

FINAL (PROPOSED) REPORT

STANDARDS, ASSESSMENTS, AND ACCOUNTABILITY SYSTEM NEGOTIATED RULEMAKING COMMITTEE

Submitted to:

DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN EDUCATION
MARCH 1X, 2019

- 1
- 2 Note: Text highlighted in yellow requires Committee discussion
- 3 and decision making at the March meeting.

Table of Contents

5		
6	I. INTRODUCTION AND CONTEXT	2
7	Overview	2
8	Alignment of Regulations to Mission and Strategic Direction	3
9	Report Organization.....	3
10	II. COMMITTEE BACKGROUND.....	4
11	Authority	4
12	Scope and Objectives	4
13	Formation and Operation	4
14	<i>Committee Membership</i>	5
15	<i>Consensus Decision Making</i>	5
16	<i>Timeframe for Deliberations</i>	5
17	Decision Making Principles	6
18	<i>Approach to Negotiations</i>	6
19	<i>Principles</i>	6
20	III. RECOMMENDATIONS RELATED TO DRAFT REGULATIONS	6
21	Key Broad Elements	6
22	<i>Overarching Policy Statement</i>	6
23	<i>Creating a Unified System</i>	7
24	<i>BIE Standards, Assessments and Accountability Plan (SAAP)</i>	7
25	<i>Ongoing Stakeholder Engagement and Periodic Review</i>	7
26	Challenging Academic Standards	8
27	<i>Tribal Civics as a Challenging Academic Standard</i>	9
28	<i>Students with Significant Cognitive Disabilities</i>	9
29	<i>English Language Proficiency</i>	9
30	<i>Immersion Schools Placeholder</i>	9
31	Academic Assessments	9
32	<i>Tribal Civics Assessments</i>	10
33	<i>Native Language Learners Placeholder</i>	10

34	Accountability	10
35	<i>Use of Extended Year Adjusted Cohort Graduation Rate</i>	10
36	<i>Incorporation of Science in the Accountability System</i>	10
37	<i>Incorporation of Tribal Civics in the Accountability System</i>	10
38	Waivers	11
39	Considerations and Concerns	11
40	IV. RECOMMENDATIONS RELEVANT TO THE SECRETARY’S DEFINITIONS OF AND/OR DEVELOPMENT	
41	OF BIE STANDARDS, ASSESSMENTS AND ACCOUNTABILITY PLAN	11
42	Overarching Approach	11
43	<i>Evaluation of Existing CFR Parts for Alignment</i>	11
44	<i>Impact of Uniform System on Accreditation and Educator Qualifications</i>	12
45	<i>SAAP Periodic Review in Consultation with Stakeholders</i>	12
46	Academic Standards.....	12
47	<i>Other Core Academic Courses</i>	12
48	<i>Elective Courses</i>	12
49	Academic Assessments	12
50	Accountability	13
51	<i>N- Size</i>	13
52	<i>Academic Indicators</i>	13
53	<i>Student Success Quality Indicators</i>	13
54	Waivers	13
55	Considerations and Concerns	13
56	V. RECOMMENDATIONS AND OTHER INFORMATION APART FROM THE COMMITTEE’S CHARGE	14
57	Considerations and Concerns	14
58	Recommendations	14
59	<i>Negotiated Rule Making Committee for other 25 CFR Parts Related to Bureau Funded Schools</i>	14
60	<i>Development of Teacher Education Programs</i>	15
61	<i>Harmonize the Regulations, SAAP and BIE Strategic Direction Document</i>	15
62	APPENDIX A – COMMITTEE MEMBERSHIP	16
63	APPENDIX B – BIE N-SIZE ANALYSIS CHART (CREATED DECEMBER 2018)	17
64	APPENDIX C – PUBLIC COMMENTS RECEIVED THROUGH MARCH 14, 2019	18
65	APPENDIX D - CONSENSUS PROPOSED REGULATIONS	23

I. INTRODUCTION AND CONTEXT

Overview

In 2005, Bureau of Indian Affairs (BIA) promulgated regulations at 25 CFR Part 30 that require BIE-funded schools to use the standards, assessments and accountability system of the State in which a BIE-funded school is located. There are BIE-funded schools in 23 different States; and each State has its own accountability system. As a result, each State system produced student achievement data that cannot be directly compared with data from other States. This created problems for the BIE in identifying under-performing schools and in directing resources effectively.

The 2015 Every Student Succeeds Act (ESSA) reauthorizes and amends the 1965 Elementary and Secondary Education Act (ESEA). ESSA Section 8007 amends ESEA Section 8204, and directs the Secretary of the Interior, in consultation with the Secretary of Education, if so requested, to use a negotiated rulemaking process to develop regulations for implementation of the Secretary of the Interior's obligation to define the standards, assessments, and an accountability system that will be utilized at BIE-funded schools.

The regulations, along with any necessary revisions to 25 CFR part 30 generally, will replace the existing 25 CFR part 30 and will define the standards, assessments, and an accountability system consistent with ESEA, for BIE-funded schools on a national, regional, or Tribal basis. The regulations will be developed in a manner that considers the unique circumstances and needs of such schools and the students served by such schools. These definitions will be implemented in the 2019-2020 school year.

ESEA Section 8204 also provides that if a Tribal governing body or school board of a BIE-funded school determines the requirements established by the Secretary of the Interior are inappropriate, they may waive, in part or in whole, such requirements. Where such requirements are waived, the Tribal governing body or school board shall submit to the Secretary of the Interior a proposal for alternative standards, assessments, and an accountability system, if applicable, consistent with ESEA Section 1111. The proposal must take into account the unique circumstances and needs of the school or schools and the students served. The proposal will be approved by the Secretary of the Interior and the Secretary of Education, unless the Secretary of Education determines that the proposed standards, assessments, and accountability system do not meet the requirements of ESEA Section 1111. Additionally, a Tribal governing body or school board of a BIE-funded school seeking a waiver may request, and the Secretary of the Interior and the Secretary of Education will provide, technical assistance.

To fulfill the requirements for negotiated rulemaking, BIE convened a negotiated rulemaking Committee comprised of stakeholders representing students, parents, teachers, administrators and other stakeholders of BIE-funded schools. This Committee met four times to learn about the requirements of Section 1111 of ESEA as amended and to negotiate proposed regulations. The

Committee **reached/did not reach** consensus on a set of proposed regulations which are highlighted in this report (Section III). The proposed regulations can be read in their entirety in **Appendix D**.

Alignment of Regulations to Mission and Strategic Direction

In 2018 the Bureau of Indian Education published its Strategic Direction, including a revised mission statement, “to provide students at BIE-funded schools with a culturally relevant, high-quality education that prepares students with the knowledge, skills, and behaviors needed to flourish in the opportunities of tomorrow, become healthy and successful individuals, and lead their communities and sovereign nations to a thriving future that preserves their unique cultural identities.” The Negotiated Rulemaking Committee notes the importance of aligning the Bureau of Indian Education’s Standards, Assessments and Accountability work to its mission and Strategic Direction. Significantly relevant to the Committee’s work are the following strategic goals:

Goal 3: K -12 Instruction and high academic standards. All students will develop the knowledge, skills, and behaviors necessary to progress successfully through school and be prepared for postsecondary education and/or career opportunities.

Goal 4: Postsecondary and Career Readiness. All students will graduate high school ready to think globally and succeed in postsecondary study and careers.

Goal 5: Self–Determination. All students will develop the knowledge, skills, and behaviors needed to lead their sovereign nations to a thriving future through self-determination.

Goal 6: Performance Management. All students will benefit from an education system that is effective, efficient, transparent, and accountable.

Report Organization

During Committee negotiations, discussions specific to the 25 CFR, Part 30 regulations brought about concerns and recommendations for other related 25 CFR parts previously amended in 2005 after the No Child Left Behind Act was enacted. While not the specific charge of this Committee, members agreed to the importance of documenting all its concerns and recommendations. Thus this report is organized first by the Committee background, highlights of consensus language for the proposed regulations, followed by its concerns and recommendations for the Secretary’s definitions and development of the Standards, Assessments and Accountability Plan (SAAP) and ending with concerns and recommendations apart from, yet related to, the Committee’s charge.

II. COMMITTEE BACKGROUND

Authority

The Bureau of Indian Education Standards, Assessments and Accountability Negotiated Rulemaking Committee (hereafter Committee) was established under the Elementary and Secondary Education Act of 1965, as amended (ESEA)¹ and the Negotiated Rulemaking Act of 1996². The Committee is regulated by the Federal Advisory Committee Act (FACA)³.

Scope and Objectives

The Secretary of the Interior chartered the Committee to provide advice through the Bureau of Indian Education (BIE) and the Assistant Secretary-Indian Affairs on the development of regulations to fulfill the Secretary's responsibility to define standards, assessments, and accountability system consistent with ESEA Section 1111⁴, as amended, for schools funded by BIE on a national, regional, or Tribal basis, as appropriate, taking into account the unique circumstances and needs of such schools and the students served by such schools and the process for requesting a waiver for these definitions. The recommendations will focus on the regulations found at 25 C.F.R. Part 30, Adequate Yearly Progress. The Committee acted solely in an advisory capacity. The final regulations will describe how to execute the Secretary's responsibility to define the standards, assessments, and an accountability system consistent with ESEA Section 1111, for schools funded by the BIE. Additionally, the Committee provided recommendations that encourage the exercise of the authority of Tribes to adopt their own standards, assessments, and an accountability system and also to provide recommendations on how BIE could best provide technical assistance under ESEA Section 8204(c)(3).

Formation and Operation

On November 9, 2015, BIE published in the Federal Register, a notice of intent⁵ requesting nominations for a negotiated rulemaking Committee to recommend revisions to the existing regulations for BIE's accountability system. The Every Student Succeeds Act (ESSA), Pub. L. 114–95 then became law, requiring an update to the subject, scope, and issues that the Committee would address.

On April 14, 2016, BIE announced its intent to expand the scope of the Committee and reopened the comment and nomination period⁶, requesting comments and nominations by May 31, 2016.

¹ 20 U.S.C. §6301 *et seq.*

² 5 U.S.C. §561 *et seq.*

³ 5 U.S.C. Appendix 2

⁴ 20 U.S.C. §6311

⁵ 80 FR 69161

⁶ 81 FR 22039

The request for nominations was extended on August 17, 2016⁷ and on January 18, 2017 a notice of proposed membership, request for nomination, and a request for comments was published in the Federal Register⁸.

Taking into consideration the interests of the new Administration in participating in this process, the Department decided that a new negotiated rulemaking process, as required by the ESEA, should begin and a new request for nominations was published in fall of 2017⁹. On April 17, 2018 a Notice of Proposed Membership and Call for Nominations¹⁰ was published and the final Notice of Establishment of the appointed Committee members was published in the Federal Register on August 2, 2018.¹¹ The Charter was signed by the Secretary of the Interior on July 26, 2018. The Committee met in September, October, December 2018 and March 2019. Each meeting was open to the public and the public had the opportunity to provide comment at each meeting as well as between meetings via email. **See Appendix C. Public Comment** for a list of the comments provided.

Committee Membership

Members of the Committee included representatives from BIE-funded schools such as administrators, teachers, parents, school board representatives. Tribal representatives appointed to the Committee were nominated by one or more Tribal governments. Federal members of the Committee included two representatives from BIE. A full list of Committee members and alternates can be found in **Appendix A. Committee Membership**.

BIE undertook this effort with the assistance of the Office of Regulatory Affairs and Collaborative Action in Indian Affairs and the Office of Collaborative Action and Dispute Resolution in the Office of the Secretary which provided impartial collaboration, consensus building facilitation support to the Committee.

Consensus Decision Making

The Committee operated by consensus, which is defined in the Negotiated Rulemaking Act¹², as unanimous concurrence of the primary Members, or in the absence of the primary, his or her alternate. Reaching consensus required all group members to educate each other about their important needs, interests, and concerns, and develop an integrative solution or agreement that addresses and satisfies both individual and group interests to the greatest extent possible. A consensus decision is an outcome that *all group members can support*. However, at a minimum, a consensus agreement may be a compromise that *all group members can accept*, “live with” and will not oppose.

Timeframe for Deliberations

⁷ 81 FR 54768

⁸ 82 FR 5473

⁹ 82 FR 43199

¹⁰ 83 FR 16806

¹¹ 83 FR 37822

¹² 5 USC 562 (2)

The BIE needed to have in place regulations for the 2019 school year. In order for BIE to meet this deadline the Committee negotiations were compressed into four meetings in a five month period of time. The Committee's meeting schedule and deliberations were delayed due to the lapse in Federal appropriations between December 22, 2018 to January 25, 2019. To expedite its work, the Committee organized several subcommittees tasked with developing proposals for the full Committee's consideration and decision making.

Approach to Negotiations

To facilitate the Committee's deliberation of draft regulations, the BIE provided a draft framework of regulations providing existing language from 25 CFR Part 30 adjacent to proposed draft rule language based on Section 1111 of ESEA. The Committee and subcommittees used the draft language in what was referred to as the 'side-by-side document' as a starting point for deliberations. In addition to the draft regulations, the Committee identified several topics that are important for the Secretary to consider in developing the BIE's Standards, Assessments, and Accountability Plan (SAAP). These recommendations are presented in Section V of this report.

Principles

At its first meeting the Committee reached consensus to adopt the following principles to use as decision making during negotiations. These principles are listed in the side-bar.

III. RECOMMENDATIONS RELATED TO DRAFT REGULATIONS

This section describes key aspects of the proposed regulations and their importance to the Committee.

Key Broad Elements

Overarching Policy Statement

It was the consensus of the Committee that the regulations include a strong statement that reaffirms the importance of tribal sovereignty and the unique relationship between Tribes and the Federal government. The statement is as follows:

"Recognizing the special rights of Indian Tribes and Alaska Native entities and the unique government-to-government relationship of Indian Tribes and Alaska Native villages with the Federal Government as affirmed by the United States Constitution, U.S. Supreme Court decisions, treaties, Federal statutes, and Executive Orders, and as set out in the Congressional declaration in sections 2 and 3 of the Indian Self-Determination and Education Assistance Act (Pub.L. 93-638; 88 Stat. 2203; 25 U.S.C. 450 and 450a), it is the responsibility and goal of the Federal government to provide comprehensive education programs and services for Indians and Alaska Natives. As acknowledged in section 5 of the Indian Child Welfare Act of 1978 (Pub. L. 95-608;

Decision Making Principles

- Educational Sovereignty
- Student Centered: Meet the unique needs of our students. How will this benefit our students? How will this hinder a student?
- Positive outcomes for ALL stakeholders (students, community, parents, school staff)
- Fairness/ Compassion
- Honor Indigenous thought
- Prayer/Meditation/Faith
- Challenge our assumptions, be open-minded
- Look for opportunity
- Logic not feelings should guide big decisions. Feelings can change most logic can't.
- Tenacity/relentlessness
- Universal: balance regulations with unique situations and needs of local control
- Unity, trust, truth, respect, make a strong commitment to honesty and integrity with each other

92 Stat. 3069; 25 U.S.C. 1901), in the Federal Government's protection and preservation of Indian Tribes and Alaska Native villages and their resources, there is no resource more vital to such Tribes and villages than their young people and the Federal Government has a direct interest, as trustee, in protecting Indian and Alaska Native children, including their education. The mission of the Bureau of Indian Affairs, Office of Indian Education Programs, is to provide quality education opportunities from early childhood through life in accordance with the Tribes' needs for cultural and economic well-being in keeping with the wide diversity of Indian Tribes and Alaska Native villages as distinct cultural and governmental entities. The Bureau shall manifest consideration of the whole person, taking into account the spiritual, mental, physical and cultural aspects of the person within family and Tribal or Alaska Native village contexts." 25 CFR 32.3

Creating a Unified System

The BIE currently uses a 23-part accountability system created during Negotiated Rulemaking for No Child Left Behind (NCLB) in 2003. This current system has proven itself ineffective due to its complexity, resulting in a lack of comparative data across the BIE and preventing school classifications for the purpose of support and school improvement funding. Furthermore, a multipart accountability system has prevented the BIE from making timely accountability determinations. The Committee came to consensus that the BIE create a single, unified system for academic standards, assessments, and accountability system aligned to ESEA as amended. This means the Secretary will be responsible for identifying a set of standards, assessments, and an accountability system that all BIE-funded schools will adhere to unless they participate in the waiver process.

BIE Standards, Assessments and Accountability Plan (SAAP)

Since the BIE is not considered a State, it is not required by statute to complete a State Plan as described in Section 1111. The Committee was in consensus that the Bureau of Indian Education develops such a plan in accordance with Section 1111 of ESEA and be named the Standards Assessment and Accountability Plan (SAAP). The SAAP will encompass the same elements as the State Plan described in Section 1111 [20 U.S.C. 6311] State Plans.

Ongoing Stakeholder Engagement and Periodic Review

Several Committee members voiced concerns regarding the lack of stakeholder input, meaningful tribal consultation, and transparency in creation and implementation of BIE plans and programs, and in its communications with the Department of Education. As a result of these discussions, the Committee reached consensus on the following language to be included in Section 30.103 of the proposed regulations:

(a) The Secretary, through the Director, must define the standards, assessments, and accountability system for use at BIE schools in accordance with this Part.

(b) The Secretary, or his/her designee will provide Indian tribes, parents and other stakeholders with quality, transparent information about how the Act will be implemented for BIE schools. Information, at a minimum, to include the standards, assessments and accountability system consistent with Section 1111.

The Director will implement a Standards Assessments and Accountability Plan that will provide Indian tribes, parents, and other stakeholders with quality, transparent information about how the Act will be implemented at BIE Schools.

The Secretary will ensure meaningful, ongoing consultation with a diverse group of stakeholders inclusive of parents, educators (such as administrators and educators from BIE operated schools and tribally controlled grant schools), tribal governments, students and community members. Such consultations will ensure input is considered in the creation, implementation, review and revision of standards, assessments, and accountability system. These stakeholder consultations will include transparent reporting, recording and responding to input obtained therein.

(c) The Secretary shall engage in active consultation with tribes and other potentially affected stakeholders when defining or revising definitions of standards, assessments, and accountability system.

This theme was reiterated in the accountability section of the proposed regulations (30.106) where the Committee, by consensus, agreed to the following language excerpted here:

“Develop and implement a single, Bureau-wide accountability system in consultation with tribes and stakeholders (such as parents, educators etc.) that:

- ...Will be reviewed in consultation with tribes and stakeholders for continuous improvements as necessary, but not less often than every four years beginning on the date the plan is implemented”.*

The purpose of the stakeholder engagement in the accountability system is to identify successes as well as unintended consequences of a new, one part system and how it impacts the various types of schools, staff, students, families and tribal communities implemented therein to determine if necessary amendments to the accountability system is needed and to solicit recommendations for such amendments.

Challenging Academic Standards

It is the consensus of the Committee that the Secretary defines a single set of academic standards for Bureau-funded schools taking into account the unique circumstances and needs of such schools and the students served by such schools by:

- Adopting challenging academic content standards and
- Aligned academic achievement standards consistent with section 11119B)(1) of the Act.

Academic achievement standards shall include the same types of knowledge, skills, and levels of achievement expected of all students at Bureau-funded schools. With cultural relevance as a guiding principle in the standards development process, challenging, academic standards will be developed for the following subjects:

- Mathematics

- Reading or Language Arts
- Science, and
- Tribal Civics

Such standards must be aligned to entrance requirements for credit-bearing coursework in higher education and relevant career and technical education standards except tribal civics. These standards shall apply to all Bureau-funded schools and students at those schools, unless the standards have been waived by a tribal governing body or school board and an alternative proposal has been approved.

Tribal Civics as a Challenging Academic Standard

The importance of tribal sovereignty and student lack of knowledge on topics related to sovereignty was discussed at length by the Committee. A Tribal Civics standard, aligns with BIE's Strategic Direction, Strategy 5.4 *"When the BIE, in partnership with Tribes, supports education needed to increase students' knowledge of Tribal sovereignty, then students will have supports needed to help them become contributing members of Tribal communities and all students will develop the knowledge, skills, and behaviors needed to lead their sovereign nations to a thriving future through self-determination."*

It was the consensus of the Committee that BIE implement Tribal Civics as challenging, academic standard. It is recommended that these standards be created and implemented for grades K-12 and are inclusive of elements such as: tribal sovereignty, self-determination, treaty law, land and water rights, laws based on tribal customs and beliefs, tribal and state relations local tribal government processes, contemporary issues such as gaming, rights around taxation, and sacred lands as well as historical events and policies that have impacted native peoples from a Native American perspective, including ideas on colonization, termination, Manifest Destiny, etc. Standards around tribal civics are not meant to be cultural in nature, but rather focus on those ideas, laws, and treaties that distinguish tribes as sovereign nations.

The Tribal Civics course would be required for grades K-12. The BIE will develop the standards for the Tribal Civics course once the regulations have been approved.

Students with Significant Cognitive Disabilities

The Secretary must adopt alternate academic achievement standards for students with the most significant cognitive disabilities.

English Language Proficiency

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 academic standards.

Immersion Schools Placeholder

Placeholder for immersion school exemptions if appropriate.

Academic Assessments

Comment [SP1]: Based on the Jan 7 webinar there are not ELP exemptions for immersion school students. Recommend keeping the placeholder because there may be other recommendations the Committee wants to make in either the regulations and reflect here or the SAAP recommendations in IV.

Placeholder for assessment subcommittee input.

- i. “Retain in the academic assessments regulations placeholders for sections of text that are currently proposed for deletion, sections such as 2E State Authority, 2I Deferral, and 3 Exception for Recently Arrived English Learners, just in case those items become *relevant to BIE in the future*.”

Tribal Civics Assessments

Understanding the complex and monumental task of creating a unified Standards, Assessments and Accountability System consensus for Tribal Civics assessments and assessment schedules will be phased in and implemented at the conclusion of the adoption of the subject area standards.

Native Language Learners Placeholder

Placeholder for possible recommendations regarding Native language learners.

Accountability

Use of Extended Year Adjusted Cohort Graduation Rate

The Committee recognizes the unique needs of and barriers to success experienced by Indian students, often resulting in a delay in academic achievement and/or graduation. To improve accuracy of statistical data representing student success and graduation rates, the Secretary will use the extended year adjusted cohort graduation rate in addition to the four-year adjusted cohort graduation rate.

Incorporation of Science in the Accountability System

The Committee recognizes the importance of science education and achievement in an increasingly STEM (Science, Technology, Engineering, Math) focused world. It also recognizes current barriers to science achievement across BIE funded schools. It is the consensus of the Committee that science be included in the accountability system. The purpose for incorporating science into the accountability system is to focus attention, resources and supports to schools in order to improve science academic achievement across Indian country. The Secretary’s discretion will determine the specifics as to how science is incorporated into the accountability system and plan.

Incorporation of Tribal Civics in the Accountability System

The Committee reached consensus as to the importance of Tribal Civics and its incorporation in the accountability system and SAAP. Understanding that the establishment of appropriate standards and assessments will require additional time for implementation, it is the Committee’s recommendation that Tribal Civics be phased in as a part of the accountability system. Following the establishment of standards for Tribal Civics courses it is recommended to be incorporated as a School Quality Success Indicator. Review of its incorporation will continue to be revisited as implementation occurs with the possibility of Tribal Civics becoming an Academic Achievement Indicator.

417

418 **Waivers**

419 **§30.108. How does a tribal governing body or school board waive the Secretary's**
420 **definitions?**

421 If a tribal governing body or school board determines the Secretary's definition of standards,
422 assessments, or accountability system to be inappropriate, it may waive these definitions in part
423 or in whole. (b) The tribal governing body or school board must notify the Secretary and the
424 Secretary of Education of the decision to waive a definition. (c) Within 60 days of the decision
425 to waive a definition the tribal governing body or school board must submit to the Secretary a
426 proposal for alternative definitions that are consistent with section 1111 of the Act and that take
427 into account the unique circumstances and needs of such school or schools and the students
428 served. (d) A tribal governing body or school board may request an extension of the 60 day
429 deadline for the provision of technical assistance. (e) The Secretary will work with the Secretary
430 of Education to develop and make available templates for alternative proposals.

431 **Placeholder for timeline for review of proposed alternative definitions.**

432

433 **Considerations and Concerns**

434 There was an interest among some representatives on the Committee to include language in the
435 regulations that encouraged tribal governing bodies or school boards to engage local
436 communities and stakeholders who would be impacted by a waiver and alternative proposed
437 definition. However other members of the Committee felt this was a matter to be left up to each
438 tribal government. Consequently there was not consensus to include the concept of community
439 engagement in the regulations pertaining to waivers.

440

441

442 **IV. RECOMMENDATIONS RELEVANT TO THE SECRETARY'S**
443 **DEFINITIONS OF AND/OR DEVELOPMENT OF BIE STANDARDS,**
444 **ASSESSMENTS AND ACCOUNTABILITY PLAN**
445

446 **Overarching Approach**

447

448 **Evaluation of Existing CFR Parts for Alignment** **NEEDS CMT DECISION MAKING**

449 Proposed changes to regulations of CFR 25 Part 30, may impact other regulations outlined in the
450 25 CFR. An evaluation of other existing 25 CFR parts to determine alignment with this
451 proposed regulation and action to address any dissonance is **recommended by the Committee.**
452 Specifically recommended is the evaluation of Part 36 (Minimum Academic Standards for the

453 Basic Education of Indian Children and National Criteria for Dormitory Situations) for alignment
454 to proposed regulations and inclusion of Tribal Civics and Part 38 (Educator Personnel).

455 **Impact of Uniform System on Accreditation and Educator Qualifications NEEDS CMT**
456 **DECISION MAKING**

457 Under current regulations and policies Bureau funded schools adhere to the standards,
458 assessments and accountability of the state in which the school is located. Following, educators
459 in Bureau funded schools are required to be certified in the state in which the school is located.
460 **The Committee recommends** that an analysis be conducted to determine the impact of
461 implementing a uniform system on regional school accreditation and educator qualifications.

462 **SAAP Periodic Review in Consultation with Stakeholders NEEDS CMT DECISION**
463 **MAKING**

464 Meaningful, continuous consultation with stakeholders is **recommended** in the creation of the
465 Secretary's definitions of Standards, Assessments and Accountability and in creation of the
466 SAAP plan, prior to implementation.

Comment [SP2]: Note to group: There were no consensus recommendations about consultation explicitly on the SAAP. It was implicit in discussions. Does the Committee want to be explicit?

467

468 **Academic Standards**

469 In the current 23-part system BIE funded schools refer to the states in which they are located for
470 academic standards, assessments and accountability. If a unified system of standards,
471 assessments and accountability is implemented for BIE funded schools, then it would follow that
472 schools would look to the Bureau of Indian Education, rather than the states, unless specifically
473 expressed otherwise, to provide standards for all subject areas including, Language Arts,
474 Mathematics, Science, Tribal Civics, as well as, ELP standards and assessments.

475 **Other Core Academic Courses NEEDS CMT DECISION MAKING**

476 It was **recommended by the Committee** (need consensus or change wording) that minimally, in
477 addition to the adopted and assessed standards, the BIE develop and implement a unified set of
478 academic standards for social studies (all levels), and high school math and science courses.
479 This would ensure that all Bureau funded students are taught with the same academic standards
480 in all core, academic courses instead of 23 different standards for essential or required core
481 academic courses.

482 **Elective Courses NEEDS CMT DECISION MAKING**

483 Following, **it is recommended by several Committee members** that the BIE also adopt standards
484 for all other courses, including electives, thus fully unifying standards across schools, creating
485 equity in access for all students in BIE funded schools. These would also be inclusive of career
486 technical courses and programming.

487

488 **Academic Assessments**

489 **Placeholder for assessment subcommittee input.**

490

491

492 **Accountability**

493

494 **N- Size *NEEDS CMT DECISION MAKING***

495 In consideration of a probable N-size to be used for Bureau of Indian Education, Appendix B
496 was reviewed. Due to the vast majority of Bureau-funded schools having smaller student
497 populations *it is recommended* that a smaller N-size be utilized. The purpose of this is to gain
498 more accurate information in regards to student growth and achievement in addition to excluding
499 as few schools as possible from accountability of smaller subgroups while balancing the need to
500 maintain student privacy.

501 **Academic Indicators *NEEDS CMT DECISION MAKING***

502 It is recommended that significant weight be assigned to the academic growth indicators in the
503 accountability system and plan. Several members of the Committee advocate for a weighting of
504 50% be assigned to reflect the importance of meeting students where they are and growing them
505 to succeed. One Committee member advocates for special consideration or provision be given to
506 Off- Reservation Boarding schools to address their unique needs, lack of feeder program and low
507 student retention rates as schools of choice.

508 **Student Success Quality Indicators *NEEDS CMT DECISION MAKING***

509 Several recommendations were brought forth by Committee members in regard to Student
510 Success Quality Indicators. The following are recommended for consideration:

- 511 • participation in language immersion or language programs, and
512 • student engagement to include extra-curricular participation

513 Specifically recommended for high schools are:

- 514 • participation or completion of college level coursework,
515 • participation or completion of Advanced Placement,
516 • participation or completion of vocational certification programs, or
517 • other college readiness markers such as ACT/SAT achievement or growth.

518

519 **Waivers**

520 *Placeholder for timeline if not addressed through regulation.*

521

522 **Considerations and Concerns**

523 *Placeholder for topics related to the recommendations where consensus was not reached.*

524
525

526 **V. RECOMMENDATIONS AND OTHER INFORMATION APART FROM**
527 **THE COMMITTEE'S CHARGE**
528

529 **Considerations and Concerns** **NEEDS CMT DECISION MAKING**

530 The Committee was made aware of the timelines prescribed by the Department of Education that
531 the Standards, Assessment and Accountability System of the BIE must be in accordance with
532 ESEA Section 111 and implemented by the 2019-2020 school year. The majority of the
533 Committee has voiced concern about the short timeframe and its impact on quality deliberations.
534 The lapse in Federal appropriations from December 22, 2018 to January 25, 2019 resulted in
535 additional delays. Further, in light of the amount of time states have taken to develop
536 accountability systems, the Committee is highly concerned that the short time frame the BIE will
537 have to develop a unified system/plan will result in the implementation of an inadequate plan
538 thereby further negatively impacting student and organizational success.

539

540 **Recommendations**

541 ***Negotiated Rule Making Committee for other 25 CFR Parts Related to Bureau Funded***
542 ***Schools*** **NEEDS CMT DECISION MAKING**

543 As required by the No Child Left Behind Act of 2001 the Secretary of the Interior developed
544 proposed regulations using negotiated rulemaking in 2005 that addressed the following issues:

- 545 • defining adequate yearly progress,
546 • establishing separate geographic attendance areas for bureau funded schools,
547 • establishing guidelines to ensure Constitutional and civil rights of Indian students, and
548 • establishing a method for administering grants to tribally controlled schools.

549 These efforts resulted in a revision and re-designation of the following in 2005:

- 550 25 CFR Part 30 Adequate Yearly Progress
551 25 CFR Part 37 Geographic Boundaries
552 25 CFR Part 39 The Indian School Equalization Program
553 25 CFT Part 42 Student Rights
554 25 CFR Part 44 Grants Under the Tribally Controlled Schools Act
555 25 CFR Part 47 Uniform Direct Funding and Support for Bureau Operated
556 Schools

557

558 This Committee was tasked with making recommendations for proposed rules for 25 CFR Part
559 30 only. It is **the Committee's recommendation (need consensus)** that a negotiated rule making
560 Committee be established to review and make recommendations for proposed rules for the
561 remaining parts as listed above which reference the repealed No Child Left Behind Act of 2001.

562

563 ***Development of Teacher Education Programs***

564 Committee discussion in regards to the need to improve student academic achievement in STEM
565 (Science, Technology, Engineering and Math) areas also led to discussion of the current lack of
566 qualified, Native educators in related fields. It is the consensus recommendation of the
567 Committee that the Bureau focus resources to further development of teacher education
568 programs, most specifically in Math and Science to also include “Grow Your Own” Teacher
569 Initiative Programs.

570

571 ***Harmonize the Regulations, SAAP and BIE Strategic Direction Document*** **NEEDS CMT**
572 **DECISION MAKING**

573 The BIE's Strategic Direction emphasizes a "culturally relevant, high-quality education" with
574 goals and strategies centered on student needs. There is a focus on continuous improvement,
575 gathering stakeholder feedback, along with providing appropriate technical assistance to tribes in
576 meeting these goals. In order to achieve coherence, **it is recommended** that the development of
577 the SAAP and forthcoming regulations maintain harmony with this Strategic Direction, and that
578 revisions to the SAAP align with revisions to the Strategic Direction over time. Through
579 ongoing communication and support, the BIE upholds its responsibility to tribes and maintains a
580 unified process for truly improving the school system for all BIE students.

APPENDIX A – COMMITTEE MEMBERSHIP

Member	Nominated by	Geographic Location	Primary/Alternate
Lora Braucher	BIE Off-reservation Boarding Schools	OR	P
Lucinda Campbell	Diné Grant Schools Association	AZ and NM	A
Dr. Gloria Coats-Kitsopoulos	Oglala Sioux Tribe	SD	P
Charles Cuny Jr.	Little Wound School Board and Oglala Sioux Tribe	SD	P
Michael Dabrieo	Santa Clara Pueblo	NM	P
Ron Etheridge	Cherokee Nation of Oklahoma	OK	P
Jeffrey Hamley	BIE Division of Performance and Accountability	WDC	P
Leslie Harper	Leech Lake Band of Ojibwe	MN	P
Jimmy Hastings	BIE Education Program	AZ	A
Genevieve J. Jackson	Diné Bi Olta School Board Association, Inc.	AZ	P
Frank No Runner	Northern Arapaho Business Council	WY	A
Dr. Amy D. McFarland	Chief Leschi Schools	WA	P
Jennifer McLeod	Sault Ste. Marie Tribe of Chippewa	MI	P
Tasha Racawan	Navajo Nation	AZ	P
Patricia Sandoval	Pueblo of Laguna	NM	P
Dr. Rick St. Germaine	Mille Lacs Band of Ojibwe	MN	P
Sherry Tubby	Mississippi Band of Choctaw Indians	MS	P

Sue Bement, Designated Federal Officer, BIE - Primary

Regina Gilbert, Designated Federal Officer, RACA – Alternate

Brian Quint, attorney, legal advisor, DOI

APPENDIX B – BIE N-SIZE ANALYSIS CHART (CREATED DECEMBER 2018)

N-Size Impact for BIE School-Level Student Demographics (17-18)

Demographic	Total Students	Total Schools	N30	N20	N15	N10
American Indian	45,149	174	-	-	-	-
English Learner	7,296	174	41	30	26	19
Economically Disadvantaged	45,149	174	-	2	-	-
Students with Disabilities	6,191	174	98	59	42	24



5

BIE School-Level Student Demographics (17-18) Exclusion of Schools with N-Sizes of 10 and 20

- English Learners
 - N = 10 (excludes 19 schools)
 - N = 20 (excludes 30 schools)
- Economically Disadvantaged
 - N = 10 (excludes 0 schools)
 - N = 20 (excludes 2 schools)
- Students with Disabilities
 - N = 10 (excludes 24 schools)
 - N = 20 (excludes 59 schools)



6

APPENDIX C – PUBLIC COMMENTS RECEIVED THROUGH MARCH 14, 2019

Public Comments from Meeting #1, Billings MT, September 25-27, 2018

Verbal comments from Ahniwake Rose –

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

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

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

I will also suggest that as the next round of budgets that are coming out you strongly recommend in whatever way that you can as a Committee, that Interior not BIE, but Interior specifically, be appropriated funds to ensure that you can conduct this and conduct this appropriately. You should be able to go out and talk to NCAI. You should be able to go out and talk to Indian Country and let them know what you are doing. A 30-day notice in a Federal Register notice, as you all know, is not going to be acceptable to our leadership over what the next 10-years is going

627 to look like under this Bill. This is going to require all of you to go out to your communities and
628 having long standing conversations and that's what the states were allowed to do. The states
629 were allowed to go out and within ESSA they were required to speak in full consultations with
630 them and some of you actually participated with them in those consultations. There is no reason
631 why you as Committee members should not have the same opportunity to go out and speak to
632 your Tribal constituents and share that you have an opportunity to do that with your leadership
633 and your council.

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

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

Lindy Fry
Colville Conf. Tribes
Paschal Sherman Indian School

639

Public Comments from Meeting #2, Albuquerque, NM October 30-November 1, 2018

Comment from Dr. Bordeaux:

Just one small comment when your drafting the standards for reading, math and science, I would suggest you take a look at what is in a website: www.acts-tribal.org and under resources there is a set of standards from the creating scared places for children project that is just going from K-3 in reading but I have a whole booklet which is probably a foot long at least for almost all content areas. It includes content standards with resources and suggested ways of implementation. And we professed at the time we did that project with the Department of Education that it is culturally relevant. It will give you an opportunity to take a look at it.

Comment from Deborah Bordeaux:

I couldn't hear the full conversation around Native languages but I did hear Dr. Hamley talk about peer review and I don't know if it fits in what's going on with what's there but I just think that it's important to encourage and support Tribes in the development of their languages. And I know that this assessment is intended for math, reading, language arts, this type of stuff and science, but I hope that we can encourage the support for Native language, especially from an oral perspective. Our people are more oral communicators than they were of being written and so it's just not always there; to have that oral perspective and if it isn't written than we need to work together and develop so it's universal to our people so that we can have something like that. I felt discouraged after the conversations so I just would encourage that we try to stay focused on positive and move forward on something. One more thing, in the future get microphones so people can hear what's going on.

Public Comments Received via US Mail and/or Email



November 1, 2018

BIEComments@bia.gov

RE: BIE Indian Education Standards, Assessments, and Accountability System
Negotiated Rulemaking

Greetings:

The Pueblo of Laguna submits the following comments regarding the Negotiated Rulemaking currently in progress on BIE Indian Education Standards, Assessments, and Accountability Systems. First, I'd like to point out that for many tribes, the decision to become tribally controlled is not done in haste and occurs with discussion within the community. A decision to come out of the umbrella of the BIE was a difficult decision and was undertaken even though we were aware that the Pueblo would receive less financial support from BIE. However, the opportunity to exercise educational sovereignty within our schools took precedence.

With this in mind, the comments from the Pueblo of Laguna follow:

1. Allow the time necessary for the Committee to prepare the necessary regulations, particularly the time needed to prepare the regulations related to the flexibility options and waivers for tribes and tribal school boards.
2. Continue to recognize the rights of the tribes and tribal school boards to oversee and administer their own schools as P.L. 93-638 and 100-297 schools and ensure that the tribal sovereignty is recognized through the development of these regulations.
3. The BIE Strategic Plan was presented at both the NIEA and NCAI sessions. The BIE Plan should have resources that allow schools to implement these goals if the goals align with the improvement plans and strategic plans of the tribally controlled school and school board. However, at the same time, the BIE cannot mandate these goals.

PO BOX 194 • LAGUNA • NEW MEXICO • 87026
PH: 505.552.6654 • FX: 505.552.6941 • WWW.LAGUNAPUEBLO-NSN.GOV

Page 2

Our understanding is that the negotiated rulemaking sessions are only related to Standards, Assessment, Accountability, and Waivers. The last rulemaking session focused on the regulations that directly impact the schools. We are requesting that another rulemaking session be established to re-visit those regulations and that sufficient time be allowed for school leaders to provide input.

Thank you for the opportunity to provide comments. If you have any questions, please contact Natalie Martinez, Ph.D., Chair, Pueblo of Laguna Education Priority Team, via email at nataliecmzt@gmail.com.

Sincerely,

PUEBLO OF LAGUNA



Virgil A. Slow
Governor

cc: Wilfred Herrera, 1st Lt. Governor, Pueblo of Laguna
Natalie Martinez, Chair, Education Priority Team, Pueblo of Laguna
Patricia Sandoval, LDOE Superintendent
Jim Hooper, Chief Operations Officer, Pueblo of Laguna
Ethel J. Abeita, Government Affairs Director, Pueblo of Laguna

Draft for Discussion Purposes

669 **APPENDIX D - CONSENSUS PROPOSED REGULATIONS**

670

671 To be inserted upon conclusion of the March meeting.