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

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

Title 25 – Indians
Chapter I – Bureau of Indian Affairs, Department of the Interior
Subchapter E – Education
Part 30 – Standards, Assessments, and Accountability System
Subpart B – Waiver of Definitions, Technical Assistance, and Approval of Waivers

§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 an alternative
proposal is approved the Secretary’s definitions apply.¹

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

(a) If a tribal governing body or school board determines the Secretary’s definition of
standards, assessments, or accountability system to be inappropriate², it may waive these
definitions in part or in whole in a manner consistent with applicable {Federal or
Tribal} law. How is this done? (11/15/18: ‘in a form appropriate /consistent with tribal
law’)-(b) The tribal governing body or school board must notify the Secretary and the
Secretary of Education of the decision to waive a definition. (c) Within 60 days of the
decision to waive a definition the tribal governing body or school board must submit to
the Secretary a proposal for alternative definitions that are consistent with section 1111 of
the Act and that take into account the unique circumstances and needs of such school or
schools and the students served. (d) A tribal governing body or school board may request

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

² As we discussed, the statute does not define “inappropriate.” As this is a matter left to Tribal governing bodies and
school boards under the statute, it might not be appropriate to try to define the term in these regulations.
an extension of the 60 day deadline for the provision of technical assistance. (e) The Secretary will work with the Secretary of Education to develop and make available templates for alternative proposals. [consensus on paragraph a 120618 as revised]

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

§30.109. What should a tribal governing body or school board include in a waiver and alternative proposal?
(a) Waivers should must explain how the Secretary’s definition of standards, assessments, or accountability system are inappropriate.[consensus 120618 as revised]

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

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

§30.110. May a proposed 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 proposals should will clearly incorporate any retained portions of the Secretary’s definitions. [consensus 120618 as revised]

§30.111. Will the Secretary provide technical assistance to tribal governing bodies or school boards seeking a waiver?
Yes. The Secretary and the Secretary of Education are required by statute to provide technical assistance, upon request, either directly or through contract, to a tribal governing body or a school board that seeks a waiver. A tribal governing body or school board seeking such assistance should will submit a request to the Director. The Secretary will provide such technical assistance on an ongoing and timely basis. [consensus 120618 as revised]

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

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

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3 20 U.S.C. §7824(c)(3). “Technical assistance. The Secretary of [the] Interior and Secretary shall, either directly or through contract, provide technical assistance, upon request, to a tribal governing body or school board of a school funded by the Bureau of Indian Affairs that seeks a waiver under paragraph (2).”
(a) A tribal governing body or school board requesting technical assistance should submit a written request to the Director, specifying the form of assistance that is being sought. Requests for Technical Assistance must be in writing from a tribal governing body or school board to the Director.

(b) The Director, or designee, will acknowledge receipt within 10 days 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. This contact will immediately begin working with the tribal governing body or school board to jointly develop the specifics of the technical assistance, including identifying the form, substance, and timeline for the assistance.

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

A tribal governing body or school board should is 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?

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

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

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

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

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

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

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

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

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

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

(2) The alternative definition will become effective at the start of the following school year.

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

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

(2) The reasons why the alternative definition has been disapproved.
(h) If a proposed alternative definition is \textbf{disapproved} \textit{not approved} under paragraph (g) of this section, the Secretary shall provide technical assistance to overcome the basis for the disapproval.