



## SUMMARY REQUIREMENTS AND MAJOR CONSIDERATIONS FOR NEGOTIATED RULEMAKING

Bureau of Indian Education Standards, Assessments, and Accountability  
 under the Every Student Succeeds Act (ESSA)  
*New regulations will replace existing regulations at: 25 CFR Part 30*

STANDARDS		
KEY QUESTIONS	ESSA REQUIREMENTS AND FLEXIBILITY	NOTES
<ol style="list-style-type: none"> <li>1. What challenging standards will be adopted by BIE in mathematics, reading, and science?</li> <li>2. How will challenging standards in the BIE fulfill all of the requirements under ESSA?</li> </ol>	<p><b>States MUST:</b></p> <ol style="list-style-type: none"> <li>1. Adopt challenging standards in math, English or language arts, and science;</li> <li>2. Include [at least] three levels of achievement in the system of standards.</li> </ol> <p><b>States MAY:</b></p> <ol style="list-style-type: none"> <li>1. Adopt standards in any subject(s) in addition to math, English or language arts, and science.</li> </ol> <p><b>Standards MUST:</b></p> <ol style="list-style-type: none"> <li>1. Apply to all children in all schools.</li> <li>2. Align with higher education institution entrance requirements without the need for remediation.</li> <li>3. Align with the relevant career and technical education standards.</li> <li>4. Allow for alternate academic standards for students with the most significant cognitive disabilities, aligned to challenging state standards.</li> </ol>	<ul style="list-style-type: none"> <li>• The BIE currently operates under a 23 state system of standards, which negotiators will consider during the rulemaking process.</li> <li>• The BIE Consolidated State Plan Draft proposed the following options to develop systems of standards and assessments under ESSA:             <ol style="list-style-type: none"> <li>a. Adopt College and Career Ready Standards (as some of the BIE-funded schools are using)</li> <li>b. Create a hybrid system of standards and assessments.</li> <li>c. Adopt standards/assessments of a single state.</li> <li>d. Develop new standards/assessments.</li> <li>e. Remain with current multi-part state academic content standards/assessments.<sup>1</sup></li> </ol> </li> <li>• The BIE State Plan strongly recommended against the continued use of a multi-part system of standards due to issues with implementation.<sup>2</sup></li> <li>• The Negotiated Rulemaking Committee will be asked to consider how to fulfill requirements around postsecondary entry and career and technical education standards. In addition, negotiators will consider whether to pursue a waiver given the unique multi-state structure of the BIE.</li> </ul>

<sup>1</sup> BIE Consolidated State Plan Draft, pg. 10-12.

<sup>2</sup> “BIE currently uses a mixture of consortia assessments and state-based assessments in English language arts and math. That arrangement has created significant challenges in obtaining test results on a timely basis, affecting school accountability determinations and statutory reporting of test data.” (BIE Consolidated State Plan Draft, pg. 12)

ASSESSMENTS		
KEY QUESTIONS	ESSA REQUIREMENTS	NOTES
<p>1. What assessment or set of assessments will BIE adopt to measure student achievement on mathematics, reading, and science?</p> <p>2. What alternate assessments will the BIE adopt for students with the most significant cognitive disabilities?</p> <p>3. Should the BIE include other subjects as part of its assessment system?</p> <p>4. How can the BIE provide technical assistance and funding to develop Native language assessments and streamline the approval process to support tribal sovereignty in education?</p>	<p><b>States MUST:</b></p> <ol style="list-style-type: none"> <li>1. Assess students annually in math and reading in grades 3-8.</li> <li>2. Assess students in science once in grades 3-5, once in grades 6-8, and once in grades 9-12.</li> <li>3. Assess at least 95% of all students.<sup>3</sup></li> <li>4. Identify and develop assessments in languages for English learners.<sup>4 5</sup></li> <li>5. Cap [at the state level] use of alternate assessments based on alternate standards for students with the most significant cognitive disabilities at 1% of all students.<sup>6</sup></li> <li>6. Offer appropriate accommodations for English learners and children with disabilities.<sup>7</sup></li> <li>7. Use universal design for learning.</li> <li>8. Disaggregate data by: <ol style="list-style-type: none"> <li>a. Race and ethnicity;</li> <li>b. Economic disadvantage;</li> <li>c. Disability;</li> <li>d. English proficiency;</li> <li>e. Gender; and</li> </ol> </li> </ol>	<ul style="list-style-type: none"> <li>• See Notes 1-3 under Standards.</li> <li>• Current ESSA regulations authorize Native immersion schools to waive English-only assessments in favor for state-administered Native language assessments in math, English or language arts, and science to students enrolled in a Native language immersion school or program until the students are in high school.<sup>9</sup> Negotiators will consider how these regulations apply to BIE schools and whether to develop new regulations for Native language assessments.</li> <li>• ESSA requires that school-level data “be provided [...] after the assessment is given, in an understandable and uniform format, and to the extent practicable, in a language that parents can understand...”<sup>10</sup> This includes reports provided in Native languages.</li> <li>• The BIE State Plan states that the BIE includes the following groups of students in the current accountability system: “all students, economically disadvantaged, English learner, and American Indian/Alaska Native.”<sup>11</sup></li> </ul>

<sup>3</sup> ESSA clarifies that: “Nothing preempts state or local law with respect to a parental decision on assessment participation.” (ESSA Sec. 1111(2)(K))

<sup>4</sup> “The BIE is currently evaluating these requirements and how they apply to BIE as a SEA and BIE-funded schools.” (BIE Consolidated State Plan Draft, pg. 16)

<sup>5</sup> Current regulations from the Department of Education provide authority for Native language immersion schools to waive English-only assessments in mathematics, English, language arts, and science in grades 3-8 (34 CFR 200.7(d))

<sup>6</sup> ESSA Title I Part A final regulations outline to states requirements to develop criteria regarding which students may be considered students with the most significant cognitive disabilities and therefore eligible to take an alternate assessment based on alternate standards See: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-08/pdf/2016-29128.pdf>

<sup>7</sup> ESSA Title I Part A final regulations outline to states requirements related to providing testing accommodations See: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-08/pdf/2016-29128.pdf>

<sup>9</sup> 34 CFR 200.7(d). See: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-08/pdf/2016-29128.pdf>

<sup>10</sup> ESSA Sec. 1111(2)(B)(x))

<sup>11</sup> BIE Consolidated State Plan Draft, pg. 17.

ASSESSMENTS		
KEY QUESTIONS	ESSA REQUIREMENTS	NOTES
	<p>f. Migrant status.<sup>8</sup></p> <p><b>State MAY:</b></p> <ol style="list-style-type: none"> <li>1. Develop new assessment designs, which may include a series of multiple statewide interim assessments that result in a single summative score.</li> <li>2. Allow advanced 8<sup>th</sup> graders to take state-determined high school assessment, as long as they take a more advanced math assessment in grades 9-12.</li> <li>3. Develop computer adaptive tests.</li> <li>4. Allow a local education agency (LEA) to use a nationally-recognized high school assessment in lieu of state assessment.</li> <li>5. Allow a LEA to develop Innovative Assessments under the Innovative Assessment Pilot.</li> </ol>	<ul style="list-style-type: none"> <li>• “The BIE currently does not have an end-of-course mathematics assessment. Whether the BIE decides to use one in the future will be decided following the conclusion of negotiated rulemaking.”<sup>12</sup></li> </ul>

ACCOUNTABILITY		
KEY QUESTIONS	ESSA REQUIREMENTS	NOTES
<ol style="list-style-type: none"> <li>1. What are BIE’s long-term goals to assure students are making academic gains?</li> <li>2. To help identify schools for comprehensive and targeted support, how will BIE measure interim [student] progress toward the long-term</li> </ol>	<p><b>States MUST:</b></p> <ol style="list-style-type: none"> <li>1. Develop an accountability system that includes long-term goals and measures of interim progress on: <ol style="list-style-type: none"> <li>a. Improvement on state assessments;</li> <li>b. Graduation rates; and</li> <li>c. Progress in achieving English proficiency.</li> </ol> </li> <li>2. Set a minimum N Size of 30 or less to provide valid, reliable, statistically significant data and reporting on</li> </ol>	<ul style="list-style-type: none"> <li>• The BIE Consolidated State Plan Draft specifically noted that negotiators will need to make a decision between fixed or relative goals, establish long-term goals, and provide a timeline for achievement.<sup>16</sup></li> <li>• “A BIE-wide N-size has not been decided [under ESSA], although the merits of various options have been discussed, mainly based on</li> </ul>

<sup>8</sup> ESSA clarifies data may not be reported... “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... (See: ESSA Sec. 1111(2)(B)(xi))

<sup>12</sup> BIE Consolidated State Plan Draft, pg. 12

<sup>16</sup> “For BIE, a decision will need to be made between fixed goals and relative goals, as well as timeline to achieve those goals.” (BIE Consolidated State Plan Draft, pg. 21)

<p>goals to measure student [subgroup] success as well as rate and measure school progress?</p> <p>3. What minimum “N” size should be adopted – to be used for student subgroup data measurement, disaggregation and reporting?</p> <p>4. What additional [5<sup>th</sup>] indicator(s) should BIE include in its accountability system?</p>	<p>the progress of student subgroups without compromising student privacy.<sup>13</sup></p> <p>3. Develop statewide indicators of school improvement, which must include:</p> <ul style="list-style-type: none"> <li>a. Indicator 1: Annual state assessments;</li> <li>b. Indicator 2: Graduation rate for high schools; <ul style="list-style-type: none"> <li>i. 4-year adjusted cohort rate;</li> <li>ii. at State’s discretion, extended-year adjusted cohort rate.<sup>14</sup></li> </ul> </li> <li>c. Indicator 3: A measure of student growth or other academic indicator (applies to K-8) (See: Notes)</li> <li>d. Indicator 4: English language proficiency, as determined by the State.</li> <li>e. Indicator 5: At least one additional measure of school quality/student success, which: <ul style="list-style-type: none"> <li>i. Must allow for meaningful differentiation in school performance;</li> <li>ii. Be valid, reliable, comparable, and state-wide (with the same indicator(s) used for each grade/grade span); and</li> <li>iii. Apply to all students and subgroups for the same length of time.</li> </ul> </li> </ul> <p>4. Institute an additional indicator to replace the graduation rate for schools that do not serve high school students. Such indicators may include:</p> <ul style="list-style-type: none"> <li>a. student engagement;</li> <li>b. educator engagement;</li> <li>c. student access to and completion of advanced coursework;</li> <li>d. postsecondary readiness;</li> <li>e. school climate and safety;</li> <li>f. any other indicator the State chooses that meets the requirements.<sup>15</sup></li> </ul>	<p>the N-size used in BIE’s 23 states. A cursory review of State plans submitted to the U.S. Department of Education indicates an N-size range of 10 to 30.<sup>17</sup></p>
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<sup>13</sup> The National Center on Educational Outcomes reports that “a state can set an n-size of 10 students, and even as low as 5 students, and still protect student privacy and ensure statistical reliability.”

<sup>14</sup> ESSA requires that the State shall set a more rigorous long-term goal for the extended-year adjusted cohort graduation rate compared to the long-term goal for the four-year adjusted cohort graduation rate. (ESSA Sec. 1111 (b)(4)(A)(BB)(a))

<sup>15</sup> Statewide Accountability System, National Indian Education Association, pg. 3

<sup>17</sup> BIE Consolidated State Plan Draft, pg. 18.

	<p>5. Develop a system of weights that places ‘greater weight’ on each of Indicators 1-4, which must together ‘have a much greater weight’ than Indicator 5 for school quality.</p> <p>6. Develop a system of differentiation based on school performance on Indicators 1-5. Schools that perform poorly on indicators afforded substantial weight must be more likely to be identified through the system of differentiation.</p> <p>7. Provide annual meaningful differentiation of schools in the accountability system, which must:</p> <ol style="list-style-type: none"> <li>a. Be based on all indicators in the State’s accountability system;</li> <li>b. Include the performance of all students;</li> <li>c. Include the performance of all subgroups;</li> <li>d. Establish a State-determined methodology to identify: <ol style="list-style-type: none"> <li>i. One statewide category of schools for comprehensive support and improvement every three years, which must include: <ul style="list-style-type: none"> <li>• The lowest-performing 5 percent of all schools; and</li> <li>• All public high schools failing to graduate one third (67) or more of their students; and</li> </ul> </li> <li>ii. Schools for targeted support and improvement each year with any student subgroup that is consistently underperforming based on all indicators in the state accountability system; and</li> <li>iii. Any school with a student subgroup performing at the level of the lowest-performing 5 percent of all Title I schools.</li> </ol> </li> </ol>	<ul style="list-style-type: none"> <li>• “The weighting of indicators will be decided as part of the larger accountability system, once negotiated rulemaking is completed.”<sup>18</sup></li> <li>• “The system of annual meaningful differentiation will be decided as part of the larger accountability system once negotiated rulemaking is completed.”<sup>19</sup></li> <li>• ESSA introduces three new terms related to accountability and for the identification of schools for intervention and support: <ul style="list-style-type: none"> <li>• <i>Comprehensive support and improvement</i></li> <li>• <i>Targeted support and improvement</i></li> <li>• <i>Consistently underperforming</i><sup>20</sup></li> </ul> </li> </ul> <p>Each has its own unique requirements which are either set and met by the state or the school district with state approval.<sup>21</sup></p> <ul style="list-style-type: none"> <li>• “Particulars of the methodology [for determining the identification and support/intervention and related timetables] will be determined following the conclusion of negotiated rulemaking. Stakeholder input is welcome.”<sup>22</sup></li> </ul>
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<sup>18</sup> BIE Consolidated State Plan Draft, pg. 27.  
<sup>19</sup> Ibid.  
<sup>20</sup> ESSA Sec. 1111(d)  
<sup>21</sup> Ibid.  
<sup>22</sup> BIE Consolidated State Plan Draft, pg. 28.



<b>TRIBAL WAIVERS AND TECHNICAL ASSISTANCE</b>		
<b>KEY QUESTIONS</b>	<b>ESSA REQUIREMENTS</b>	<b>NOTES</b>
<p>1. How will the BIE expand technical assistance for tribes that request a waiver to develop their own standards, assessment(s) and related accountability system?</p> <p>2. How will the BIE ensure that the waiver process supports tribal sovereignty?</p>	<p>1. If a tribe or school board determines that the system of standards, assessments, and accountability set by the BIE is inappropriate for students in a tribal school, a tribe has the authority to waive all or part of such systems in favor of systems that better address the needs of Native students.</p> <p>2. The BIE is required to provide technical assistance upon request to tribes that choose to develop systems of standards, assessments, and accountability under ESSA.</p> <p>3. This provision replaces the tribal waiver to develop a unique system of adequate yearly progress under No Child Left Behind.</p>	<p>1. The Navajo Nation Diné School Accountability Plan was approved to adopt and implement a “common set of college- and career-ready standards in reading/language arts and mathematics for all of its schools,” as required by No Child Left Behind and pursuant to BIE regulations.<sup>23,24</sup></p> <p>2. The Miccosukee Tribe of Indians of Florida received approval to implement a unique accountability plan for the Miccosukee Indian School in 2015.<sup>25</sup></p>

<b>WAIVERS</b>		
<b>KEY QUESTIONS</b>	<b>ESSA REQUIREMENTS</b>	<b>NOTES</b>
<p>1. Are there waivers that BIE must seek on behalf of all schools?</p>	<p>1. The Secretary has the discretion to issue waivers of most statutory and regulatory requirements at the request of a state or Indian tribe.</p> <p>2. Additional limits prevent the Secretary from requiring any State, district, school, or Indian tribe, as a condition of approval of a waiver request, to include specific standards, use specific assessments, or include or delete from the request any specific elements related to academic standards, assessments, accountability systems etc.</p>	

<sup>23</sup> Letter to T. Lewis, U.S. Department of the Interior, U.S. Department of Education, September 2016

<sup>24</sup> Diné School Accountability Plan, See: [http://navajonationdode.org/uploads/FileLinks/8dbc3347d3854011b2b42cc8990c5846/NNAWB\\_Final\\_1\\_1.pdf](http://navajonationdode.org/uploads/FileLinks/8dbc3347d3854011b2b42cc8990c5846/NNAWB_Final_1_1.pdf)

<sup>25</sup> Miccosukee Indian School Consolidated State Application Accountability Workbook, See: <https://www2.ed.gov/nclb/freedom/local/flexibility/waiverletters2009/misaypwk060515.pdf>