <p>Waivers should explain how the Secretary's definition of standards, assessments, or accountability system are inappropriate.</p> <p>Alternative proposals should include an explanation how the alternative proposal is consistent with section 1111 of the Act and meets the unique</p>	



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<p>(b) In accordance with <u>20 U.S.C. 6311(b)</u> of the Act and <u>34 CFR 200.13-200.20</u>, an alternative definition of AYP must:</p> <ul style="list-style-type: none"> <li>(1) Apply the same high standards of academic achievement to all students;</li> <li>(2) Be statistically valid and reliable;</li> <li>(3) Result in continuous and substantial academic improvement for all students;</li> <li>(4) Measure the progress of all students based on a high-quality assessment system that includes, at a minimum, academic assessments in mathematics and reading or language arts;</li> <li>(5) Measure progress separately for reading or language arts and for mathematics;</li> <li>(6) Unless disaggregation of data cannot yield statistically reliable information or reveals personally identifiable information, apply the same annual measurable objectives to each of the following: <ul style="list-style-type: none"> <li>(i) The achievement of all students; and</li> </ul> </li> <li>(7) The achievement of economically disadvantaged students, students from major racial or ethnic groups, students with disabilities, and <ul style="list-style-type: none"> <li>(i) students with limited English proficiency;</li> </ul> </li> <li>(8) Establish a starting point;</li> </ul>	<p>circumstances and needs of the school(s) and students served.</p>	
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<p>(9) Create a timeline to ensure that all students are proficient by the 2013-2014 school year;</p> <p>(10) Establish annual measurable objectives;</p> <p>(11) Establish intermediate goals;</p> <p>(12) Include at least one other academic indicator which, for any school with a 12th grade, must be graduation rate; and</p> <p>(13) Ensure that at least 95 percent of the students enrolled in each group under § 30.107(b)(6) are assessed.</p> <p>(c) If a Bureau-funded school's alternative definition of AYP does not use a State's academic content and student achievement standards and academic assessments, the school must include with its alternative definition the academic standards and assessment it proposes to use. These standards and assessments must meet the requirements in <u>20 U.S.C. 6311(b)</u> and <u>34 CFR 200.1-200.9</u>.</p>		
<p><b>§30.108. May an alternative definition of AYP use parts of the Secretary's definition?</b> Yes, a tribal governing body or school board may take part of the Secretary's definition and propose to waive the remainder. The proposed alternative definition of AYP must, however, include both the parts of the Secretary's AYP definition the tribal governing body or school board is adopting and those parts the tribal governing body or school board is proposing to change.</p>	<p><b>§30.110. May a proposed alternative definition use parts of the Secretary's definition?</b> Yes, a tribal governing body or school board may waive the Secretary's definitions in part or in whole. Alternative proposals should, however, clearly incorporate any retained portions of the Secretary's definitions.</p>	

SUBPART A – DEFINING ADEQUATE YEARLY PROGRESS, TECHNICAL ASSISTANCE	SUBPART B – WAIVER OF DEFINITIONS, TECHNICAL ASSISTANCE, AND APPROVAL OF WAIVERS	
<p><b>§30.109. Will the Secretary provide assistance in developing an alternative AYP definition?</b></p> <p>Yes, the Secretary through the Bureau, shall provide technical assistance either directly or through contract to the tribal governing body or the school board in developing an alternative AYP definition. A tribal governing body or school board needing assistance must submit a request to the Director of OIEP under § 30.110. In providing assistance, the Secretary may consult with the Secretary of Education and may use funds supplied by the Secretary of Education in accordance with <u>20 U.S.C. 7301.</u></p>	<p><b>§30.111. Will the Secretary provide technical assistance to tribal governing bodies or school boards seeking a waiver?</b></p> <p>Yes, the Secretary and the Secretary of Education are required by statute to provide technical assistance, upon request, either directly or through contract to a tribal governing body or a school board that seeks a waiver.<sup>52</sup> A tribal governing body or school board seeking such assistance should submit a request to the Director.</p>	
<p><b>§30.110. What is the process for requesting technical assistance to develop an alternative definition of AYP?</b></p> <p>(a) The tribal governing body or school board requesting technical assistance to develop an alternative definition of AYP must submit a written request to the Director of OIEP, specifying the form of assistance it requires.</p> <p>(b) The Director of OIEP must acknowledge receipt of the request for technical assistance within 10 days of receiving the request.</p> <p>(c) No later than 30 days after receiving the original request, the Director of OIEP will identify a point of contact. This contact will immediately begin working with the tribal governing body or school board to jointly develop the specifics of the technical assistance, including identifying the form, substance, and timeline for the assistance.</p>	<p><b>§30.112. What is the process for requesting technical assistance?</b></p> <p>(a) A tribal governing body or school board requesting technical assistance should submit a written request to the Director, specifying the form of assistance that is being sought.</p> <p>(b) The Director will acknowledge receipt of a request for technical assistance</p>	<p><b>Consider:</b> Providing a timeline for response from the Director.</p> <p><b>Consider:</b> Providing a timeline for follow-up and engagement with the Bureau.</p>



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<p><b>§30.111. When should the tribal governing body or school board request technical assistance?</b> In order to maximize the time the tribal governing body or school board has to develop an alternative definition of AYP and to provide full opportunity for technical assistance, the tribal governing body or school board should request technical assistance before formally notifying the Secretary of its intention to waive the Secretary's definition of AYP.</p>	<p><b>§30.113. When should the tribal governing body or school board request technical assistance?</b> A tribal governing body or school board should request technical assistance before formally notifying the Secretary of its intention to issue a waiver in order to maximize the time available for technical assistance.</p>	<p><b>Consider:</b> The answer provided does not adequately address the question. Negotiators may consider reframing the question to “When is the tribal governing body or school board eligible for technical assistance?”</p>
<p><b>SUBPART A – DEFINING ADEQUATE YEARLY PROGRESS, APPROVAL OF ALTERNATE DEFINITION</b></p>	<p><b>SUBPART B – WAIVER OF DEFINITIONS, TECHNICAL ASSISTANCE, AND APPROVAL OF WAIVERS</b></p>	
<p><b>§30.113. How does the Secretary review and approve an alternative definition of AYP?</b> (a) The tribal governing body or school board submits a proposed alternative definition of AYP to the Director, OIEP within 60 days of its decision to waive the Secretary's definition.  (b) Within 60 days of receiving a proposed alternative definition of AYP, OIEP will notify the tribal governing body or the school board of: (1) Whether the proposed alternative definition is complete; and (2) If the definition is complete, an estimated timetable for the final decision.  (c) If the proposed alternative definition is incomplete, OIEP will provide the tribal governing body or school board with technical assistance to complete the proposed alternative definition of AYP, including identifying what additional items are necessary.</p>	<p><b>§30.114. How does the Secretary review and approve an alternative definition?</b> (a) The tribal governing body or school board submits a proposed alternative definition to the Director within 60 days of its waiver.<sup>53</sup>  (b) The Director will notify the tribal governing body or school board of: (1) Whether the proposed alternative definition is complete; and (2) If the proposed definition is complete, an estimated timetable for the final decision; or (3) Will inform the tribal governing body or school board that more time is required to review the proposed alternative definition.  (c) If the proposed alternative definition is incomplete, the Director will provide the tribal governing body or school board with technical assistance to complete the proposed alternative definition, including identifying what additional items are necessary.  (d) If the proposed definition is complete, the Secretary will work with the Secretary of</p>	<p><b>Consider:</b> Providing a timeline within which the Director must respond to the tribal governing body or school board.  <b>Consider:</b> Providing tribes access to the comprehensive centers at the Department of Education, as well as technical assistance from the Bureau of Indian Education. <i>Note: This may be something to include in the MOU if it is included in the regulations.</i></p>

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<p>(d) The Secretaries will review the proposed alternative definition of AYP to determine whether it is consistent with the requirements of <u>20 U.S.C. 6311(b)</u>. This review must take into account the unique circumstances and needs of the schools and students.</p> <p>(e) The Secretaries shall approve the alternative definition of AYP if it is consistent with the requirements of <u>20 U.S.C. 6311(b)</u>, taking into consideration the unique circumstances and needs of the school or schools and the students served.</p> <p>(f) If the Secretaries approve the alternative definition of AYP:</p> <ol style="list-style-type: none"> <li>(1) The Secretary shall promptly notify the tribal governing body or school board; and</li> <li>(2) The alternate definition of AYP will become effective at the start of the following school year.</li> </ol> <p>(g) The Secretaries will disapprove the alternative definition of AYP if it is not consistent with the requirements of <u>20 U.S.C. 6311(b)</u>. If the alternative definition is disapproved, the tribal governing body or school board will be notified of the following:</p> <ol style="list-style-type: none"> <li>(1) That the definition is disapproved; and</li> <li>(2) The reasons why the proposed alternative definition does not meet the requirements of <u>20 U.S.C. 6311(b)</u>.</li> </ol> <p>(h) If the Secretaries deny a proposed definition under paragraph (g) of this section, they shall</p>	<p>Education to review the proposed alternative definition to determine whether it meets the requirements of section 1111 of the Act, taking into consideration the unique circumstances and needs of the school or schools and the students served.</p> <p>(f) If the Secretary and Secretary of Education approve the alternative definition:</p> <ol style="list-style-type: none"> <li>(1) The Secretary shall promptly notify the tribal governing body or school board; and</li> <li>(2) The alternative definition will become effective at the start of the following school year.</li> </ol> <p>(g) An alternative definition will be disapproved if it does not meet the requirements of section 1111, taking into consideration the unique circumstances and needs of the school or schools and the students served. If the alternative definition is disapproved, the tribal governing body or school board will be notified of the following:</p> <ol style="list-style-type: none"> <li>(1) That the alternative definition has been disapproved; and</li> <li>(2) The reasons why the alternative definition has been disapproved.</li> </ol> <p>(h) If a proposed alternative definition is disapproved under paragraph (g) of this section, the Secretary</p>	<p><b>Consider:</b> Adding that the Secretaries shall approve all proposals consistent with section 1111 of the Act, as stipulated under Section 8204 of ESSA.</p>
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provide technical assistance to overcome the basis for the denial.	shall provide technical assistance to overcome the basis for the disapproval.	
<b>SUBPART B – ASSESSING ADEQUATE YEARLY PROGRESS</b>	<b>[NO EXISTING SECTION.]</b>	
<p><b>§30.114. Which students must be assessed?</b> All students in grades three through eight and at least once in grades ten through twelve who are enrolled in a Bureau-funded school must be assessed.</p>		
<p><b>§30.115. Which students' performance data must be included for purposes of AYP?</b> The performance data of all students assessed pursuant to § 30.114 must be included for purposes of AYP if the student is enrolled in a Bureau-funded school for a full academic year as defined by the Secretary or by an approved alternative definition of AYP.</p>		
<p><b>§30.116. If a school fails to achieve its annual measurable objectives, what other methods may it use to determine whether it made AYP?</b> A school makes AYP if each group of students identified in § 30.107(b)(6) meets or exceeds the annual measurable objectives and participation rate identified in §§ 30.107(b)(9) and 30.107(b)(12) respectively, and the school meets the other academic indicators identified in § 30.107(b)(11). If a school fails to achieve its annual measurable objectives for any group identified in § 30.107(b)(6), there are two other methods it may use to determine whether it made AYP:</p> <p>(a) Method A -- "Safe Harbor." Under "safe harbor," the following requirements must be met for each group referenced under § 30.107(b)(6) that</p>		

<p>does not achieve the school's annual measurable objectives:</p> <ul style="list-style-type: none"> <li>(1) In each group that does not achieve the school's annual measurable objectives, the percentage of students who were below the "proficient" level of academic achievement decreased by at least 10 percent from the preceding school year; and</li> <li>(2) The students in that group made progress on one or more of the other academic indicators; and</li> <li>(3) Not less than 95 percent of the students in that group participated in the assessment.</li> </ul> <p>(b) Method B -- Uniform Averaging Procedure. A school may use uniform averaging. Under this procedure, the school may average data from the school year with data from one or two school years immediately preceding that school year and determine if the resulting average makes AYP.</p>		
SUBPART C –FAILURE TO MAKE ADEQUATE YEARLY PROGRESS	[NO EXISTING SECTION]	
<p><b>§30.117. What happens if a Bureau-funded school fails to make AYP? * *</b></p> <p>Note: This CFR provision includes a table with three columns:</p> <ul style="list-style-type: none"> <li>(1) "Number of years of failing to make AYP in same academic subject;"</li> <li>(2) "Status;" and</li> <li>(3) "Action required by entity operating school for the following school year."</li> </ul>		

<p><b>§30.118. May a Bureau-funded school present evidence of errors in identification before it is identified for school improvement, corrective action, or restructuring?</b></p> <p>Yes. The Bureau must give such a school the opportunity to review the data on which the bureau would identify a school for improvement, and present evidence as set out in 20 U.S.C. 6316(b)(2).</p>		
<p><b>§30.119. Who is responsible for implementing required remedial actions at a Bureau-funded school identified for school improvement, corrective action or restructuring?</b></p> <p>(a) For a Bureau-operated school, implementation of remedial actions is the responsibility of the Bureau.</p> <p>(b) For a tribally operated contract school or grant school, implementation of remedial actions is the responsibility of the school board of the school.</p>		
<p><b>§30.120. Are Bureau-funded schools exempt from offering school choice and supplemental educational services when identified for school improvement, corrective action, and restructuring?</b></p> <p>Yes, Bureau-funded schools are exempt from offering public school choice and supplemental educational services when identified for school improvement, corrective action, and restructuring.</p>		
<p><b>§30.121. What funds are available to assist schools identified for school improvement, corrective action, or restructuring?</b></p> <p>From fiscal year 2004 to fiscal year 2007, the Bureau will reserve 4 percent of its title I allocation to assist Bureau-funded schools identified for school improvement, corrective action, and restructuring.</p>		



<p>(a) The Bureau will allocate at least 95 percent of funds under this section to Bureau-funded schools identified for school improvement, corrective action, and restructuring to carry out those schools' responsibilities under 20 U.S.C. 6316(b). With the approval of the school board the Bureau may directly provide for the remedial activities or arrange for their provision through other entities such as school support teams or educational service agencies.</p> <p>(b) In allocating funds under this section, the Bureau will give priority to schools that:</p> <ol style="list-style-type: none"> <li>(1) Are the lowest-achieving schools;</li> <li>(2) Demonstrate the greatest need for funds; and</li> <li>(3) Demonstrate the strongest commitment to ensuring that the funds enable the lowest-achieving schools to meet progress goals in the school improvement plans.</li> </ol> <p>(c) Funds reserved under this section must not decrease total funding under title I, part A of the Act, for any school below the level for the preceding year. To the extent that reserving funds under this section would reduce the title I, part A dollar amount of any school below the amount of title I, part A dollars the school received the previous year, the Secretary is authorized to reduce the title I, part A allocations of those schools receiving an increase in the title I, part A funds over the previous year to create the 4 percent reserve. This section does not authorize a school to receive title I, part A dollars it is not otherwise eligible to receive.</p>		
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(d) The Bureau will publish in the Federal Register a list of schools receiving funds under this section.		
<p><b>§30.122. Must the Bureau assist a school it identified for school improvement, corrective action, or restructuring?</b></p> <p>Yes, if a Bureau-funded school is identified for school improvement, corrective action, or restructuring, the Bureau must provide technical or other assistance described in 20 U.S.C. 6316(b)(4) and 20 U.S.C. 6316(g)(3)</p>		
<p><b>§30.123. What is the Bureau's role in assisting Bureau-funded schools to make AYP?</b></p> <p>The Bureau must provide support to all Bureau-funded schools to assist them in achieving AYP. This includes technical assistance and other forms of support.</p>		
<p><b>§30.124. Will the Bureau apply for funds that are available to help schools that fail to meet AYP?</b></p> <p>Yes, to the extent that Congress appropriates other funds to assist schools not meeting AYP, the Bureau will apply to the Department of Education for these funds.</p>		
<p><b>§30.125. What happens if a State refuses to allow a school access to the State assessment?</b></p> <p>(a) The Department will work directly with State officials to assist schools in obtaining access to the State's assessment. This can include direct communication with the Governor of the State. A Bureau-funded school may, if necessary, pay a State for access to its assessment tools and scoring services.</p>		

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<p>(b) If a State does not provide access to the State's assessment, the Bureau-funded school must submit a waiver for an alternative definition of AYP.</p>		
SUBPART D – RESPONSIBILITIES AND ACCOUNTABILITY	SUBPART C – RESPONSIBILITIES AND ACCOUNTABILITY	
<p><b>§30.126. What is required for the Bureau to meet its reporting responsibilities?</b> The Bureau has the following reporting responsibilities to the Department of Education, appropriate Committees of Congress, and the public.</p> <p>(a) In order to provide information about annual progress, the Bureau must obtain from all Bureau-funded schools the results of assessments administered for all tested students, special education students, students with limited English proficiency, and disseminate such results in an annual report.</p> <p>(b) The Bureau must identify each school that did not meet AYP in accordance with the school's AYP definition. (c) Within its annual report to Congress, the Secretary shall include all of the reporting requirements of 20 U.S.C. 6316(g)(5).</p>	<p><b>§30.126. What is required for the Bureau to meet its reporting responsibilities?</b> The Bureau<sup>54</sup> and individual Bureau-funded schools are required to prepare and disseminate widely to the public an Annual Report Card for the BIE-funded school system as a whole that is consistent with the requirements of section 1111(h) of the Act.<sup>55</sup> The BIE's annual report card shall be made available on the internet along with all Bureau-funded school report cards, and the annual report to the Secretary.<sup>56</sup></p>	
<p><b>§30.150. Information collection.</b> Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)(PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This part involves collections of information subject to the PRA in § 30.104(a)(1), 30.104(b),</p>	<p><b>§ 30.150 Information collection.</b> Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)(PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.</p>	

30.106, 30.107, 30.110, and 30.118. These collections have been approved by OMB under control number 1076-0163.		
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## ENDNOTES

<sup>1</sup> This definition is from 20 U.S.C. §6311(c)(2).

<sup>2</sup> 20 U.S.C. §7824(c)(1). “For the purposes of part A of title I [20 U.S.C. §6311 *et seq.*], the Secretary of [the] Interior, in consultation with the Secretary, if the Secretary of the Interior requests the consultation, using a negotiated rulemaking process to develop regulations for implementation no later than the 2017-2018 academic year, shall define the standards, assessments, and accountability system consistent with section 1111 [20 U.S.C. §6311], for the schools funded by the [BIE] on a national, regional, or tribal basis, as appropriate, taking into account the unique circumstances and needs of such schools and the students served by such schools.”

<sup>3</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>4</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).”

<sup>5</sup> 20 U.S.C. §7824(c)(1). “For the purposes of part A of title I [20 U.S.C. §6311 *et seq.*], the Secretary of [the] Interior, in consultation with the Secretary, if the Secretary of the Interior requests the consultation, using a negotiated rulemaking process to develop regulations for implementation no later than the 2017-2018 academic year, shall define the standards, assessments, and accountability system consistent with section 1111 [20 U.S.C. §6311], for the schools funded by the [BIE] on a national, regional, or tribal basis, as appropriate, taking into account the unique circumstances and needs of such schools and the students served by such schools.”

<sup>6</sup> BIE is not included within the definition of “State” or “State educational agency” under ESEA. See 20 U.S.C. §7801(30)(E), (48). On the other hand, the definition of “local education agency” provides that the term includes BIE-funded schools “except that [such schools] shall not be subject to the jurisdiction of any State educational agency other than the [BIE].” 20 U.S.C. §7801(30)(C) (emphasis added). As such it is unclear whether BIE is required to have a State Plan. However BIE/DOI functions as a State for purposes of ESEA. Under a 2012 agreement with the Department of Education (ED) pursuant to 20 U.S.C. §7824(a), ED considered BIE’s responsibilities to be “comparable” to those of a State Education Agency (SEA) and that BIE “assumes the responsibility of an SEA.” The agreement also acknowledged that BIE would have and follow a State plan. Whereas BIE must have regulations that are “consistent” with the requirements of section 1111, and section 1111 requires States to have State plans, it is not inconsistent with section 1111 for BIE to have a similar plan. As reflected in the 2012 agreement, if BIE intends to have a State plan, it is not absolutely necessary for such a plan to be described in this regulation, however if it is not described in regulation it may not be binding on grant and contract schools.

<sup>7</sup> 20 U.S.C. 6311(a)(6)(A)(i)-(ii). “(6) Duration of the plan. (A) In general. Each State plan shall – (i) remain in effect for the duration of the State’s participation under this part [Section 1111 *et seq.*; 20 U.S.C. §§6311 *et seq.*]; and (ii) be periodically reviewed and revised as necessary by the State educational agency to reflect changes in the State’s strategies and programs under this part [Section 1111 *et seq.*; 20 U.S.C. §§6311 *et seq.*].”

<sup>8</sup> See, e.g., 20 U.S.C. §6311(a)(1)(A)(State plans are “developed by the State educational agency with timely and meaningful consultation with...”); Department of the Interior Tribal Consultation Policy.

<sup>9</sup> 20 U.S.C. §6311(j). “Voluntary partnerships. A State retains the right to enter into a voluntary partnership with another State to develop and implement the challenging State academic standards and assessments required under this section...” Even if we are unsure as to whether BIE has or will have the resources to develop and implement such standards and assessments, it would be a good idea to codify the ability to enter into such partnerships in case it becomes necessary in the future.

<sup>10</sup> The requirements for challenging State academic standards are located at 20 U.S.C. §6311(b)(1)(A)-(G). “(A) In general. Each State, in the plan it files under subsection (a), shall provide an assurance that the State has adopted challenging academic content standards and aligned academic achievement standards (referred to in [20 U.S.C. §§6311 et seq.] as “challenging State academic standards”), which achievement standards shall include not less than 3 levels of achievement, that will be used by the State, its local educational agencies, and its schools to carry out this part. (B) Same standards. Except as provided in subparagraph (E), the standards required by subparagraph (A) shall - (i) apply to all public schools and public school students in the State; and (ii) with respect to academic achievement standards, include the same knowledge, skills, and levels of achievement expected of all public school students in the State... (F) English language proficiency standards. Each State plan shall demonstrate that the State has adopted English language proficiency standards that - (i) are derived from the 4 recognized domains of speaking, listening, reading, and writing; (ii) address the different proficiency levels of English learners; and (iii) are aligned with the challenging State academic standards.”

<sup>11</sup> Are there any other academic standards that might be useful or appropriate? 20 U.S.C. §6311(b)(1)(C). “Subjects. The State shall have such academic standards for mathematics, reading or language arts, and science, and may have such standards for any other subject determined by the State”.

<sup>12</sup> Should such alternate standards be adopted? 20 U.S.C. §6311(b)(1)(E). “Alternate academic achievement standards for students with the most significant cognitive disabilities. (i) In general. The State may, through a documented and validated standards-setting process, adopt alternate academic achievement standards for students with the most significant cognitive disabilities, provided those standards- (I) are aligned with the challenging State academic content standards under subparagraph (A); (II) promote access to the general education curriculum, consistent with [IDEA]; (III) reflect professional judgment as to the highest possible standards achievable by such students; (IV) are designated in the individualized education program developed under section 614(d)(3) of [IDEA] for each such student as the academic achievement standards that will be used for the student; and (V) are aligned to ensure that a student who meets the alternate academic achievement standards is on track to pursue postsecondary education or employment, consistent with the purposes of [29 U.S.C. §§701 et seq.]. (ii) Prohibition on any other alternate or modified academic achievement standards. A State shall not develop, or implement for use under [ESEA title I], any alternate academic achievement standards for children with disabilities that are not alternate academic achievement standards that meet the requirements of clause (i).”

<sup>13</sup> We will need to figure out what this means for the BIE. 20 U.S.C. §6311(b)(1)(D). “Alignment. (i) In general. Each State shall demonstrate that the challenging State academic standards are aligned with entrance requirements for credit-bearing coursework in the system of public higher education in the State and relevant State career and technical education standards. (ii) Rule of construction. Nothing in [ESEA, as amended] shall be construed to authorize public institutions of higher education to determine the specific challenging State academic standards required under this paragraph.”

<sup>14</sup> The requirements for high-quality student academic assessments are located at 20 U.S.C. §6311(b)(2). The statutory requirements seem particularly specific, which should limit the number of decisions that the Secretary has to make concerning how to define assessments and implement the definition. Should assessments in other subjects be chosen? 20 U.S.C. §6311(b)(2)(A). “In general. Each State plan shall demonstrate that the State educational agency, in consultation with local educational agencies, has implemented a set of high-quality student academic assessments in mathematics, reading or language arts, and science. The State retains the right to implement such assessments in any other subject chosen by the State.” See also 20 U.S.C. §7824(c)(1).

<sup>15</sup> 20 U.S.C. §6311(b)(2)(B)(v). Assessments shall “in the case of mathematics and reading or language arts, be administered- (aa) in each of grades 3 through 8; and (bb) at least once in grades 9 through 12.” Assessments shall “in the case of science, be administered not less than one time during- (aa) grades 3 through 5; (bb) grades 6 through 9; and (cc) grades 10 through 12.” Assessments shall “in the case of any other subject chosen by the State, be administered at the discretion of the State.”

<sup>16</sup> 20 U.S.C. §6311(b)(2)(B)(viii). Assessments shall “at the State’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.”

<sup>17</sup> 20 U.S.C. §6311(b)(2)(B)(i)(I)-(II). “Requirements. The assessments under subparagraph (A) shall- (i) except as provided in subparagraph (D) [students with the most significant cognitive disabilities], be- (I) the same academic assessments used to measure the achievement of all public elementary school and secondary school students in the State; and (II) administered to all public elementary school and secondary school students in the State.”

<sup>18</sup> 20 U.S.C. §6311(b)(2)(B)(ii)-(iv). Assessments shall “(ii) be aligned with the challenging State 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; (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; (iv) be of adequate technical quality for each purpose required under this [ESEA] and consistent with the requirements of this section, the evidence of which shall be made public, including on the website of the State educational agency.”

<sup>19</sup> 20 U.S.C. §6311(b)(2)(B)(vi). Assessments shall “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.”

<sup>20</sup> 20 U.S.C. §6311(b)(2)(B)(x). Assessments shall “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.”

<sup>21</sup> 20 U.S.C. §6311(b)(2)(B)(xi)(I)-(V) (omitting subsection (VI) concerning migrant status. Assessments shall “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.”

<sup>22</sup> 20 U.S.C. §6311(b)(2)(B)(xii). Assessments shall “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.”

<sup>23</sup> 20 U.S.C. §6311(b)(2)(B)(xiii). Assessments shall “be developed, to the extent practicable, using the principles of universal design for learning.”

<sup>24</sup> 20 U.S.C. §6311(b)(2)(D). “A State may 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...”

<sup>25</sup> 20 U.S.C. §6311(b)(2)(F)(i). “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.”

<sup>26</sup> 20 U.S.C. §6311(b)(2)(F)(ii). “The State shall make every effort to develop such assessments and may request assistance from the Secretary if linguistically accessible academic assessment measures are needed. Upon request, the Secretary 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.”

<sup>27</sup> 20 U.S.C. §6311(b)(2)(G)(i). “Each State plan shall demonstrate that local educational agencies in the State will provide for an annual assessment of English proficiency of all English learners in the schools served by the State educational agency.”

<sup>28</sup> 20 U.S.C. §6311(b)(2)(G)(ii). “The assessments described in clause (i) shall be aligned with the State's English language proficiency standards described in paragraph (1)(F).”

<sup>29</sup> 20 U.S.C. §6311(b)(2)(J)(i). “Subject to clause (ii), a State 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 —“

<sup>30</sup> 20 U.S.C. §6311(b)(2)(J)(i)(I). “(I) subparagraph (B)(i) shall not be interpreted to require that all students taking the computer adaptive assessment be administered the same assessment items;”

<sup>31</sup> 20 U.S.C. §6311(b)(2)(J)(i)(II)(aa)-(bb). “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 accountability system under subsection (c).”

<sup>32</sup> 20 U.S.C. §6311(b)(2)(J)(ii). “In developing and administering computer adaptive assessments-- (I) as the assessments allowed under subparagraph (D), a State 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 growth towards such proficiency, in order to measure the student's acquisition of English."

<sup>33</sup> 20 U.S.C. §6311(b)(2)(L). "Subject to Federal or State requirements related to assessments, evaluations, and accommodations, each State 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."

<sup>34</sup> The requirements for statewide accountability systems and school support and improvement activities are located at 20 U.S.C. §6311(c)-(d). Statewide accountability systems must comply with both subsections (c) (statewide accountability system) and (d) (school support and improvement activities). See 20 U.S.C. §6311(c)(1).

<sup>35</sup> 20 U.S.C. 6311(c)(4)(C)-(D). "(C) Annual meaningful differentiation. Establish a system of meaningfully differentiating, on an annual basis, all public schools in the State, which shall- (i) be based on all indicators in the State's accountability system under subparagraph (B), for all students and for each of subgroup of students, consistent with the requirements of such subparagraph; (ii) with respect to the indicators described in clauses (i) through (iv) of subparagraph (B) afford- (I) substantial weight to each such indicator; and (II) in the aggregate, much greater weight than is afforded to the indicator or indicators utilized by the State and described in subparagraph (B)(v), in the aggregate; and (iii) include differentiation of any such school in which any subgroup of students is consistently underperforming, as determined by the State, based on all indicators under subparagraph (B) and the system established under this subparagraph. (D) Identification of schools. Based on the system of meaningful differentiation described in subparagraph (C), establish a State-determined methodology to identify- (i) beginning with school year 2017-2018, and at least once every three school years thereafter, one statewide category of schools for comprehensive support and improvement, as described in subsection (d)(1), which shall include- (I) not less than the lowest-performing 5 percent of all schools receiving funds under [ESEA] in the State; (II) all public high schools in the State failing to graduate one third or more of their students; and (III) public schools in the State described under subsection (d)(3)(A)(i)(II); and (ii) at the discretion of the State, additional statewide categories of schools."

<sup>36</sup> 20 U.S.C. §(c)(4)(A)(i)(I). "(A) Establishment of long-term goals. Establish ambitious State-designed long-term goals, which shall include measurements of interim progress toward meeting such goals- (i) for all students and separately for each subgroup of students in the State- (I) for, at a minimum, improved- (aa) academic achievement, as measured by proficiency on the annual assessments required under subsection (b)(2)(B)(v)(I); and (bb) high school graduation rates, including- (AA) the four-year adjusted cohort graduation rate; and (BB) at the State's discretion, the extended-year adjusted cohort graduation rate, except that the State shall set a more rigorous long-term goal for such graduation rate, as compared to the long-term goal set for the four-year adjusted cohort graduation rate."

<sup>37</sup> 20 U.S.C. §(c)(4)(A)(i)(II). "(II) for which the term set by the State for such goals is the same multi-year length of time for all students and for each subgroup of students in the State."

<sup>38</sup> 20 U.S.C. §(c)(4)(A)(i)(III). "(III) that, for subgroups of students who are behind on the measures described in items (aa) and (bb) of subclause (I), take into account the improvement necessary on such measures to make significant progress in closing statewide proficiency and graduation rate gaps."

<sup>39</sup> 20 U.S.C. §(c)(4)(A)(ii). "(ii) for English learners, for increases in the percentage of such students making progress in achieving English language proficiency, as defined by the State and measured by the assessments described in subsection (b)(2)(G), within a State-determined timeline."

<sup>40</sup> 20 U.S.C. §(c)(4)(B). "(B) Indicators. Except for the indicator described in clause (iv), annually measure, for all students and separately for each subgroup of students, the following indicators."

<sup>41</sup> 20 U.S.C. §(c)(4)(B)(i)(I)-(II). "(i) For all public schools in the State, based on the long-term goals established under subparagraph (A), academic achievement- (I) as measured by proficiency on the annual assessments required under subsection (b)(2)(B)(v)(I); and (II) at the State's discretion, for each public high school in the State, student growth, as measured by such annual assessments."

<sup>42</sup> 20 U.S.C. §(c)(4)(B)(ii)(I)-(II). "(ii) For public elementary schools and secondary schools that are not high schools in the State- (I) a measure of student growth, if determined appropriate by the State; or (II) another valid and reliable statewide academic indicator that allows for meaningful differentiation in school performance."

<sup>43</sup> 20 U.S.C. §(c)(4)(B)(iii)(I)-(II). "(iii) For public high schools in the State, and based on State-designed long term goals established under subparagraph (A)- (I) the four-year adjusted cohort graduation rate; and (II) at the State's discretion, the extended-year adjusted cohort graduation rate."

<sup>44</sup> 20 U.S.C. §(c)(4)(B)(iv)(I)-(II). "(iv) For public schools in the State, progress in achieving English language proficiency, as defined by the State and measured by the assessments described in subsection (b)(2)(G), within a State-determined timeline for all English learners- (I) in each of the grades 3 through 8; and (II) in the grade for which such English learners are otherwise assessed under subsection (b)(2)(B)(v)(I) during the grade 9 through grade 12 period, with such progress being measured against the results of the assessments described in subsection (b)(2)(G) taken in the previous grade."



<sup>45</sup> 20 U.S.C. §(c)(4)(B)(v)(I)-(VIII). “(v) (I) For all public schools in the State, not less than one indicator of school quality or student success that- (aa) allows for meaningful differentiation in school performance; (bb) is valid, reliable, comparable, and statewide (with the same indicator or indicators used for each grade span, as such term is determined by the State); and (cc) may include one or more of the measures described in subclause (II). (II) For purposes of subclause (I), the State may include measures of- (III) student engagement; (IV) educator engagement; (V) student access to and completion of advanced coursework; (VI) postsecondary readiness; (VII) school climate and safety; and (VIII) any other indicator the State chooses that meets the requirements of this clause.”

<sup>46</sup> 20 U.S.C. §6311(c)(4)(E)(i). “(E) Annual measurement of achievement. (i) Annually measure the achievement of not less than 95 percent of all students, and 95 percent of all students in each subgroup of students, who are enrolled in public schools on the assessments described under subsection (b)(2)(v)(I).”

<sup>47</sup> 20 U.S.C. §6311(c)(4)(E)(ii). “(ii) For the purpose of measuring, calculating, and reporting on the indicator described in subparagraph (B)(i), include in the denominator the greater of- (I) 95 percent of all such students, or 95 percent of all such students in the subgroup, as the case may be; or (II) the number of students participating in the assessments. (iii) Provide a clear and understandable explanation of how the State will factor the requirement of clause (i) of this subparagraph into the statewide accountability system.”

<sup>48</sup> 20 U.S.C. §6311(c)(4)(F)(i)(I)-(II). “(F) Partial attendance. (i) In the case of a student who has not attended the same school within a local educational agency for at least half of a school year, the performance of such student on the indicators described in clauses (i), (ii), (iv), and (v) of subparagraph (B)- (I) may not be used in the system of meaningful differentiation of all public schools as described in subparagraph (C) for such school year; and (II) shall be used for the purpose of reporting on the State and local educational agency report cards under subsection (h) for such school year.”

<sup>49</sup> 20 U.S.C. §6311(c)(4)(F)(ii)(I)-(II). “(ii) In the case of a high school student who has not attended the same school within a local educational agency for at least half of a school year and has exited high school without a regular high school diploma and without transferring to another high school that grants a regular high school diploma during such school year, the local educational agency shall, in order to calculate the graduation rate pursuant to subparagraph (B)(iii), assign such student to the high school- (I) at which such student was enrolled for the greatest proportion of school days while enrolled in grades 9 through 12; or (II) in which the student was most recently enrolled.”

<sup>50</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>51</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.

<sup>52</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).”

<sup>53</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>54</sup> 20 U.S.C. §6311(h)(1)(a). “(h) Reports. (1) Annual State report card. (A) In general. A State that receives assistance under [ESEA] shall prepare and disseminate widely to the public an annual State report card for the State as a whole that meets the requirements of this paragraph.”

<sup>55</sup> 20 U.S.C. §6311(h)(2)(a). “(2) Annual local educational agency report cards. (A) Preparation and dissemination. A local educational agency that receives assistance under [ESEA] shall prepare and disseminate an annual local educational agency report card that includes information on such agency as a whole and each school served by the agency.”





<sup>56</sup> 20 U.S.C. §6311(h)(1)(B). “(B) Implementation. The State report card required under this paragraph shall be- (i) concise; (ii) presented in an understandable and uniform format that is developed in consultation with parents and, to the extent practicable, in a language that parents can understand; and (iii) widely accessible to the public, which shall include making available on a single webpage of the State educational agency's website, the State report card, all local educational agency report cards for each local educational agency in the State required under paragraph (2), and the annual report to the Secretary under paragraph (5).”