Bureau of Indian Education
Standards, Assessments, and Accountability System
Negotiated Rulemaking Committee

March 12 – 14, 2019 – Phoenix, AZ
Meeting Summary

Executive Summary

The Standards, Assessments, and Accountability System Negotiated Rulemaking Committee held its fourth and final in-person negotiation session in Phoenix Arizona March 12-14, 2019. The meeting was opened and closed each day by Sue Bement, Designated Federal Officer (DFO) presided over the meeting. Committee member Rick St. Germaine opened the meeting with a prayer in his Native American language and Committee member Lucinda Campbell closed the meeting with a prayer.

The meeting objectives were to: negotiate the remaining sections of the draft regulations, specifically waivers, and seek consensus on the final package of draft regulations; negotiate the draft Committee report to accompany the draft regulations, and seek consensus on the final report; and provide BIE input into proposed locations for tribal consultation sessions and confirm member participation in consultation sessions.

During the meeting the Committee reached consensus on the following topics:

1. Meeting #3 summary with corrections;
2. Regulatory language in Section 30.100(d)
3. Regulatory language in Section 30.101 defining BIE funded schools
4. Regulatory language in Section 30.104(a) – (c), (f), (g)
5. Regulatory language in Section 30.107 made for consistency with other sections
6. Regulatory language in Section 30.108(a), (c), (e)-(g);
7. Regulatory language in Section 30.112(a)-(c);
8. Regulatory language in Section 30.113;
9. Regulatory language in Section 30.114(a)-(e);
10. Language in the Committee's final report, delegating the writing group to incorporate the Committee's revisions into the final report and proof the document for grammar and punctuation.

Topics where the Committee did not reach consensus in the proposed regulations are noted in the Committee's report and are briefly summarized in Section III of this document. On the final day of the meeting the Committee reviewed and reached consensus on the concepts reflected in its final report and authorized a subset of Committee members to work with the facilitator and DFO to finalize the report after the meeting. The Committee also provided BIE suggestions for where it might hold government-to-government consultation sessions once the regulation is published as a draft rule in the Federal Register.

On the final day of the meeting Mark Cruz, Deputy Assistant Secretary, joined the meeting and made remarks that are reflected in Section V. Public comment was provided each day of the meeting and is available in Section V of this summary.

Because the Committee completed its negotiations at meeting #4 this summary is provided by the facilitation staff as draft.

At the conclusion of the meeting Committee member Jennifer McLeod expressed her gratitude to everyone for their dedication and time put forth on this Committee, adding that it was an honor to work with everyone.

This document is organized into the following sections:

Section I. Review and Approve Meeting #3 Draft Summary

The Committee reviewed the meeting #3 draft summary. Committee member Michael Dabrieo pointed out to replace "WEDA" with "WIDA" where appropriate. The Committee approved the meeting #3 summary as revised by consensus. The corrected meeting #3 summary, marked as FINAL, was posted to the Committee's webpage (see: https://www.bie.edu/cs/groups/xbie/documents/text/idc2-092505.pdf).

Section II. Review of Draft Regulations

The Facilitator summarized the work done by the Committee through meeting #3 reflected in the document labeled December 2018 Consensus Document and Proposed Edits (see https://www.bie.edu/Resources/NRMC/index.htm). The content highlighted in yellow is language agreed upon by consensus of the Committee at meeting #3. For meeting #4, BIE provided proposed language in track changes at the request of the Committee for consideration.

The discussion and consensus agreements made by the Committee at meeting #4 regarding the draft regulations are presented below and highlighted in turquoise. Iterations of language as it was negotiated is not reflected in all cases. Committee discussion of each section at meeting # 4 is consolidated in the right-hand column. The content highlighted in yellow in the left-hand column is language agreed upon by consensus of the Committee at meeting #3.

Where there was no consensus on key sections (i.e., Assessments) it is noted. Details around the different interests are included in the Committee's report and relevant aspects of the discussion are reflected here.

Section	Discussion Points at Meeting #4
§30.100. What is the purpose of this Part?	
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: (a) Diminishes the Secretary's trust responsibility for Indian education or any statutory rights in law; (b) Affects in any way the sovereign rights of tribes; or (c) Terminates or changes the trust responsibility of the United States to Indian Tribes or individual Indians. (d) In carrying out activities under this Part the Secretary will be guided by the policies stated in 25 C.F.R. Part 32.	At meeting #3, the Committee felt language on in this section was lengthy and asked the BIE to propose language to shorten for the draft regulation. Brian Quint, Attorney Advisory, proposed to strike lines 11 – 28 [see Meeting #4 read ahead] and replace with new language referring back to 25 C.F.R. Part 32. The Committee came to a consensus and the Facilitator confirmed, to strike language and replace with: 30.100(d) In carrying out activities under this Part, the Secretary will be guided by the policies stated in 25 C.F.R. Part 32.
§30.101. What definitions apply to terms in this part?	
"Act" means the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds	Brian Quint, attorney advisor revised the term 'BIE-funded schools' as it includes Bureau-operated schools, tribally controlled schools, and

Act, Public Law 114-95, enacted December 10, 2015. "Bureau" means the Bureau of Indian Education. "BIE-funded school(s)" means a school funded by the Bureau of Indian Education and includes Bureau-operated schools, tribally-controlled P.L. 93-638 contract schools, or P.L. 100-297 grant schools. [No dissent 031319] "Bureau Operated school" means a school operated by the Bureau of Indian Education. "Department" means the Department of the Interior. "Director" means the Director of the Bureau of Indian Education. "Secretary" means the Secretary of the Interior or a designated representative. "Subgroup of students" means a) economically disadvantaged students; b) students from major racial and ethnic groups; c) children with disabilities; and d) English learners. "Standards, Assessments, and Accountability Plan" means a document that will provide Indian tribes, parents, and other stakeholders with quality, transparent information about how standards, assessments, and accountability system will be implemented at BIE Schools. "Tribally controlled school" means a school operated under a P.L. 93-638 contract or P.L. 100-297 grant. "Tribal governing body or school board" means, with respect to waiver and submission of alternative plans of the Secretary's definitions of standards, assessments, and accountability system at P.L. 100-297 grant or P.L. 93-638 contract schools, the entity authorized under applicable Tribal or Federal law to waive the Secretary's definitions and negotiate an alternative plan with the Secretary.	grant schools. The Committee revised the proposed language based on the following discussion: • It's important to refer back to that indicator of an 'authorized' or a 'governing' school board to a Bureau-operated school board does not have authority to waive. • Put the word 'authorized' in front of school board. • This language 'tribal governing body or school board' is essential to ESEA language and was all through NCLB and all through our regulations. I would exercise caution and stick to the language of ESEA as amended. • The word 'authorized' really isn't the clarifier, it would have to be 'governing'. The difference is between a governing board and a non-governing board, because some boards do not have the authority to govern, there advisory. *In Section 8204 it refers to tribal governing bodies or school boards.* • I'm wondering if 'governing' might imply the schools have some sort sovereign authority with the tribally controlled schools act and the self-determination act to contract these. I'm not comfortable with 'governing'. • I request to see the legal definition of all of these terms in order to understand what fits best for them, the intent of this. *The proposal is to avoid conflicts with other legal definitions.* • Is there any way then to insert a statement, especially in waivers, because that is what this definition is about? Basically a Bureau-operated school do not have this authority [to waive]. o Maybe it's under the waiver definition. We could state it here in definitions, or we could state it down in waivers, or both. I agree, we should clarify that. o Section 30.108 says how a tribal governing body or school board waives the Secretary's definitions as a heading. Propose adding to (a) the Bureau operated

	schools are not eligible for this waiver process. o I like the language in this were it references P.L.100-297 and P.L. 93-638, because that is where the legal authority of who is governing is in those. The Committee came to a consensus to replace the term to read: *BIE-funded school(s)* means a school funded by the Bureau of Indian Education and includes both Bureau-operated schools and tribally-controlled P.L. 93-638 contract schools or P.L. 100-297 grant schools Consensus to keep the definition of 'tribal governing body or school board' as is in the definitions. Consensus to replace 'proposal' with 'plan' Sections 101, 107-114
§30.102. What does the Act require of the Secretary?	No changes to consensus language reached at meeting #3.
§30.103. How will the Secretary implement the Standards Assessments and Accountability System?	No changes to consensus language reached at meeting #3.
§30.104. How will the Secretary define standards?	
(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: • adopting challenging academic content standards and • aligned academic achievement standards (standards) consistent with section 1111(b)(1) of the Act. That shall include at least three levels of achievement and are described collectively in the Act as "challenging State academic standards." (edits accepted 031219)	The BIE made multiple revisions to this section. The first is to paragraph (a) to add three levels of achievement as the BIE indicated it was important to include. The Committee had the following discussion and accepted the proposed language based on the following: • The achievement levels are in another section, not in the standards. The standards don't have levels within themselves. *This would be in the accountability section. The proposed language is from Section 1111(b)(a)(A) pg. 18 – challenging academic standards – "which achievement standards shall include not less than 3 levels of achievement".* The Committee came to a consensus for the paragraph to read: That shall include at least three levels of achievement and are described collectively in

	the act as "challenging State academic standards."
(b) The academic standards will apply to all Bureau-funded schools and the students served at such schools in the absence of approved alternative requirements, and will include: (edits accepted 031219) • mathematics • reading or language arts • science, and • Tribal civics Phase in tribal civics assessment and accountability system starting as a school quality indicator and revisit as implemented. Assessments and assessment schedule will be developed for Tribal Civics at the conclusion of the processes described in Section 30.103. • And may have such standards for any other subject determined by the Secretary. Such standards, except Tribal civics, must be aligned to entrance requirements for credit-bearing coursework in higher education and relevant career and technical education standards. 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 plan approved. (edits accepted 031219)	As currently written, subpart (b), didn't seem that the standards apply to all the schools. The Committee had the following discussion and accepted the proposed language based on the following: • How is this regulation? Isn't this just restating the statute? *The point of the regulation is to fill in the missing piece that Congress left for the Secretary of the Interior to announce how it will define the standards, assessments and accountability system for Bureau-funded schools. There is some leeway to implement the requirements. In previous meeting the Committee wanted to follow closely follow what the states are doing.* The Committee came to a consensus and the Facilitator confirmed the paragraph to read: (b) The academic standards will apply to all Bureau funded schools and the students served at such schools in the absence of approved alternative requirements and will include: … The third revision to exempt Tribal civics as it is unclear if there are entrance requirements for credit-bearing coursework. As such, the proposed language excludes Tribal civics from this requirement. The Committee came to a consensus on the paragraph to read: Such standards, except Tribal civics, must be aligned to entrance requirements for credit-bearing coursework in higher education and relevant career and technical education standards. 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 approved.
(c) Academic achievement standards for students with the most significant cognitive disabilities [no dissent 31219] Academic achievement standards shall include the same types of knowledge, skills, and levels of achievement expected of all students at Bureau-funded schools.	The fourth revision is to subpart (c) to include regulatory language for students with the most significate cognitive disabilities, to reflect the full title of Section 1111(b)(1)(E). The Committee came to a consensus on the first paragraph to read: (c) Academic achievement standards for students with the most significant cognitive disabilities.

The Secretary must, 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 BIE academic content standards under subparagraph (A); (II) promote access to the general education curriculum, consistent with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.); (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 the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(3)) 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 Public Law 93–112, as in effect on July 22, 2014. [no dissent 31219]	The fifth revision the BIE proposes to strike consensus language from a previous meeting and replace with proposed language from the statue but was omitted from the Committee's draft regulation. The Department of Education does not create standards that are applied. The proposed language is describing how the Secretary will adopt and define the standards, assessments and accountability system for the BIE. The Committee discussion: • In the Committee's report, section four provides recommendations apart from the Committee's charge. There is a portion about the development of teacher education programs specifically about training teachers to focus on areas of STEM, suggest that topic would go under this section of the report. This is a strong recommendation from the Committee as I don't think it would go into the regulations. • Where in this document will we be addressing training for teachers who work with special needs children? States identify teachers who receive training and funding will be available to them. I want to make sure we get every available training for the BIE that is provided as the states. *In current law, IDEA address training and funding.* o We need to ensure that not only we're giving teacher training and ensure that is properly supported so our folks know how to give the assessments. Also how to identify special needs children and how to give accommodations for all of our students with disabilities. For students who are English learners and also recognizing the Bureau's specific commitment to Native Language immersion and Native Language support. *BIE will review 25 CFR 39 to see if these matters are addressed.* o I worked with Special Ed for six years and done part of the application to apply for professional development funds to make sure teachers are trained. They've never denied funding for training. Staff need to

	be well versed with the alternate assessment ahead of time to be prepared to administer it one-on-one. o It can certainly go into the report as a recommendation. I also think it should be in the regulation to ensure that it is done. But not only for Special Ed but for English learners and for Native Languages. o These are really important pieces regarding the civil rights of students, students with cognitive disabilities, rights of parents and communities that were discussed extensively in a previous rulemaking session with Department of Education. Where those pieces make sense bring them into these regulations. • Could we add broader language in 30.103 to address appropriate training and professional development? o *This proposal was subsequently withdrawn:* ▪ I would like to withdraw the proposal to add any language to that section. I was trying to address the concern by not just the committee, but by constituents regarding professional development and the roll out. My thought was that that would ensure that some of those concerns would be addressed by doing so. The problem is the unintended consequences - that every piece therein would have to be provided by the BIE which would create a lot of unnecessary work. Also, including it in the regulations prevents any type of variation from what is strictly required by the States to better serve the needs of our students. In the perfect world if we had more time to go through what every single requirement was and we want to ensure is there would be great, we just don't have that. And for that reason I'm going to withdraw the proposal.

	• We also need to discuss our English learners and our Native Language learners. We have these learners within our Bureau tribal schools to consider and consider their unique needs. The Committee came to a consensus striking previous language and replace with: The Secretary must, through a documented and validated standards-setting process, adopt alternate academic achievement standards for students with the most significant cognitive disabilities, provide those standards: (I) Are aligned with the challenging BIE academic content standards under subparagraph (A); (II) Promote access to the general education curriculum, consistent with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et.seq.); (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 the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(3)) for each such student as the academic achievement standards that will be sued for the student; and (V) Are aligned to ensure that a student who meets the alternative academic achievement standards is on track to pursue postsecondary education or employment, consistent with the purpose of Public Law 93-112, as in effect on July 22, 2014.
(f) English language proficiency standards 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 BIE's challenging academic standards.	The sixth revision is to insert a subsection header as referenced in Section 1111(b)(1)(F). The Committee discussion: • Understanding that this is a system that were trying to build and it's the prerogative of the BIE to provide high quality language instruction, provide for an opportunity for immersion with dual language schools, this is going to be an issue. How can you develop language around that and not punish those schools that are trying to do something that is

	very specific to the unique needs and circumstances of our kids? • There needs to be language around the accountability system regarding having less than 95% test. Because if less than that do not test than that counts negatively against the school. • This would be something that the tribes should waive. Then they can determine if they want to develop standards for the language that is being taught if that's what they want to do. There may be some challenges with those languages that are in a written form but that still is tribal sovereignty education. Tribes should be able to say they will not teach English in our class. Until there is a tribally recognized way to have written assessments some of those things are done in English, but the tribe should be free to teach what is culturally relevant and unique to their tribe. o I thought we were talking about English Language proficiency standards. BIE is already required elsewhere in Part 49 to have English proficiency standards and applied services. I don't want to punt this to a waiver but I think this is something that would have to be worked out between a tribe, the BIE and the Department of Education to see if a proposal is viable. The Committee came to a consensus on the subsection header to read: (f) English language proficiency standards.
(g) Native American Language Tribal governing bodies or school boards may create their own Native American language academic standards and Native American language academic assessments. The Secretary shall not have the authority to mandate, direct, control, coerce, or exercise any direction or supervision over such standards or assessments or require the submission of such standards and assessments to the Secretary for review or approval. The Bureau will provide	The seventh and last revision, the BIE inserted a placeholder to include proposed language around the unique standards / assessments in immersion schools. The Committee had a webinar in January 2019 with the Department of Education with respect to immersion schools. The Committee discussed the following: • The Bureau has a special priority to support Native American language immersion education, especially to serve our unique cultural and linguistic needs of our students. There are some tribes who have made their Native American language the official

Technical Assistance to the Tribe if requested. [consensus 031319]	language of their tribe. We already described topic standards in the previous section 30.104, math, reading, language arts, science and tribal civics. And a lot of those would be the same standards but when you start looking at Native American Language arts, it's going to look different than English language arts. Our literacy and oracy skill are so different from English. That's going to affect the rate of English Language assessments taken in different grades throughout the years. That will affect the creation of assessments that will necessitate the creation of assessments in the Native American language of the tribe where the tribe says this is their priority, an educational priority. *There are no Bureau-operated immersion schools at this point. Native Languages exists in 25 USC 2901, which discusses official policy to preserve, protect and promote the rights of freedom the Native Americas use practice and develop Native American languages or the use and support of Native American languages.* • The Bureau does have steams of Native American language immersion operating within larger English language medium schools. The Lac Courte Oreilles Ojibwa School in Wisconsin, operates in elementary through middle school level Native American language immersion program as a choice track within the larger English medium school. The Bug-O-Nay-Ge-Shig School in Leech Lake in Minnesota has an elementary level Native American Language immersion track that operations within the larger English medium school. There are schools on the Navajo Nation that are operating in early elementary in Native American language medium education. These programs have had barriers put up in front of them in form of regulations and in statues that have discouraged them from operating in their Native American language. This regulation is a chance to support them and to support what the Bureau has said the priorities are. The appropriations have directed the Bureau to set as priority and this can help

	us in a lot of our Native Nations to become more engage with education and to provide better outcomes for our students and our communities. • Although there are schools operating as immersion schools, those schools do not have the same opportunities to get instructions and materials needed that are provided for in English language. If they aren't in the regulations, how can they justify requesting assistance? We need to have something in there that's going to protect our immersion schools. Just because you don't see it in a novel form doesn't mean it doesn't qualify. I think it deserves the same level of honor, respect and credibility that is given to the English language. Children who are speaking their Native tongue should not be held accountable for English any more than if we were to go into an English school and hold them accountable to speak in a Native language. • I want to thank the committee for their thoughts. Because this is a big thing that's facing everyone in this room, including BIE. I'm hearing BIE indicate this should belong in the waivers section, is that right? My concern is, without a timeline schools and tribes will have to wait 10-years for approval and will be facing the loss of their Native American language that is irreversible. It's just another reason why the Department of Education and the BIE need to figure out and agree upon a timeline for waiver approval. What happens once this is passed because everyone is going to be immediately adopted into the BIE standards, assessment and accountability? What does that mean for immersion schools while they put together the waiver proposal? There's going to be a weird transition time for a lot of schools. • There is language [in assessments], 30.105(b)(xiv), in here already that addresses in whole or in part. We've discussed this

	previously and where we left it we would insert the language and have the vote. o We did indeed come to consensus on that language that you pointed out at 237-247 that addresses a lot of this. And this might not even be the section for it because each of those immersion schools that are doing Native Language, would have to describe them on their own. It's going to look different in each tribal community; we might have different literacy and reading systems which is very common. We can leave it as English language proficiency, but we do need to provide protections for those sites to understand they won't be translating all of the English standards over to a Native language because that is not appropriate. Does it come in the assessment section when we talk about the assessment schedule? Does it come in the accountability section? That is where we got hung up last time. • I want to point out a couple of things in section 30.104 Section (f) where it talks about English language proficiency standards, on the one hand we want our Native students to become proficient in the English language that's outlined in (f). It's important to define what is an ELL specifically among Native tribe because that is a very different thing, other ELL. There is a whole section on ESEA section 8101 where ELL are defined. Is that definition anywhere in the policy than it ought to be in here? Maybe (g) should be specific on Native language proficiency and would focus on the significant on immersion schools, the sovereign rights of tribes to teach Native language, revitalize the language, and that development of language proficiency in their own Native language is honored there. In section 1111 the Department of Education has recognized there are limitation for states to mandate, direct, control, coarse, or exercise any direction or supervision over any of the standards adopted and implemented by a state, and that would be something relevant for

	maybe tribes to include as a matter of sovereignty. The Federal government has limits defining what those standards are for each Native language. That allows every tribe to be distinct to develop their own standards and to be sovereign in the way they teach their language. • Regarding the question of how the Secretary will define the standards for English language proficiency. Our interests were to make sure our students are proficient in English and there is a strong need to empathize the Native language proficiency is also a priority. • I propose we copy the language from subpart (f), insert it as a subpart (g), change 'English language' to 'Native language' or 'tribal language' or whatever the Committee prefers. o Add: 'The Secretary must develop and 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 BIE's challenging academic standards.' Because we realize it will take time to occur. We looked at Hawaii as a model example and some of the things they do is to work directly with tribes to develop the standards / plans. Some have a permanent advisory committee. We need to add language that 'the Bureau would work with tribes to develop those proficiency standards.' We also recognized this is something that has to be phased in so it will need language to reflect that. 'Standards will be phased in and comply with 200.6(f) where states are required to include 'make every effort to develop annual assessments in languages other than English that are present to a significant extent in the participating student population.'' • We are also proposing that students in Native immersion schools are exempt from the

	requirements in 200.6 specifically 200.6(j) which essentially requires that Native American language schools actually assess in academic content areas in their own language. Given the fact that those assessments do not exist, every tribal language is different, it would take a very long time to develop those assessments. This particular policy is not reasonable and does not meet the needs of Native students. • We also spent some time talking about the historical context of how the Federal government has dealt with tribes and their languages. In adhering to this particular policy it would in some ways allow tribes to revitalize their own languages and maintain their identity of people and culture. As far as BIE's Strategic Direction Plan of revitalization of language and tribal sovereignty of students is a very critical part. We looked at some of those goals, there are a number of BIE goals that are aligned to Native languages. This regulation will support and recognize the BIE's strategy long-term commitment to this particular area. The proposed language: 'The Secretary must work with tribes to ~~must~~ develop and adopt ~~English~~ Native/tribal 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 Native/tribal learners; and (iii) are aligned with the BIE's challenging academic standards.' • I appreciate the work on this clause and the attention given to Native American languages and giving us something to start with. I'm concerned with the language proficiency standards that are derived from the four recognized domains of speaking, listening, reading, and writing. There are some Native American languages that don't have a literacy domain. Some of them are only speaking and

	listening. Some do not have a reading/writing domain. We need to reconsider that statement and try to talk about the other intent of where it is coming from. I understand we want parity with the previous clause regarding English language proficiency standards. I will always work to uphold our Native American languages in educational and other institutional settings within our communities. I'm concern about requiring these domains be created. It could have unintended negative consequences for some of our Tribal communities by working to revitalizing their Native languages. Facilitator checks: Are there any concerns with the revision to 'Working with tribes the Secretary must develop and adopt Native/tribal language proficiency standards'; any dissent? • I think for tribes this is a burden for them to develop proficiency standards in their Native language. There's no statutory requirement that this take place and it doesn't preclude tribes developing standards and assessments on their own. The Bureau has held meetings on Native language and we have people in the Bureau devoted to that. But to put it in the context of what we are doing here with these regulations for the standards assessments and accountability system does not fit. We could propose other language that would support the concept but that moves it outside of the accountability box. Another thing is the cost of doing this. Congress did not authorize funds for this purpose. That's something that the tribes need to take to Congress on a legislative front. • This is prescribing rights to develop standards, Native language content standards and assessments that the Secretary shall not be in control, direct or coerced direction or supervision of such standards. This is actually drawn from the language in section in 1111 of the Secretary of Education not directing certain standards requirement

	standards or assessments, and does not require submission of such standards or assessments to the Secretary. • [The original BIE proposal] is an affirmative statement that the Secretary supports the creation of Native language academic content not proficiency outside of the accountability box. • I understand there are administrative hurdles and appropriation hurdles to overcome in order to implement any of the regulations that are created and further approved. That is not the charge of this Committee. There are portions of the U.S. Education law that would support this happening. I know it's one thing where we can say, hey that's all on the tribe to do that and we can't force the BIE and Department of Education to do this. The Native American Language Act which is held over in the law, it supports using Native language as a medium of instruction, using Native language in any program public proceeding, and a program of instruction. Definitely include assessments, accountability plans, a program of instruction is made up of all of these parts we can't just pick and choose. This is where the U.S. Education regulation supports Native languages in curriculum and instruction and assessment and accountability plans. We can't afford to overlook that either. This still remains the policy of the United States to support, promote, protect, Native American languages in these areas. There's [Sec 104 of the Act] *(8) Encourage all institutions of elementary, secondary and higher education who are appropriate, to include Native American languages in the curriculum in the same manner as foreign languages and to grant proficiency in Native American languages the same full academic credit as proficiency in foreign languages*. There's the clause [Sec 104 of the Act] (7) *Support the granting of comparable proficiency achieved through course work in a Native American language*

	the same academic credit as comparable proficiency achieved through course work in a foreign language, with recognition of such Native American language proficiency by institutions of higher education as fulfilling foreign language entrance or degree requirements. [Sec 104 of the Act] (5*) Recognizing the right of Indian tribes and other Native American governing bodies to use Native American languages as a medium of instruction in all schools funded by the Secretary of the Interior*. [Sec 104 of the Act] (3) *Encourage and support the use of Native American languages as a medium of instruction in order to encourage support – (A) Native American language survival, (B) Educational opportunity, (C) Increased student success and performance, (D) Increase student awareness and knowledge of their culture and history and (E) Increased student and community pride*. [Sec 104 of the Act] (4) *Encourage state and local education programs to work with Native American parents, educators, Indian tribes, and other Native American governing bodies in the implementation of programs to put this policy into effect*. There are other clauses in the Native American Languages Act we can pull it up and put it on the screen. But I think it makes sense that if we are going to be talking about this Education regulation, we need to align all of the pieces of this that support our rights. I have some concerns with the domains that would be required and put into this. I don't think it should be completely off the table on the side of the Agency. The Native American Languages Act remains the policy of the United States, it remains the Congressional intent of those who formed the creation of this law and those who worked to get this law passed. It doesn't all just fall on the tribes to do it. We have room in here to align all of the rights and all of the purposes of the Native American Languages Act with what we're trying to implement here our unique tribal cultural educational settings.

	• Two proposed revisions: 1. Strike the last sentence~~… Students in Native language immersion schools are exempt from the requirements of 200.6(J)~~. 2. The four domains (speaking, listening, reading and writing) should be determined by the tribe. Edit – (1) Are derived from the four recognized domains of speaking, listening, reading, and writing [add] as appropriately determined by the Tribe. I support the idea of each tribe having flexibility to develop their own language standard so that needs to be in there. The BIE Strategic Direction Plan is committed to revitalizing language. As far as a policy that holds the BIE accountable and all were talking about is defining standards, were not talking about funding here. It just needs to be a priority. • It's important that we are having this conversation and putting Native America Languages on the same level as the English language. BIE is able to create standards, language proficiency standards, that don't align with a particular tribe. It's going to be difficult for a tribe to waive and present an alternative proposal. I'm wondering if some alternative language for this would be: '*working with tribes the Secretary must support tribes by technical assistance in development of language proficiency standards when requested*.' Something along those lines because different tribes are at different points and different tribes see their responsibility and their schools responsibility with language sometimes being two different places. • When it was originally written, the thought was to rise tribal languages to at least of par with English. The reasons why the domains were kept is because that is how they evaluate English. Within my tribe having us all agree on how to write our language is a challenge. But what it does, it compels the Secretary to work with tribes to develop those things and eventually adopt those things. It doesn't say in here that it must be done by a certain time. It

	just says that they have to work towards that in these areas. The concern was we didn't want to exclude that which we want to compel. Those things we need in reading and writing can be developed. Is that a costly process? It absolutely is. Again, that wasn't a concern. It will become a concern and this could get completely get tossed out because its too expensive. In this modern world that we live in we all know that paper is power and I certainly would like to have my tribe working towards having a way that a paper is produced in our language. I would like the Secretary's commitment to assisting tribes in doing that. If it takes 10-years, if it takes 100-years, there's not a timeline on here. I don't want our children to have less than they would get speaking any other language. • This is probably for the language assessment piece but also for the regular assessment. The term 'proficiency' is a big term. My main goal to be on this committee was to replace that language with 'growth'. Stats on the Bureau, 8% of Native American students attend BIE schools and 92% of other Native American enrolled in public schools have higher achievement scores than our kids in our schools. That is an important fact that we need to look at. We need to change that language from 'proficiency' to 'growth' to really help our kids. Going back to language, I grew up in a home with Native American speakers every day. In the morning they would be talking, I hear them and I come out of my bedroom and they quit talking the Native language. They didn't want me to speak my own language because it was beat out of them. It's a federal trust responsibility for the U.S. Government to help us, encourage us, to bring our language back. They need to help us implement because they are the ones who took it from us. • Congress explicitly made proficiency for English, language arts and math in the law. That unfortunately cannot be changed, its written in stone. However, on the

	accountability side they gave states the discretion to include growth and to weight it. Washington State has elevated growth to 50%. The Secretary will look at growth adding it and also weighting it. I think I heard schools say they want to get credit for the growth they are making. A lot of schools are making very high growth. That will be looked at in the accountability part. To the proposal about making languages another academic subject area, it's really not one subject area. We have 64 tribes and those tribes, those reservations have more than one language on them. BIE also has schools that have 90 or 100 or more different languages spoken. As a subject area it would have to be many language subject areas. It would be hard to make Native language a single subject area. If the request came from a tribe, we (BIE) know that some tribes are hands off the government of their language. They don't want the government anywhere near their language because language and culture are very intertwined. If the Committee makes Native language an academic subject your making it public in a way and you're making the culture public and some tribes want to keep this topic to themselves. The regulation can't say the government must work with tribes to develop Native language proficiency, it has to be at the discretion of the tribe to request the government to assist in this area. • We are stuck with speaking to proficiency in parts of the regulation, but we can also add in growth. When we're writing our definitions we can definitely find places in the definitions to put in 'growth' and recognize what an important indicator that is. • I do think we need that term growth in there. • I want to offer additional revisions. o In subsection (2) Address the various growth ~~different proficiency~~ levels of Native/Tribal learners. o In subsection (3) ~~Are aligned with the BIE's challenging academic standards~~ To

	be differentiated according to the needs of the tribe. I don't know if Native language standards need to be aligned to the academic standards of math, science, social studies, that's my suggestion. o Will the last sentence remain the same? "These standards will be phased in and tribes will be given time to comply with Section 200.6". o I would request we use the term 'Native American languages' when we're describing this. There is already a legal definition, Native American languages are used, there are other federal laws that use that term for which there are definitions that exists. I would like to maintain if we are going to start talking about Native American language proficiency, I would like to retain the word 'proficiency' because we use that term when talking about different levels of and abilities when we're describing student growth. We actually use levels of proficiency. We can put in 'or proficiency' 'or growth' depending on what the tribe is looking for. • I have concerns over 'proficiency' and am not opposing that, but it would depend on how the rest of this language would work. Representing my school and what we are trying to do right now, is a very real that a lot of Native American language development does not align with the Western ideas that were put into this law. Therefore, it's kind of its own thing, there's no domains, there's no creating a continuum is somewhat contentious. What should kids know at what time? I have a lot of concerns about putting this in the regulations when it affects all tribes. There are some tribes that can do this but there are many more that can't. My suggested language earlier was to shorten the language to: o 'must support tribes and provide technical assistance for the development of language standards upon request.' Putting it on the tribe to indicate if this is something they

	want to happen rather than being forced to participate in it in some way. • We want to change back to 'proficiency content' to make it consistent with the one above. Content standards was something we thought would be more acceptable, but it could be proficiency if that is what people want. That minor change. • I agree about the word 'proficiency'. There are students within our tribes who are not seeking proficiency in their Native language. That's sad to say but they do exist. The students that want to attain proficiency choose the BIE schools and they seek out the language. But if we are starting from emerging speakers the level of proficiency from someone who is just becoming a speaker in comparison to someone who grew up listening to it in the background those levels of proficiency are going to be different even if they are at the same grade level, the same age and academically at the same level. There's going to be a lock in if we use proficiency. I would prefer to see growth as well. • Propose we start the language with: 'Based on the needs of the tribe or according to the needs of the tribe' because someone is going to read this and the first thing they are going to say is the Federal Government cannot make me do this. We need make it very evident that it's the tribes decision and no one has mandated that they do anything. • The 'needs' are based on the decision of the tribe. o Can you add 'development and adoption'? o Add to the last line identifying 'The Secretary shall not have the authority to mandate, direct, control, coerce, or exercise any direction or supervision over such standards … ' to clearly defining that. • I think adding that section from the alternative proposals language is contradictory. On the one hand your saying you have to meet all

	these requirements but there is no enforcement mechanism. • I would also point out that if a tribe is going to use this as a waiver, they might potentially be in a situation where they would have to submit that for review. Facilitator offers choices: 1. You could strike what is in (i) through line 161 and leave 162 of the Secretary shall have no authority over … as one option. Or, 2. You could strike the lines 162 – 164 as another option. Is there a preference from the Committee? • I would like to strike the reference to 200.6(f) as that is incorrect. • I'm uncomfortable with the identification of proficiency. I get the earlier point about that last sentence as it's written. • I need some time to chew on this. I appreciate the intent to elevate Native American languages. There could be unintended consequences of including this strictly in this manner in the regulations if we have students with disabilities who can't meet these. All of a sudden we are bound to figure out how to assist students who are not physically or cognitively able to meet these domains. There's a lot to consider in here and definitely we do need a place somewhere in the regs to elevate our languages to the same level and I would like some more time to consider where that may go. • I'm just going to ask an obvious question. Do we need to do this? If we don't' need to address this because of all the concerns we are presenting and if the tribes have the option at any point they want to develop these things, then we should just let this stand and let it go away. If a tribe wants to create their own standards there's already provisions and things they can do and they can do it to the levels of how ever they want it done. My concern is compelling that assistance is there if tribes

	want to do that, that's my biggest concern. Beyond that, the rest of this stuff let's worry about if, when, we have a tribe that is actually going to do this. Maybe we should just leave it as is under tribal sovereignty and let them decide how they want to do this. • Why don't we just remove 'proficiency' and just make it standards and assessments. Then it would be an affirmative statement the government is supporting. • I would like to add somewhere in line 169 'is the policy of the Bureau of Indian Education to partner with or to assist / support' in doing this if they so determine. This doesn't put any responsibility on the Bureau to assist or provide support, or technical assistance or anything. I agree with that statement as long as we can get something in there that the Bureau can support. • The technical assistance on the development and implementation of Native language standards and assessments is actually a bigger project than what were here for. I really find it hard to commit the Bureau to even providing technical assistance on this. There are other avenues, there's ANA. It is incumbent on tribes and Congress to change the legislation to make more resources available. Putting a line in here to commit the Bureau is very problematic • Is it not a Bureau strategic goal to support language particularly immersion? o *It is in the BIE strategic plan, its unfunded goal.* • We understand the constraints of funding and the need to go to third party grants. For me it's easier to speak with my tribal leadership and say these regs call for this. We need to talk to our congressional delegation to get funding rather than 'here's this ambiguous plan that's hidden with no actual policy backing in how it will get funded'. This could help us help the Bureau at least give us something to stand on. There's a ton of in the New Mexico Indian Education Act that is tragically underfunded

	and has no teeth but it still gives us something that we can fall back on as were going through those items. • *On second thought, it is in the strategic plan and in the reorg they created tribal language positions. I think the Bureau can provide that technical assistance. I believe I misspoke earlier. I was thinking in the context of technical assistance on the standards, assessments and accountability, within that BIE group they are not equipped to do that. There is separately in the Bureau, sprinkled in the Bureau some positions on this. We can leave it in.* Facilitator read the revised language [which is BIE's proposed language] There was no dissent with the language as revised. 30.104(g) Tribal governing bodies or school boards may create their own Native American language academic standards and Native American language academic assessments. The Secretary shall not have the authority to mandate, direct, control, coerce or exercise any direction or supervision over such standards or assessments or require the submission of such standards and assessments to the Secretary for review or approval. The Bureau will provide technical assistance to the Tribe if requested.
§30.105. How will the Secretary define assessments?	**Although there was initial tentative consensus on subsections of 30.105, the Committee was unable to reach consensus on this section as a whole at meeting #4.** Summary of Committee negotiations regarding assessments in 30.105. Meeting #2 (October 2018), there was a proposal put forth by the assessment subcommittee to use section 1111 language on assessments for the regulations. At the same meeting there was consensus to universally replace the word 'State' with 'BIE' in the assessment part of the regulations. Meeting #3 (December 2018), there was consensus to put into the regulations language that said '*tribal civics assessment and assessments*

	schedule will be developed at the conclusion of the process as described in Section 30.103'. The exact location of this wording in the regulations was not determined. At the same meeting the assessment subcommittee formulated a list of questions memorialized in the document: "*BIE Reg-Neg Consensus and Remaining Questions Consolidated 120618"* that was provided as a read ahead to meeting #4. Some of these questions, for example the timeline for creating assessments, were addressed. However, the majority of the questions had not been addressed prior to meeting #4. The question was asked, what happens if there is not consensus? As described in the Committee's operating protocols if there is no consensus the task the Facilitator is to understand what the differing interests are, and document them in the report that accompanies the Committees' draft regulations. What that means is that the Bureau would be responsible for looking at the different interests and making a determination about how best to write the part(s) of the regulation where there is no consensus. When the BIE publishes the Federal Register notice with the proposed regulations they will note the areas of the proposed regulations where there was no consensus, the differing range of views and how the BIE are proposing to handle that part of regulation. The Committee had the following discussion regarding the consensus language regarding Tribal Civics in Section 105 that was developed at meeting #2 (December 2018): • I'm trying to refresh my memory on the tribal civics. Lines108-109 'starting as a school quality indicator and revisit as implemented', is there anything in this section that changes that? Does it remain a school quality indicator or is that going to become a standards issue? Does it make a difference? *There was a conversation of how to incorporate tribal civics into the BIE's accountability system. Remember there are 5 different kinds of indicators. Short of having your full assessment in place you might use a quality*

	indicator in terms of how many students are enrolled in Tribal civic classes, a system that would have a tiered approach for time to create a system. o We would start as a quality indicator in the accountability section and it's going to shift over eventually in the standards. *Standards are not in the indicator. You have achievement indicators, you have those language arts and math indicators. Then there is an 'other' indicator and when you were ready to use a metrics that measured student's achievement in tribal civics then you can think about moving that in the 'other' indicator. You were thinking of giving yourself flexibility in terms of being able to create a system recognizing that's going to take a little time before it gets fully flushed into an accountability system.* o The Secretary will phase that in? *Yes* o The way I viewed this is it's a school quality indicator and revisit as implemented. Right now it says 'revisit' but it doesn't say revisit and work towards being a piece of the accountability system. *Another option could be you put it in your report and specify the long-term approach.* • I'm going to argue as someone who sees our history and our forms of government and so much of who we are disappearing. I do want it held to a higher accountability. I would want both the standards and assessments established. There are some universal questions that can be asked and some are going to be specific to the tribes. I've had my entire teaching career seen as a 'special' and not as something that is vital. • Should we propose language at line 109 'Phase in tribal civics assessment and accountability system starting as a school quality indicator and moving it towards an 'other academic indicator.' *You have quite a bit of flexibility of how you design that accountability system which we haven't gotten to yet. How you think about the weight is what I think you're talking*

	about. The importance of a particular indicator and how you have some flexibility. You can call it a school quality indicator but it can have a particular weight that would signify its importance. Or you could have both, you could have something that talks about the academic indicator in terms of student metric that measures students' performance. And then you could also have a school quality indicator that specifically talked about access for students to tribal civics. • The content standards, assessments, and the accountability are things the tribes are going to have input into. We may decide that the way we're going to assess our children is to have them stand up in front of their communities and give their speech in their language. We are the ones who has to decide how we want our children to use our language and how we are going to decide they've got it. *A reminder to look at the PP presentation that WestEd provided at the Arlington meeting on academic indicators, weighting that was really informative*. • When I read that paragraph I thought we would revisit as it was implemented and that assessments and assessment schedule will be developed for the tribal civics at the conclusion of the processes. o That was a point of information because it does refer back to 'at the conclusion of the process as described in section 30.103.' 30.103 is these standards will be developed but also describes the consultation with stakeholders surrounding the standards that are developed. So not just developing the standards but it's the meaningful consultation and engaging the importance of that and feedback from the stakeholder groups. *If I may the language in here does say revisit. But it's not meant to be this Committee revisit, it's the expectation of the Bureau does.* At the request of the Committee the Department of Education provided a cross-walk on their

	assessments regulations (34 CFR 200) with the draft assessments language and identified what was missing from the Committee's draft regulation. Jill Martin, from Department of Education provided a cross-walk the Department of Education Title I Assessment regulations with the BIE draft language. See Appendix B of the Committee's final report (https://www.bia.gov/sites/bia.gov/files/assets/as-ia/raca/pdf/BIE-NRM-Final-Report-V8_508.pdf) to review the comparison. The Committee explored whether additional time was available for the Committee to review and negotiate the language in Section 105 based on the Education assessments language. The Department was unable to provide a time extension for the Committee to negotiate further. In response to the differences in the Education regulations regarding assessments and that contemplated by the Committee, note that things maybe missing because it was an oversight or they may be missing because they aren't relevant to BIE, the BIE proposed to incorporate by reference 34 CFR 200 into the BIE regulations, substituting BIE for state and tribal governing body or school board for local education agency. If there's a conflict in the provision between the BIE regulations and the Department of Education regulations, the provisions in the BIE regulations would prevail. The proposed language read as follows: *The Department of Education's regulation at 34 CFR 200.2, .3, .5, and .6 concerning assessments are incorporated by reference into this section, substituting BIE for State and tribal governing body or school board for local educational agency. However, in case of a conflict between the provisions of this Part and 34 CFR Part 200, the provisions in this Part control.* The Committee was unable to come to consensus with Section 30.105 of how the Secretary would define assessments. The Committee had the following discussion, no further action was taken based on the discussion:

	• My worries are not the items that are in conflict, it's the items we don't even include by reference. • I share the concern. It's a catch all and I don't know what we are allowing and not allowing, and how all that will play out. • I am not authorized as a negotiator to consent to this language after conversation with constituencies. We have not given appropriate attention to this issue and it has been provided on too short notice for our constituencies to review and consent to. • I'm a little uncomfortable with saying OK to things I don't know about. My question is this one paragraph saying that the Department of Education regulations and the BIE's regulations, that if there's a conflict that the BIE's regulations are going to hold firm above that. But my discomfort comes from the fact that we have not completed our mission, that there are things we didn't have the opportunity to review adequately and that is going to be expressed in our report. We did the best that we can do with the resources and the time that we've had. • I like some of the [previous consensus] provisions in the assessment piece because it gives a lot for our special education students. I did ask for language to be included and adding the Native language learner section that may still be brought up because we can't address the whole document. If this doesn't pass I would like to see an extensive area in the report that explains that these need to be looked at by BIE before the regulations are finalized. • We have a committee member unable to negotiate on this section, so we won't be able to have consensus. As a procedural recommendation I would say get back into the regulations we have. We need to approve something, if we don't that means the BIE can define everything and that's not what we want either it would go against our responsibility as

	committee members. It's not going to be perfect and we have to note that in the report.
§30.106. How will the Secretary define accountability system?	Consensus language developed at meeting #3 (December 2018) is unchanged.
§30.107. May a tribal governing body or school board waive the Secretary's definition of standards, assessments, and accountability system? 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 a tribal governing body or school board's alternative plan (hereafter plan) is approved, the Secretary's definitions apply.	Consensus to replace 'proposal' with 'plan' Sections 101, 107-114
§30.108. How does a tribal governing body or school board waive the Secretary's definitions?	
(a) A tribal governing body or school board may waive the Secretary's requirements for standards, assessments, and accountability system, in part or in whole. Bureau operated school boards are not eligible for waivers.	The BIE proposes replacing '*the Secretary's definition of standards, assessments, or accountability system'* with '*the Secretary's requirements for standards, assessments, or accountability system' because* the term 'definition' was unclear. [no dissent 031319] Committee discussion: • I need clarification on the waiver section where it says tribal governing body or school board. The way it reads right now does that include BIE operated school boards. Because if it doesn't, we should probably say. • The interpretation is BIE operated schools couldn't apply for the waiver? For my clarity, Little Wound is tribally grant and Pine Ridge is a BIE operated school. In the future if our tribal council wants Pine Ridge School to adopt the same plan, what will happen then? *If the tribe wants the school to follow tribal regulations, it would need to be a tribally controlled school.* • The BIE has one accountability system, one test required. If a tribal grant schools wanted to stay with the state system they would have to apply for a waiver? *Yes.*

	[no dissent to language clarifying Bureau operated school boards are not eligible for waivers. 031319]
(b) The tribal governing body or school board must notify the Secretary and the Secretary of Education of the decision to waive the Secretary's requirements in part or in whole.	No changes from Meeting #3
(c) Within 60 days of the decision to waive the Secretary's requirements in part or in whole the tribal governing body or school board must submit to the Secretary for review, and in coordination with the Secretary of Education, approval, a plan for alternative requirements 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. The Secretary encourages a tribal governing body or school board to request and receive technical assistance, consistent with §30.111, well in advance of submission of a plan to the Secretary for review. A tribal governing body or school board must continue to follow the Secretary's requirements for standards, assessments and accountability system until a plan for alternative requirements has been approved and until alternative requirements become effective except in case of (g1) below. [no dissent 031419]	At the conclusion of meeting #3, the Committee asked the BIE to develop a timeline for the Secretary of the Interior (Secretary), BIE and Department of Education to respond to a waiver request. Brian Quint, Attorney Advisor provided an overview of the proposed language of how the Secretary will coordinate with the Secretary of Education for review and approval of proposed alternate requirements. The statute does not provide the Department of the Interior the authority to regulate the Department of Education. The BIE added language in (c) clarifying that a tribal governing body or school board must continue to follow the Secretary's requirements until a proposal is approved and effective. Committee discussion: • Is there any mention about holding Tribes harmless during the period of time when they move formally through the waiver process until the point of determination that their alternative proposal complies or does not comply with ESSA? *Its BIE's interpretation of the statute that until an alternative proposal has been approved by both the Secretary of the Interior and the Secretary of Education, the school would have to follow the requirements the Secretary of the Interior has adopted reflected in 30.108(c) last paragraph.* • I'm not in agreement that the Tribes must continue to use previously adopted requirements when they've already approved a waiver. That undermines Tribal sovereignty. As I understand, the only job of BIE and the Department of Education is to determine whether the tribe's alternative proposal complies with or not. I'm looking for something in the regulations that says, if there

	is anything in the alternative proposal that does not comply with law, technical assistance will be provided to the Tribe to remedy those issues. • When a school chooses to apply for a waiver, there's a 120-day response from the Department of Education which is 4-months. If you're going to apply for a waiver you really wouldn't expect it to be effective until the following school year. If the Bureau adopted a unified system to all BIE and tribal grant schools would you fall back on that? I would just hope there are provisions that the school can't be threaten of losing Title funding. • We talked about treating tribes in parity with the states. The 120-days is in statute for the Department of Education to respond to a state who requests a waiver, not the approval. The Bureau is trying to provide a process that is in parity with the states. • Speaking to one Department controlling another Department, under section 8204 it says the Secretary of the Interior and the Secretary shall approve, so it says that they shall, unless the Secretary determines that they do not meet the requirements. So, if the Secretary of the Interior, BIE says these meet it, it should be a forgone conclusion that the Department of Education Secretary must approve it. Why can't we write a deadline for the Secretary of the Interior to say you must do this within a certain amount of time? *What is being talked about in 8204 under ESEA the definition of the Secretary is the Secretary of Education. Whereas if they mean the Secretary of the Interior, they say the Secretary of the Interior.* • Our school already follows our state assessment. If the BIE adopts regulations that we don't want to follow, can we write a letter to show we're in compliance under the Department of Education with the state of Mississippi until we decide to do our own waiver? The timeline for the waiver approval will exceed the time our schools are required to test by the state. If the Bureau implements

	another assessment, we don't want to switch gears and take on a whole new assessment. *That is a waiver. If the Bureau adopts a uniform accountability system and a particular tribe in a state doesn't want to use the BIE system they can request a waiver to use some other system in whole or in part.* • We need to consider that because it's just to follow the Secretary's requirement. We need to clarify for tribal sovereignty. The Secretary's requirements limit the situation where any of our schools want to follow the state guidelines. The language doesn't appear to leave room for that nor does it leave room for a tribal education guidelines. • I would like to request that at beginning of this section that anywhere it uses the word 'proposal' that it be changed to 'submits.' At the point the tribe has waived, they are submitting their alternative proposal [to the BIE system]. I still object to 'waiving' that they should be able to implement. The word sounds like a subjugation and I rather it be in more positive form for the tribes for future use. • Two concerns with part (c): 1) The initial transition that is going to happen will be quick for a lot of schools who don't know this is coming. They are going to have the same questions, particularly when it's going to be next year. 2) I would be okay with this language "you must continue to follow …", if we've been able to nail down a timeline on when waivers would be approved. Is there a reasoning behind why no timeline can be agreed upon? Are there other vehicles aside from this regulation, such as a MOA that can spell out the timeline? • The question for me is at the very end just to help me understand this, this is saying that tribes may continue to do what they are already doing, particularly with the Navajo Nation following their accountability plan, until the requirements have been approved, so they will have to go through the approval process and stick with that plan until the agency has

	established alternative requirements. Until there is actually a SAAP, tribes can stick with what they are doing, am I reading that correctly? There is no dissent with the language as revised: 'Within 60 days of the decision to waive the Secretary's requirements in part or in whole the tribal governing body or school board must submit to the Secretary for review, and in coordination with the Secretary of Education, approval a plan for alternative requirements that are consistent with section 1111 of the Act and take into account the unique circumstances as need of such school or schools and students served. The Secretary encourages a tribal governing body or school board to request and receive technical assistance consistent with 30.111 well in advance of submission of a plan to the Secretary for review. A tribal governing body or school board must continue to follow the Secretary's requirements for standards, assessments and accountability system until a plan for alternative requirements has been approved and alternative requirements become effective except in case of (g)(1) below.'
(d) A tribal governing body or school board may request an extension of the 60 day deadline for the provision of technical assistance.	Committee clarification: • I'm looking at section D, line 560. Is there clarity about the provision for technical assistance? Would BIE DPA provide technical assistance or would it be in combination with the Department of Education? Does technical assistance need to be specific in this section of the regulations? *In the statue at (c)(3) it speaks to the Secretary of the Interior and the Secretary of Education will provide technical assistance.*
(e) A tribal governing body or school board must use this process anytime a tribal governing body or school board proposes alternative requirements for standards, assessments, and accountability.	The BIE proposed clarifying language that a tribal governing body or school board must use this process if they propose alternative requirements for standards, assessments, and accountability. [no dissent 31219]
(f) The Secretary will work with the Secretary of Education to develop and make available templates for plans for	At the December 2018 meeting, the Committee had discussion on a template and in response the BIE proposed language. The proposed language

alternative requirements that tribal governing bodies and school boards may use to assist in the development of such plans for alternative requirements.	expands on the consensus language established at meeting #3. Committee discussion: • *In subsection (f) the Secretary in this case means of the Interior will work with the Secretary of Education to make available templates to meet the requirements.* [no dissent 31219]
(g) During the transition to the Secretary's requirements for standards, assessments, under this Part, or at any time thereafter, where a Tribal governing body or school board elects to use the standards, assessments of a state, they may do so without submitting such standards, assessments, under the waiver process after the Secretary's requirements under this Part are final, provided the Secretary is notified of this and provided that the state agrees to allow the use of such standards, assessments. [no dissent 031419] Note: The Committee discussed language to cover three different transition scenarios: 1) schools that want to stay with their current state standards and assessments rather than the BIE standards and assessments, 2) tribes that currently have BIE and Education Department approved alternative standards and/or assessments under NCLB, 3) schools who intend to develop alternate proposals (waivers) to stay with the state instead of switching over to the BIE until their alternative proposal is approved. The Committee did not reach consensus on language for scenarios 2 and 3.	Based on Committee comments regarding paragraph (c) of this same section about hold harmless and questions about whether a tribal governing body or school board would like to use the requirements that's established by the state if they did not want to transition to the BIE's system. BIE prepared two-part text in (g). Part one was intended to address the situation for the transition where if a tribal governing body or school board wanted to continue to follow the states requirements they can do so without submitting a waiver. They just have to notify the Secretary what they are doing and provided that the state agrees. BIE can't guarantee the states will agree to allow access to their standards and assessments. Part two is to address, both the situation where there's an existing waiver approved alternative proposal at the time of the transition but also after. To say that if a tribal governing body or school board submits a waiver or a new waiver, they can use the previous waiver until the next waiver is approved. Committee discussion: • Under the first paragraph it says "or accountability system." Technically none of our [BIE] schools use a state's accountability system. There are some states, the relationship between the state and the school system are close. Over the past decade states have begun to issue an accountability determination on AYP for those schools. But we keep the schools in the state that's not their role. I don't know if we would keep 'accountability system'

	in there. I propose we end at standards and assessments. • On paragraph two, I'm looking at the last line "have been approved." Approved is one thing but the other operative term is "approved and implemented." I propose we add "and implemented." I don't think it changes drastically, the intent is the same. The intent on both is to have a smooth transition. • Here's my question about the accountability system. If we go to a single system and a tribe decides to use the state assessment and the state standards, because they have the right to do, if they don't go with the state accountability system, how do we possibly keep them in the Bureau accountability system when it's in a single system? How would you even do an accountability system for those schools that are not using the same standards and same assessments? My question is why wouldn't they go into the accountability system of their state? o *It's not the responsibility of the state to make accountability determinations for BIE schools. The other thing is it can't really make accountability determinations because all the data is in our NASIS system. The FAY (full academic year) the attendance records, we [BIE] possess the data.* • If I'm a Tribe and I'm waiving, and/or remaining with my state, with my standards and assessments. I'm basically removing myself from the accountability system; that's the issue now with 23 different parts. What does that really look like to a school that does this? My point is they would have to defer to be accountable in some form and if there using the states. Why wouldn't they? o *The assessments is just one of the data points of the larger determination. Under AYP BIE had an accountability system and will under the new system.*

	○ So the Bureau-wide accountability system will be able to basically accommodate the 23 different assessments and standards? ○ *We [BIE] haven't crossed that bridge yet. I don't think we need to answers those questions now.* • I think these two are really great proposals regarding identifying what happens to folks in different situations. I don't know if I'm reading it correctly, I'm thinking there might need to be a #3 that talks about schools that are initially waiving to create their own and waiting for that to be approved. Where does that fit? Because I see this as going from the BIE to the state, and then going from changing their own once they already had an approved waiver. But we are missing the in-between there with the BIE and they want to create their own, what happens in-between there? ○ *[BIE] I think (a) is what your talking about because those are schools going to create their own. Those are in that category, they are going to submit waivers with the intent of using the state assessments with aligned standards. It's moving them over so they don't have to switch suddenly to the Bureau system and then 6 months later back to their own system.* ○ The difference there is 'of a state'. What if they are not adopting the state and they are going through the process to create their own, where do those folks sit while it's being developed? ○ *[BIE] section 8204 is part of ESEA. What that says is that the Secretary shall define standards, assessments and accountability system for Bureau-funded schools. Subsection (c)(2) says that these requirements may be waived in part or in whole. Our interpretation has been in the situation where an alternative proposal is going under review, the school would still have to follow BIE's requirements until that happens. In 30.108(c) the last sentence it is in there.*

	○ It might be worth taking it from there and adding to (b) so you have all together in one spot. The proposed language for scenario 2: (g)(2) During the transition to the Secretary's requirements for standards, assessments and accountability system under this Part and at any time thereafter, where a Tribal governing body or school board has a~~n~~ previously approved alternative plan, they may continue to follow that plan for one school year following the ~~implementation of the SAAP~~ publication of the final rule. • We've introduced a new variable with that language with "the implementation of the SAAP". We are talking about the final rule but now we've introduced the SAAP. I don't feel like I can go along with that, that variable raises too many questions. I would add "SAAP following publication of the final rule." • Where it says "has an approved alternative plan" add "previously approved alternative plan." In that way it allows tribes to continue with what has been previously approved and not wait for another approval for whatever transpires between what they have or whenever that will happen. • I don't approve of the word 'previously'. We represent the parents and the students to bring concerns to this table. For us to approve a generalized wording and a plan doesn't agree with us. We're right here in the middle of this plan [with Navajo Nation] now. • I want to comment that 'previously approved alternative plan' [in the context of the Navajo Nation] is a product that has been worked on for several years. Having the word 'previously', allows tribes to work out any issues on what is currently in place instead of having to scrap it all and then start all over. So 'previously' matters. The other comment I want to make on the word 'implementation' needs to be revised. Implementation is a long-term process it takes several years for that to play out. However, if we're going to use the

	exception of 'publication of the final rule' what rule are we talking about exactly? That needs to be specified there, are we talking about the final SAAP product? o *The final rule is the final version of these regulations the Committee is negotiating.* • What about the SAAP? I think the SAAP is relevant because that is the plan that tribes would have to be following. The rule is one thing but actually having a plan is another. That is the topic of this section right here, were talking about alternative plans not just this regulation itself. I object to the portion that was added. Facilitator: there is not support for this language with the word 'previously' and there is not support for this language without the word 'previously.' There is also no support for the language 'publication of the final rule' and similarly there are others who cannot support the language of 'implementation of the SAAP.' There was no disagreement with that summation. What we will do is note the impasse in the Committee's report in chapter 3. We will report that the committee discussed orderly transition language for tribes that have approved alternate plans but did not reach consensus on the exact wording for that language. So that will appear in the final report for the record. The proposed language for scenario 3: (g)(3) to read: 'During the transition to the Secretary's requirements for standards, assessments, and accountability system under this Part, where a tribe seeks to implement a locally developed standards, assessments and ~~accountability~~ system aligned to the unique circumstances of the school through the waiver process, the tribal governing body or school board may elect to use the standards, assessments, and accountability system of the state in which they reside in the same manner as (g)(1), Otherwise, the tribal governing body or school board must continue to follow the Secretary's requirements for standards, assessments, and accountability system until the

	plan for alternative requirements has approved and until the alternative requirements become effective.' The Committee discussed further: • We didn't have anything in here where schools are creating their own and it's submitted and waiting for approval. • I have a question again back to accountability. Will the state determine the accountability or will the Bureau under this situation? • Number three is where a tribe is not seeking to use the state but develop their own. In this transition period if we don't highlight this, they are going to have to switch to the BIE, whatever the BIE approves, and then they would have to switch to whatever they develop once it's approved. So they will be going through three sets of standards versus staying with what they are doing. • I want to take a step back and say we heard a couple of concerns, BIE got together and developed some language to address the orderly transition. But now we are going into a third paragraph which doesn't address the language that BIE wrote to address the initial concerns. I'm very concerned about the third paragraph because that was not what we were trying to address. The language in the number 3, *'the tribe seeks to develop the local standards'*, ESSA says states will adopt challenging academic standards and implement assessments. It doesn't say that states will 'develop'. There is an assumption, I think, that every tribe is going to develop their own and I think that is a waiver request. It's a big leap and we don't need to try and write an orderly transition paragraph for the third paragraph that is the wavier. The first two paragraphs have addressed the orderly transition issues that were raised by the committee and Navajo. o The expectation that tribes will not be developing their own I think undermines completely tribal sovereignty and education. I fully expect tribes to create their own standards, assessments, and

	accountability systems. I fully expect that tribes will particularly do that in areas that are theirs to do that for; language, culture; those types of things. I fully expect that those tribes who have their language are going to redesign those and put those in their own language. Tribes certainly have the expertise to develop their own. I expect that they will regardless of cost. That's tribal sovereignty. o What I said is that if development is part of [a tribes' proposal] then that's a waiver request; it will go through a waiver process that's all I'm saying. I was pointing out that ESSA says 'adopt' standards, 'implement' assessments, those were my exact words. I do expect that tribal governing bodies or school boards will make proposals to develop and that's part of the waiver process that will be handled through that process. • The intent of paragraph 3, is to provide some clarification for the types of schools that maybe partaking and wanting to go through a different process. Not that folks may or may not do these things. These are the questions I'm receiving from communities. It is important that we spell that out so that it is not where the BIE is trying to make it up. I think we can do some easy switches here. Instead of where a *'tribe seeks to develop'* change to *'seeks to implement a locally developed an assessment and accountability system align to the unique …'*. They may elect to stay with the state system. After (g)(1) Otherwise, the tribal governing body or school board must continue to follow the Secretary's requirements. This is clearly identifying folks who are thinking in this first transition year. They know by looking at paragraph 3 that it applies to them that if they want to develop their own stuff. Paragraph 3 means we have to stick with the state or go with the BIE while we develop our own approach. The language is meant to clarify what their pathway is it will tie this

	together make our entire document a little tighter. • Number 3 brings out some good points and encourages tribes to develop their own plans and to take ownership of their education system. I would add in there something that addresses the tribes have unique circumstances that their standards are aligned to their unique circumstances needs of the school. • Tribes and or tribal governing bodies will submit. Number 3 leaves the door open for those tribes because they will be submitting. There has to be something in the regulations that takes into account that the tribes and the tribal governments will be submitting because 8204 is the law. They will be able to submit these, provide these waivers. We need to be prepared for them to provide the waivers. • BIE: As stated previously, we initially started out with a smooth transition in response to two specific cases but now we have a smooth transition / solution to a problem that wasn't proposed. I have concerns with a lot of the language here. I think this is the waiver process. I don't see writing a statement in here for the entire system. The other two paragraphs we did address specific problems. Facilitator: sounds like there's no consensus for this language therefore we'll treat it the same as the previous section and it will be noted in the committee report.
§30.109. What should a tribal governing body or school board include in a waiver and alternative plan? Alternative plans must include an explanation how the alternative plan meets the requirements of section 1111 of the Act, taking into consideration the unique circumstances and needs of such schools and students served. [no dissent 031219]	This section was agreed upon by consensus of the Committee in December. However, the Committee had further discussion and revised 30.109 based on the following: • Looking at (b) it must include an explanation of how the alternative proposal meets the requirements. It's up to the tribes and the tribal governing bodies to determine what they feel is appropriate. • That's a very good point and perhaps subsection (a) should be taken out. It's not the Departments' place to tell a tribal sovereign governing body what is the proper legislative

	vehicle here, also what is appropriate. Also, in subsection (b) we could add additional language at the end of the sentence; "taking into consideration the unique circumstances of such schools and students served". The Committee came to a consensus and the Facilitator confirmed the revised language in 30.109 to: Strike (a), and to revise what was (b) to read as: 30.109 Alternative proposals must include an explanation how the alternative proposals meet the requirements of section 1111 of the Act, taking into consideration the unique circumstances and needs of such schools and students served.
§30.110. May a plan's alternative definition use parts of the Secretary's definition? Yes, a tribal governing body or school board may waive the Secretary's definitions in part or in whole. Alternative plans will clearly identify any retained portions of the Secretary's definitions.	There were no comments or changes to the consensus language in 30.110 at meeting #4.
§30.111. Will the Secretary provide technical assistance to tribal governing bodies or school boards seeking a waiver? 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. A tribal governing body or school board seeking such assistance will submit a request to the Director. The Secretary will provide such technical assistance on an ongoing and timely basis.	The Committee discussed the consensus language in section 30.111 but did not revise the language. *The 8204 talks about submitting a proposal within 60-days, but there's no requirement that you can't receive technical assistance ahead of time.*
§30.112. What is the process for requesting technical assistance?	The Committee did not discuss 30.112 in December. The edits in track changes were provided by BIE in December in response to the Committee concern over the form of assistance.

	The existing regulations do not specify when BIE would respond to a request for technical assistance, it just said the Director would specify a point of contact with no timeline. The Committee revised the proposed language based on the following discussion.
(a) Requests for Technical Assistance must be in writing from a tribal governing body or school board to the Director of BIE.	• Here you are saying assistance must be in writing from the tribal governing body or school board to the BIE Director. I thought we just assumed they are sovereign? *This is discussing technical assistance to put together an alternate proposal. This is not about the sovereign act of waiving one of the requirements* • Add 'governing' in front of school board to clarify. • I don't know what the technical assistance would be. Is it the consulting group from the Department of Education visiting the school and working with them directly? Is that considered technical assistance? Is it an application that is devised by BIE in the next 24-months to simply go in to list your standards and test you are taking and what part of the waiver you will include and not include? Is that the process of a waiver? Those are two different level of costs, time, effort, so those are my questions. • I appreciate those questions because those are the questions we are going to have on the ground as school and tribal administrators, how does this all happen? The Bureau is performing an act of trust responsibility to our tribes. However this regulation is written and needs to be rolled out and implemented. The BIE are responsible to ensure the resources are there. Again, it should be the least burdensome on the tribes because of that trust responsibility. • Tribes need to have some input into what level of technical assistance they need. In a reciprocal relationship those types of things need to be discussed and mutually agreed upon. A tribe might not know what's needed. And they need those with higher level of

	expertise in that field that can help them go through those really technical areas. • We need regulations to be broad enough but to ensure it's a mutually cooperative process. Some technical assistance might be easy and others may be complicated. We don't want the BIE Director to say this is the only type of technical assistance, tribes input will be considered with the request. • Can we add something to say templates will be available to outline what type of technical assistance can be provided? The tribes may not know what kind of technical assistance will be needed. We're getting ahead of what questions the schools are going to be asking. We're trying to be proactive to reduce the potential confusion. By providing these templates, we can fill in the blanks. *The BIE agrees there needs to be a timely agreement on a template process. It will be released with the final rule. BIE is having active discussion of what to include on a template.*
(b) The Director, or designee, will acknowledge receipt of a request for technical assistance.	• Can you identify who is the Director? *The Director of BIE, also indicated in the definitions*. • Can we insert BIE in front of Director? *There is a proposal on the floor to insert BIE before director in 30.112. Any dissent; there was none.*
(c) No later than 30 days after receiving the original request, the Director will identify a point of contact and technical assistance will begin. The Director and requesting tribe shall work together to identify the form, substance, and timeline for the assistance.	• At the end of (c) it says including identifying a form substance and timeline. Does that address your concern? *We need to add language that it's mutually agreed upon. This is a treaty obligation to keep it lateral in all matters.* • I propose to add language in (c) 'the director and requesting tribe shall work together to identify' the form, substance, and timeline for the assistance.' • How will BIE ensure all tribes requesting technical assistance receive it in a timely way It's a question of equity. *This is an appropriations issue and its outside of this Committee.*

	The Committee came to a consensus on the revised language in 30.112 to read: (a) Requests for Technical Assistance must be in writing from a tribal governing body or school board to the Director of BIE. (b) The Director, or designee, will acknowledge receipt of a request for technical assistance. (c) No later than 30 days after receiving the original request, the Director will identify a point of contact and technical assistance will begin. The Director and requesting tribe shall work together to identify the form, substance, and timeline for the assistance.
§30.113. When should the tribal governing body or school board request technical assistance?	
A tribal governing body or school board may request technical assistance at any time before or during this process. A tribal governing body or school board is welcomed and encouraged to 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.	The BIE added a minor edit to the proposed language for consideration. The Committee revised the proposed language based on the following discussion: • Propose to add a sentence of 'A tribal governing body or school board may request technical assistance at any time before or during this process.' • Need to ensure we are consistent of 'authorized' school board. • Add 'is welcomed and encouraged to' request, as it speaks to tone. The Committee came to a consensus on the revised language in 30.113 to read: A tribal governing body or school board may request technical assistance at any time before or during this process. A tribal governing body or school board is welcomed and encouraged to 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.
§30.114. How does the Secretary review and approve an alternative definition?	The Committee considered regulatory language proposed by BIE. The BIE added this might be a place to include a statement that the Secretaries of Interior and Education will work together to jointly to develop a timeline. The Committee had the following discussion:

(a) The Secretary and the Secretary of Education shall jointly approve plans for alternative requirements for standards, assessments, and accountability unless a determination is made that the proposed alternative requirements do not meet the requirements of section 1111 of the Act. (i) Secretary will consult with the Secretary of Education through the review of a plan for alternative requirements. (ii) Upon receipt of a plan for alternative requirements for standards, assessments, and accountability system, in part or in whole, the Secretary shall begin coordination with the Secretary of Education on review and approval of the plan. (iii) The Secretary shall provide a status update regarding the processing of the plan within 120 days of receipt of the plan and every thirty days thereafter to discuss the stage of the review process.	• I propose to replace 'proposal' with 'plan'. I didn't know if there was anything about determining whether it's complete or not, just that it was compliant with the law or not. The only responsibility the Department of Education and the BIE have is to determine whether the Tribe 'plan' is in compliant with law or not. During the course of technical assistance, a missing signature is something that is incomplete. *The word proposal is in ESSA and the BIE will need to think about the proposed change. The BIE discussed and was able to accept replacing 'proposal' with 'plan'.* • I'm going to keep on harping on the timeline, the 120-days is in statute. *When a state applies for a waiver the Department of Education has 120-days to respond to a proposal, not that it's automatically approved. And there was discussion of treaty tribes inheriting the states timeline.* • I'm trying to think of what the expectations for tribes and schools be in the initial roll out so folks understand how long is this going to take. A tribe submits a waiver on July 1, it's not going to be until 4-months they will get a notification. I want to flag that concern. We are working in such an ambiguous timeframe that it's difficult for tribes to plan effectively to allocate resources. Waivers are going to be a two-year process. • Not all of the tribes have an active Education Department, but several do. What we are talking about is submitting a tribal education plan. Equal and on the same level as any state education plan. That kind of language puts it into a level of parity and equity. I support using the word 'plan'. It's like were talking about state consolidated plans, are tribes are doing the same thing. • I'm looking at 8204, would it be 'plan' or 'system' for a waiver; a proposal for alternate standards assessments and accountability system?

	• ESSA is very clear that BIE is not a state. State plans don't apply to BIE. Congress did not make tribes or tribal education department as states. There may be sovereignty issues but Congress did not explicitly make tribal education department's equivalent of states. It would take more than Interior regulations to make that happen. • I agree, Congress did not make tribes equal to states. If a tribe is saying this is our educational department, this is our plan it carries greater weight than a state does from a tribal nation's perspective. I can only imagine the backlash if you had told the states that their education plan is a proposal. I'm going to respectfully agree with you but my position is totally opposite. • The BIE is not considered a state so were not going to call it a state plan. But something has to match up with section 1111 for accountability purposes. The Committee did reach consensus that the BIE will develop a plan and has been named the Standards Assessments and Accountability Plan. It was called a plan – we need to coordinate the language as it was decided at the last meeting. • How does the Secretary review and approve an alternative definition? Definition is NCLB language. Is it still appropriate? *The use of the word 'definition' is not helpful and we can change to alternative requirements.* • This is to ensure the accountability of the process for those out on the ground operating tribal schools. We need assurance that this process is going to be followed through. The Bureau is the agency telling us, "if you don't like the regulations just write a waiver". Well in order for us as tribes to just submit a waiver we need a very clear process. We don't want to get hung up on the technicalities that may arise. We need to ensure that the Department of Education is participating in this process because they are named in the statute. • We just need to have some sort of box of time that we're working with as agreed upon

	between the BIE and this Committee to come to that determination. The larger tribes might be seeking to hire contractors to assist. Whenever you're presenting this to a tribal council or tribal leadership the first question is always how much is this going to cost. If you don't have any idea how long this process is going to be an open-ended question. • This statement should be in both the regulations and the committee's report. • We want to see an assurance that the actions move forward and that there are definitions for accountability to tribes. • Tribal schools and tribal leadership want assurances that our waiver will continue to move through the agencies. We would like to lay out a process that spells out how that works and to ensure a two-way communication between our tribe and the agency. • I'm going to propose a very simple process even if its hypothetical and even if it's never been done before. Because this is a unique situation that tribes may at least be given the notification that their alternative proposal has been received, it's being reviewed. I want to ask, that even through we've never done it before to please consider phases and completion, create an app for this.
(b) If the Secretary and the Secretary of Education approve a plan for alternative requirements, the Secretary will (i) promptly notify the Tribal governing body or school board; and (ii) shall indicate the date for which the alternative plan will be effective.	• A Committee member flagged the word incomplete in section 30.114(b). We don't want it to look like a checklist of completeness. If the tribe submitted a plan the only thing to be determined is if it's in compliant with Section 1111 or not; it's not incomplete. We need to find a way to address items found to be in non-compliance. *The term incomplete was pulled from the Self-Determination Act.* • Do we have a definition for compliant? If it's not compliant it's not approved. I'm wondering if were recreating that section? *I would caution what that means since 8204 says an alternative proposal has to meet the requirements that takes into account the unique circumstances and needs of such school*

	or schools and the students served. So just straight compliance with section 1111. • I don't want 'incomplete' to be a hurdle that tribes have to overcome. If it's not written into these regulations that tribes need to go line by line why they think the Secretary's plan doesn't work for their tribe. What if someone says it's not required anywhere in here? We want the regulations to be decisive. • I don't know if I want to address whether is complete or incomplete. I'd rather it be reduced to its simplest terms that the rule is that you determine its compliant or not and technical assistance will be provided when it's non-compliant. • The 120-days, four months after the submission, is when the Secretary is required to provide an update that is a long time to wait to hear that something is 'incomplete'. I'm also wondering if 'incomplete' is redundant to a proposal just not being approved. Do we need to define complete or incomplete? Do we want to change language if they are small things like a missing signature; like small technicality provisions where there could be a follow up? My view is if it's incomplete I would assume it would be not approved and that technical assistance would be assumed anyway. • There are no standards being offered to what constitutes a complete application. Complete will have to be defined so people will know their application is complete.
(c) If a plan for alternative requirements is not approved, the Tribal governing body or school board will be notified that (i) the plan has not been approved; and (ii) the reasons why the alternative plan was not approved.	• In section (a) they are going to jointly approve. In section (c) maybe add a sentence: "If the Secretary and the Secretary of Education approve an alternative plan in part or in whole. If the Secretary and the Secretary of Education approved the ~~for~~ alternative ~~requirements~~ plan, the Secretary will:…" Part (a) is introducing the general idea how the alternative plan. • The phrase 'in part or in whole' does not fit in section (c) because we got '(ii) shall indicate the date for which the alternative proposal will be effective.' So that's taking about an entire

	approved plan. We need to move in part or in whole into (d) or (e). • When we're talking approval (c) is just if the whole plan is approved, (d) is a partial piece of the plan approved and (e) the whole plan is denied. Put in a clause for each of those options. Subsection (c) would be the Secretary approved the plan in whole, and (d) is partially approved the plan, and (e) not approved and need technical assistance. Aspects of your plan is fine for partial approval. • BIE clarification: *A letter from the Secretary indicates 'we agree' on [the alternative plan] is not signed until the plan is ready. The concept of a partial plan does not exist. The wording of 'in part or in whole' applies to the waiver, not to the approval process. There is no such approval in whole or in part, it is waived in whole or in part.*
(d) If a plan for alternative requirements is not approved, the Secretary shall provide technical assistance to overcome the reasons why the alternative plan was not approved.	
(e) If a plan for alternative requirements is not approved, or is not moving forward, then the Tribes may individually request formal consultation with the Secretary and Secretary of Education. [no dissent 031219.]	• The purpose of including tribal consultation is the BIE can't tell the Department of Education what to do and when to show up. Let's say worst case scenario the Department of Education is too busy and the plan sits there. Tribes can compel something will happen by requesting a formal consultation on the review and approval. • Government-to-government responsibility is about the education of the children. The plan is just a tool that is being used for it. Consultation will be to discuss the education of the children and how this is going to work and why isn't this happening, what needs to be put in place, what do we need to do with the Department of Education so these two big departments can work together to get this done on a timely manner? • The issue is big especially with timeline. This is a reminder for folks who in five years might not know you can request tribal consultation.

	It might be important if we are in consensus adding something around formal consultation to be specific of tribes seeking timely feedback from the Secretary's. • There are governing school boards who will probably never be involved in the process of formal consultation and they need to know there is a process. This is a treaty based issue the education of our children. • For clarification, this phase here is the consultation occurring within the 120 days? Or is it something that happens after this entire process has played out and tribes are still not satisfied with the outcome after not having their plans approved. Maybe this line belongs after (e) where the entire process has played out and there are no other means to address their issues. • Maybe this is something we add to the technical assistance section. When we're talking about technical assistance maybe it's another avenue where it may make more sense. • It's a way to hold the Depart of Ed accountable on the waiver process. Department of Education is being held by statute. We do need to describe when to trigger consultation for the benefit of our tribes and communities. The Committee came to a consensus on the revised language to read: (a) The Secretary and the Secretary of Education shall jointly approve plans for alternative requirements for standards, assessments, and accountability unless a determination is made that the proposed alternative requirements do not meet the requirements of section 1111 of the Act. (i) Secretary will consult with the Secretary of Education through the review of a plan for alternative requirements. (ii) Upon receipt of a plan for alternative requirements for standards, assessments, and accountability system, in part or in whole, the Secretary shall begin coordination with the Secretary of Education on review and approval of the plan.

	(iii) The Secretary shall provide a status update regarding the processing of the plan within 120 days of receipt of the plan and every thirty days thereafter to discuss the stage of the review process. (b) If the Secretary and the Secretary of Education approve a plan for alternative requirements, the Secretary will: (i) Promptly notify the Tribal governing body or school board; and (ii) Shall indicate the date for which the alternative plan will be effective. (c) If a plan for alternative requirements is not approved, the Tribal governing body or school board will be notified that: (i) The plan has not been approved; and (ii) The reasons why the alternative plan was not approved. (d) If a plan for alternative requirements is not approved, the Secretary shall provide technical assistance to overcome the reasons why the alternative plan was not approved. (e) If a plan for alternative requirements is not approved, or is not moving forward, then the Tribes may individually request formal consultation with the Secretary and Secretary of Education.

Decision on Final Recommendations for the Regulation as a Package
The Committee was asked if there was consensus on the final package of proposed regulations as revised through the negotiations, noting that there was not consensus on Section 30.105 Assessments. There was no dissent on the draft regulations as a package minus the assessment section.

The Facilitator congratulated the Committee for the all the things they considered and worked so hard to make sure were included in the consensus regulations.

Section III. Committee Discussion and Agreements made Regarding its Final Report to BIE

Before reviewing the Committee's draft final report, a member asked what the process is for coming to consensus on the final draft.

The Facilitator responded: Thank you for asking. There is limited decision space for the Committee today [the final day of the final meeting]. When we go through the report we need to be clear about whether there is consensus on the report before folks leave. Rather than word smiting I ask the Committee to authorize or delegate to the writing group to work with me as a facilitator role to incorporate the changes that you all flag here today. That way we can seek concurrence from the Committee today on those big picture concept changes and worry less so on about the wording. We need to focus primarily on the substantive sections which are around recommendations for the SAAP and also the regulation changes. If we have time the recommendations that are outside of the Committees' scope.

The Committee authorized the report drafting group to revise the report based on today's discussion and send the final document to the DFO, Sue Bement who will transmit it to Director Dearman and cc the Committee. The final report will be posted on the Committee's website: https://www.bia.gov/sites/bia.gov/files/assets/as-ia/raca/pdf/BIE-NRM-Final-Report-V8_508.pdf

The report drafting group (Mike, Tasha, Lora, Sarah and Regina) drafted the report by first reviewing all of the meeting summaries, the consolidated the consensus agreements and the items that were proposed as Committee recommendations but had not been discussed by the Committee. Each writing group member drafted a section of the document. The report is organized using an outline from a previous reg neg committee as a template. Anything in yellow in the draft report needs a decision from the Committee.

Chapter 1, Introduction and Context was developed using information from other documents that are publicly available (e.g., Federal Register, Charter, BIE Strategic Plan). Chapter 2, Committee Background describes the Committee's authority, scope and operations based on the committee Operating Protocol, Charter, Guiding Principles, etc.

Committee discussion of Chapters 1 and 2:

- The committee revised the preamble language in the regulations which is also in the Committee report. The committee agreed by consensus to leave the entire language in the report but note it was shorten in the regulations.
- One area is to note there was consensus on all sections of the draft regulations except the assessment section.
    - Assessments are tied to accountability. Was accountability section reached by consensus? What was the date the consensus was reached?
    - *The committee did reach consensus on tribal civics and science and did reach consensus on including them in accountability. Those agreements were reached at meeting # 3 [December 2018].*

Chapter 3 Recommendations Related to Draft Regulations includes a brief summary of the overarching elements of the regulations as well as a summary of consensus agreements for each section, e.g., Standards, Assessments, Accountability System. The last section in the chapter is for Key Considerations and Concerns and is where the Committee will memorialize topics negotiated but did not reach consensus.

Committee discussion:

- In *Creating a Unified* System, I would like to strike the sentences on line 277 indicating *the Committee came to consensus that the BIE create a single unified system.* I felt the law dictated the Secretary is mandated to define the standards, assessments and accountability system.
    - When did the Committee come to a consensus on a BIE unified system?
    - *At meeting # 2 in Albuquerque, October/November 2018.*
    - *This proposal was withdrawn.*
- On line 286, I didn't know if that fit in, I would like to strike: "*The SAAP will encompass the same elements as the State Plan described in Section 1111 [20 U.S.C. 6311] State Plans*."

There was no Committee dissent for this change.

- Propose we remove the placeholder on immersion schools as its not part of the regulations since there was no consensus from the Committee.

There was no dissent from the Committee to strike the placeholder.

In the subsection placeholder entitled "Academic Assessments" the Committee negotiated language regarding the lack of consensus regarding academic assessments.

- On Wednesday, the Committee drafted a paragraph. I suggest that paragraph be included in the report for this section. Right now it appears the Committee did nothing. The Committee would like to acknowledge there was an attempt to work on assessments and it needs to be stated for the record.

The Facilitator noted: The statement could be inserted into the subsection *Considerations and Concerns*, in Chapter 3.

- My understanding about reaching consensus on the assessment section would also effect the consensus agreed upon from previous meeting around tribal civics [to be phased in over a course of time and is K-12]. I want to make sure I'm clear in my understanding.

The Facilitator clarified: when we get to the section on *Considerations and Concerns* we need to add Tribal Civics to memorialize the Committee's wishes with respect to Tribal Civic assessments be phased in.

- There is a section on Tribal Civics where the Committee reached consensus on in assessments? Where are you deleting from?
  Facilitator: We would move what's in your book starting at 377 to page 10 line 389, and add text under *Considerations and Concerns*
- Native language learners placeholder at line 388 will be stricken from your draft report.

There was no dissent with these changes.

The Committee supported the *Accountability* section of the report as written.

In the *Waivers* section of Chapter 3, note that at this meeting the Committee added (f) and (g) to the consensus language already in the waivers section. The report is to highlight sections of the regulations, not to repeat the language. The Committee discussed the following:

- Add an introductory / summation paragraph that describes that a tribal governing body or school board can waive in part or in whole and technical assistance can be provided by the BIE. There was no dissent with this proposal.
- Add 'encourage' to the sentence for requesting technical assistance as part of the process.
- There needs to be consideration of a desire from this Committee to have a timeline in this section so that it's documented.
- One of the points brought out was the transition while the BIE implements the regulation and the SAAP. The SAAP was not in the regulations but would be summarize in the report.

The Facilitator clarified: Things in waivers that you did not reach consensus on would be included in this section under *Considerations and Concerns* starting at line 433.

There was no dissent from the Committee with summarizing 418 – 430, highlighting technical assistance, adding section 30.108(f) and (g), the communication coordination pieces in 30-109 – 30.114.

In the subsection *Consideration and Concerns* of Chapter 3, the writing group will add assessments and include the tribal civics assessments where there was consensus. The section will note there was no consensus on the assessment regulations, based on the lack of time for the Committee to look at and understand the crosswalk with the Department of ED regulations, and proposed language on waivers to engage the community and there was no consensus on this language. The draft text from the cross-walk exercise and the Committee's feelings and would be added as an Appendix.

Committee members proposed the following statement regarding academic assessments for inclusion in this section:

"The Committee was unable to reach consensus for recommendations for regulations regarding assessments as described in Section 1111 of ESEA. Some members of the Committee expressed disappointment. There were several compounding factors that contributed to this outcome including but not limited to:

- *The read ahead documents the Committee received erroneously indicated that the Committee had reached consensus on the draft assessments portion of the regulations. As a result, the March meeting agenda did not provide adequate time for consensus to be reached by assessment.*
- *Department of Education assessment regulations were provided to the non-Federal Committee members during its final meeting in March 13, 2019. After the Department of Education assessment regulations were reviewed and cross-referenced with the draft*

regulations the Committee had been working on, there were several gaps found between them.

- *Upon identifying the differences in regulations, there was insufficient time for the Committee to evaluate both the ED and BIE assessment regulations, provide input and adequately deliberate language that would close any gaps. Despite having some draft language prepared. Committee members felt it was not in the best interest of their constituencies to come to consensus on recommended regulations for assessments as described in Section 1111 of ESEA given the new information, and doing so would potentially create unintended gaps and discrepancies for Bureau-funded schools.*
- *The Committee was under resources in time and access to subject matter experts that contributed to having baseline knowledge to deliberate.*
- *The Committee requested to have a conference call meeting after the final March 2019 Rulemaking meeting for members to review, provide input, and adequately deliberate language around assessments, but the overall time constraint placed upon the Committee for the entire Negotiated Rule Making process prevented the Committee from doing so."*

Comments from the Committee:

- BIE appreciates the statement. Want to make a point that the charge of this Committee was not to incorporate the Department of Education regulations, it was to create the Department of Interior regulations. The BIE will provide a counter statement:
    - *"The BIE respectfully disagrees with the implication that it was deficient in supporting the Committee."*

The Facilitator asked the Committee if there was any dissent including the language as revised, there was none.

Chapter 4 Recommendations Relevant to the Secretary's Definition of and/or Development of BIE Standards, Assessments and Accountability Plan contains Committee recommendations related to the SAAP that were discussed in past meetings but had not made a formal decision. The Committee reviewed the subsections in this Chapter that had not been discussed at previous meetings as listed below.

Evaluate Existing CFR Parts for Alignment:
There are other CFR Parts identified that would be significantly impacted by the work of this Committee. Examples of other regulations affected are: graduation requirements for co-academics where the Committee discussed Tribal Civic and consideration as part of graduation requirement and implementing a single Bureau-wide system involving all the other moving parts of the BIE system that will that have an impact on teacher certification, and all other things that the BIE relied on the State.
There was no dissent for including this section in the report.

Impact of Uniform System on Accreditation and Educator Qualifications:
The Committee was concerned about how the establishment of a uniform BIE system will impact teacher certification and regional accreditation requirements. The Bureau need to look at this to ensure the Bureau is ensuring the requirements are met.

There was no dissent for including this section in the report.

SAAP Periodic Review in Consultation with Stakeholders:
The concern brought forth is not just consulting with tribes but engaging those who are involved with the assessments and if it's working or not working. The idea was to engage all. The Committee agreed to the following language:

> ***SAAP Periodic Review in Consultation with Stakeholders***
> *Meaningful, continuous engagement such as inter-tribal working group and other stakeholder engagement is recommended in the creation of the Secretary's definitions of Standards, Assessments and Accountability and in creation of the SAAP plan, prior to implementation.*

Academic Standards – Other Core Academic Courses
This section is related to how the Secretary will define the academic standard on other core academic courses. Currently, all schools have relied upon state standards and assessments. Once the Bureau moves to a unified system, will the Bureau be unified on only core academic courses (identified in ESSA)? What about all the other standards (i.e., social studies, etc.) that are identified as core studies?
There was no dissent for adding this section in the report.

Academic Standards - Elective Courses
If the Bureau is going to implement a unified system, it is recommended that all children have equal access to standards and content across the system and not just state by state.
There was no dissent for adding this section in the report.

Academic Assessments
Although the Committee did not have no consensus on the assessment section of the draft regulations, the Committee agreed to the following language in its report:

- *In the drafting of the SAAP, the Committee recommends that BIE give full consideration of the unique needs and circumstances of students and a thorough evaluation and clear guidance on how to implement assessments.*

There was no dissent for adding this section in the report.

Accountability – N-Size
The Committee had various discussion about the N-size. There was discussion on the concern for having a small N-size number based on the unique needs of our schools. We need to come to an agreement on what this Committee is recommending.

- Recommend two N-size, one for reporting and one for accountability. Also take into consideration a smaller N-size for smaller schools for reporting purposes.

There was no dissent of the revised language.

Academic Indicators
The Committee agrees on the importance of growth and being able to tell the story of student success through growth and accomplishments.
There was no dissent for adding this section in the report.

Student Success Quality Indicators
The Committee had prior discussion on items to consider as student success quality indicators and are outlined in the draft report. The Committee made the following points:

- If we are talking about language immersion then we need to clarify it is Native American language. The Bureau needs to consider for our top students advance placement or gifted-talented students.
- I want to advocate schools that are pursuing International accreditation through the International Baccalaureate (IB) program and rewarding schools for making that pursuit.

There was no dissent for adding this section in the report with these revisions.

Waivers

- The Committee made the following points to include in this subsection of Chapter 4: Recommend the BIE and the Department of Ed to come up with a timeline as it was not included in the draft regulations. The timeline is for the review and determination of alternate plans submission through the waiver process.
- Include an appropriate transition timeline of when the regulations are final to implementation.

There was no dissent for adding this section in the report.

Consideration and Concerns
The Committee made the following points to include in this subsection of Chapter 4:

- The equitable time for the State given to develop their plan versus the time provided to this Committee to make recommendations.
    - This Committee is not able to extend time to work on the issues. The SAAP will impact the whole school system.
- The statement is to give a voice for this Committee's concern. It's just a statement for the record.

There was no dissent for adding this section in the report.

Note: The Department of Education provided clarification to the Committee on State requirements and the amount of time required to submit their plans. The BIE was not required, per 8204(c)(1) to submit a plan but was required to conduct negotiated rulemaking to cover the standards, assessments and accountability to govern its Bureau system. After the BIE has completed the negotiated rulemaking process, the BIE will enter into a Memorandum of Agreement with Department of Education to talk about the achievement measures of the program.

Chapter 5, Recommendations and Other Information Apart From the Committee's Charge addresses recommendations that are outside of the scope of this Committee.
There was no dissent for adding this section in the report.

Recommendations subsection in Chapter 5
The Committee addressed the concern that other regulations may be affected by the implementation of this regulation and made the following points:

- This Committee is already working on Part 30 so we can remove that from the list.

- We were asked to address the graduation requirements for Part 36 and want to make sure we include in this list.
- Another importing one establishes the date for entry into Kindergarten (Part 39.106).

There was no dissent for adding this section in the report.

Harmonize the Regulations, SAAP and BIE Strategic Direction Document
There was no dissent for adding this section in the report.

The Committee approved the inclusion of the following appendices in its report:
Appendix A on Committee membership,
Appendix B BIE N-Size analysis chart,
Appendix C Public comments,
Appendix D on the crosswalk of the assessments section from BIE with the Department of Ed,

Section IV. Committee Suggestions for Consultation Locations

The BIE described next steps upon the conclusion of meeting #4.

- The BIE will schedule consultations with input from Indian Affairs and publish the Proposed Rule in the Federal Register with a 60-day comment period including government to government consultation.
- The Committee will reconvene via a teleconference for the final meeting to review public comments received, discuss any substantive comments that will affect the proposed rule, and seek consensus on a recommended approach to addressing the comments. The final meeting will include a close-out discussion about the process. This meeting will occur after the proposed rule comment period has ended and all comments have been combined into a single document for the Committee to evaluate.
- After consensus of the Committee addressing the comments, the Final Rule will be published with a 30-day time period prior to the rule becoming effective.

Questions and comments regarding consultation:

- During the public comment and consultation, what is going to be the response to with those who are not in consensus with certain sections?
    - *Any member of the public can provide comments.*
- What constitutes meaningful consultation is different between agencies. I'm going to see how this develops and the outcomes sitting on this side of the table.
- Recommend a consultation in Santa Fe, NM and in AZ/NM for the Navajo Nation.
- Strongly recommend consultation on the Navajo Nation reservation and at a time when the public is available.
- Look ahead for events where tribal leaders attend, such as NCAI.
- Recommend a consultation in Minneapolis, MN.
- Recommend Rapid City, SD for a face-to-face meeting.

Section V. Remarks of Deputy Assistant Secretary for Indian Affairs and Public Comments

Mark Cruz, Deputy Assistant Secretary, joined the meeting on day three and made the following remarks. Note the text below is not a verbatim transcript.

> *Good morning everybody. As most of you know I sat in on the last day of the third session [in December 2018] and I wanted to be here to see the last day and the progress you've all made and I am excited that we are bringing this in for a landing. I wanted to share with you a few thoughts. Since the last time we spoke, we have an Acting Secretary, David Bernhardt. Assistant Secretary, Tara Sweeney and I updated him on the progress of this rule. He's very excited to get to work and ensure that were complying with ESSA. You may have also seen earlier this week we released our budget and brief for the Bureau of Indian Education and we made it very clear that this is an important year for the Bureau to comply with ESSA. We put that in writing. We are also working with the Department of Education to make sure that as soon as this committee releases its draft that were all working together coordinating in the implementation, consult and do the things that we need to do so that our students have their new standards, new accountability system, and their assessments. We are really excited within the Department. The Assistant Secretary wanted me to relay, really reiterate, to you all her thanks for the sacrifices you have all made for close to a year and being away from your schools, your classrooms, your families, and your communities. This is a task that we greatly appreciate you all investing your time, energy and resources and bringing your expertise and your intellectual capability to this process. At the end of the day collectively were going to get a product that is reflective of the diverse experiences and views you all bring to the table. She is very excited and I'm very excited to see that, and so from the bottom of our hearts we really appreciate all the hard work you've put into this. With that said, I'll be in observation mode and if you want to catch me during lunch I'm here. I'm visiting a couple of schools tomorrow and I'll be here as late as you need me to be here. I'm looking forward to these conversations and the productivity. Thank you very much.*

Public Comment to the Committee on Tuesday, March 12, 2019

Jack Sharma, Principal of Gila River. Good afternoon everybody. My name is Jack Sharma, Principal at Blackwater Community School. My question is for the BIE officials pertains to the Ed Title I funding. When it comes to the BIE submitting the plan and what we've been hearing of different versions of the letter that was written to the Bureau from the U.S. Department of Education. The question is are there going to be any funding cuts when it comes to the schools? Or will that remain at the BIE level but it will not affect in any way shape or form the schools? T*he funding only effects only the Title I Admin which is to the BIE as an agency not as a SEA and it doesn't affect the funding to the schools.*

Public Comment to the Committee on Wednesday, March 13, 2019

Lillian Kim Franklin, Principal at the Casa Blanca Community School –Good afternoon my name is Lillian Kim Franklin I'm the Principal at Casa Blanca Community School which is the smallest of the three Bureau of Indian Education schools on Gila River Indian Community. My

first thing that I want to express is gratitude. I've watched for two-days, I can't imagine the magnitude of the work that has gone into this process, the amount of time and effort, and on behalf of the children and the families in my community I want to say thank you to everybody because I know that it's not easy, it's a very, very big task. Ms. Campbell, today I almost don't need to say anything because you spoke for me and for the parents at my school. My families were not aware that this was happening and quite frankly I wasn't aware that this was happening until sometime in December. I am a new principal, so it is possible that perhaps communication crossed or whatever it is but my first indication about what you all are doing came when Mr. Dabrieo presented on a webinar call in December. There were many other schools on that call that was just as surprised as my school. I went out and started talking to my families and letting them know because that is exactly and they were shocked, they had no idea. The State of Arizona had fairly recently within three-years or so changed from AIMS to AZ Merit and they have gone through this very large turmoil while there children where changing systems and they were very concerned and to know that there might be a new system that was unknown where their children would be evaluated. Then our school goes from K-4, so my children go from me into the public system and there are questions with thinks like; how will this work? What will the public schools say? Can my children go from one to the other, and how will I know what is happening? I had no answers. To me when we do this, and I have been at this a long time, you can tell from the grey hair. I think this is, maybe 40-years of education all of it in Native American schools, Navajo Nation, Muckleshoot Tribal School, Gila River Indian Community, working on grades K-4. In my heart of hearts I don't like to think of compliance as a game. I don't like to think that what we're doing is a paper game, it has to have some purpose. It drives so much of what we do. This has to be for the kids and if it has to be for the kids what is going to happen to us when this is all happening in July? I listened yesterday and one of my biggest concerns, and I shared it with several people here, is in my head there's a clock ticking. I'm thinking OK on the compliance side were doing all of this and this is going to move forward to the to the consultations and then were going to be moving ahead and in my mind it's like, okay, this is the middle of March. We are supposed to be implementing and rolling out in September and then if our school wants a waiver or if our community wants a waiver now were at 120-days. Am I remembering that correctly from yesterday? How long is that going to take and then I heard the most alarming thing yesterday that was truly frightening. The one truly frightening thing sitting in the back was, well if they are still in the waiver process the default will be the BIE process and then they will do that 'til the waiver gets done and then we'll go on. That seems like such a calm and rational idea unless you're the principal of school who is trying to tell the data story of your students with tests that don't align to each other. When my parents say how are they doing? If we had to take a different test it the middle of our testing cycle because our waiver didn't get approved, what does that do and how does that help us to improve the education for our kids? What is that doing to move that ball down the road? I am worried. I think that I truly do believe that there are other principals out there and I'm just one tiny little school. I'm a small school even among small schools I'm a small school, 250 kids. Best most marvelous children and families anywhere, except for your communities which all have the same thing, right? But what story am I telling the families and what is this compliance piece doing to help us improve the education? In your recommendations and within your thoughts I know there are principals sitting here with the same problem I have, the exact same problem. As we are doing this and I guess maybe I'm addressing the folks who are going to be taking this back and who are going to be helping us with the implementation, please, please, please, remember us out

in the field. For each of you, I have no doubt in my mind not one after having been here for two-days that the children are in your hearts and the children are in your heads as your deliberating on this. Just keep that where it is because we need your help. We desperately need your help. If we're going to do this and were going to do this in a meaningful way, we are going to need more time, we just are. Thinking that we're going to roll this out in July. Well. I appreciate you all being willing to listen to me today. I want to thank you again and welcome you to Arizona. I so sad, usually its sunny and 90 degrees outside and it's cold and windy and I'm going to sit down now because I promised myself I wouldn't take very long. I tried for 5 minutes, I don't know what my time was. But please just remember that what this does and how it impacts our kids. Again, I very much appreciate your work. Thank you.

Public Comment to the Committee on Wednesday, March 13, 2019
Darrick Franklin of the National Indian Education Association – A member of the Board of Director for NIEA. Read from a statement and provided recommendations. Good afternoon and thank you for the opportunity to provide comments to the Committee today. [Provided introduction of himself in the Navajo language.] Continued to read from prepared statement.

NIEA Talking Points – Darrick Franklin

Bureau of Indian Education Negotiated Rulemaking Committee

Phoenix, AZ | March 13, 2019

Introduction

- Good afternoon and thank you for the opportunity to provide comments to the Committee today.
- **[Please introduce yourself as you feel comfortable, including your name and tribal affiliation].**
- As a member of the Board of Directors for the National Indian Education Association, I am here today to provide comments on behalf of NIEA.
- NIEA is the nation's most inclusive national organization advancing comprehensive, culture-based educational opportunities for American Indians, Alaska Natives, and Native Hawaiians.
- Since September, NIEA has provided resources and technical assistance to support negotiators as they develop regulations to support highly effective, culturally relevant education systems for Native students under the Every Student Succeeds Act.
- NIEA urges the Bureau of Indian Education to uphold the federal trust responsibility by respecting the role of tribal negotiators in the negotiated rulemaking process. Tribes have carefully selected negotiators for their experience as tribal leaders, educators, and parents. Tribal voices are critical to developing highly effective education systems that fully serve the unique needs of Native students across the nation.
- In reviewing the draft regulations and listening over these past 7 months, we recommend the following:
    - First, the regulations must establish high standards that support a robust assessment and transparent accountability system that appropriately measures student growth and provides effective interventions and supports. Such systems, closely aligned to the Department of Education's assessment regulations for states under 34 CFR, must include testing and reporting measures that ensure equity

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for all students, including students with disabilities, English language learners, migrant students, homeless children, children in foster care, children with parents in the military, and other vulnerable groups of students.

- Education systems that include tribal civics education and flexibility for Native language and culture enable our schools to provide culturally appropriate programs and services for Native students.
- NIEA urges the Committee to ensure reciprocity in the government-to-government relationship, providing specific language that clarifies a mutually agreeable process for tribal waivers and holds the BIE accountable for working with tribes to finalize alternative education plans in a timely manner. Tribes must also have the flexibility to exercise sovereignty when they have concerns regarding this process, whether through tribal consultation or through an inter-tribal working group.
- We must remember that tribes know our students, schools, and communities best. The process to develop highly effective, culturally appropriate systems of standards, assessments, and accountability is iterative and must include tribal leaders, educators, and communities at every step. From development to implementation, reporting, and revision of education systems under ESSA, tribes and Native communities must be considered partners in ensuring equity in the education of Native students.
- Finally, NIEA urges the Bureau of Indian Education to establish a second negotiated rulemaking committee to evaluate regulations that may be impacted by the outcome of this rulemaking process, as occurred under No Child Left Behind. Such regulations for review should include funding through the Indian School Equalization Program in 25 CFR Part 39 and minimum graduation requirements in 25 CFR Part 36.

Therefore

- NIEA remains concerned regarding the timelines provided to negotiators and the Bureau of Indian Education for implementation of regulations under ESSA. We urge the federal government to support a process for finalization of these regulations as well as development and implementation of the resulting standards, assessments, and accountability systems upholds tribal sovereignty in Native education.

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- NIEA is disappointed in the lack of acknowledgement of the impact of other federal and tribal ~~statutes~~ laws or this process, ~~from~~ including PL 93-638, PL 100-297, PL 95-561,

- Healthy education systems are key to thriving tribal nations and communities. This Committee has a key opportunity to ensure that Native students have access to the support and resources necessary to thrive. ED's ~~A~~ssessment regulati IDEA, and mo

- Thank you for this opportunity to speak before the committee. NIEA is committed to the ongoing and dedicated work to expand education systems that support quality and culturally appropriate Native education. Our students deserve nothing less.

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Public Comment to the Committee on Wednesday, March 13, 2019
Committee member Natasha Racawan read a letter here dated 12/12/2018, statement on the Navajo Nation's position on Indian Education regarding Dine School Accountability Plan known as DSAP. This statement is signed by President Russell Begaye, President of the Navajo Nation and by Dr. Tommy Lewis Jr., Superintendent of Schools for the Navajo Nation. This statement reads as follows:

DEPARTMENT OF DINÉ EDUCATION
THE NAVAJO NATION
P.O. Box 670 • Window Rock, Arizona 86515
PHONE: 928.871.7475 • FAX: 928.871.7474

Russell Begaye
President

Jonathan Nez
Vice-President

Navajo Nation Position Statement on Indian Education: Diné School Accountability Plan

December 12, 2018

The goal of the Navajo Nation is to develop an educational system that endorses its culture, sustains its language, and promotes the academic success of its children and adults. The Navajo Nation is taking initiatives to develop an effective department of education that can implement initiatives and polices as a Sovereign State. As such the Navajo Nation the Navajo provides the following statement:

1. The U.S. Department of Education entered into a Memorandum of Understanding (MOU) with the Bureau of Indian Education (BIE) in December of 2012 to assume functions as a State Educational Agency (SEA) and to administer school improvement initiatives, related to Every Student Succeeds Act (ESSA), Title 1 Part and B. The BIE has, for years, tried to address these federal requirements. But, as of this date, the BIE does not have an accountability plan that holds BIE schools accountable to these requirements. This is clearly outlined in the December 28, 2018 letter from the DOE to BIE that cites BIE's failure to fulfill the conditions and terms of the MOU as it relates to implementing Title 1 Part A and B of ESSA. The Navajo Nation seeks to enter into a MOU with DOE to assume the responsibilities of a SEA for BIE funded schools operating within the boundaries of the Navajo Nation.

2. The U.S. Department of Education and U.S. Department of Interior has approved the Navajo Nation's Diné School Accountability Plan (DSAP) up to June 2019. The approval clearly provides the Navajo Nation the opportunity to develop decision rules, school interventions, and school report cards to fulfill the federal requirements of Title 1 Part A and B. The Navajo Nation has completed these tasks. The DSAP details school improvement initiatives for all BIE funded schools located on the Navajo Nation. Federal funding to implement Title 1 Part A and B is required for the Navajo Nation to fulfill the federal requirements of DSAP.

3. The U.S. Department of Interior with its administration of BIE has failed the Navajo Nation. BIE schools on the Navajo Nation continue to fail the students and Navajo communities they serve. Since the implementation of the federal statue No Child Left Behind, 74% of the BIE schools on the Navajo Nation have failed to meet Adequate Yearly Progress (AYP) as defined by the law. With the reauthorization of NCLB to ESSA, the BIE continues to fail Navajo students because it does not have a consistent academic improvement plan for schools and students. Rather, they rely on the academic accountability plan of the state the BIE school is located in-ESSA supports tribal control of tribal controlled schools. For the Navajo Nation this means 61 schools impact over 16,000 students. Therefore, the Navajo Nation stands ready to implement DSAP to improve the quality of education for our Navajo students.

4. The Navajo Nation is pursing State Education Agency status as a sovereign state to improve the academic achievement of students attending BIE funded schools on the Navajo Nation. The Navajo Nation Council has authorized such policies in the Navajo Sovereignty Education Act of 2005. This is a tribal statue, authorizing the Department of Diné Education to develop a Navajo education system to meet the needs of our Navajo students. Without fundamental academic skills, students struggle to survive in a challenging world. The Navajo Nation strongly believes that we need to help ourselves to improve our student's academic achievement. Presently, tribes, with education responsibilities for tribally controlled schools, are not recognize as State Educational Agencies because they lack an academic accountability plan. Instead, these tribes are recognized as Tribal Education Agencies in title only. Tribal Education Agencies are not endowed with equal responsibilities of SEA. Navajo Nation has the capacity and desire to serve as a SEA for all BIE-funded schools on the Navajo Nation.

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DEPARTMENT OF DINÉ EDUCATION
THE NAVAJO NATION
P.O. Box 670 • Window Rock, Arizona 86515
PHONE: 928.871.7475 • FAX: 928.871.7474

Russell Begay
President

Jonathan Nez
Vice-President

Navajo Sovereignty in Education

1. In 2005 the Navajo Nation's Tribal Council passed the *Sovereignty in Education Act*, which explicitly recognizes the authority and responsibility of the Navajo government for the education of its people.

2. The successful education of Navajo children will require the engaged commitment of parents and communities embedded in the culture and values of the Diné People. The Navajo Nation's Department of Diné Education has been developing Navajo curriculum related to key Navajo standards: culture, language, history, governance, and character (ké).

3. The Navajo Nation is ready to implement DSAP.

4. DSAP gives the Department of Diné Education regulatory authority to oversee BIE funded schools located within the boundaries of the Navajo Nation.

5. In closing Western education, through the BIE, has overseen the operation of BIE schools on the Navajo Nation for 150 years. The BIE has failed the Navajo Nation. The Navajo Nation is prepared to take responsibility for our students to ensure that they receive a quality education, which is critical because-these students are our future. When a quality education is absent from the lives of the students it seriously impacts the livelihood of the Navajo Nation. Our people need the basic academic skills to raise healthy families and to make positive contributions to our Navajo communities and society.

6. The Navajo Nation seeks control of the development and progress of the educational system within the boundaries of the reservation to preserve our language and culture while providing a sound core academic content in reading, writing, math and science.

7. Navajo Nation does not support the BIE's SEA oversight of BIE-funded schools within the boundaries of the reservation. The Navajo Nation supports the purpose of Every Child Achieves Act to govern tribally-controlled schools in furthering the education of Navajo children independent of BIE control. This is further stipulated to in tribal, state and federal statue to support self-determination in Tribes and governance of their sovereignty.

Signatures:

Russell Begaye, President of the Navajo Nation

Dr. Tommy Lewis Jr., Superintendent of Schools, Navajo Nation

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Public Comment to the Committee on Thursday, March 14, 2019
Committee member Natasha Racawan. I would like to submit for public record a letter from the 24th Navajo Nation Council Delegate Daniel Tso addressed to the BIE Negotiated Rulemaking Committee members. This letter is dated 03/13/2019, and it reads as follows:

24th Navajo Nation Council

March 13, 2019

BIE Negotiated Rulemaking Committee Members
Phoenix, Arizona

Dear Members of the BIE Negotiated Rulemaking Committee:

As the Chairman of the Health, Education, and Human Services Committee of the Navajo Nation Council, I am writing to express the Committee's support of the Diné School Accountability Plan ("DSAP").

The United States Department of Education and the United States Department of Interior have approved DSAP through June 2019. The DSAP includes school improvement initiatives for all BIE funded schools located on the Navajo Nation. Moreover, DSAP will establish a single accountability system for BIE funded schools.

Students in BIE schools within the Navajo Nation continue to struggle academically. Since the implementation of the No Child Left Behind Act, seventy-four percent of the BIE schools on the Navajo Nation have failed to meet the adequate yearly progress standards, as defined by the law. In order to provide the best opportunities for our Navajo students to succeed, the Navajo Nation seeks to control the development and progress of the educational system within the boundaries of the reservation.

To that end, the Navajo Nation is ready to assume the functions of a State Education Agency (SEA) in order to implement school improvement initiatives. Currently, tribes with education responsibilities for tribally controlled schools are not recognized as SEA's because they lack an accountability plan. The Navajo Nation, with the implementation of DSAP, will be able to serve as a SEA for all BIE funded schools within the Navajo Nation.

The implementation of DSAP is critical to the development and education of our young Navajo students. I respectfully request the BIE Negotiated Rulemaking Committee Members support the implementation of DSAP.

Sincerely,

Daniel Tso

Delegate Daniel Tso
Health, Education and Human Services Committee, Chairman
24th Navajo Nation Council

Post Office Box 3390 • Window Rock, Arizona 86515 • Ph: (928) 871-6380 / 6381 / 6382 / 6383 / 6887 • Fax: (928) 871-7259

Public Comment to the Committee on Thursday, March 14, 2019
Good afternoon, my name is Derrick Leslie from the White Mountain Apache Tribe from Whiteriver, Arizona. I want to take this time to thank the Committee for all the work you have done so far, up to this point on behalf of Indian Country's children and our students. I can only imagine the difficulties staying within the parameters of Section 1111 when we all know Indian Education is so much more than that. I'm sure you had to leave work and family, so in just behalf of the White Mountain Apache Tribe, our Dishchii'bikoh Community School, our John F. Kennedy Day School, our Theodore Roosevelt School, and of course the tribe as a whole they want to thank you for your time and effort in doing the hard, hard work that you've done so far. Again, thank you.

Public Comment to the Committee on Thursday, March 14, 2019
Cathie Gladue – Turtle Mountain Community College. First, I would like to applaud you all for your time and effort that you've put into this very worthy cause, it's greatly appreciated. I'm with Turtle Mountain Community College, teacher education department. As I was reviewing different items within this binder, I've looked at the development of teacher education programs. Our teacher education program was brought to life around 2002. Since the beginning of our teacher education program through 2018, we have graduated over 225 students from our reservation; they are all enrolled. The majority of our graduates work within BIE schools systems. I'm looking here and the BIE's strategic direction emphasizes a culturally relevant high quality education, we do as well. We prepare our students to go out there and our graduates to be ready to teach our future. We give them the tools that are necessary; they know the best practices. When they go into the BIE school systems their major complaint is they have to follow scripted curriculums. We are not allowed to provide them with project-based learning, we are not allowed to provide them with student centered brain based learning. This is what we teach them. We are failing if we are going to continue in this route, we need to change things. I think this Committee is saying that loud and clear. Thank you.

Public Comment to the Committee on Thursday, March 14, 2019
Committee member Lucinda Campbell shared the following concerns sent to her by Lemual Adson from the Shonto Preparatory School in Shonto, Arizona, on the Navajo Nation. These are concerns that he feels needed to be expressed.

Concerns expressed by community, staff and myself. Thanks for sharing and seeking input from us in the field.

- What is the alignment of the BIE accountability system with the DoDE DSAP. (Department of Dine' Education/Dine' Standards & Accountability Plan)

- In light of NM public school doing away with PARCC and AZ reviewing the merits of the AZ merit. What test will the schools who supported NM in doing away with PARCC, use. Will they be forced to continue with BIEs PARCC use, NN PARCC use. If NM & AZ change the assessment tool, will it change the accountability workbook. An update on the DoDE DSAP would be helpful and training on this new alignment on the Navajo Nation with the BIE before this whole plan is passed and put on an Administrators desk to implement. What is the intent for the BIE operated schools on NN? Will they be subject to the new BIE SAAP or the NN DSAP?

- The Students on Navajo Nation move from school system to school system. What will prevent parents from playing the system to get better results in one school over another to get better results from a less rigorous test. Will Universities and secondary education institutes continue to accept all students regardless of the school system they attend?

- What are the real support systems that will be in place and provided to the many schools on the NN by the BIE and DoDE, if we continue to be underperforming or receive an F?

- When one understands the complexity of the 'letter grade' process it opens up so much for which section of curriculum should be weighted heavily over other sections, which should be minimized? When knowledge of the AZ state accountability system regarding letter grades assigned to schools, it is doubtful our schools will be 'A' schools. I just hope there will be data available that will allow us to focus our efforts on reaching that point but not label us negatively as F schools.
  A terrible example would be to use Dine Bizaad ability as a section that would influence your letter grade a school earns. If the Dine Bizaad is only measured on 'yes' they speak the language or 'no' they do not speak the language then the school is penalized for the failure of teaching the language, especially when it is not reinforced at home. There are so many components that must be considered just for this section. Lots of time and money needed, how did you guys get through it? Of course, it is a priority to save our Native Languages but true language courses should be implemented with fidelity and based on research before it can be recognized as a potential language program. Currently, there are no funds available to implement such programs effectively. Hopefully this new plan will help alleviate these shortages.

  Respectfully,
  Mr. Lemuel Adson
  leadson@shontoprep.org

Appendix A – List of Attendees

Names	Organization	Attendance March 2019		
		12th	13th	14th
Non-Federal Committee				
Charles Cuny Jr.	Little Wound School Board	Yes	Yes	Yes
Dr. Gloria Coats-Kitsopoulos	Oglala Sioux Tribe	---	---	---
Sherry Tubby	Mississippi Band of Choctaw Indians	Yes	Yes	Yes
Ron Etheridge	Cherokee Nation of Oklahoma	---	---	---
Michael Dabrieo	Santa Clara Pueblo	Yes	Yes	Yes
Patricia Sandoval	Pueblo of Laguna	Yes	Yes	Yes
Jennifer McLeod	Sault Ste. Marie Tribe of Chippewa	Yes	Yes	Yes
Dr. Rick St. Germaine	Mille Lacs Band of Ojibwe	Yes	Yes	Yes
Genevieve J. Jackson	Dine Bi Olta School Board Association, Inc.	Yes	Yes	Yes
Dr. Amy D. McFarland	Chief Leschi Schools	---	---	---
Frank No Runner	Northern Arapaho Business Council	Yes	Yes	---
Lucinda Campbell	Dine Grant Schools Association	Yes	Yes	Yes
Tasha Racawan	Navajo Nation	Yes	Yes	Yes
Leslie Harper	Leech Lake Band of Ojibwe	Yes	Yes	Yes
Federal Committee				
Sue Bement	Designated Federal Official	Yes	Yes	Yes
Jeffrey Hamley	Bureau of Indian Education	Yes	Yes	Yes
Jimmy Hastings	Bureau of Indian Education	Yes	Yes	Yes
Lora Braucher	Bureau of Indian Education	Yes	Yes	Yes
Brian Quint	Office of the Solicitor	Yes	Yes	Yes
Sarah Palmer	Facilitator	Yes	Yes	Yes

NOTE: Alternate Committee member Lucinda Campbell served as a primary Committee member in the absence of Amy McFarland at McFarland's request. Alternate Committee member Frank No Runner served as a primary Committee member in the absence of Ron Etheridge.

Members of the Public **See the following sign in sheets**

BIE Standards, Assessments, and Accountability System Negotiated Rulemaking Committee
Phoenix, AZ / March 12, 2019
Members of the Public Sign in Sheet

Name (Please **PRINT** Your Name)	Tribe / Tribal Organization / Organization
Jeffrey Hamley	BIE
Leandra Scott	Shonto Prep School / Navajo
JACK SHARMA	Blackwater Community School
Wendall Joe	Blackwater Community School.
Anne Garcia	" Blackwater Com. Sch.
[illegible]	Gila River Indian Comm.
Adrianne Elliott	NIEA
Laura Kaloi	NIEA
Jill Martin	ED

Meeting #4 Phoenix, AZ

BIE Standards, Assessments, and Accountability System Negotiated Rulemaking Committee
Phoenix, AZ / March 12, 2019
Members of the Public Sign in Sheet

Name (Please **PRINT** Your Name)	Tribe / Tribal Organization / Organization
Henry Pino	Pima - Brookline School
Nina Smith	Santa Fe Indian School.
Bryan Hemberg	WestEd
Roger Bordeaux	ACTS
Deb Sigman	CSAI
Cathie Gladue	TMCC - Ojibwa - TMBCI
Misty Lopez	BVCS
Kim Franklin	Casa Blanca Comm. School Bapchule, AZ
Melanie Pierce Tuk	Shonto Prep Schools

Meeting #4 Phoenix, AZ

BIE Standards, Assessments, and Accountability System Negotiated Rulemaking Committee
Phoenix, AZ / March 12, 2019
Members of the Public Sign in Sheet

Name (Please **PRINT** Your Name)	Tribe / Tribal Organization / Organization
ROBERT SALLEY	US Dept of ED
Derrick Leslie	WMAT
Pattee Bement	BIE School
Catherine Esquivel	NJOMA Board Member Diné
ELAINE KASCH	FLAGSTAFF AZ - FUSD

Meeting #4 Phoenix, AZ