

**Bureau of Indian Education (BIE) concept for Standards, Assessments, and Accountability System (SAA) regulations.**

Generally, regulations or rules are “a general statement issued by an agency that has the force and effect of law and is designed to implement, interpret, or prescribe law or policy.” *How to Prepare Regulations and Federal Register Notices Handbook*, 318 DM HB, 4. Put another way, regulations “fill any gap[s] left, implicitly or explicitly, by Congress.”

*Morton v. Ruiz*, 415 U.S. 199, 231. 20 U.S.C. §7824(c) requires the Secretary of the Interior “using a negotiated rulemaking process to develop regulations for implementation” to “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.”

The BIE SAA Negotiated Rulemaking Committee is, therefore, tasked with developing regulations for implementation of the Secretary’s statutory responsibility to define SAA for BIE-funded schools. While section 1111 has certain mandatory elements, because SAA for BIE-funded schools must only be “consistent” with section 1111 taking into account the unique needs BIE-funded schools and the students served by them, there is considerable latitude to tailor the regulations in a way that meets the unique needs of BIE-funded schools and the students served by them. Because the regulations must be consistent with section 1111 and section 1111(a)(6)(A)(ii) contemplates periodic review and revision as necessary, BIE envisions a more broad interpretation of the words “regulations for implementation” with a regulation consisting of a high-level framework under which SAA for BIE-funded schools will be defined. This document is only intended to facilitate discussion.

**Title 25 – Indians**

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

**Subchapter E – Education**

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**§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.

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

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

“Bureau” means the Bureau of Indian Education.

“Department” means the Department of the Interior.

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

“BIE School(s)” means a school funded by 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.<sup>1</sup>

“Indian Education Plan” means a document that will provide Indian tribes, parents, and other stakeholders with quality, transparent information about how the Act will be implemented at BIE Schools.

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<sup>1</sup> This definition is from 20 U.S.C. §6311(c)(2).

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

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

### **Subpart A – Defining Standards, Assessments, and Accountability System.**

#### **§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.<sup>2</sup>

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.<sup>3</sup>

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 that seeks a waiver.<sup>4</sup>

#### **§30.103. How will the Secretary implement the requirements of the Act?**

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<sup>2</sup> 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.”

<sup>3</sup> 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.”

<sup>4</sup> 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).”

- (a) The Secretary, through the Director, must define the standards, assessments, and accountability system for use at BIE schools in accordance with this Part.<sup>5</sup>
- (b) The Director will implement an Indian Education Plan<sup>6</sup> that will provide Indian tribes, parents, and other stakeholders with quality, transparent information about how the Act will be implemented at BIE Schools.
- (c) The Director shall review and revise the Indian Education Plan periodically as necessary to reflect changes in the Bureau's strategies and programs.<sup>7</sup> The Secretary shall engage in active consultation with tribes and other interested parties while engaged in review and revision of the Indian Education Plan.<sup>8</sup>
- (d) The Director may voluntarily partner with States to develop and implement challenging State academic standards and assessments.<sup>9</sup>

#### **§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:

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<sup>5</sup> 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."

<sup>6</sup> BIE is not included within the definition of "State" or "State educational agency" under ESEA. *See* 20 U.S.C. §7801(30)(E), (48). On the other hand, the definition of "local education agency" provides that the term includes BIE-funded schools "except that [such schools] shall not be subject to the jurisdiction of *any State educational agency other than the [BIE].*" 20 U.S.C. §7801(30)(C) (emphasis added). As such it is unclear whether BIE is required to have a State Plan. However BIE/DOI functions as a State for purposes of ESEA. Under a 2012 agreement with the Department of Education (ED) pursuant to 20 U.S.C. §7824(a), ED considered BIE's responsibilities to be "comparable" to those of a State Education Agency (SEA) and that BIE "assumes the responsibility of an SEA." The agreement also acknowledged that BIE would have and follow a State plan. Whereas BIE must have regulations that are "consistent" with the requirements of section 1111, and section 1111 requires States to have State plans, it is not inconsistent with section 1111 for BIE to have a similar plan. As reflected in the 2012 agreement, if BIE intends to have a State plan, it is not absolutely necessary for such a plan to be described in this regulation, however if it is not described in regulation it may not be binding on grant and contract schools.

<sup>7</sup> 20 U.S.C. 6311(a)(6)(A)(i)-(ii). "(6) Duration of the plan. (A) In general. Each State plan shall – (i) remain in effect for the duration of the State's participation under this part [Section 1111 *et seq.*; 20 U.S.C. §§6311 *et seq.*]; and (ii) be periodically reviewed and revised as necessary by the State educational agency to reflect changes in the State's strategies and programs under this part [Section 1111 *et seq.*; 20 U.S.C. §§6311 *et seq.*]"

<sup>8</sup> *See, e.g.*, 20 U.S.C. §6311(a)(1)(A)(State plans are "developed by the State educational agency with timely and meaningful consultation with..."); Department of the Interior Tribal Consultation Policy.

<sup>9</sup> 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 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.

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- adopting challenging academic content standards and
- aligned academic achievement standards (standards) consistent with section 1111(b)(1) of the Act.<sup>10</sup>

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

(b) The academic standards will include:

- mathematics
- reading or language arts, and
- science
- And may have such standards for any other subject determined by the Secretary.<sup>11</sup>

These standards shall apply to all Bureau-funded schools and students at those schools.

(c) Academic achievement standards

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

The Secretary may adopt alternate academic achievement standards for students with the most significant cognitive disabilities.<sup>12</sup>

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<sup>10</sup> 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.”

<sup>11</sup> 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”.

<sup>12</sup> 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).”

(d) The Secretary will support assessment of students with cognitive disabilities with the administration of a uniform exam.

(e) The academic standards must be aligned with entrance requirements for credit-bearing coursework at institutions of higher education and relevant career and technical education standards.<sup>13</sup> The Secretary will select an assessment that indicates college readiness for credit bearing coursework.

(f) 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 challenging State academic standards.

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

(a) The Secretary shall define assessments for Bureau-funded schools by:

- implementing a set of high-quality student academic assessments consistent with section 1111(b)(2) of the Act.

(b) These assessments will be aligned to the Bureau’s challenging academic standards in:

- Mathematics
- Reading or Language Arts, and
- Science
- And in any other subject chosen by the Secretary taking into account the unique circumstances and needs of Bureau-funded schools and the students served by such schools.<sup>14</sup>

(c) These assessments will be administered to all elementary and secondary school students at Bureau-funded schools as required under section 1111(b)(2)(B)(v)<sup>15</sup>, except in the event that the

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<sup>13</sup> We will need to figure out what this means for the BIE. 20 U.S.C. §6311(b)(1)(D). “Alignment. (i) In general. Each State shall demonstrate that the challenging State academic standards are aligned with entrance requirements for credit-bearing coursework in the system of public higher education in the State and relevant State career and technical education standards. (ii) Rule of construction. Nothing in [ESEA, as amended] shall be construed to authorize public institutions of higher education to determine the specific challenging State academic standards required under this paragraph.”

<sup>14</sup> The requirements for high-quality student academic assessments are located at 20 U.S.C. §6311(b)(2). The statutory requirements seem particularly specific, which should limit the number of decisions that the Secretary has to make concerning how to define assessments and implement the definition. Should assessments in other subjects be chosen? 20 U.S.C. §6311(b)(2)(A). “In general. Each State plan shall demonstrate that the State educational agency, in consultation with local educational agencies, has implemented a set of high-quality student academic assessments in mathematics, reading or language arts, and science. The State retains the right to implement such assessments in any other subject chosen by the State.” *See also* 20 U.S.C. §7824(c)(1).

<sup>15</sup> 20 U.S.C. §6311(b)(2)(B)(v). Assessments shall “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.” Assessments shall “in the case of science, be administered not less than one time during- (aa) grades 3 through 5; (bb) grades 6 through

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Secretary provides for the exemption of any 8<sup>th</sup> grade student from the assessment in mathematics under section 1111(b)(2)(C).

(d) The Secretary's high-quality student academic assessments may, at the Secretary's discretion, be administered through a single summative assessment or be administered through multiple statewide 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.<sup>16</sup>

(e) The Secretary shall provide for the participation of all such students in those assessments and ensure, except in the case of students with the most significant cognitive difficulties, that the same assessments will be used to measure the achievement of all elementary and secondary school students at Bureau-funded schools.<sup>17</sup>

(f) The Secretary shall ensure that the assessments meet the requirements described in section 1111(b)(2)(B)(ii)-(xiii) including that the assessments provide coherent and timely information about student attainment of such standards and whether the student is performing at the student's grade level;<sup>18</sup> that the assessments involve multiple up-to-date measures of student academic achievement;<sup>19</sup> that the assessments produce individual student interpretive, descriptive, and diagnostic reports regarding achievement on the assessments;<sup>20</sup> that the assessments enable results to be disaggregated;<sup>21</sup> that the assessments enable itemized score analyses;<sup>22</sup> and that the

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9; and (cc) grades 10 through 12." Assessments shall "in the case of any other subject chosen by the State, be administered at the discretion of the State."

<sup>16</sup> 20 U.S.C. §6311(b)(2)(B)(viii). Assessments shall "at the State's discretion- (I) be administered through a single summative assessment; or (II) be administered through multiple statewide 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."

<sup>17</sup> 20 U.S.C. §6311(b)(2)(B)(i)(I)-(II). "Requirements. The assessments under subparagraph (A) shall- (i) except as provided in subparagraph (D) [students with the most significant cognitive disabilities], be- (I) the same academic assessments used to measure the achievement of all public elementary school and secondary school students in the State; and (II) administered to all public elementary school and secondary school students in the State."

<sup>18</sup> 20 U.S.C. §6311(b)(2)(B)(ii)-(iv). Assessments shall "(ii) be aligned with the challenging State 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 [ESEA] and consistent with the requirements of this section, the evidence of which shall be made public, including on the website of the State educational agency."

<sup>19</sup> 20 U.S.C. §6311(b)(2)(B)(vi). Assessments shall "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."

<sup>20</sup> 20 U.S.C. 6311(b)(2)(B)(x). Assessments shall "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."

<sup>21</sup> 20 U.S.C. 6311(b)(2)(B)(xi)(I)-(V) (omitting subsection (VI) concerning migrant status. Assessments shall "enable results to be disaggregated within each State, local educational agency, and school by- (I) each major racial



assessments be developed, to the extent practicable, using the principles of universal design for learning.<sup>23</sup>

(g) The Secretary may provide for alternate assessments aligned with the challenging State academic standards and alternate academic achievement standards for students with the most cognitive disabilities if the requirements of Section 1111(b)(2)(D) are met.<sup>24</sup>

(h) The Secretary shall identify the languages other than English that are present to a significant extent in the student population and indicate the languages for which annual student academic assessments are not available and are needed.<sup>25</sup> The Secretary shall make every effort to develop such assessments.<sup>26</sup>

(i) The Secretary will provide for an annual assessment of English proficiency of all English learners at BIE schools.<sup>27</sup> Such assessments shall be aligned with the Secretary's English proficiency standards.<sup>28</sup>

(j) The Secretary may develop and administer computer adaptive assessments.<sup>29</sup>

(i) Computer adaptive assessments are not required to be the same for all students taking such assessments.<sup>30</sup> Such assessments (i) must at a minimum measure each student's academic

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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 a State, local educational agency, or a 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.”

<sup>22</sup> 20 U.S.C. 6311(b)(2)(B)(xii). Assessments shall “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.”

<sup>23</sup> 20 U.S.C. §6311(b)(2)(B)(xiii). Assessments shall “be developed, to the extent practicable, using the principles of universal design for learning.”

<sup>24</sup> 20 U.S.C. §6311(b)(2)(D). “A State may provide for alternate assessments aligned with the challenging State academic standards and alternate academic achievement standards described in paragraph (1)(E) for students with the most significant cognitive disabilities, if the State...”

<sup>25</sup> 20 U.S.C. §6311(b)(2)(F)(i). “Each State plan shall identify the languages other than English that are present to a significant extent in the participating student population of the State and indicate the languages for which annual student academic assessments are not available and are needed.”

<sup>26</sup> 20 U.S.C. §6311(b)(2)(F)(ii). “The State shall make every effort to develop such assessments and may request assistance from the Secretary if linguistically accessible academic assessment measures are needed. Upon request, the Secretary 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.”

<sup>27</sup> 20 U.S.C. §6311(b)(2)(G)(i). “Each State plan shall demonstrate that local educational agencies in the State will provide for an annual assessment of English proficiency of all English learners in the schools served by the State educational agency.”

<sup>28</sup> 20 U.S.C. §6311(b)(2)(G)(ii). “The assessments described in clause (i) shall be aligned with the State's English language proficiency standards described in paragraph (1)(F).”

<sup>29</sup> 20 U.S.C. §6311(b)(2)(J)(i). “Subject to clause (ii), a State 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—“

<sup>30</sup> 20 U.S.C. §6311(b)(2)(J)(i)(I). “(I) subparagraph (B)(i) shall not be interpreted to require that all students taking the computer adaptive assessment be administered the same assessment items;”

proficiency based on the challenging State academic standards for the students grade level and growth toward such standards; and (ii) 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 Secretary's accountability system.<sup>31</sup>

(ii) The Secretary shall ensure that in developing and administering computer adaptive assessments they meet the requirements for alternative assessments for students with the most severe cognitive disabilities as well as for assessments of English proficiency of all English learners.<sup>32</sup>

(k) The Secretary may, subject to Federal requirements related to assessments, evaluations, and accommodations, 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.<sup>33</sup>

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

(a) 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 statewide accountability system and school support and improvement activities.<sup>34</sup>

(b) 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 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;

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<sup>31</sup> 20 U.S.C. §6311(b)(2)(J)(i)(II)(aa)-(bb). "and (II) such assessment-- (aa) shall measure, at a minimum, each student's academic proficiency based on the challenging State 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 a State's accountability system under subsection (c)."

<sup>32</sup> 20 U.S.C. §6311(b)(2)(J)(ii). "In developing and administering computer adaptive assessments-- (I) as the assessments allowed under subparagraph (D), a State 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), a State 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."

<sup>33</sup> 20 U.S.C. §6311(b)(2)(L). "Subject to Federal or State requirements related to assessments, evaluations, and accommodations, each State may, at the sole discretion of such State, 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."

<sup>34</sup> 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).

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- 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;<sup>35</sup> 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.

(c) 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, at the Secretary's discretion, 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;<sup>36</sup>

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<sup>35</sup> 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."

<sup>36</sup> 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."

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(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;<sup>37</sup>

(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;<sup>38</sup> and

(4) will 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.<sup>39</sup>

(d) 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;<sup>40</sup> and

(3) incorporate an Academic Achievement indicator,<sup>41</sup> an Academic Progress indicator,<sup>42</sup> a Graduation rate indicator,<sup>43</sup> a Progress in Achieving English Language Proficiency indicator,<sup>44</sup> and one or more indicators of School Quality or Student Success.<sup>45</sup>

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<sup>37</sup> 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."

<sup>38</sup> 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."

<sup>39</sup> 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."

<sup>40</sup> 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."

<sup>41</sup> 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."

<sup>42</sup> 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."

<sup>43</sup> 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."

<sup>44</sup> 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

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(e) 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.<sup>46</sup> 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.<sup>47</sup>

(f) 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.<sup>48</sup> 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.<sup>49</sup>

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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.”

<sup>45</sup> 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.”

<sup>46</sup> 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).”

<sup>47</sup> 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.”

<sup>48</sup> 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.”

<sup>49</sup> 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.”

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

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

Yes. A tribal governing body or school board may waive the Secretary’s definition of standards, assessments, and accountability system in part or in whole. However, unless an alternative proposal is approved the Secretary’s definitions apply.<sup>50</sup>

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

If a tribal governing body or school board determines the Secretary’s definition of standards, assessments, or accountability system to be inappropriate<sup>51</sup>, it may waive these definitions in part or in whole. Within 60 days 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.

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

Waivers should explain how the Secretary’s definition of standards, assessments, or accountability system are inappropriate.

Alternative proposals should include an explanation how the alternative proposal is consistent with section 1111 of the Act and meets the unique circumstances and needs of the school(s) and students served.

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

Yes, a tribal governing body or school board may waive the Secretary’s definitions in part or in whole. Alternative proposals should, however, clearly incorporate 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?**

Yes, the Secretary and the Secretary of Education are required by statute to provide technical assistance, upon request, either directly or through contract to a tribal governing body or a school

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<sup>50</sup> 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.”

<sup>51</sup> 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.

board that seeks a waiver.<sup>52</sup> A tribal governing body or school board seeking such assistance should submit a request to the Director.

**§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.

(b) The Director will acknowledge receipt of a request for technical assistance and

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

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

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

(a) The tribal governing body or school board submits a proposed alternative definition to the Director within 60 days of its waiver.<sup>53</sup>

(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.

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<sup>52</sup> 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).”

<sup>53</sup> 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.”

(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 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.

### **Subpart C – Responsibilities and Accountability.**

#### **§30.126. What is required for the Bureau to meet its reporting responsibilities?**

The Bureau<sup>54</sup> and individual Bureau-funded schools are required to prepare and disseminate widely to the public an Annual Report Card for the BIE-funded school system as a whole that is consistent with the requirements of section 1111(h) of the Act.<sup>55</sup> The BIE's annual report card shall be made available on the internet along with all Bureau-funded school report cards, and the annual report to the Secretary.<sup>56</sup>

#### **§30.150. Information Collection.**

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)(PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

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<sup>54</sup> 20 U.S.C. §6311(h)(1)(a). “(h) Reports. (1) Annual State report card. (A) In general. A State that receives assistance under [ESEA] shall prepare and disseminate widely to the public an annual State report card for the State as a whole that meets the requirements of this paragraph.”

<sup>55</sup> 20 U.S.C. §6311(h)(2)(a). “(2) Annual local educational agency report cards. (A) Preparation and dissemination. A local educational agency that receives assistance under [ESEA] shall prepare and disseminate an annual local educational agency report card that includes information on such agency as a whole and each school served by the agency.”

<sup>56</sup> 20 U.S.C. §6311(h)(1)(B). “(B) Implementation. The State report card required under this paragraph shall be- (i) concise; (ii) presented in an understandable and uniform format that is developed in consultation with parents and, to the extent practicable, in a language that parents can understand; and (iii) widely accessible to the public, which shall include making available on a single webpage of the State educational agency's website, the State report card, all local educational agency report cards for each local educational agency in the State required under paragraph (2), and the annual report to the Secretary under paragraph (5).”