

Draft for Discussion Purposes – March 5, 2019

Dear Committee Members:

Attached for your review are the updated draft recommendations on the regulations implementing the requirements of the *Elementary and Secondary Education Act of 1965*, as amended by the *Every Student Succeeds Act*, applicable to the Secretary of the Interior and Bureau of Indian Education-funded schools.

A few notes about this document:

1. Highlighted in yellow is all of the text that is consensus language of the Committee. The majority of this text is unchanged. In a few places we suggest changes to the consensus language, that are reflected in track changes and noted in a comment box why the change is being suggested. Most of these suggestions aim to align the text more closely to Sections 1111 and 8204 of ESEA, as amended.
2. We made grammatical edits to the document, i.e. commas, line spacing, etc. These changes are incorporated into the text.
3. In track changes you will see key areas where BIE was asked in December to provide proposed language. We will discuss these proposals when we meet in Phoenix and ask you to focus your attention on these areas in particular.
4. The document also reflects places, e.g., in the waivers sections 30.112 - 30.114 that the Committee did not have time to discuss in December and that we need to discuss next week. We have made minor revisions, as indicated in track changes, to this text.

We look forward to the discussion and thank you for your work with us in developing this recommendation.

1 **§30.100. What is the purpose of this Part?**

2 This Part establishes regulations regarding the definition of standards, assessments, and  
3 accountability system at Bureau-funded schools consistent with section 1111 of the Elementary  
4 and Secondary Education Act of 1965. Nothing in this Part:

- 5 (a) Diminishes the Secretary’s trust responsibility for Indian education or any statutory rights in  
6 law;
- 7 (b) Affects in any way the sovereign rights of tribes; or
- 8 (c) Terminates or changes the trust responsibility of the United States to Indian Tribes or  
9 individual Indians.
- 10

11 ~~“Recognizing the special rights of Indian Tribes and Alaska Native entities and the unique  
12 government to government relationship of Indian Tribes and Alaska Native villages with the  
13 Federal Government as affirmed by the United States Constitution, U.S. Supreme Court  
14 decisions, treaties, Federal statutes, and Executive Orders, and as set out in the Congressional  
15 declaration in sections 2 and 3 of the Indian Self-Determination and Education Assistance Act  
16 (Pub.L. 93-638; 88 Stat. 2203; 25 U.S.C. 450 and 450a), it is the responsibility and goal of the  
17 Federal government to provide comprehensive education programs and services for Indians and  
18 Alaska Natives. As acknowledged in section 5 of the Indian Child Welfare Act of 1978 (Pub.L.  
19 95-608; 92 Stat. 3069; 25 U.S.C. 1901), in the Federal Government’s protection and preservation  
20 of Indian Tribes and Alaska Native villages and their resources, there is no resource more vital to  
21 such Tribes and villages than their young people and the Federal Government has a direct  
22 interest, as trustee, in protecting Indian and Alaska Native children, including their education.  
23 The mission of the Bureau of Indian Affairs, Office of Indian Education Programs, is to provide  
24 quality education opportunities from early childhood through life in accordance with the Tribes’  
25 needs for cultural and economic well-being in keeping with the wide diversity of Indian Tribes  
26 and Alaska Native villages as distinct cultural and governmental entities. The Bureau shall  
27 manifest consideration of the whole person, taking into account the spiritual, mental, physical  
28 and cultural aspects of the person within family and Tribal or Alaska Native village contexts.”~~

29 In carrying out activities under this Part the Secretary will be guided by the policies stated in 25  
30 C.F.R. Part 32.

31 **§30.101. What definitions apply to terms in this part?**

32 “Act” means the Elementary and Secondary Education Act of 1965, as amended by the Every  
33 Student Succeeds Act, Public Law 114-95, enacted December 10, 2015.

34 “Bureau” means the Bureau of Indian Education.

**Comment [QBA1]:** The above language is the text of 25 CFR 32.3, *Mission Statement*. Perhaps the concept of a moral statement of responsibility could be re-stated as: In carrying out activities under this Part the Secretary will be guided by the policies stated in 25 C.F.R. Part 32.

35 “BIE-funded ~~School~~school(s)” means a school funded by the Bureau of Indian Education and  
36 includes both Bureau-operated schools and tribally-controlled P.L. 93-638 contract schools or  
37 P.L. 100-297 grant schools.

**Comment [QBA2]:** Edit recommended to reflect the common nomenclature of Bureau-funded schools to mean all of the institutions that receive funding through the BIE.

38 “Bureau Operated school” means a school operated by the Bureau of Indian Education.

39 “Department” means the Department of the Interior.

40 “Director” means the Director of the Bureau of Indian Education.

41 “Secretary” means the Secretary of the Interior or a designated representative.

42 “Subgroup of students” means a) economically disadvantaged students; b) students from major  
43 racial and ethnic groups; c) children with disabilities; and d) English learners.

44 “Standards, Assessments, and Accountability Plan” means a document that will provide Indian  
45 tribes, parents, and other stakeholders with quality, transparent information about how standards,  
46 assessments, and accountability system will be implemented at BIE Schools.

47 “Tribally controlled school” means a school operated under a P.L. 93-638 contract or P.L. 100-  
48 297 grant.

49 “Tribal governing body or school board” means, with respect to waiver and submission of  
50 alternative proposals of the Secretary’s definitions of standards, assessments, and accountability  
51 system at P.L. 100-297 grant or P.L. 93-638 contract schools, the entity authorized under  
52 applicable Tribal or Federal law to waive the Secretary’s definitions and negotiate an alternative  
53 proposal with the Secretary.

54 **§30.102. What does the Act require of the Secretary?**

55 The Act requires the Secretary to define standards, assessments, and accountability system  
56 consistent with section 1111 of the Act for schools on a national, regional, or tribal basis, as  
57 appropriate, taking into account the unique circumstances and needs of such schools and the  
58 students served by such schools, using regulations developed through a negotiated rulemaking  
59 process.

60 A tribal governing body or school board may waive these requirements, in part or in whole, and  
61 submit a proposal for alternative definitions within 60 days, which the Secretary and the  
62 Secretary of Education will approve unless the Secretary of Education determines that the  
63 proposal does not meet the requirements of section 1111, taking into account the unique  
64 circumstances and needs of such school or schools and the students served.

65 The Act further requires the Secretary and the Secretary of Education to provide technical  
66 assistance, upon request, either directly or through a contract, to a tribal governing body or  
67 school board.

68

69 **§30.103. How will the Secretary implement the Standards Assessments and Accountability**  
70 **System?**

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

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

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

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

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

90 (d) The Director may voluntarily partner with States, or Federal agency, to develop and  
91 implement challenging academic standards and assessments.

92

93 **§30.104. How will the Secretary define standards?**

94 (a) The Secretary will define academic standards for Bureau-funded schools on a national,  
95 regional, or tribal basis, as appropriate, taking into account the unique circumstances and needs  
96 of such schools and the students served by such schools by:

- 97
- 98 • adopting challenging academic content standards and
  - 99 • aligned academic achievement standards (standards) consistent with section 1111(b)(1)  
of the Act.

100 | That shall include at least three levels of achievement and are ~~Described~~ described collectively in  
101 | the Act as “challenging State academic standards.”

**Comment [QBA3]:** Edit reflects the language of section 1111(b)(1)(A) providing that “achievement standards shall include not less than 3 levels of achievement” and which was absent from the consensus text.

102 | (b) The academic standards will apply to all Bureau-funded schools and the students served at  
103 | such schools in the absence of approved alternative requirements, and will include:

**Comment [QBA4]:** Edit reflects the language of section 1111(b)(1)(B) that challenging academic achievement standards shall “apply to all public schools and public school students” and which was absent from the consensus text.

- 104 | • mathematics
- 105 | • reading or language arts
- 106 | • science, and
- 107 | • Tribal civics

108 | Phase in tribal civics assessment and accountability system starting as a school  
109 | quality indicator and revisit as implemented. Assessments and assessment schedule  
110 | will be developed for Tribal Civics at the conclusion of the processes described in  
111 | Section 30.103.

- 112 | • And may have such standards for any other subject determined by the Secretary.

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

**Comment [QBA5]:** It is not clear whether there are entrance requirements for credit-bearing coursework in Tribal civics. As such, the proposed language excluding Tribal civics from this requirement.

118 | (c) Academic achievement standards for students with the most significant cognitive disabilities  
119 | Academic achievement standards shall include the same types of knowledge, skills, and levels of  
120 | achievement expected of all students at Bureau-funded schools.

**Comment [QBA6]:** Edit reflects the full title of section 1111(b)(1)(E).

121 | The Secretary must, through a documented and validated standards-setting process, adopt  
122 | alternate academic achievement standards for students with the most significant cognitive  
123 | disabilities, provided those standards—  
124 | (I) are aligned with the challenging State academic content standards under subparagraph  
125 | (A);  
126 | (II) promote access to the general education curriculum, consistent with the Individuals  
127 | with Disabilities Education Act (20 U.S.C. 1400 et seq.);  
128 | (III) reflect professional judgment as to the highest possible standards achievable by such  
129 | students;  
130 | (IV) are designated in the individualized education program developed under section  
131 | 614(d)(3) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(3)) for  
132 | each such student as the academic achievement standards that will be used for the  
133 | student; and  
134 | (V) are aligned to ensure that a student who meets the alternate academic achievement  
135 | standards is on track to pursue postsecondary education or employment, consistent with  
136 | the purposes of Public Law 93–112, as in effect on July 22, 2014.

**Comment [QBA7]:** Edit reflects the language of section 1111(b)(1)(E).

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

139 (f) English language proficiency standards

140 The Secretary must adopt English language proficiency standards that (i) are derived from the  
141 four recognized domains of speaking, listening, reading, and writing; (ii) address the different  
142 proficiency levels of English learners; and (iii) are aligned with the BIE’s challenging academic  
143 standards.

144 (g) insert language here to acknowledge the unique standards/assessments in immersion schools.  
145 Add language in either standards or assessments for an exception that students in immersion  
146 schools in grade xx-yy, shall not be held accountable for instructing in English.

147

148 **§30.105. How will the Secretary define assessments?**

149 (A) IN GENERAL., The Bureau of Indian Education (BIE), will implement a set of high quality  
150 student academic assessments in mathematics, reading or language arts, and science. The BIE  
151 retains the right to implement such assessments in any other subject chosen by the BIE.

152 (B) REQUIREMENTS.—The assessments shall—

153 (i) except Alternate Assessments, be—

154 (I) the same academic assessments used to measure the achievement of all BIE-funded  
155 school students; and

156 (II) administered to all BIE-funded school students;

157 (ii) be aligned with the BIE’s challenging academic standards, and provide coherent and timely  
158 information about student attainment of such standards and whether the student is performing  
159 at the student’s grade level;

160 (iii) be used for purposes for which such assessments are valid and reliable, consistent with  
161 relevant, nationally recognized professional and technical testing standards, objectively  
162 measure academic achievement, knowledge, and skills, and be tests that do not evaluate or  
163 assess personal or family beliefs and attitudes, or publicly disclose personally identifiable  
164 information;

165 (iv) be of adequate technical quality for each purpose required under this Act and consistent  
166 with the requirements of this section, the evidence of which shall be made public, including on  
167 the BIE website;

**Comment [QBA8]:** Edit inserts section 1111(b)(1)(F) subsection heading.

**Comment [QBA9]:** This topic requires further discussion.

168 (v) Assessments and assessment schedule will be developed for Tribal Civics at the conclusion  
169 of the processes described in Section 30.103.(v)

**Comment [QBA10]:** Edit preserves subsection heading and deletes language repeated in subsection (III).

170 (I) in the case of mathematics and reading or language arts, be administered—

171 (aa) in each of grades 3 through 8; and

172 (bb) at least once in grades 9 through 12;

173 (II) in the case of science, be administered not less than one time during—

174 (aa) grades 3 through 5;

175 (bb) grades 6 through 9; and

176 (cc) grades 10 through 12; and

177 (III) Tribal Civics assessments and assessment schedule will be developed at the conclusion  
178 of the processes described in Section 30.103 except that the Secretary shall phase in the  
179 requirement for assessments aligned with the Tribal civics standards. In the case of any other  
180 subject chosen by the BIE, be administered at the discretion of the BIE;

**Comment [QBA11]:** Edit reflects language in 30.104(b) and in 30.106(b) regarding the phase-in of Tribal civics assessments and incorporation into accountability system.

181 (vi) involve multiple up-to-date measures of student academic achievement, including  
182 measures that assess higher-order thinking skills and understanding, which may include  
183 measures of student academic growth and may be partially delivered in the form of portfolios,  
184 projects, or extended performance tasks;

185 (vii) provide for—

186 (I) the participation in such assessments of all students;

187 (II) the appropriate accommodations, such as interoperability with, and ability to use,  
188 assistive technology, for children with disabilities (as defined in section 602(3) of the  
189 Individuals with Disabilities Education Act (20 U.S.C. 1401(3))), including students with the  
190 most significant cognitive disabilities, and students with a disability who are provided  
191 accommodations under an Act other than the Individuals with Disabilities Education Act (20  
192 U.S.C. 1400 et seq.), necessary to measure the academic achievement of such children  
193 relative to the BIE's challenging academic standards or alternate academic achievement  
194 standards described in paragraph (1)(E); and (III) the inclusion of English learners, who shall  
195 be assessed in a valid and reliable manner and provided appropriate accommodations on  
196 assessments administered to such students under this paragraph, including, to the extent  
197 practicable, assessments in the language and form most likely to yield accurate data on what  
198 such students know and can do in academic content areas, until such students have achieved  
199 English language proficiency, as determined under subparagraph (G);

- 200 (viii) at the BIE’s discretion—
- 201 (I) be administered through a single summative assessment; or
- 202 (II) be administered through multiple Bureau-wide interim assessments during the course of
- 203 the academic year that result in a single summative score that provides valid, reliable, and
- 204 transparent information on student achievement or growth;
- 205 (ix) notwithstanding clause (vii)(III), provide for assessments (using tests in English) of reading
- 206 or language arts of any student who has attended school in the United States for 3 or more
- 207 consecutive school years, except that if the local educational agency determines, on a case-by-
- 208 case individual basis, that academic assessments in another language or form would likely yield
- 209 more accurate and reliable information on what such student knows and can do, the local
- 210 educational agency may make a determination to assess such student in the appropriate language
- 211 other than English for a period that does not exceed 2 additional consecutive years, provided that
- 212 such student has not yet reached a level of English language proficiency sufficient to yield valid
- 213 and reliable information on what such student knows and can do on tests (written in English) of
- 214 reading or language arts;
- 215 (x) produce individual student interpretive, descriptive, and diagnostic reports, consistent with
- 216 clause (iii), regarding achievement on such assessments that allow parents, teachers, principals,
- 217 and other school leaders to understand and address the specific academic needs of students, and
- 218 that are provided to parents, teachers, and school leaders, as soon as is practicable after the
- 219 assessment is given, in an understandable and uniform format, and to the extent practicable, in
- 220 a language that parents can understand;
- 221 (xi) enable results to be disaggregated within the Bureau and each Bureau-funded school by—
- 222 (I) each major racial and ethnic group;
- 223 (II) economically disadvantaged students as
- 224 compared to students who are not economically disadvantaged;
- 225 (III) children with disabilities as compared to children without disabilities;
- 226 (IV) English proficiency status;
- 227 (V) gender; and
- 228 (VI) migrant status,
- 229 except that such disaggregation shall not be required in the case of the Bureau or a Bureau-
- 230 funded school in which the number of students in a subgroup is insufficient to yield statistically

231 reliable information or the results would reveal personally identifiable information about an  
232 individual student;

233 (xii) enable itemized score analyses to be produced and reported, consistent with clause (iii), to  
234 local educational agencies and schools, so that parents, teachers, principals, other school  
235 leaders, and administrators can interpret and address the specific academic needs of students as  
236 indicated by the students' achievement on assessment items; and

237 (xiii) be developed, to the extent practicable, using the principles of universal design for  
238 learning.

239 (xiv) (I) except as provided in paragraph (xiv)(II) of this section, the BIE is not required to  
240 assess, using an assessment written in English, student achievement in meeting the BIE's  
241 challenging academic standards in reading/language arts, mathematics, or science for a student  
242 who is enrolled in a school or program that provides instruction primarily in a Native American  
243 language if – (aa) the BIE provides such an assessment in the Native American language to all  
244 students in the school or program, consistent with the requirements of 34 CFR 200.2; (bb) for an  
245 English learner, as defined in section 8101(20)(C)(ii) of the Act, the BIE continues to assess the  
246 English language proficiency assessment, and provides appropriate services to enable him or her  
247 to attain proficiency in English.

248 (II) the BIE must assess using assessments written in English, the achievement of each student  
249 enrolled in such school or program in meeting the BIE's challenging academic standards in  
250 reading/language arts, at a minimum, at least once in grades 9 through 12.

251 (C) Exception for Advance Mathematics in Middle School - The BIE may exempt any 8th  
252 grade student from the assessment in mathematics described in subparagraph (B)(v)(I)(aa) if—

253 (i) such student takes the end-of-course assessment

254 the BIE typically administers to meet the requirements of subparagraph (B)(v)(I)(bb) in  
255 mathematics;

256 (ii) such student's achievement on such end-of-course assessment is used for purposes of  
257 subsection (c)(4)(B)(i), in lieu of such student's achievement on the mathematics assessment  
258 required under subparagraph (B)(v)(I)(aa), and such student is counted as participating in the  
259 assessment for purposes of subsection (c)(4)(B)(vi); and

260 (iii) in high school, such student takes a mathematics assessment pursuant to subparagraph  
261 (B)(v)(I)(bb) that—

262 (I) is any end-of-course assessment or other

263 assessment that is more advanced than the assessment taken by such student under clause (i)  
264 of this subparagraph; and

265 (II) shall be used to measure such student’s academic achievement for purposes of subsection  
266 (c)(4)(B)(i).

267 (D) Alternate Assessments for Student with the Most Significant Cognitive Disabilities –

268 (i) ALTERNATE ASSESSMENTS ALIGNED WITH ALTERNATE  
269 ACADEMIC ACHIEVEMENT STANDARDS.—The BIE will provide for alternate  
270 assessments aligned with the BIE’s challenging academic standards and alternate academic  
271 achievement standards described in paragraph (1)(E) for students with the most significant  
272 cognitive disabilities, if the BIE—

273 (I) consistent with clause (ii), ensures that, for  
274 each subject, the total number of students assessed in such subject using the alternate  
275 assessments does not exceed 1 percent of the total number of all students in the BIE-funded  
276 school system who are assessed in such subject;

277 (II) ensures that the parents of such students are clearly informed, as part of the process for  
278 developing the individualized education program (as defined in section 614(d)(1)(A) of the  
279 Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)))—

280 (aa) that their child’s academic achievement will be measured based on such alternate  
281 standards; and

282 (bb) how participation in such assessments may delay or otherwise affect the student  
283 from completing the requirements for a regular high school diploma;

284 (III) promotes, consistent with the Individuals with Disabilities Education Act (20 U.S.C.  
285 1400 et seq.), the involvement and progress of students with the most significant cognitive  
286 disabilities in the general education curriculum;

287 (IV) describes the steps the Bureau has taken to incorporate universal design for learning, to  
288 the extent feasible, in alternate assessments;

289 (V) describes that general and special education teachers, and other appropriate  
290 staff—

291 (aa) know how to administer the alternate assessments; and

292 (bb) make appropriate use of accommodations for students with disabilities on all  
293 assessments required under this paragraph;

294 (VI) develops, disseminates information on, and promotes the use of appropriate  
295 accommodations to increase the number of students with significant cognitive disabilities—

296 (aa) participating in academic instruction and assessments for the grade level in which the  
297 student is enrolled; and

298 (bb) who are tested based on the BIE’s challenging academic standards for the grade level in  
299 which the student is enrolled; and

300 (VII) does not preclude a student with the most significant cognitive disabilities who takes an  
301 alternate assessment based on alternate academic achievement standards from attempting to  
302 complete the requirements for a regular high school diploma.

303 (ii) SPECIAL RULES.—

304 (I) RESPONSIBILITY UNDER IDEA.—Subject to the authority and requirements for the  
305 individualized education program team for a child with a disability under section  
306 614(d)(1)(A)(i)(VI)(bb) of the Individuals with Disabilities Education Act (20 U.S.C.  
307 1414(d)(1)(A)(i)(VI)(bb)), such team, consistent with the guidelines established by the BIE  
308 and required under section 612(a)(16)(C) of such Act (20 U.S.C. 1412(c)(16)(C)) and clause  
309 (i)(II) of this subparagraph, shall determine when a child with a significant cognitive  
310 disability shall participate in an alternate assessment aligned with the alternate academic  
311 achievement standards.

312 (II) PROHIBITION ON LOCAL CAP.—Nothing in this subparagraph shall be construed to  
313 permit the BIE to impose a cap on the percentage of students administered an alternate  
314 assessment under this subparagraph, except that a BIE-funded school exceeding the cap  
315 applied to the BIE under clause (i)(I) shall submit information to the BIE justifying the need  
316 to exceed such cap.

317 (III) BIE SUPPORT.—The BIE shall provide appropriate oversight, as determined by the  
318 BIE, of any BIE-funded school that is required to submit information to the BIE under  
319 subclause(II).

320 (E) State Authority.

321 (F) Language Assessments –

322 (i) IN GENERAL.— shall identify the languages other than English that are present to a  
323 significant extent in the participating student population and indicate the languages for which  
324 annual student academic assessments are not available and are needed. The BIE will define a

325 methodology to identify the languages other than English that are present to a significant extent  
326 in the participating student population.

327 (ii) SECRETARIAL ASSISTANCE.—The Bureau of Indian Education shall make every effort  
328 to develop such assessments and may request assistance from the Secretary of Education if  
329 linguistically accessible academic assessment measures are needed. Upon request, the  
330 Secretary of Education shall assist with the identification of appropriate academic assessment  
331 measures in the needed languages, but shall not mandate a specific academic assessment or  
332 mode of instruction.

333 (G) Assessments of English Language Proficiency –

334 (i) IN GENERAL.—The BIE will ensure that BIE-funded schools  
335 will provide for an annual assessment of English proficiency of all English learners in the  
336 schools served by the BIE.

337 (ii) ALIGNMENT.—The assessments described in clause (i) shall be aligned with the BIE's  
338 English language proficiency standards described in paragraph (1)(F).

339 (H) Locally Selected Assessment ASSESSMENT.—

340 (i) IN GENERAL.—Nothing in this paragraph shall be construed to prohibit a tribal  
341 governing body or school board from administering a locally-selected assessment in lieu of the  
342 BIE-designed academic assessment under subclause (I)(bb) and subclause (II)(cc) of  
343 subparagraph (B)(v), if the local educational agency selects a nationally-recognized high  
344 school academic assessment that has been approved for use by the BIE as described in clause  
345 (iii) or (iv) of this subparagraph.

346 (ii) BIE TECHNICAL CRITERIA.—To allow for BIE approval of nationally-recognized high  
347 school academic assessments that are available for local selection under clause (i), the BIE  
348 educational agency shall establish technical criteria to determine if any such assessment meets  
349 the requirements of clause (v).

350 (iii) BIE APPROVAL.—If the BIE chooses to make a nationally-recognized high school  
351 assessment available for selection by a tribally governing body or school board under clause  
352 (i), which has not already been approved under this clause, the BIE shall—

353 (I) conduct a review of the assessment to determine if such assessment meets or exceeds the  
354 technical criteria established by the BIE under clause (ii);

355 (II) submit evidence in accordance with subsection (a)(4) that demonstrates such assessment  
356 meets the requirements of clause (v); and (III) after fulfilling the requirements of subclauses  
357 (I) and (II), approve such assessment for selection and use by any tribally governing body or  
358 school board that requests to use such assessment under clause (i).

359 (iv) tribally governing body or school board OPTION.—

360 (I) tribally governing body or school board.—If a tribally governing body or school board  
361 chooses to submit a nationally recognized high school academic assessment to the BIE,  
362 subject to the approval process described in subclause (I) and subclause (II) of clause (iii) to  
363 determine if such assessment fulfills the requirements of clause (v), the BIE may approve the  
364 use of such assessment consistent with clause (i).

365 (II) BIE.—Upon such approval, the BIE shall approve the use of such assessment in any  
366 other tribally governing body or school board that subsequently requests to use such  
367 assessment without repeating the process described in subclauses (I) and (II) of clause (iii).

368 (v) REQUIREMENTS.—To receive approval from the BIE under clause (iii), a locally  
369 selected assessment shall—

370 (I) be aligned to the BIE’s academic content standards under paragraph (1), address the depth  
371 and breadth of such standards, and be equivalent in its content coverage, difficulty, and  
372 quality to the BIE-designed assessments under this paragraph (and may be more rigorous in  
373 its content coverage and difficulty than such BIE-designed assessments);

374 (II) provide comparable, valid, and reliable data on academic achievement, as compared to  
375 the BIE-designed assessments, for all students and for each subgroup of students defined in  
376 subsection (c)(2), with results expressed in terms consistent with the BIE’s academic  
377 achievement standards under paragraph (1), among all BIE-funded schools;

378 (III) meet the requirements for the assessments under subparagraph (B) of this paragraph,  
379 including technical criteria, except the requirement under clause (i) of such subparagraph;  
380 and

381 (IV) provide unbiased, rational, and consistent differentiation between BIE-funded schools to  
382 meet the requirements of subsection (c).

383 (vi) PARENTAL NOTIFICATION.—A tribally governing body or school board shall notify  
384 the parents of high school students served by the local educational agency—

385 (I) of its request to the BIE for approval to administer a locally-selected assessment; and

386 (II) upon approval, and at the beginning of each subsequent school year during which the  
387 locally selected assessment will be administered, that the tribally governing body or school  
388 board will be administering a different assessment than the BIE-selected assessments under  
389 subclause (I)(bb) and subclause (II)(cc) of subparagraph (B)(v).

390 (I) Deferral.

391 (J) Adaptive Assessments

392 (i) IN GENERAL.—Subject to clause (ii) BIE retains the right to develop and administer  
393 computer adaptive assessments as the assessments described in this paragraph, provided the  
394 computer adaptive assessments meet the requirements of this paragraph, except that—

395 (I) subparagraph (B)(i) shall not be interpreted to require that all students taking the computer  
396 adaptive assessment be administered the same assessment items; and

397 (II) such assessment—

398 (aa) shall measure, at a minimum, each student’s academic proficiency based on the BIE’s  
399 challenging academic standards for the student’s grade level and growth toward such  
400 standards; and

401 (bb) may measure the student’s level of academic proficiency and growth using items above  
402 or below the student’s grade level, including for use as part of the BIE’s accountability  
403 system under subsection (c).

404 (ii) STUDENTS WITH THE MOST SIGNIFICANT COGNITIVE DISABILITIES AND  
405 ENGLISH LEARNERS.—In developing and administering computer adaptive assessments—

406 (I) as the assessments allowed under subparagraph (D), the BIE shall ensure that such  
407 computer adaptive assessments—

408 (aa) meet the requirements of this paragraph, including subparagraph (D), except such  
409 assessments shall not be required to meet the requirements of clause (i)(II); and

410 (bb) assess the student’s academic achievement to measure, in the subject being assessed,  
411 whether the student is performing at the student’s grade level; and

412 (II) as the assessments required under subparagraph (G), the BIE shall ensure that such  
413 computer adaptive assessments—

414 (aa) meet the requirements of this paragraph, including subparagraph (G), except such  
415 assessment shall not be required to meet the requirements of clause (i)(II); and

416 (bb) assess the student’s language proficiency, which may include growth towards such  
417 proficiency, in order to measure the student’s acquisition of English.

418 (K) Rule of Construction on Parental Rights –Nothing in this paragraph shall be construed as  
419 preempting tribal law at tribally controlled contract or grant school regarding the decision of a  
420 parent to not have the parent’s child participate in the academic assessments under this  
421 paragraph.

422 (L) Limitation on Assessment Time -- The Secretary may set a target limit on the aggregate  
423 amount of time devoted to the administration of assessments for each grade, expressed as a  
424 percentage of annual instructional hours.

425 (J) ~~(A)~~ Exception for Recently Arrived English Learners.

426 (A) ASSESSMENTS.—With respect to recently arrived English learners who have been enrolled  
427 in a school in one of the 50 States in the United States or the District of Columbia for less than  
428 12 months, a State may choose to—

**Comment [QBA12]:** Edit re-inserts the language in section 1111(b)(3)(A) as this could become relevant to BIE at some point in the future.

429 (i) exclude—

430 (I) such an English learner from one administration of the reading or language arts  
431 assessment required under paragraph (2); and

432 (II) such an English learner’s results on any of the assessments required under  
433 paragraph

434 (2)(B)(v)(I) or (2)(G) for the first year of the English learner’s enrollment in such  
435 a school for the purposes of the State-determined accountability system under  
436 subsection (c); or

437 (ii)(I) assess, and report the performance of, such an English learner on the  
438 reading or language arts and mathematics assessments required under paragraph

439 (2)(B)(v)(I) in each year of the student’s enrollment in such a school; and  
440 (II) for the purposes of the State-determined accountability system—

441 (aa) for the first year of the student’s enrollment in such a school, exclude  
442 the results on the assessments described in subclause (I);

443 (bb) include a measure of student growth on the assessments described in  
444 subclause (I) in the second year of the student’s enrollment in such a school; and

445 (cc) include proficiency on the assessments described in subclause (I) in the third year of the  
446 student’s enrollment in such a school, and each succeeding year of such enrollment.)

447 B) ENGLISH LEARNER SUBGROUP.—With respect to a student previously identified as an  
448 English learner and for not more than 4 years after the student ceases to be identified as an  
449 English learner, the BEI may include the results of the student’s assessments under paragraph  
450 (2)(B)(v)(I) within the English learner subgroup of the subgroups of students (as defined in  
451 subsection (c)(2)(D)) for the purposes of the BIE-determined accountability system.

452

453 **§30.106. How will the Secretary define accountability system?**

454 (a) The Secretary will incorporate science in the accountability system.

455 (b) Phase in tribal civic assessment and accountability system starting as a school quality  
456 indicator and revisit as implemented.

457 (c) The Secretary shall define an accountability system for Bureau-funded schools consistent  
458 with section 1111(c)-(d) of the Act, including provisions for a single Bureau-wide accountability  
459 system and school support and improvement activities.

460 (d) To improve student academic achievement and school success among all elementary and  
461 secondary schools within the Bureau-funded school system the Secretary will:

- 462 • Develop and implement a single, Bureau-wide accountability system in consultation with  
463 tribes and stakeholders (such as parents, educators etc.) that:
  - 464 ○ Is based on the Bureau’s challenging academic standards and academic  
465 assessments;
  - 466 ○ Is informed by ambitious long-term goals and measurements of interim progress;
  - 467 ○ Includes all section 1111(c)(4)(B)-consistent accountability indicators;
  - 468 ○ Takes into account the achievement of all elementary and secondary school  
469 students within the Bureau-funded school system;
  - 470 ○ Is the same accountability system used to annually meaningfully differentiate all  
471 schools within the Bureau-funded school system and the same accountability  
472 system used to identify schools for comprehensive and targeted support and  
473 improvement; and
  - 474 ○ Includes the process that the Bureau will use to ensure effective development and  
475 implementation of school support and improvement plans, including evidence-  
476 based interventions, to hold all schools within the Bureau-funded school system  
477 accountable for student academic achievement and school success.
  - 478 ○ Will be reviewed in consultation with tribes and stakeholders for continuous  
479 improvements as necessary, but not less often than every four years beginning on  
480 the date the plan is implemented.

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

483 (1) include, at a minimum, improved academic achievement, as measured by proficiency  
484 on the Bureau’s annual assessments in mathematics and reading or language arts under section  
485 1111(b)(2)(B)(v)(I), and high school graduation rates, including the four-year adjusted cohort  
486 graduation rate and the extended-year adjusted cohort graduation rate, except that the Secretary  
487 shall set a more rigorous long-term goal for such graduation rate as compared to the long-term  
488 goal set for the four-year adjusted cohort graduation rate;

489 (2) have the same multi-year length of time set to meet such goals for all students and for  
490 each subgroup of students within the Bureau-funded school system;

491 (3) take into account for subgroups of students who are behind on the measurements of  
492 academic achievement and high school graduations rates the improvement necessary on such  
493 measures to make significant progress in closing Bureau-wide proficiency and graduation rate  
494 gaps; and

495 (4) will include for English learners a measurement of increases in the percentage of such  
496 students making progress in achieving English language proficiency as defined by the Secretary

497 and measured by the assessments under section 1111(b)(2)(G) within a timeline determined by  
498 the Secretary.

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

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

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

506 (3) incorporate an Academic Achievement indicator, an Academic Progress indicator, a  
507 Graduation rate indicator, a Progress in Achieving English Language Proficiency indicator, and  
508 one or more indicators of School Quality or Student Success.

509 (g) The Bureau's accountability system will annually measure the achievement of at least 95% of  
510 all students, and 95 percent of each subgroup of students, who are enrolled in schools within the  
511 Bureau-funded school system on the Bureau's assessments. The denominator for the purpose of  
512 measuring, calculating, and reporting on each indicator shall be the greater of:

513 (1) 95 percent of all students, or 95 percent of each subgroup of students; or

514 (2) the number of students participating in the assessments.

515 (h) The performance of students that have not attended the same Bureau-funded school for at  
516 least half of a school year will not be used in the system of meaningful differentiation of school  
517 for such school year, but will be used for the purpose of reporting on the Bureau and school  
518 report cards for such school year. In calculating the high school graduation rate, a high school  
519 student who has not attended the same school for at least half of a school year and has exited  
520 high school without a regular high school diploma and without transferring to another high  
521 school that grants a regular high school diploma during such a school year shall be assigned to  
522 the high school at which the student was enrolled for the greatest proportion of school days while  
523 enrolled in grades 9 through 12, or to the high school in which the student was most recently  
524 enrolled.

525 **§30.107. May a tribal governing body or school board waive the Secretary's definition of**  
526 **standards, assessments, and accountability system?**

527  
528 Yes. A tribal governing body or school board may waive the Secretary's definition of standards,  
529 assessments, and accountability system in part or in whole. However, unless an alternative  
530 proposal is approved the Secretary's definitions apply.  
531

532 **§30.108. How does a tribal governing body or school board waive the Secretary’s**  
533 **definitions?**  
534

535 ~~(a) If a tribal governing body or school board determines the Secretary’s definition of standards,~~  
536 ~~assessments, or accountability system to be inappropriate, it may waive these definitions in part~~  
537 ~~or in whole. (b) The tribal governing body or school board must notify the Secretary and the~~  
538 ~~Secretary of Education of the decision to waive a definition. (c) Within 60 days of the decision~~  
539 ~~to waive a definition the tribal governing body or school board must submit to the Secretary a~~  
540 ~~proposal for alternative definitions that are consistent with section 1111 of the Act and that take~~  
541 ~~into account the unique circumstances and needs of such school or schools and the students~~  
542 ~~served. (d) A tribal governing body or school board may request an extension of the 60 day~~  
543 ~~deadline for the provision of technical assistance. (e) The Secretary will work with the Secretary~~  
544 ~~of Education to develop and make available templates for alternative proposals.~~

545  
546 (a) A tribal governing body or school board may waive the Secretary’s requirements for  
547 standards, assessments, and accountability system, in part or in whole.

548 (b) The tribal governing body or school board must notify the Secretary and the Secretary of  
549 Education of the decision to waive the Secretary’s requirements in part or in whole.

550 (c) Within 60 days of the decision to waive the Secretary’s requirements in part of in whole the  
551 tribal governing body or school board must submit to the Secretary for review, and in  
552 coordination with the Secretary of Education, approval, a proposal for alternative requirements  
553 that are consistent with section 1111 of the Act and that take into account the unique  
554 circumstances and needs of such school or schools and the students served. The Secretary  
555 encourages a tribal governing body or school board to request and receive technical assistance,  
556 consistent with §30.111, well in advance of submission of a proposal to the Secretary for review.  
557 A tribal governing body or school board must continue to follow the Secretary’s requirements for  
558 standards, assessments, and accountability system until a proposal for alternative requirements  
559 has approved and until the alternative requirements become effective.

560 (d) A tribal governing body or school board may request an extension of the 60 day deadline for  
561 the provision of technical assistance.

562 (e) A tribal governing body or school board must use this process anytime a tribal governing  
563 body or school board proposes alternative requirements for standards, assessments, and  
564 accountability.

565 (f) The Secretary will work with the Secretary of Education to develop and make available  
566 templates for proposals for alternative requirements that tribal governing bodies and school  
567 boards may use to assist in the development of such proposals for alternative requirements.

568  
569 **ACTION ITEM: BIE add a time-certain for BIE to respond. BIE: will work with ED on a**  
570 **timeline and provide the timeline for the Committee to respond. Note for FYI: ED Section**  
571 **8401 regarding state waivers, the Sec Ed must respond within 120 days. [consensus**  
572 **120618]**

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

- (a) Waivers must explain how the Secretary’s definition of standards, assessments, or accountability system are inappropriate.
- (b) Alternative proposals must include an explanation how the alternative proposal meets the requirements of section 1111 of the Act.

**§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 will clearly identify any retained portions of the Secretary’s definitions.

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**§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.

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

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

(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.~~

604

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

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(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.~~

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

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

616

617 **§30.114. How does the Secretary review and approve an alternative definition?**  
618

619 (a) The Secretary and the Secretary of Education shall jointly approve proposals for alternative  
620 requirements for standards, assessments, and accountability unless a determination is made that  
621 the proposed alternative requirements do not meet the requirements of section 1111 of the Act.  
622 (i) Secretary will consult with the Secretary of Education through the review of a proposal for  
623 alternative requirements. (ii) Upon receipt of a proposal for alternative requirements for  
624 standards, assessments, and accountability system, in part or in whole, the Secretary shall begin  
625 coordination with the Secretary of Education on review and approval of the proposal. (iii) The  
626 Secretary shall provide a status update regarding the processing of the proposal within 120 days  
627 of receipt of the proposal. (iv) The Director and a tribal governing body or school board are  
628 encouraged to communicate on a monthly basis.

629 (b) If a proposal for alternative requirements is found to be incomplete by the Secretary or the  
630 Secretary of Education, technical assistance will be provided to complete the proposal for  
631 alternative requirements, including what additional items are necessary.

632 (c) If the Secretary and the Secretary of Education approve an alternative proposal for  
633 alternative requirements, the Secretary will (i) promptly notify the Tribal governing body or  
634 school board; and (ii) shall indicate the date for which the alternative proposal will be effective.

636 (d) If a proposal for alternative requirements is not approved, the Tribal governing body or  
637 school board will be notified that (i) the proposal has not been approved; and (ii) the reasons why  
638 the alternative proposal was not approved.

640 (e) If a proposal for alternative requirements is not approved, the Secretary shall provide  
641 technical assistance to overcome the reasons why the alternative proposal was not approved.

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

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

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

648 ~~—— (2) If the proposed definition is complete, an estimated timetable for the final decision;~~

649 ~~or~~

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

652

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

656

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

661

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

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

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

666

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

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

672 ~~———— (2) The reasons why the alternative definition has been disapproved.~~

673

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