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.
§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.

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

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?


“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.
“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.

“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 proposals 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 proposal with the Secretary.

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

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

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

The Act further requires the Secretary and the Secretary of Education to provide technical assistance, upon request, either directly or through a contract, to a tribal governing body or school board.
§30.103. How will the Secretary implement the Standards Assessments and Accountability System?

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

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

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

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

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

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

§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.
(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:

- 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 proposal approved.

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

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

(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.

(g) insert language here to acknowledge the unique standards/assessments in immersion schools.

Add language in either standards or assessments for an exception that students in immersion schools in grade xx-yy, shall not be held accountable for instructing in English.

§30.105. How will the Secretary define assessments?

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

(B) REQUIREMENTS.—The assessments shall—

(i) except Alternate Assessments, be—

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

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

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

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

(iv) be of adequate technical quality for each purpose required under this Act and consistent with the requirements of this section, the evidence of which shall be made public, including on the BIE website;
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(v) Assessments and assessment schedule will be developed for Tribal Civics at the conclusion of the processes described in Section 30.103.(v)

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

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

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

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

(aa) grades 3 through 5;

(bb) grades 6 through 9; and

(cc) grades 10 through 12; and

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

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

(vii) provide for—

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

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

(i) be administered through a single summative assessment; or

(ii) be administered through multiple Bureau-wide interim assessments during the course of the academic year that result in a single summative score that provides valid, reliable, and transparent information on student achievement or growth;

(ix) notwithstanding clause (vii)(iii), provide for assessments (using tests in English) of reading or language arts of any student who has attended school in the United States for 3 or more consecutive school years, except that if the local educational agency determines, on a case-by-case individual basis, that academic assessments in another language or form would likely yield more accurate and reliable information on what such student knows and can do, the local educational agency may make a determination to assess such student in the appropriate language other than English for a period that does not exceed 2 additional consecutive years, provided that such student has not yet reached a level of English language proficiency sufficient to yield valid and reliable information on what such student knows and can do on tests (written in English) of reading or language arts;

(x) produce individual student interpretive, descriptive, and diagnostic reports, consistent with clause (iii), regarding achievement on such assessments that allow parents, teachers, principals, and other school leaders to understand and address the specific academic needs of students, and that are provided to parents, teachers, and school leaders, as soon as is practicable after the assessment is given, in an understandable and uniform format, and to the extent practicable, in a language that parents can understand;

(xi) enable results to be disaggregated within the Bureau and each Bureau-funded school by—

(I) each major racial and ethnic group;

(II) economically disadvantaged students as compared to students who are not economically disadvantaged;

(III) children with disabilities as compared to children without disabilities;

(IV) English proficiency status;

(V) gender; and

(VI) migrant status,

except that such disaggregation shall not be required in the case of the Bureau or a Bureau-funded school in which the number of students in a subgroup is insufficient to yield statistically
reliable information or the results would reveal personally identifiable information about an individual student;

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

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

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

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

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

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

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

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

(iii) in high school, such student takes a mathematics assessment pursuant to subparagraph

(B)(v)(I)(bb) that—

(I) is any end-of-course assessment or other...
assessment that is more advanced than the assessment taken by such student under clause (i) of this subparagraph; and

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

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

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

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

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

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

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

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

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

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

(aa) know how to administer the alternate assessments; and
(bb) make appropriate use of accommodations for students with disabilities on all
assessments required under this paragraph;

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

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

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

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

(ii) SPECIAL RULES.—

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

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

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

(E) State Authority.

(F) Language Assessments—

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

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

(G) Assessments of English Language Proficiency –
(i) IN GENERAL.—The BIE will ensure that BIE-funded schools
will provide for an annual assessment of English proficiency of all English learners in the
schools served by the BIE.
(ii) ALIGNMENT.—The assessments described in clause (i) shall be aligned with the BIE’s
English language proficiency standards described in paragraph (1)(F).

(H) Locally Selected Assessment ASSESSMENT.—
(i) IN GENERAL.—Nothing in this paragraph shall be construed to prohibit a   tribal
governing body or school board from administering a locally-selected assessment in lieu of the
BIE-designed academic assessment under subclause (I)(bb) and subclause (II)(cc) of
subparagraph (B)(v), if the local educational agency selects a nationally-recognized high
school academic assessment that has been approved for use by the  BIE as described in clause
(i) or (iv) of this subparagraph.
(ii) BIE TECHNICAL CRITERIA.—To allow for BIE approval of nationally-recognized high
school academic assessments that are available for local selection under clause (i), the BIE
educational agency shall establish technical criteria to determine if any such assessment meets
the requirements of clause (v).
(iii) BIE APPROVAL.—If the BIE chooses to make a nationally-recognize high school
assessment available for selection by a tribally governing body or school board under clause
(i), which has not already been approved under this clause, the BIE shall—
(I) conduct a review of the assessment to determine if such assessment meets or exceeds the
technical criteria established by the BIE under clause (ii):
(II) submit evidence in accordance with subsection (a)(4) that demonstrates such assessment
meets the requirements of clause (v); and (III) after fulfilling the requirements of subclauses
(i) and (II), approve such assessment for selection and use by any tribally governing body or
school board that requests to use such assessment under clause (i).
(iv) tribally governing body or school board OPTION.—

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

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

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

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

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

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

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

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

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

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

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

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

(II) such assessment—

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

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

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

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

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

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

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

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

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

(K) Rule of Construction on Parental Rights —Nothing in this paragraph shall be construed as preempting tribal law at tribally controlled contract or grant school regarding the decision of a parent to not have the parent’s child participate in the academic assessments under this paragraph.
(L) Limitation on Assessment Time -- The Secretary may set a target limit on the aggregate amount of time devoted to the administration of assessments for each grade, expressed as a percentage of annual instructional hours.

(J) Exception for Recently Arrived English Learners.

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

(i) exclude —

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

(II) such an English learner’s results on any of the assessments required under paragraph (2)(B)(v)(I) or (2)(G) for the first year of the English learner’s enrollment in such a school for the purposes of the State-determined accountability system under subsection (c); or

(ii) assess, and report the performance of, such an English learner on the reading or language arts and mathematics assessments required under paragraph (2)(B)(v)(I) in each year of the student’s enrollment in such a school; and

(II) for the purposes of the State-determined accountability system—

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

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

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

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

§30.106. How will the Secretary define accountability system?

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

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

(c) The Secretary shall define an accountability system for Bureau-funded schools consistent with section 1111(c)-(d) of the Act, including provisions for a single Bureau-wide accountability system and school support and improvement activities.
To improve student academic achievement and school success among all elementary and secondary schools within the Bureau-funded school system the Secretary will:

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

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

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

2. Have the same multi-year length of time set to meet such goals for all students and for each subgroup of students within the Bureau-funded school system;

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

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

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

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

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

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

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

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

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

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

§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.
§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 inappropriate, it may waive these definitions in part or in whole.

(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 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.

(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.

(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.

(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 proposal 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 proposal to the Secretary for review.

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

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

**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 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.

§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.

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.

§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.
(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. 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 Secretary and the Secretary of Education shall jointly approve proposals 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 proposal for alternative requirements. (ii) Upon receipt of a proposal 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 proposal. (iii) The Secretary shall provide a status update regarding the processing of the proposal within 120 days of receipt of the proposal. (iv) The Director and a tribal governing body or school board are encouraged to communicate on a monthly basis.

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

(c) If the Secretary and the Secretary of Education approve an alternative proposal 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 proposal will be effective.

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

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

(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

(2) If the proposed definition is complete, an estimated timetable for the final decision; or
(3) Will inform the tribal governing body or school board that more time is required to
review the proposed alternative definition.

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

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

(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 disapproved under paragraph (g) of this
section, the Secretary shall provide technical assistance to overcome the basis for the
disapproval.