

1 **Standards, Assessments, and Accountability System Negotiated Rulemaking Committee**
2 **Consensus Agreements to Include in the Draft Regulations**
3 **As of December 6, 2018**

4
5 The following consensus agreements were made by the Committee at its December 2018 meeting.
6 Some of the language are changes to be made throughout the draft regulations. The exact placement of
7 other consensus text is to be determined by BIE.

- 8
9 1. Throughout the draft regulations replace 'state' with BIE where relevant.
- 10 2. Throughout the draft regulations replace 'state plan' with 'Standards, Assessments and Accountability
11 Plan'
- 12 3. Include as a preamble to the regulations: "Recognizing the special rights *[remove 'special' replace*
13 *with 'unique' unless a direct quote from CFR]* of Indian Tribes and Alaska Native entities and the unique
14 government-to-government relationship of Indian Tribes and Alaska Native villages with the Federal
15 Government as affirmed by the United States Constitution, U.S. Supreme Court decisions, treaties,
16 Federal statutes, and Executive Orders, and as set out in the Congressional declaration in sections 2 and
17 3 of the Indian Self-Determination and Education Assistance Act (Pub.L. 93-638; 88 Stat. 2203; 25 U.S.C.
18 450 and 450a), it is the responsibility and goal of the Federal government to provide comprehensive
19 education programs and services for Indians and Alaska Natives. As acknowledged in section 5 of the
20 Indian Child Welfare Act of 1978 (Pub.L. 95-608; 92 Stat. 3069; 25 U.S.C. 1901), in the Federal
21 Government's protection and preservation of Indian Tribes and Alaska Native villages and their
22 resources, there is no resource more vital to such Tribes and villages than their young people and the
23 Federal Government has a direct interest, as trustee, in protecting Indian and Alaska Native children,
24 including their education. The mission of the Bureau of Indian Affairs, Office of Indian Education
25 Programs, is to provide quality education opportunities from early childhood through life in accordance
26 with the Tribes' needs for cultural and economic well-being in keeping with the wide diversity of Indian
27 Tribes and Alaska Native villages as distinct cultural and governmental entities. The Bureau shall
28 manifest consideration of the whole person, taking into account the spiritual, mental, physical and
29 cultural aspects of the person within family and Tribal or Alaska Native village contexts." **[consensus**
30 **120618 to include in regulation preamble unless there is a legal problem doing so. Note: Revise text to**
31 **address run-on sentences]**
- 32 4. **[consensus 120618 to add to 30.101]:** "Tribal governing body or school board" means, with respect to
33 waiver and submission of alternative proposals of the Secretary's definitions of standards, assessments,
34 and accountability system at P.L. 100-297 grant or P.L. 93-638 contract schools, the entity authorized
35 under applicable Tribal or Federal law to waive the Secretary's definitions and negotiate an alternative
36 proposal with the Secretary.
- 37 5. "The Secretary will incorporate science in the accountability system." **[consensus 120618 to include**
38 **in the regulation]**
- 39 6. "Phase in tribal civics assessment and accountability system starting as a school quality indicator and
40 revisit as implemented". **[consensus 120618 exact placement of this text in the regulations is to be**
41 **determined.] "**
- 42 7. Assessments and assessment schedule will be developed for Tribal Civics at the conclusion of the
43 processes described in Section 30.103." **[consensus 120618 exact placement of this text in the**
44 **regulations is to be determined.]**

45 **8.** Retain in the assessments regulations placeholders for sections of text that are currently proposed for
46 deletion, sections such as 2E State Authority, 2I Deferral, and 3 Exception for Recently Arrived English
47 Learners, just in case those items become relevant to BIE in the future. **[120518]**

*Note from SP: Standards Assessments and Accountability System Negotiated Rulemaking Committee
Summary of consensus language for sections 30.102-104 as of December 6, 2018. Items in red require
further Committee deliberation in January.*

48 **Title 25 – Indians**

49 **Chapter I – Bureau of Indian Affairs, Department of the Interior**

50 **Subchapter E – Education**

51 **Part 30 – Standards, Assessments, and Accountability System**

52 **Subpart A – Defining Standards, Assessments, and Accountability System**

53 **§30.102. What does the Act require of the Secretary?**

54 The Act requires the Secretary to define standards, assessments, and accountability system consistent
55 with section 1111 of the Act for schools on a national, regional, or tribal basis, as appropriate, taking
56 into account the unique circumstances and needs of such schools and the students served by such
57 schools, using regulations developed through a negotiated rulemaking process.¹

58 A tribal governing body or school board may waive these requirements, in part or in whole, and submit a
59 proposal for alternative definitions within 60 days, which the Secretary and the Secretary of Education
60 will approve unless the Secretary of Education determines that the proposal does not meet the
61 requirements of section 1111, taking into account the unique circumstances and needs of such school or
62 schools and the students served.²

¹ 20 U.S.C. §7824(c)(1). “For the purposes of part A of title I [20 U.S.C. §6311 *et seq.*], the Secretary of [the] Interior, in consultation with the Secretary, if the Secretary of the Interior requests the consultation, using a negotiated rulemaking process to develop regulations for implementation no later than the 2017-2018 academic year, shall define the standards, assessments, and accountability system consistent with section 1111 [20 U.S.C. §6311], for the schools funded by the [BIE] on a national, regional, or tribal basis, as appropriate, taking into account the unique circumstances and needs of such schools and the students served by such schools.”

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

63 The Act further requires the Secretary and the Secretary of Education to provide technical assistance,
 64 upon request, either directly or through a contract, to a tribal governing body or school board. ~~that~~
 65 ~~seeks a waiver.~~ **[Committee consensus 120418]**

66 **§30.103. How will the Secretary implement the Standards Assessments and Accountability System?**
 67 ~~requirements of the Act?~~ **[consensus 120518]**

68 (a) The Secretary, through the Director, must define the standards, assessments, and accountability
 69 system for use at BIE schools in accordance with this Part.³ **[no dissent 120518]**

70 (b) The Secretary, or his/her designee will provide Indian tribes, parents and other stakeholders with
 71 quality, transparent information about how the Act will be implemented for BIE schools. Information, at
 72 a minimum, to include the standards, assessments and accountability system consistent with Section
 73 1111. **[no dissent 120518]**

74 The Director will implement a Standards Assessments and Accountability Plan that will provide Indian
 75 tribes, parents, and other stakeholders with quality, transparent information about how the Act will be
 76 implemented at BIE Schools. ~~The Plan must be reviewed [by whom] and revised as necessary to reflect~~
 77 ~~changes in BIE's standards, assessments, accountability system plan strategies and programs [level~~
 78 ~~detail, what entails] under this section.~~ **[no dissent on revisions to lines 30-31 on 120518, consensus to**
 79 **strike 29-31 120618]**

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 and
 82 tribally controlled grant schools), tribal governments, students and community members. Such
 83 consultations will ensure input is considered in the creation, implementation, review and revision of
 84 standards, assessments, and accountability system. These stakeholder consultations will include
 85 transparent reporting, recording and responding to input obtained therein. **[consensus lines 33-38**
 86 **120518]**

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 system.
 89 **[no dissent 120518]**

90 (d) The Director may voluntarily partner with States, or Federal agency, to develop and implement
 91 challenging academic standards and assessments.⁴ **[consensus 120518]**

³ 20 U.S.C. §7824(c)(1). “For the purposes of part A of title I [20 U.S.C. §6311 *et seq.*], the Secretary of [the] Interior, in consultation with the Secretary, if the Secretary of the Interior requests the consultation, using a negotiated rulemaking process to develop regulations for implementation no later than the 2017-2018 academic year, shall define the standards, assessments, and accountability system consistent with section 1111 [20 U.S.C. §6311], for the schools funded by the [BIE] on a national, regional, or tribal basis, as appropriate, taking into account the unique circumstances and needs of such schools and the students served by such schools.”

⁴ 20 U.S.C. §6311(j). “Voluntary partnerships. A State retains the right to enter into a voluntary partnership with another State to develop and implement the challenging State academic standards and assessments required under this section...” Even if we are unsure as to whether BIE has or will have the resources to develop and implement

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, regional, or
95 tribal basis, as appropriate, taking into account the unique circumstances and needs of such schools and
96 the students served by such schools by:

- 97 • adopting challenging academic content standards and
- 98 • aligned academic achievement standards (standards) consistent with section 1111(b)(1) of the
99 Act.⁵

100 Described collectively in the Act as “challenging State academic standards.”

101 (b) The academic standards will include:

- 102 • mathematics
- 103 • reading or language arts
- 104 • science, and
- 105 • Tribal civics [**committee consensus 12/5/18**]

106 Phase in tribal civics assessment and accountability system starting as a school quality
107 indicator and revisit as implemented. [**consensus 120618 exact placement of this text in**
108 **the regulations is to be determined.**] Assessments and assessment schedule will be
109 developed for Tribal Civics at the conclusion of the processes described in Section 30.103.
110 [**consensus 120618 exact placement of this text in the regulations is to be determined.**]

- 111 • And may have such standards for any other subject determined by the Secretary.⁶

112 Such standards must be aligned to entrance requirements for credit-bearing coursework in higher
113 education and relevant career and technical education standards. These standards shall apply to all

such standards and assessments, it would be a good idea to codify the ability to enter into such partnerships in case it becomes necessary in the future.

⁵ The requirements for challenging State academic standards are located at 20 U.S.C. §6311(b)(1)(A)-(G). “(A) In general. Each State, in the plan it files under subsection (a), shall provide an assurance that the State has adopted challenging academic content standards and aligned academic achievement standards (referred to in [20 U.S.C. §§6311 *et seq.*] as “challenging State academic standards”), which achievement standards shall include not less than 3 levels of achievement, that will be used by the State, its local educational agencies, and its schools to carry out this part. (B) Same standards. Except as provided in subparagraph (E), the standards required by subparagraph (A) shall - (i) apply to all public schools and public school students in the State; and (ii) with respect to academic achievement standards, include the same knowledge, skills, and levels of achievement expected of all public school students in the State... (F) English language proficiency standards. Each State plan shall demonstrate that the State has adopted English language proficiency standards that - (i) are derived from the 4 recognized domains of speaking, listening, reading, and writing; (ii) address the different proficiency levels of English learners; and (iii) are aligned with the challenging State academic standards.”

⁶ Are there any other academic standards that might be useful or appropriate? 20 U.S.C. §6311(b)(1)(C). “Subjects. The State shall have such academic standards for mathematics, reading or language arts, and science, and may have such standards for any other subject determined by the State”.

114 Bureau-funded schools and students at those schools, unless the standards have been waived by a tribal
115 governing body or school board and an alternative proposal approved.

116 (c) Academic achievement standards

117 Academic achievement standards shall include the same types of knowledge, skills, and levels of
118 achievement expected of all students at Bureau-funded schools.

119 The Secretary must adopt alternate academic achievement standards for students with the most
120 significant cognitive disabilities.⁷

121 (f) The Secretary must adopt English language proficiency standards that (i) are derived from the four
122 recognized domains of speaking, listening, reading, and writing; (ii) address the different proficiency
123 levels of English learners; and (iii) are aligned with the challenging State academic standards.

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

127 **Standards, Assessments, and Accountability System Negotiated Rulemaking Committee**
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130

131 Committee questions are in italics. Section numbers reference the language in the document: “Assess.
132 *Subcmt Task 2 Sec. 1111 Assessments-redlines -112018_181127 draft 120418*” provided to the
133 Committee on December 4, 2018. **The Committee reviewed and discussed items 1-2 below on 120618.**
134 **Consensus agreements of the Committee are reflected below.**

- 135 1. Section 2A. Ensure “State” (BIE) consults with tribally controlled schools as LEAs. *Possible*
136 *guidance from BIE? Is this addressed in revised Section 30.103? [Consensus agreement that this*
137 *is addressed in revised section 30.103, 120618]*
- 138 2. Section 2B. Requirements. *In relation to Tribal civics, do we need to outline when the courses will*
139 *be taught from K-12 / as is done example with Math and Science? Would this be in the standard*
140 *section and in section 2(B)?*

⁷ Should such alternate standards be adopted? 20 U.S.C. §6311(b)(1)(E). “Alternate academic achievement standards for students with the most significant cognitive disabilities. (i) In general. The State may, 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 [IDEA]; (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 [IDEA] 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 [29 U.S.C. §§701 *et seq.*]. (ii) Prohibition on any other alternate or modified academic achievement standards. A State shall not develop, or implement for use under [ESEA title I], any alternate academic achievement standards for children with disabilities that are not alternate academic achievement standards that meet the requirements of clause (i).”

141 2(B)(v)(I) in the case of mathematics and reading or language arts, be administered—
 142 (aa) in each of grades 3 through 8; and
 143 (bb) at least once in grades 9 through 12;
 144 (II) in the case of science, be administered not less than one time during—
 145 (aa) grades 3 through 5;
 146 (bb) grades 6 through 9; and
 147 (cc) grades 10 through 12; and
 148 (III) in the case of any other subject chosen by the BIE, be administered at the discretion
 149 of the BIE;

- 150 • **Add to 2(B)(III) in assessments regulations: “Tribal Civics assessments and assessment**
 151 **schedule will be developed at the conclusion of the processes described in Section 30.103.”**
 152 **[consensus 120618]**

-
- 154 3. *What is the timeline for creating assessments?* SP: Was this question addressed in Tuesday’s
 155 presentation from Bryan and Deb?
- 156 4. Section 2B(vi) “...may be partially delivered in the form of portfolios, projects, or extended
 157 performance tasks” The term ‘partially delivered’ is not defined in ESSA. *Should there be a*
 158 *committee recommendation that BIE define ‘partially delivered’ in the regulations?*
- 159 5. Section 2B (xiv) proposed language: *Needs committee discussion and input: “(xiv) (I) except as*
 160 *provided in paragraph (xiv)(II) of this section, the BIE is not required to assess, using an*
 161 *assessment written in English, student achievement in meeting the challenging State academic*
 162 *standards in reading/language arts, mathematics, or science for a student who is enrolled in a*
 163 *school or program that provides instruction primarily in a Native American language if – (aa) the*
 164 *BIE provides such an assessment in the Native American language to all students in the school or*
 165 *program, consistent with the requirements of 34 CFR 200.2; (bb) for an English learner, as*
 166 *defined in section 8101(20)(C)(ii) of the Act, the BIE continues to assess the English language*
 167 *proficiency assessment, and provides appropriate services to enable him or her to attain*
 168 *proficiency in English. (II) the BIE must assess using assessments written in English, the*
 169 *achievement of each student enrolled in such school or program in meeting the challenging State*
 170 *academic standards in reading/language arts, at a minimum, at least once in grades 9 through*
 171 *12.”*
- 172 6. Section 2C Exception for Advance Mathematics in Middle School - The BIE may exempt any 8th
 173 grade student from the assessment in mathematics – *Should the committee recommend*
 174 *changing the ‘may’ to ‘shall’?*
 175 a. How is Exception for Advance Mathematics in Middle School reflected in the
 176 accountability system regulations?
- 177 7. Section 2(D)(ii)(I) Prohibition on Local Cap. *What would the LEA need to present to BIE if it*
 178 *exceeded the 1% cap. Put in BIE plan or in regulation?*
 179 a. In ABQ had indicated the BIE has exceeded the 1% cap. Recall: The LEA might exceed the
 180 1% cap, but the BIE cannot.
 181 b. Discuss how it will work with Dept of Ed. There is language is with the Dept of Ed
 182 regulations...see final Dept Ed regulations.
- 183 8. Section 2(F) Language Assessments.
 184 a. *Should ‘present to a significant extent’ be defined in the regulations?*

- 185 b. *Committee to define -- what does this mean in a Bureau school around Native*
 186 *languages?*
- 187 9. Section 2(G) Assessments of English Language Proficiency.
- 188 a. *Should there be explicit language in this section or in waivers section that tribes or*
 189 *governing school boards can waive EL assessments?*
- 190 10. Section 2(H) Locally Selected Assessments.
- 191 a. *Per BIE: This section on locally-selected assessments might be redundant and possibly in*
 192 *conflict with the statutory provisions on the waiver/alternative proposal process in*
 193 *section 8204(c)(2). Recommend deletion.*
- 194 b. *Committee needs to discuss further – useful tool, option for LEAs. May be redundant but*
 195 *provides useful process guidance. Consider moving to waivers? Or reference here and*
 196 *link to the waivers.*
- 197 11. Section 2(L). Limitation on Assessment Time.
- 198 a. *See 25 CFR on instructional hours. Include reference in these regulations?*
- 199 b. *Clarify if this part of the regulation is specific to assessments in HS, required assessments*
 200 *or all assessments of the school*
- 201 c. *Need to define if summative or formulate assessments.*
- 202 12. Section 3. Exception for English Learners. *How many ELs are in the BIE student population?*
- 203 13. Overarching comment/proposal: *Retain placeholders for sections such as 2E State Authority, 2I*
 204 *Deferral, and 3 Exception for Recently Arrived English Learners. Include a statement under each*
 205 *retained heading to note that the section does not currently apply to BIE but could be reviewed*
 206 *and revised if necessary in the future.*
- 207 a. *Further discussion on a civil rights law as to why it doesn't apply to the Bureau and if it*
 208 *does apply down the road, what will the recourse be for the Bureau. See section (3)*
 209 *Exception for recently arrived EL.*
- 210

Accountability System Summary of Committee consensus decisions as of 120618

Insert in the appropriate place in the accountability section of the draft regulations the following consensus language:

1. "The Secretary will incorporate science in the accountability system." [consensus 120618 to include in the regulation]

211 §30.106. How will the Secretary define accountability system?

212 (a) The Secretary shall define an accountability system for Bureau-funded schools consistent
 213 with section 1111(c)-(d) of the Act, including provisions for a single ~~statewide~~ Bureau-wide
 214 accountability system and school support and improvement activities.⁸

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

⁸ The requirements for statewide accountability systems and school support and improvement activities are located at 20 U.S.C. §6311(c)-(d). Statewide accountability systems must comply with both subsections (c) (statewide accountability system) and (d) (school support and improvement activities). See 20 U.S.C. §6311(c)(1).

- 217 | • Develop and implement a single, Bureau-wide accountability system in consultation with
 218 | tribes and stakeholders (such as parents, educators etc.)- that:
- 219 | ○ Is based on the Bureau’s challenging academic standards and academic
 220 | assessments;
 - 221 | ○ Is informed by ambitious long-term goals and measurements of interim progress;
 - 222 | ○ Includes all section 1111(c)(4)(B)-consistent accountability indicators;
 - 223 | ○ Takes into account the achievement of all elementary and secondary school
 224 | students within the Bureau-funded school system;
 - 225 | ○ Is the same accountability system used to annually meaningfully differentiate all
 226 | schools within the Bureau-funded school system and the same accountability
 227 | system used to identify schools for comprehensive and targeted support and
 228 | improvement;⁹ and
 - 229 | ○ Includes the process that the Bureau will use to ensure effective development and
 230 | implementation of school support and improvement plans, including evidence-
 231 | based interventions, to hold all schools within the Bureau-funded school system
 232 | accountable for student academic achievement and school success.
 - 233 | ○ Will be reviewed in consultation with tribes and stakeholders for continuous
 234 | improvements as necessary, but not less often than every four years
 235 | from beginning on the date the plan is implemented. [Consensus 120518]
- 236 | (c) For all students and separately for each subgroup of students within the Bureau-funded school
 237 | system the Bureau’s long-term goals and measurements of interim progress will:
- 238 | (1) include, at a minimum, improved academic achievement, as measured by proficiency
 239 | on the Bureau’s annual assessments in mathematics and reading or language arts under section
 240 | 1111(b)(2)(B)(v)(I), and high school graduation rates, including the four-year adjusted cohort
 241 | graduation rate and ~~at the Secretary’s discretion,~~ [consensus 120518] the extended-year adjusted
 242 | cohort graduation rate, except that the Secretary shall set a more rigorous long-term goal for such

⁹ 20 U.S.C. 6311(c)(4)(C)-(D). “(C) Annual meaningful differentiation. Establish a system of meaningfully differentiating, on an annual basis, all public schools in the State, which shall- (i) be based on all indicators in the State’s accountability system under subparagraph (B), for all students and for each of subgroup of students, consistent with the requirements of such subparagraph; (ii) with respect to the indicators described in clauses (i) through (iv) of subparagraph (B) afford- (I) substantial weight to each such indicator; and (II) in the aggregate, much greater weight than is afforded to the indicator or indicators utilized by the State and described in subparagraph (B)(v), in the aggregate; and (iii) include differentiation of any such school in which any subgroup of students is consistently underperforming, as determined by the State, based on all indicators under subparagraph (B) and the system established under this subparagraph.

(D) Identification of schools. Based on the system of meaningful differentiation described in subparagraph (C), establish a State-determined methodology to identify- (i) beginning with school year 2017-2018, and at least once every three school years thereafter, one statewide category of schools for comprehensive support and improvement, as described in subsection (d)(1), which shall include- (I) not less than the lowest-performing 5 percent of all schools receiving funds under [ESEA] in the State; (II) all public high schools in the State failing to graduate one third or more of their students; and (III) public schools in the State described under subsection (d)(3)(A)(i)(II); and (ii) at the discretion of the State, additional statewide categories of schools.”

243 graduation rate as compared to the long-term goal set for the four-year adjusted cohort
244 graduation rate;¹⁰

245 (2) have the same multi-year length of time set to meet such goals for all students and for
246 each subgroup of students within the Bureau-funded school system;¹¹

247 (3) take into account for subgroups of students who are behind on the measurements of
248 academic achievement and high school graduations rates the improvement necessary on such
249 measures to make significant progress in closing Bureau-wide proficiency and graduation rate
250 gaps;¹² and

251 (4) will include for English learners a measurement of increases in the percentage of such
252 students making progress in achieving English language proficiency as defined by the Secretary
253 and measured by the assessments under section 1111(b)(2)(G) within a timeline determined by
254 the Secretary.¹³

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

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

259 (2) use the same measures within each indicator for all schools within the Bureau-funded
260 school system except that measures within the Academic Progress and School Quality or Student
261 success indicators may vary by each grade span;¹⁴ and

262 (3) incorporate an Academic Achievement indicator,¹⁵ an Academic Progress indicator,¹⁶
263 a Graduation rate indicator,¹⁷ a Progress in Achieving English Language Proficiency indicator,¹⁸
264 and one or more indicators of School Quality or Student Success.¹⁹

Comment [SP1]: From BQ: The language “may vary by each grade span” may not be consistent with section 1111.

¹⁰ 20 U.S.C. §(c)(4)(A)(i)(I). “(A) Establishment of long-term goals. Establish ambitious State-designed long-term goals, which shall include measurements of interim progress toward meeting such goals- (i) for all students and separately for each subgroup of students in the State- (I) for, at a minimum, improved- (aa) academic achievement, as measured by proficiency on the annual assessments required under subsection (b)(2)(B)(v)(I); and (bb) high school graduation rates, including- (AA) the four-year adjusted cohort graduation rate; and (BB) at the State’s discretion, the extended-year adjusted cohort graduation rate, except that the State 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.”

¹¹ 20 U.S.C. §(c)(4)(A)(i)(II). “(II) for which the term set by the State for such goals is the same multi-year length of time for all students and for each subgroup of students in the State.”

¹² 20 U.S.C. §(c)(4)(A)(i)(III). “(III) that, for subgroups of students who are behind on the measures described in items (aa) and (bb) of subclause (I), take into account the improvement necessary on such measures to make significant progress in closing statewide proficiency and graduation rate gaps.”

¹³ 20 U.S.C. §(c)(4)(A)(ii). “(ii) for English learners, for increases in the percentage of such students making progress in achieving English language proficiency, as defined by the State and measured by the assessments described in subsection (b)(2)(G), within a State-determined timeline.”

¹⁴ 20 U.S.C. §(c)(4)(B). “(B) Indicators. Except for the indicator described in clause (iv), annually measure, for all students and separately for each subgroup of students, the following indicators.”

265 (e) The Bureau’s accountability system will annually measure the achievement of at least 95% of
 266 all students, and 95 percent of each subgroup of students, who are enrolled in schools within the
 267 Bureau-funded school system on the Bureau’s assessments.²⁰ The denominator for the purpose
 268 of measuring, calculating, and reporting on each indicator shall be the greater of:

269 (1) 95 percent of all students, or 95 percent of each subgroup of students; or

270 (2) the number of students participating in the assessments.²¹

271 (f) The performance of students that have not attended the same Bureau-funded school for at
 272 least half of a school year will not be used in the system of meaningful differentiation of school
 273 for such school year, but will be used for the purpose of reporting on the Bureau and school
 274 report cards for such school year.²² In calculating the high school graduation rate, a high school

¹⁵ 20 U.S.C. §(c)(4)(B)(i)(I)-(II). “(i) For all public schools in the State, based on the long-term goals established under subparagraph (A), academic achievement- (I) as measured by proficiency on the annual assessments required under subsection (b)(2)(B)(v)(I); and (II) at the State’s discretion, for each public high school in the State, student growth, as measured by such annual assessments.”

¹⁶ 20 U.S.C. §(c)(4)(B)(ii)(I)-(II). “(ii) For public elementary schools and secondary schools that are not high schools in the State- (I) a measure of student growth, if determined appropriate by the State; or (II) another valid and reliable statewide academic indicator that allows for meaningful differentiation in school performance.”

¹⁷ 20 U.S.C. §(c)(4)(B)(iii)(I)-(II). “(iii) For public high schools in the State, and based on State-designed long term goals established under subparagraph (A)- (I) the four-year adjusted cohort graduation rate; and (II) at the State’s discretion, the extended-year adjusted cohort graduation rate.”

¹⁸ 20 U.S.C. §(c)(4)(B)(iv)(I)-(II). “(iv) For public schools in the State, progress in achieving English language proficiency, as defined by the State and measured by the assessments described in subsection (b)(2)(G), within a State-determined timeline for all English learners- (I) in each of the grades 3 through 8; and (II) in the grade for which such English learners are otherwise assessed under subsection (b)(2)(B)(v)(I) during the grade 9 through grade 12 period, with such progress being measured against the results of the assessments described in subsection (b)(2)(G) taken in the previous grade.”

¹⁹ 20 U.S.C. §(c)(4)(B)(v)(I)-(VIII). “(v) (I) For all public schools in the State, not less than one indicator of school quality or student success that- (aa) allows for meaningful differentiation in school performance; (bb) is valid, reliable, comparable, and statewide (with the same indicator or indicators used for each grade span, as such term is determined by the State); and (cc) may include one or more of the measures described in subclause (II). (II) For purposes of subclause (I), the State may include measures of- (III) student engagement; (IV) educator engagement; (V) student access to and completion of advanced coursework; (VI) postsecondary readiness; (VII) school climate and safety; and (VIII) any other indicator the State chooses that meets the requirements of this clause.”

²⁰ 20 U.S.C. §6311(c)(4)(E)(i). “(E) Annual measurement of achievement. (i) Annually measure the achievement of not less than 95 percent of all students, and 95 percent of all students in each subgroup of students, who are enrolled in public schools on the assessments described under subsection (b)(2)(v)(I).”

²¹ 20 U.S.C. §6311(c)(4)(E)(ii). “(ii) For the purpose of measuring, calculating, and reporting on the indicator described in subparagraph (B)(i), include in the denominator the greater of- (I) 95 percent of all such students, or 95 percent of all such students in the subgroup, as the case may be; or (II) the number of students participating in the assessments. (iii) Provide a clear and understandable explanation of how the State will factor the requirement of clause (i) of this subparagraph into the statewide accountability system.”

²² 20 U.S.C. §6311(c)(4)(F)(i)(I)-(II). “(F) Partial attendance. (i) In the case of a student who has not attended the same school within a local educational agency for at least half of a school year, the performance of such student on the indicators described in clauses (i), (ii), (iv), and (v) of subparagraph (B)- (I) may not be used in the system of meaningful differentiation of all public schools as described in subparagraph (C) for such school year; and (II) shall be used for the purpose of reporting on the State and local educational agency report cards under subsection (h) for such school year.”

275 student who has not attended the same school for at least half of a school year and has exited
276 high school without a regular high school diploma and without transferring to another high
277 school that grants a regular high school diploma during such a school year shall be assigned to
278 the high school at which the student was enrolled for the greatest proportion of school days while
279 enrolled in grades 9 through 12, or to the high school in which the student was most recently
280 enrolled.²³

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

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

281 **Title 25 – Indians**

282 **Chapter I – Bureau of Indian Affairs, Department of the Interior**

283 **Subchapter E – Education**

284 **Part 30 – Standards, Assessments, and Accountability System**

285 **Subpart B – Waiver of Definitions, Technical Assistance, and Approval of Waivers**

286 **§30.107. May a tribal governing body or school board waive the Secretary’s definition of**
287 **standards, assessments, and accountability system?**

288
289 Yes. A tribal governing body or school board may waive the Secretary’s definition of standards,
290 assessments, and accountability system in part or in whole. However, unless an alternative
291 proposal is approved the Secretary’s definitions apply.²⁴
292

²³ 20 U.S.C. §6311(c)(4)(F)(ii)(I)-(II). “(ii) In the case of a high school student who has not attended the same school within a local educational agency 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 school year, the local educational agency shall, in order to calculate the graduation rate pursuant to subparagraph (B)(iii), assign such student to the high school- (I) at which such student was enrolled for the greatest proportion of school days while enrolled in grades 9 through 12; or (II) in which the student was most recently enrolled.”

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

293 **§30.108. How does a tribal governing body or school board waive the Secretary’s**
 294 **definitions?**

295
 296 (a) If a tribal governing body or school board determines the Secretary’s definition of
 297 standards, assessments, or accountability system to be inappropriate²⁵, it may waive these
 298 definitions in part or in whole in a manner consistent with applicable (Federal or
 299 Tribal) law. How is this done? (11/15/18: ‘in a form appropriate /consistent with tribal
 300 law’)(b) The tribal governing body or school board must notify the Secretary and the
 301 Secretary of Education of the decision to waive a definition. (c) Within 60 days of the
 302 decision to waive a definition the tribal governing body or school board must submit to
 303 the Secretary a proposal for alternative definitions that are consistent with section 1111 of
 304 the Act and that take into account the unique circumstances and needs of such school or
 305 schools and the students served. (d) A tribal governing body or school board may request
 306 an extension of the 60 day deadline for the provision of technical assistance. (e) The
 307 Secretary will work with the Secretary of Education to develop and make available
 308 templates for alternative proposals. [consensus on paragraph a 120618 as revised]
 309

310 **ACTION ITEM: BIE add a time-certain for BIE to respond. BIE: will work with ED on a**
 311 **timeline and provide the timeline for the Committee to respond. Note for FYI: ED Section**
 312 **8401 regarding state waivers, the Sec Ed must respond within 120 days. [consensus**
 313 **120618]**

314 **§30.109. What should a tribal governing body or school board include in a waiver and**
 315 **alternative proposal?**

316 (a) Waivers ~~should~~must explain how the Secretary’s definition of standards, assessments, or
 317 accountability system are inappropriate.[**consensus 120618 as revised**]

318
 319 (b) Alternative proposals ~~should~~must include an explanation how the alternative proposal ~~is~~
 320 consistent withmeets the requirements of section 1111 of the Act ~~and meets the unique~~
 321 circumstances and needs of the school(s) and students served. [consensus 120618 as revised]

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

325 **§30.110. May a proposed alternative definition use parts of the Secretary’s definition?**

326
 327 Yes, a tribal governing body or school board may waive the Secretary’s definitions in part or in
 328 whole. Alternative proposals [will] ~~should~~, ~~however~~, clearly ~~incorporate~~ [identify] any retained
 329 portions of the Secretary’s definitions. [**consensus 120618 as revised**]
 330

331 **§30.111. Will the Secretary provide technical assistance to tribal governing bodies or**
 332 **school boards seeking a waiver?**

²⁵ As we discussed, the statute does not define “inappropriate.” As this is a matter left to Tribal governing bodies and school boards under the statute, it might not be appropriate to try to define the term in these regulations.

333
334 ~~Yes,~~ The Secretary and the Secretary of Education are required by statute to provide technical
335 assistance, upon request, either directly or through contract, to a tribal governing body or a
336 school board that seeks a waiver.²⁶ A tribal governing body or school board seeking such
337 assistance ~~should~~ [will]submit a request to the Director. The Secretary will provide such
338 technical assistance on an ongoing and timely basis. [consensus 120618 as revised]

339
340 **NOTE THE COMMITTEE DID NOT REVIEW AND DISCUSS THE REMAINING**
341 **SECTIONS DUE TO TIME CONSTRAINTS ON 120618. The edits reflected below are**
342 **were provided by Brian Q. to clarify subcommittee questions about the draft language.**
343

344 **§30.112. What is the process for requesting technical assistance?**

345 (a) ~~A tribal governing body or school board requesting technical assistance should submit a~~
346 ~~written request to the Director, specifying the form of assistance that is being sought. Requests~~
347 ~~for Technical Assistance must be in writing from a tribal governing body or school board to the~~
348 ~~Director.~~

349 (b) The Director, or designee, will acknowledge receipt within 10 days of a request for technical
350 assistance ~~and~~.

351 (c) No later than 30 days after receiving the original request, the Director will identify a point of
352 contact and technical assistance will begin, ~~This contact will immediately begin working with~~
353 the tribal governing body or school board to jointly develop the specifics of the technical
354 assistance, including identifying the form, substance, and timeline for the assistance.

355

356 **§30.113. When should the tribal governing body or school board request technical**
357 **assistance?**
358

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

362

363 **§30.114. How does the Secretary review and approve an alternative definition?**
364

²⁶ 20 U.S.C. §7824(c)(3). “Technical assistance. The Secretary of [the] Interior and Secretary shall, either directly or through a contract, provide technical assistance, upon request, to a tribal governing body or school board of a school funded by the Bureau of Indian Affairs that seeks a waiver under paragraph (2).”

365 (a) The tribal governing body or school board submits a proposed alternative definition to the
366 Director, within 60 days of its waiver.²⁷ The tribal governing body or school board may request
367 an extension of the 60 day deadline to allow for the provision of technical assistance.

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

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

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

371 or

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

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

376

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

380

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

385

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

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

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

388 | (2) The ~~alternative definition will become~~ date on which the alternative proposal will be
389 | effective ~~at the start of the following school year.~~

390

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

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

396 | (2) The reasons why the alternative definition has been disapproved.

397

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

401

402