

# Bureau of Indian Education

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## **ESEA Flexibility Request for Window 3**

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Submitted by the  
Bureau of Indian Education,  
U.S. Department of the Interior

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June 7, 2012

U.S. Department of Education  
Washington, DC 20202

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Paperwork Burden Statement

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## INTRODUCTION

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The U.S. Department of Education (Department) is offering each State educational agency (SEA) the opportunity to request flexibility on behalf of itself, its local educational agencies (LEAs), and its schools, in order to better focus on improving student learning and increasing the quality of instruction. This voluntary opportunity will provide educators and State and local leaders with flexibility regarding specific requirements of the No Child Left Behind Act of 2001 (NCLB) in exchange for rigorous and comprehensive State-developed plans designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction. This flexibility is intended to build on and support the significant State and local reform efforts already underway in critical areas such as transitioning to college- and career-ready standards and assessments; developing systems of differentiated recognition, accountability, and support; and evaluating and supporting teacher and principal effectiveness.

The Department invites interested SEAs to request this flexibility pursuant to the authority in section 9401 of the Elementary and Secondary Education Act of 1965 (ESEA), which allows the Secretary to waive, with certain exceptions, any statutory or regulatory requirement of the ESEA for an SEA that receives funds under a program authorized by the ESEA and requests a waiver. Under this flexibility, the Department would grant waivers through the 2014–2015 school year.

## REVIEW AND EVALUATION OF REQUESTS

The Department will use a review process that will include both external peer reviewers and staff reviewers to evaluate SEA requests for this flexibility. This review process will help ensure that each request for this flexibility approved by the Department is consistent with the principles described in the document titled *ESEA Flexibility*, which are designed to support State efforts to improve student academic achievement and increase the quality of instruction, and is both educationally and technically sound. Reviewers will evaluate whether and how each request for this flexibility will support a comprehensive and coherent set of improvements in the areas of standards and assessments, accountability, and teacher and principal effectiveness that will lead to improved student outcomes. Each SEA will have an opportunity, if necessary, to clarify its plans for peer and staff reviewers and to answer any questions reviewers may have. The peer reviewers will then provide comments to the Department. Taking those comments into consideration, the Secretary will make a decision regarding each SEA's request for this flexibility. If an SEA's request for this flexibility is not granted, reviewers and the Department will provide feedback to the SEA about the components of the SEA's request that need additional development in order for the request to be approved.

## GENERAL INSTRUCTIONS

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An SEA seeking approval to implement this flexibility must submit a high-quality request that addresses all aspects of the principles and waivers and, in each place where a plan is required, includes a high-quality plan. Consistent with ESEA section 9401(d)(1), the Secretary intends to grant waivers that are included in this flexibility through the end of the 2014–2015 school year for SEAs that request the flexibility in “Window 3” (*i.e.*, the September 2012 submission window for peer review in October 2012). The Department is asking SEAs to submit requests that include plans through the 2014–2015 school year in order to provide a complete picture of the SEA’s reform efforts. The Department will not accept a request that meets only some of the principles of this flexibility.

This *ESEA Flexibility Request for Window 3* is intended for use by SEAs requesting ESEA flexibility in September 2012 for peer review in October 2012. The timelines incorporated into this request reflect the timelines for the waivers, key principles, and action items of ESEA flexibility for an SEA that is requesting flexibility in this third window.

**High-Quality Request:** A high-quality request for this flexibility is one that is comprehensive and coherent in its approach, and that clearly indicates how this flexibility will help an SEA and its LEAs improve student achievement and the quality of instruction for students.

A high-quality request will (1) if an SEA has already met a principle, provide a description of how it has done so, including evidence as required; and (2) if an SEA has not yet met a principle, describe how it will meet the principle on the required timelines, including any progress to date. For example, an SEA that has not adopted minimum guidelines for local teacher and principal evaluation and support systems consistent with Principle 3 by the time it submits its request for the flexibility will need to provide a plan demonstrating that it will do so by the end of the 2012–2013 school year. In each such case, an SEA’s plan must include, at a minimum, the following elements for each principle that the SEA has not yet met:

1. **Key milestones and activities:** Significant milestones to be achieved in order to meet a given principle, and essential activities to be accomplished in order to reach the key milestones. The SEA should also include any essential activities that have already been completed or key milestones that have already been reached so that reviewers can understand the context for and fully evaluate the SEA’s plan to meet a given principle.
2. **Detailed timeline:** A specific schedule setting forth the dates on which key activities will begin and be completed and milestones will be achieved so that the SEA can meet the principle by the required date.
3. **Party or parties responsible:** Identification of the SEA staff (*e.g.*, position, title, or office) and, as appropriate, others who will be responsible for ensuring that each key activity is accomplished.
4. **Evidence:** Where required, documentation to support the plan and demonstrate the SEA’s progress in implementing the plan. This *ESEA Flexibility Request for Window 3* indicates the specific evidence that the SEA must either include in its request or provide at a future reporting date.

5. **Resources:** Resources necessary to complete the key activities, including staff time and additional funding.
6. **Significant obstacles:** Any major obstacles that may hinder completion of key milestones and activities (*e.g.*, State laws that need to be changed) and a plan to overcome them.

Included on page 19 of this document is an example of a format for a table that an SEA may use to submit a plan that is required for any principle of this flexibility that the SEA has not already met. An SEA that elects to use this format may also supplement the table with text that provides an overview of the plan.

An SEA should keep in mind the required timelines for meeting each principle and develop credible plans that allow for completion of the activities necessary to meet each principle. Although the plan for each principle will reflect that particular principle, as discussed above, an SEA should look across all plans to make sure that it puts forward a comprehensive and coherent request for this flexibility.

**Preparing the Request:** To prepare a high-quality request, it is extremely important that an SEA refer to all of the provided resources, including the document titled *ESEA Flexibility*, which includes the principles, definitions, and timelines; the document titled *ESEA Flexibility Review Guidance for Window 3*, which includes the criteria that will be used by the peer reviewers to determine if the request meets the principles of this flexibility; and the document titled *ESEA Flexibility Frequently Asked Questions*, which provides additional guidance for SEAs in preparing their requests.

As used in this request form, the following terms have the definitions set forth in the document titled *ESEA Flexibility*: (1) college- and career-ready standards, (2) focus school, (3) high-quality assessment, (4) priority school, (5) reward school, (6) standards that are common to a significant number of States, (7) State network of institutions of higher education, (8) student growth, and (9) turnaround principles.

Each request must include:

- A table of contents and a list of attachments, using the forms on pages 1 and 2.
- The cover sheet (p. 3), waivers requested (p. 4-6), and assurances (p. 7-8).
- A description of how the SEA has met the consultation requirements (p. 9).
- Evidence and plans to meet the principles (p. 10-18). An SEA will enter narrative text in the text boxes provided, complete the required tables, and provide other required evidence. An SEA may supplement the narrative text in a text box with attachments, which will be included in an appendix. Any supplemental attachments that are included in an appendix must be referenced in the related narrative text.

Requests should not include personally identifiable information.

**Process for Submitting the Request:** An SEA must submit a request to the Department to receive the flexibility. This request form and other pertinent documents are available on the Department's Web site at: <http://www.ed.gov/esea/flexibility>.

*Electronic Submission:* The Department strongly prefers to receive an SEA's request for the flexibility electronically. The SEA should submit it to the following address:  
[ESEAflexibility@ed.gov](mailto:ESEAflexibility@ed.gov).

*Paper Submission:* In the alternative, an SEA may submit the original and two copies of its request for the flexibility to the following address:

Paul S. Brown, Acting Director  
Student Achievement and School Accountability Programs  
U.S. Department of Education  
400 Maryland Avenue, SW, Room 3W320  
Washington, DC 20202-6132

Due to potential delays in processing mail sent through the U.S. Postal Service, SEAs are encouraged to use alternate carriers for paper submissions.

### **REQUEST SUBMISSION DEADLINE**

The submission due date for Window 3 is September 6, 2012.

### **TECHNICAL ASSISTANCE FOR SEAS**

The Department has conducted a number of webinars to assist SEAs in preparing their requests and to respond to questions. Please visit the Department's Web site at:  
<http://www.ed.gov/esea/flexibility> for copies of previously conducted webinars and information on upcoming webinars.

### **FOR FURTHER INFORMATION**

If you have any questions, please contact the Department by e-mail at [ESEAflexibility@ed.gov](mailto:ESEAflexibility@ed.gov)

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**COVER SHEET FOR ESEA FLEXIBILITY REQUEST**

|   |  |
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| <p>Legal Name of Requester:<br/><br/>Bureau of Indian Education</p>   | <p>Requester's Mailing Address:<br/><br/>Bureau of Indian Education<br/>U.S. Department of the Interior<br/>1849 C Street, NW<br/>MS-3609-MIB<br/>Washington, DC 20240</p> |
| <p>State Contact for the ESEA Flexibility Request</p> <p>Name: Dr. Jeffrey Hamley</p> <p>Position and Office: Associate Deputy Director, Division of Performance and Accountability</p> <p>Contact's Mailing Address:<br/><br/>Bureau of Indian Education<br/>U.S. Department of the Interior<br/>1849 C Street, NW<br/>MS-3609-MIB<br/>Washington, DC 20240</p> <p>Telephone: (202) 208-6123</p> <p>Fax: (202) 208-3312</p> <p>Email address: Jeffrey.hamley@bie.edu</p> |  |
| <p>Chief State School Officer (Printed Name):<br/>Brian Drapcaux<br/>Acting Director, Bureau of Indian Education</p>  | <p>Telephone:<br/>(202) 208-6123</p>   |
| <p>Signature of the Chief State School Officer:<br/><br/>X <span style="border: 1px solid black; padding: 2px;">(b)(6)</span></p>   | <p>Date:<br/><br/>9-6-12</p>   |
| <p>The State, through its authorized representative, agrees to meet all principles of the ESEA Flexibility.</p>   |  |

**WAIVERS**

By submitting this flexibility request, the SEA requests flexibility through waivers of the ten ESEA requirements listed below and their associated regulatory, administrative, and reporting requirements by checking each of the boxes below. The provisions below represent the general areas of flexibility requested; a chart appended to the document titled *ESEA Flexibility Frequently Asked Questions* enumerates each specific provision of which the SEA requests a waiver, which the SEA incorporates into its request by reference.

- 1. The requirements in ESEA section 1111(b)(2)(E)-(H) that prescribe how an SEA must establish annual measurable objectives (AMOs) for determining adequate yearly progress (AYP) to ensure that all students meet or exceed the State’s proficient level of academic achievement on the State’s assessments in reading/language arts and mathematics no later than the end of the 2013–2014 school year. The SEA requests this waiver to develop new ambitious but achievable AMOs in reading/language arts and mathematics in order to provide meaningful goals that are used to guide support and improvement efforts for the State, LEAs, schools, and student subgroups.
- 2. The requirements in ESEA section 1116(b) for an LEA to identify for improvement, corrective action, or restructuring, as appropriate, a Title I school that fails, for two consecutive years or more, to make AYP, and for a school so identified and its LEA to take certain improvement actions. The SEA requests this waiver so that an LEA and its Title I schools need not comply with these requirements.
- 3. The requirements in ESEA section 1116(c) for an SEA to identify for improvement or corrective action, as appropriate, an LEA that, for two consecutive years or more, fails to make AYP, and for an LEA so identified and its SEA to take certain improvement actions. The SEA requests this waiver so that it need not comply with these requirements with respect to its LEAs.
- 4. The requirements in ESEA sections 6213(b) and 6224(e) that limit participation in, and use of funds under the Small, Rural School Achievement (SRSA) and Rural and Low-Income School (RLIS) programs based on whether an LEA has made AYP and is complying with the requirements in ESEA section 1116. The SEA requests this waiver so that an LEA that receives SRSA or RLIS funds may use those funds for any authorized purpose regardless of whether the LEA makes AYP.
- 5. The requirement in ESEA section 1114(a)(1) that a school have a poverty percentage of 40 percent or more in order to operate a schoolwide program. The SEA requests this waiver so that an LEA may implement interventions consistent with the turnaround principles or interventions that are based on the needs of the students in the school and designed to enhance the entire educational program in a school in any of its Priority and Focus schools that meet the definitions of “Priority schools” and “Focus schools,” respectively, set forth in the document titled *ESEA Flexibility*, as appropriate, even if those schools do not have a poverty percentage of 40 percent or more.
- 6. The requirement in ESEA section 1003(a) for an SEA to distribute funds reserved under that section only to LEAs with schools identified for improvement, corrective action, or

restructuring. The SEA requests this waiver so that it may allocate section 1003(a) funds to its LEAs in order to serve any of the State’s Priority and Focus schools that meet the definitions of “Priority schools” and “Focus schools,” respectively, set forth in the document titled *ESEA Flexibility*.

- 7. The provision in ESEA section 1117(c)(2)(A) that authorizes an SEA to reserve Title I, Part A funds to Reward a Title I school that (1) significantly closed the achievement gap between subgroups in the school; or (2) has exceeded AYP for two or more consecutive years. The SEA requests this waiver so that it may use funds reserved under ESEA section 1117(c)(2)(A) for any of the State’s Reward schools that meet the definition of “Reward schools” set forth in the document titled *ESEA Flexibility*.
- 8. The requirements in ESEA section 2141(a), (b), and (c) for an LEA and SEA to comply with certain requirements for improvement plans regarding highly qualified teachers. The SEA requests this waiver to allow the SEA and its LEAs to Focus on developing and implementing more meaningful evaluation and support systems.
- 9. The limitations in ESEA section 6123 that limit the amount of funds an SEA or LEA may transfer from certain ESEA programs to other ESEA programs. The SEA requests this waiver so that it and its LEAs may transfer up to 100 percent of the funds it receives under the authorized programs among those programs and into Title I, Part A.
- 10. The requirements in ESEA section 1003(g)(4) and the definition of a Tier I school in Section I.A.3 of the School Improvement Grants (SIG) final requirements. The SEA requests this waiver so that it may award SIG funds to an LEA to implement one of the four SIG models in any of the State’s Priority schools that meet the definition of “Priority schools” set forth in the document titled *ESEA Flexibility*.

Optional Flexibilities:

If an SEA chooses to request waivers of any of the following requirements, it should check the corresponding box(es) below:

- 11. The requirements in ESEA sections 4201(b)(1)(A) and 4204(b)(2)(A) that restrict the activities provided by a community learning center under the Twenty-First Century Community Learning Centers (21st CCLC) program to activities provided only during non-school hours or periods when school is not in session (*i.e.*, before and after school or during summer recess). The SEA requests this waiver so that 21st CCLC funds may be used to support expanded learning time during the school day in addition to activities during non-school hours or periods when school is not in session.
- 12. The requirements in ESEA sections 1116(a)(1)(A)-(B) and 1116(c)(1)(A) that require LEAs and SEAs to make determinations of adequate yearly progress (AYP) for schools and LEAs, respectively. The SEA requests this waiver because continuing to determine whether an LEA and its schools make AYP is inconsistent with the SEA’s State-developed differentiated recognition, accountability, and support system included in its ESEA flexibility request. The SEA and its LEAs must report on their report cards performance against the AMOs for all subgroups identified in ESEA section 1111(b)(2)(C)(v), and use performance against the AMOs

to support continuous improvement in Title I schools.

13. The requirements in ESEA section 1113(a)(3)-(4) and (c)(1) that require an LEA to serve eligible schools under Title I in rank order of poverty and to allocate Title I, Part A funds based on that rank ordering. The SEA requests this waiver in order to permit its LEAs to serve a Title I-eligible high school with a graduation rate below 60 percent that the SEA has identified as a priority school even if that school does not rank sufficiently high to be served under ESEA section 1113.

**ASSURANCES**

By submitting this application, the SEA assures that:

- 1. It requests waivers of the above-referenced requirements based on its agreement to meet Principles 1 through 4 of the flexibility, as described throughout the remainder of this request.
- 2. It will adopt English language proficiency (ELP) standards that correspond to the State's college- and career-ready standards, consistent with the requirement in ESEA section 3113(b)(2), and that reflect the academic language skills necessary to access and meet the new college- and career-ready standards, no later than the 2013–2014 school year. (Principle 1)
- 3. It will develop and administer no later than the 2014–2015 school year alternate assessments based on grade-level academic achievement standards or alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities that are consistent with 34 C.F.R. § 200.6(a)(2) and are aligned with the State's college- and career-ready standards. (Principle 1)
- 4. It will develop and administer ELP assessments aligned with the State's ELP standards, consistent with the requirements in ESEA sections 1111(b)(7), 3113(b)(2), and 3122(a)(3)(A)(ii). (Principle 1)
- 5. It will report annually to the public on college-going and college credit-accumulation rates for all students and subgroups of students in each LEA and each public high school in the State. (Principle 1)
- 6. If the SEA includes student achievement on assessments in addition to reading/language arts and mathematics in its differentiated recognition, accountability, and support system and uses achievement on those assessments to identify Priority and Focus schools, it has technical documentation, which can be made available to the Department upon request, demonstrating that the assessments are administered statewide; include all students, including by providing appropriate accommodations for English Learners and students with disabilities, as well as alternate assessments based on grade-level academic achievement standards or alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities, consistent with 34 C.F.R. § 200.6(a)(2); and are valid and reliable for use in the SEA's differentiated recognition, accountability, and support system. (Principle 2)
- 7. It will report to the public its lists of Reward schools, Priority schools, and Focus schools at the time the SEA is approved to implement the flexibility, and annually thereafter, it will publicly recognize its Reward schools as well as make public its lists of Priority and Focus schools if it chooses to update those lists. (Principle 2)
- 8. Prior to submitting this request, it provided student growth data on their current students and the students they taught in the previous year to, at a minimum, all teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects in a manner that is timely and informs instructional programs, or it will do so no later than the deadline required under the State Fiscal Stabilization Fund. (Principle 3)

- 9. It will evaluate and, based on that evaluation, revise its own administrative requirements to reduce duplication and unnecessary burden on LEAs and schools. (Principle 4)
- 10. It has consulted with its Committee of Practitioners regarding the information set forth in its request.
- 11. Prior to submitting this request, it provided all LEAs with notice and a reasonable opportunity to comment on the request and has attached a copy of that notice (Attachment 1) as well as copies of any comments it received from LEAs (Attachment 2).
- 12. Prior to submitting this request, it provided notice and information regarding the request to the public in the manner in which the State customarily provides such notice and information to the public (*e.g.*, by publishing a notice in the newspaper; by posting information on its website) and has attached a copy of, or link to, that notice (Attachment 3).
- 13. It will provide to the Department, in a timely manner, all required reports, data, and evidence regarding its progress in implementing the plans contained throughout this request.
- 14. It will report annually on its State report card, and will ensure that its LEAs annually report on their local report cards, for the “all students” group and for each subgroup described in ESEA section 1111(b)(2)(C)(v)(II): information on student achievement at each proficiency level; data comparing actual achievement levels to the State’s annual measurable objectives; the percentage of students not tested; performance on the other academic indicator for elementary and middle schools; and graduation rates for high schools. It will also annually report, and will ensure that its LEAs annually report, all other information and data required by ESEA section 1111(h)(1)(C) and 1111(h)(2)(B), respectively.

**If the SEA selects Option A in section 3.A of its request, indicating that it has not yet developed and adopted all the guidelines for teacher and principal evaluation and support systems, it must also assure that:**

- 15. It will submit to the Department for peer review and approval a copy of the guidelines that it will adopt by the end of the 2012–2013 school year. (Principle 3)

## CONSULTATION

An SEA must meaningfully engage and solicit input from diverse stakeholders and communities in the development of its request. To demonstrate that an SEA has done so, the SEA must provide an assurance that it has consulted with the State’s Committee of Practitioners regarding the information set forth in the request and provide the following:

The Bureau of Indian Education will engage in two types of consultation: 1) stakeholder input, and 2) tribal consultation. Stakeholder input will address the requirements of the Flexibly Request, to the greatest extent possible. Formal tribal consultation is required of BIE as a federal agency, as well as other federal agencies, in accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. President Obama signed a Memorandum on Tribal Consultation on November 5, 2009, directing each executive department to develop a detailed plan of action to implement Executive Order 13175. In response, the U.S. Department of the Interior developed the Department of the Interior Policy on Consultation with Indian Tribes<sup>1</sup> (see Attachment 2).

1. A description of how the SEA meaningfully engaged and solicited input on its request from teachers and their representatives.

The BIE meaningfully engaged and solicited input on its Flexibility Request from teachers and the teachers’ labor union. Teachers and their representatives are actively involved in the design of the Flexibility Request.

Methods of Communication. The BIE communicated with stakeholders by various means, including:

- Email listserv
- Web-based information
- Facsimile transmission
- Dedicated email response account (eseaconsultation@bie.edu)
- Website posting
- Webinar
- Teleconference
- Face-to-face meeting

The above means we used to communicate to schools, inviting review of the draft Flexibility request and requesting input.

Teachers. The Bureau of Indian Education (BIE) funds 174 schools. Of that number, 58 schools are BIE-operated and 116 schools are tribally-controlled.<sup>2</sup> Teachers in the BIE-operated schools are federal employees. Outreach by the BIE to teachers working in BIE-funded schools is determined by their federal or non-federal status and the various statutes and regulations governing the BIE as a federal agency.

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<sup>1</sup> Secretary Order No. 3317, U.S. Department of the Interior, December 11, 2011.

<sup>2</sup> The total number of schools may vary each year, as well as the mix of BIE-operated and tribally controlled schools.

The BIE conducted stakeholder outreach to teachers in the BIE-funded schools through various means. The Flexibility Request and related materials were posted for public view to the BIE and Interior websites: <http://www.bie.edu> and <http://www.bia.gov/WhoWeAre/AS-IA/Consultation/index.htm>. Reviewers also could submit open-ended comments by email to: [eseaconsultation@bie.edu](mailto:eseaconsultation@bie.edu), or by U.S. mail to: BIE ESEA Flexibility Request Comments, Office of the Assistant Secretary – Indian Affairs, U.S. Department of the Interior, Mail Stop 4141 MIB, Washington, DC 20240.

Through emails to both BIE-operated and tribally controlled schools, information was disseminated about how to access the BIE Flexibility Request at the various websites and inviting input into the draft document.

Information also was disseminated at the annual 2012 BIE Summer Institute held in Denver June 11-14, 2012. Over 1,900 personnel from BIE-funded schools attended the event, including teachers. Four sessions were held on the BIE Flexibility Request. In addition, hundreds of flyers were distributed to participants and inviting input into the BIE Flexibility Request.

Teacher Representatives. Teachers in BIE-operated schools are represented by the Federation of Indian Service Employees Union (FISE). Teachers in tribally-controlled schools have no labor union representation.

The BIE solicited input from the employee union by contacting the union and requesting input in the BIE Flexibility Request. Of particular interest to the teacher's union is the part dealing with teacher evaluations. Discussions have taken place with the union about revising the existing Employee Performance Appraisal Plan (EPAP), which is the instrument used to evaluate BIE employees, to include a student achievement element. Discussions have centered on schools participating in the Department of Education School Improvement Grant (SIG) program. SIG requires the use of data on student progress in the evaluation of teachers. Agreement in principle has been reached with the SIG schools and can be expanded to all BIE-operated schools. A draft Memorandum of Understanding has been developed and is under review by both parties.

In regard to the teachers in tribally- controlled schools, BIE cannot require unilaterally that tribal schools implement a particular evaluation system. However, some leverage is available with schools funded with School Improvement Grant dollars, since SIG requires the use of data on student progress in the evaluation of teachers. Tribal schools unwilling to include a student achievement component to teacher evaluation will not be eligible for SIG dollars.

2. A description of how the SEA meaningfully engaged and solicited input on its request from other diverse communities, such as students, parents, community-based organizations, civil rights organizations, organizations representing students with disabilities and English Learners, business organizations, and Indian tribes.

The BIE meaningfully engaged and solicited input on its Flexibility Request from other diverse communities as outlined below.

Public – Students and Parents. Students and parents are considered members of the public as defined in the Paperwork Reduction Act (PRA). Similar to teachers in tribally-controlled schools, the BIE cannot collect information using identical questions to 10 or more members of the public, whether

voluntary or mandatory, written, electronic, or oral without prior approval from the Office of Management and Budget (OMB). Again, the Flexibility Request and related materials were posted for public view to the BIE and Interior websites for comment in various formats, which enabled members of the public to be informed about the reform initiative and to submit comments, if they so choose.

- Students – BIE-operated and tribally-controlled schools
- Parents – BIE-operated and tribally-controlled schools
- School Boards – BIE-operated and tribally-controlled schools

Organizations. The Bureau of Indian Education (BIE) solicited input from a number of organizations representing various interests. Below is a list of organizations contacted.

- Center on Innovation & Improvement (CII)
- Council of Chief State School Officers (CCSSO)
- Mountain Plains Regional Resource Center
- BIE Special Education Advisory Committee

Federal Employees. Employees of the federal government are not considered members of the public and therefore outreach to them for input is not restricted by the Paperwork Reduction Act (PRA).

- Teachers – BIE-operated and tribally-controlled schools
- School Principals – BIE-operated and tribally-controlled schools
- School Superintendents – BIE-operated and tribally-controlled schools
- School Staff – BIE-operated and tribally-controlled schools
- Education Line Officers (22)
- Associate Deputy Directors (3)
- BIE senior management (7)
- BIE staff

Tribal Consultation. The BIE followed Interior’s Policy on Consultation with Indian Tribes to solicit input in the Flexibility Request. Adherence to the policy is intended to contribute toward effective collaboration and informed decision-making fully involving Indian tribes and the government. The general procedure for tribal consultations is to send a Tribal Leader Letter to all tribes which contain all relevant information about the topic for consultation, including consultation locations and dates (see Attachment 2).

The BIE ESEA Flexibility Request was on the agenda for discussion purposes at four tribal consultation sessions sponsored jointly by the Department of the Interior and the Department of Education on the draft Memorandum of Understanding between the two departments and the strategic implementation of the White House Initiative on American Indian and Alaska Native Education established by Executive Order 13592. The tribal consultation sessions were held on the following dates and locations.

May 18, 2012  
Lincoln, California  
No. attendees: 23

May 24, 2012  
Flagstaff, Arizona  
No. attendees: 78

May 31, 2012  
 Bloomington, Minnesota  
 No. attendees: 47

June 5, 2012  
 Nashville, Tennessee  
 No. attendees: 4

In addition, the Department of the Interior held four formal tribal consultations on the BIE ESEA Flexibility Request at various locations around the country in July of 2012.

Tuesday, July 17, 2012  
 Oklahoma City, Oklahoma  
 No. attendees: 13

Tuesday, July 24, 2012  
 Seattle, Washington  
 No. attendees: 8

Friday, July 20, 2012  
 Flagstaff, Arizona  
 No. attendees: 17

Friday, July 27, 2012  
 Bismarck, North Dakota  
 No. attendees: 11

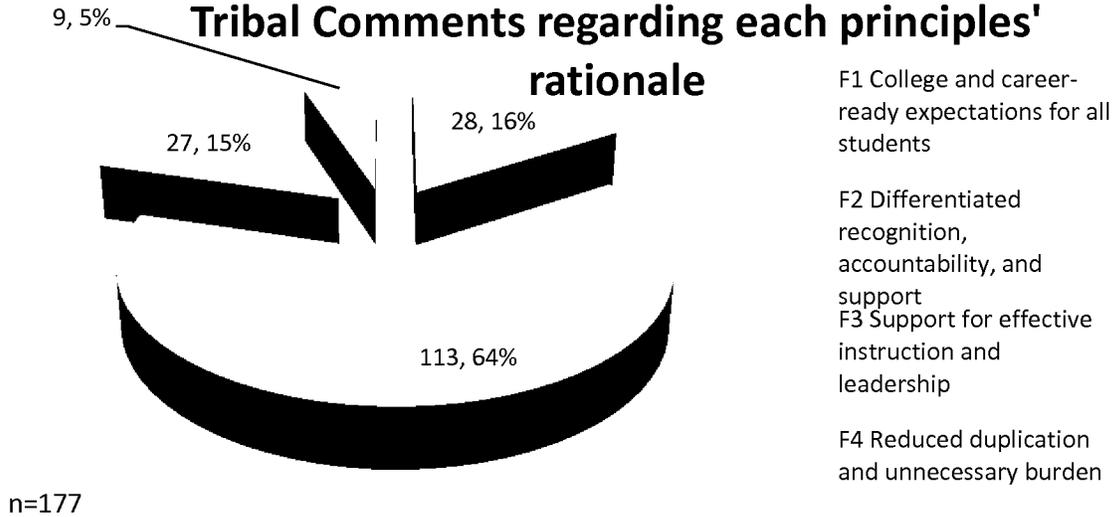
The number of attendees at each of these sessions includes only tribal leaders and tribal community representatives, excluding a number of federal officials who also attended and occasionally offered input. These meetings were primarily for consulting with tribes.

*Data collection.* A court reporter was present at each session to record input on the BIE ESEA Flexibility Request from tribal leaders and tribal community representatives. In addition, tribal leaders and tribal representative were invited to submit comments directly. Four documents were submitted either at the sessions, by mail, or by email.

- Fond du Lac Band of Lake Superior Chippewa and Fond du Lac Ojibwe School
- Mississippi Band of Choctaw Indians
- Duckwater Shoshone Tribe, Chitimacha Tribe of Louisiana, Alamo Navajo School, Board, Inc., and Ramah Navajo School Board, Inc.
- Department of Diné Education, Navajo Nation

*Data Analysis.* The data from various sources were compiled and analyzed. A full range of responses was provided by various stakeholders. Outlined in the Summary of Stakeholder Comments document in Attachment 2 are the various comments and how BIE has dealt with the comments, either by an immediate response in the chart or in the Flexibility Request or both. See graph below, which depicts a breakdown of responses by Flexibility Request principles.

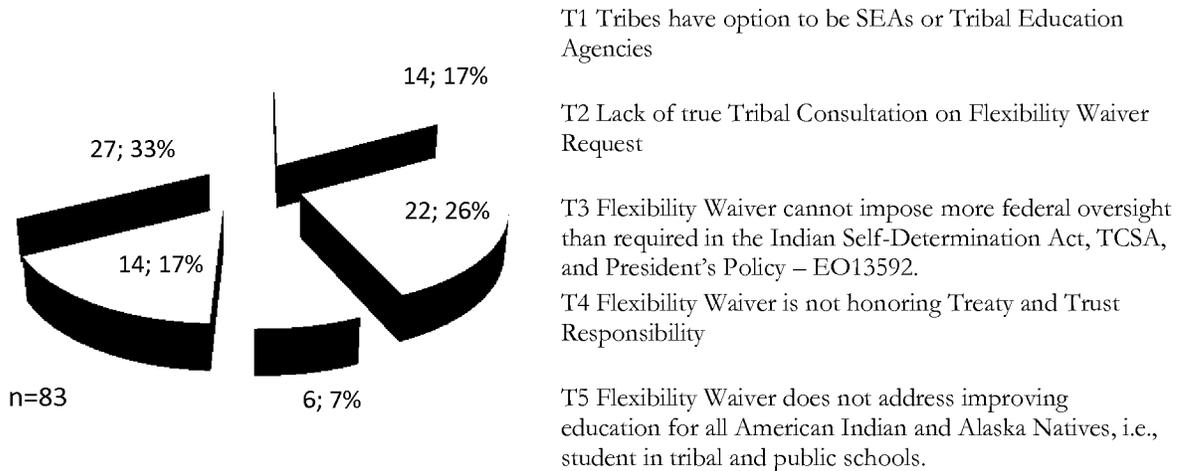
### Cumulative BIE ESEA Flexibility Waiver Request Tribal Comments regarding each principles' rationale



- F1 College and career-ready expectations for all students
- F2 Differentiated recognition, accountability, and support
- F3 Support for effective instruction and leadership
- F4 Reduced duplication and unnecessary burden

Both support and opposition to the Flexibility Request were voiced from the tribal community representatives. Most of the comments, however, raised issues in need of clarification.

### Cumulative Summary of Tribal Concerns



- T1 Tribes have option to be SEAs or Tribal Education Agencies
- T2 Lack of true Tribal Consultation on Flexibility Waiver Request
- T3 Flexibility Waiver cannot impose more federal oversight than required in the Indian Self-Determination Act, TCSA, and President’s Policy – EO13592.
- T4 Flexibility Waiver is not honoring Treaty and Trust Responsibility
- T5 Flexibility Waiver does not address improving education for all American Indian and Alaska Natives, i.e., student in tribal and public schools.

Two key issues emerged from the tribal leaders:

- 1) The BIE is not eligible for waivers available through a Flexibility Request, because it is not a State Education Agency (SEA) and the Flexibility Request invitation was made only to SEAs.
- 2) The BIE Flexibility request, if granted, can only apply to BIE-operated schools and not tribally controlled schools.

Both issues are explained in the Summary of Stakeholder Comments document and the text of the Flexibility Request has been revised to reflect these explanations. The BIE response from the Summary of Stakeholder Comments documents is provided below.

*Item 1.* As explained in the BIE Flexibility Request, the same authority cited by the Department of Education to grant waivers to states – ESEA section 9401(d)(1) – also applies to the Bureau of Indian Education and is specifically cited in the ESEA governing agreement between the Department of Education and the Department of the Interior. While it is true the BIE is not a State Education Agency (SEA) in the same sense as states, BIE is treated like a state by the Department of Education for the purposes of managing programs and funds provided by the Department of Education. In essence, the BIE is a quasi-SEA and not a true SEA. Consequently, the BIE will submit a Flexibility Request for the September 6, 2012, submission.

*Item 2.* The BIE Flexibility Request as originally written encompassed both BIE-operated schools and tribally-controlled grant and contract schools. Stakeholder input by several tribes and schools indicated a desire to not be included in the Flexibility Request. In response, the BIE has clarified an already existing option for governing school boards or governing tribes to not participate in the BIE Flexibility Request. That option is outlined in 25 CFR 30.104(b), which allows a governing tribe or governing school board the option of requesting an alternative definition of AYP.

The Flexibility Request addresses specific topics defined by the Department of Education for all states and others applying for waivers. Transition from one type of school to another is not one of the topics requiring an explanation in the Flexibility Request.

However, the BIE can provide an explanation in the Flexibility Request, in response to this issue being raised by a particular tribe as an important consideration.

*Item 1 explanation.* The issue of the legal basis for BIE to request waivers and for the Department of Education to grant waivers has been resolved in an exchange of letters to between the Department of the Interior and the Department of Education.<sup>3</sup> The letter from the Department of Education, dated July 5, 2012, provides an unambiguous response to Interior's question:

**[Interior:]**

Does [ED] have authority under Section 9401 of the Elementary and Secondary Education Act [of 1965] (ESEA), as amended, 20 U.S.C. § 7861, to grant the BIE Flexibility waivers as a State educational agency [SEA] when BIE is carrying out the Activities of [an SEA]?

**Response:**

Yes. Consistent with section 9204 of the ESEA, in 2005, ED and the U.S. Department of the Interior (Interior) entered into an agreement regarding the distribution and use of certain ESEA Program funds by BIE, including, among others, funds under Title I, Part A; Title II, Part A; Title IV, Part B; Title VI, Part B; and Title VII, Part A, Subpart 1 (2005 Agreement).

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<sup>3</sup> Letter from Jeffrey Nelson (Interior) to Michael Yudin (Education), dated April 30, 2012, and letter from Deborah S. Delisle (Education) to Jeffrey Nelson, dated July 5, 2012.

The 2005 Agreement was amended in 2008 to include the School Improvement Grants (SIG) program under section 1003(g) of the ESEA. Additionally, ED and Interior recently reached an agreement on the terms of a Draft Agreement (Draft Agreement) that is currently being reviewed through tribal consultation and that, when finalized, will replace the 2005 Agreement. The Draft Agreement governs the distribution and use of funds under the programs set forth above, among others.

Both the 2005 Agreement and the Draft Agreement specifically provide that each agreement “extends to [BIE] the same right to seek waivers of ESEA requirements that section 9401 extends to SEAs, LEAs, Indian tribes, and schools.”<sup>1</sup> Accordingly, when the BIE acts as an SEA with respect to one of the programs covered by the 2005 Agreement, or that will be covered by the Draft Agreement, ED has the same authority under section 9401 of the ESEA to grant a waiver to BIE that it has under that provision to grant waivers to any SEA.

<sup>1</sup> The 2005 Agreement refers to BIE by its former name – the Office of Indian Education Programs (OIEP).

Clearly, the BIE has a legal right to seek waivers through a Flexibility Request and the Department of Education has the authority to grant waivers to BIE (see Attachment 12).

*Item 2 explanation.* The BIE Flexibility Request draft dated April 24, 2012, included both BIE-operated schools and tribally-controlled grant and contract schools. During the consultation and stakeholder input processes, it became apparent that some governing schools and tribes wanted an option of not being included in the BIE Flexibility request.

In response, the BIE has clarified an already existing option for governing school boards or governing tribes to not participate in the BIE Flexibility Request. That option is outlined in 25 CFR 30.104(b), which allows a governing tribe or governing school board the option of requesting an alternative definition of AYP.

(b) School boards or tribal governing bodies may seek a waiver that may include developing their own definition of AYP, or adopting or modifying an existing definition of AYP that has been accepted by the Department of Education. The Secretary is committed to providing technical assistance to a school, or a group of schools, to develop an alternative definition of AYP.

That option will adequately serve the purpose of allowing a school or tribe the option of defining an accountability system or its own design, as long as it is approved by the Department of the Interior and the Department of Education. Related, the Navajo Nation currently has a proposal for an alternative definition of AYP under consideration by Interior and Education, with a decision forthcoming soon.

## EVALUATION

The Department encourages an SEA that receives approval to implement the flexibility to collaborate with the Department to evaluate at least one program, practice, or strategy the SEA or its LEAs implement under principle 1, 2, or 3. Upon receipt of approval of the flexibility, an

interested SEA will need to nominate for evaluation a program, practice, or strategy the SEA or its LEAs will implement under principles 1, 2, or 3. The Department will work with the SEA to determine the feasibility and design of the evaluation and, if it is determined to be feasible and appropriate, will fund and conduct the evaluation in partnership with the SEA, ensuring that the implementation of the chosen program, practice, or strategy is consistent with the evaluation design.

Check here if you are interested in collaborating with the Department in this evaluation, if your request for the flexibility is approved.

## OVERVIEW OF SEA'S REQUEST FOR THE ESEA FLEXIBILITY

Provide an overview (about 500 words) of the SEA's request for the flexibility that:

1. explains the SEA's comprehensive approach to implement the waivers and principles and describes the SEA's strategy to ensure this approach is coherent within and across the principles; and
2. describes how the implementation of the waivers and principles will enhance the SEA's and its LEAs' ability to increase the quality of instruction for students and improve student achievement.

Note to readers: This Overview section is divided into two parts: Part I provides the Overview of SEA's Request for the ESEA Flexibility. Part II provides an overview of the Bureau of Indian Education (BIE) and explains its uniqueness as an SEA, Focusing on key aspects that impact this ESEA Flexibility Request. A basic premise held by the framers of the ESEA Flexibility Request was that states would be the sole respondents, not a federal agency, such as BIE, with legal authority to submit a Flexibility Request of its own. Our apologies to readers for the length of the overview section, but the BIE Flexibility Request would not be comprehensible without a prologue of some specificity.

### **Part I: Overview of BIE's Request for ESEA Flexibility**

- Describe the SEA's comprehensive approach to implement the waivers and principles and describes the SEA's strategy to ensure this approach is coherent within and across the principles.

The Bureau of Indian Education (BIE) recognizes that a comprehensive and coherent system to improve student achievement and the quality of instruction is a critical need in the BIE's national school system. BIE-funded schools score significantly lower than national norms in math and especially so in reading. According to a recent study of BIE schools:

BIE students on the whole have lower test scores and lower growth than a national norm population of students. In addition, BIE students in some subjects, grades, and geographic areas have lower growth than a group of students with similar test scores, similar school poverty rates, and similar rural geography.<sup>4</sup>

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<sup>4</sup> Kingsbury Center at NWEA, *The Bureau of Indian Education: 2009-2010 Baseline Data Report*, February 2011, p. 32. A follow-up study is forthcoming and will be released mid-2012.

The significant gap in academic achievement between BIE-funded schools and the national norms in reading and math represents a considerable challenge to BIE’s reform efforts. The BIE is actively defining solutions to enhance current efforts and to devise new approaches to: 1) prepare students for college graduation and career-readiness; 2) ensure schools receive appropriate recognition, accountability, and support; and 3) construct systems for evaluation and support of teacher and principal effectiveness. The BIE’s request for an ESEA Flexibility Request is driven by a commitment to increase the quality of instruction and to improve student achievement in BIE-funded schools.

At the center of the BIE’s reform approach is the creation of a unified accountability system for all BIE-funded schools. The reason that this component is critical and highlighted is because the BIE – unlike the states – lacks a single, coherent accountability system of standards, assessments, and methodology for calculation of progress. BIE is required, as will be explained, to utilize the respective accountability systems of the 23 states where its schools are located. For this Flexibility Request, the BIE proposes to adopt a single set of academic standards – College- and Career-Ready Standards – along with a uniform set of assessments.

With the proposed Accountability Index serving as the foundation of a comprehensive and coherent accountability system, information will be readily available to provide differentiated recognition, accountability, and support for all schools. In addition to academic indicators, schools also will be measured on nonacademic indicators of attendance and graduation rates. The Accountability Index changes accountability determinations from the NCLB model by giving schools credit for their levels of proficiency and progress, even if they miss set targets. No longer will missing an AMO automatically result in the school failing, and a clearer picture of the school’s performance will emerge as a result. But most important, for the first time there will be comparable data for all BIE schools, which will enable BIE to target those schools most in need of intervention and differentiate supports appropriately. BIE’s differentiated recognition, accountability, and support system will create incentives and provide support that is likely to be effective in closing achievement gaps for all subgroups of students.

The development of teacher and principal evaluation and support systems will facilitate effective instruction and leadership. Although the BIE will need to address evaluation and support systems differently than states, BIE’s effort will strive for systems that increase the quality of instruction for students and improve student achievement. A central Focus will be on systematic reviews of the quality of all staff and the determination of effectiveness and the ability to be successful in the turnaround effort. Input from teachers and principals involved will be included in the process, including the employee labor union.

- Describe how the implementation of the waivers and principles will enhance the SEA’s and its LEAs’ ability to increase the quality of instruction for students and improve student achievement.

Waivers will allow the BIE to move to a unified accountability system, which combined with reform efforts already undertaken by BIE, will help ensure improved quality instruction and student achievement. The BIE has effectively identified major challenges confronting it as a school system and has defined strategies to reform them as a means to improve quality instruction and student achievement. In many cases, the obstacles confronting the BIE are much different than those

confronting states, notably the current fragmented accountability system mandated by NCLB-imposed negotiated rulemaking (see below for further explanation). Additional work is needed to turn around BIE-funded schools and to bring them into line with national achievement standards and outcomes. Key components of the BIE's current reform effort include:

- Adoption of uniform College- and Career-Ready academic standards and accompanying assessments. The BIE Flexibility Request refers to these as the Common Core Standards.
- Unifying the BIE accountability system around a single, high quality assessment for mathematics and reading/language arts.
- Using growth models to measure increases in student achievement throughout the academic year.
- Implementing a data-driven model of System of Support services to provide educators with customized professional development, technical assistance, and support.
- Developing leadership competencies of principals, superintendents, and Education Line Officers.
- Implementing a web-based system for organizing school improvement activities built upon indicators of effective practice and aligned to research and evidence of what works (i.e., Native Star/Indistar).
- Creation of a dropout prevention initiative to address the significant dropout problem in many BIE-funded schools.
- Creation of a bureau-wide literacy plan designed to ensure reading competency in all grades.
- Development of a bureau-wide STEM initiative in concert with a Department of the Interior initiative.

The Flexibility Request presents an opportunity for the BIE to effect meaningful reforms that will improve student achievement and the quality of instruction. The BIE will adopt a unified accountability system, with the Common Core Standards serving as the foundation. Common academic assessments will be employed in all BIE-funded schools across 23 states, rather than the current disjointed and incomparable system of 23 states' assessments. The performance of schools will be measured using growth and other academic indicators that meaningfully assess progress toward established targets. BIE's approach to teaching and learning would be standardized and strengthened as a result of reforms implementing common standards, curriculum, instruction, and assessments. Likewise, the new ability to make meaningful comparisons across all BIE schools will enable creation of a system of differentiated recognition, accountability, and support for schools that will promote continuous achievement of all students, close achievement gaps, and improve equity. Finally, the development of teacher and principal evaluation and support systems will facilitate effective instruction and leadership. Together, the BIE's requests for an ESEA Flexibility Request, combined with existing reform efforts, will provide an opportunity for BIE to overcome challenges in implementing an effective school system that provides quality education to Indian students.

## **Part II: Overview of the Bureau of Indian Education**

Because the BIE is not an SEA in the normal sense of the term, critical aspects of the laws and regulations governing BIE must be explained to provide outside readers the necessary context to evaluate the BIE's Flexibility Request. The framework of the Flexibility Request is based upon an overriding assumption that the respondents to the Flexibility Request would be states. Questions referring to a state's standards, assessments, institutions of higher education, and other references

are grounded in this basic assumption. However, the same authority cited by the Department of Education to grant waivers to states – ESEA section 9401(d)(1) – also applies to the Bureau of Indian Education and is specifically cited in the ESEA governing agreement between the Department of Education and the Department of the Interior.<sup>5</sup> Information deemed critical to this flexibility request is described succinctly below, as well as restated appropriately in the body of the Flexibility Request. An understanding of the Bureau of Indian Education (BIE) as an organization and the complexities of the BIE school system are necessary to place this Flexibility Request in perspective.

### **About the Bureau of Indian Education (BIE)**

*BIE as federal agency.* The Bureau of Indian Education (BIE), within the U.S. Department of the Interior, is a unique school system in the United States. The BIE is a federal agency, which makes it somewhat different than state governments. BIE provides funding to and oversees a nationwide school system. The only other federal agency overseeing a school system is the Department of Defense Education Activity (DODEA), which operates a school system worldwide.

*Trust responsibility.* Underpinning the BIE school system is the federal trust responsibility of the government to provide educational services to schools serving American Indian tribes. The federal government's trust responsibility to American Indian tribes is well established and has been recognized by courts, by Congress, and by the executive branch. That federal trust responsibility manifests itself in the educational services provided to Indian tribes by the Bureau of Indian Education.

*Organization of BIE.* The BIE is comprised of a central office in Washington DC; a major field service center in Albuquerque, New Mexico; three Associate Deputy Director (ADD) offices located regionally (East, West, & Navajo); 22 Education Line Offices (ELO) located on or near Indian reservations; and schools located in 23 states.

*Schools in the BIE system.* The BIE is responsible for educating over 45,000 American Indian and Alaska Native students in 174 elementary and secondary academic programs located on 64 reservations in 23 states.<sup>6</sup> Over 56% of students attend BIE-funded schools in just four states: Arizona, South Dakota, New Mexico, and North Dakota.

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<sup>5</sup> The Final Agreement Between the Department of Education and the Department of the Interior (June 30, 2005) extends to BIE “the same right to seek waivers of ESEA requirements that section 9401 extends to SEAs, LEAs, Indian tribes, and schools,” section 8, p. 6.

<sup>6</sup> The BIE also operates ten peripheral dormitories, which do not have academic programs.



Distribution of BIE-funded Schools by State  
(See 23 States shaded in green)

The BIE has schools spanning, literally, the four corners of the contiguous United States, which creates management challenges of various kinds.

Academic programs in BIE-funded schools conform to a variety of grade configurations: K, K-2, K-3, K-6, K-8, K-12, 3-9, 6-8, 7-8, and 9-12. In addition, ten dormitories have no academic programs and only provide residential services. All schools within the BIE educational system have school-wide Title I programs.

*Control of Schools.* Of the 174 BIE-funded schools, 58 are operated by the Bureau and the remaining 116 are tribally-controlled.<sup>7</sup> The tribally-controlled schools operate under special legislation, predominantly as grant schools (P.L. 100-297, Tribally Controlled Schools Act of 1988) or as contract schools (P.L. 93-638, Indian Self-Determination and Education Assistance Act of 1975). Federal policy supports tribal self-determination and self-governance, which is manifested in the realm of education by the tribal control of schools.

With approximately two-thirds of the BIE-funded schools under tribal control, the BIE therefore does not directly manage the majority of schools in its system. The fact that the BIE does not directly control schools in its system has profound implications for sweeping reform efforts, which must be considered. The BIE, for example, can only suggest or encourage tribally-controlled schools adopt key policies created by BIE for implementation in BIE-operated schools. A case-in-point is a bureau-wide policy on Suicide Prevention, Early Intervention, and Postvention Policy designed to address a serious suicide problem among American Indian youth, which was mandatory for BIE-operated schools but not compulsory for tribally-controlled schools.<sup>8</sup> The same is true of all policies developed for BIE-operated schools. Tribally-controlled schools and school boards develop policies on their own.

<sup>7</sup> The mix of BIE-operated and tribally controlled schools may vary by year due to tribes assuming control of schools, and occasionally the BIE reassuming control of a tribal school.

<sup>8</sup> Bureau of Indian Education, National Policy Memorandum, NPM-EDUC-22.

*Personnel management system.* As a federal agency, broad authority for personnel matters falls under a separate federal agency, the Office of Personnel Management (OPM), with the various federal agencies (i.e., Interior) exercising some authority and flexibility. Unlike public school systems in states, changes to appraisal systems (i.e., Principle 3) must take into consideration governing federal statutes, regulations, and policies, as well as issues of local tribal control. Although the requirements of the Flexibility Request, with respect to teacher and principal evaluation and support systems, is achievable, the approach taken by BIE to reform its personnel evaluation systems will take a different form than similar efforts mounted by states.

*IHEs.* State Institutions of Higher Education (IHE) play a role in the reform initiative under the Flexibility Request. Since BIE is not an SEA in the typical sense of the term and not part of a state education system, it does not have a corresponding State network of Institutions of Higher Education as described in the Flexibility Request. Specifically, BIE cannot:

- Certify that the State’s standards correspond to being college- and career-ready in State IHEs without the need for remedial coursework at the postsecondary level.
- Enter into agreements with the State’s IHEs certifying that students who meet these standards will not need remedial coursework at the postsecondary level.
- Conduct outreach and dissemination of the college-and career-ready standards to the State’s IHEs.
- Work with teacher and principal preparation programs in State IHEs to better prepare incoming teacher and principals.
- Work with the State’s IHEs to grant course credits to entering college students to determine whether students are prepared for postsecondary success.

The Bureau of Indian education does operate two postsecondary institutions: Haskell Indian Nations University (HINU) located in Lawrence, Kansas, and Southwestern Indian Polytechnic Institute (SIPI) located in Albuquerque, New Mexico. HINU has a teacher preparation program, but as far as can be determined, no teacher currently working in BIE-funded schools has received a degree from that institution.

*BIE as the SEA.* The Bureau of Indian Education is the State Education Agency (SEA) for BIE-funded schools, although the Division of Performance and Accountability is responsible for calculating AYP for BIE-funded schools. A Final Agreement between the Department of Education and the Department of the Interior (June 30, 2005) specifies that the BIE’s “responsibilities are comparable to those of a state educational agency (SEA)” for certain purposes including:

- To provide assistance to bureau-funded schools to help them implement, and where necessary to enforce, those schools' adoption and use of AYP definitions (including those the schools would adopt under the waiver provision in ESEA section 1116(g)) and the Title I, part A accountability system applicable to bureau funded schools, and
- More generally, to a) monitor the activities and recordkeeping of all bureau funded schools for compliance with applicable programmatic and fiscal requirements; b) document the purpose, scope, and results of such monitoring; c) provide appropriate technical assistance

and enforcement measures; d) systematically analyze the results of the LEA audits and other oversight activities to identify trends in findings and improvements in monitoring and technical assistance strategies, and e) submit performance reports and other information to ED required of all states.<sup>9</sup>

While treated as an SEA for certain purposes by the Department of Education, BIE does not enjoy all the benefits afforded other SEAs, such as full access to funding initiatives (i.e., the reform-oriented Race to the Top Fund). Further, as noted above, it does not exert other kinds of authority over schools conferred to many SEAs by state law.

*LEAs in the BIE system.* The issue of what constitutes an LEA in the BIE system is complicated by overlapping legal authorities. In practice, the 22 Education Line Offices, in concert with the three ADD offices, serve as the LEAs or districts. However, this arrangement is not codified, although the Education Line Officer and Associate Deputy Director duties are defined in the Departmental Manual of the Department of the Interior.<sup>10</sup>

While the Education Line Offices under ADD offices essentially serve as LEAs, individual schools in the BIE system also are treated as LEAs. LEAs are defined in various documents. The Final Agreement between the Department of Education and the Department of the Interior (June 30, 2005) outlines SEA activities of the BIE, as well as what constitutes an LEA in the BIE-funded schools system. The agreement states:

For purposes of this Agreement, all bureau-funded schools assume the responsibility of **both LEAs and schools**, except with regard to requirements governing public school choice and supplemental educational services in ESEA sections 1116(b) and (e).<sup>11</sup> (emphasis added)

Interestingly, the No Child Left Behind Act of 2001 defines a tribally controlled school as a school and not an LEA. The law states:

The term “tribally controlled school” means a school that—  
 (A) is operated by an Indian Tribe or a tribal organization, enrolling students in kindergarten through grade 12, including a preschool;  
 (B) is **not a local educational agency**; and  
 (C) is not directly administered by the Bureau of Indian Affairs.<sup>12</sup> (emphasis added)

Finally, EdFacts treats BIE-funded schools as both schools and LEAs. All BIE-funded schools have been assigned both school and LEA ID numbers by EdFacts through the Education Data Exchange Network (EDEN), which is a centralized portal through which states submit their educational data to the U.S. Department of Education.

<sup>9</sup> Final Agreement, section D.4, p. 4. In 2006, the Bureau of Indian Education became a separate bureau in the Office of the Assistant Secretary-Indian Affairs. The Office of Indian Education Programs was dismantled. A new agreement between Education and Interior has tentatively been negotiated and following tribal consultation will be signed.

<sup>10</sup> U.S. Department of the Interior, 130 DM 8, 08/29/2006.

<sup>11</sup> Final Agreement, section D.6.b.i, p. 5.

<sup>12</sup> Public Law 107-110, Sec. 5212; 25 U.S.C. § 2511.

The dilemma for BIE is twofold. One, treating schools as LEAs means that individual schools, many small in size, are responsible for carrying-out LEA activities, which are beyond their organizational capacity. Two, assignment of LEA status to schools undermines BIE's effort to fulfill LEA responsibilities at the ADD/ELO level. It is hoped that clarity to the situation can be achieved through reauthorization of ESEA.

*Accountability system dilemma.* The most significant feature distinguishing the BIE school system from states is the way in which BIE implements its accountability system. The No Child Left Behind Act mandated a negotiated rulemaking process to establish how BIE would implement its accountability system. The principal determination of negotiated rulemaking was that BIE-funded schools would be measured against the accountability standards of the respective 23 states where schools were located. The BIE, in other words, would utilize the academic standards, assessments, and adequate yearly progress (AYP) calculation based on 23 states' dissimilar accountability systems.

Each of the states, and the BIE, are required to have an approved Consolidated State Application Accountability Workbook (i.e., state accountability plan), approved by the U.S. Department of Education in accordance with Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB). Each state follows the accountability plan of its own state. However, the BIE follows the accountability plans of the state in which the school is located. While BIE-funded schools follow the accountability plans of twenty-three different states, the responsibility of making determinations about AYP and other aspects of accountability for BIE-funded schools is BIE, specifically the Division of Performance and Accountability (DPA).<sup>13</sup>

The intent of the negotiated rulemaking committee was to hold BIE-funded schools accountable to the same standards as the public schools in the areas surrounding the tribe, contributing to a consistent set of standards on a state-wide basis. The unintended consequence of the rulemaking decision was to create a burdensome and unnecessarily complex accountability system for the BIE to manage and calculate AYP statuses annually. Moreover, because each state has its own unique accountability system, it is not possible to compare AYP status across states. The great variability of AYP systems nationwide was examined in a joint study of states' accountability systems by the Thomas Fordham Institute and the Northwest Evaluation Association:

NCLB has given states the discretion to establish proficiency cut scores, the required trajectory for improvement, minimum subgroup sizes, and confidence intervals. Our results show that the product of these differences bears no resemblance to a coherent system. Not only do the proficiency cut scores themselves vary greatly, but the variance in improvement trajectories, subgroup sizes, and policies for application of confidence intervals result in wildly different Adequate Yearly Progress results for the schools in our sample.<sup>14</sup>

Although the negotiated rulemaking committee was undoubtedly well intended, the committee could not possibly have anticipated the difficulties and inherent wrongness in requiring the BIE to construct an accountability system based upon the widely dissimilar accountability systems of 23

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<sup>13</sup> Approved State Accountability Plans are available at:  
<http://www2.ed.gov/admins/lead/account/stateplans03/index.html>.

<sup>14</sup> See Cronin, J., Dahlin, M., Xiang, Y., & McCahon, D. (2009). *The Accountability Illusion*. Thomas Fordham Institute, Northwest Evaluation Association, February 2009, p. 47.

states. Since passage of NCLB, the BIE has labored against a vastly chaotic, yet mandated, accountability system. Although the BIE has managed to calculate AYP using 23 different systems, the lack of a coherent accountability system has hampered its school improvement efforts in schools that are among the lowest performing in the nation.

Accountability under waivers. Ironically, the reform-based flexibility waivers that Department of Education is granting to states will pose additional challenges to BIE as the waivers will allow states to move to entirely new and disparate accountability systems beginning in the 2012-2013 school year. This shift by states will further prevent BIE from meaningfully comparing student achievement across all BIE-funded schools.

The question for the BIE is, how does BIE implement 23 accountability systems that have become vastly more complex and data intensive? This scenario is unfolding as more flexibility waivers are granted to states. Currently, four states with BIE-funded schools have received flexibility. An additional 14 of the 23 states have applied for flexibility. In the case of two states where waivers have been granted, BIE's contacts with the State Education Agencies' accountability officers have been clear: the BIE will not be able to replicate the calculations by which the new accountability determinations will be made. The measures of school performance used by the states often involve iterative, statistical processes that are impractical for the BIE to replicate. Further, the different states' assessments are not correlated to one another, which is a longstanding problem for BIE of incomparable data across states and the BIE system. Below is listed the current state of Flexibility Requests.

| <b>States with BIE-funded Schools<br/>applying for Flexibility</b> |                            |                                       |
|--|----------------------------|---------------------------------------|
| <b>States</b>  | <b>No. BIE<br/>Schools</b> | <b>Flexibility<br/>Request Status</b> |
| Arizona  | 51                         | Approved                              |
| California   | 2                          | Will not apply                        |
| Florida  | 2                          | Approved                              |
| Idaho  | 2                          | Applied                               |
| Iowa   | 1                          | Applied                               |
| Kansas   | 1                          | Approved                              |
| Louisiana  | 1                          | Approved                              |
| Maine  | 3                          | Not yet applied                       |
| Michigan   | 2                          | Approved                              |
| Minnesota  | 4                          | Approved                              |
| Mississippi  | 8                          | Approved                              |
| Montana  | 2                          | Will not apply                        |
| Nevada   | 2                          | Approved                              |
| New Mexico   | 41                         | Approved                              |
| North Carolina   | 2                          | Approved                              |
| North Dakota   | 9                          | Not yet applied                       |

|              |            |                     |
|--------------|------------|---------------------|
| Oklahoma     | 4          | Approved            |
| Oregon       | 1          | Approved            |
| South Dakota | 23         | Approved            |
| Utah         | 1          | Approved            |
| Washington   | 8          | Approved            |
| Wisconsin    | 3          | Approved            |
| Wyoming      | 1          | Not yet applied     |
| <b>23</b>    | <b>174</b> | Data as of 8/9/2012 |

The new state accountability systems created by waivers to states will further complicate a fragmented accountability system that already ill-serves BIE students and schools. BIE must manage entirely new and disparate accountability systems beginning in the 2012-2013 school year, which will still leave it unable to target services toward the neediest students and schools, as there will be no uniform set of criteria for ranking schools which are located in so many different states.

LEP and ELL. The BIE functions as an SEA and receives ESEA funds from the Department of Education and must follow No Child Left Behind (NCLB) requirements. Under NCLB schools must identify students who are limited English proficient.

The NCLB definition of a limited English proficient (LEP) student, also known as an English Language Learner (ELL), gives states flexibility in defining the students who constitute the LEP subgroup. For example, a state has the flexibility to define narrowly the LEP subgroup as only those students receiving direct, daily LEP services. A state may also define the group more broadly to include both students receiving direct services and students being monitored based on their achievement on academic assessments.

The BIE serves American Indian and Alaska Native students who are born and raised within the United States but come from linguistically distinct communities in geographically remote areas across the United States. A full continuum of Native language vitality exists in tribal communities. Many of the students who enter the BIE-funded schools are identified as Limited English proficient (LEP), because they are third and fourth generation students born to parents who continue to use their first language but are not proficient in either language. The majority of these students continue to live in the communities where their Native language and culture continue to have significant impact. Native American students are unique in that the student's primary language is English, but generally spoken in a nonstandard dialect as a result of generational, cultural, and language idiosyncrasies.

Approximately 98% of the students who enter BIE-funded schools have sufficient social communication or Basic Interpersonal Communication Skills (BICS) to communicate in English but lack the formal academic language or Cognitive Academic Language Proficiency (CALP) skills necessary to successfully achieve academically. Therefore, the BIE identifies the student as limited English proficient, whether the student has some English or not. BIE identifies students as LEP rather than English Language Learners (ELL), because ELL generally describes students learning English as a second language.

Subgroups. The No Child Left Behind Act required each school and district to define subgroups for the purpose of calculating adequately yearly progress (AYP). Listed below are NCLB subgroups.

| <b>NCLB Subgroups</b>             |
|-----------------------------------|
| Asian & Pacific Islander          |
| Black                             |
| Hispanic                          |
| White                             |
| American Indian                   |
| Free/Reduced lunch                |
| IEP (Special education)           |
| LEP (Limited English proficiency) |

The n-size for IEP and LEP subgroups is established by states for the purposes of accountability for AYP and varies by state. As required by NCLB, BIE uses the student subgroup size of the respective 23 states where BIE-funded schools are located.

The student population of BIE does not conform to the above NCLB subgroup model in several respects. Most significant, the BIE's ethnic population is homogeneously American Indian and Alaska Native. Recognizing key differences between BIE and states, the Final Agreement between the Department of Education and the Department of the Interior (June 30, 2005) specified subgroups for use by BIE:

- (i) Each group of students – all students, special education students, and Limited English Proficient students – must have met or exceeded the annual measurable objectives the [BIE] established for making AYP. The purpose of establishing the determination of AYP in this manner was to ensure that 100% of the students are proficient in 12 years.<sup>15</sup>

BIE defines the above subgroups for the purpose of accountability: all students, special education students, and Limited English Proficient students. The identification of other sub-groups for AYP purposes is unnecessary and reflected in the agreement.

Small n-size issue. BIE faces a range of challenges where accountability is concerned. In particular for the Flexibility Request, the primary challenge arises from the small size of subgroups and, in some cases, BIE schools. The BIE is comprised of a range of schools from very small schools to relatively large schools, with enrollments ranging from approximately 25 to 1,200. Small schools present a challenge to BIE, similar to many states with rural schools, of sufficient n-size required to calculate AYP. The issue is that sub-groups rarely meet the minimum number required for performing accountability determinations, despite comprising a significant proportion of the student population within a BIE school. Because of small n-size, sub-group AYP determinations have not been regularly calculated in many BIE schools, because the sub-group failed to attain the required minimum n-size. It should also be noted that total student population n-size for some schools is not sufficient to meet n-size requirements (e.g., schools in Arizona and New Mexico).

<sup>15</sup> Final Agreement, section D.2.b.i., pp. 2-3.

Specifically in regard to the special education subgroup, BIE schools rarely meet the “minimum number” (“minimum n”) for calculating AYP for this population. Fifty percent of BIE schools have fewer than 15 students receiving special education services who test for accountability purposes. Similarly, small n-size affects the Limited English Proficiency subgroup. Although the primary language of BIE students is English, the challenge facing BIE is in the tremendous variance in English language proficiency. The BIE serves communities where the vast majority (if not the entire population) of students are LEP, thereby rendering comparisons with non-LEP students impossible.

In closing, the Bureau of Indian Education is charged with the important responsibility to provide quality education to Indian tribes. The BIE recognizes the need for bold reforms to address the significant gap in achievement between students attending BIE-funded schools and students in the national norm sample. The BIE is unique among school systems, but despite challenges is committed to designing and implementing effective reforms. Through the Flexibility Request, the Bureau of Indian Education has an exceptional opportunity to improve the quality of instruction and to increase achievement for students in BIE-funded schools, thus fulfilling the government’s trust responsibility to Indian tribes.

## PRINCIPLE 1: COLLEGE- AND CAREER-READY EXPECTATIONS FOR ALL STUDENTS

### 1.A ADOPT COLLEGE- AND CAREER-READY STANDARDS

Select the option that pertains to the SEA and provide evidence corresponding to the option selected.

|  |   |
|--|---|
| <p><b>Option A</b></p> <p><input checked="" type="checkbox"/> The State has adopted college- and career-ready standards in at least reading/language arts and mathematics that are common to a significant number of States, consistent with part (1) of the definition of college- and career-ready standards.</p> <p>i. Attach evidence that the State has adopted the standards, consistent with the State’s standards adoption process. (Attachment 4)</p> | <p><b>Option B</b></p> <p><input type="checkbox"/> The State has adopted college- and career-ready standards in at least reading/language arts and mathematics that have been approved and certified by a State network of institutions of higher education (IHEs), consistent with part (2) of the definition of college- and career-ready standards.</p> <p>i. Attach evidence that the State has adopted the standards, consistent with the State’s standards adoption process. (Attachment 4)</p> <p>ii. Attach a copy of the memorandum of understanding or letter from a State network of IHEs certifying that students who meet these standards will not need remedial coursework at the postsecondary level. (Attachment 5)</p> |
|--|---|

### 1.B TRANSITION TO COLLEGE- AND CAREER-READY STANDARDS

Provide the SEA’s plan to transition to and implement no later than the 2013–2014 school year college- and career-ready standards statewide in at least reading/language arts and mathematics for all students and schools and include an explanation of how this transition plan is likely to lead to all students, including English Learners, students with disabilities, and low-achieving students, gaining access to and learning content aligned with such standards. The Department encourages an SEA to include in its plan activities related to each of the italicized questions in the corresponding section of the document titled ESEA Flexibility Review Guidance for Window 3, or to explain why one or more of those activities is not necessary to its plan.

*1.B.1 Does the SEA intend to analyze the extent of alignment between the State’s current content standards and the college- and career-ready standards to determine the similarities and differences between those two sets of standards? If so, will the results be used to inform the transition to college- and career-ready standards?*

As explained in the Overview, the BIE is required under its current accountability system to utilize the standards of the 23 states in which BIE-funded schools are located. However, consistent with the adoption by states of the Common Core Standards (CCS), the BIE is likewise transitioning to Common Core Standards. Schools throughout the BIE system have been notified of this transition and will be provided assistance to make this transition.

At this time, the BIE has not entered into formal agreements with either the Partnership for the Assessment of Readiness for College and Career (PARCC) consortium or the Smarter Balanced Assessment Consortium (SBAC). The agreements required for BIE to formally join the consortia and the corresponding purchase of assessments presents challenges for a federal agency that must be considered, specifically in regard to compliance with federal acquisition procedures. However, BIE is actively exploring options to join both consortia in some capacity.

### **Transition to Common Core Standards**

The BIE has developed a plan to transition from the current accountability system to one based upon Common Core Standards (CCS) as the basis for instruction and accountability in BIE schools. The transition to Common Core Standards will occur by SY 2013-2014. Over the next two years, the BIE will build capacity at the state, regional/district (Associate Deputy Director/Education Line Office) and school levels to ensure the transition to CCS increases the quality of instruction in every classroom and raises achievement for all students, including students with limited English proficiency, students with disabilities, and low-achieving students.

The BIE is integrating the transition to Common Core Standards with the implementation of other critical system-wide foundational elements to ensure consistency and uniformity across the schools served by BIE across 23 states. To illustrate the integration of initiatives, for example, the BIE will provide professional development on the Common Core Standards as it rolls out the revised instructional management processes in BIE's Native American Student Information System (NASIS) to teachers. NASIS provides instructors a tool to organize assignments aligned to the standards and evaluate student progress in the classroom. The BIE is also restructuring the teacher evaluation process and will make sure Common Core Standards are a key part of every teacher performance evaluation and the training that goes with each evaluation. Likewise, the BIE is mandating its schools move to curricula aligned to the CCS.

During the summer of 2012, the BIE will be engaged in promoting its community at all levels in awareness and understanding of the system-wide transition plan. The BIE Summer Institute will serve as the catalyst to implementing CCS as a bureau-wide effort. A local, regional approach to rolling out the standards will be a major component of BIE's approach. In the fall of 2012, the BIE will assist its educators in "unpacking" the CCS, reviewing gap analysis reports of the respective states' previous standards and the CCS, deconstructing the CCS, identifying appropriate curricula for their implementation, and providing technical assistance to its schools throughout the academic year to improve student achievement relative to the standards.

As part of the transition plan, the BIE may provide technical assistance through specialist contractors for regional implementation of CSS. It is impractical for the BIE to centrally facilitate the transition from 23 different sets of state standards to the CCS in terms of developing transition plans for each state and providing technical assistance from the SEA level to the schools directly. However, because

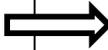
states are moving to CCS, regional vendor options are now available to facilitate transition activities to the CCS.

As explained in the overview, the BIE’s accountability system is based upon the accountability systems of the 23 states where its schools are located, which encompasses content standards. The BIE therefore does not have a discrete set of content standards for analysis of alignment to the college-and career-ready standards. Moreover, no attempt will be made to analyze the alignment of content standards of 23 states to the college-and career-ready standards. However, the BIE has a plan to transition from the current accountability system to one based upon college-and career-ready standards.

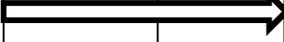
*1.B.2 Does the SEA intend to analyze the linguistic demands of the State’s college- and career-ready standards to inform the development of ELP standards corresponding to the college- and career-ready standards and to ensure that English Learners will have the opportunity to achieve to the college-and career-ready standards? If so, will the results be used to inform revision of the ELP standards and support English Learners in accessing the college- and career-ready standards on the same schedule as all students?*

Currently, BIE schools follow the state’s English Language Proficiency (ELP) standards and utilize the state’s English Proficiency Assessment or other “valid and reliable assessment of English proficiency” in accordance with ESEA.<sup>16</sup> By adopting the CCS, BIE is moving in the direction of ensuring that ELP standards-based assessments are aligned to the new CCS. To guarantee linkage between the CCS for academic content and English language proficiency standards, it is recommended that the large scale assessment and the English proficiency assessment are correlated. By aligning the ELP standards and assessment to the CCS, better measures will be implemented for assessing how well English Learners are learning the content needed to fully access the CCS.

To ensure high quality support for English Learners and their teachers, BIE will adopt the WIDA (World-Class Instructional Design in Assessment) Standards in 2013-2014. These standards encompass the vocabulary and academic language of all content areas and clearly delineate language development across all proficiency levels in each academic content area. The WIDA English Language Development (ELD) standards were aligned to the Common Core in 2011 through an alignment study that examined the linguistic demands of the Common Core Standards. The WIDA ELD standards are also aligned with the national TESOL (Teachers of English to Speakers of Other Languages) standards and address specific language development in core content areas. The Common Core Standards, in conjunction with the pre-K-12 WIDA ELD standards, provide a framework for teachers to support instruction for English learners. The ELD standards will ensure Limited English Proficiency (LEP) learners have the opportunity to achieve the BIE’s college- and career-ready standards on the same schedule as all students.

| <i>Activity</i>  | <i>School Year</i> |  |                |                |
|--|--------------------|--|----------------|----------------|
|  | <i>2011-12</i>     | <i>2012-13</i>   | <i>2013-14</i> | <i>2014-15</i> |
| <b>ELD Phase 1: Identify and convene Focus groups throughout BIE regarding specific needs of LEP students in BIE</b> |                    |  |                |                |

<sup>16</sup> ESEA, Public Law 107-110, Subpart 1, Section 3121(a)(2).

|   |  |   |   |   |
|---|--|---|---|---|
| <p><b>ELD Phase 2: Begin reviewing on WIDA ELD Standards for application within BIE</b></p>     |  |  |   |   |
| <p><b>ELD Phase 3: Professional Development for Schools regarding WIDA ELD Standards</b></p>    |  |  |   |   |
| <p><b>ELD Phase 4: Schools using WIDA Standards review ongoing Professional Development</b></p> |  |   |  |  |
| <p><b>ELD Phase 5: Ongoing Evaluation and Professional Development</b></p>                      |  |  |   |   |

*1.B.3 Does the SEA intend to analyze the learning and accommodation factors necessary to ensure that students with disabilities will have the opportunity to achieve to the college- and career-readiness standards? If so, will the results be used to support students with disabilities in accessing college- and career-ready standards on the same schedule as all students?*

The BIE will systematically analyze the learning and accommodation factors necessary to ensure that students with disabilities will have the opportunity to achieve to the college- and career-readiness standards. Results of this analysis will be used to support students with disabilities in accessing college- and career-ready standards on the same schedule as all students.

Nearly 15% of school populations within the BIE are students with disabilities; the majority of these students are identified as having a learning disability. Preparation of students with disabilities for a state of readiness to pursue college- or career-ready options will require a range of accommodations and supports. Students with disabilities experience challenges in a broad range of areas. It is important to help students establish connectivity from one concept to another. Consideration must be given to how students may gather information, how students organize and express information, and how students are engaged in learning.

The BIE will ensure that students with disabilities are afforded accommodations that are necessary to access college- and career-ready standards. Instruction must incorporate the supports and accommodations that are necessary for students to achieve success in meeting the Common Core Standards. The supports and accommodations will most readily be defined through the Individualized Education Program (IEP) including statements on present levels of academic achievement and functional performance (PLAAFP) and relevant and appropriate annual goals.

**Approaches to Address Accommodations**

The Universal Design for Learning (UDL) model is provided as a framework of how supports can benefit a range of learners, including students with disabilities. Currently, teachers are encouraged to use Universal Design for Learning principles in the instructional process. Beginning in SY 2012-2013, information and professional development in UDL principles will be provided to teachers throughout the BIE school system. Resources for accommodations will be included along with existing resources (e.g., manuals, websites).

The National Center on Universal Design for Learning provides a succinct definition of Universal Design for Learning, as follows:

The term Universal Design for Learning means a scientifically valid framework for guiding educational practice that:

- (A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and
- (B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient.<sup>17</sup>

According to the National Center on Universal Design for Learning, Universal Design (UDL):

...is a set of principles for curriculum development that give all individuals equal opportunities to learn.

UDL provides a blueprint for creating instructional goals, methods, materials, and assessments that work for everyone--not a single, one-size-fits-all solution but rather flexible approaches that can be customized and adjusted for individual needs.

Further, UDL is necessary because:

Individuals bring a huge variety of skills, needs, and interests to learning. Neuroscience reveals that these differences are as varied and unique as our DNA or fingerprints. Three primary brain networks come into play:

**1) Recognition Networks – The *what* of learning**

How we gather facts and categorize what we see, hear, and read. Identifying letters, words, or an author's style are recognition tasks.

**2) Strategic Networks – The *how* of learning**

Planning and performing tasks. How we organize and express our ideas. Writing an essay or solving a math problem are strategic tasks.

**3) Affective Networks – The *why* of learning**

How learners get engaged and stay motivated. How they are challenged, excited, or interested. These are affective dimensions.<sup>18</sup>

Curriculum is a key concept in the UDL framework. Again, according to the National Center on Universal Design for Learning,

The purpose of UDL curricula is not simply to help students master a specific body of knowledge or a specific set of skills, but to help them master learning itself—in short, to become expert learners. Expert learners have developed three broad characteristics. They are: a) strategic, skillful and goal directed; b) knowledgeable; and c) purposeful and motivated to learn more. Designing curricula using UDL allows teachers to remove potential barriers that

<sup>17</sup> See <http://www.udlcenter.org/aboutudl/udldefined>. This concise definition of Universal Design for Learning was provided by the Higher Education Opportunity Act of 2008 (HEOA).

<sup>18</sup> See <http://www.udlcenter.org/aboutudl/whatisudl>.

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could prevent learners from meeting this important goal.<sup>19</sup>

Accommodations for students with disabilities, particularly as it relates to college- and career-ready standards, will be individually designed through the IEP process. However, in view of the varying learning challenges that many American Indian and Alaska Native students face in making educational progress leading to graduation, it is crucial that BIE recognize that the principles of universal design (see [www.udlcenter.org](http://www.udlcenter.org)) can benefit other learners, as readily as students with disabilities.

In addition, the BIE will analyze accommodations that may best support students with disabilities, based on the learning challenges that are reflective of different disabilities. Likewise, accommodations will be afforded to students with disabilities, as needed, when assessments are administered. It is crucial that all teachers of students with disabilities have information relative to the goals, supports and accommodations specified in a given student's IEP. This will necessitate coordinated efforts among multiple teachers within a school in support of students with disabilities.

Other approaches and systems the BIE intends to utilize to analyze the learning and accommodation factors necessary to ensure that students with disabilities will have the opportunity to achieve to the college- and career-readiness standards include the following:

- BIE Advisory Board for Exceptional Children
- BIE Dropout Prevention Initiative
- Annual BIE Special Education Data Summit
- BIE's Integrated Monitoring in Special Education
- IEP module in BIE's Native American Student Information System (NASIS)

### **BIE Advisory Board for Exceptional Children**

The purpose of the Advisory Board is to fulfill the requirements of the Individuals with Disabilities Act of 2004 (IDEA) as it pertains to Indian children with disabilities (P.L. 108-446 § 611 (h) (6)). The Board is comprised of 15 members and meets at least two times a year. The duties of the Advisory Board include the following:

- Advise and assist the Secretary of the Interior in the performance of the Secretary's responsibilities in section 611(I) of the Act.
- Assist in the coordination of services within the BIE and with other local, State, and federal agencies in the provision of education for infants, toddlers, and children with disabilities.
- Develop and recommend policies concerning effective inter and intra-agency coordination, including modifications to regulations and the elimination of barriers to inter and intra-agency programs and activities.
- Provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved educational programming for Indian infants, toddlers, and children with disabilities.
- Provide assistance in the preparation of information required to be submitted to the Secretary of Education under section 611(I)(2)(D) of the Act.
- Prepare and submit an annual report to the Secretary of the Interior and Congress containing a

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<sup>19</sup> See <http://www.udlcenter.org/aboutudl/udlcurriculum>.

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description of the activities of the Board for the preceding year. The Secretary shall make this annual report available to the Secretary of Education.

The Advisory Board will address accommodation factors necessary to ensure that students with disabilities will have the opportunity to achieve to the college- and career-readiness standards by facilitating dialogue with other tribal entities to discuss and identify students' needs including accommodations. The Advisory Board, comprised of representatives of different stakeholders (i.e., parents, service providers and content specialists) will present research and will advise educators on best practices and offer recommendations of appropriate accommodations for specific needs, e.g., learning disability, emotional disturbance, intellectual disability and autism. Based on feedback and discussion with stakeholders, the Advisory Board can advise the BIE regarding Indian students with disabilities in BIE-funded schools.

### **BIE Dropout Prevention Initiative**

The BIE has created a dropout prevention initiative to implement effective strategies in the areas of dropout prevention, reentry, and school completion. BIE has developed strategic partnerships with two results oriented organizations in the field of dropout prevention. BIE's approach is based on best practices and evidenced based methodologies.

*BIE-NDPC-SD Partnership.* The BIE entered into a Cooperative Agreement with the National Dropout Prevention Center for Students with Disabilities (NDPC-SD) to provide training and technical assistance on implementation of effective strategies in areas of dropout prevention, reentry, and school completion models.<sup>[1]</sup> Thirteen schools have elected to participate in Cohort I and schools for Cohort II will be selected in the fall of 2012. Each school will establish a team that will participate in training through which they will gain knowledge and skills on designing and implementing their dropout prevention program. Schools will use the evidence-based Dropout Prevention Intervention Framework (DPIF) and will target their efforts on at least two of six areas for intervention: a) school climate, b) attendance, c) behavior, d) academics, e) family engagement, and f) student engagement.

The BIE Dropout Prevention Initiative relates directly to learning and analyzing accommodation factors necessary to ensure that students with disabilities have the opportunity to achieve college- and career-ready standards. Students with disabilities who receive appropriate accommodations are more likely to be successful in school and therefore less likely to drop out of school. The Dropout Prevention Initiative provides training to teachers on how to teach students self-advocacy skills. For example, a self-advocacy skill taught to students with disabilities is being able to identify their disability and knowing what accommodations are appropriate for their individual needs. Self-advocacy skills will help students with disabilities make the transition to college or career paths.

*BIE-Jobs for America's Graduates (JAG) Partnership.* The BIE also has partnership with Jobs for America's Graduates (JAG), which is a national non-profit organization dedicated to preventing dropouts among young people who are most at-risk. The Bureau of Indian Education will join 33 states in establishing Jobs for America's Graduates (JAG) initiative. The JAG program, in coordination with state-based organizations, assists youth to stay in school and graduate, and to secure jobs leading to careers with

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<sup>[1]</sup> See <http://www.ndpc-sd.org/> for the website of the National Dropout Prevention Center for Students with Disabilities (NDPC-SD).

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advancement opportunities.

The JAG program provides training for school staff who provide support to students in areas of employability skills development, job development, job placement services along with support for staying in school. The first cohort of six BIE schools will begin their program activities during the 2012-2013 school year. Three will begin their efforts in fall 2012 and three more in spring of 2013. The schools will partner with the state-based organizations for the training and related supports. This participation by the schools includes hiring of one staff person who will conduct JAG instructional classes and skill development.

The expected outcomes for the schools are to raise the graduation rate along with positive post-school outcomes, like employment, postsecondary education or military. Participation in the JAG Initiative also impacts other areas including decreased disciplinary referrals, increased attendance and improved grades.

### **Annual BIE Special Education Data Summit**

Each April, a data summit is held enabling special education staff and stakeholders to examine and analyze a variety of special education data including the State Performance Plan (SPP) Indicators, Annual Performance Report (APR), criteria for school level of determination, and other information (e.g., correction of noncompliance). During this meeting, participants have an opportunity to advise and comment on data and Focused monitoring activities. The results of the data summit help determine:

- Decision-making for program management and improvement,
- Data usage to Focus on systemic impact and positive education outcomes for all students,
- The criteria to be used in determining the annual school special education levels of determination (for the preceding school year), and
- The onsite Focused monitoring activities for the following school year.

The Special Education Data Summit improves education results for students with disabilities through the examination and analysis of special education, including specific data related to accommodations and college- and career-readiness. To address accommodation factors linked to college- and career-readiness, academic achievement data of students with disabilities is examined. If there are low achievement scores, teachers and administrators are taught to drill down into the data to identify root causes. Areas of weaknesses are identified through data analysis to target instructional strategies and intervention. Multi-year trend data is also examined to assist educators with professional development needs. For example, if the data demonstrates overall weaknesses in an area such as reading comprehension, training for teachers can Focus on providing appropriate accommodations for instruction in that area.

### **BIE's Integrated Monitoring in Special Education**

The primary Focus of BIE's monitoring activities is to address the following areas: a) improve educational results and functional outcomes for all children with disabilities, and b) ensure that program requirements under Part B are met, especially those most closely related to improving educational results for children with disabilities, in accordance with the Department of Education

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regulations governing state monitoring and enforcement.<sup>20</sup>

The BIE Special Education Staff conduct monitoring through data from three processes: (a) Focused Monitoring (on-site visits), (b) Desk Audits on Indicators 11 and 13, and (c) Other sources including ISEP (Indian Student Equalization Program).<sup>21</sup> In addition, the BIE is implementing a system of fiscal reviews in coordination with the BIE Administration Unit. Recommendations derived from these monitoring processes result in notification of the school if findings of noncompliance have been identified.

The BIE has established a three year monitoring schedule. One-third of the schools will be scheduled for on-site monitoring. Any findings of noncompliance that must be corrected are determined through a desk review using the NASIS web-based data system.

The monitoring process supports the analysis of accommodation factors necessary to support college- and career-readiness. The monitoring process verifies the implementation of accommodations and also collects additional qualitative data through surveys, interviews and document analysis. Monitoring includes examining student files and IEPs to identify required modifications and accommodations. Classroom observations are also conducted to validate the implementation of accommodations for students with disabilities. In high schools, students with disabilities are interviewed to confirm their understanding of their own educational needs. Also, interviews with parents of students with disabilities are conducted to ensure their child is receiving appropriate services and accommodations.

### **IEP module in BIE's Native American Student Information System (NASIS)**

The BIE utilizes an online IEP module in the BIE's Native American Student Information System (NASIS) to analyze the learning and accommodation factors necessary to ensure that students with disabilities will have the opportunity to achieve to the college- and career-readiness standards. The NASIS IEP module will assist in the analysis of student IEP goals, the environments in which students receive instruction, accommodations and modifications, types of assessments, and assessment results. The NASIS Special Education module will support educators in understanding patterns of students who take the general assessments, CCS assessments and alternate assessments and in providing transitional interventions that will lead students toward high achievement on CCS assessments and alternate assessments in the future. Ad Hoc reports from NASIS also provide data such as frequency of accommodations used in a classroom, grade and school. Educators can use the reports to analyze the professional development needs of teachers related to instructional strategies by examining the frequency of certain types of accommodations. The BIE provides on-going training and support to educators and parents in developing online Individualized Education Programs (IEPs) based on grade level standards to improve student outcomes.

*1.B.4 Does the SEA intend to conduct outreach and dissemination of the college- and career-ready standards? If so, does the SEA's plan reach the appropriate stakeholders including educators, administrators, families and IHE's? Is it likely that the plan will result in all stakeholders increasing their awareness of the state's college- and career-ready standards?*

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<sup>20</sup> See 34 C.F.R. § 300.600(b).

<sup>21</sup> Indicator 11 states: Percent of children with parental consent to evaluate, who were evaluated and eligibility determined within 60 days (or State established timeline). Indicator 13 states: Percent of youth aged 15 and above with an IEP that includes coordinated, measurable, annual IEP goals and transition services that will reasonably enable the student to meet the post-secondary goals.

The BIE is conducting ongoing outreach to the public and targeted stakeholder groups and will continue to do so to increase awareness as the BIE transitions to CCS. The Common Core Standards were published in 2009 and the BIE began conducting outreach in late 2011 in every region of the BIE to ensure stakeholders are aware of the transition to college- and career-ready standards. The overarching goal of these activities is to foster increased awareness, understanding, and ultimately the adoption of these standards. Detailed information on that outreach effort follows.

## Implementation

As the standards are being developed, BIE will solicit feedback on the CCS as well as perceived benefits of raising academic standards to a higher, college- and career-ready, level. During this process, BIE will seek feedback from BIE-funded institutions of higher education as well as from higher education institutions with high Indian student populations within the 23 states where BIE-funded schools are located. BIE will Focus on how the standards might effectively result in students who are prepared for postsecondary education or the workforce, without the need for remediation.

| <b>BIE Common Core Standards (CCS) Implementation<br/>4-Year Timeline</b>         |                    |                |                |                |
|---|--------------------|----------------|----------------|----------------|
| <i>Phase</i>  | <i>School Year</i> |                |                |                |
|   | <i>2011-12</i>     | <i>2012-13</i> | <i>2013-14</i> | <i>2014-15</i> |
| Phase 1: Awareness and understanding, alignment and adoption                      | →                  |                |                |                |
| Phase 2: Build capacity, collaborate to develop and align resources and materials |                    | →              |                |                |
| Phase 3: Professional Development and classroom transition                        |                    |                | →              |                |
| Phase 4: BIE-wide implementation through the assessment system                    |                    |                |                | →              |
| Phase 5: Evaluation   |                    | →              |                |                |

Various stakeholders – educators, administrators, school boards, Indian tribes, and families – will be included in an outreach effort. (BIE does not have a state system of Institutions of Higher Education, and therefore does not include this group as a stakeholder.) This phased effort will result in all stakeholders increasing their awareness of the BIE’s college- and career-ready standards.

### **Phase One: Awareness and understanding, alignment, and adoption**

The first goal for the initial year of adoption (2011-2012 and 2012-2013) is focused on educating key BIE stakeholders, including Pre-K-12 educators, early childhood educators, tribal school boards, career and technical educators, higher education faculty, and SEA leadership and staff about the CCS and how they differ from the previous state standards.

The following is a list of representative professional development efforts designed to create awareness and build consensus through presentations, meetings, webinars, and regional conferences:

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- March 2012 Advisory Board for Exceptional Children: Overview of CCS and BIE’s implementation plan. The BIE introduced and explained the contents of the flexibility request and elicited feedback from the audience. Audience: 30 Advisory Board Members and Program Specialists
  - April 2012 Division of Performance and Accountability presentation: Overview of CCS and BIE’s implementation plan. Audience: 40 Educational Specialists and Program Support Assistants
  - April 2012 Associate Deputy Directors Webinar: Overview of CCS and BIE’s implementation plan. Audience: 3 Associate Deputy Directors who oversee 22 Education Line Officers in 3 major regions: East, West, and Navajo.
  - April 2012 Associate Deputy Directors and Education Line Officers Webinar: Overview of CCS and BIE’s implementation plan. Audience: 22 Education Line Officers and additional staff.
    - West Region Webinar – 1 Associate Deputy Director, 7 Education Line Offices
    - East Region Webinar – 1 Associate Deputy Director, 9 Education Line Offices
    - Navajo Region Webinar – 1 Associate Deputy Director, 6 Education Line Offices
  - April 2012 Association of Navajo Community Controlled School Board (ANNCCSB) Spring Conference: Two sessions at the conference provided an overview of the CCS and BIE’s Implementation timeline. The BIE introduced and explained the contents of the flexibility request and elicited feedback from the audience. Audience: Pre-K-12 educators and administrators, tribal school board members, parents, and community members.
  - June 2012 Bureau of Indian Education Annual National Summer Institute: Four-day summer institute. Keynote presentation provided an overview of the CCS. Also, CCS overview sessions included BIE’s timeline focused on implications for specific groups, (i.e., educators, administrators, school board members, postsecondary educators and administrators, etc.). The BIE also introduced and explained the contents of the flexibility request and elicited feedback from the audience. Audience: 1,500 BIE educators, school administrators, Education Line Officers, Associate Deputy Directors, school board members, and postsecondary educators and administrators.
  - July 2012 – August 2012 Associate Deputy Director and Education Line Officer Webinar: Presentations reviewed frequently asked questions and introduced Phase Two.
    - West Region Webinar – 1 Associate Deputy Director, 7 Education Line Offices
    - East Region Webinar – 1 Associate Deputy Director, 9 Education Line Offices
    - Navajo Region Webinar – 1 Associate Deputy Director, 6 Education Line Offices
  - September 2012 BIE CCS Web Page: A page on the BIE’s website will be established to provide educators and other stakeholders with important information and technical assistance for implementing the CCS. The page will include:
    - The English Language Arts and Mathematics Standards and Appendices
    - BIE’s adoption announcement and implementation timeline information
    - Presentations on CCS for public use

- Multiple links to teacher, administrator, and parent resources for assistance in developing curriculum, improving classroom practice, and helping students at home
- Templates and guiding questions for Education Line Office 3-Year Transition Plans, required for every BIE Education Line Office to develop and submit to their Associate Deputy Director

*1.B.5 Does the SEA intend to provide professional development and other supports to prepare teachers to teach all students including English Language Learners, students with disabilities and low-achieving students to the new standards? If so, will the planned professional development and supports prepare teachers to teach to the new standards, use instructional materials aligned with those standards, and use data on multiple measures of student performance (e.g., data from formative, benchmark and summative assessments) to inform instruction.*

Professional development, and other supports, is a key strategy employed by BIE to prepare teachers to teach all students, including English Language Learners, students with disabilities and low-achieving students to the new standards.

### **Phase Two: Build capacity, collaborate to develop and align resources and materials**

Phase Two will focus on building capacity and collaboration to develop and align resources and materials for leaders and teachers. This will be accomplished principally through professional development.

#### **Teacher Track**

To successfully implement the CCS, teachers must first learn what the standards are and how they are different from what they have taught in the past. Professional development in Phase Two will help teachers gain an understanding of CCS and the expectations for content and understanding at each grade level for math and reading. Teachers will deconstruct the standards at their grade level by examining the CCS to determine key vocabulary; discussing demonstration of mastery of the key concepts; and determining the assessment of a particular standard. Teachers must have an understanding of the learning progression from year to year to fully recognize the rigorous expectations at each grade level. Teachers will spend time collaborating on and creating learning experiences that incorporate quality materials for those standards/objectives in the textbook that do not meet the intent and rigor of the CCS. Embedded in the professional development will be an examination of the theories and methods of “best practice” models that are the foundation for effective lessons.

Teachers will receive training on how to provide differentiated support for all learners including Limited English Proficient learners, Students with Disabilities, Low Achieving Students and gifted and talented students. Teachers will also gain an understanding of how to use formative assessment to ensure students are meeting the learning expectations and ideas to modify instruction for the differentiated learner.

The following is a list of representative professional development efforts designed for teachers and school administrators facilitated by regionally contracted consultants:

- September 2012 – CCS Regional Training for School Administrators and Teacher Leaders

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- October 2012 – CCS Regional Training for School Administrators and Teacher Leaders
  - November 2012 – CCS Regional Training for School Administrators and Teacher Leaders
  - January 2013 – CCS Regional Training for School Administrators and Teacher Leaders

In addition, professional development will be provided in connection with the newly created teacher and principal evaluation and support systems. Training Focusing specifically on the needs of English Language Learners, students with disabilities, and low-achieving students will comprise a special emphasis of professional development.

*1.B.6 Does the SEA intend to provide professional development and supports to prepare principals to provide strong, supportive instructional leadership based on the new standards? If so, will this plan prepare principals to do so?*

Similar to teachers, BIE will employ professional development and supports to prepare principals to provide strong, supportive instructional leadership based on the new standards.

### **Leadership Track**

The role of the instructional leader at each site is to support teachers in their understanding of CCS, including a clear understanding of what the student is expected to learn, the necessary pedagogical practices that need to be developed and implemented, and effective techniques for delivering instruction and assessing student learning of the standard. Instructional leaders are necessary for monitoring and supporting implementation and in establishing communities of professional practice for sustained adult learning Focused on student learning of the CCS. Instructional leaders will support and monitor teachers by creating and analyzing data. Leaders will be trained to help teachers grow in weak areas and promote collaboration using various data points and best practices, which will include building, leading, and observing effective communities of professional practice that will span a continuum of improvement over time.

Leaders will participate in regional CCS training four times a year:

- September 2012 – CCS Regional Training for Associate Deputy Directors, Education Line Officers, and School Administrators
- October 2012 – CCS Regional Training for Associate Deputy Directors, Education Line Officers, and School Administrators
- November 2012 – CCS Regional Training for Associate Deputy Directors, Education Line Officers, and School Administrators
- January 2013 – CCS Regional Training for Associate Deputy Directors, Education Line Officers, and School Administrators

### **BIE Principal Leadership Academy**

The purpose of the BIE Principal Leadership Academy (PLA) is to prepare principals to achieve rapid

and sustained improvement of their schools by providing them with training, mentoring, and support. A major theme that will be incorporated throughout the BIE PLA is Instructional Leadership based on the CCS. The training will focus on the principal's role in setting direction, managing change, engaging people, and improving instruction. The mentoring and support will ensure that training is effectively translated into practice. Principals successfully meeting the requirements of the program will be certified as Rapid Improvement Leaders. Certified Improvement Leaders will be eligible to serve as Rapid Improvement Mentors for subsequent cohorts of principals.

Research suggests that successful school leaders influence student achievement in several important ways, both through their influence on other people or features of their organization, and through their influence on school processes. Below is a general expectation of skills necessary for BIE principals to embrace and utilize to impact student achievement, which are embodied in the Principal Leadership Academy. Specifically, the goals of the Principal Leadership Academy are:

- Goal 1. **Content:** BIE will develop a training and support curriculum along with protocols that will effectively prepare in-service principals to lead the rapid improvement of their schools.
- Goal 2. **Standards:** BIE will establish rigorous training and implementation standards as criteria for principals earning recognition as Certified Rapid Improvement Leaders.
- Goal 3. **Delivery:** BIE will deliver the one-year PLA program to two cohorts of principals, reaching a total of 100 principals.
- Goal 4. **Output:** Seventy-five percent of the principals who enter the Principal Leadership Academy will earn recognition as Certified Rapid Improvement Leaders.
- Goal 5. **Outcome:** Schools whose principals earn recognition as Certified Rapid Improvement Leaders will achieve gains on NWEA MAP assessments in reading and mathematics of at least 20 percentage points in the two years following the principal's entry into the Academy.

#### Management Team

##### Provides project leadership and direction

Project Manager: Stanley Holder, Special Assistant,  
DPA, BIE  
Roxanne Brown, Associate Deputy Director, BIE  
Bart Stevens, Associate Deputy Director, ADD  
Charles (Monty) Roessel, Associate Deputy Director,  
BIE

#### Design Team

##### Creates Content Framework

##### Critiques Certification Criteria

##### Recommends Candidates for Certification

Team Leader: Sam Redding, Center for Innovation and  
Improvement (CII)  
Kenneth Wong, Brown University  
Lauren Morando Rhim, Consultant  
Roger Quarles, Boise State University  
Maureen Mirabito, Maryland SEA and Consultant

#### Development Team

##### Creates Materials

##### Recommends Certification Criteria

##### Trains Instructors and Mentors

Team Leader: Pam Sheley, Center for Innovation and  
Improvement (CII)  
Donna McCahon, Northwest Education Association  
(NWEA)  
Carol Chelemer, Consultant  
Maureen Mirabito, Maryland SEA and Consultant  
Sam Redding

#### Instruction and Mentoring Team

##### Trains Principals

##### Monitors Principal's Implementation

##### Mentors Principals

Instructors drawn from other three teams  
Mentors from BIE personnel

The Principal Leadership Academy will be directed by a project manager, a core management team, and designed, developed, and delivered by three teams.

*1.B.7 Does the SEA propose to develop and disseminate high-quality instructional materials aligned to the new standards? If so, are the instructional materials designed (or will they be designed) to support the teaching and learning of all students, including English learners, students with disabilities, and low achieving students?*

BIE will develop and disseminate high-quality instructional materials aligned to the new standards. The instructional materials will support the teaching and learning of all students, including English learners, students with disabilities, and low achieving students.

### **Phase Three: Professional Development and Classroom Transition**

During Phases Two and Three, CCS Regional and School Level Training will continue to support the implementation of the CCS. The BIE will emphasize the development of high quality instructional materials starting with the training of teachers in the implementation of the Common Core Standards. The BIE's contract for training teachers requires that the training materials be made available to the teachers for their use as the school year progresses. Supplemental training on the standards and their implementation using the BIE's student information system will also lead to the sharing among educators of materials related to Common Core implementation in the form of shared lesson plans, assignments, and materials.

Another avenue for the creation and provision of high quality instructional materials stems from BIE's evaluation of curricula for the purpose of identifying recommendations for BIE schools. Implementation of the Common Core requires a critical examination of the available curricula and the degree to which they align with the standards. Curricular materials will only be high quality to the degree they are supportive of instruction aligned with the Common Core. The BIE (SEA-level) intends to undertake reviews of available curricula for the purpose of recommending ones that align with the Common Core.

Resources on technical aspects of the standards to support schools and Education Line Offices will be created. Training will continue to include the development of scope and sequence documents, design of Units of Study, and curriculum development around English Language Arts and Mathematics CCS.

### **Science, Technology, Engineering, and Mathematics (STEM)**

BIE will partner with professional organizations to provide content specific information on the standards for teachers and administrators. For example, in the area of Science, Technology, Engineering, and Mathematics (STEM), the BIE will continue to work with partners such as National Aeronautics and Space Administration (NASA) Goddard. NASA has presented at the last three BIE Summer Institutes to offer technical assistance regarding expertise on science curriculum and teaching activities to BIE school teachers and administrators. NASA also has provided summer teacher professional development workshops in Greenbelt, Maryland, regarding teacher development in STEM direct instruction.

In addition, the BIE, as a part of the Department of the Interior, will participate with the U.S. Department of the Interior's STEM Education and Employment Pathways Program. The program is

developing a Strategic Plan for FY 2013-FY 2018. The DOI STEM Initiative is designed to strategically align existing resources, leverage current programs, and expand partnerships to strengthen education and career pathways.

The ***Vision*** for the Department’s STEM Education and Employment Pathways Strategic Plan is:

- To build a science-literate public and prepare professionals from all backgrounds who understand and value the role of science and science inquiry in the stewardship of America’s natural resources and cultural heritage.

The ***Mission*** is to:

- Build an inclusive 21<sup>st</sup> Century workforce and increase science literacy by connecting the public with the nation’s natural and cultural resources through outdoor developmental experiences and long-term engagement, education, employment, and service in support of public lands and waters. Through these actions, advance the science, engineering, and technology that inform natural resource management and decision making on critical issues impacting our globe.

The STEM Education and Employment ***Five-Year Goal*** is:

- Young people, especially those typically underrepresented in STEM fields of study, become scientifically literate ambassadors for our natural and cultural heritage and become inspired to choose career paths at the U.S. Department of the Interior or related agencies and partners.

BIE’s various partnerships will help BIE’s STEM initiative, which encompasses building the capacity of teachers, the development of instructional materials, and creating opportunities for student learning experiences.

### **BIE Literacy Team**

The BIE is developing a bureau-wide Literacy Plan as a part of the implementation of a Striving Readers Comprehensive Literacy Program grant received by the U.S. Department of Education. The Striving Readers Comprehensive Literacy grant is Focused on advancing literacy skills for students from birth through grade 12, including limited English proficient students and those with disabilities. The Literacy Team will inform the BIE’s work with literacy Pre-K through adult education, taking into account the Common Core Standards in English Language Arts. The Literacy Team is comprised of Associate Deputy Directors, Education Line Officers, education specialists, and school administrators.

### **Native American Student Information System (NASIS)**

The NASIS Lesson Plan and Grade book modules provide online tools for classroom teachers and administrators onsite to support Common Core Standards. In addition, ADD/ELO (district), and state level staff may access data as needed to support schools. The tools include instant access to data on student attendance and academic achievement; access to the Common Core Standards; and lesson plans aligned to Common Core Standards. Teachers can develop their own lesson plans and share with others onsite, district-wide, or across the BIE. BIE NASIS staff will provide professional development to classroom teachers on how to use the NASIS module. BIE emphasizes the alignment of content, curriculum, and lesson plans in each of the professional development activities related to NASIS. Bureau-wide training will continue to be Focused on the Common Core Standards and lesson plan

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alignment will be ongoing.

#### **Phase Four: BIE-wide implementation through the assessment system**

The implementation of the assessment will be bureau-wide and will commence in SY 2012-2013. At the end of each academic year, BIE schools will assess students using the NWEA MAP “blended model” for the end of year accountability assessment. The blended MAP fulfills the requirements of ESEA. The test is both standards-based and computer-adaptive, and provides meaningful information on student growth and achievement. All schools within the BIE will be required to use the BIE assessments for accountability purposes.

The assessment vendor, NWEA, selected by the BIE provides formative assessments currently aligned to the standards of the states where the districts are located. NWEA also provides assessments that are aligned with the Common Core Standards and is engaged in development efforts to enhance the depth and breadth of these offerings in terms of item types to reflect the depth and breadth of the Common Core Standards. Discussed in more depth in Section 1.C, the assessment is of sophisticated design and form, and can accurately assess student achievement and growth relative to the Common Core Standards at each grade level. The use of an assessment that is aligned to the Common Core facilitates BIE’s implementation of the Common Core Standards in the classroom since, despite best efforts to avoid this, educators have a tendency to “teach to the test.”

2013-2014: Students take the new CCS Assessment

- Student Growth Target is established
- BIE issues School Accountability Determinations (Growth Model Only)

2014-2015: Students take the new CCS Assessment

- Students are measured against Growth Targets
- Students are measured by Student Proficiency
- BIE issues School Accountability Determinations (Full Model)

#### **Phase Five: Evaluation (applies to all implementation phases)**

The BIE will seek to strengthen the quality of the CCS implementation and improve outcomes for the students they serve through assessment and evaluation of the CCS roll-out. BIE will monitor the progress of the CCS implementation by analyzing quantitative and qualitative data related to the CCS implementation goals, processes, and outcomes.

*1.B.8 Does the SEA plan to expand access to college-level courses or their prerequisites, dual enrollment courses, or accelerated learning opportunities? If so, will this plan lead to more students having access to courses that prepare them for college and a career?*

BIE plans to expand access to college-level courses or their prerequisites, dual enrollment courses, or accelerated learning opportunities, with the intended outcome of more students having access to courses that prepare them for college and a career.

However, creating access to college-level courses is a challenge for BIE, since it is a federal agency and not part of a state education system. Individual BIE high schools are able to enter into agreements

with neighboring colleges for dual enrollment purposes, but success has been limited. Some high schools have partnered with tribal colleges and universities, but a complaint of the tribal colleges is the BIE schools have no existing mechanism for cost sharing with the colleges. In regard to accelerated learning opportunities, BIE schools have difficulty recruiting and retaining teachers in rural, isolated environments, especially to teach accelerated courses for a small number of students.

Despite these challenges, there are some examples of BIE high schools expanding access to college-level courses, college prerequisite courses, dual enrollment courses, or accelerated learning opportunities. An example of a BIE high school offering college-level courses, college prerequisite courses, Advanced Placement (AP) courses, and dual enrollment is the Santa Fe Indian School. The Santa Fe Indian School is located in Santa Fe, New Mexico. The Santa Fe Indian School offers AP English III and IV, AP Calculus Exam, AP World History, and AP U.S. Government and Politics. The high school also provides access to dual enrollment courses through the Northern New Mexico College for classes in Navajo I and II, Engineering, Video Production, and Auto Mechanics.

Some high schools, such as Sherman Indian High School in Riverside, California, currently have partnerships with local colleges and universities and are working towards offering dual enrollment courses. Faculty and students from Loma Linda University frequently make presentations to students in the Health Career Pathway and are exploring ways to offer dual credit courses in the health and science classes. Additionally, Sherman Indian High School has a partnership with Western University of Health Sciences. Western University of Health Sciences has been operating a Saturday Academy for students for several years. This year it expanded to include Sherman Indian High School students as well.<sup>22</sup> Sherman Indian School plans to expand and use the Western University program as a springboard for offering dual enrollment courses related to STEM.

It is the intent of BIE to enter into further agreements between BIE high schools and local universities and colleges. Associate Deputy Directors, Education Line Officers, and BIE high school communities working with colleges and universities will accomplish this partnership effort.

Also under consideration is the possibility of offering dual enrollment courses and accelerated learning opportunities via distance learning on a regional or national basis. Two technology initiatives in BIE are exploring these options. One is an ad hoc group in School Operations, which is developing a technology plan to address these and other issues. Another is a specific Focus in the Division of Performance and Accountability to examine deployment of IT resources to best fulfill BIE's mission to provide quality education services to Indian tribes. The perspectives and expertise of these two groups is slightly different, but their work will come together at a later date into a joint effort.

*1.B.9 Does the SEA intend to work with the State's IHEs and other teacher and principal preparation programs to better prepare: Incoming teachers to teach all students, including English language learners, students with disabilities, and low-achieving students to the new college- and career-ready standards; and incoming principals to provide strong, supportive instructional leadership; on teaching the new standards? If so, will the implementation of the plan likely improve the preparation of incoming teachers and principals?*

As explained previously, BIE is a federal agency with schools located in 23 states and is not part of a state education system. Consequently, BIE has no single IHE system for collaboration regarding

<sup>22</sup> See <http://www.westernu.edu/ladder-lebanon/news.php> and [http://wsprod.westernu.edu/news/nr\\_detail.jsp?id=13023](http://wsprod.westernu.edu/news/nr_detail.jsp?id=13023).

teacher and principal preparation. Moreover, BIE as an SEA exerts no control over states' IHEs.

While BIE operates two post-secondary institutions – Haskell Indian Nations University (HINU) located in Lawrence, Kansas and Southwestern Indian Polytechnic Institute (SIPI) located in Albuquerque, New Mexico – neither of these two institutions is a primary provider of teacher and principal preparation. Data suggests that teachers in BIE-funded schools obtain their training from respective state IHEs. HINU has a teacher preparation program, but data does not support the notion that teachers in BIE-funded schools are products of that program. SIPI is a two-year college and therefore does not offer baccalaureate teacher preparation or certification. Similarly, principals in BIE-funded schools receive their principal preparation and certification from their respective states' IHE. Regarding teacher and principal preparation, BIE is at a disadvantage compared to states.

*1.B.10 Does the SEA plan to evaluate its current assessments and increase the rigor of those assessments and the alignment to the State's college- and career-ready standards, in order to better prepare students and teachers for the new assessment through one of more of the following strategies:*

- *Raising the State's academic achievement standards on its current assessments to ensure that they reflect a level of postsecondary readiness, or are being increased over time to that level of rigor?*
  - *Augmenting or revising current State assessments by adding questions, removing questions, or varying formats in order to better align those assessments with the State's college- and career-ready standards?*
  - *Implementing another strategy to increase the rigor of current assessments, such as using the "advanced" performance level on State assessments instead of the "proficient Performance level as the goal for individual students performance or using college-preparatory assessments or other advanced tests on which IHEs grant course credits to entering college students to determine whether students are prepared for postsecondary success?*
- *If so, is this activity likely to result in an increase in the rigor of the State's current assessments and their alignment with college- and career-ready standards?*

As previously mentioned, BIE's accountability system is based upon the assessments of the 23 states where BIE schools are located. BIE does not have an assessment of its own for the purpose of AYP calculation. It is therefore not possible for BIE to conduct an evaluation of its "current assessments."

However, the BIE is procuring for all of its schools an assessment that will be aligned to the Common Core Standards in SY 2012-2013. The assessment will be computer-based and aligned to the Common Core Standards for reading/language arts and mathematics. The assessment will be administered to all students in all grades within the BIE (including K-2), and will provide for the measurement of student growth. The assessments are intended as an interim solution, until PARCC and SBAC assessments are available.

BIE will work with the interim assessment vendor to increase the rigor of the assessments and the alignment to the State's college- and career-ready standards by providing resources to add questions to the interim vendor's item bank. The BIE intends on developing new test items that assess process (what students can do), in addition to knowledge. The intent with all item development efforts will be to maximize the extent to which higher order cognitive skills are assessed with each test item in accordance with the Common Core Standards' specifications. The BIE will not be unique in this regard as no assessment currently measures the Common Core as robustly as the standards themselves actually describe.

The BIE intends to establish uniform academic achievement standards for all students served by the BIE. The BIE will ensure that these standards reflect a level of postsecondary readiness by conducting a rigorous Standard Setting process. The BIE standards will be established using the modified Bookmark technique, the most common technique for setting rigorous academic standards.<sup>23</sup> The Bookmark procedure will be executed for each subject at each grade level (K-10) by a team comprised of an experienced psychometrician and several teachers that teach the subject and grade being evaluated. High school-level subjects in the upper classes will have standards set for them reflective of the courses in which the student has participated (end of class as opposed to general subject area assessments will be administered). The teachers will be recruited from across the 23 states served by the BIE in order to ascertain a representative sample of expert opinions as to the performance of students served by the BIE. As part of standard setting, the teachers will be trained on the academic standards being evaluated and the process of standard setting.

Standard setting will occur following the spring of 2013 testing in order to have sufficient data to support the modified Bookmark procedure. The resulting standard setting will produce academic achievement standards necessary to report proficiency status at three levels, basic, proficient, and advanced.

A detailed description of the development of BIE’s interim assessment is provided in Section 1.C.

*1.B.11 Does the SEA intend to analyze the factors that need to be addressed in preparing teachers of students with disabilities in a State’s alternate assessment based on modified academic achievement standards in order to ensure these students can participate in the assessment that will be aligned with college and career-ready standards?*

The BIE will analyze factors that need to be addressed in preparing teachers of students with disabilities in alternate assessment based on modified academic achievement standards to ensure students can participate in the assessment that will be aligned with college- and career-ready standards. All BIE teachers are involved in this matter since the general education curricula and classroom provide the primary instruction with Special Education services and support. To prepare students with disabilities to achieve on Common Core Standards teachers must understand the appropriateness of academic standards for students requiring Special Education services. The identification of student levels of performance and their measurement involve the use of appropriate on-grade-level standards, whether they are regular, alternate or modified.

The BIE will use alternative assessments that reflect the Common Core Standards. Alternative Portfolio Assessment will be used in most situations with options to include modifications of testing when required. Alternative assessments will require flexibility in areas including structure and format of assessments. Further, the BIE will develop alternate assessment policies to meet needs of students with significant disabilities who cannot participate in statewide assessments even with accommodations.

The initial roll-out of the Common Core Standards (“unpacking”) training will be based on standardized training modules. The design of these modules will assist educators in identifying factors involved with the learning process for students requiring Special Education services.

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<sup>23</sup> Lewis D.M., Mitzel, H.C., Green, D.R. (1996). “Standard Setting: A Bookmark Approach.” In D. R. Green (Chair), IRT-Based Standard-Setting Procedures Utilizing Behavioral Anchoring. Symposium presented at the 1996 Council of Chief State School Officers 1996 National Conference on Large Scale Assessment, Phoenix, AZ.

Further SEA-level Special Education Program Activities include webinars, school site visits, NASIS training, Special Education Data Summits and National BIE Summer Institutes.

*1.B.12 Does the SEA propose other activities in its transition plan? If so, is it likely that these activities will support the transition to and implementation of the State's college- and career-ready standards?*

States are allowed to supplement the Common Core Standards with an additional 15% of state-specific standards, at their discretion. Furthermore, although standards in science and social science are being considered, the Common Core's Standards currently address only English Language Arts and mathematics. Effectively integrating all content areas into instruction is essential for students to receive a comprehensive education.

Under present statute, the BIE makes available to tribally-controlled schools the option of Alternative Definition of Adequate Yearly Progress (AYP) in accordance with 25 C.F.R. § 30 as a means to incorporate tribally developed standards. However, the standards for adoption of the Alternative AYP definition set by the statute are exceedingly high and none have met with approval thus far.

The BIE proposes that tribes be allowed to craft indicators that reflect their values that satisfy the Alternative AYP mandates. By refining the areas affected by Alternative AYP, the BIE would simplify the process by which the accountability system could be customized to suit the needs of the tribes BIE serves. BIE schools would have the option of requesting to exercise the 15% flexibility of the Common Core Standards while continuing to follow the BIE's accountability system for the core academic subject areas. The BIE would provide technical assistance to the schools in the areas of standards and assessment. Local tribal community interests might include the development of standards and assessments related to tribal government, tribal history, tribal language, etc.

**1.C DEVELOP AND ADMINISTER ANNUAL, STATEWIDE, ALIGNED, HIGH-QUALITY ASSESSMENTS THAT MEASURE STUDENT GROWTH**

Select the option that pertains to the SEA and provide evidence corresponding to the option selected.

|   |  |  |
|---|--|--|
| <p><b>Option A</b></p> <p><input type="checkbox"/> The SEA is participating in one of the two State consortia that received a grant under the Race to the Top Assessment competition.</p> <p>i. Attach the State’s Memorandum of Understanding (MOU) under that competition. (Attachment 6)</p> | <p><b>Option B</b></p> <p><input checked="" type="checkbox"/> The SEA is not participating in either one of the two State consortia that received a grant under the Race to the Top Assessment competition, and has not yet developed or administered statewide aligned, high-quality assessments that measure student growth in reading/language arts and in mathematics in at least grades 3-8 and at least once in high school in all LEAs.</p> <p>i. Provide the SEA’s plan to develop and administer annually, beginning no later than the 2014–2015 school year, statewide aligned, high-quality assessments that measure student growth in reading/language arts and in mathematics in at least grades 3-8 and at least once in high school in all LEAs, as well as set academic achievement standards for those assessments.</p> | <p><b>Option C</b></p> <p><input type="checkbox"/> The SEA has developed and begun annually administering statewide aligned, high-quality assessments that measure student growth in reading/language arts and in mathematics in at least grades 3-8 and at least once in high school in all LEAs.</p> <p>i. Attach evidence that the SEA has submitted these assessments and academic achievement standards to the Department for peer review or attach a timeline of when the SEA will submit the assessments and academic achievement standards to the Department for peer review. (Attachment 7)</p> |
|---|--|--|

*1.C Did the SEA develop, or does it have a plan to develop, annual, statewide, high-quality assessments, and corresponding academic achievement standards, that measure student growth and are aligned with the State’s college- and career-ready standards in reading/ language arts and mathematics, in at least grades 3-8 and at least once in high school, that will be piloted no later than the 2013–2014 school year and planned for administration in all LEAs no*

*later than the 2014–2015 school year, as demonstrated through one of the three options below? Does the plan include setting academic achievement standards?*

The next generation of assessments aligned with the new standards is under development to advance essential skills that promote critical thinking, problem solving, and the application of knowledge. BIE, like the states, is awaiting the assessments being developed by the two consortia, so that evaluation of those assessments can take place.

- BIE will adopt interim assessments for all BIE-funded schools beginning in SY 2012-2013 and through SY 2013-2014, until national assessments are available for evaluation by BIE.
- Assessments will measure **student achievement** and **within-year student growth** in grades 3-10 for accountability purposes, but data will be available for all students taking the tests.
- In SY 2014-2015, either the interim assessment or one of the two consortia assessments will be adopted by BIE.
- Aligned CCS and ELP assessments will be adopted and administered.

### **The Bureau of Indian Education’s Transitional Assessment Plan**

The BIE has procured an assessment for all of its schools that will be aligned to the Common Core Standards for reading/language arts and mathematics. The assessment will be administered in SY 2012-2013 to all students in all grades within the BIE (including K-2 and 11-12), and will provide for the measurement of student achievement and growth.

The assessment is computer-based and adapts to the performance level of the student. The assessment strategy is called computerized adaptive testing (CAT) and is widely used in large-scale standards-based assessments. There has been over 50 years of research conducted on operational CAT systems demonstrating their psychometric soundness and equivalency, or in most cases superiority, to other testing modalities.

The testing system is comprised of a set of item banks that have been calibrated using Item Response Theory (IRT), the psychometric framework used by the vast majority of large scale testing programs in the world. When the items of a calibrated item bank are administered to students using a CAT modality, the equivalency of tests is maximized thereby ensuring fairness for all students being assessed. Because the test adapts to each student being tested, the quality of the assessment for low performing and high performing students is also maximized. In addition, the CAT testing system maximizes the reliability of test scores and placement decisions.

The BIE intends to implement an interim assessment to transition to full alignment with the Common Core Standards. The intent of the interim assessment is to measure student growth and determine grade level proficiency. The BIE has contracted with Northwest Evaluation Association (NWEA) to use NWEA’s Measures of Academic Progress (MAP) to measure student growth and use NWEA’s blended assessment to determine grade level proficiency. Over a two-year period (SY 12-13 & SY 13-14), BIE will transition from the current system of using assessments aligned to states’ standards in 23 states to a comprehensive assessment system aligned to Common Core Standards. The MAP will be the transitional assessment system used by the BIE for accountability purposes until the BIE issues a contract competition in 2014 for an assessment aligned to the

Common Core Standards (CCS) for use in school year 2014-2015. The contract competition will coincide with the public availability of the Partnership for Assessment of Readiness for College and Careers (PARCC) and the Smarter Balanced Assessment Consortium (SBAC) assessments, although the competition will be open to all vendors. See transition plan in chart below.

| <b>School Year 2012-2013</b> |                        |               |                    |                                      |
|------------------------------|------------------------|---------------|--------------------|--------------------------------------|
| <b>Term</b>                  | <b>Assessment</b>      | <b>Grades</b> | <b>CCS Aligned</b> | <b>Subjects</b>                      |
| Fall 2012                    | MAP for Primary Grades | K-2           | Yes*               | Reading, Mathematics                 |
|                              | MAP interim assessment | 3-12          | Yes*               | Reading, Language Usage, Mathematics |
|                              | MAP interim assessment | 3-12          | No                 | Science                              |
| Winter 2013                  | MAP for Primary Grades | K-2           | Yes*               | Reading, Mathematics                 |
|                              | MAP interim assessment | 3-12          | Yes*               | Reading, Language Usage, Mathematics |
|                              | MAP interim assessment | 3-12          | No                 | Science                              |
| Spring 2013                  | MAP for Primary Grades | K-2           | Yes*               | Reading, Mathematics                 |
|                              | MAP blended assessment | 3-10          | Yes*               | Reading, Language Usage, Mathematics |
|                              | MAP interim assessment | 11-12         | Yes*               | Reading, Language Usage, Mathematics |
|                              | MAP interim assessment | 3-10          | No                 | Science                              |

| <b>School Year 2013-2014</b> |                        |               |                    |   |
|------------------------------|------------------------|---------------|--------------------|---|
| <b>Term</b>                  | <b>Assessment</b>      | <b>Grades</b> | <b>CCS Aligned</b> | <b>Subjects</b>                         |
| Fall 2013                    | MAP for Primary Grades | K-2           | Yes*               | Reading, Mathematics                    |
|                              | MAP interim assessment | 3-12          | Yes*               | Reading, Language Usage, Mathematics    |
|                              | MAP interim assessment | 3-12          | No                 | Science                                 |
| Winter 2014                  | MAP for Primary Grades | K-2           | Yes*               | Reading, Language Usage and Mathematics |
|                              | MAP interim assessment | 3-12          | Yes*               | Reading, Language Usage, Mathematics    |
|                              | MAP interim assessment | 3-12          | No                 | Science                                 |
| Spring 2014                  | MAP for Primary Grades | K-2           | Yes*               | Reading, Mathematics                    |
|                              | MAP blended assessment | 3-10          | Yes*               | Reading, Language Usage, Mathematics    |
|                              | MAP interim assessment | 11-12         | Yes*               | Reading, Language Usage, Mathematics    |
|                              | MAP interim assessment | 3-10          | No                 | Science                                 |

| School Year 2014-2015 |                              |        |             |                     |
|-----------------------|------------------------------|--------|-------------|---------------------|
| Term                  | Assessment                   | Grades | CCS Aligned | Subjects            |
| Fall 2014             | Fully aligned CCS assessment | K-12   | Yes         | ELA and Mathematics |
| Winter 2015           | Fully aligned CCS assessment | K-12   | Yes         | ELA and Mathematics |
| Spring 2015           | Fully aligned CCS assessment | K-12   | Yes         | ELA and Mathematics |

\*NWEA uses a hand-alignment process to ensure that item content aligns to standards and to build goal structures based on Common Core Standards, which provide consistent groupings of standards across all tests. A robust development plan is underway to ensure full coverage of the CCS.

Below is a description of the NWEA MAP assessments depicted in the above chart.

- NWEA MAP Interim assessment: MAP Assessment administered in the Fall and Winter test windows for the following purposes: informing instruction, predicting student performance on the end of year assessment and to provide growth data.
- NWEA MAP blended assessment: NWEA end of year assessment consisting of two segments: segment one is an on-grade fixed form segment and segment two is an adaptive segment. The purpose of the blended assessment is to provide summative information about student proficiency on grade level standards and to provide interim information about student growth and achievement outside of grade level standards.

In school year 2012-2013, the design of the MAP-CCS assessment is interim and computer-adaptive for the first two assessments (i.e., fall and winter). The spring blended assessment is a grade level fixed form assessment in segment one and computer adaptive in segment two. Goal structures and items for reading, language usage, and mathematics have been created for the MAP and blended assessment, which are aligned to content but not the breadth and depth of the Common Core Standards. Additional items are under development to allow fuller measurement of the breadth and depth of the Common Core Standards. States that have implemented the Common Core Standards in school year 2012-2013 are in a similar position as BIE regarding transitioning to the Common Core Standards in that the states' assessments are aligned to the states' standards and not necessarily Common Core Standards.

The State of Utah's Local Adaptive Assessment (ULAA) is a version of the blended assessment approved by the U.S. Department of Education for pilot use in Utah in school years 2009, 2010, 2011 and 2012. The end of year assessment BIE will employ in spring of 2013 is based upon the blended model of the MAP assessment. BIE will attain full alignment to the Common Core Standards with the end of year assessment administered in spring 2014.

In its blended form, the MAP assessment meets two critical objectives of BIE's unified accountability system. First, the MAP (blended) assessment satisfies the requirement that BIE's accountability system address the student's mastery of academic content standards. The blended MAP does this by asking a series of scripted questions that directly evaluate the student's mastery of the standards. Once the scripted questions have been completed, the MAP becomes adaptive and asks questions based on the student's level of success on the scripted questions to provide an accurate level of achievement for the student (see Attachment 14). Second, the MAP (blended) assessment evaluates within-year student growth. The vertical integration of the MAP (blended) assessment's scale scoring system and its computer adaptive questioning allow the MAP (interim) assessment to align to the end of year blended MAP assessment. The result is that the scale scores are comparable from the beginning of the year to the end of the year, and from grade to grade. While the BIE's accountability system is keen to measure within year growth, the access to information on student declines across summer months and within-year from school-to-school will provide the BIE with a rich source of data on its students that it does not currently possess.

One additional capability that the use of the MAP assessment provides is that BIE can calculate a student's progress goal to proficiency on-standards three years out. While the majority of BIE students will be expected to perform on-grade-level by the end of the year, a significant number will require an extended timeline to achieve proficiency. While the BIE plans to use aggressive progress goals for its students, such goals need to be firmly anchored in reality and reflect that it is not appropriate to expect the lowest achieving students to make progress on a pace with their more gifted peers academically. The generation of three year goals is enabled by the use of the MAP assessment system.

The BIE will engage relevant stakeholders in standards setting. This process will take place during the spring of 2013 upon the completion of a full cycle of testing under the new system. The baseline year of 2012-2013 for the assessment will specify impartially-generated proficiency levels. The standards setting process will convene upon completion of SY 2012-2013 and use the data generated during the school year to inform the decisions that the standard setting panelists make about proficiency levels.

Under ESEA (P.L. 107-110 § 1111(m)), the Secretary of the Interior may select an assessment appropriate for accountability purposes for use in BIE-funded schools. The use of NWEA MAP for the interim assessment suffices the requirements for a high quality assessment to be used for accountability. As the flexibility period draws to a close and in anticipation of the reauthorization of ESEA, the BIE will hold a contract competition in 2013 for a replacement assessment for use by the BIE in its accountability system.

The assessment system will be monitored on an ongoing basis by the BIE. The performance of the assessment will be evaluated along three dimensions: the reliability of scores, the decision consistency, and decision accuracy of proficiency status placements. The BIE will work with NWEA to ensure that the assessment performs as required, producing valid and reliable evaluations of student achievement.

### **Adoption of a New Assessment System**

The BIE will adopt a single, interim assessment in SY 2012-2013 for its students bureau-wide, which is a revolutionary change in the approach to assessment for the BIE from the mandated 23 states'

assessment system. The interim assessment implemented in SY 2012-2013 will be evaluated each year. In SY 2014-2015, transition to one of the assessments developed by the two U.S. Department of Education’s standards consortia may occur.

It should be understood that BIE may choose to continue with the interim assessment system, but that will depend on annual evaluations of the interim assessments and review of the consortia options when available. Whatever assessment is eventually used, BIE will need to procure the assessments consistent with the competitive contracting requirements identified by the Federal Acquisitions Regulation (FAR). Below is a timeline for implementation of the interim assessment and transition to the consortia assessments.

| <b>Timeline for Implementation of Assessments</b> |  |   |
|---|--|---|
| <i>School Year</i>                                | <i>Assessment</i>                                    | <i>Scale used for Accountability</i>  |
| 2011-12   | 23 States’ assessments model                         | Final year for current BIE performance levels; begin field testing  |
| 2012-13   | Interim BIE assessment system                        | Use uniform cut scores based on standard setting, and for school report cards   |
| 2013-14   | Interim BIE assessment system                        | Continue with prior year’s accountability.  |
| 2014-15   | Possible transition to national assessments          | Field test national consortia assessments (or alternative) and define performance cut scores to be used across all participating states |
| 2014-15   | Possible full implementation of national assessments | Fully implement national consortia assessment (or alternative) with consortia-defined performance cut scores                            |

The above timeline coincides with the Flexibility Request timeline.

### **Assessment**

ESEA mandated the use of a “criterion-referenced” or “standards-based” assessment on which states would base their accountability determinations. In theory, the use of a standards-based assessment would allow states to gauge the degree to which their students were achieving relative to their challenging, academic standards. Essentially, states and schools are suspect of modifying their curricula to “teach to the test.” The use of a single, high stakes examination contributes to the perception of teaching to the test by delivering a clear-cut result on which accountability determinations are exclusively based on students being proficient or not proficient. The pressure placed on schools to deliver proficient scores is detrimental to the students because emphasis is placed on mathematics and reading to the disadvantage of other academic subjects. As a result, standards-based assessments fail to provide an accurate evaluation of student performance relating to area-specific knowledge on grade level matter that is not assessed.

By adopting Common Core Standards, the BIE and its colleagues in the states are setting the bar higher. Instead of “teaching to the test” the CCS are comprehensive and challenging enough that

schools must “teach up to the standards.” Changing the perspective of how standards and assessments are integrated into education requires a similar change in the assessment type and administration. Educational programs need to know where their students are performing in relation to the standards well before the spring assessment.

In particular, the BIE should provide as much feedback to the schools as it can in terms of meaningful data that guides instruction. The results stemming from standards-based assessments currently contain diagnostic information surrounding student achievement relative to the standards. However, the traditional standards-based assessment is strictly comprehensive and administered at the end of the school year in most states. Some states where bureau schools operate administer the test in the fall. What is needed to guide instruction is an assessment that is administered periodically throughout the academic year to identify student weaknesses in achievement that aligns with the high stakes, end of the year assessment that is used for accountability purposes. The NWEA MAP assessments will provide standards-based information on actual levels of student performance during the first two administrations of the assessment. The use of vertically-integrated scale scoring will allow the Computer Adaptive Test to adjust to students’ level of performance and to assist educators in preparing students for the end-of-year assessment that measures student performance on the standards directly.

### **Assessment Types and Administration**

The BIE will implement an assessment strategy that provides both formative interim feedback throughout the school year and summative results in the spring that can be used for accountability purposes. At the end of each academic year, BIE schools will assess students using a “blended model” of assessment. The blended model of the assessment consists of a scripted battery of items that evaluate the students’ achievement based on the Common Core Standards. The spring assessment will be used for accountability purposes and will contain an extensive, standards-based component to measure student achievement on the standards directly. Once the standards have been measured directly, the test will shift to an adaptive mode. Computerized adaptive tests adjust to the performance of the test taker, asking easier or tougher questions based on the student’s demonstrated level of achievement. The blended assessment fulfills the requirements of ESEA by providing a standards-based achievement test that can be used for accountability purposes, while also providing meaningful information on student growth and achievement relative to peers.

At the beginning and middle of each academic year, schools will assess using the “fully adaptive model” assessment. This version of the assessment will also be aligned to the Common Core Standards. Data provided by these first two assessments will be used to develop and deliver technical assistance to the schools aimed at improving student achievement. Several major benefits occur from the use of a fully-adaptive, computer-based assessment: the results are available almost instantaneously; student performance is more accurately evaluated; fewer items are needed to determine the student’s level of performance; students remain engaged with the test since the level of difficulty (or ease) of every question is appropriate for the student. In addition, by using a computer-based assessment throughout the school year, the students comfort with the testing modality will increase thereby decreasing any potential test-taking anxiety bias that might exist..

There are also practical benefits of using the vendor’s vertically scaled computerized adaptive test. Since the test adapts to the student, the timing of the test delivery does not need to be tied to the exact moment when the group of students has completed the material being tested. Instead, a more flexible testing window (the timeframe when testing is possible) can be used. This is also a benefit to

students that miss the days in which their peers are assessed. These students may easily make-up the missed assessment without the BIE’s vendor developing a separate make-up test form. Since each test is computer-based, the BIE will be freed of the cumbersome rules that are a necessity for safeguarding pencil and paper exams. Taken together, these benefits, minimize student testing time, maximize assessment quality, maximize student performance, and minimize administrative ease thereby promoting meaningful accountability determinations.

### **Progress Goals**

The most important benefit of using the proposed assessment system is its ability to measure student growth. Since the assessment system uses a vertical scale, any pair of test results (from the same student in the same subject) can be compared creating a measure of student growth. In addition to being able to measure student growth, the proposed assessment system facilitates individualized goal setting based on student growth. The importance of student growth goals is that they better inform accountability determinations by considering the ability of the school to *improve* student achievement on top of the simple measure of student proficiency. Both student growth and proficiency are incorporated in the BIE accountability determination, providing a better picture of the academic performance of the students at each school.

The BIE will establish student growth goals following the fall (beginning of year) assessment. Growth goals will be based on fall to spring growth meaning that growth will be calculated as the difference between spring achievement and fall achievement. The successful accomplishment of growth goals will be determined following the calculation of growth scores in the spring.

### **Generation of Progress Goals**

The BIE will employ a model for generating progress goals that are realistic, especially for students achieving well below grade level standards. The expectation that students will grow from significantly underperforming to performing proficiently on grade levels across one academic year is not realistic. This model of establishing progress goals breaks growth toward proficiency into manageable chunks to reach proficiency at the end of a three year period. While the overarching goal is to bring students up to grade level proficiency, the progress model establishes individualized growth goals that put the student on-track to achieve proficiency across a lengthier period of time. Students who, at present, attain proficiency on assessments will be challenged to make above-average growth each school year.

### **Diverse Learners**

The BIE assessment will incorporate instrument construction concepts from the Universal Design for Learning (UDL). The employment of UDL improves instrument validity and reliability by reducing practical impediments to precisely measuring student achievement from the testing instrument itself. The BIE’s assessment incorporates UDL principles into its construction, accommodating diverse learners in the general assessment and enabling students through the use of accessible questions and multiple avenues of response.

In brief, it is important to help students establish connectivity from one concept to another. The bridge between concepts can be achieved, in part, through the use of UDL principles. Consideration must also be given to how students may gather and organize information, and how they express concepts about information to demonstrate student engagement with learning. In this regard, the Common Core Standards and their emphasis on higher order thinking skills require that assessment

vendors figure out ways in which student achievement can be measured. The requirement of Common Core Standards is to break into the components of students' thought processes as they answer questions. This can also be applied to students with disabilities, students with Limited English Proficiency, and gifted and talented students.

### **Assessment of Students with Limited English Proficiency**

Please refer to section 1.B.2 for a more in-depth discussion of Limited English Proficiency in BIE schools. To the degree practicable, the BIE will tie LEP assessment on the WIDA back to student performance on the BIE accountability assessment. WIDA supports this objective generally through its domain-specific diagnostics of student language proficiency in academic content areas. A more appropriate solution – English proficiency assessments referencing the native language of the tribe served by the school – may not be practical from either a cost or development standpoint.

### **Gifted and Talented Students**

One area where the assessment is particularly valuable is in the evaluation of gifted and talented students. Because the fully adaptive assessment provides questions that are targeted to the performance level of each student, the achievement level of gifted and talented students can be measured up to their level of performance. Again, just as it is with students performing below or on grade level, the expediency with which results are obtained from the test can be used to craft curricula more appropriate to the capabilities of gifted and talented students.

### **Assessment Accommodations and Modifications**

BIE's interim assessment will accommodate students with a wide range of skills and achievement levels. The test design automatically provides one accommodation (extended time) and permits schools to select accommodations appropriate for the needs of an individual student. The following accommodations apply to all students:

#### Changes in timing or scheduling the assessment

- Extended time
- Breaks as needed
- Administer at time of day most beneficial to student

#### Test directions

- Directions should be read aloud. May be reread if needed
- Simplify language in directions
- Clarify directions

#### Changes in Test Setting

- Test an individual student in a separate setting
- Test a small group of students in a separate, but familiar location
- Minimize distractions (e.g., study carrel)

#### References and Tools

- Scratch paper
- Markers to highlight (e.g., student may use sticky note to move down the screen while reading)

## Implementation

The implementation of the interim assessment bureau-wide will commence in SY 2012-2013. At present, 138 of 174 BIE-funded schools use a common formative assessment, in addition to the respective states' assessments. The new interim version to be used by the BIE, while sharing many of the same attributes as the formative version, will be comprised of an item bank aligned with the Common Core Standards. All schools within the BIE will be required to use the new version for their accountability assessments.

## PRINCIPLE 1 OVERALL REVIEW

*Is the SEA's plan for transitioning to and implementing college- and career-ready standards, and developing and administering annual, statewide, aligned high-quality assessments that measure student growth, comprehensive, coherent, and likely to increase the quality of instruction for students and improve student achievement? If not, what aspects are not addressed or need to be improved upon?*

The BIE's plan for transitioning to and implementing college- and career-ready standards and use of high-quality assessments will dramatically reform the BIE education system, increase the quality of instruction for students and improve student achievement. Indeed, without such a transformation, BIE-funded schools will continue to be among the lowest performing in the nation. The lack of a unified accountability system has severely hampered the ability of BIE to implement school improvement initiatives. BIE's vision is that each student will learn essential concepts and skills identified in the college- and career-ready standards to prepare them for college and for careers in the 21st Century.

- Each K-12 educator will embed the essential concepts and skills in rigorous and relevant instruction informed by ongoing formative assessment.
- Each educational leader will support and ensure total instructional alignment of content, and assessment, Focused on the BIE's core essential concepts and skills.
- BIE LEAs (ADDs/ELOs) and schools will collaborate with partners to provide the necessary supports to establish and sustain structures as needed for the essential concepts and skills, instruction, and assessment.

The adoption of the college- and career-ready standards and the use of common assessments across all BIE-funded schools will allow BIE to compare student growth across the entire system, to differentiate student achievement, and to provide appropriate supports (See Attachment 15).

## PRINCIPLE 2: STATE-DEVELOPED DIFFERENTIATED RECOGNITION, ACCOUNTABILITY, AND SUPPORT

### 2.A DEVELOP AND IMPLEMENT A STATE-BASED SYSTEM OF DIFFERENTIATED RECOGNITION, ACCOUNTABILITY, AND SUPPORT

- A.i Provide a description of the SEA’s differentiated recognition, accountability, and support system that includes all the components listed in Principle 2, the SEA’s plan for implementation of the differentiated recognition, accountability, and support system no later than the 2013–2014 school year, and an explanation of how the SEA’s differentiated recognition, accountability, and support system is designed to improve student achievement and school performance, close achievement gaps, and increase the quality of instruction for students.

#### Accountability Index, Annual Measurable Objectives, and Differentiated Recognition

The BIE is pursuing an innovative method of combining its Accountability Index (AI), Annual Measurable Objectives (AMOs), and Differentiated Recognition system in such a way that the three elements are aligned for the first two years of the flexibility system (see Attachment 13). Because the BIE was required to use the accountability systems of the 23 states in which its schools were located for determining whether they met Adequate Yearly Progress requirements, schools in the BIE have been identified for school improvement statuses by differing definitions of what it means to make AYP. To level the playing field, the BIE will use the 2012-2013 school year as the baseline year for identifying schools into new Differentiated Recognition categories.

The unique opportunity for the BIE is to take advantage of the 0-100 system for generating AMOs and AI scores by using the natural quintile identification system in the flexibility request: The schools in the bottom 20% of academic performers comprise the Priority and Focus status, and the top 20% comprise the highest performing schools. The BIE segments each of these two quintiles by the Differentiated Recognition categories to derive a total of 7 categories from five quintiles.

What makes the system intuitive is the normalization of the distribution around 70. The use of quintiles around this center point renders a score that is familiar to educators and parents: it looks similar to a grading scale where 70 is the point demarcating the difference between a “C” grade and a “D” grade. Rather than using another descriptor such as a letter grade, the BIE will use the simplified 0-100 scale which provides a score comparable from AI to AMO. The differentiated recognition tied to school’s performance will be less seen as a descriptor of how the school is performing and more as activities that the school must engage as the result of its performance. After the Baseline Year and Year 1, differentiated recognition will operate independently from the AI and AMOs.

*2.A.i. Did the SEA propose a differentiated recognition, accountability, and support system, and a high-quality plan to implement this system no later than the 2012–2013 school year, that is likely to improve student achievement and school performance, close achievement gaps, and increase the quality of instruction for students?*

The BIE will implement a differentiated recognition, accountability, and support system no later than the 2012-2013 school year. The plan to implement this system is designed specifically to improve student achievement and school performance, close achievement gaps, and increase the quality of instruction for students. All schools will be subject to the flexibility accountability system unless exempted from it by a tribe's choice to elect an Alternate Definition of AYP pursuant to 25 CFR § 30.104(b).

The heart of BIE's plan is a unified system of standards, assessments, and accountability criteria, which will allow BIE to derive accurate information on school performance for status identification, accountability determinations, and support systems. BIE's efforts to improve student performance have been severely hampered by a mandate to use an accountability system based on 23 states' standards, assessments, and accountability criteria. The shift to a unified system will allow BIE to meaningfully compare schools system-wide and across state lines, thus creating a logically consistent accountability system.

By bringing together data about schools in ways that were not possible before, the BIE will have consistent and timely information concerning school performance patterns. The BIE, perhaps for the first time in a decade, will be able to implement various reforms, including:

- Set new ambitious but achievable AMOs
- Provide incentives and recognition for successful schools making the most progress
- Effect dramatic, systemic change in the lowest-performing schools
- Close achievement gaps by developing gap criteria and providing supports to narrow the gap
- Provide incentives and support to ensure continuous improvement in Title I schools
- Build capacity of the SEA, LEAs (ADDs/ELOs), and schools

### 1. Differentiated Recognition System (Principle 2 component)

The BIE's system of differentiated recognition is based upon the school performance score obtained in the Accountability Index. Further, identification into a category of recognition is the basis for specific levels of support (i.e., technical assistance, professional development) to be provided to the school. The BIE conforms to the differentiated recognition categories outlined in the Flexibility request. See chart below for the categories of recognition categories.

| <b>BIE's Differentiated Recognition System</b> |  |                        |
|--|--|------------------------|
| <i>Category</i>                                | <i>Percentile Description</i>              | <i>Percentile Band</i> |
| Reward   | Top 5%                                     | 95%-100%               |
| Performing                                     | Next 15% from Reward                       | 80%-94%                |
| Satisfactory                                   | Next 20% from Performing                   | 60%-79%                |
| Progressing                                    | 20% between Satisfactory and Transitioning | 40%-59%                |
| Transitioning                                  | Next 20% from Focus                        | 20%-39%                |
| Focus-Needs Improvement                        | Next 15% from Priority                     | 6%-19%                 |
| Priority-Turnaround                            | Bottom 5%                                  | 1%-5%                  |

Fuller descriptions of the categories are provided below.

- Reward: The top 5% of schools will be recognized as Reward schools. These schools are the highest performing schools in the BIE.
- Performing: The next top 15% band of schools is designated as Performing. These schools are doing well and potentially could enter the highest tier.
- Satisfactory: Schools in the 20% cluster below Performing are in the middle group of schools, which constitute the average of the BIE system. However, BIE schools overall perform significantly lower than the national norms, so the average is still quite low by comparison.
- Progressing: Schools falling below Satisfactory are in the top of the lower tier of schools and require support to improve.
- Transitioning: Schools falling above Focus-Needs Improvement and below Progressing are in the bottom of the lower tier and need significant support to improve.
- Focus-Needs Improvement: Schools in the 15% band of schools above the Priority category are described as Focus-Needs Improvement. This category corresponds to the Flexibility Focus category. To exit this status, these schools must meet their Annual Measurable Objective in two consecutive years to advance from the Focus-Needs Improvement status.
- Priority-Turnaround: Schools at the bottom 5% of schools are designated priority schools. Priority schools are targeted for the most intensive interventions. To exit this status, priority schools must meet their Annual Measurable Objective in three consecutive years to advance beyond Priority status.

The above categories correspond to quintiles used in the Accountability Index and the AMO models for the first two years of the flexibility system. This allows the BIE to properly identify schools for differentiated recognition on a level playing field coming out of AYP systems.

The BIE wants to establish a comprehensible accountability system and one that is fairer to its schools. A single accountability system will be adopted and the highly ineffective 23 states model will be abandoned. The 23 states model has not been successful, and the academic performance of students in the BIE system remains lackluster as a direct result of using disparate standards, assessments, and accountability criteria. Unification of the standards and assessment, and the establishment of a single standard by which all schools are judged are keys to understanding school academic performance and providing the support necessary to improve student achievement through better instruction.

The BIE's new accountability system derives its power from several sources: adoption of unified standards and assessments; giving schools credit for what their students have achieved through a growth dimension; and use of technology and statistics to simplify accountability by leveraging data. The result is that the BIE will have clearer, easier-to-use accountability determinations that are meaningful and drive the delivery of supports for school improvement.

The BIE will implement its accountability system in SY 2012-2013. The accountability system emphasizes the consolidation of standards and their measurement to a single set; the use of a single set of criteria by which accountability determinations are made and differentiation recognized; and the use of accountability data to efficiently deliver System of Support services to schools to improve instruction. Instruction and student achievement will improve through the unification of the

elements of the accountability system and the extensive use of data in identifying schools for System of Support services.

## 2. Accountability System

As discussed in the overview, the consolidation of the accountability system from those of the 23 states to one that fits the unique needs of the BIE will undoubtedly result in major efficiency gains in System of Support (SOS) service delivery. By moving to a single set of academic content standards, the System of Support can streamline services; SOS will not be dealing with a range of academic content standards that vary by state, diminishing the ability of the BIE to assist schools in the area of instruction by directly making it impractical to tailor services to the needs of schools. Using a single assessment with a common reference point makes it possible to identify and remedy specific school needs.

Another obstacle discussed in the Overview section is the small n-size problem. Because the sub-groups of Special Education and Limited English Proficient do not comprise statistically significant portions of the student populations in the vast majority of BIE schools, it is not conceptually appropriate to examine achievement gaps in schools with small n-sizes. Consequently, where the BIE assigns schools to the Focus or Priority categories, the BIE will treat the school as if there are significant achievement gaps between groups and deliver services accordingly. This allows the BIE to assign schools into a differentiated recognition category regardless of the “n-size” of student sub-groups and to impose improvement expectations on the schools consistent with the principles of reform.

Achievement gaps exist in the BIE between LEP and Special Education sub-groups and their non-sub-group peers. These gaps are statistically significant when aggregated to the bureau level. The use of the assumption for schools whose “all students” group performance qualifies the school for identification as Focus or Priority status commits the BIE to the provision of services designed to improve the performance of students in these sub-groups. Acknowledging the gaps in sub-group achievement and working to ameliorate them will improve student achievement at the school overall.

### AMOs (Principle 2 component)

The system of AMOs proposed by the BIE breaks the distribution of schools into groupings approximating quintiles. The quintile structure of the AMO system directly corresponds with the differentiated recognition system in the sense that schools are identified for an AMO track based on their status. Inasmuch as two of the quintiles are broken down into two smaller categories, there are seven status levels captured by the quintile model and assigned to an AMO track for gap reduction. Successful achievement of the AMOs on a yearly basis will lead to a reduction in the performance gap between the lowest performing schools and the highest performing schools. Likewise, high performing schools will be asked to push their students to achieve continual growth in academics. Essential elements of the system of AMOs include:

- The BIE will redefine and reset the concept of Annual Measurable Objectives.
- AMOs will be applied to the school for accountability purposes.

- Using the baseline year (SY 2012-2013) data, the BIE will normalize AI scores such that 70 represents “average,” 50 “low,” and 90 “high.” Outliers may result in some schools being identified as higher than 90 (for exceptional performance schools) or lower than 50.
- Schools will be placed into their new status and an AMO based on their Accountability Index score will be generated.
- Identification based on performance will be a structure resembling quintiles, more or less. The quintiles will correspond with the differentiated recognition system but will also call out additional categories corresponding with “High Achieving” in addition to Reward and distinguishing between Focus and Priority for the bottom 20%. This leads to a seven category system, an elaboration upon the quintile structure.
- Schools’ identification into status will determine their progression for AMOs.
- The goal is for all schools to reach 90 points on AMOs by SY 2017-2018. The goals for Focus and Priority schools will be to reach 85 or 80, respectively, during the same period of time.
- The imposition of a quintile system for generating AMOs is essentially the same thing as identifying schools based on performance gaps and setting expectations for the schools to close the gaps over a five year period of time.

The AMOs will increase annually based on schools’ aggregate performance relative to one another in the baseline year. The development of a quintile system of AMOs for differentiating school performance and delivering System of Support services optimizes the nature and level of services a school receives. At the same time, because of the normative nature of the AI and AMO systems, the targets created by quintile identification drive academic improvements at the school level through challenging but achievable goals.

AMOs will not only be created for the purpose of measuring schools, they will be set for the purpose of improving student achievement in mathematics and reading/language arts. Using the same methodology described in the 2.B section on AMOs, targets will be set for each school on these academic indicators. Achievement of the AMOs on all academic indicators will lead to the achievement of the school’s AMO on the Accountability Index.

### **Accountability Index (AI)**

The BIE proposes to implement an Accountability Index (AI) to replace the current system of Adequate Yearly Progress (AYP). The justification for the use of an AI is to bring multiple measures of school performance to bear on the accountability determination, increasing the accuracy of the accountability determination by virtue of having consulted more information in its issuance. These measures are: participation in assessments, proficiency in the subject areas of mathematics and reading/language arts as measured by assessments, within-year progress in the subject areas of mathematics and reading as measured by multiple administrations of the same assessment, attendance rate, and graduation rate. The AI will generate a performance score for each school, which is measured against an Annual Measurable Object (AMO) to arrive at an accountability determination.

The AI departs from the rigid accountability rules of AYP by giving schools credit for their achievement on each indicator. While underachievement on one indicator will not necessarily sink the school’s hopes for a satisfactory accountability determination, underachievement on multiple

indicators will appropriately reflect this result. Likewise, underachievement on one indicator with strong achievement elsewhere should produce a satisfactory determination.

- The BIE will use an Accountability Index to weight the indicators used to make an accountability determination.
- The BIE will evaluate student participation, proficiency, and progress on academic assessments. These components are weighted within the reading/language arts and math indicators for incorporation into the Accountability Index.
- The Accountability Index will also include indicators for attendance and graduation rates.
- The outcome of the Accountability Index will be a school performance score that is measured against an Annual Measurable Objective (AMO) for an accountability determination.
- A school's score in the Baseline Year identifies them for Differentiated Recognition. Scores relative to the AMO in subsequent years determine whether the school advances, declines, or remains in the same status.

Consistent with the principles of the Elementary and Secondary Education Act, the accountability determination will be based principally on student achievement as measured by standards-based assessments. 80-90% of the Accountability Index is weighted toward student participation, proficiency, and progress on assessments. The remainder of the AI is devoted to attendance and graduation rates, depending on the school's grade configuration. The indicator weights on the following table are in bold while their components are in italics. The totals of the weights for each indicator in bold should tally to 100. Likewise, the components in combination with attendance and graduation rates should also tally to 100.

| <b>Accountability Indicators</b>    | <b>K-8</b> | <b>HS</b>  | <b>HS+Elem/Mid*</b> |
|-------------------------------------|------------|------------|---------------------|
| <b>Proficiency on Assessments</b>   | <b>40</b>  | <b>36</b>  | <b>36</b>           |
| <i>Mathematics</i>                  | <i>20</i>  | <i>18</i>  | <i>18</i>           |
| <i>Reading/Language Arts</i>        | <i>20</i>  | <i>18</i>  | <i>18</i>           |
| <b>Progress on Assessments</b>      | <b>40</b>  | <b>36</b>  | <b>36</b>           |
| <i>Mathematics</i>                  | <i>20</i>  | <i>18</i>  | <i>18</i>           |
| <i>Reading/Language Arts</i>        | <i>20</i>  | <i>18</i>  | <i>18</i>           |
| <b>Participation in Assessments</b> | <b>10</b>  | <b>8</b>   | <b>8</b>            |
| <i>Mathematics</i>                  | <i>5</i>   | <i>4</i>   | <i>4</i>            |
| <i>Reading/Language Arts</i>        | <i>5</i>   | <i>4</i>   | <i>4</i>            |
| <b>Attendance Rate</b>              | <b>10</b>  | <b>0</b>   | <b>5</b>            |
| <b>Graduation Rate</b>              | <b>0</b>   | <b>20</b>  | <b>15</b>           |
| <b>Total</b>                        | <b>100</b> | <b>100</b> | <b>100</b>          |

\* Any school system with a high school and non-high school grades in its configuration.

The result of the AI calculation at the school level will be compared with the AMO assigned to the school after the baseline year. If the AI score meets or exceeds the AMO, the school will receive a satisfactory accountability determination. Likewise, if the school fails to achieve an AI score high enough to meet the AMO, the school will receive an unsatisfactory accountability determination.

## **Accountability Index: Academic Indicators**

As addressed primarily in Section 1.C, the BIE will adopt the NWEA MAP assessment for its students bureau-wide on an interim basis. This assessment will be computer-based, adaptive, and administered three times per year. The measurement of student growth will be accomplished through a system of aligned, vertical scale scoring.

It is important to note that the BIE may change assessments in SY 2014-2015 as Common Core assessments developed by the U.S. Department of Education's standards consortia will be available at that time. The BIE is committed to fulfilling the competitive contracting requirements identified by the Federal Acquisitions Regulation. This timeline is consistent with the Flexibility Request requirements and timeframe.

### **Academic Indicators: Participation Rate on Assessments**

Performance will be assessed across three areas in each academic subject: participation, proficiency, and progress. Schools are expected to assess all students appropriately, and the use of a computer-based assessment and generous testing windows promote this expectation. The mandate under ESEA to assess no less than 95% of students will be maintained. As conceived in the AI, the scaling of the participation rate indicator will reflect a distribution range running from 95% to 100% with no points given to schools with a participation rate of less than 95%. Students enrolled less than 12 weeks prior to the end of the year assessment will not be counted for participation rate calculation purposes.

Schools inappropriately assessing students receiving Special Education services will receive no credit for participation rate points. This will be determined annually through a "desk audit" of each student's official Individualized Education Program (IEP) conducted by the BIE's SEA-level Special Education Program (not by the school). The desk audit is an examination of students' IEPs as they are recorded in the Native American Student Information System (NASIS). Schools assessing students receiving Special Education services in a manner incongruent with the specification under the IEP will be stripped of all points available for participation rate in the affected academic subject area. Additionally, schools not assessing students receiving Special Education services will not receive points for participation rate and will be automatically given a "not satisfactory" accountability determination regardless of school performance otherwise.

Participation rate will be evaluated for each subject area assessed. The participation rate will be measured by dividing the number of students taking the assessment by the total number of students in the assessment pool. The assessment pool will consist of every student in grades 3-10 enrolled at any point during the testing window. At present, NASIS tracks this information and will be used as the source of information for these calculations.

### **Academic Indicators: Proficiency on Assessments**

The method for calculating academic achievement on Common Core Standards will remain the same as it was under ESEA. The proficiency rate will be the percentage of students achieving "proficient" or "advanced" scores of all students taking the assessment. However, the use of an AI allows the BIE to move away from set AYP-style AMOs by which academic indicator performance is measured categorically ("Met" or "Not Met"). Instead, the percentage of students scoring

proficiently will be used. The amount of AI points assigned to the academic proficiency indicator will be the same proportion as the students achieving proficiency.

### **Academic Indicators: Progress**

The BIE will improve its accountability system by assigning credit to schools for student progress in academic achievement across the school year. By assessing three times per year, the BIE has the opportunity to measure how students grow relative to the Common Core Standards. The measurement of student progress across an academic year solves several major problems. It provides an additional measurement of student performance rather than relying upon proficiency alone. It serves as a barometer of the educational institution and how well it addresses student needs when they are identified. It guides the System of Support in identifying appropriate resources for school improvement and establishes a routine of support to address those needs. Finally, it gives schools credit for the gains that they make with students who do not reach the level of proficiency.

Just as the AMO in the new accountability system pushes schools to meet ambitious but attainable goals, the creation of progress goals for students replicates the same concept at the individual level. Upon the administration and completion of the beginning of the year accountability assessment, each student will receive a progress goal (sometimes referred to as a “growth target”) that they will try to attain on the end of the year assessment. The AI measure for progress is the percentage of students meeting their progress goals on the end of the year assessment.

Operationalizing the generation of progress goals requires extensive business rules to effectively implement. For example, students not enrolled at the beginning of the year will be assessed upon arrival at the school. For students arriving too late in the academic year (less than 12 weeks prior to the end of the year assessment), it is not practical to generate progress goals for them and they would need to be excluded from the AI.

The goals themselves will need to be ambitious but achievable. The overall goal of the BIE accountability system is to produce students that can thrive in college or in careers upon completion of high school. Therefore, the BIE will set goals that push students to achieve at least on par with their peers nationally in terms of within year progress on academic standards. Ideally, BIE schools would be in a position to expect that such growth would be sufficient to ensure preparedness upon transition from secondary schooling.

There are two methods for setting progress goals: normal progress and extended progress. Establishing progress goals for within-year growth for students achieving well below the proficiency standards is unrealistic. Low achieving students will be hard-pressed to surge past their higher achieving cohorts in terms of academic progress. The BIE therefore will set higher goals for students who perform well below their cohort, but on-grade-level proficiency in a single academic year will not be expected.

The model for establishing these progress goals is to project a path to on-grade-level proficiency for each student after three years of instruction. Given that the progress goal is established at the beginning of the year assessment, proficiency would be projected at the end of the two subsequent academic years. Once the proficiency level that needs to be attained is established, the progress goal will be the proficiency scale score minus the fall, current year scale score divided by three plus the fall, current year scale score.

As with the proficiency portion of the academic indicators, progress will be scaled and incorporated into the AI. The measure itself is simple: it is the percentage of students meeting their progress goal not including students for whom a goal was not generated (due to late enrollment). In the AI, proficiency and progress will be weighted equally within each academic indicator (mathematics and reading).

### **Accountability Index: Non-Academic Areas**

The BIE proposes to use non-academic indicators to account for 20% of the AI score. For all BIE schools this will include attendance rates (valued at 10% of the AI). The remaining 10% will include a mix of graduation rates (high schools only) and other factors such as the amount of community engagement and/or native language and cultural programs offered.

The mandated use of the U.S. Department of Education's Adjusted Cohort Graduation Rate (ACGR, or 4-year on-time rate) is not reflective of BIE's completer patterns. Schools that may be very successful in keeping students in-school rather than dropping-out are not receiving credit for these students when they remain in the school and graduate with a regular diploma. The BIE is looking at ways in the Accountability Index to Reward schools with students who do not graduate on-time for keeping these students in school until they do graduate.

The BIE is also exploring ways to modify these rate indicators for high schools to give credit to them for preparing students for college and career as well. In particular, the BIE would like to give credit to schools for graduating students beyond the traditional timeframe. As the BIE serves students up to 22 years of age, it is appropriate to consider students graduating beyond the on-time norm as successes for the school. But in other areas, such as dual enrollment, advanced placement, or continuation on to college, BIE schools need to be given credit for their success in encouraging the continued educational development of their students.

Alternatively, the BIE is exploring options by which other measures of school performance may be selected by the schools for incorporation into their accountability determination. For instance, many states have adopted college-readiness measures as part of their Flexibility Request. The BIE may make the option available to high schools to allow them to demonstrate student preparedness for post-secondary education through advanced placement, dual enrollment, or designated college preparatory courses of study. Similar indicators could also be developed around community engagement by the school, native language, cultural programs, or other areas where tribes express the desire for their culture to be reflected in the accountability system.

Under present statute, the BIE makes available to tribally-controlled schools the option of an Alternate Definition of Adequate Yearly Progress, in accordance with 25 C.F.R. § 30.104(b). However, no governing tribes or school boards of tribal schools have to date successfully developed an Alternate Definition of AYP. The requirements of Alternate AYP are so high (should successfully meet with U.S. Department of Education Peer Review processes: 25 C.F.R. § 30.113) and the resources are so scarce that, even with Technical Assistance provided by the BIE (25 C.F.R. § 30.109), the process is arduous.

The BIE proposes that tribes be allowed to craft indicators that reflect their values (i.e., language, culture, history) that satisfy the Alternative AYP mandate. The new indicators would fall within the

15% guidelines proposed by the Common Core Standards. The BIE would provide technical assistance to the schools in the areas of alternative standards and assessment, consistent with Interior regulations.

The benefit of using the 15% local standards provision is that it allows tribes to customize the accountability system in a manner that is reflective of their values. The BIE will reshape Alternate AYP to reflect academic content standards and assessments valued by tribes and provide them with Technical Assistance accordingly. By doing this, the BIE is redefining the scope of Alternate AYP to be an area where the greatest chance of success can be realized: the development and measurement of locally-created standards.

### **Accountability Index: Addressing Disproportionality in Sub-group Achievement**

One facet unique to ESEA was its emphasis on setting the same rigorous academic objectives for all categories of students. In addition to the “all students” group, only students receiving Special Education services or identified as Limited English Proficient are identified for inclusion into a sub-group category (i.e., Special Education and LEP) within the BIE. Given that the ethnic population of the BIE is homogenous – non-migrant by definition – and uniformly high poverty, the identification of other sub-groups for AYP purposes is unnecessary and reflected in the Final Agreement Between the Department of Education and the Department of the Interior.<sup>24</sup>

Yet, one of the principles guiding the creation of the BIE’s AI is that no student should be counted more than once for accountability. The principle from ESEA is that students identified in the Special Education or LEP sub-groups would be factored into the AYP calculation either two or three times more than non-disabled or non-LEP students. Effectively, this assumption gave additional weight to students in sub-groups relative to non-sub-group students in the school. While the intent of the law was to “leave no child behind” by referencing students in sub-groups as receiving disproportionate and arguably inferior education services based on their sub-group, the reality is that these students had a disproportionate influence on the AYP determination.

The BIE seeks to revise the influence student sub-groups have on the accountability system. Instead of weighting the accountability calculations in favor of sub-groups, the BIE will examine disproportionate achievement in student sub-groups relative to non-group students in the assessment of “Rewards” and “Penalties” after the AI calculation is complete. The result of this approach is that no student has any greater influence over the calculation of the AI than any other student. However, schools will still be held accountable for the proficiency and progress levels of students in the Special Education and LEP sub-groups.

The BIE method of examining student achievement in sub-groups, in fact, has the added benefit of comparing sub-groups with non-sub-group peers directly rather than making the comparison of the sub-group with the “all students” group. The latter method for examining sub-group performance, usually through the generation of gap measures, is not theoretically sound because sub-group students are contained in the all students group. In practical terms, such a grouping may logically overcome small n sub-group issues by virtue of building a “cushion” into the all students group: if there is lower performance in the sub-group, incorporating the sub-group’s students into the all

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<sup>24</sup> Final Agreement, section 2.B.i.

students group lowers the performance of the all students group, diminishing any gap one might observe between the two while rendering more significant the observation of the gap itself.

However, this approach to addressing sub-group performance disparities is unsatisfactory because a true comparison of students in the sub-group with the non-sub-group population is not obtained. The effect of calculating accountability in this manner is to mask sub-group performance trends relative to the all student group. The BIE method for accounting for sub-group performance does not give sub-groups undue influence over the AI calculation, but examines performance trends after the fact for significant performance gaps and assigns rewards or penalties accordingly.

The system of rewards and penalties under the new accountability system is based on discrimination of sub-groups versus their non-sub-group peers. It is important to recognize that in some instances in BIE-funded schools, the entire school may be included in the LEP sub-group, precluding any meaningful comparison with non-LEP peers.

| <b>Disproportionality in Achievement</b> |       |                         |
|--|-------|-------------------------|
| 2 AI Point Reward                        | 2 SD  | Above the Mean          |
| 1 AI Point Reward                        | 1 SD  | Above the Mean          |
| Neither                                  | <1 SD | Within a SD of the Mean |
| 1 AI Point Penalty                       | 1 SD  | Below the Mean          |
| 2 AI Point Penalty                       | 2 SD  | Below the Mean          |

Calculation of disproportionality will be through the use of a difference of means test of significance (t test) between two means of two populations: specifically between a particular subgroup and the general school population minus the subgroup students. Schools with sub-groups achieving growth or proficiency levels in mathematics or English/language arts that are one standard deviation above the mean in comparison with their non-sub-group peers will receive an award of 1% toward the AI for this subject area. Achievement above their peers by two full standard deviations will be rewarded with a 2% bonus on the AI. Similarly, underperformance by one and two standard deviations in comparison with the non-sub-group peers will earn the school a 1% and 2% penalty, respectively, to the relevant portion of the AI.

The BIE will impose a threshold of a 15 student minimum for calculation of the disproportionality test. The minimum number of 15 is low enough that schools may qualify for sub-group calculation, but high enough that the Student's T-distribution used for statistical inferences on small sets of data begins to approximate the normal distribution used on larger sets of data.<sup>25</sup> Overall, no minimum number is required for calculation in the AI system.

### **Statistical Analyses**

<sup>25</sup> The Student's T-distribution (commonly known as the T-distribution) is a family of continuous probability distributions that arises when estimating the mean of a normally distributed population in situations where the sample size is small and population standard deviation is unknown.

On an ongoing basis, the BIE will perform statistical analyses of academic indicator performance. These analyses will be in addition to the statistics generated by the accountability system. The reasons for the analyses are to generate deeper understanding of performance trends in the BIE that go beyond the measurement of academic achievement and to ensure that the AI is performing as desired.

*Sub-Group Analysis at the Bureau Level.* As discussed at great length already, the performance of sub-groups at the school-level is difficult to measure reliably in the BIE. However, when aggregated to the bureau level, the number of students in the sub-group population is easily sufficient to obtain reliable measures. The importance of sub-group analysis at the bureau level is that it serves to justify the course of the accountability system in terms of support services.

Specifically, the contention that the BIE makes in this Flexibility Request is that, while it is not statistically sound to use sub-groups for most of BIE's schools in the accountability system, the BIE can and will improve sub-group performance by treating schools identified for Focus and Priority status as if they have performance gaps in their sub-group achievement. With the implementation and establishment of the baseline for the new accountability system, the BIE should observe a closing of the performance gap between students in sub-groups and their non-sub-group peers in Focus and Priority schools as the accountability system takes full effect. If the BIE cannot close the achievement gap as identified at the bureau level, then the accountability system must be changed to better address sub-group needs.

*Classroom and School Level Analyses.* The BIE is currently working with relevant stakeholders – including its teachers union – in determining precisely how data will be used in educator evaluations. Beyond educator evaluations, the use of classroom and school level data for the identification of trends in student achievement will drive the System of Support. This has been mentioned multiple times and is rather straight-forward. The ability to take assessment data and link it back to classrooms very quickly allows the BIE to work with educators to improve instruction to meet student needs.

What is less obvious is that the BIE can use the same information to determine the success of Professional Development and school improvement activities. Because the BIE will use data to determine what range of supports to deploy to a school to improve the academics there, the BIE will be able to use subsequent data to determine whether the supports actually improved achievement. Over time, the consideration of data relative to the delivery of support services to the school will help the BIE improve its services or to develop alternatives that may work better.

*Student Level Analyses and Bureau Level Applications.* As the sophistication of the BIE's technology infrastructure improves, the BIE will be able to link more data together relevant to the student's academic career. Already, the Native American Student Information System (NASIS) accommodates Common Core Standards and Personal Learning Plans. Personal Learning Plans are similar to Individualized Education Programs. Importing students' assessment results into NASIS allows the BIE to connect student achievement across multiple areas: courses, performance on Common Core Standards, and the programs in which the student may be involved. This will require significant work to achieve, but engaging in the necessary work will bring more information about the student to bear on their education. Pulling together all the relevant information about a student into a single place greatly enables educators to have a more profound effect on the student.

The aggregation of student data across multiple domains of information can provide a powerful tool for policymakers. The BIE has started the process by which a system wide Longitudinal Data System (LDS) will be constructed. In its first phase, the BIE will develop a limited data warehouse and access this data using a “dashboard” concept. The dashboard will provide decision makers in the BIE the ability to graphically display trends captured for other reasons but until now difficult to assemble for the purpose of shaping policy.

The goal of the BIE in its data usage is to eventually and regularly engage in primary research: the development of knowledge about Indian students that can be used to improve the educational services the BIE delivers. This is a lofty goal when compared with where the BIE is currently. The activities involved with program implementation and compliance monitoring and the inefficiency of the accountability system effectively preclude primary research. The meaningful data generated by the new accountability system will help the BIE both through internal, primary research and through the involvement of external, academic researchers in Indian education.

*Calibrating the Accountability Index.* The BIE will work with its partners to calibrate the Accountability Index as data come in. Generally, changes to the AI will only be made once per year. But this process should not be left to chance. Given that valid and reliable data are readily available during the school year, the BIE will attempt to uncover potential problems in the implementation of the AI long before the data roll in for the accountability determination.

### **3. Support System**

The BIE’s support system is designed to improve student achievement and school performance, close achievement gaps, and increase the quality of instruction for students.

#### **Incentives and Recognition (Principle 2 component)**

BIE will provide incentives and recognition for successful schools making the most progress. Schools in the reward category – both Performing and Progress – will be afforded flexibility on their continuous improvement process. Schools will be able to select from a group of effective practice indicators that the school chooses to employ, such as the Danielson Model of Effective Schools or the Lezotte Model of Effective Schools, and track their continuous school improvement process in the Native Star system. In other words, successful schools will be able to fine tune their continuous improvement progress with ongoing support of that effort provided. Technical assistance will be provided as requested even from outside resources.

Also, reward schools will submit an application to be recognized as a Blue Ribbon School or a National Title I Distinguished School. BIE will assist the schools with their applications and will cover the registration and travel cost for these recognition events. BIE will publicly recognize the Reward Schools on the BIE’s web-site and send a BIE dignitary to honor the school at a school assembly and at high-level and/or national BIE events.

#### **Dramatic, Systemic Change in the Lowest-performing Schools (Principle 2 component)**

BIE utilizes funds from the ESEA state set-aside for school improvement – 1003(a) and 1003(g) – to support targeted professional development efforts that ensure Associate Deputy Director (ADD) offices, Education Line Offices (ELO), and schools have sufficient support for implementation of

interventions in the lowest performing Priority and Focus schools and other lower performing schools identified in BIE's differentiated recognition system (i.e., transitioning and progressing).

BIE's differentiated recognition system identifies both high performing and low performing schools, but will concentrate both supports and interventions on the lowest performing schools in BIE's system. Supports and interventions will match the needs of the schools and will be of duration that enables the schools to reach their goals. Below is a summary of supports and interventions to be provided to schools, from lowest performing to higher-level performing:

#### Priority-Turnaround

- This includes priority schools (at least 5% of lowest performing in BIE's system as determined by the BIE's accountability index).
- For these schools, their ADDs/ELOs will be required to intervene and conduct a comprehensive, on-site diagnostic review to pinpoint problem areas.
- The ADDs/ELOs will be required to meet with the tribal officials and school boards to present the data and problem areas, followed by quarterly collaboration with school boards and School Leadership Teams.
- Schools must conduct self-assessment using the Transformation indicators and develop a school improvement plan in the Native Star system.
- Schools must contract with a BIE-approved turnaround partner to implement reform plans.
- Priority schools have the following options:
  - Implementation of a Turnaround Model replacing the principal; screening existing school staff and rehiring no more than half the teachers; adopting a new governance structure; and improving the school through curriculum reform, professional development, extending learning time, and other strategies;
  - Implementation of a Transformation Model replacing the principal and improving the school through comprehensive curriculum reform, professional development, extending learning time, and other strategies.
- For BIE-operated schools that fail to demonstrate improvement after three years, the BIE's Academic Achievement Office will intervene.
- For tribally-controlled schools that fail to demonstrate improvement after three years, the BIE will work with tribal officials to intervene.
- Supports will include online resources, and technical assistance from the approved turnaround partner, the BIE's intervention implementer (i.e., CORE), the data analysis specialist, and the BIE's turnaround team.
- On-site technical assistance visits will be conducted each month.
- Specialists will convene each month to assess the implementation of recommendations provided and determine next steps.

#### Focus-Needs Improvement

- This includes Focus schools (at least 15% of lowest performing above the 5% priority schools in BIE's system as determined by the BIE's accountability index).
- For these schools, their ADDs/ELOs will be required to intervene and conduct a comprehensive, on-site diagnostic review to pinpoint problem areas.
- The ADDs/ELOs will be required to meet with the tribal officials and school boards to present the data and problem areas, followed by semi-annual collaboration with the school board and School Leadership Team.

- Schools must conduct a self-assessment using the 99 Rapid Improvement Indicators and develop a plan in the Native Star system.
- Schools must contract with a BIE-approved turnaround partner to implement reform plans.
- For BIE-operated schools that fail to demonstrate improvement after three years, the BIE’s Academic Achievement Office will intervene.
- For tribally-controlled schools that fail to demonstrate improvement after three years, the BIE will work with tribal officials to intervene.
- Specific interventions will vary depending on the needs of the school and their specific performance indicators. Examples include extended learning time, targeted reading and mathematics supports, professional development and implementation assistance.
- Supports will include online resources, and technical assistance from the approved turnaround partner, the BIE’s Intervention Implementer (CORE), the data analysis specialist, and the BIE’s turnaround team.
- On-site technical assistance visits will be conducted each month.
- Specialists will convene each month to assess the implementation of recommendations provided and determine next steps.

#### Transitioning & Progressing

- This includes all other BIE schools with less than 60% of their students proficient in Reading/Language Arts and Math.
- For these schools, their ADDs/ELOs will be required to intervene and conduct a comprehensive, desk-top diagnostic review to pinpoint problem areas assessing the 99 Rapid Improvement indicators and developing a plan in the Native Star system and must contract with a BIE-approved turnaround partner to implement reform plans.
- The ADDs/ELOs will be required to meet with the tribal officials and school boards to present the data and problem areas.
- Schools must contract with a BIE-approved school improvement partner to implement their improvement plans that would Focus on instructional practice, according to specific needs of the school and their specific performance indicators. Examples include extended learning time, targeted reading and mathematics supports, professional development and implementation assistance.
- Supports will include online resources, and technical assistance from the approved school improvement partner, the data analysis specialist, and the BIE’s turnaround team.
- Teleconference will be scheduled each month through the ELO.
- The school improvement providers will convene each month with the ELO to assess the implementation of recommendations provided and determine next steps.

#### **Close Achievement Gaps (Principle 2 component)**

The achievement gap measures the performance of the lowest achieving students in a school system in terms of whether their growth is narrowing the system’s achievement gap.

The Flexibility Request is most concerned with closing the achievement gap between students in defined subgroups and some higher standard of comparison which is determined by the SEA. Of the states submitting Flexibility Requests, some are using a super subgroup strategy or a consolidated set of subgroups strategy due to insufficient n-size of certain subgroups. Some states also have taken the approach of lowering the n-size to hold more schools accountable.

The super-subgroup approach does not work for the BIE as, in some instances, the subgroups are either too small to be significant (less than 15) or too large to be distinct from the student population that is not members of the subgroup. The BIE approach is to examine sub-group performance over time at the bureau level and to evaluate it at the school level when a sufficient n-size is met. Where disproportionality in achievement is found through the use of a t-test, the BIE will act swiftly to address the problem.

Moreover, the accountability system of the BIE is bringing the principles of the Individualized Education Program from the Special Education area to the general student population; at least in one major way. The BIE's assessment system and its emphasis on student-level progress goals mirrors the creation of goals in Special Education IEPs. Student assessment results will lead to specialized, differentiated instruction in the classroom for all students. In essence, rather than "mainstreaming" Special Education students into the general classroom, the BIE will be applying principles of effective Special Education programs to the general student population by emphasizing the importance of student growth through appropriate differentiated instruction. Where SWD are concerned, the general classroom environment will be far more hospitable to providing them the services they require.

Limited English Proficient students will also benefit from this differentiated instruction classroom paradigm. However, as many LEP students are identified as such due to concerns surrounding native languages in their settings, the BIE will not be able to systematically address LEP students with the accountability system. Initiatives within the BIE are being refocused to address native language instruction as a means to improve student achievement. As the BIE serves more than 200 tribes and by extension a considerable number of native languages, crafting supports for native language instruction and English language instruction tailored to the needs of specific native language speakers must take place over the long run.

### **Incentives and Support for Continuous Improvement (Principle 2 component)**

BIE will provide incentives and support to ensure continuous improvement in Title I schools, which in the BIE system encompasses all schools. BIE utilizes funds from the ESEA state set-aside for school improvement – 1003(a) and 1003(g) – to support cross-agency targeted, collaborative professional development efforts that ensure Associate Deputy Director (ADD) offices, Education Line Offices (ELO), and schools have sufficient support for implementation of interventions in Priority schools, Focus schools, and other Title I schools identified under the BIE's differentiated recognition, accountability, and support system.

BIE will identify both high performing and low performing schools, but will Focus both supports and interventions on the lowest performing schools in BIE's system. Supports and interventions will match the needs of the schools and will be of duration that enables the schools to reach their goals. BIE will establish one "state-wide" differentiated system of support for all BIE-funded schools, that will include the high performing and high progress (reward) schools, the lowest performing (Focus and Priority) schools, and those schools in the middle range (Transitioning, Progressing, Satisfactory, and Performing).

## Build Capacity of the SEA, LEAs, and Schools (Principle 2 component)

In the BIE system, Education Line Offices (ELOs) function essentially as Local Education Agencies (LEAs) or districts. The BIE provides the following capacity-building activities to Education Line Offices and schools to ensure comprehensive monitoring of and technical assistance for implementation of interventions in Priority and Focus schools:

- Mandatory training regarding the requirements and timelines related to the school improvement process and implementation of interventions.
  - BIE reviews the ELO approved school improvement plans following the presentation to the local school board to ensure compliance and potential for success.
  - Priority schools: the BIE conducts once a month monitoring and technical assistance visits to each Priority school. These visits include: a comprehensive interview with the principal; Focus groups with teachers, parents, and students; and classroom observations.
  - Focus Schools: the BIE conducts on-site monitoring and technical assistance visits once a school quarter to each Focus school. These visits include: an interview with the principal; Focus groups with teachers and parents; and classroom observations.
  - Review the electronic school improvement plans and progress reports that are part of the BIE Native Star online tool.
  - Develop, train, and implement regional System of Support (SOS) to assist schools on utilization of the teacher and leader standards.
  - Train the regional SOS on the implementation and alignment of the Common Core State Standards and assessments.
  - Develop and provide data team training to regional SOS to increase staff effectiveness and inform instruction.
  - Develop supports for professional collaboration which Focuses on school climate and high expectations and collaborative teaching practices.
  - Develop tools, practices and procedures to ensure parental and family engagement.
  - Develop and implement interventions and instructional strategies for all students including Limited Reading Proficient students and Students with Disabilities.
  - Develop and train on the use of common formative and summative assessments.
  - Data coaching using NWEA MAP assessments data, BIE’s NASIS data, BIE’s Native Star school improvement data, and other resources.
  - Strategic planning for implementing Common Core State Standards and high-quality assessments systems.
  - Strategies for re-purposing resources (i.e., fiscal, human, technology, facilities); building community partnerships and partnerships with social service agencies and other providers; and leveraging a variety of data sources to support improvement efforts.
  - Build capacity to support leadership practices to support improved teacher effectiveness.
- a. *Does the SEA’s accountability system provide differentiated recognition, accountability, and support for all LEAs in the State and for all Title I schools in those LEAs based on (1) student achievement in reading/language arts and mathematics, and other subjects at the State’s discretion, for all students and all subgroups of students identified in ESEA section 1111(b)(2)(C)(v)(II); (2) graduation rates for all students and all subgroups; and (3) school performance and progress over time, including the performance and progress of all subgroups?*

All schools in the BIE system are Title I schools. The Education Line Offices, in tandem with the Associate Deputy Director offices, function as LEAs, although NCLB designated schools as LEAs for some purposes.

BIE's accountability system provides differentiated recognition, accountability, and support for all Title I schools based on: 1) student achievement in reading/language arts and mathematics, and other subjects at the State's discretion, for all students and all subgroups of students; 2) graduation rates for all students and all subgroups; and 3) school performance and progress over time, including the performance and progress of all subgroups.

The accountability determination of BIE's new accountability system will be based principally on the academic indicators of reading/language arts and mathematics along with attendance rate and graduation rate. The BIE does not currently differentiate between the required sub-groups identified in ESEA due to its unique student population and according to the Final Agreement between the Department of Education and the Department of the Interior.

The attainment of the AMO in the Accountability Index will require that all students, regardless of sub-group identification, perform to their potential over time. Inconsistent achievement and graduation trends based on sub-group performance will be identified by the accountability system and addressed. The way in which this will be accomplished is through statistical diagnostics that track school performance and aggregate sub-group performance (e.g., status-level of Priority, Focus, and reward). Hypothetically, schools improving in their accountability determinations over time should see a corresponding improvement in sub-group achievement in aggregate. Without this positive correlation, the BIE will re-examine its proposal for ensuring school improvement through increasing student-level academic achievement specifically for the purpose of identifying weaknesses in sub-group education program implementation.

The BIE's reconfigured Annual Measurable Objective (AMO) uses statistical grouping of all BIE schools to impose categorical identifications. Identification into categories will determine the AMO for each school in the subsequent year. By SY 2017-2018, all BIE schools will be expected to attain the AMO of 90.

*b. Does the SEA's differentiated recognition, accountability, and support system create incentives and provide support that is likely to be effective in closing achievement gaps for all subgroups of students?*

BIE's differentiated recognition, accountability, and support system will create incentives and provide support that will benefit all subgroups of students. BIE will identify both high performing and low performing schools. Incentives will be provided to reward schools demonstrating success. Supports and interventions will be directed to the lowest performing schools in BIE's system. Supports and interventions will match the needs of the schools and will be of duration that enables the schools to reach their goals.

Schools identified with achievement gaps, which will encompass underperforming students generally and students in subgroups, will be provided additional supports designed to reduce achievement gaps. BIE has retained a vendor to provide a range of support to School Improvements Grant (SIG) recipients. These services will be expanded to serve lowest performing schools.

- c. *Did the SEA provide a plan that ensures that the system will be implemented in LEAs and schools no later than the 2012-2013 school year?*

The BIE presently has no real accountability system of its own, instead borrowing from the accountability systems of the states in which its schools are located. Therefore, the BIE transition plan is Focused entirely on the future. The plan for the BIE is to implement the new accountability system in SY 2012-2013.

- 2.A.ii Select the option that pertains to the SEA and provide the corresponding information, if any.

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| <p><b>Option A</b></p> <p><input checked="" type="checkbox"/> The SEA includes student achievement only on reading/language arts and mathematics assessments in its differentiated recognition, accountability, and support system and to identify Reward, Priority, and Focus schools.</p> | <p><b>Option B</b></p> <p><input type="checkbox"/> If the SEA includes student achievement on assessments in addition to reading/language arts and mathematics in its differentiated recognition, accountability, and support system or to identify Reward, Priority, and Focus schools, it must:</p> <p>a. provide the percentage of students in the “all students” group that performed at the proficient level on the State’s most recent administration of each assessment for all grades assessed; and</p> <p>b. include an explanation of how the included assessments will be weighted in a manner that will result in holding schools accountable for ensuring all students achieve college- and career-ready standards.</p> |
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BIE includes student achievement only on reading/language arts and mathematics assessments in its differentiated recognition, accountability, and support system and to identify Reward, Priority, and Focus schools.

**2.B SET AMBITIOUS BUT ACHIEVABLE ANNUAL MEASURABLE OBJECTIVES**

Select the method the SEA will use to set new ambitious but achievable annual measurable objectives (AMOs) in at least reading/language arts and mathematics for the State and all LEAs, schools, and subgroups that provide meaningful goals and are used to guide support and improvement efforts. If the SEA sets AMOs that differ by LEA, school, or subgroup, the AMOs for LEAs, schools, or subgroups that are further behind must require greater rates of annual progress.

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|---|--|--|
| <p><b>Option A</b></p> <p><input type="checkbox"/> Set AMOs in annual equal increments toward a goal of reducing by half the percentage of students in the “all students” group and in each subgroup who are not proficient within six years. The SEA must use current proficiency rates based on assessments administered in the 2011–2012 school year as the starting point for setting its AMOs.</p> <p>i. Provide the new AMOs and an explanation of the method used to set these AMOs.</p> | <p><b>Option B</b></p> <p><input type="checkbox"/> Set AMOs that increase in annual equal increments and result in 100 percent of students achieving proficiency no later than the end of the 2019–2020 school year. The SEA must use the average statewide proficiency based on assessments administered in the 2011–2012 school year as the starting point for setting its AMOs.</p> <p>i. Provide the new AMOs and an explanation of the method used to set these AMOs.</p> | <p><b>Option C</b></p> <p><input checked="" type="checkbox"/> Use another method that is educationally sound and results in ambitious but achievable AMOs for all LEAs, schools, and subgroups.</p> <p>i. Provide the new AMOs and an explanation of the method used to set these AMOs.</p> <p>ii. Provide an educationally sound rationale for the pattern of academic progress reflected in the new AMOs in the text box below.</p> <p>iii. Provide a link to the State’s report card or attach a copy of the average statewide proficiency based on assessments administered in the 2011–2012 school year in reading/language arts and mathematics for the “all students” group and all subgroups. (Attachment 8)</p> |
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**Option A:**

*Did the SEA set its AMO’s so they increase in annual increments toward a goal of reducing by half the percentage of students in the “all students” group and in each subgroup who are not proficient?*

i. *Did the SEA provide the new AMO’s and the method used to set these AMO’s?*

The BIE is resetting its Annual Measurable Objectives (AMOs) using Option C. This option was selected because it facilitates the implementation of a new accountability system beginning in SY 2012-2013. This accountability design is based upon multiple performance indicators indexed into an overall score (and subsequent rating). The BIE plans to establish performance standards and applicable metrics necessary to transform data from different scales into the AI's scale. The AMOs for school year (SY 2011-2012) will remain unchanged.

The BIE must reset the AMO system entirely and without reference to current test scoring patterns exhibited by schools. Because the most recent round of testing (school year 2011-2012) was completed using the assessments of the 23 states where BIE schools are located, it is impossible to equate scores between schools in different states. The BIE must engage in a baseline year using a single assessment bureau-wide to derive accurate, consistent data on school performance prior to implementing an AMO system in Year One of the full flexibility system.

The AI affords each BIE school the opportunity to demonstrate improvement in several areas against AMOs that are both ambitious and achievable. Setting differential targets for school performance reflects the current conditions in classrooms and will motivate educators and school leaders to improve their overall school's performance. The expectation is that the BIE's schools will improve performance towards the goal in 2017-2018 of 90 AI points, by drawing more attention to their current academic performance and setting an ambitious long-term goal.

In brief, the BIE will utilize AMOs in the following manner:

- The BIE will reset and redefine the concept of Annual Measurable Objectives.
- AMOs will be applied to the school for accountability purposes.
- Using the baseline year (SY 2012-2013) data, the BIE will normalize indicator scores such that 70 represents “average,” 50 “low,” and 90 “high.” Some schools that are statistical outliers when the data are normalized may be above 90 or below 50.
- Schools will be placed into their new status and an AMO based on their Accountability Index score.
- Identification based on performance will be a structure resembling quintiles. The quintiles will correspond with the differentiated recognition system. The top and bottom quintile will be further divided into two smaller parts to yield seven AMO trajectories. The division of the quintiles is in response to Differentiated Recognition categories outlined by the U.S. Department of Education.
- Schools' identification into status will determine their progression for AMOs.
- The goal is for schools in the top three quintile ranges to reach 90 points on AMOs by 2017-2018 school year.
- The goal is for schools in the bottom two quintile ranges to reach 80 or 85 points on AMOs by the 2017-2018 school year.
- The imposition of a quintile system for generating AMOs is essentially the same thing as identifying schools based on performance gaps and setting expectations for the schools to close the gaps over a five year period of time. Because the 2012-2013 school year is the Baseline Year and schools will not be identified into status until Year One (immediately following the Baseline Year), Differentiated Recognition will reflect both AI and AMOs for the first two years of the flexibility system. Beyond these two years, Differentiated Recognition will reflect school performance.

## AMO Approach

The approach below provides a macro-level set of steps used in determining a school's overall accountability index (AI). The actual beta-testing, including the transformation constants needed to convert data from different scales onto the common AI 0-100 scale will be conducted in the spring of 2013. This testing will demonstrate for each school how each indicator contributes to the overall score. The goal will be to establish AMOs for all schools given their relative starting position during the baseline year.

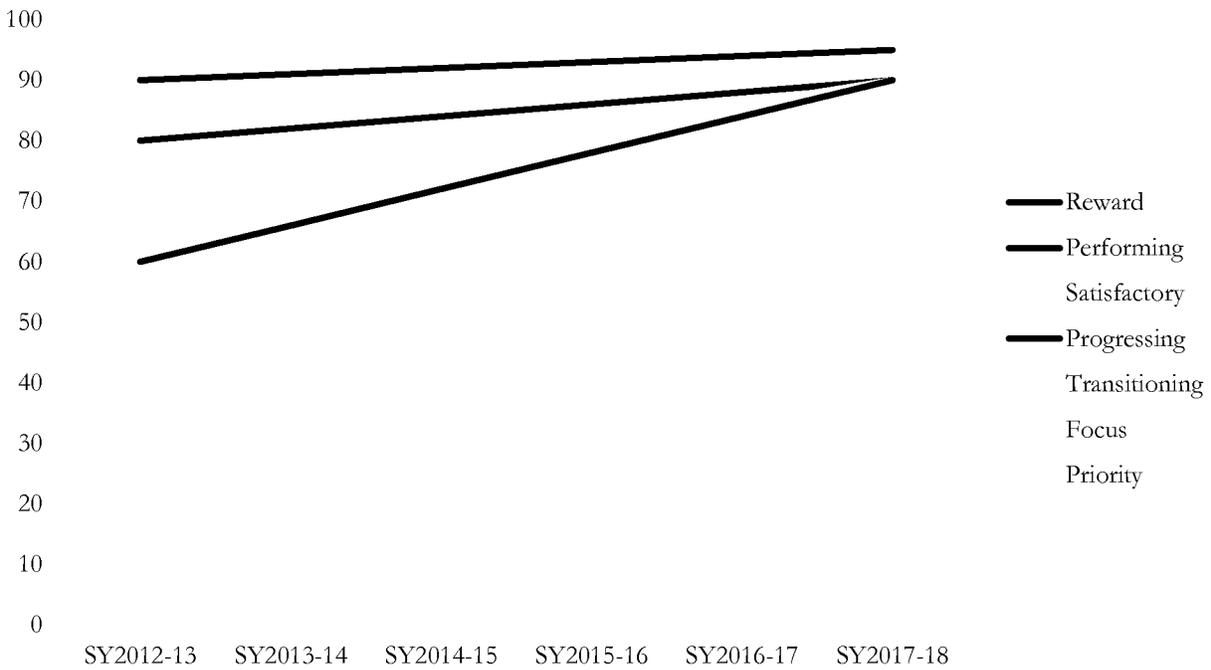
| <b>Baseline Year (SY 2012-2013)</b>  |
|--|
| <p><u>Step 1:</u> Calculate the unweighted index values for the following indicators in reading and mathematics</p> <ul style="list-style-type: none"> <li>a) Participation</li> <li>b) Status (proficiency)</li> <li>c) Improvement (within year growth)</li> </ul> |
| <p><u>Step 2:</u> Calculate the unweighted index values for the following indicators</p> <ul style="list-style-type: none"> <li>a) Graduation rate (ACGR)</li> <li>b) Attendance (within year growth)</li> </ul>   |
| <p><u>Step 3:</u> Index multiple values by weight and sum values</p>   |
| <p><u>Step 4:</u> Determine relative position on the 100 point scale</p> <ul style="list-style-type: none"> <li>a) Long-term goal = 90 points</li> <li>b) Typical performance = 70 points [Baseline Year AMO]</li> <li>c) Minimum performance = 50 points</li> </ul> |

Each year the AMOs increase is based upon the performance trajectory as identified in the Baseline Year. This approach simplifies the improvement expectations and identifies different levels of school performance. The table on the next page illustrates graphically how the system will reduce the gap in school performance over time.

Although the illustration demonstrates differential AMOs at the school level, the results for indicators follow the same logic. The AMOs on individual indicators will be generated based on the school's performance in the Baseline Year. Making the suggested amount of progress on all indicators will lead to the school meeting the school-level AMO upon which the accountability determination is made.

However, as alluded to earlier in the request, if schools miss their indicator-level AMOs, they will not automatically receive unsatisfactory accountability determinations. Performance beyond the point of meeting the AMOs in other areas will still count toward the school's performance on the AI. The shortfall on one indicator's AMO can be made-up by surpluses achieved on other indicators resulting in a satisfactory determination being issued to the school overall.

### Annual Measurable Objectives Trajectories over a Five Year Period



ii. Did the SEA use current proficiency rates from the 2010-2011 school year as the base year?

To generate the new AMOs, the BIE will use data on the assessments taken during the 2012-2013 school year when establishing the baseline year. The reason for doing so is that the BIE is currently using 23 different assessments by which proficiency is measured. It is statistically impossible to equate proficiency levels using these assessments.

ii. If the SEA set AMOs that differ by LEA, school, or subgroup do the AMOs require LEAs, schools and subgroups to make greater rates of annual progress?

The effect of the method of setting AMOs is that schools that currently have low AI will be required to make much more progress than those close to the long-term goal of 90 points. However, the improvement rate is fixed at 8 points for schools in order to reduce the gap while addressing the need for “ambitious but attainable” AMOs. The fixed improvement floor will be validated to ensure the lowest performing schools attain an AI above 80 index points by 2017-2018, closing 80% of the gap between the lowest and highest performing schools.

## 2.C REWARD SCHOOLS

*2.C.i Describe the SEA’s methodology for identifying highest-performing and high-progress schools as reward schools. If the SEA’s methodology is not based on the definition of reward schools in ESEA Flexibility (but instead, e.g., based on school grades or ratings that take into account a number of factors), the SEA should also demonstrate that the list provided in Table 2 is consistent with the definition, per the Department’s “Demonstrating that an SEA’s Lists of Schools meet ESEA Flexibility Definitions” guidance.*

BIE has developed a methodology for identifying highest-performing and high-progress schools as Reward schools. However, the list of Reward schools contained in Table 2 is based on state assessment data from 23 states for SY 2010-2011, since that is all BIE had available for calculation at this time. BIE will submit a new list of reward schools that is derived from a methodology used for identifying highest-performing and high-progress schools once the 2011-12 assessment data is available.

BIE’s methodology rank orders schools to determine the highest achieving schools as well as lowest performing schools. The BIE used the “all students” group (whole school) that included those students who are assessed in reading/language arts and mathematics using the assessments given in the state in which the school is located as required under section 1111(b)(3) of the ESEA. The “all students” group is comprised of students in grades 3 through 8 and high school students for whichever grade is assessed in the 23 states where BIE schools are located. The “all students” group includes limited English proficient (LEP) students and students with disabilities (SWD), including students with significant cognitive disabilities who take an alternate assessment based on alternate academic achievement standards. BIE rank ordered all BIE schools for which the BIE is responsible for reporting AYP status.

**High performing schools** - A Title I school (all BIE-funded schools) has the highest absolute performance at the 5% level or better for the “all students” group and for all subgroups, on the Reading/Language Arts assessments that are part of the SEA’s differentiated recognition, accountability, and support system.

- At the high school level, school is also among the Title I schools with the highest graduation rates of at least 75%.
- A highest-performing school must be making AYP for the “all students” group and all of its subgroups.
- A school may not be classified as a “highest-performing school” if there are significant achievement gaps across subgroups that are not closing in the school.

**High progress schools** - A Title I school (all BIE-funded schools) is among the ten percent of Title I schools that are making the most progress at the 5% level or better in improving the performance of the “all students” group over a number of years on the statewide assessments that are part of the SEA’s differentiated recognition, accountability, and support system

- At the high school level, school is also among the Title I schools that are making the most progress in increasing graduation rates of at least 75%.
- A school may not be classified as a “high-progress school” if there are significant achievement gaps across subgroups that are not closing in the school.

BIE used the process outlined below for identification and determination of the highest achieving schools, referred to as reward schools. The BIE identified the highest-achieving 5% of all 174 BIE elementary and secondary schools in the system as all schools receive Title I funding. These schools have been identified as reward schools. The number of schools identified in the top 5% of BIE schools is nine. The BIE uses the U.S. Department of Education's 4-Year Adjusted Cohort Graduation Rate (ACGR) since none of the BIE secondary schools use the graduation rate defined in 34 C.F.R. § 200.19(b).<sup>26</sup> This measures the number of students who begin high school in a specific cohort against those who graduate on-time from that cohort. The BIE factored in the 4-year ACGR to identify the highest achieving schools with an 80% or greater graduation rate for school years 2007-08, 2008-2009, 2009-2010, 2010-2011, which included 2 BIE high schools as part of the reward schools list.

The highest achieving five (5) percent of BIE schools (n = 9 schools) was calculated using an adding ranks method determined by the following series of calculations:

- 1) Calculated the percent of students proficient in reading/language arts for every school using the most recent assessment data available (SY 2010-2011).
- 2) Calculated the percent of students proficient in mathematics for every school using the most recent assessment data available (SY 2010-2011).
- 3) Rank ordered the schools based on percent of students proficient in reading/language arts from the lowest to the highest.
- 4) Rank ordered the schools based on percent of students proficient in mathematics from the lowest to the highest.
- 5) Rank ordered the schools based on the sum of the reading/language arts and mathematics ranks for each school. The schools with the highest sum ranking score (percent of students proficient in reading/language arts added to the percent of students proficient in mathematics, then divided by 2) were identified as the highest-achieving schools.
- 6) After the adding ranks method was used to identify highest achieving schools, high schools with a graduation rate 80% or greater were included.

The BIE used the definition of proficient for each of the states where the schools are located. No attempt was made to “weight” or analyze the disparity in proficiency cut scores and annual measurable objectives determined by each state and/or to analyze and compare the rigor of the actual assessments given in each of the 23 states.

2.C.ii Provide the SEA's list of Reward schools in Table 2.

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<sup>26</sup> 34 C.F.R. § 200.19(b)(i)(A) states: “A State must calculate a ‘four-year adjusted cohort graduation rate,’ defined as the number of students who graduate in four years with a regular high school diploma divided by the number of students who form the adjusted cohort for that graduating class.”

Listed in Table 2 is a full listing of Reward, priority, and Focus schools (see Attachment 9).

BIE will submit a new list of reward schools that is derived from a methodology used for identifying highest-performing and high-progress schools once the SY 2012-2013 assessment data has been base-lined. At present BIE has 23 states' assessment data, so we cannot make the requested comparison until a unified set of assessment data is available.

2.C.iii Describe how the SEA will publicly recognize and, if possible, Reward highest-performing and high-progress schools.

Under the NCLB requirement regarding State Recognition, the BIE has publicly recognized schools in the category of making “AYP” at national training institutes by providing plaques at special evening events or during general sessions. The issue of using the accountability systems of the 23 states in which BIE-funded schools are located also has a significant impact on the BIE’s academic achievement awards programs. Using student performance data that is nearly two years old by the time the AYP determinations have been completed and then providing special recognition devalues the efforts of these schools. Other means of recognizing and Rewarding schools funded by BIE have occurred through special partnerships with scientific labs and business entities to provide training and other supports to these higher performing schools based on the number of students who were proficient in reading/language arts and mathematics. BIE will replace its current recognition system with Rewards designated for schools that achieve proficiency and growth under BIE’s new accountability system.

A school must be a Reward-Performing or Reward-Progress in order to be nominated for national awards, such as the National Blue Ribbon Award or National Title I Distinguished School Award. Schools identified for Reward status will be consistent with the definition of either a “high-performing school” or a “high-progress school” as set forth in the *ESEA Flexibility* document.

BIE will recognize the Reward schools publicly in a system-wide announcement in August and September in two ways: a) announcements at school-wide assemblies held at the beginning of the school year; and b) presentation of a symbol of recognition, such as a plaque or certificate. Title I funds will be used to support the public acknowledgement of Reward schools receiving that recognition.

➤ *Has the SEA consulted with LEAs and schools in designing its recognition, and, where applicable, Rewards?*

BIE has solicited input from a range of stakeholders about suggestions for additional Reward strategies for high-performing and high-progress schools and to assess the potential support (as well as the likelihood of being able to implement same) for additional strategies that are put forth. The goal of this effort is to establish more meaningful recognition of the Reward schools, while at the same time provide models of high performing and high progress schools for the other BIE schools to access as examples within BIE’s school system. Model descriptions of each school receiving a Reward rating will be posted on the BIE’s website for other aspiring schools to access.

## 2.D PRIORITY SCHOOLS

*2.D.i Describe the SEA’s methodology for identifying a number of lowest-performing schools equal to at least five percent of the State’s Title I schools as priority schools. If the SEA’s methodology is not based on the definition of priority schools in ESEA Flexibility (but instead, e.g., based on school grades or ratings that take into account a number of factors), the SEA should also demonstrate that the list provided in Table 2 is consistent with the definition, per the Department’s “Demonstrating that an SEA’s Lists of Schools meet ESEA Flexibility Definitions” guidance.*

*Did the SEA describe its methodology for identifying a number of lowest-performing schools equal to at least five percent of the State’s Title I schools as Priority schools?*

BIE has developed a methodology for identifying a number of lowest-performing schools, equal to at least five percent of the BIE’s Title I schools as Priority schools. Further, BIE’s methodology is based on the definition of Priority schools in ESEA Flexibility.

When the BIE replaces its current assessment with an interim unified assessment in 2012-13, Priority schools will be determined based on BIE’s new accountability plan. For example, student growth within a year will be measured and combined with proficiency scores to determine achievement which will be computed into an Annual Measurable Objective (AMO) for the school. This is different from the current computation of only using proficiency scores.

The lowest performing five percent of BIE schools ( $n = 9$ ) was calculated using an adding ranks method determined by the following series of calculations:

- 1) Calculated the percent of students proficient in reading/language arts for every school using the most recent assessment data available (SY 2010-2011).
- 2) Calculated the percent of students proficient for mathematics in every school using the most recent assessment data available (SY 2010-2011).
- 3) Rank ordered the schools based on percent of students proficient in reading/language arts from the lowest to the highest.
- 4) Rank ordered the schools based on percent of students proficient in mathematics from the lowest to the highest.
- 5) Rank ordered the schools based on the sum of the reading/language arts and mathematics ranks for each school. The schools with the lowest sum ranking score (percent of students proficient in reading/language arts added to the percent of students proficient in mathematics, then divided by 2) were identified as the lowest-achieving schools.
- 6) After the adding ranks method was used to identify schools, high schools with a graduation rate less than 60% were included.

For school years 2013-14 and 2014-15, priority schools will be identified by using an adding ranks methodology based on the interim BIE assessment that has a vertically integrated scale that allows the BIE to estimate an individual student's progress at grade level, above grade level, or below grade level.

2.D.ii Provide the SEA's list of Priority schools in Table 2.

Listed in Table 2 is a full listing of Reward, Priority, and Focus schools (see Attachment 9).

*a. Did the SEA identify a number of Priority schools equal to at least five percent of its Title I schools?*

As noted in 2.C.ii, BIE produced a ranking list for all BIE schools. All 174 BIE schools are eligible for and receive Title I funding. The BIE is submitting a preliminary list of its 5% lowest performing, priority schools, using the achievement data from the assessments administered in SY 2010-11 as well as the graduation rate data for SY 2010-11. The preliminary list includes nine (9) of BIE's 174 schools, with two of the three high schools with graduation rates less than 60%.

*b. Did the SEA's methodology result in the identification of Priority schools that are –*

*i. Among the lowest five percent of Title I schools in the State based on the achievement of the "all students" group in terms of proficiency on the statewide assessments that are part of the SEA's differentiated recognition, accountability, and support system, combined, and have demonstrated a lack of progress on those assessments over a number of years in the "all students" group;*

The BIE used the "all students" group (whole school) that included those students who are assessed in reading/language arts and mathematics using the assessments in which the school is located as required under section 111(b)(3) of the ESEA. The "all students" group is comprised of students in grades 3 through 8 and high school students for whichever grade is assessed in the 23 states where the 174 BIE schools are located. The "all students" group includes limited English proficient (LEP) students and students with disabilities (SWD), including students with significant cognitive disabilities who take an alternate assessment based on alternate academic achievement standards. The BIE defines lack of progress as at least two consecutive years of not making AYP in the "all students" group.

*(i) Title I-participating or Title I-eligible high schools with a graduation rate less than 60 percent over a number of years; or*

All 174 BIE schools are eligible to participate in Title school wide programs. This includes all 63 BIE secondary schools that were ranked according to their student proficiency and graduation rates less than 60%.

*(ii) Tier I or Tier II schools under the School Improvement Grants (SIG) program that are using SIG funds to fully implement a school intervention model?*

BIE's list of priority schools includes schools identified for the 1003(g) School Improvement Grant program. BIE included the 5% lowest performing schools identified as Tier I schools, as well as the next 10% lowest performing schools as Targeted Tier III schools. BIE does not have any Tier II schools as all schools are eligible and receive Title I funding, including high schools. All BIE schools that receive SIG funding are implementing a school intervention model.

2.D.iii Describe the meaningful interventions aligned with the turnaround principles that an LEA with Priority schools will implement.

Are the interventions that the SEA described aligned with the turnaround principles and are they likely to result in dramatic, systematic change in Priority schools?

The interventions BIE plans to use are aligned to the Turnaround Principles defined in ESEA Flexibility. Implementation of these interventions will assist BIE in effecting dramatic, systemic change in priority schools. BIE uses a Seven Point Intervention Plan, which is directly based upon the Turnaround Principles for turning around its lowest performing schools. This framework establishes team structures to address the areas of: principal leadership; effective teachers able to improve instruction; additional time for student learning and teacher collaboration; provision of an instructional program that is research-based, rigorous, and aligned with academic content standard; use of data to inform instruction and for continuous improvement; a school environment that improves safety and discipline and address the students' social, emotional, and health needs; and on-going engagement of families and communities.

| <b>Seven Point Intervention Plan</b>           |   |  |
|--|---|--|
| <b><i>Turnaround Principle</i></b>             | <b><i>Turnaround Intervention</i></b>   | <b><i>BIE Strategies</i></b>   |
| 1. Strong leadership                           | a) Review performance of principal<br>b) Replace principal or assurance can lead turnaround effort  | <ul style="list-style-type: none"> <li>▪ Employee Performance Appraisal – Rewards and supports</li> <li>▪ Choice of SIG Model</li> <li>▪ Principals' Academy</li> </ul>  |
| 2. Effective teachers                          | a) Review quality of instructional staff and retrain only those with potential to be effective<br>b) Prevent ineffective teachers from transferring<br>c) Provide job-embedded professional development | <ul style="list-style-type: none"> <li>▪ Employee Performance Appraisal - Rewards and supports</li> <li>▪ CORE Professional Development (i.e., literacy, math, RtI, and ELL support)</li> <li>▪ CORE Technical Assistance for SIG schools</li> <li>▪ Individual Development Plan</li> <li>▪ Teachscape Professional Development (i.e., teacher evaluation, professional learning, and school improvement)</li> <li>▪ Power of Teaching</li> <li>▪ ELL intervention strategies</li> </ul> |
| 3. Redesign school day, week, or year          | a) Provide additional time for student learning and teacher collaboration   | <ul style="list-style-type: none"> <li>▪ BIE evaluating (i.e., funding, labor CBA)</li> <li>▪ Choice of SIG Model</li> </ul>   |
| 4. Strengthen the school instructional program | a) Base instruction on student needs<br>b) Design instructional program that is research-based, rigorous, and aligned with State academic content standards   | <ul style="list-style-type: none"> <li>▪ RtI with emphasis on students with disabilities and limited English proficient students</li> <li>▪ CompassLearning Odyssey</li> <li>▪ Literacy Plan</li> <li>▪ ELL intervention strategies</li> <li>▪ Choice of SIG Model</li> <li>▪ Site visits</li> </ul>   |

|  |   |  |
|--|---|--|
|  |   | <ul style="list-style-type: none"> <li>▪ Progress Monitoring</li> <li>▪ Intervention/Improvement Plan</li> <li>▪ School Improvement Plan</li> <li>▪ Teachscape Professional Development (i.e., school improvement)</li> <li>▪ Power of Teaching</li> <li>▪ NASIS Lesson Plan Module</li> <li>▪ NASIS Special Education IEP Module</li> <li>▪ Drop-Out Prevention Initiative</li> </ul>           |
| 5. Data to inform instruction and for continuous improvement | <ul style="list-style-type: none"> <li>a) Use data to inform instruction and for continuous improvement</li> <li>b) Schedule time for collaboration on the use of data</li> </ul>   | <ul style="list-style-type: none"> <li>▪ NWEA MAP Assessments Quarterly Roll-up sessions</li> <li>▪ Native Star</li> <li>▪ NASIS</li> <li>▪ Special Education Data Summit</li> <li>▪ ELL intervention protocol</li> </ul>  |
| 6. School environment  | <ul style="list-style-type: none"> <li>a) Establishing school environment with school safety, discipline, and non-academic factors (e.g., students' social, emotional, and health needs) that impact student achievement</li> </ul> | <ul style="list-style-type: none"> <li>▪ Youth Risk Behavior Survey</li> <li>▪ School Safety Audits</li> <li>▪ Technical Assistance on Bullying Prevention</li> <li>▪ BIE National Policy Memorandum (NPM) on Suicide Prevention</li> <li>▪ Technical Assistance on Suicide Prevention and Drug &amp; Alcohol Prevention</li> <li>▪ BIE evaluating use of a school climate instrument</li> </ul> |
| 7. Family and community engagement                           | <ul style="list-style-type: none"> <li>a) Provide ongoing mechanisms for family and community engagement</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Native Star Family Engagement Tool (FET)</li> <li>▪ School Improvement involvement</li> <li>▪ BIE Summer Institute training</li> <li>▪ FACE family engagement (birth-5 years old)</li> </ul>  |

In addition, BIE has established a team structure to carry out the Seven Point Intervention Plan, based on collaborative work with the Center on Innovation & Improvement (CII). BIE's team structure based upon the CII's model identifies teams and their purposes as follows:

- **The Leadership Team** comprised of the principal and team leaders from the Instructional Teams (grade level or subject areas teams). The leadership Team functions as the School Improvement Team, with parent members attending meetings scheduled for purposes of reviewing and amending the school improvement plan.
- **Instructional Teams** are manageable groupings of teachers by grade level or subject area that meet to develop instructional strategies aligned to the standards-based curriculum and to monitor the progress of the students in grade levels or subject area for which the team is responsible.
- **A Family and Community Engagement Team** is comprised of the principal, counselor, social worker, teachers, and parents (typical configuration), with parents constituting the majority of the membership. The Family/Community Engagement Team advises, plans, and assists with matters related to the school-home compact, homework, open houses, parent-teacher conference, school-home communication, and parent education (including training and information about learning standards and parents' role in supporting children's learning at home).

The BIE will continue to follow the guidance provided in the ESEA Flexibility Request and the 1003(g) SIG and strengthen its current school turnaround approach through BIE’s newly established Academic Achievement Office. Schools will continue to receive SIG funding to focus on rapidly and significantly turning around their schools.

The BIE uses the 1003(g) SIG models of turning around its “persistently lowest performing” schools. Only the Turnaround Model and Transformation Model are applicable with BIE’s school system as they are aligned to the actions identified in the BIE’s Seven Point Intervention plan. The Restart Model and School Closure are not available as options for BIE schools. The Restart Model can only occur if the school becomes a State charter school, as BIE has no authority to recognize a “charter” school in its current system. The School Closure is not an option unless the tribe chooses to close a school. BIE does not have the authority to unilaterally close a school given current laws and regulations. The two models implemented by BIE are described below.

### **Turnaround Model**

The Turnaround model requires: replacing the principal; screening all existing staff, and rehiring no more than 50 percent, then replacing those staff not rehired with new staff; providing staff with on-going, high quality, job-embedded professional development aligned to the instructional program; implementing an instructional program that is research-based and vertically aligned from one grade to the next, as well as aligned with academic standards; promoting continuous use of data that includes formative, interim, and summative assessments to inform and differentiate instruction in order to meet the academic needs of individual students; establishing schedules and implementing strategies that provide increased learning time; providing appropriate social-emotional and community-oriented services and supports for students; and finally, adopting a new governance structure that requires the BIE.

### **Transformation Model**

The Transformation model addresses four specific components critical to transforming the lowest achieving schools. These components include:

- Developing teacher and school leader effectiveness;
- Implementing comprehensive instructional reform strategies;
- Increasing learning time and creating community-oriented schools; and
- Providing operational flexibility and sustained support.

*a. Do the SEA’s interventions include all of the following?*

*(i) providing strong leadership by: (1) reviewing the performance of the current principal; (2) either replacing the principal if such a change is necessary to ensure strong and effective leadership, or demonstrating to the SEA that the current principal has a track record in improving achievement and has the ability to lead the turnaround effort; and (3) providing the principal with operational flexibility in the areas of scheduling, staff, curriculum, and budget;*

The first step a school must take in implementing a Turnaround/Transformation program is to determine whether the existing principal possesses the necessary competencies to be a turnaround leader. BIE’s past practice of coordinating with the ADD and the ELO has shown the

organization's need in this area requires a stronger commitment for all groups to come to the table and find the best solutions for assisting the school in understanding the sense of urgency to turnaround their school. As such, the BIE Academic Achievement Office will work closely with the ADD, ELO, and School Boards to make that determination. It is critical that the BIE undertake a search for "School Turnaround Leaders" versus just any certified school administrator. Knowing that the traditional principal pool is already stretched to capacity, BIE must undertake a national recruitment effort beginning in SY2012-13 to find such leaders for the priority schools.

Using the research that suggests successful leaders in the turnaround setting possess competencies different from successful leaders in already high-performing organizations, BIE will develop targeted training and support that will ensure the following competencies are nurtured in BIE Turnaround Leaders:

- **Driving for Results** – the turnaround leader's strong desire to achieve outstanding results and the task-oriented actions required for success.
- **Influencing for Results** – motivating others and influencing their thinking and behavior to obtain results. Turnaround leaders cannot accomplish change alone, but instead must rely on the work of others.
- **Problem-solving** – including analysis of data to inform decisions, making clear, logical plans that people can follow, and ensuring a strong connection between school earnings goals and classroom activity.
- **Showing Confidence to Lead** – staying visibly Focused, committed, and self-assured despite the barrage of personal and professional attacks common during turnarounds.<sup>27</sup>

BIE will work with the Human Resources Office to research possibilities of importing talent from outside resources, such as the "Troops to Classrooms" project, and other sources following the lessons and recommendations from *Importing Leaders for School Turnarounds*, a report published by the schools of business and education at the University of Virginia in 2011.

The BIE will continue the practice of using the 99 Rapid Improvement Indicators in the Native Star web-based system. The Principal as Instructional Leader is one of the components used in BIE's current System of Support and prominent in the Native Star continuous improvement process. All schools are required to address the 99 Rapid Improvement Indicators that are tied to effective schools research and best practices. The school's Leadership Team begins by assessing the following indicators specific to the Principal as Instructional Leader:

- Principal makes sure everyone understands the school's mission, clear goals (short and long term), and their roles in meeting the goals.
- Principal models and communicates the expectation of improved student learning through commitment, discipline, and careful implementation of sound practices.
- Principal participates actively with the school's teams.
- Principal keeps a Focus on instructional improvement and student learning outcomes.
- Principal monitors curriculum and classroom instruction regularly.

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<sup>27</sup> Public Impact, Lucy M. Steiner, Emily Ayscue Hassel, Bryan Hassel, Eli Valsing, Sarah Crittenden. *School turnaround leaders: Competencies for success*, June 2008.

- Principal spends at least 50% of his/her time working directly with teachers to improve instruction, including classroom observations.
- Principal challenges and monitors unsound teaching practices and supports the correction of them.
- Principal celebrates individual, team, and school successes, especially related to student learning outcomes.
- Principal offers frequent opportunities for staff and parents to voice constructive critique of the school's progress and suggestions for improvement.

The School Leadership Team conducts an assessment of these nine indicators to determine the level of development or implementation as “No development or Implementation”; “Limited Development or Implementation”; or “Full Implementation.” Once the School Leadership Team has determined if the indicator is a high, medium or low Priority and level of difficulty the indicator will be to develop or implement, the Team describes the current level of development or implementation. Once these nine indicators are assessed, the School Leadership Team can continue to assess their progress and plan and monitor their improvement.

*(ii) ensuring that teachers are effective and able to improve instruction by: (1) reviewing the quality of all staff and retaining only those who are determined to be effective and have the ability to be successful in the turnaround effort; (2) preventing ineffective teachers from transferring to these schools; and (3) providing job-embedded, ongoing professional development informed by the teacher evaluation and support systems and tied to teacher and student needs;*

*(iii) redesigning the school day, week, or year to include additional time for student learning and teacher collaboration;*

*(iv) strengthening the school's instructional program based on student needs and ensuring that the instructional program is research-based, rigorous, and aligned with State academic content standards;*

*(i) redesigning the school day, week, or year to include additional time for student learning and teacher collaboration;*

BIE has not created an initiative per se to broadly redesign the school day, week, or year for BIE-funded schools. With respect to BIE-operated schools, those options have been discussed and will continue to be the Focus of discussion to improve schools. However, BIE lacks the broad authority to redesign learning time for tribally-controlled schools. Those schools can only be encouraged to consider such an option.

BIE has utilized the 21<sup>st</sup> Century Community Learning Centers (CCLC) program, funded by the Department of Education, to expand before- or after-school learning enrichment opportunities for students. BIE provide grants to BIE-funded schools and dormitories to enable them – with the assistance of community partners – to plan, implement, or expand projects that benefit the educational, health, social services, cultural, and recreational needs of the community. The 21<sup>st</sup> Century Community Learning Centers enables BIE to support schools and dormitories as community education centers keeping children safe in the after school hours and providing academic enrichment, homework centers and tutors, and a range of cultural, developmental and recreational opportunities. In addition, lifelong learning activities are available for community members in the local school setting. School-based 21<sup>st</sup> Century Community Learning Centers that have been established around the country are providing safe, drug-free, supervised and cost-effective after school, weekend or summer havens for children, youth and their families. The program is

designed to deploy support specifically to high-need BIE schools and dormitories that have low achieving students and high rates of juvenile crime, school violence, and student drug abuse, but lack the resources to establish after school centers.

*(ii) using data to inform instruction and for continuous improvement, including by providing time for collaboration on the use of data;*

BIE's priority schools will be required to use the interim assessment to assess each student's learning at three benchmark points: fall, winter and spring. The intermediate assessment data along with other optional learning assessments, such as DIBELS and AIMSweb, will be utilized by the School Support Teams, School Leadership Teams, and School Instructional Teams to collaborate on continuously improving the instructional delivery for all students at the school.

Using the effective practice indicators in Native Star related to curriculum, assessment, and planning, priority schools will ensure:

- Students' learning is assessed frequently with standards-based assessments.
- The school tests each student at least 3 times a year to determine progress toward standards-based objectives.
- Teachers receive timely reports of results from standardized and objectives-based tests.
- The school maintains a central database that includes each student's test scores, placement information, demographic information, attendance, behavior indicators, and other variables useful to teachers.
- Yearly learning goals are set for the school by the Leadership Team, utilizing student learning data.
- Instructional Teams use student learning data to assess strengths and weaknesses of the curriculum and instructional strategies.
- Instructional Teams use student learning data to plan instruction.
- Instructional teams use student learning data to identify students in need of instructional support or enhancement.
- Instructional Teams review the results of unit pre- and post-tests to make decisions about the curriculum and instructional plans and to "red flag" students in need of intervention (both students in need of tutoring or extra help and students needing enhanced learning opportunities because of their early master of objectives).

*(iii) establishing a school environment that improves school safety and discipline and addressing other non-academic factors that impact student achievement, such as students' social, emotional, and health needs; and*

BIE has made systemic improvements to target school climate. The major initiative targets schools and dormitories by assisting them in building and sustaining effective positive supports within their classrooms and campuses. The training, developed by the University of Oregon, Institute on Violence and Destructive Behavior, builds the capacity of the positive behavior teams at the local school or dormitory. The teams use the Native American Student Information System (NASIS) for data review, to develop data driven decisions, and to consistently implement the program. Currently, the NASIS contractor, Infinite Campus provides behavior reports on a monthly basis that are aligned with the University of Oregon's behavior program. The reports will be provided at the local level and the Education Line Office and Associate Deputy Directors. With this report, all levels of

BIE will be able to identify trends and target technical assistance for their respective agencies. This will be the first time reports of this magnitude will be available on an ongoing basis.

The Safe and Drug Free Schools Program provided ten regional technical assistance sessions targeting bullying and suicide in 2009 and 2010. The 16 hour training provided fundamental information, evidence and researched based best practices, and a high degree of participant interaction. All participants had to pass a competency exam in order to receive a certificate of attendance.

The annual BIE Summer Institutes in 2009, 2010, 2011, and 2012 included two strands that addressed safe schools issues. The first strand offered positive behavior supports. The second strand provided safe and secure schools updates and included the BIE Emergency Prepared Plan (EPP) schools would use to revise and update their current plans. BIE staff also attended the BIE's Suicide Prevention and Anti-Bullying technical assistance sessions where experts in the field provided up to date information and trends in the field of safe and secure schools.

BIE has hired three School Safety Specialists who are dedicated to their respective ADD region (East, West & Navajo). The specialists provide specific technical assistance for their Associate Deputy Directors region and work in collaboration with the Division of Performance and Accountability.

BIE also has a Suspected Child Abuse and Neglect (SCAN) Specialist to specifically address and follow up on reports filed in BIE schools and dormitories.

BIE also will roll-out the Youth Risk Behavior Survey (grades 6-12) results that have monitored behaviors that place adolescents most at risk for premature morbidity and mortality, for grades 6-12. The survey monitors six categories of Priority health-risk behaviors among youth and young adults, including:

- Behaviors that contribute to unintentional injuries and violence
- Tobacco use
- Alcohol and other drug use
- Sexual risk behaviors
- Unhealthy dietary behaviors
- Physical inactivity

The survey also monitors the prevalence of obesity and asthma. The survey has been adapted to include tribal-specific issues of interest to particular schools and tribes.

These data will be available and disseminated in fall of 2012. Technical assistance will be provided on the development of interventions based on the current data set. The survey has been administered by BIE since 1997 on a two-three year basis.

BIE is also exploring the possibility of implementing a comprehensive school climate instrument to complement the Youth Risk Behavior Survey. The purpose of administering a school climate instrument is to identify nonacademic factors that impinge upon students' academic performance. BIE recognizes that the relationship between school climate and learning is a critical area for BIE to explore to support academic achievement.

School safety and security are high priorities in the BIE school system, but also a challenge. The BIE has conducted system-wide school safety audits, partially in response to Department of the Interior Office of Inspector General (OIG) reports in 2008 and 2012, which highlighted safety and security issues in BIE-funded schools. From spring of 2010 to May 2012, a total of 143 school sites have been audited, Focusing on school safety, school police, school security services, and costs to ameliorate issues. Findings in the resulting reports have been analyzed to prioritize issues. Support police and security services, for example, have been provided to two off-reservation boarding schools with student populations especially at-risk due to close proximity to urban centers. The services provided have specifically addressed security issues identified in OIG reports of both schools. The next phase of the school safety and security initiative is to provide ongoing training to Education Line Office and school staff.

*(i) providing ongoing mechanisms for family and community engagement?*

BIE has incorporated mechanisms to support family and community engagement in the school-wide planning process. Designated staff in the Division of Performance and Accountability (DPA) provide support, training, and technical assistance to the Associate Deputy Directors (East, West, & Navajo) and 22 Education Line Office staff on incorporating family engagement in the planning process at schools.

Collaboration with the Academic Development Institute (ADI) and the Center on Innovation and Improvement (CII) on their Family Engagement initiatives has led to BIE introducing to the BIE school system the Family Engagement Tool (FET) which is embedded in the BIE's Native Star tool, which is based on the Indistar web-based tool. Beginning in fall 2011, the BIE provided schools training to utilize the Family Engagement Tool. The FET supports schools' continuous school improvement efforts encompassing family and community engagement.

BIE's Family Engagement approach utilizes a Family Engagement Team consisting of 5-8 individuals, including a school principal, parent liaison, and parents. This team works through a five step process whereby they analyze resources and effective practices that support the family and community engagement. The team's findings are incorporated in the school improvement planning process. In response to requests from schools for further training, a Next Steps training series was developed to assist the Family Engagement Team in understanding the Native Star (Indistar) indicators related to family and community engagement and to assess and plan for these indicators. This initiative has involved parents and community in the school improvement effort and has strengthened their relationship to the schools.

*b. Are the identified interventions to be implemented in Priority schools likely to —*

- (i) increase the quality of instruction in Priority schools;*
- (ii) improve the effectiveness of the leadership and the teaching in these schools; and*
- (iii) improve student achievement and, where applicable, graduation rates for all students, including English Learners, students with disabilities, and the lowest-achieving students?*

The identified interventions to be implemented in Priority schools will increase the quality of instruction in Priority schools; improve the effectiveness of the leadership and the teaching in these schools; and improve student achievement and, where applicable, graduation rates for all students, including English Learners, students with disabilities, and the lowest-achieving students.

The BIE will use an external provider to provide expert on-site consultation, technical assistance, and professional development related to each school’s reading and or mathematics program and implementation of the curriculum and or programs that are being implemented at the school. A process for school turnaround consisting of six stages will be employed:

- 1) Gather and analyze data to determine priorities
- 2) Explore possible solutions
- 3) Assess readiness and build capacity
- 4) Create and communicate improvement plan
- 5) Implement the plan
- 6) Monitor and adjust

The process will then be repeated as needed to effect needed changes in the school.

The external provider will work collaboratively with pre-K-12 educators to support literacy and math achievement growth for all students. The contractor will develop a continuum of services designed to create and maintain significant improvement in educational quality in schools. The Blueprint shall be based on a multi-tier model at all levels. This model will inform the districts of the progress of the instructional organization for literacy and mathematics, and classroom instruction. This model will also be consistent with the requirement of IDEA and will be based upon the Response to Intervention (RTI) conceptual framework. The model shall include three critical components to sustain improvement:

- Ongoing professional development to build research-based knowledge and skills;
- Support in selecting and implementing effective, research-based instructional tools;
- Establishment of local support systems to build sustainable success.

The external provider schedules and coordinates site visits with Education Line Offices, School Leadership Teams, and when possible school board members are at the school on the day the site visits occur. The contractor will develop an agenda with input and concurrence from the school administrator for each school site visit and will notify and provide a copy of the agenda to the Education Line Officer, Associate Deputy Director and the DPA point of contact.

The external provider will provide a summary of site visits for each school within ten days of the site visit completion with supporting documentation.

- *Has the SEA indicated that it will ensure that each of its Priority schools implements the selected intervention for at least three years?*

Priority schools will be required to implement the selected intervention for at least three years.

- 2.D.iv Provide the timeline the SEA will use to ensure that its LEAs that have one or more Priority schools implement meaningful interventions aligned with the turnaround principles in each Priority school no later than the 2014–2015 school year and provide a justification for the SEA’s choice of timeline.*

BIE has established a timeline to ensure that Priority schools implement meaningful interventions aligned with the turnaround principles no later than the 2014–2015 school year.

### Timeline

- SY 2012-2013 – All priority schools plan and initially implement interventions with preliminary results expected
- SY 2013-2014 – All priority schools fully implement interventions with moderate results expected
- SY 2014-2015 – All priority schools continue implementation of interventions with significant results expected
- SY 2015-2016 and beyond – Lagging priority schools continue implementation of interventions with significant results expected

The above timeline will allow interventions to be put in place and take effect over time. By the third year, significant results are expected. Some schools will realize results on a shorter timeline, while some schools will need more time to turnaround the school.

- *Does the SEA's proposed timeline distribute Priority schools' implementation of meaningful interventions aligned with the turnaround principles in a balanced way, such that there is not a concentration of these schools in the later years of the timeline?*

The proposed timeline distributes priority schools' implementation of meaningful interventions aligned with the turnaround principles in a balanced way, such that there is not a concentration of these schools in the later years of the timeline. Schools that are identified as Priority schools will be provided sufficient time to develop and implement a school improvement turnaround plan complete with specific interventions to target schoolwide and subgroup achievement gaps. The BIE will provide a timeline so that plans are completed and approved efficiently to allow time to address pre-implementation activities such as professional development and procurement. The timeline will be developed so that schools can begin implementation prior to the start of the fall semester.

Priority schools will remain under the requirements of implementation of the school improvement/turnaround plan for at least three years in order to fully implement the Turnaround Principles and to build capacity for sustainability. To exit this status, priority schools must meet their Annual Measurable Objective in three consecutive years to advance beyond Priority status.

Because all priority schools are engaged in the school improvement process in SY 2012-2013, the timeline distributes Priority schools' implementation of meaningful interventions aligned with the turnaround principles in a balanced way so that there is not a concentration of these schools in the later years of the timeline.

- 2.D.v Provide the criteria the SEA will use to determine when a school that is making significant progress in improving student achievement exits Priority status and a justification for the criteria selected.

BIE has defined criteria to determine when a school that is making significant progress in improving student achievement exits Priority status, along with a justification for the criteria selected. Specifically, the criterion is provided below.

*Priority-Turnaround:* Schools at the bottom 5% of schools are designated priority schools. Priority schools are targeted for the most intensive interventions. To exit this status, priority schools must meet their Annual Measurable Objective in three consecutive years to advance beyond Priority status.

- a. Do the SEA’s criteria ensure that schools that exit Priority status have made significant progress in improving student achievement?

The justification for using three consecutive years of meeting AMOs is to demonstrate that reform efforts are effectively internalized and success can be sustained over time, rather than being a one-time anomaly.

- *Is the level of progress required by the criteria to exit Priority status likely to result in sustained improvement in these schools?*

If schools can achieve AMO targets over three consecutive years, the indication is the exit Priority status will likely result in sustained improvement in these schools.

## 2.E FOCUS SCHOOLS

*2.E.i Describe the SEA’s methodology for identifying a number of low-performing schools equal to at least 10 percent of the State’s Title I schools as “Focus schools.” If the SEA’s methodology is not based on the definition of Focus schools in ESEA Flexibility (but instead, e.g. based on school grades or ratings that take into account a number of factors), the SEA should also demonstrate that the list provided in Table 2 is consistent with the definition, per the Department’s “Demonstrating that an SEA’s Lists of Schools meet ESEA Flexibility Definitions” guidance.*

- a. *In identifying Focus schools, was the SEA’s methodology based on the achievement and lack of progress over a number of years of one or more subgroups of students identified under ESEA section 1111(b)(2)(C)(v)(II) in terms of proficiency on the statewide assessments that are part of the SEA’s differentiated recognition, accountability, and support system or, at the high school level, graduation rates for one or more subgroups?*
- b. *Is the SEA’s methodology for identifying Focus schools educationally sound and likely to ensure that schools are accountable for the performance of subgroups of students?*

BIE has developed a methodology for identifying a number of low-performing schools equal to at least 10 percent of the BIE system’s Title I schools as Focus schools (all schools are considered Title I).

When the BIE replaces its current 23 states’ assessment model with an interim unified assessment in SY 2012-2013, Focus schools will be determined based on BIE’s new unified accountability plan. For example, student growth within a year will be measured and combined with proficiency scores to

determine achievement which will be computed into an Annual Measurable Objective (AMO) for the school. This is different from the current computation of only using proficiency scores.

For the 2013-2014 and 2014-2015 school years, Focus schools will be identified by using an adding ranks methodology described below based on BIE interim assessment that has a vertical scale to allow the BIE to estimate an individual student's progress as at grade level, above grade level, or below grade level.

The lowest performing 10% of BIE schools ( $n = 17$ ) was calculated using an adding ranks method determined by the following series of calculations:

- 1) Calculated the percent of students proficient in reading/language arts for every school using the most recent assessment data available (SY 2010-2011).
- 2) Calculated the percent of students proficient for mathematics in every school using the most recent assessment data available (SY 2010-2011).
- 3) Rank ordered the schools based on percent of students proficient in reading/language arts from the lowest to the highest.
- 4) Rank ordered the schools based on percent of students proficient in mathematics from the highest to the lowest.
- 5) Rank ordered the schools based on the sum of reading/language arts and mathematics ranks for each school. The schools with the lowest combined ranking score (percent of students proficient in reading/language arts added to the percent of students proficient in mathematics, then divided by 2) were identified as the lowest-achieving schools.

After the adding ranks method was used to identify schools, high schools with a graduation rate less than 60% were included.

In order to determine "lack of progress," the BIE repeated Steps 1-5 for one previous year (SY 2009-2010) for each school. Finally, the number of years the school had failed to make AYP was added to the sum to determine lowest performing schools.

2.E.ii Provide the SEA's list of Focus schools in Table 2.

Listed in Table 2 is a full listing of Reward, Priority, and Focus schools (see Attachment 9).

*a. Did the SEA identify a number of Focus schools equal to at least 10 percent of the State's Title I schools?*

As noted in 2.C.ii, BIE produced a ranking list for all BIE schools. All 174 BIE schools are eligible for and receive Title I funding. The BIE is submitting a preliminary list of its 10%, referred to as focus schools that are ranked above the 5% of schools identified as priority schools using the achievement data from the assessments administered in SY 2010-2011 as well as the graduation rate data for SY 2010-2011. The preliminary list includes 24 of BIE's 174 schools that included an additional seven schools beyond the minimum required number of 17 (10%). These additional seven

schools had student academic proficiency rates less than 20%. Seven of the 26 focus schools are high schools with graduation rates less than 60%.

- b. *Did the SEA's methodology result in the identification of Focus schools that have —*
- (i) *the largest within-school gaps between the highest-achieving subgroup or subgroups and the lowest-achieving subgroup or subgroups or, at the high school level, the largest within-school gaps in the graduation rate; or*
  - (ii) *a subgroup or subgroups with low achievement or, at the high school level, a low graduation rate?*

BIE clearly understands that the achievement gap between the lowest achieving subgroup or subgroups and the highest achieving subgroup or subgroups is an important consideration of the ESEA Flexibility Request.

However, as explained previously in this document, BIE cannot dependably use SWD and LEP subgroups for comparison purposes primarily because the n-size is insufficient in small schools. A confounding problem is that the SWD and LEP subgroups actually form a majority of the school population in some schools, which is counterintuitive to measuring the growth of what is expected to be a subset of a larger school population.

The BIE has devised a workable solution, which is to use an approach based on a super subgroup comprised of the lowest proficient students (currently 20% of all students). This approach recognizes that the traditional overlap between low proficient students and SWD and LEP subgroups. Schools will be measured based on the growth of their lowest 20% of students, which includes low-performing SWD and LEP (ELL) populations. This growth will be compared to the average of the growth of the highest 20% of the students in all BIE schools. The measures are Reading/Language Arts and Math scores. In schools with sufficient n-size for SWD and LEP subgroups, additional analyses can be conducted by BIE to more closely monitor progress of these students.

- *Did the SEA identify as Focus schools all Title I-participating high schools with a graduation rate less than 60 percent over a number of years that are not identified as Priority schools?*

BIE's methodology identified as Focus schools all Title I high schools – all schools in the BIE system are considered Title I – with a graduation rate less than 60 percent over a number of years that are not identified as priority schools. BIE identified a total of seven focus schools of its 25 BIE high schools that have a graduation rate less than 60%. All 63 BIE high schools are eligible for and receive Title I-A formula funding to implement a Title I-A schoolwide program. The remaining 18 BIE high schools with graduation rates less than 60% will receive additional supports through the BIE's dropout prevention initiative and will be eligible for additional Interior funds through BIE's Enhancement Programs.

*2.E.iii Describe the process and timeline the SEA will use to ensure that its LEAs that have one or more Focus schools will identify the specific needs of the SEA's Focus schools and their students and provide examples of and justifications for the interventions Focus schools will be required to implement to improve the performance of students who are the furthest behind.*

*Does the SEA's process and timeline ensure that each LEA will identify the needs of its Focus schools and their students and implement interventions in Focus schools at the start of the 2012–2013 school year? Did the SEA*

*provide examples of and justifications for the interventions the SEA will require its Focus schools to implement? Are those interventions based on the needs of students and likely to improve the performance of low-performing students and reduce achievement gaps among subgroups, including English Learners and students with disabilities?*

BIE has developed a process and timeline to identify the specific needs of its Focus schools and their students, along with justifications for the interventions Focus schools will be required to implement to improve the performance of students who are the furthest behind.

### **Process**

Every Focus school will be required to write a Rapid Improvement Plan, using the 99 Rapid Improvement Effective Practice Indicators in the Native Star system, with technical assistance provided by the BIE Division of Performance and Accountability (DPA) and the ADD office staff. BIE introduced the Native Star continuous improvement process in SY 2010-2011. As of March 31, 2012, 158 BIE schools are using the Native Star process, which is an on-line reporting tool that allows school improvement teams to inform, coach, track, and report improvement activities. Currently, all but 19 BIE schools are using Native Star process and web-based system to submit required BIE school improvement reports. As such, schools identified as focus schools will be well on their way to developing School Improvement Plans and identifying the required interventions to advance improvement. Those schools that remain on the Focus school list will be expected to continue to implement intervention strategies until they exit Focus status.

### **Timeline**

BIE has established a timeline to ensure that Focus schools implement meaningful interventions aligned with the turnaround principles no later than the 2014–2015 school year.

- SY 2012-2013 – All focus schools plan and initially implement interventions with preliminary results expected
- SY 2013-2014 – All focus schools fully implement interventions with moderate results expected
- SY 2014-2015 – All focus schools continue implementation of interventions with significant results expected
- SY 2015-2016 and beyond – Lagging focus schools continue implementation of interventions with significant results expected

The above timeline will allow interventions to be put in place and take effect over time. By the third year, significant results are expected. Some schools will realize results on a shorter timeline, while some schools will need more time to turnaround the school.

### **Justifications for Interventions**

The proposed process and timeline engages all focus schools in the school improvement process beginning in SY 2012-2013. Interventions will be individualized to the needs of the school. Focus

schools will remain under the requirements of implementation of the school improvement plan for at least two years in order to fully implement the Turnaround Principles and to build capacity for sustainability. To exit this status, focus schools must meet their Annual Measurable Objective in two consecutive years to advance beyond focus status.

In regard to reducing achievement gaps among subgroups, including English Learners and students with disabilities, as previously explained BIE is using a super subgroup approach, comprised of lowest proficient students (currently 20% of all students). This approach recognizes that the traditional overlap between low proficient students and SWD and LEP subgroups. Schools will be measured based on growth of their lowest 20% of students, which includes low-performing SWD and LEP (ELL) populations, compared to the average of highest 20% of all BIE schools. The measures are Reading/Language Arts and Math scores. In schools with sufficient n-size for SWD and LEP subgroups, additional analyses can be conducted by BIE to more closely monitor progress of these students.

- *Has the SEA demonstrated that the interventions it has identified are effective at increasing student achievement in schools with similar characteristics, needs, and challenges as the schools the SEA has identified as Focus schools?*

The interventions BIE has identified have been effective in increasing student achievement in low performing schools with characteristics, needs, and challenges similar to schools identified as focus schools. The interventions are aligned to the Turnaround Principles defined in ESEA Flexibility. Implementation of these interventions will assist BIE in effecting dramatic, systemic change in focus schools.

BIE uses a Seven Point Intervention Plan, which is directly based upon the Turnaround Principles for turning around its lowest performing schools. This framework establishes team structures to address the areas of: principal leadership; effective teachers able to improve instruction; additional time for student learning and teacher collaboration; provision of an instructional program that is research-based, rigorous, and aligned with academic content standard; use of data to inform instruction and for continuous improvement; a school environment that improves safety and discipline and address the students' social, emotional, and health needs; and on-going engagement of families and communities.

| <b>Seven Point Intervention Plan</b> |   |  |
|--------------------------------------|---|--|
| <b><i>Turnaround Principle</i></b>   | <b><i>Turnaround Intervention</i></b>   | <b><i>BIE Strategies</i></b>   |
| 1. Strong leadership                 | c) Review performance of principal<br>d) Replace principal or assurance can lead turnaround effort  | <ul style="list-style-type: none"> <li>▪ Employee Performance Appraisal – Rewards and supports</li> <li>▪ Choice of SIG Model</li> <li>▪ Principals' Academy</li> </ul>  |
| 2. Effective teachers                | d) Review quality of instructional staff and retrain only those with potential to be effective<br>e) Prevent ineffective teachers from transferring<br>f) Provide job-embedded professional | <ul style="list-style-type: none"> <li>▪ Employee Performance Appraisal - Rewards and supports</li> <li>▪ CORE Professional Development (i.e., literacy, math, RtI, and ELL support)</li> <li>▪ CORE Technical Assistance for SIG schools</li> </ul> |

|  |   |  |
|--|---|--|
|  | development   | <ul style="list-style-type: none"> <li>▪ Individual Development Plan</li> <li>▪ Teachscape Professional Development (i.e., teacher evaluation, professional learning, and school improvement)</li> <li>▪ Power of Teaching</li> <li>▪ ELL intervention strategies</li> </ul>   |
| 3. Redesign school day, week, or year                        | b) Provide additional time for student learning and teacher collaboration   | <ul style="list-style-type: none"> <li>▪ BIE evaluating (i.e., funding, labor CBA)</li> <li>▪ Choice of SIG Model</li> </ul>   |
| 4. Strengthen the school instructional program               | <p>c) Base instruction on student needs</p> <p>d) Design instructional program that is research-based, rigorous, and aligned with State academic content standards</p>            | <ul style="list-style-type: none"> <li>▪ RtI with emphasis on students with disabilities and limited English proficient students</li> <li>▪ CompassLearning Odyssey</li> <li>▪ Literacy Plan</li> <li>▪ ELL intervention strategies</li> <li>▪ Choice of SIG Model</li> <li>▪ Site visits</li> <li>▪ Progress Monitoring</li> <li>▪ Intervention/Improvement Plan</li> <li>▪ School Improvement Plan</li> <li>▪ Teachscape Professional Development (i.e., school improvement)</li> <li>▪ Power of Teaching</li> <li>▪ NASIS Lesson Plan Module</li> <li>▪ NASIS Special Education IEP Module</li> <li>▪ Drop-Out Prevention Initiative</li> </ul> |
| 5. Data to inform instruction and for continuous improvement | <p>c) Use data to inform instruction and for continuous improvement</p> <p>d) Schedule time for collaboration on the use of data</p>  | <ul style="list-style-type: none"> <li>▪ NWEA MAP Assessments Quarterly Roll-up sessions</li> <li>▪ Native Star</li> <li>▪ NASIS</li> <li>▪ Special Education Data Summit</li> <li>▪ ELL intervention protocol</li> </ul>  |
| 6. School environment  | b) Establishing school environment with school safety, discipline, and non-academic factors (e.g., students' social, emotional, and health needs) that impact student achievement | <ul style="list-style-type: none"> <li>▪ Youth Risk Behavior Survey</li> <li>▪ School Safety Audits</li> <li>▪ Technical Assistance on Bullying Prevention</li> <li>▪ BIE National Policy Memorandum (NPM) on Suicide Prevention</li> <li>▪ Technical Assistance on Suicide Prevention and Drug &amp; Alcohol Prevention</li> <li>▪ BIE evaluating use of a school climate instrument</li> </ul>   |
| 7. Family and community engagement                           | b) Provide ongoing mechanisms for family and community engagement   | <ul style="list-style-type: none"> <li>▪ Native Star Family Engagement Tool (FET)</li> <li>▪ School Improvement involvement</li> <li>▪ BIE Summer Institute training</li> <li>▪ FACE family engagement (birth-5 years old)</li> </ul>  |

In addition, BIE has establishing a team structures to carry out the Seven Point Intervention Plan, based on collaborative work with the Center on Innovation & Improvement (CII). BIE's team structure based upon the CII's model identifies teams and their purposes as follows:

- **The Leadership Team** comprised of the principal and team leaders from the Instructional Teams (grade level or subject areas teams). The leadership Team functions as the School Improvement Team, with parent members attending meetings scheduled for purposes of reviewing and amending the school improvement plan.
  - **Instructional Teams** are manageable groupings of teachers by grade level or subject area that meet to develop instructional strategies aligned to the standards-based curriculum and to monitor the progress of the students in grade levels or subject area for which the team is responsible.
  - **A Family and Community Engagement Team** is comprised of the principal, counselor, social worker, teachers, and parents (typical configuration), with parents constituting the majority of the membership. The Family/Community Engagement Team advises, plans, and assists with matters related to the school-home compact, homework, open houses, parent-teacher conference, school-home communication, and parent education (including training and information about learning standards and parents’ role in supporting children’s learning at home).
- *Has the SEA identified interventions that are appropriate for different levels of schools (elementary, middle, high) and that address different types of school needs (e.g., all-students, targeted at the lowest-achieving students)?*

Interventions will be geared for the different levels of schools – elementary, middle and high – and tailored to address the different types of school needs. BIE’s Seven Point Intervention Plan (see table in section 2.D.iii) defines a range of strategies that can be utilized to address different types of schools needs are different levels of schools in the areas of leadership, effective teachers, extended learning time, school instructional program, data for continuous improvement, and school environment..

### Different Levels of Schools

BIE has identified specific interventions that are appropriate for different levels of schools – elementary, middle and high. All of the interventions listed in the Seven Point Intervention Plan below apply to all levels of schools, except the drop out initiative which is designed to target high schools. Conceivably, a middle schools initiative could be developed, as well. Approaches to certain inventions (i.e., literacy and math) will vary according to grade level.

### Turnaround Principle and Interventions

#### 1. **Strong leadership**

- Employee Performance Appraisal – Rewards and supports
- Choice of SIG Model
- Principals’ Academy

#### 2. **Effective teachers**

- Employee Performance Appraisal - Rewards and supports
- CORE Professional Development (i.e., literacy, math, RtI, and ELL support)
- CORE Technical Assistance for SIG schools
- Individual Development Plan

- Teachscape Professional Development (i.e., teacher evaluation, professional learning, and school improvement)
- Power of Teaching
- 3. ***Redesign school day, week, or year***
  - BIE evaluating (i.e., funding, labor CBA)
  - Choice of SIG Model
- 4. ***Strengthen the school instructional program***
  - RtI with emphasis on students with disabilities and limited English proficient students
  - CompassLearning Odyssey
  - Literacy Plan
  - Choice of SIG Model
  - Site visits
  - Progress Monitoring
  - Intervention/Improvement Plan
  - School Improvement Plan
  - Teachscape Professional Development (i.e., school improvement)
  - Power of Teaching
  - NASIS Lesson Plan Module
  - NASIS Special Education IEP Module
  - Drop-Out Prevention Initiative
- 5. ***Data to inform instruction and for continuous improvement***
  - NWEA MAP Assessments Quarterly Roll-up sessions
  - Native Star
  - NASIS
  - Special Education Data Summit
- 6. ***School environment***
  - Youth Risk Behavior Survey
  - School Safety Audits
  - Technical Assistance on Bullying Prevention
  - BIE National Policy Memorandum (NPM) on Suicide Prevention
  - Technical Assistance on Suicide Prevention and Drug & Alcohol Prevention
  - BIE evaluating use of a school climate instrument
- 7. ***Family and community engagement***
  - Native Star Family Engagement Tool (FET)
  - School Improvement involvement
  - BIE Summer Institute training
  - FACE family engagement (birth-5 years old)

### **Different Types of School Needs**

Targeted interventions will be provided at the school-level for students that are at-risk of not passing a grade level assessment including students with disabilities and students with limited English proficiency. Student eligibility for Special Education will be determined under the provisions of the Individuals with Disabilities Education Act (IDEA). Students with limited English proficiency (LEP) will be identified through the implementation of the World-Class Instructional Design Assessment (WIDA) standards to ensure high quality supports. In the BIE's continuous school improvement process, the ELO works directly with the school level staff to ensure process and

procedures are in place to support improvement of schools. Where participation and proficiency issues are identified, the BIE addresses sub-group performance by requiring schools to address the accountability issues in their Focus School improvement plans and activities.

*2.E.iv Provide the criteria the SEA will use to determine when a school that is making significant progress in improving student achievement and narrowing achievement gaps exits Focus status and a justification for the criteria selected.*

*Did the SEA provide criteria to determine when a school that is making significant progress in improving student achievement and narrowing achievement gaps exits Focus status?*

BIE has defined criteria to determine when a school that is making significant progress in improving student achievement exits Focus status, along with a justification for the criteria selected. Specifically, the criterion is provided below.

*Focus-Needs Improvement:* Schools in the 15% band of schools above the Priority category are described as Focus-Needs Improvement. This category corresponds to the Flexibility Focus category. To exit this status, these schools must meet their Annual Measurable Objective in two consecutive years to advance from the Focus-Needs Improvement status.

a. *Do the SEA's criteria ensure that schools that exit Focus status have made significant progress in improving student achievement and narrowing achievement gaps?*

The justification for using two consecutive years of meeting AMOs is to demonstrate that reform efforts are effectively internalized and success can be sustained over time, rather than being a one-time anomaly.

➤ *Is the level of progress required by the criteria to exit Focus status likely to result in sustained improvement in these schools?*

If schools can achieve AMO targets over two consecutive years, the indication is the exit Priority status will likely to result in sustained improvement in these schools.

## **TABLE 2: REWARD, PRIORITY, AND FOCUS SCHOOLS**

Provide the SEA's list of Reward, Priority, and Focus schools using the Table 2 template (see Attachment 9). Use the key to indicate the criteria used to identify a school as a Reward, Priority, or Focus school.

## 2.F PROVIDE INCENTIVES AND SUPPORTS FOR OTHER TITLE I SCHOOLS

2.F Describe how the SEA’s differentiated recognition, accountability, and support system will provide incentives and supports to ensure continuous improvement in other Title I schools that, based on the SEA’s new AMOs and other measures, are not making progress in improving student achievement and narrowing achievement gaps, and an explanation of how these incentives and supports are likely to improve student achievement and school performance, close achievement gaps, and increase the quality of instruction for students.

As previously explained, all schools in the BIE system are designated as Title I. All schools therefore receive Title I-A formula funding and operate schoolwide programs. Consequently, the incentives and supports provided affect all BIE-funded schools across the board.

2.F.i Does the SEA’s differentiated recognition, accountability, and support system provide incentives and supports for other Title I schools that, based on the SEA’s new AMOs and other measures, are not making progress in improving student achievement and narrowing achievement gaps?

BIE has developed a comprehensive system of recognition, accountability, and support that applies to all schools, since all schools in the BIE are considered Title I. That differentiated recognition accountability and support system provides incentives and supports that are likely to improve student achievement, close achievement gaps, and increase the quality of instruction for all students in the BIE.

### Incentives

Incentives are available for all schools, but are based on success and therefore accrue to the schools demonstrating the greatest success.

For schools designated as rewards schools – both Performing and Progress – the opportunity to be recognized as a Blue Ribbon School or a National Title I Distinguished School will be available. BIE will cover the costs for these recognition events. BIE will publicly recognize the reward schools on the BIE’s web-site and send a BIE dignitary to honor the school at a school assembly and at high-level and/or national BIE events.

For schools designated as rewards schools and also Satisfactory schools, flexibility will be afforded on their continuous improvement process to select from a group of effective practice indicators that the school chooses to use, such as the Danielson Model of Effective Schools or the Lezotte Model of Effective Schools, and tracking their continuous school improvement process in the Native Star system.

Additional supports will be provided to both reward and satisfactory schools to assist them in to concentrating efforts of additional improvements. Supports will include online resources (e.g., Native Star, NASIS), and technical assistance from the approved school improvement partner, the data analysis specialist, and the BIE’s Academic Achievement Office.

## Supports

Supports and interventions are directed toward the lowest performing schools in BIE's system with the intent of assisting those schools in becoming more successful. Supports and interventions will match the needs of the schools and will be of duration that enables the schools to reach their goals.

Priority-Turnaround schools will receive the greatest attention. The general approach is summarized in bullet form below.

- This includes Priority schools (at least 5% of lowest performing in BIE's system as determined by the BIE's accountability index).
- For these schools, their ADDs/ELOs will be required to intervene and conduct a comprehensive, on-site diagnostic review to pinpoint problem areas.
- The ADDs/ELOs will be required to meet with the tribal officials and school boards to present the data and problem areas, followed by quarterly collaboration with school boards and School Leadership Teams.
- Schools must conduct self-assessment using the Transformation indicators and develop a plan in the Native Star system.
- Schools must contract with a BIE-approved turnaround partner to implement reform plans.
- Priority Schools have the following options:
  - Implementation of a Turnaround Model replacing the principal; screen existing school staff and rehire no more than half the teachers; adopt a new governance structure; and improve the school through curriculum reform, professional development, extending learning time, and other strategies;
  - Implementation of a Transformation Model replacing the principal and improving the school through comprehensive curriculum reform, professional development, extending learning time, and other strategies.
- For BIE-operated schools that fail to demonstrate improvement after three years, the BIE's Academic Achievement Office will intervene.
- For tribally-controlled schools that fail to demonstrate improvement after three years, the BIE will work with tribal officials to intervene.
- Supports will include online resources, and technical assistance from the approved turnaround partner, the BIE's intervention implementer (i.e., CORE), the data analysis specialist, and the BIE's turnaround team.
- On-site technical assistance visits will be conducted each month.
- Specialists will convene each month to assess the implementation of recommendations provided and determine next steps.

Similarly, Focus-Needs Improvement schools will receive extra attention, but not as dramatic as Priority-Turnaround schools.

- This includes Focus schools (at least 15% of lowest performing above the 5% priority schools in BIE's system as determined by the BIE's accountability index).
- For these schools, their ADDs/ELOs will be required to intervene and conduct a comprehensive, on-site diagnostic review to pinpoint problem areas.

- The ADDs/ELOs will be required to meet with the tribal officials and school boards to present the data and problem areas, followed by semi-annual collaboration with the school board and School Leadership Team.
- Schools must conduct a self-assessment using the 99 Rapid Improvement Indicators and develop a plan in the Native Star system.
- Schools must contract with a BIE-approved turnaround partner to implement reform plans.
- For BIE-operated schools that fail to demonstrate improvement after three years, the BIE's Academic Achievement Office will intervene.
- For tribally-controlled schools that fail to demonstrate improvement after three years, the BIE will work with tribal officials to intervene.
- Specific interventions will vary depending on the needs of the school and their specific performance indicators. Examples include extended learning time, targeted reading and mathematics supports, professional development and implementation assistance.
- Supports will include online resources, and technical assistance from the approved turnaround partner, the BIE's Intervention Implementer (CORE), the data analysis specialist, and the BIE's turnaround team.
- On-site technical assistance visits will be conducted each month.
- Specialists will convene each month to assess the implementation of recommendations provided and determine next steps.

Finally, Transitioning and Progressing schools will be provided support commensurate with their needs and of duration that enables the schools to reach their goals.

- This includes all other BIE schools with less than 60% of their students proficient in Reading/Language Arts and Math.
- For these schools, their ADDs/ELOs will be required to intervene and conduct a comprehensive, desk-top diagnostic review to pinpoint problem areas assessing the 99 Rapid Improvement indicators and developing a plan in the Native Star system and must contract with a BIE-approved turnaround partner to implement reform plans.
- The ADDs/ELOs will be required to meet with the tribal officials and school boards to present the data and problem areas.
- Schools must contract with a BIE-approved school improvement partner to implement their improvement plans that would focus on instructional practice, according to specific needs of the school and their specific performance indicators. Examples include extended learning time, targeted reading and mathematics supports, professional development and implementation assistance.
- Supports will include online resources, and technical assistance from the approved school improvement partner, the data analysis specialist, and the BIE's turnaround team.
- Teleconference will be scheduled each month through the ELO.
- The school improvement providers will convene each month with the ELO to assess the implementation of recommendations provided and determine next steps.

BIE's differentiated recognition, accountability, and support system provides incentives and supports for all its schools that, based on BIE's new AMOs and other measures, are not making progress in improving student achievement and narrowing achievement gaps.

*2.F.ii Are those incentives and supports likely to improve student achievement, close achievement gaps, and increase the quality of instruction for all students, including English Learners and students with disabilities?*

As explained, subgroups present a real challenge to BIE. BIE cannot dependably use SWD and LEP subgroups for comparison purposes primarily because the n-size is insufficient in small schools. A confounding problem is that the SWD and LEP subgroups actually form a majority of the school population in some schools, which is counterintuitive to measuring the growth of what is expected to be a subset of a larger school population. In schools with sufficient n-size for SWD and LEP subgroups, additional analyses can be conducted by BIE to more closely monitor progress of these students.

The approach taken by BIE is to use a super subgroup comprised of lowest proficient students (currently 20% of all students), because of the traditional overlap between low proficient students and SWD and LEP subgroups. Schools will be measured based on growth of their lowest 20% of students, which includes low-performing SWD and LEP (ELL) populations, compared to the average of highest 20% of all BIE schools. The measures are Reading/Language Arts and Math scores.

Using the super group approach, those incentives and supports provided likely will improve student achievement, close achievement gaps, and increase the quality of instruction for all students, including English Learners and students with disabilities.

## **2.G BUILD SEA, LEA, AND SCHOOL CAPACITY TO IMPROVE STUDENT LEARNING**

2. G Describe the SEA's process for building SEA, LEA, and school capacity to improve student learning in all schools and, in particular, in low-performing schools and schools with the largest achievement gaps, including through:
- i. timely and comprehensive monitoring of, and technical assistance for, LEA implementation of interventions in Priority and Focus schools;
  - ii. ensuring sufficient support for implementation of interventions in Priority schools, Focus schools, and other Title I schools identified under the SEA's differentiated recognition, accountability, and support system (including through leveraging funds the LEA was previously required to reserve under ESEA section 1116(b)(10), SIG funds, and other Federal funds, as permitted, along with State and local resources); and
  - iii. holding LEAs accountable for improving school and student performance, particularly for turning around their Priority schools.

Explain how this process is likely to succeed in improving SEA, LEA, and school capacity.

- i. timely and comprehensive monitoring of, and technical assistance for, LEA implementation of interventions in Priority and Focus schools;

The BIE has developed and is utilizing a process for monitoring and providing technical assistance to schools identified as persistently low achieving that qualified for School Improvement Grant

1003(g) funds. BIE staff is actively involved in leading the effort both to monitor and provide technical assistance to these lowest achieving 5% of schools. Intervention teams have been formed comprised of DPA staff, ELOs, school staff, and outside contractors with particular expertise. The contracted service providers have demonstrated successful experience in: a) turning around low-performing schools; b) implementing interventions designed to dramatically improve student achievement; and c) addressing the needs of English language learners, students with disabilities, and students in historically underachieving subgroups (i.e., Limited English Proficiency and students with disabilities). Building upon this process, the BIE will expand monitoring and technical assistance from a purely SIG model to newly defined Priority and focus schools. The BIE will hold schools accountable for improving student achievement and closing achievement gaps by closely monitoring the extent to which schools are meeting goals and benchmarks described in required accountability plans and the BIE will ensure that there is sufficient support for these schools as they engage in the process of rapid improvement.

The BIE provides the following capacity building activities to ELOs and schools to ensure comprehensive monitoring of and technical assistance for implementation of interventions in Priority and Focus schools:

- Mandatory training regarding the requirements and timeline related to the school improvement process and implementation of interventions.
- BIE reviews the ELO approved school improvement plans following the presentation to the local school board to ensure compliance and potential for success.
- Priority schools: the BIE will conduct once a month monitoring and technical assistance visits to each Priority school. These visits include: a comprehensive interview with the principal; Focus groups with teachers, parents, and students; and classroom observations.
- Focus Schools: the BIE will conduct on-site monitoring and technical assistance visits once a school quarter to each Focus School. These visits include: an interview with the principal; Focus groups with teachers and parents; and classroom observations.
- Review the electronic school improvement plans and progress reports that are part of the BIE Native Star online tool.
- Develop, train, and implement regional SOS to assist schools on utilization of the teacher and leader standards.
- Train the regional SOS on the implementation and alignment of the Common Core State Standards and assessments.
- Develop and provide data team training to regional SOS to increase staff effectiveness and inform instruction.
- Develop supports for professional collaboration which Focuses on school climate and high expectations and collaborative teaching practices.
- Develop tools, practices and procedures to ensure parental and family engagement.
- Develop and implement interventions and instructional strategies for all students including Limited English Proficient students and Students with Disabilities.
- Develop and train on the use of common formative and summative assessments.
- Data coaching based on key data (e.g., NWEA MAP Assessments, NASIS, WIDA-ELD, etc.).
- Strategic planning for implementing Common Core State Standards and high-quality assessments systems.

- Strategies for repurposing resources (fiscal, human, technology, facilities); building community partnerships and partnerships with social service agencies and other providers; and leveraging a variety of data sources to support improvement efforts.

The technical assistance team will help build capacity to support leadership practices to support improved teacher effectiveness (see Principle 3):

- Provide leadership and teacher professional development Focused on what evidence to look for when observing classrooms; coaching for literacy and mathematics; effective modeling practices; planning based on classroom observations; research-based intervention practices; and, response to intervention.
- Provide implementation support and coaching throughout the year for principals and teachers. Model effective practices and provide guided practice until practices are in place independently of the contractor.
- Provide modeling to principals in providing feedback to teachers, and provide guided practice to principals until the principal is able to exhibit practices independently.
- Implement, monitor, and support an intervention model at the school-level with a Focus on students with disabilities and English language learners, including profession development for teaches and other school staff.
- Build the division’s capacity to support low-performing schools and increase student achievement.

To allow the BIE to better monitor school improvement progress throughout the school year and over the course of the interventions, Priority and Focus schools will be required to use the same assessments, school improvement web-based planning tool, data analysis systems, partners and resources, as outlined below:

*Native Star.* BIE requires Priority and Focus schools to submit their school improvement plan using Native Star. Native Star, a web-based system created and managed by the Center on Innovation and Improvement (CII) for BIE, is aligned to the turnaround principles and designed to monitor the progress of the implementation of school reform plans. A number of evidence-based practices and indicators are provided to inform improvement efforts, but the system can also be customized to reflect customized division or school indicators of effective practice or rubrics for assessment. BIE staff will review plans submitted via Native Star and communicate with priority schools and their districts regarding missing, incomplete, or inadequate plans for each indicator of success. In addition to providing a means for BIE to monitor each district’s level of implementation of reforms, this process will facilitate the introduction of instructional program planning at the Education Line Office and school level, resulting in modifications aligned to ongoing assessments of need and the implementation of reforms, which the district can sustain at no cost after exiting Priority status. Native Star is used to collect professional development activities, strategies for extending learning opportunities, parent activities, and indicators of effective leadership and instructional practice.

*Turnaround Partner.* BIE partners with the Center on Innovation and Improvement (CII) to assist BIE and BIE-funded schools with various reform efforts specifically for: School Improvement, Statewide Systems of Support, School Turnaround and School Improvement Grants, Family Engagement, Extended Learning Time and Supplemental Educational Services.

*BIE Liaison.* Each Priority and Focus school will be assigned a liaison from BIE staff in the Division of Performance and Accountability (DPA). The role of the liaison is to work closely with ELO and school leadership to observe and provide feedback on reform plan implementation.

*Fiscal monitoring.* BIE will provide ongoing fiscal oversight of expenditures submitted by priority and focus schools to ensure claims match activities included within approved budgets.

*Data reviews.* BIE will conduct monthly data reviews to ensure that schools and districts make progress towards their goals. BIE will require districts to submit student achievement and school climate data for each of their priority schools. BIE staff will discuss progress towards goals, as evidenced by data, as well as concerns regarding objectives illustrating stagnant or minimal progress.

BIE will require ADDs/ELOs (district) and school staff to identify and communicate strategies to modify existing plans and practices in order to address concerns and improve academic outcomes. This process will facilitate data reviews at the ADDs/ELOs (district) level, resulting in modifications to instructional programming aligned to ongoing assessments of need, which the ADDs/ELOs (district) can sustain at no cost after exiting Priority status.

*School monitoring visits.* BIE's School Improvement Grant (SIG) monitoring system includes school visits in order to ensure ADDs/ELOs (districts) and schools receiving SIG funds have implemented their approved reform plans with fidelity, identified areas of concern within their implementation, and developed appropriate plans to resolve these issues accordingly. BIE staff will continue this process and conduct four onsite school visits to each funded Priority school annually. Attendees will include the school's principal, turnaround partner, and district representatives.

*NWEA Measures of Academic Progress (MAP).* NWEA MAP is a computer adaptive testing (CAT) system that administers tests to determine each student's overall reading and mathematics achievement. The system adjusts the difficulty of questions based on performance, and tracks the performance of individual students, classrooms, and the school over time. Students are assessed at least three times per year, and the beginning of year data is used to set progress goals for mid-year and end of year growth and proficiency. Students are grouped by tiers based upon skills and need to facilitate meaningful instruction. Priority and Focus schools will be required to utilize this progress monitoring tool to track the efficacy of interventions for selected students.

➤ *Did the SEA describe a process for the rigorous review and approval of any external providers used by the SEA and its LEAs to support the implementation of interventions in Priority and Focus schools that is likely to result in the identification of high-quality partners with experience and expertise applicable to the needs of the school, including specific subgroup needs?*

The BIE will utilize a variety of external providers to assist in its school improvement efforts. As a federal agency, procurement of goods and services is handled by the Office of Acquisitions consistent with the Federal Acquisition Regulation (FAR). The Federal Acquisition Regulation is the principal set of rules in the Federal Acquisition Regulation System, which consists of sets of regulations issued by agencies of the federal government to manage what is called the acquisition or procurement process of obtaining goods and services.

BIE will therefore purchase professional services utilizing the FAR system and the Federal Business Opportunities (FedBizOps.gov) online procurement system. Proposals will be solicited from vendors and then evaluated before an award is made based on defined criteria outlined in a performance work statement. The key to procuring high quality services are the requirements detailed in the performance work statement. The process is rigorous for the review and approval of procured professional services.

- i. ensuring sufficient support for implementation of interventions in Priority schools, Focus schools, and other Title I schools identified under the SEA’s differentiated recognition, accountability, and support system (including through leveraging funds the LEA was previously required to reserve under ESEA section 1116(b)(10), SIG funds, and other Federal funds, as permitted, along with State and local resources); and

The BIE will take the following steps to ensure that ELOs and staff in BIE-operated schools are accountable through Employee Performance Appraisal Plans (EPAP) for improving school and student performance, particularly for turning around Priority and Focus schools:

- The BIE requires ELO and school participation in the school improvement appraisal and planning process.
- The BIE requires ELO and school participation in the mandatory training meetings for all priority and focus schools.
- The BIE requires the ELO and school to present the revised school improvement plan to the local board of education.
- The BIE will monitor, at least once annually, each ELO that has priority or focus schools to ensure implementation of required interventions and ELO technical assistance to the schools.
- The BIE will review the Quarterly Progress Reports submitted for each Priority and Focus school to ensure that the school improvement activities outlined in each school improvement plan are being implemented.
- Reform-oriented duties will be specifically included in the BIE performance appraisal process, known as Employee Performance Appraisal Plans (EPAP)

The BIE will provide extensive support and guidance to ensure ELOs and schools, together with the technical assistance team, implement a model that meets the turnaround principles or one of the four US Department of Education intervention models in priority schools. The BIE will monitor the implementation of school improvement interventions in Priority, as well as Focus and other schools, on a cyclical basis.

- ii. holding LEAs accountable for improving school and student performance, particularly for turning around their Priority schools.

*Explain how this process is likely to succeed in improving SEA, LEA, and school capacity.*

As explained previously in this document, the term LEA does not readily translate to the BIE-funded school system. For some purposes, schools are designated LEAs by NCLB and other legal documents. For all practical purposes, however, the Education Lines Offices, in tandem with the

three Associate Deputy Director offices, function as LEAs in the BIE system. In terms of accountability for school and student performance, both the ADDs/ELOs and schools should be held accountable.

The BIE will take the following steps to ensure that ELOs and staff in BIE-operated schools are accountable for improving school and student performance, particularly for turning around priority and focus schools:

- The BIE requires ELO and school participation in the school improvement appraisal and planning process.
- The BIE requires ELO and school participation in the mandatory training meetings for all priority and focus schools.
- The BIE requires the ELO and school to present the revised school improvement plan to the local board of education.
- The BIE will monitor, at least once annually, each ELO who has priority or focus schools to ensure implementation of required interventions and ELO technical assistance to the schools.
- The BIE will review the Quarterly Progress Reports submitted for each Priority and Focus school to ensure that the school improvement activities outlined in each school improvement plan is being implemented.

## **PRINCIPLE 2: SUMMARY**

It is anticipated that continuous school improvement will need a comprehensive effort from the school, DPA, ELO, ADD, and other resources to make significant progress. Funding for priority and focus schools is available and the BIE is concentrating on those schools not only with the greatest need but also the strongest commitment to make rapid improvements. SIG funding is not just regular school improvement funding offered through the federal government; this program is intended to make drastic changes to school governance, processes, and procedures.

As for DPA's accountability, all priority and focus schools are required to have intermediate-cycle, formative, curriculum-based measures in place in addition to the required ESEA state assessment. The DPA examines results from these formative assessments quarterly along with other factors such as fidelity of implementation and progress on the leading indicators identified in the final requirements that determine whether, for example, a SIG grant should be renewed.

The BIE reviews annual goals for student achievement in each school. In addition to administering annual state tests, BIE schools are expected to use interim assessments to provide progress reports. Assessments are administered three times a year in the fall, winter, and spring. Furthermore, SIG schools are also required to use short-cycle progress monitoring assessments such as AIMSweb, DIBELS, and others and report quarterly to all key stakeholders.

BIE high schools must also use ACT's EXPLORE, PLAN, AND ACT tests to help students make educational and career plans starting in 8th grade and take them through high school and beyond. Most students take EXPLORE in 8th grade or at the beginning of 9th grade. PLAN is for 10th graders and the ACT is for 11th and 12th graders. BIE's plans call for quarterly reviews of this student achievement data. In addition, BIE's Priority and Focus schools must participate in

technical assistance and demonstrate progress toward specific goals, such as increasing student and teacher attendance and increasing the number of students completing advanced coursework. For Priority schools, the BIE established ambitious goals of 30%-40% gains in the number of students' proficient and advanced as measured by a criterion referenced assessment fall to spring.

**PRINCIPLE 2 OVERALL REVIEW**

*Is the SEA's plan for developing and implementing a system of differentiated recognition, accountability, and support likely to improve student achievement, close achievement gaps, and improve the quality of instruction for students?*

BIE's plan for developing and implementing a system of differentiated recognition, accountability, and support is specifically designed to improve student achievement, close achievement gaps, and improve the quality of instruction for students.

BIE has developed a differentiated recognition, accountability, and support system suitable to the uniqueness of the BIE school system. The differentiated recognition model may evolve over time in response to the ongoing process for evaluating and improving the efficiency and effectiveness of its design, structure, and organization. Self-evaluation and self-correction are basic assumptions built into the model.

The accountability system devised by BIE is a dramatic, if not revolutionary, departure for the BIE, compared to the unworkable 23 states' accountability system mandated by the negotiated rulemaking provision of NCLB. For the first time, the BIE will be able to collect and compare assessment data on key indicators across all BIE-funded schools in 23 states.

The supports needed to advance continuous improvement are based on research-based approaches utilized successfully in other school systems across the country. While the comprehensiveness of the system is in place, any intervention is only as good as the fidelity of its implementation.

*Do the components of the SEA's plan fit together to create a coherent and comprehensive system that supports continuous improvement and is tailored to the needs of the State, its LEAs, its schools, and its students? If not, what aspects are not addressed or need to be improved upon?*

The intent of the BIE is that the components of the plan fit together to create a coherent and comprehensive system (See Attachment 15). Like any new design, it will need a shakedown cruise and field testing to uncover the flaws and to correct them. Candidly, the supports are the key to improving the quality of instruction and making gains in achievement. The deployment of supports needs to be well coordinated and appropriate to the needs of the schools. Another area of uncertainty is the teacher and principal evaluation and support system, which depend so much upon federal laws and regulations. However, we are optimistic that changes can be made. These changes will affect only one-third of the schools in the system, the BIE-operated schools. Related, a wildcard is the tribally-controlled schools, since BIE does not directly control these schools and therefore cannot as readily implement reforms as it can in BIE-operated schools.

### PRINCIPLE 3: SUPPORTING EFFECTIVE INSTRUCTION AND LEADERSHIP

#### 3.A DEVELOP AND ADOPT GUIDELINES FOR LOCAL TEACHER AND PRINCIPAL EVALUATION AND SUPPORT SYSTEMS

Select the option that pertains to the SEA and provide the corresponding description and evidence, as appropriate, for the option selected.

|  |  |
|--|--|
| <p><b>Option A</b></p> <p><input checked="" type="checkbox"/> If the SEA has not already developed and adopted all of the guidelines consistent with Principle 3, provide:</p> <ul style="list-style-type: none"> <li>i. the SEA’s plan to develop and adopt guidelines for local teacher and principal evaluation and support systems by the end of the 2012–2013 school year;</li> <li>ii. a description of the process the SEA will use to involve teachers and principals in the development of these guidelines; and</li> <li>iii. an assurance that the SEA will submit to the Department a copy of the guidelines that it will adopt by the end of the 2012–2013 school year (see Assurance 14).</li> </ul> | <p><b>Option B</b></p> <p><input type="checkbox"/> If the SEA has developed and adopted all of the guidelines consistent with Principle 3, provide:</p> <ul style="list-style-type: none"> <li>i. a copy of the guidelines the SEA has adopted (Attachment 10) and an explanation of how these guidelines are likely to lead to the development of evaluation and support systems that improve student achievement and the quality of instruction for students;</li> <li>ii. evidence of the adoption of the guidelines (Attachment 11); and</li> <li>iii. a description of the process the SEA used to involve teachers and principals in the development of these guidelines.</li> </ul> |
|--|--|

The Bureau of Indian Education recognizes that teacher and principal effectiveness has a greater impact upon student learning than any factor in a school system, especially in BIE-funded schools, which are the lowest performing in the nation.<sup>28</sup> The BIE is therefore committed to developing and sustaining teacher and principal evaluation and support systems as a means to support the continuous improvement of instruction.

Principle 3 states two basic requirements: 1) that the SEA develop and adopt guidelines for teacher and principal evaluation and support systems, and 2) that LEAs develop and implement such systems consistent with the SEA’s guidelines. The premise of Principle 3 presents particular

<sup>28</sup> Partnership for Learning. *The Impact of Effective Teachers and Principals: Accelerating Student Performance by Focusing on What Matters Most in Our Schools*, July 2010.

challenges to the Bureau of Indian Education, which, while not insurmountable, will need to be taken into consideration in meeting this requirement.

### Historical Perspective

The BIE serves as an SEA for BIE-funded schools nationally, but does not function as an SEA completely analogous to states. Key differences distinguish the BIE and states, as described below.

First, the Office of Personnel Management, not BIE, develops and issues overall policies affecting hiring in the federal government. The individual executive branch agencies appropriately apply the policies and standards to individual personnel actions. The BIE, as a sub-unit of the Department of the Interior, applies uniform policies and procedures for personnel evaluation throughout the Bureau. The approach articulated in Principle 3 that the SEA develop guidelines and the LEAs separately develop evaluation systems for approval by the SEA is not tenable for the BIE as a federal agency. The development of personnel evaluation systems for federal employees is an agency responsibility and not a local responsibility. However, such a centralized approach does not preclude active involvement by teachers and principals in the development and implementation of evaluation systems. The government can specifically request input by principals, as federal employee managers, and work with the employee labor union to solicit input from bargaining unit teachers.

Furthermore, under OPM guidelines, a federal agency may develop more than one appraisal program. Agencies can authorize the development of separate appraisal programs under the framework of their appraisal system. Such an approach would allow an agency's various subcomponents or subpopulations to determine how best to address their needs and cultures and more effectively manage individual and organizational performance by tailoring specific appraisal procedures and requirements to mission and work technology.

Second, the issue of what is an LEA in the BIE system complicates the task of the development of teacher and principal evaluation and support systems by LEAs for approval by the BIE acting as SEA. As explained previously, the 22 Education Line Offices, in tandem with their respective three Associate Deputy Director offices, function as the LEAs of the BIE system. For some purposes, however, NCLB has designated schools as LEA in order to directly receive ESEA funds.

Third, the BIE does not directly operate the majority of schools in its system. The BIE directly operates only 58 schools, while 116 are tribally-controlled. BIE can implement reforms only in schools it operates. BIE cannot require the tribal schools to adopt teacher and principal evaluation and support systems and can only encourage tribally-controlled schools to adopt the BIE's teacher and principal evaluation system.

Regarding BIE-operated schools, the BIE employs approximately 3,800 contract educators in the 174 schools it controls. Employees in the BIE-operated schools are federal employees and are considered Education Contract Personnel in accordance with Public Law 95-561, November 1, 1978, as amended.<sup>29</sup> The definition of Education Contract Personnel includes education positions in the BIE's Education Line Offices and the elementary and secondary schools and dormitories

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<sup>29</sup> Codified at 25 C.F.R. § 38.

operated by the BIE.<sup>30</sup> Specific federal regulations govern job performance for teachers and principals within BIE-operated schools. These guidelines are articulated in several documents, including: P.L. 95-561; BIAM 62, Chapter 11; and 370 DM 430. In addition, the Collective Bargaining Agreement (CBA) outlines agreed-upon procedures covering performance standards and evaluation for bargaining unit employees.<sup>31</sup> Collectively, these guidelines describe the job performance reviews used for all federal employees, including educators and leaders serving students attending BIE-operated schools.

In sum, BIE is a special case with respect to teacher and principal evaluation compared to other SEAs, because the BIE follows federal guidelines for the management and evaluation of personnel. BIE's reform of teacher and principal evaluation systems may necessitate changes encompassing policy, regulations, procedures, internal manuals, internal rules, and agreements. Reform of evaluation systems in BIE-funded schools, both BIE and tribal, is not insurmountable, but will require a different approach than states have taken.

### **Initial Evaluation Reform Efforts**

Reform of teacher and principal evaluation systems is one of the most critical areas of need in the BIE. The BIE has taken steps to reform teacher and principal evaluation and support systems initiatives that support the continuous improvement of instruction. As mentioned above, for example, the BIE has a labor agreement with the union representing bargaining unit employees working in BIE-operated schools. The most recent Collective Bargaining Agreement between the Federation of Indian Service Employees Union (FISE) and the Department of Interior's Office of Indian Affairs was concluded in February 2012.<sup>32</sup> Bargaining unit employees include all professional and nonprofessional employees employed in BIE-operated schools, excluding managerial officials, supervisors, and selected other employees.<sup>33</sup> Teachers in BIE-operated schools are represented by a labor union, but schools' principals and superintendents are not. FISE will thus play an important partnership role with BIE in the development and adoption of guidelines for local teacher evaluation and support systems.

Steps in the development of reform initiatives already have been underway between the two parties. Discussions have taken place with the union about revising the existing Employee Performance Appraisal Plan (EPAP), which is the instrument used to evaluate BIE employees, to include a student achievement element. Discussions have centered on schools participating in the Department of Education School Improvement Grant (SIG) program. SIG requires the use of data on student progress in the evaluation of teachers. Agreement in principle has been reached with the SIG schools and can be expanded to all BIE-operated schools. A draft Memorandum of Understanding has been developed and is under review by both parties.

In regard to the teachers in tribally- controlled schools, BIE cannot require unilaterally that tribal schools implement a particular evaluation system. However, some leverage is available with schools funded with School Improvement Grant dollars, since SIG requires the use of data on student

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30 See 62 BIAM 11.1.

31 Collective Bargaining Agreement between the Federation of Indian Service Employees Union and the Department of the Interior's Office of Indian Affairs, n.d. See <http://www.bie.edu/HR/Resources/Labor/index.htm>.

32 See <http://ief.aft.org/index.cfm?action=cat&categoryID=559E3C78-738E-42A6-9DCD-C174522891BA>.

33 See CBA, p. 142; Additional excluded employees are described in 5 USC 7112(b)(2), (3), (4), (6) and (7).

progress in the evaluation of teachers. Tribal schools unwilling to include a student achievement component to teacher evaluation will not be eligible for SIG dollars.

Beyond the FISE MOU, the BIE is exploring how it can create and implement an educator and leader evaluation process in BIE-operated schools that applies to all teachers and principals, while concurrently adhering to federal employment regulations and protections. The exploration process by BIE will be conducted to fully engage various stakeholders, including teachers (represented by FISE), principals, superintendents, school boards, and tribal leaders.

3.A.i Is the SEA's plan for developing and adopting guidelines for local teacher and principal evaluation and support systems likely to result in successful adoption of those guidelines by the end of the 2012–2013 school year?

### **BIE's Plan to Support Effective Instruction and Leadership**

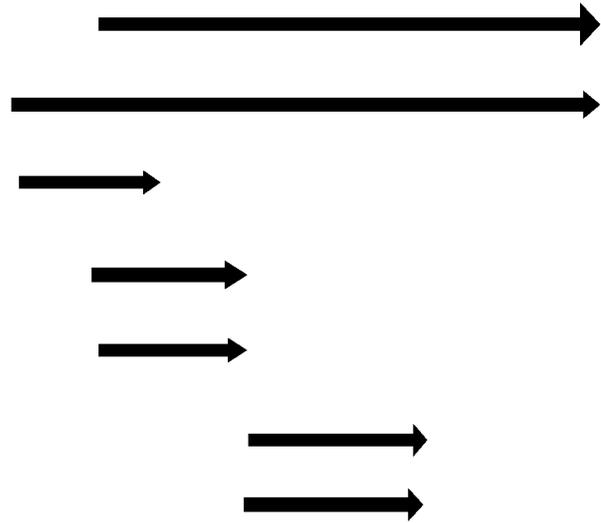
In the fall of 2012, BIE plans to establish and convene an Educator Effectiveness Steering Committee. The charge of the Committee is to guide the development of teacher and principal evaluation and support systems as a means to support the continuous improvement of instruction.

The committee will be divided into two workgroups: (a) the Teacher Evaluation Workgroup, and (b) the Principal Evaluation Workgroup. Each workgroup will be charged with developing an evaluation model that adheres to the following key principles:

- 1) Every American Indian and Alaska Native student will be taught by an effective teacher and each school will be led by an effective principal.
- 2) A fair and equitable system to measure the effectiveness of teachers and principals.
- 3) Meaningful differentiation of performance utilizing at least three performance levels.
- 4) A design incorporating multiple valid measures to determine performance levels, including student growth for all students and other measures of professional practice.
- 5) Performance evaluation that will inform improvement of instruction and lead to increased student achievement.
- 6) Utilization of feedback mechanisms to identify needs and guide professional development.
- 7) A comprehensive performance management system that evaluates teachers and principals on a regular basis and forms the basis of personnel decisions.

The workgroups will include a broad cross-section of stakeholders that represent diverse viewpoints. The members will include those individuals currently serving BIE schools as teachers, principals, superintendents, and tribal governing boards or school governing boards, as well as parents, business, and community organizations. The employee labor union representing teachers also will be actively involved in the development process.

A timeline for implementation of evaluation and support systems has been developed. Initial planning for the teacher and principal evaluation system will take place in the late months of school year 2011-2012 and continue into early school year 2012-2013. A piloting phase will be conducted in SY 2012-2013. The evaluation system will become fully operational by the end of school year 2012-2013.



This timeline allows sufficient opportunities for consultation and training to be provided throughout the BIE school system.

In addition, action steps and target dates to accomplish reform of teacher and principal evaluation systems, from design to implementation, have been defined as follows:

| <b>Action Steps and Target Dates</b>  |                     |
|---|---------------------|
| <b>Action Step</b>  | <b>Target Date</b>  |
| Initial planning.   | March-August 2012   |
| Form Educator Effectiveness Committee.  | September 2012      |
| Assign and task Teacher Evaluation Work Group and Principal Evaluation Workgroup.   | September 2012      |
| Conduct substantial planning, including the design of complex evaluation systems, with input from a range of stakeholders.              | Nov. 2012-Jan. 2013 |
| Conduct outreach to organizations and individuals with expertise in the design of teacher and principal evaluation and support systems. | August 2012         |
| Begin revision process of key authorities and regulations, such as Department of the Interior policy manuals and the FISE-Interior CBA. | January 2013        |
| Piloting of evaluation systems.   | Jan.-Feb. 2013      |
| Re-design of systems, based upon pilots and input from stakeholders.  | Feb.-Mar. 2013      |

|  |               |
|--|---------------|
| Provide training to schools and BIE administration regarding the implementation of the evaluation systems. | May-June 2013 |
| Full implementation of evaluation and support systems.   | SY 12-13      |

Detailed work plans will be developed for major stages of the evaluation systems project. Appropriate resources will be allocated to the different workgroups and subgroups.

A critical activity is the design of the evaluation systems. Consideration of various models and criteria is underway, but the special challenges of the BIE as an SEA federal agency will need to be considered. For example, formal tribal consultation may be required as part of the process. BIE will partner with experts in the field of educator evaluation systems in order to accomplish this key task. Partnerships with various non-profit organizations and for-profit companies have been an important part of BIE's reform initiatives. BIE likely will reach out to outside organizations and experts supporting effective instruction and leadership. Topics to be explored include:

- Identification of measures for evaluation of teachers and principals
- Validity and reliability of evaluation measures
- Measures related to academic achievement and school performance
- Evaluation of teachers of non-tested grades and subjects
- Evaluation of teachers of English learners and Limited English Proficiency (LEP) students
- Evaluation of teachers of student with disabilities
- Approaches to providing training, professional development, and technical assistance

It is possible that part of the work needed to develop and sustain teacher and principal evaluation and support systems may involve the work of outside contractors, since this specialized work is beyond the capacity of BIE and Department of the Interior personnel. In that case, the above requirements will be specified in the performance work statement for purchase of services through the federal acquisition process.<sup>34</sup>

While the development of teacher and principal evaluation and support systems in the BIE school system will present unique challenges, it will become a key element to achieve the continuous improvement of instruction. It will offer a more coherent, unified system of education by including such features as:

- a) Adoption and implementation of the Common Core Standards (CCS)
- b) Single BIE assessments in reading and mathematics;
- c) Options for tribal communities to incorporate local-developed standards and assessments in Native language, culture and history;
- d) BIE's interim accountability system; and
- e) Additional professional development opportunities for principals and educators.

The newly developed evaluation and support systems will achieve reform of a major component of education in BIE-operated schools significantly impacting student performance.

<sup>34</sup> Federal acquisitions for professional services are purchased thorough FedBizOpps.

*3.A.ii What is the process the SEA will use to involve teachers and principals in the development of these guidelines?*

As explained above, BIE’s approach to the development of evaluation and support systems will need to vary from the approach stipulated by the Flexibility Request, whereby guidelines are developed at the SEA level and evaluations systems will be developed with input from the local level. The BIE will explore how it can create and implement teacher and principal evaluation systems that meaningfully incorporate stakeholder input, while concurrently adhering to federal employment regulations and protections.

The exploration process by BIE will be conducted to fully engage various stakeholders, including teachers (represented by FISE), principals, superintendents, school boards, and tribal leaders. In cooperation with the labor union representing teachers, the BIE will actively ask for input from teachers in BIE-operated schools regarding the development of guidelines. BIE itself will solicit input from principals and superintendents, who are considered management and not represented by the labor union. As a means to help ensure stakeholder input, the Educator Steering Committee will be comprised of representatives across BIE, including teachers, principals, superintendents, school board members, tribal representatives, and BIE administrators.

*3.A.iii Has the SEA checked Assurance 15?*

Yes, the BIE will submit to the U.S. Department of Education for peer review and approval a copy of the guidelines that it will adopt by the end of the 2012-2013 school year.

### **3.B ENSURE LEAS IMPLEMENT TEACHER AND PRINCIPAL EVALUATION AND SUPPORT SYSTEMS**

3.B Provide the SEA’s process for ensuring that each LEA develops, adopts, pilots, and implements, with the involvement of teachers and principals, including mechanisms to review, revise, and improve, high-quality teacher and principal evaluation and support systems consistent with the SEA’s adopted guidelines.

The BIE has developed a plan and timeframe for the development and implementation of an educator evaluation system that incorporates stakeholder input into the process. This work has begun with the development of a draft Memorandum of Understanding between BIE and the employee labor union, the Federation of Indian Service Employees (FISE). That work will be revisited to expand and concentrate the reform initiatives in light of the ESEA Flexibility Request.

In the development of a model for teacher and principal evaluation, key factors to be addressed include:

- Performance levels
- Reliability and validity
- Training, professional development, and technical assistance

As outlined in section 3.A, the BIE plans to establish and convene an Educator Effectiveness Steering Committee. The Committee will be divided into two workgroups: (a) the Teacher Evaluation Workgroup, and (b) the Principal Evaluation Workgroup. Each workgroup will include a broad cross-section of stakeholders that represent diverse viewpoints, along with expertise and perspectives from tribal leaders. The members will include those individuals currently serving BIE schools in such roles as teachers, principals, superintendents, school boards, and higher education as well as parent, business, and community organizations.

The use of the steering committee and the work groups is essential to the development of high-quality teacher and principal evaluation and support systems. In addition, input into the process by the teacher labor union and local school communities will include additional levels of stakeholder input.

- *Does the SEA have a process for reviewing and approving an LEA's teacher and principal evaluation and support systems to ensure that they are consistent with the SEA's guidelines and will result in the successful implementation of such systems?*

As explained above, BIE's approach to the development of evaluation and support systems calls for the systems to be developed at the BIE-SEA level, with adequate input, and the implementation of the systems at the local level. It goes beyond the BIE simply developing guidelines for local level creation of systems. The BIE differs from other SEAs in this respect. Consequently, the BIE will not develop a review and approval process of local evaluation systems with "consistency" and "successful implementation" guarantees. The BIE as the SEA will develop teacher and principal evaluation systems that meet stated reform principles and implementation objectives. Training will be provided throughout the system to ensure consistent implementation.

- *Does the SEA have a process for ensuring that an LEA develops, adopts, pilots, and implements its teacher and principal evaluation and support systems with the involvement of teachers and principals?*

Teachers and principals represent two distinct categories in the BIE, and therefore the processes for involvement will be different based upon collective bargaining rights and management classifications. Both groups, however, will be actively involved in the development, adoption, piloting, and implementation of the evaluation and support systems.

Principals are considered management in the BIE, which means their involvement will be facilitated by the BIE as a federal agency. BIE will work with the Office of Human Capital Management in the Office of the Assistant Secretary-Indian Affairs to define overarching guidelines. Typically, such a task is handled by a working group, with representation from across the Bureau.

Teachers are considered bargaining unit employees in the BIE. Such employees are represented by the Federation of Indian Service Employees (FISE) Union. The topic of personnel evaluation is a specific point-of-negotiation in the Collective Bargaining Agreement (CBA), and a topic in which the labor union has a particular interest. Involvement of the teachers in the evaluation and support systems for teachers will be facilitated in cooperation with the employee labor union.

Adoption of the evaluation systems for principals and teachers will be effected through a process of policy and procedures changes at the agency level and reflected for teachers in a revised CBA.

- *Did the SEA describe the process it will use to ensure that all measures used in an LEA's evaluation and support systems are valid, meaning measures that are clearly related to increasing student academic achievement and school performance, and are implemented in a consistent and high-quality manner across schools within an LEA (i.e., process for ensuring inter-rater reliability)?*

The process for ensuring that all measures used on the evaluator and support systems are valid and reliable is described in section 3.A above. Basically that process will utilize the work of the committees and subcommittees created as part of the evaluation and support systems project. Outside experts are another group that will inform the design of the evaluation systems so that they meet stated criteria, outlined in 3.A above. Contractors to the federal government may be utilized, but until work plan is developed it remains uncertain.

- *Does the SEA have a process for ensuring that teachers working with special populations of students, such as students with disabilities and English Learners, are included in the LEA's teacher and principal evaluation and support systems?*

The BIE has professional staff at the SEA, LEA, and school levels with specific expertise in working with special populations (i.e., students with disabilities and English Learners). That expertise will be drawn upon in the development of teacher and principal evaluation and support systems. Not only teachers, but principals and other educators will be included in the process of development. In regard to students with disabilities, the BIE's National Advisory Board for Exceptional Children will play an active role in the development of teacher and principal evaluation and support systems.<sup>35</sup>

- *Is the SEA's plan likely to be successful in ensuring that LEAs meet the timeline requirements by implementing these systems no later than the 2012–2013 school year?*

A timeline for implementation of evaluations and support systems has been developed. Initial planning for the teacher and principal evaluation system will take place in the late months of School Year 2011-2012 and continue in school year 2012-2013. A piloting phase will be conducted in early 2013. The evaluation system will become fully operational in the subsequent school year 2012-2013.

- *Is the SEA plan for providing adequate guidance and other technical assistance to LEAs in developing and implementing teacher and principal evaluation and support systems likely to lead to successful implementation?*

As explained above, the approach used by BIE will be somewhat different than outlined in the question above. The BIE will adopt a common system-wide model for teacher and principal evaluation and support systems. The system will be implemented locally, but data will be collected centrally to facilitate comparisons system-wide. Adequate guidance will be provided locally by the BIE, but the emphasis will be on implementation of the systems to ensure fidelity to the model, as well as validity and reliability.

- *Is the pilot broad enough to gain sufficient feedback from a variety of types of educators, schools, and classrooms to inform full implementation of the LEA's evaluation and support systems?*

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<sup>35</sup> Sec. 34 C.F.R. § 300.714.

The pilot schools have not been selected at this point. However, a methodology will be employed that ensures a variety of schools, classrooms, and educators will be included to provide a breadth of perspectives and sufficient feedback.

### PRINCIPLE 3 OVERALL REVIEW

*If the SEA indicated that it has not developed and adopted all guidelines for local teacher and principal evaluation and support systems consistent with Principle 3 by selecting Option A in section 3.A, is the SEA's plan for the SEA's and LEAs' development and implementation of teacher and principal evaluation and support systems comprehensive, coherent, and likely to increase the quality of instruction for students and improve student achievement? If not, what aspects are not addressed or need to be improved upon?*

The BIE has developed a comprehensive plan for the development and implementation of teacher and principal evaluation and support systems. The plan proposes a significant reform effort aimed at teacher and principal effectiveness that is designed to increase the quality of instruction for students and improve student achievement. The plan addresses a need of the BIE to effect reform in this area because it is a major factor impacting the student learning in BIE-funded schools.

Collaboration with the employee labor union representing teachers has led to a dialog on the need to reform evaluation and support systems in BIE-operated schools. A draft agreement with the labor union will serve a basis for further collaborations. Additional partners with particular expertise will be brought in to assist in the development of a common model for evaluation systems. Stakeholder groups will play an important role in all phases of the development process (See Attachment 15).

Some areas of the overall plan can be improved upon. The evaluation and support systems developed by the BIE are not applicable to the tribally controlled schools, because those schools operate independent of the BIE. The BIE can, however, make all work produced available to the tribal schools. A strategy to assist the tribal schools in adopting evaluation and support systems designed to increase the quality of instruction for students and improve student achievement has yet to be developed. This task constitutes another dimension of this work.

## Principle 4: Reducing Duplication and Unnecessary Burden

The BIE is fortunate in one major way that few states share in common: All BIE-funded schools use the Native American Student Information System (NASIS) for tracking their students. The systematic storage of data in a central repository is helping the BIE to improve the efficiency of its data collections by reducing the episodic burdens of reporting that plague BIE schools. The point is the BIE funds schools rather than local education agencies as conceived under the Elementary and Secondary Education act – district level personnel that handle data for reporting do not exist in the BIE, thus the burden falls on staff at the school for whom data reporting is a secondary concern.

Over the past three years, the BIE has successfully improved its data reporting through the reuse of electronic data and the crafting of computer-based data collections that replace exceedingly low-tech methods. BIE can now access data for student demographic and performance from NASIS and are verified by the schools prior to submission into EdFacts and for public reporting. Adequate Yearly Progress calculations and determinations that had formerly taken approximately four hours to complete during regional verification meetings with the schools now take place virtually in less than half an hour.

The pathway to further reductions in burdensome reporting and duplication of effort is clear: unify the accountability system and eliminate the differences introduced into the system through the use of varying state accountability standards, content standards, and assessments. Reducing to one the number of various mainline accountability systems and handling Alternate AYP where approved represents a massive reduction in burdens at the SEA level of the BIE. Handling a single, electronic file containing all of the BIE's students' test results will eliminate assessment reporting on behalf of schools and simplify data handling. The clearance of the Flexibility Request to use a single assessment aligned to a single set of standards will represent the largest and most important efficiency gain in BIE history. Thousands of hours spent reporting will be given back to the schools immediately.

The efficiency gains will also affect System of Support functions. The reuse of data entered elsewhere into the system combined with the realization of a Longitudinal Data System for tracking achievement trends will be prominently featured in the new accountability system. But the ability for SOS personnel to pare down to a single set of Common Core Standards from 23 separate sets of state standards will result in an immediate efficiency gain for the delivery of professional development and technical assistance. Test results will be quickly returned to the schools along with specific, meaningful recommendations for performance improvement.

Another reduction in reporting burden is achieved using the NativeStar school improvement system. The BIE intends for NativeStar to replace the burdensome and antiquated Performance Improvement Accountability Plan. The quarterly data calls that are engaged by the BIE in support of the PIAP will be jettisoned in favor of unobtrusively collecting the data through NativeStar.

These actions are logical ways for the BIE to internally maximize efficiency. The primary impetus for reporting, however, remains with the requirements of the U.S. Department of Education. Over time, these requirements have become more onerous, burdensome, and duplicative. While the BIE was an early adopter of the Adjusted Cohort Graduation Rate (ACGR) calculation, even with all the students with enrollments entered into NASIS, schools have an extremely difficult time sorting

through hundreds of enrollment records to produce accurate counts for each cohort. The recent move by the Office of Special Education Programs to move to a cohort dropout rate concept is a bridge too far: students falling out of the graduation cohort do not count toward the graduation rate if it takes more than four years for them to complete school; but this will now be compounded by counting as dropouts students that have long since missed their cohort opportunity to graduate on-time as the OSEP calculation observes 14-21 year old students.

The use of either stringent measure with pronounced consequences will inevitably lead schools to report data in other than an accurate manner and in ways that cannot be verified by the BIE at the SEA level. Given the complexity of the reporting, there is a strong incentive for schools to make sure their data is a positive reflection on their respective programs. Short of micromanaging all data entry for the schools, there is no practical solution for this problem that the BIE can reasonably exercise.

While simplification of the accountability system is an important first step to helping the BIE ease the burden and duplication of reporting, the BIE is also requesting that it be allowed to forego reporting on the following EdFacts files and OSEP reports that represent duplication, burdensome reporting, or reporting that is not particularly relevant to how the BIE operates:

**OSEP Table 8: Maintenance of Effort and Coordinated Early Intervening Services:** The BIE is currently not required to report Maintenance of Effort. But, because the BIE is not subject to disproportionality requirements for Special Education, the CEIS requirement is entirely voluntary on the part of schools. As the schools and BIE generally have a difficult time making sense of Table 8, and because the BIE has no matching requirement for CEIS stemming from disproportionality on the SPP/APR indicators, the BIE would like to immediately stop reporting Table 8.

**EdFacts C150: Adjusted Cohort Graduation Rates:** C151 collects the graduate cohort numbers meaning that the submission of C150 is the duplication of reporting that could be derived from C151 alone.

**EdFacts C40 & C41:** The files on graduates and completers are duplicative of C150 & C151 as the BIE already reports by the ACGR method.

**EdFacts C63 & C64: Educator Quality:** As the standards are changing for how these data are reported to reflect what is in the flexibility package and because the BIE does not have direct human resources control over any of its tribally-controlled schools, the BIE does not believe these data to be relevant to its operation. As is the case with any set of data presented to casual observers, inferences about teacher quality in BIE-operated schools may be confused with teacher quality in tribally-controlled schools. The data here are intermingled, and relevant information is not expressed to the public regarding the proper interpretation of this data. Data on teachers generally would still be available under Title I federally funded staff reporting.

**EdFacts C050, C116, C126, C137, & C138:** Intermingled files on Title III and LEP students, participation in ELP assessments, ELP attainment, and LEP students served. In the past, the BIE has not submitted files for Title III programs as the BIE did not receive Title III funds. The BIE still does not receive Title III funding, but is now faced with reporting students for LEP purposes alongside Title III students. As some of BIE's schools obtain Title III funding from the state in which the school is located, the prior division of reporting worked as schools reported to the state

information about their Title III programs. With the LEP and Title III now intermingled, the opportunity for double-counting of students abounds. Just as important, the BIE does not conceive of students as English Language Learners. Technically, BIE students are native English speakers, but the influence of Indian languages may have an effect on their English level of proficiency. The BIE also finds the requirement to identify first time LEP testers to be onerous – under 25 CFR § 39.134 the BIE assesses all students for limited English proficiency. The identification of first time takers of the LEP test is difficult for the BIE. Reducing only to the essential requirements would tremendously benefit the BIE in terms of easing the burden of data collection and reporting.

Taken together, the BIE seeks reasonable amendments to the reporting requirements from the U.S. Department of Education. Progress made in reporting over time, particularly in the automation of data collection and reuse of data collected elsewhere have reduced burdens and duplication of reporting at the school level. For greater progress to be made in this area, the BIE is seeking to only have the most relevant data reported for ESEA and IDEA. Reducing the reporting burden necessarily leads to reducing the reporting requirements (See Attachment 15).

## OVERALL EVALUATION OF REQUEST

Did the SEA provide a comprehensive and coherent approach for implementing the waivers and principles in its request for the flexibility? Overall, is implementation of the SEA's approach likely to increase the quality of instruction for students and improve student achievement? If not, what aspects are not addressed or need to be improved upon?

The Bureau of Indian Education has developed an approach for implementation of the waivers and corresponding principles in this request that is comprehensive and coherent. Each of the principles and corresponding components has been addressed as follows:

### 1. College- and Career-Ready Expectations for All Students

- Adoption of college- and career-ready standards in at least reading/language arts and mathematics, transitioning to and implementing such standards system wide for all students and schools.
- Development and administration annually of aligned, system-wide high-quality assessments, and corresponding academic achievement standards, that measure student growth in grades 3-10.
- Adoption of English language proficiency (ELP) standards that correspond to BIE's college- and career-ready standards and that reflects the academic language skills necessary to access and meet the new college- and career-ready standards.
- Commitment to develop and administer aligned ELP assessments.
- Explanation of challenges of ensuring that BIE's college- and career-ready standards are truly aligned with postsecondary expectations when BIE is located in 23 states and not part of a state system of Institutions of Higher Education.
- Information to parents and students about the college-readiness rates of local schools.
- Report annually to BIE's tribal constituencies and the public on college-going and college credit-accumulation rates for all students and student subgroups in each LEA (ADDs/ELOs) and each high school in 23 states.

### 2. State-Developed Differentiated Recognition, Accountability, and Support

- Development of a next-generation accountability system that recognize student growth and school progress, align accountability determinations with support and capacity-building efforts, and provides for systemic, context-specific interventions that Focus on the lowest-performing schools and schools with the largest achievement gaps.
- Development and implementation of a system of differentiated recognition, accountability, and support for all LEAs (ADDs/ELOs) and for all schools (Title I).
- Develop a unified accountability system based upon common standards, assessments, and accountability criteria.
- Set new ambitious but achievable AMOs in at least reading/language arts and mathematics for the BIE and all LEAs (ADDs/ELOS) schools, and subgroups that provide meaningful goals and are used to guide support and improvement efforts.

- Provide incentives and recognition for success on an annual basis by publicly recognizing and rewarding schools (Title I) making the most progress or having the highest performance as Reward schools.
- Effect dramatic, systemic change in the lowest-performing schools and providing meaningful interventions aligned with the turnaround principles in each of these schools.
- Work to close achievement gaps by implementing interventions based on reviews of the specific academic needs of the school and its students.
- Development of exit criteria to determine when a school that is making significant progress in improving student achievement and narrowing achievement for Focus and Priority schools.
- Build SEA, LEA (ADDs/ELOs), and school capacity to improve student learning in all schools and, in particular, in low-performing schools and schools with the largest achievement gaps.
- Provide timely and comprehensive monitoring of, and technical assistance for, implementation of interventions in Priority and Focus schools
- Hold LEAs (ADDs/ELOs) accountable for improving school and student performance, particularly for turning around their Priority schools.

### **3. Supporting Effective Instruction and Leadership**

- Commitment to develop adopt, pilot, and implement teacher and principal evaluation and support systems, with the involvement of teachers and principals.
- Define criteria for teacher and principal evaluation and support systems consistent with Principle 3.
- Develop and adopt guidelines for these systems.
- Implement teacher and principal evaluation and support systems that are consistent with the SEA's guidelines.
- Provide training to all teachers, principals, and evaluators on the evaluation system, including delineation of responsibilities in the evaluation system, in order to ensure high-quality implementation.
- Include student growth data on current students and the students taught in the previous year to include, at a minimum, teachers of reading/language arts and mathematics in grades 3-10.

### **4. Reducing Duplication and Unnecessary Burden**

- Assurance that BIE will evaluate and revise its own administrative requirements to reduce duplication and unnecessary burden on LEAs (ADDs/ELOs) and schools. Further efficiencies may be gained if the reporting burden borne by the BIE were also reduced. Particularly onerous and duplicative reporting requirements can be removed to achieve significant reductions in reporting burdens by the BIE and its schools.

Implementation of the BIE's approach will increase the quality of instruction for students and improve student achievement. Some challenges remain to be resolved, but overall the reform initiative articulated in the Flexibility Request represents a dramatic improvement in the system of education provided to schools.

# Attachment 1



## Notice to LEAs

## Hamley, Jeffrey

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**From:** IA Messaging <IA.Messaging@bia.gov>  
**Sent:** Friday, June 01, 2012 5:20 PM  
**To:** All\_IE  
**Subject:** Request for stakeholder input into BIE Flexibility Request

Community members of BIE-funded schools:

I am writing to request your input into the **BIE's Flexibility Request**, which will be submitted to the U.S. Department of Education. The Department of Education has offered states the opportunity to apply for flexibility on certain provisions of the federal Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB). In exchange for flexibility waivers, applicant states have agreed to implement bold reforms around standards and accountability defined by four principles:

- 1) College- and career-ready expectations for all students;
- 2) Differentiated recognition, accountability, and support;
- 3) Support for effective instruction and leadership; and
- 4) Reduced duplication and unnecessary burden

The Bureau of Indian Education (BIE) is requesting flexibility from provisions of NCLB. **Stakeholder input into the waiver request is a key part of the process and will be used to revise the Flexibility Request.** If granted by the Department of Education, the Flexibility Request would give BIE an exceptional opportunity to improve the quality of instruction and increase student achievement in BIE-funded schools.

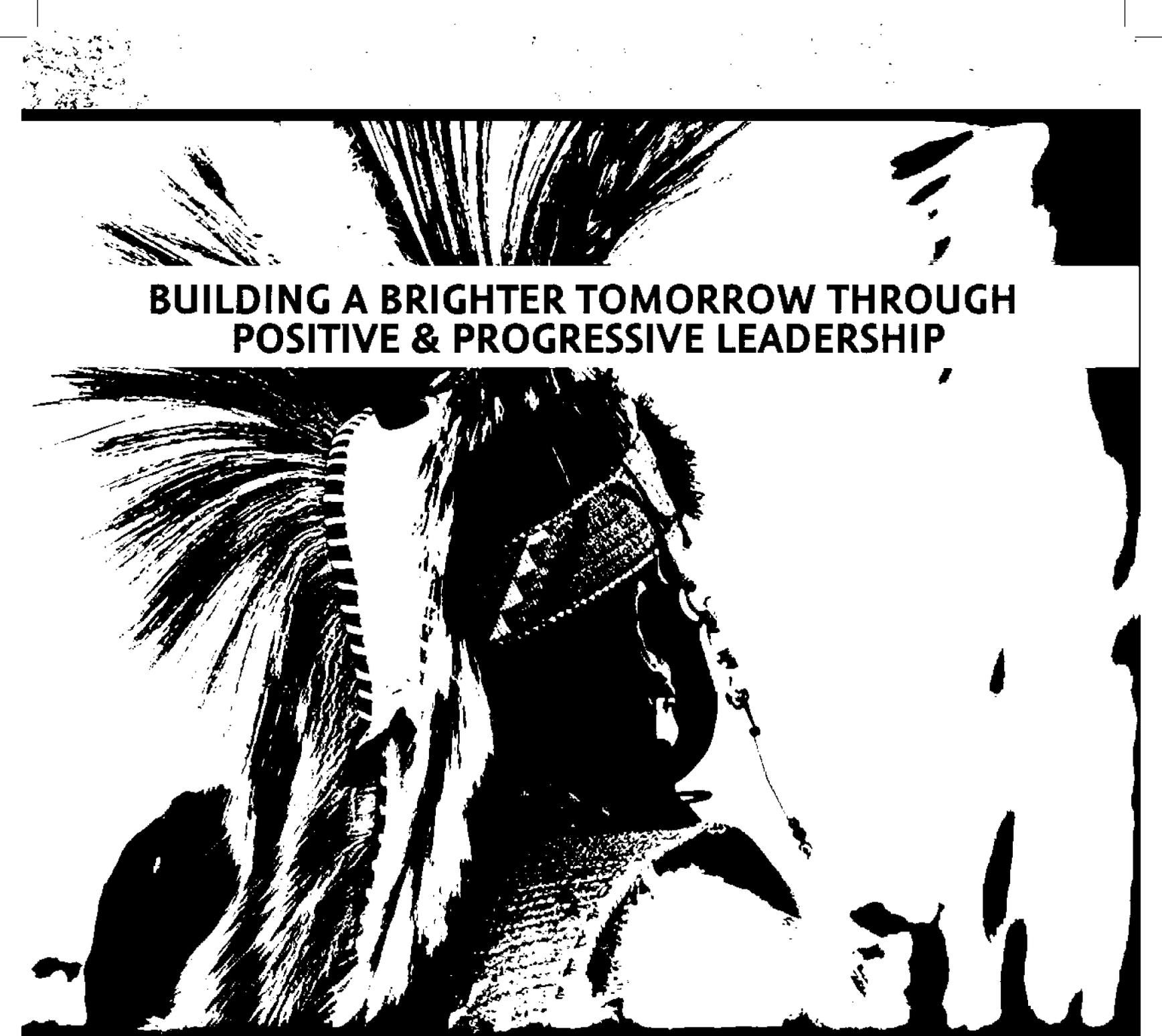
The ***draft BIE ESEA Flexibility Request*** and related documents are available at the BIE website: <http://www.bie.edu>



Comments may be submitted by email to: [eseaconsultation@bie.edu](mailto:eseaconsultation@bie.edu), or by U.S. mail to: BIE ESEA Flexibility Request Comments, Office of the Assistant Secretary – Indian Affairs, U.S. Department of the Interior, Mail Stop 4141 MIB, Washington, DC 20240. Comments will be accepted through June 30, 2012.

**Questions:** contact Jeffrey Hamley at [jeffrey.hamley@bie.edu](mailto:jeffrey.hamley@bie.edu) or (202) 208-4397.

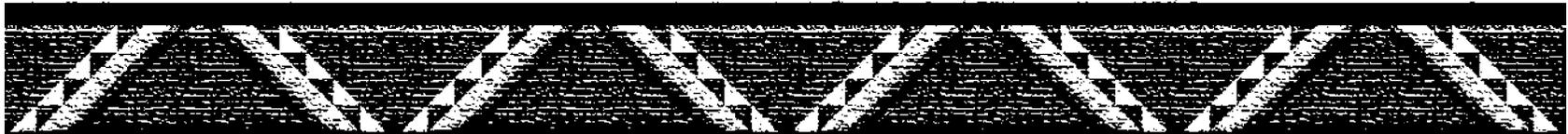
Thank you.



**BUILDING A BRIGHTER TOMORROW THROUGH  
POSITIVE & PROGRESSIVE LEADERSHIP**

THE SUMMER INSTITUTE

▶▶▶▶▶ 2012 ▶▶▶▶▶



*The Navajo Plan and Native Star*

**Room 406** Leadership

The session will focus on how Native Star Indicators connect to the Navajo Plan for making school improvement relevant and strengthen the commitment to Navajo Learners in the following areas: Pillar 1- Continuous Improvement Using Data; Pillar 2-Leadership and Decision Making for Change; Pillar 3 - Curriculum and Instruction; and Pillar 4 - School, Parent and Community.

**Presenter(s): Cheryl Quimayousie, Navajo Region**

*Using Value Added Data to Improve Student Achievement*

**Room 501** Instruction

Participants will become familiar with using a value-added process to improve student achievement through instructional reflection, view a variety of formats to analyze data and develop a student-individualized plan to ensure growth.

**Presenter(s): Veronica Klain, BIE, Arizona Navajo North Education Line Office**

*What K-12 Professionals Need to Know*

**Room 108** Policy

Instruction and Leadership provide information and recommendations on the need to adapt policies, practices and systems in the BIE K-12 and post-secondary system to improve the preparation and readiness of tribal students, including new common core standards, ACT testing for high school students and early preparation.

**Presenter(s): Venida S. Chenault & Marisa Mendoza Spoonhunter, Haskell Indian Nations University**

**ONE HOUR SESSIONS**

**2:15pm-3:15pm**

*Creating Change for Student Achievement*

**Room 109** Leadership

A presentation on how a change agent may initiate change, assist others in understanding the need for change and what is entailed, recruit support, manage the change process and/or assist in resolving conflict. The leader must understand how things work and must have the ability to orchestrate resources such as people, materials, technology, and finances to ensure that education works. The leader must adopt and follow guidelines that will help them to be people of vision, integrity, and commitment. The professional life of a leader depends on building and maintaining an ethical professional identity.

**Presenter(s): Dr. Tommy Lewis, Dilcon Community School**

*Developments in Accountability: Reauthorization and Waivers*

**Room 105** Policy

The Reauthorization of the Elementary and Secondary Education Act is five years overdue. What is the BIE doing to address accountability issues and what does it mean for schools?

**Presenter(s): Brian Bough, BIE, Division of Performance & Accountability**

*Family Engagement-Common Core*

**Room 607** Policy, Instruction, Leadership

What parents and community need to know about the Common Core.

**Presenter(s): Common Core Institute**

*First Year Principals*

**Room 112** Leadership

Best practices will be shared with participants regarding both effective and efficient operations of educational programs and administrative management of facilities and all that it entails. All administrators are welcome.

**Presenter(s): Lemual B. Adson, & Veronica Klain, BIE, Arizona Navajo North Education Line Office**

*Identifying Unacceptable Conditions in the School Environment and Culture*

**Room 407** Leadership

This session will focus on recognizing unacceptable conditions with regard to the environment and culture of the school. Some historical leadership attributes will be shared with participants.

**Presenter(s): Lemual B. Adson, BIE, Arizona Navajo North Education Line Office**

*Illuminating Instruction with Illuminations Computer-Based Activities*

**Room 111** Instruction

Take yourself beyond 'drill & practice' with NCTM's Illuminations web-based Mathematics activities. These 108 online activities are ideal for small or whole group Math instruction. Suitable for classroom or computer lab environments.

**Presenter(s): David K Schafer, Ojo Encino Day School**

*Measuring Language and Culture Learning*

**Room 601** Instruction

This session addresses standards for teaching Navajo Children History, Government, Language, Culture which forms the framework for the 15% of the Common Core State Standards Assessment.

**Presenter(s): Ancita Benally, & Afton Sells, Office of Dine Culture, Language and Community Service**

*Navajo Region Classroom Observation Walk-Through Form*

**Room 406** Leadership, Instruction

This presenter will demonstrate use of a tool for Principals when performing daily classroom walk-throughs. Proven indicators to observe are listed while performing supervision and monitoring of instruction, increase student engagement, and increase the classroom effectiveness

**Presenter(s): Gloria Hale-Showalter, BIE, Arizona Navajo Central**

*Physical Activity Resources and Partners for Schools*

**Room 608** Policy, Instruction, Leadership

Join us to learn about partnership opportunities that can help increase school capacity for physical activity programming both during and after the school day.

**Presenter(s): Kevin Discepolo, Department of Interior**

*Principal Mentoring Program*

**Room 501** Leadership

The session will describe the Principal Mentoring Program that will be initiated for Navajo Region principals for SY 2012-13.

**Presenter(s): Dr. Monty Roessel, Navajo Region**



## WEDNESDAY, JUNE 13, 2012

### HEALTH & WELLNESS ACTIVITIES

5:30am-7:00am

Fun Run Walk

### COMMON CORE SESSIONS

1:00pm-5:00pm

#### *COMMON CORE--Elementary BEGINNING*

**Room(s) 707 & 708**

Leadership, Policy, Instruction

The purpose of this presentation is to provide teachers with a clear understanding of CCS and their role in implementing the CCS and their responsibilities in terms of support to the students.

**Presenter(s):** *Common Core Institute*

#### *COMMON CORE--Elementary INTERMEDIATE*

**Room(s) 709**

Leadership, Policy, Instruction

The purpose of this presentation is to provide teachers with a clear understanding of CCS and their role in implementing the CCS and their responsibilities in terms of support to the students.

**Presenter(s):** *Common Core Institute*

#### *COMMON CORE--Elementary ADVANCED*

**Room(s) 710**

Leadership, Policy, Instruction

The purpose of this presentation is to provide teachers with a clear understanding of CCS and their role in implementing the CCS and their responsibilities in terms of support to the students.

**Presenter(s):** *Common Core Institute*

#### *COMMON CORE--High School BEGINNING*

**Room(s) 711**

Leadership, Policy, Instruction

The purpose of this presentation is to provide teachers with a clear understanding of CCS and their role in implementing the CCS and their responsibilities in terms of support to the students.

**Presenter(s):** *Common Core Institute*

#### *COMMON CORE--High School INTERMEDIATE/ADVANCED*

**Room(s) 712**

Leadership, Policy, Instruction

The purpose of this presentation is to provide teachers with a clear understanding of CCS and their role in implementing the CCS and their responsibilities in terms of support to the students.

**Presenter(s):** *Common Core Institute*

### FLEXIBILITY WAIVER SESSIONS

10:30am-11:30am

*What the Flexibility Waiver Means to you*  
**(Room 710)** Leadership, Policy

School Board **(Room 707)**; Parents **(Room 708)**; ADDs, ELOs, Educ. Specs. **(Room 709)** ; Teachers

The Department of Education is providing the Bureau of Indian Education (BIE) an opportunity to apply for a waiver of the requirements of P.L. 107-110 "No Child Left Behind," this presents an opportunity for the BIE to effect a meaningful reform that will improve student achievement and prepare students for college and career readiness. The BIE is striving to adopt a unitary accountability system, with the Common Core Standards serving as the foundation. Unitary academic assessments will be employed in all BIE-funded schools across 23 states, rather than the current disjointed and hard-to-compare system of 23 states' assessments. The performance of schools will be based on growth and other academic indicators that meaningfully assess progress toward established targets. BIE's approach to teaching and learning will be standardized and strengthened as a result of implementing the common standards, curriculum, instruction, and assessments. Finally, the development of teacher and principal evaluation and support systems will facilitate effective instruction and leadership. Working together will provide an opportunity for BIE to overcome challenges in implementing a school system that provides quality education to Indian students and fulfills the Federal Trust responsibility.

### NASIS SESSIONS

Follow Online Schedule for Time(s) & Room #'s

#### *NASIS - Activity Eligibility*

Policy, Instruction & Leadership

The Activity Eligibility Report can be used to monitor students' academic grades to determine sports/program participation eligibility.

**Presenter(s):** *Cheril Davies, Infinite Campus*

#### *NASIS - Common Core Standards (Teachers)*

Policy, Instruction & Leadership

This session will review how to create and align assignments to Common Core Standards along with a review on how to score and post grades for report cards.

**Presenter(s):** *Jennifer Downey, Infinite Campus & Susan McCabe, BIE, Division of Performance and Accountability*

#### *NASIS - BIE Reporting*

Policy, Instruction & Leadership

ISEP Rules and regulations will be reviewed. The BIE Validation report for ISEP, the ISEP Verification/Certification Report and the ISEP 3 year Allotment report will be reviewed.

**Presenter(s):** *Don Padilla & Susan McCabe, BIE, Division of Performance and Accountability*

# THURSDAY, JUNE 14, 2012

## HEALTH & WELLNESS ACTIVITIES

6:00am-7:00am

*Yoga/Meditation* Room 501 Health & Wellness Activity

**Facilitator(s):** Kirsten Johnson & Beth Tepper, ADD-East, & Katherine Campbell, Ph.D., BIE

*Beyonce Move Your Body Dance* Room 502 Health & Wellness Activity

**Facilitator(s):** Kevin Discepolo, Department of Interior & Brandi Sweet, Bureau of Indian Education

*Jump rope* Room 503 Health & Wellness Activity

**Facilitator(s):** Tommy Amico

## COMMON CORE SESSIONS

1:00pm-5:00pm

*COMMON CORE--Elementary BEGINNING* Room(s) 707 & 708 Leadership, Policy, Instruction

The purpose of this presentation is to provide teachers with a clear understanding of CCS and their role in implementing the CCS and their responsibilities in terms of support to the students.

**Presenter(s):** Common Core Institute

*COMMON CORE--Elementary INTERMEDIATE* Rooms(s) 709 Leadership, Policy, Instruction

The purpose of this presentation is to provide teachers with a clear understanding of CCS and their role in implementing the CCS and their responsibilities in terms of support to the students.

**Presenter(s):** Common Core Institute

*COMMON CORE--Elementary ADVANCED* Room(s) 710 Leadership, Policy, Instruction

The purpose of this presentation is to provide teachers with a clear understanding of CCS and their role in implementing the CCS and their responsibilities in terms of support to the students.

**Presenter(s):** Common Core Institute

*COMMON CORE—High School BEGINNING* Room(s) 711 Leadership, Policy, Instruction

The purpose of this presentation is to provide teachers with a clear understanding of CCS and their role in implementing the CCS and their responsibilities in terms of support to the students.

**Presenter(s):** Common Core Institute

*COMMON CORE— High School INTERMEDIATE/ADVANCED* Room(s) 712 Leadership, Policy, Instruction

The purpose of this presentation is to provide teachers with a clear understanding of CCS and their role in implementing the CCS and their responsibilities in terms of support to the students.

**Presenter(s):** Common Core Institute

## FLEXIBILITY WAIVER SESSIONS

10:30am-11:30am

*What the Flexibility Waiver Means to you* Teachers (Room 707) Leadership, Policy

The Department of Education is providing the Bureau of Indian Education (BIE) an opportunity to apply for a waiver of the requirements of P.L. 107-110 "No Child Left Behind", this presents an opportunity for the BIE to effect a meaningful reform that will improve student achievement and prepare students for college and career readiness. The BIE is striving to adopt a unitary accountability system, with the Common Core Standards serving as the foundation. Unitary academic assessments will be employed in all BIE-funded schools across 23 states, rather than the current disjointed and incomparable system of 23 states' assessments. The performance of schools will be based on growth and other academic indicators that meaningfully assess progress toward established targets. BIE's approach to teaching and learning will be standardized and strengthened as a result of implementing the common standards, curriculum, instruction, and assessments. Finally, the development of teacher and principal evaluation and support systems will facilitate effective instruction and leadership. Working together will provide an opportunity for BIE to overcome challenges in implementing a school system that provides quality education to Indian students and fulfills the Federal Trust responsibility.

## NASIS SESSIONS

Follow Online Schedule for Time(s) & Room #'s

*NASIS -Portal Setup* Policy, Instruction & Leadership

The Portal is an important component to the student information system. The portal allows for parents and students to log in and visually see the status of a student. The information is offered in real time. Each school has a portal that is ready to use. Small system preferences are set and it is ready to go. We will also highlight First Mesa and their use of the Parent Portal.

**Presenter(s):** Cheril Davies, Infinite Campus & Davis Shula, First Mesa Day School

*NASIS Support Lab*

The Support Lab is ready to help schools with all sorts of tasks. Uploading Student photos, reviewing ISEP data, create attendance and behavior letters, analyze the health of data in NAIS and cleaning up records if necessary.

**Facilitator(s):** NASIS Staff

Policy, Instruction & Leadership

**ONE HOUR SESSIONS**

**10:30am-11:30am**

*Active Participation*

**Room 112**

Instruction

This interactive session will present the benefits of active participation, involve attendees in learning by doing activities, and guide the participants through a self-assessment exercise.

**Presenter(s):** *Becky Surls, Byrne & Associates*

*BIE Dropout Prevention Framework*

**Room 603**

Leadership

This presentation will provide details of a cooperative effort between the Bureau of Indian Education and the National Dropout Prevention Center on Students with Disabilities (NDPC-SD). Presentation is based on an evidence-based framework.

**Presenter(s):** *Sandra Covington-Smith, PhD, National Dropout Prevention Center for Students with Disabilities, & Marilyn Johnson, PhD & Sue Bement, BIE, Division of Performance and Accountability*

*Bridging the Gap*

**Room 602**

Leadership

A mentoring approach that develops lifelines for incoming administrators and provides opportunities to hone leadership skills, understand their school's culture, and develop greater receptivity through an outside peer mentor's guide.

**Presenter(s):** *Perfilliea Mikki-Charlie*

*Continuous School Improvement ADD Navajo*

**Mile High Ballroom**

Policy and Leadership

Leading a school is a tough job under any circumstances, but leadership in a climate of change is especially demanding. There are two kinds of change: 1) adaptive change in response to new expectations placed on the school, like adopting common core standards and meeting new compliance requirements; and 2) innovative change initiated by the school to improve the school's effectiveness in achieving better outcomes for students. The principal is the administrative and instructional leader of the school, but leadership is shared with the Leadership Team and other teams that make decisions. Dr. Redding will discuss: 1) new research on change leadership, 2) the roles of the principal and school teams, 3) aligning instruction to common core standards and differentiating instruction for students, and 4) helpful tools, including the new Indicators in Action professional development course on Leadership.

**Presenter(s):** *Dr. Sam Redding, Center on Innovation and Improvement*

*Developments in Accountability: Reauthorization and Waivers*

**Room 105**

Policy

The Reauthorization of the Elementary and Secondary Education Act is five years overdue. What is the BIE doing to address accountability issues and what does it mean for schools?

**Presenter(s):** *Brian Bough, BIE, Division of Performance and Accountability*

*Illuminating Instruction with Illuminations Computer-Based Activities*

**Room 107**

Instruction

Take yourself beyond 'drill & practice' with NCTM's Illuminations web-based Mathematics activities. These 108 online activities are ideal for small or whole group Math instruction. Suitable for classroom or computer lab environments.

**Presenter(s):** *David K Schafer, Ojo Encino Day School*

*Integrating Common Core Standards of Mathematical Practice*

**Room 502**

Instruction

What does 100% mathematical proficiency look like in schools that serve Native American students? Participants in this session will have the opportunity to view classrooms that have achieved this very feat, and discuss Standards of Mathematical Practice as outlined in Common Core State Standards.

**Presenter(s):** *RunningHorse Livingston*

*It's Time for a Change*

**Room 111**

Leadership

What are the ingredients in the recipe for change? A school administrator and education consultant provide a road map for planning and follow through.

**Presenter(s):** *Diana Jo Johnston, Engage Learning, & Jane Pitts, To'Hajiilee Community School*

*Linking Student Individualized Education Plans and Classroom Instruction Using Quick Looks*

**Room 110**

Instruction

Session will provide attendees with information on using "Quick Looks" in the general education setting to support IEP goals, objectives, accommodations and modifications.

**Presenter(s):** *Willeta George, Lummi Nation Schools*

*Native American Incarcerated Youth in New Mexico: Understanding special education needs*

**Room 503**

Policy

This research is intended to fill a gap in knowledge about incarcerated Native American youth in New Mexico. Specific characteristics about this group will be collected and analyzed, including tribal affiliation, history of trauma, psychiatric disorders and educational status. By more accurately describing this population, it is hoped that clinicians, social workers, and any other health or social welfare person or agency can more adequately address their needs.

**Presenter(s):** *Billie Jo Kipp, Ph.D., Blackfeet Community College*



## Attachment 2

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Comments on request received from schools/LEAs, Tribal Leaders, and other stakeholders (i.e., verbatim testimony can be accessed at:

(b)(6)

## Summary of Stakeholder Comments

| Stakeholder Group   | Comment Summary  | BIE Response   |
|---|--|--|
| <b>General Information</b>  |  |  |
| <ul style="list-style-type: none"> <li>▪ Mississippi Band of Choctaw Indians</li> <li>▪ Duckwater Shoshone Tribe, Chitimacha Tribe of Louisiana, Alamo Navajo School Board, Inc., and Ramah Navajo School Board, Inc.</li> <li>▪ Department of Diné Education, Navajo Nation</li> <li>▪ Fond du Lac Band of Lake Superior Chippewa and Fond du Lac Ojibwe School</li> </ul> | <p>The BIE is not eligible for Flexibility Request waivers, because it is not a State Education Agency (SEA) and the Flexibility Request invitation was made only to SEAs.</p> | <p>As explained in the BIE Flexibility Request, the same authority cited by the Department of Education to grant waivers to states – ESEA section 9401(d)(1) – also applies to the Bureau of Indian Education and is specifically cited in the ESEA governing agreement between the Department of Education and the Department of the Interior. While it is true the BIE is not a State Education Agency (SEA) in the same sense as states, BIE is treated like a state by the Department of Education for the purposes of managing programs and funds provided by the Department of Education. In essence, the BIE is a quasi-SEA and not a true SEA. Consequently, the BIE will submit a Flexibility Request for the September 6, 2012 submission.</p> <p>In an exchange of letters the Department of the Interior specifically posed this question to the Department of Education. The Department of Education responded affirmatively that the Bureau of Indian Education has the right to seek waivers and the Department of Education has the authority to grant waivers to BIE. (See attachment 12)</p> |
| <ul style="list-style-type: none"> <li>▪ Mississippi Band of Choctaw Indians</li> <li>▪ Duckwater Shoshone Tribe, Chitimacha Tribe of Louisiana, Alamo Navajo School Board, Inc., and</li> </ul>  | <p>The BIE Flexibility request, if granted, can only apply to BIE-operated schools and not tribally controlled schools.</p>  | <p>The BIE Flexibility Request as originally written encompassed both BIE-operated schools and tribally-controlled grant and contract schools. Stakeholder input by several tribes and schools indicated a desire to <b>not</b> be included in the Flexibility Request. In response, the BIE has clarified an already existing option for governing</p>  |

## Summary of Stakeholder Comments

| Stakeholder Group   | Comment Summary  | BIE Response   |
|---|--|--|
| Ramah Navajo School Board, Inc.   |  | school boards or governing tribes to not participate in the BIE Flexibility Request. That option is outlined in 25 CFR 30.104(b), which allows a governing tribe or governing school board the option of requesting an alternative definition of AYP.  |
| <ul style="list-style-type: none"> <li>▪ Department of Diné Education, Navajo Nation</li> </ul> | No discussion is provided of how BIE-funded schools will work with state public schools for the seamless transition of students into the public system.                                      | <p>The Flexibility Request addresses specific topics defined by the Department of Education for all states and others applying for waivers. Transition from one type of school to another is not one of the topics requiring an explanation in the Flexibility Request.</p> <p>However, the BIE can provide an explanation in the Flexibility Request, in response to this issue being raised by a particular tribe as an important consideration.</p> |
| <ul style="list-style-type: none"> <li>▪ Department of Diné Education, Navajo Nation</li> </ul> | It is unclear what requirements are being waived in the states' respective accountability plans, given that BIE uses the accountability plans of the 23 states in which schools are located. | The Flexibility Request is proposing waivers to specific requirements of NCLB and not the states' accountability plans.  |
| <ul style="list-style-type: none"> <li>▪ Department of Diné Education, Navajo Nation</li> </ul> | What is the status of the Navajo Nation Accountability Workbook?   | The Accountability Workbook has been reviewed by the BIE and the Department of Education. A joint response letter is in process of being developed.  |
| <ul style="list-style-type: none"> <li>▪ Kickapoo Nation, OK</li> </ul>                         | Has the impact of the Flexibility Request upon the accreditation of schools by the North Central Association (NCA) been considered?  | The impact per se has not been assessed, because it is thought that the accreditation status of schools will not be impacted.  |
| <ul style="list-style-type: none"> <li>▪ Choctaw Nation, OK</li> </ul>                          | When will training on the interim assessment be provided to teachers?  | The plan is that all BIE-funded schools will test using the interim assessment in fall of 2012. The majority of schools (136) already use the assessment, so these schools will not require  |

## Summary of Stakeholder Comments

| Stakeholder Group   | Comment Summary  | BIE Response   |
|---|--|--|
|   |  | training. The remaining 38 schools will receive training prior to testing by the end of September 2012.  |
| <ul style="list-style-type: none"> <li>▪ Muskogee Creek Nation, OK</li> </ul> | <p>The ACT as an indicator of college- and career-readiness is problematic. Has BIE considered other alternatives?</p> | <p>In the Flexibility Waiver Request document, BIE discussed setting proxy scores in the assessments to reflex college- and career-readiness. This is an approach used by other states. The idea of using the ACT suite of tools and assessments also was mentioned, but is not certain at this point. This issue will be explored going forward, not just by BIE but by other states.</p>   |
| <ul style="list-style-type: none"> <li>▪ Chickasaw Nation, OK</li> </ul>      | <p>What will be provided to gifted and talented students that are identified?</p>                                      | <p>Students will be tested beginning in kindergarten. Teachers will be supported to provide instruction appropriate to the individual needs of the students, including gifted and talented students.</p>   |
| <ul style="list-style-type: none"> <li>▪ Muckleshoot Indian Tribe</li> </ul>  | <p>What precautions will be taken to prevent bias in assessments that are selected for use with Indian children?</p>   | <p>Bias of various types is an important consideration in the selection of a test for use with American Indian students in BIE-funded schools. Test developers have developed various procedures for item bias detection. In regard to the NWEA assessments BIE currently uses, BIE is familiar with the procedures used to detect bias of various types. These are articulated in NWEA’s technical manuals. BIE is not as familiar with the procedures that developers of the PARCC and SBAC assessments will use. However, in selecting any future assessment, BIE will be cognizant of the bias issue and will include safeguards in its selection process.</p> <p>In regard to NWEA, the task of creating items that are free from sensitivity issues and that are fair to all students is a selection criterion employed by the</p> |

## Summary of Stakeholder Comments

| Stakeholder Group   | Comment Summary   | BIE Response   |
|---|---|--|
|   |   | <p>vendor. Any sensitivity and fairness issues found in items are eliminated in revision. Each item is evaluated against a set of criteria. An item is flagged if it:</p> <ul style="list-style-type: none"> <li>▪ requires prior knowledge other than the skill/concept being assessed</li> <li>▪ has cultural bias</li> <li>▪ has linguistic bias</li> <li>▪ has socio-economic bias</li> <li>▪ has religious bias</li> <li>▪ has geographic bias</li> <li>▪ has color-blind bias</li> <li>▪ has gender bias</li> <li>▪ inappropriately employs idiomatic English</li> <li>▪ offensively stereotypes a group of people</li> <li>▪ mentions body/weight issues</li> <li>▪ has inappropriate or sensitive topics (smoking, death, crime, violence, profanity, sex, etc.)</li> <li>▪ other (identified by reviewer)</li> </ul> <p><i>See Technical Manual: For Measures of Academic Progress (MAP) and Measures of Academic Progress for Primary Grades (MPG), NWEA, January 2011, pp. 38-39.</i></p> |
| <ul style="list-style-type: none"> <li>▪ G.Archambeau</li> </ul>                                | <p>Various suggestions regarding English Language Learners (ELL), including adopting a ELL intervention model and proven strategies and techniques.</p> | <p>The suggestions were reviewed, considered, and incorporated in part into the Flexibility Request.</p>   |
| <p><b>Principle 1: College- and Career-Ready Expectations for All Students</b></p>              |   |  |
| <ul style="list-style-type: none"> <li>▪ Department of Diné Education, Navajo Nation</li> </ul> | <p>No plan is provided to address the failure of students on the Navajo Nation to meet academic standards as defined in NCLB.</p>                       | <p>The comment correctly reflects that the BIE Flexibility Waiver Request makes no attempt “to meet academic standards as defined in NCLB.”</p>  |

## Summary of Stakeholder Comments

| Stakeholder Group   | Comment Summary  | BIE Response   |
|---|--|--|
|   |  | <p>Like states pursuing waivers from NCLB, the BIE purposely will abandon the rigid and untenable accountability system mandated by NCLB. The Flexibility Request will waive specific requirements of NCLB in favor of defining a new accountability system based on Common Core Standards, a single assessment system, a redefined accountability index, and corresponding AMOs. A growth component has been built into the accountability system to give schools credit for success in making gains in student achievement.</p>  |
| <ul style="list-style-type: none"> <li>▪ Department of Diné Education, Navajo Nation</li> </ul> | <p>College and career readiness in the context of students in grades K-8 is not adequately described.</p>  | <p>College and career readiness in grades K-8 can be better described in the Flexibility request.</p> <p>The Common Core Standards are designed around college and career readiness expectations. The grade-specific standards define what students should understand and be able to do by the end of each grade. They correspond to the College and Career Readiness (CCR) anchor standards by number. The CCR and grade-specific standards are necessary complements—the former providing broad standards, the latter providing additional specificity—that together define the skills and understandings that all students must demonstrate. (See <a href="http://www.corestandards.org/the-standards/english-language-arts-standards/anchor-standards/college-and-career-readiness-anchor-standards-for-reading/">http://www.corestandards.org/the-standards/english-language-arts-standards/anchor-standards/college-and-career-readiness-anchor-standards-for-reading/</a>.)</p> |
| <ul style="list-style-type: none"> <li>▪ Department of Diné Education, Navajo Nation</li> </ul> | <p>It is unclear how teacher preparation and transition to Common Core Standards will be accomplished.</p> | <p>Transitioning teachers to the Common Core Standards is explained in the BIE Common Core Standards Implementation plan, beginning in</p>   |

## Summary of Stakeholder Comments

| Stakeholder Group  | Comment Summary   | BIE Response   |
|--|---|--|
|  |   | <p>section 1.B.4. A primary goal of the plan is to provide teachers in-depth training on the Common Core Standards. Training has been underway beginning in calendar year 2012 and will continue through school year 2012-2013. Additional training will be provided corresponding to deeper implementation of the Common Core Standards in BIE-funded schools.</p>  |
| <p><b>Principle 2: Differentiated Recognition, Accountability, and Support</b></p>   |   |  |
| <ul style="list-style-type: none"> <li>▪ Mississippi Band of Choctaw Indians</li> <li>▪ Duckwater Shoshone Tribe, Chitimacha Tribe of Louisiana, Alamo Navajo School Board, Inc., and Ramah Navajo School Board, Inc.</li> </ul> | <p>Tribally controlled schools must be able to choose which accountability system (i.e., AYP standard) to apply to their schools based on the following choices:</p> <ul style="list-style-type: none"> <li>○ The BIE accountability system outlined in BIE ESEA Flexibility Request if it is approved by the Department of Education and if the tribally controlled school elects to use it.</li> <li>○ An approved accountability system as provided in 25 CFR 30.104(b).</li> <li>○ Adoption of a state pre-ESEA Flexibility Request accountability system no longer used by a state in which is school is located because the state has been granted waivers to NCLB requirements in an approved Flexibility Request.</li> <li>○ Adoption of an accountability system from any state, as long as that system has been approved by the Department of Education.</li> </ul> | <p>An option currently exists for schools to pursue an alternative definition if AYP as provided in 25 CFR 30.104(b). That option will still exist if the Flexibility Request is granted to BIE. Governing tribes or governing school boards will still be able to propose an accountability system of its own making, including the aforementioned options outlined. However, adoption of a state accountability system approved under a state Flexibility Request may present technical challenges to BIE.</p> |
| <ul style="list-style-type: none"> <li>▪ Department of Diné Education, Navajo Nation</li> </ul>  | <p>The proposed interim assessment (i.e., Northwest Evaluation Association Measures of Academic Progress) has not been peer reviewed by the U.S. Department Education and therefore cannot be used.</p>   | <p>ESEA (P.L. 107-110 § 1111(m)) allows the Secretary of the Interior to approve “such other appropriate assessment” for use in the BIE’s accountability system. The BIE intends to comply with the mandate to use “Peer Reviewed”</p>   |

## Summary of Stakeholder Comments

| Stakeholder Group  | Comment Summary   | BIE Response   |
|--|---|--|
|  |   | <p>assessments for accountability purposes by taking the NWEA Measures of Academic Progress blended model aligned to the Common Core Standards through the Peer Review process. While the assessment is in the Peer Review process, the BIE may use the assessment for accountability purposes.</p>  |
| <ul style="list-style-type: none"> <li>▪ Fond du Lac Band of Lake Superior Chippewa and Fond du Lac Ojibwe School</li> <li>▪ Muckleshoot Indian Tribe</li> </ul> | <p>It is recommended that the BIE incorporate in its Flexibility Request a five- or six-year graduation rate model, rather than the current four-year model, since many American Indian students require a longer time frame to complete high school.</p> | <p>States have attempted to establish a uniform and accurate formula for high school graduation rate that is comparable across states. Likewise, the BIE would like to see a formula that allows comparison across the 23 states in which BIE-funded schools are located. Federal Title I regulations were revised in October 2008 establishing a Four-Year Adjusted Cohort Graduation Rate formula that must be used nationally beginning with 2009-10 graduation rates. The graduation rate is used to calculate AYP and to report data to the U.S. Department of Education for comparison across states.</p> <p>Some states are exploring use of an Extended-Year Adjusted Cohort Graduation Rate formula for both calculation of AYP and reporting data to the Department of Education. The BIE understands that many BIE-funded schools have students who graduate in five or six years, although eliminating the four year graduation rate is not a possibility under current federal regulations. Further study of the graduation patterns of students attending BIE-funded schools would be beneficial to increasing graduation rates.</p> |

## Summary of Stakeholder Comments

| Stakeholder Group   | Comment Summary  | BIE Response   |
|---|--|--|
|   |  | <p>The current Flexibility Request does not include and an Extended-Year Adjusted Cohort Graduation Rate formula. But inclusion of such a model could be part of an amended plan in the future.</p>  |
| <ul style="list-style-type: none"> <li>▪ Department of Diné Education, Navajo Nation</li> </ul> | <p>No adequate explanation is provided of why BIE will use an interim assessment instead of the state criterion-referenced test (CRTs).</p>                | <p>A central proposition of the Flexibility Request is to create a unified accountability system based on the Common Core Standards, a single assessment system, and a common methodology to calculate academic progress.</p>  |
| <ul style="list-style-type: none"> <li>▪ Department of Diné Education, Navajo Nation</li> </ul> | <p>No adequate explanation is provided of why BIE will use an interim assessment instead of the state criterion-referenced test (CRTs).</p>                | <p>Throughout the Flexibility Request document, BIE explains why a 23 state accountability system is detrimental to the academic achievement of students attending BIE-funded schools. A central proposition of the Flexibility Request is to create a unified accountability system based on the Common Core Standards, a single assessment system, and a common methodology to calculate academic progress. Notably in section 1.C, a detailed description of the development of BIE’s interim assessment is provided. The Flexibility Request has been revised to provide further explanation about the use of a single assessment, rather than the 23 states’ assessments.</p> |
| <ul style="list-style-type: none"> <li>▪ Department of Diné Education, Navajo Nation</li> </ul> | <p>No discussion is provided about the merits or differences of the NWEA MAP assessments, states’ assessments, PARCC assessments, or SBAC assessments.</p> | <p>The Flexibility Request does not specifically require a discussion of the merits and differences of the NWEA MAP, the PARCC, and the SBAC assessments, so none was provided. However, one is provided below.</p> <p>The Partnership for Assessment of Readiness for College and Careers (PARCC) and the Smarter Balances Assessment Consortium (SMAC) are</p>   |

## Summary of Stakeholder Comments

| Stakeholder Group | Comment Summary | BIE Response   |
|-------------------|-----------------|--|
|                   |                 | <p>currently under development and expected to be available in the 2014-2015 school year. Below is a description of major features of the PARCC assessments. The PARCC assessments have six priority purposes, which are driving the design of the system. The priority purposes of PARCC Assessments are:</p> <ol style="list-style-type: none"> <li>1. Determine whether students are college- and career-ready or on track.</li> <li>2. Assess the full range of the Common Core Standards, including standards that are difficult to measure.</li> <li>3. Measure the full range of student performance, including the performance high- and low-performing students.</li> <li>4. Provide data during the academic year to inform instruction, interventions and professional development.</li> <li>5. Provide data for accountability, including measures of growth.</li> <li>6. Incorporate innovative approaches throughout the assessment system.</li> </ol> <p>Similarly, the SBAC assessments contains features paralleling as the PARCC assessments regarding college- and career-readiness, identification of high- and low-performing students, and intra-year assessment data. (See: <a href="http://parcconline.org/parcc-assessment-design">http://parcconline.org/parcc-assessment-design</a>. For information on the Smarter Balanced Assessment Consortium, see <a href="http://www.smarterbalanced.org/">http://www.smarterbalanced.org/.</a>)</p> |

## Summary of Stakeholder Comments

| Stakeholder Group | Comment Summary | BIE Response  |
|-------------------|-----------------|---|
|                   |                 | <p>Until the new PARCC and SBAC assessment are available for public use, states are forced to use their existing state assessments, which are not aligned with the Common Core Standards and which do not utilize a growth model for intra-year growth analysis. In the intervening period until the new assessments are available, BIE proposes to use a single interim assessment, rather than 23 states' assessments. When the PARCC and SBAC assessments are ready for use, BIE will compete through federal acquisitions process for a new assessment for use in the BIE-funded school system. All test vendors will be invited to submit a proposal for consideration. A full analysis of the various assessments will be conducted in the procurement process, prior to awarding a contract.</p> <p>In regard to the merits or differences of the NWEA MAP assessments, 23 states' assessments, PARCC assessments, and SBAC assessments, the basic distinction between the existing state assessments and the new assessments under development is twofold: a) the new assessments will be aligned to the Common Core Standards, and b) the new assessments will contain a growth model for measurement of intra-year growth. For the most part, existing state assessments do not. The interim assessment proposed by BIE – the NWEA MAP-CCS assessment – is aligned to the Common Core Standards and utilizes a growth model.</p> <p>In regard to the state assessments, the state</p> |

## Summary of Stakeholder Comments

| Stakeholder Group  | Comment Summary   | BIE Response  |
|--|---|---|
|  |   | <p>assessments are aligned to previous state standards which have been abandoned in favor of the Common Core Standards. The BIE’s position is that the 23 states’ assessments are not comparable and as a consequence BIE-funded schools are not comparable across states. That is why the BIE is proposing a unified accountability system utilizing Common Core Standards and a single assessment system. The BIE proposes an interim assessment until the PARCC and SBAC assessments can be evaluated for possible adoption.</p> |
| <p><b>Principle 3: Support for Effective Instruction and Leadership</b></p>  |   |   |
| <ul style="list-style-type: none"> <li>▪ Fond du Lac Band of Lake Superior Chippewa and Fond du Lac Ojibwe School</li> </ul> | <p>The role of tribal schools as LEAs in the development of teacher and principal evaluations and support systems needs to be clarified.</p>                                | <p>This section of the Flexibility Request has been updated to clarify the role schools which under NCLB are considered LEAs.</p>   |
| <ul style="list-style-type: none"> <li>▪ Snoqualmie Tribe</li> </ul>   | <p>Will teachers be compared to other BIE teachers or to teachers nationally?</p>   | <p>The evaluation system will compare teachers in BIE-funded schools to teachers within the BIE-funded school system.</p>   |
| <p><b>Principle 4: Reduced Duplication and Unnecessary Burden</b></p>  |   |   |
| <ul style="list-style-type: none"> <li>▪ Chief Leschi Schools</li> <li>▪ Mississippi Band of Choctaw Indians</li> </ul>      | <p>The BIE should consider the burden it places upon schools, some small schools, in data collection, reporting and related activities. Too much reporting is required.</p> | <p>This point is well taken and the BIE is attempting to reduce burdensome data collection and reporting in response to school and tribal concerns.</p>   |

## Hamley, Jeffrey

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**From:** (b)(6)  
**Sent:** Tuesday, August 28, 2012 11:19 AM  
**To:** Drapeaux, Brian; Hamley, Jeffrey; Bough, Brian  
**Cc:** Campbell, Katherine  
**Subject:** BIE Flexibility Plan -ELL suggestions  
**Attachments:** BIE ELL FLEX PLAN SUGGESTIONS 8.27.12.doc

Mr. Drapeaux:

Regarding the "White Paper" on ELLs. Your interest in a discussion of ELL for the BIE that would result in a white paper is still important. I continue to have a strong interest in supporting the BIE in that effort. However, since Nancy is on leave till next week, I will wait until she returns.

### Flexibility Plan Suggestions:

May I suggest some additions to the existing Flexibility Plan? I am aware that the BIE will submit the Plan to USDOE anytime now.

I have attached a set of suggestions that expand a little on various sections of the Plan. The page numbers of the February Flexibility Plan (on BIE's website) were used to identify the sections.

As you will see I have only added slightly to the original text. However, I felt that the Peer Review would consider the needs of English Learners to be of critical importance and therefore evaluate if the Plan sufficiently addresses the educational needs of ELL students as well as students with disabilities. The ELL students are probably a sizable percentage of the student population and have a substantial effect on the achievement profile of BIE.

More elaboration may be necessary on ELL education, PD, and accountability, once the Peer Review comments are received by BIE. That would be another opportunity to more fully discuss a comprehensive description of ELL education in any future Flexibility plans.

There are nationally recognized ELL researchers and program developers (along with myself, colleagues, BIE teachers) prepared to assist the BIE in addressing such needs. (eg. Jana Echevarria CSU-Long Beach; Maryellen Vogt CSU-Long Beach; Deborah Short Center for Applied Linguistics, Washington D.C. Patricia Latham ELL-Consultant/trainer, Aurora Martinez -SIOP Pearson et.al. )

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I do acknowledge that this is not the recognized means for providing feedback and I would respect whatever action taken regarding my suggestions.

Having no obligation to other organizations or companies, (other than to the Acoma Department of Education) that independency enables me to focus on contributing my knowledge and experience to the BIE without strings attached.

I will continue to be available to the BIE (contacting Nancy and Dr. Campbell next week) as it creates one of the most important plans in recent years that may yield the results pursued.

Note: The changes to selected pages are highlighted in yellow. The page numbers are based on the February 2012 Flexibility Plan published on the BIE website.

Page 32 BIE Flexibility Plan

Currently, BIE schools follow the state’s English Language Proficiency (ELP) standards and utilize the state’s English Proficiency Assessment or other “valid and reliable assessment of English proficiency” in accordance with ESEA.<sup>16</sup> By adopting the CCS, BIE is moving in the direction of ensuring that ELP standards-based assessments are aligned to the new CCS. To guarantee linkage between the CCS for academic content and English language proficiency standards, it is recommended that the large scale assessment and the English proficiency assessment are correlated. By aligning the ELP standards and assessment to the CCS, better measures will be implemented for assessing how well English Learners are learning the content needed to fully access the CCS.

To ensure high quality support for English Learners and their teachers, BIE will adopt the WIDA (World-Class Instructional Design in Assessment) Standards in 2013-2014. These standards encompass the vocabulary and academic language of all content areas and clearly delineate language development across all proficiency levels in each academic content area.

The five language proficiency levels covered in the WIDA Consortium ELP standards are

- Level 1 – Entering;
- Level 2 – Beginning;
- Level 3 – Developing;
- Level 4 – Expanding; and
- Level 5 – Bridging

These levels produce a linguistic match of ELL instruction to the CCS standards and serve as the foundational intervention support for ELL acquisition of academic proficiency of Common Core while improving academic English ability.

The WIDA English Language Development (ELD) standards were aligned to the Common Core in 2011 through an alignment study that examined the linguistic demands of the Common Core Standards. The WIDA ELD standards are also aligned with the national TESOL (Teachers of English to Speakers of Other Languages) standards and address specific language development in core content areas. The Common Core Standards, in conjunction with the pre-K-12 WIDA ELD standards, provide a framework for teachers to support instruction for English learners. The ELD standards will ensure Limited English Proficiency (LEP) learners have the opportunity to achieve the BIE’s college- and career-ready standards on the same schedule as all students.

p. 74. BIE Flexibility Plan

The BIE provides the following capacity building activities to ELOs and schools to ensure comprehensive monitoring of and technical assistance for implementation of interventions in priority and focus schools:

- Mandatory training regarding the requirements and timeline related to the school improvement process and implementation of interventions.

- BIE reviews the ELO approved school improvement plans following the presentation to the local school board to ensure compliance and potential for success.
- Priority schools: the BIE will conduct once a month monitoring and technical assistance visits to each Priority school. These visits include: a comprehensive interview with the principal; focus groups with teachers, parents, and students; and classroom observations.
- Focus Schools: the BIE will conduct on-site monitoring and technical assistance visits once a school quarter to each Focus School. These visits include: an interview with the principal; focus groups with teachers and parents; and classroom observations.
- Review the electronic school improvement plans and progress reports that are part of the BIE Native Star online tool.
- Develop, train, and implement regional SOS to assist schools on utilization of the teacher and leader standards.
- Train the regional SOS on the implementation and alignment of the Common Core State Standards and assessments.
- Develop and provide data team training to regional SOS to increase staff effectiveness and inform instruction.
- Develop supports for professional collaboration which focuses on school climate and high expectations and collaborative teaching practices.
- Develop tools, practices and procedures to ensure parental and family engagement
- Develop and implement interventions and instructional strategies for all students including Limited English Proficient students and Students with Disabilities.

*Rather than a piecemeal, “pick and choose” approach to interventions-that have not yielded results, a complete system of ELL instruction will apply a research proven set of ELL strategies and techniques to be utilized with fidelity.*

*Due to the significant percent of students who likely are Limited English Proficient and a sizable percent who have not mastered the academic language of reading, math, and English, the importance of the intervention model is evident.*

*The intervention model would enable teachers to teach common core content effectively to English language learners and students with disabilities while developing their academic English ability.*

*An intervention model such as SIOP (Sheltered Instruction Observation Protocol) would merge the BIE program components of (a) Common Core content instruction; NWEA Descartes based Power of Teaching; and WIDA-English Standards Instruction, into one systematic daily delivery of ELL instruction.*

*In addition, those ELL strategies and techniques can provide differentiated RH instruction for Tier 1, 2, and 3 instruction, enabling ELL students with disabilities (Tier 3) to meaningfully comprehend Common Core standards for reading and math. The academic English proficiency of ELL SWDs would also be improved.*

- Develop and train on the use of common formative and summative assessments.
- Data coaching based on key data (e.g., NWEA, NASIS, WIDA-ELD, etc.).
- Strategic planning for implementing Common Core State Standards and high-quality assessments systems.

- Strategies for repurposing resources (fiscal, human, technology, facilities); building community partnerships and partnerships with social service agencies and other providers; and leveraging a variety of data sources to support improvement efforts. The technical assistance team will help build capacity to support leadership practices to support improved teacher effectiveness (see Principle 3):
- Provide leadership and teacher professional development focused on what evidence to look for when observing classrooms; coaching for literacy and mathematics; effective modeling practices; planning based on classroom observations; research-based intervention practices; and, response to intervention.
- Provide implementation support and coaching throughout the year for principals and teachers. Model effective practices and provide guided practice until practices are in place independently of the contractor.
- Provide modeling to principals in providing feedback to teachers, and provide guided practice to principals until the principal is able to exhibit practices independently.
- Implement, monitor and support an intervention model at the school-level with a focus on students with disabilities and English language learners. A professional development program for ELL intervention instruction will train (onsite, web-based) on the utilization of a comprehensive model of ELL instruction such as SIOP, in which Common Core lesson delivery will be provided with NWEA Power to Teach, and WIDA-ELD standards. A computerized observation protocol (SIOP) is available for teachers, supervisors, and coaches to monitor and improve ELL instruction of the Common Core.
- Build the division’s capacity to support low-performing schools and increase student achievement.

Pg. 100 BIE Flexibility Plan

**Seven Point Intervention Plan**

|                              |  |  |
|------------------------------|--|--|
| <p>9. Effective teachers</p> | <p>d) Review quality of instructional staff and retrain only those with potential to be effective<br/> e) Prevent ineffective teachers from transferring<br/> f) Provide job-embedded professional development</p> | <ul style="list-style-type: none"> <li>• Employee Performance Appraisal - rewards and supports</li> <li>• CORE Professional Development (i.e., literacy, math, RtI, and ELL support)</li> <li>• CORE Technical Assistance for SIG schools</li> <li>• Individual Development Plan</li> <li>• Teachscape Professional Development (i.e., teacher evaluation, professional learning, and school improvement)</li> </ul> |
|------------------------------|--|--|

|   |   |  |
|---|---|--|
|   |   | <ul style="list-style-type: none"> <li>• Power of Teaching</li> <li>ELL Intervention Strategies and Techniques -SIOP</li> </ul>  |
| 11. Strengthen the school instructional program               | <ul style="list-style-type: none"> <li>c) Base instruction on student needs</li> <li>d) Design instructional program that is research-based, rigorous, and aligned with State academic content standards</li> </ul> | <ul style="list-style-type: none"> <li>• RtI with emphasis on students with disabilities and limited English proficient students</li> <li>• CompassLearning Odyssey</li> <li>• Literacy Plan</li> <li>ELL system model of Strategies and techniques –e.g. SIOP</li> <li>• Choice of SIG Model</li> <li>• Site visits</li> <li>• Progress Monitoring</li> </ul> |
| 12. Data to inform instruction and for continuous improvement | <ul style="list-style-type: none"> <li>c) Use data to inform instruction and for continuous improvement</li> <li>d) Schedule time for collaboration on the use of data</li> </ul>                                   | <ul style="list-style-type: none"> <li>• NWEA MAP Assessments</li> <li>Quarterly Roll-up sessions</li> <li>• Native Star</li> <li>• NASIS</li> <li>• Special Education Data Summit</li> <li>ELL Intervention Observation Protocol (e.g. Structured Instruction Observation Protocol-online)</li> </ul>   |

### 1. Strong leadership

- Employee Performance Appraisal – rewards and supports
- Choice of SIG Model
- Principals’ Academy

### 2. Effective teachers

- Employee Performance Appraisal - rewards and supports
  - CORE Professional Development (i.e., literacy, math, RtI, and ELL support)
  - CORE Technical Assistance for SIG schools
  - Individual Development Plan
  - Teachscape Professional Development (i.e., teacher evaluation, professional learning, and school improvement)
  - Power of Teaching
- ELL instructional strategies and techniques –e.g. SIOP

### 3. Redesign school day, week, or year

- BIE evaluating (i.e., funding, labor CBA)
- Choice of SIG Model

### 4. Strengthen the school instructional program

- RtI with emphasis on students with disabilities and limited English proficient students
- CompassLearning Odyssey

- Literacy Plan
- Choice of SIG Model
- Site visits
- Progress Monitoring
- Intervention/Improvement Plan
- School Improvement Plan
- Teachscape Professional Development (i.e., school improvement)

- Power of Teaching
- NASIS Lesson Plan Module
- NASIS Special Education IEP Module
- Drop-Out Prevention Initiative

ELL System of Intervention strategies and techniques –e.g. SIOP

### 5. **Data to inform instruction and for continuous improvement**

- NWEA MAP Assessments Quarterly Roll-up sessions
- Native Star
- NASIS
- Special Education Data Summit

ELL Intervention Observation Protocol (e.g. Structured Instruction Observation Protocol-online)

### 6. **School environment**

- Youth Risk Behavior Survey
- School Safety Audits
- Technical Assistance on Bullying Prevention
- BIE National Policy Memorandum (NPM) on Suicide Prevention
- Technical Assistance on Suicide Prevention and Drug & Alcohol Prevention
- BIE evaluating use of a school climate instrument

### 7. **Family and community engagement**

- Native Star Family Engagement Tool (FET)
- School Improvement involvement
- BIE Summer Institute training
- FACE family engagement (birth-5 years old)

|                              |
|------------------------------|
| P. 125- BIE Flexibility Plan |
|------------------------------|

• *Does the SEA have a process for ensuring that teachers working with special populations of students, such as students with disabilities and English Learners, are included in the LEA's teacher and principal evaluation and support systems?*

The BIE has professional staff at the SEA, LEA, and school levels with specific expertise in working with special populations (i.e., students with disabilities and English Learners). ***The BIE may use a formative teacher observation model such as the Sheltered Instruction Observation Protocol to observe and record consistent application of key ELL sheltered interventions that focus on academic language of common core while advancing English language proficiency without necessarily attaining native-like proficiency.***

That expertise will be drawn upon in the development of teacher and principal evaluation and support systems. Not only teachers, but principals and other educators will be included in the process of development. In regard to students with disabilities, the BIE's National Advisory Board for Exceptional Education will play an active role in the development of teacher and principal evaluation and support systems **as well as experts and researchers in ELL and SWD instruction.**<sup>32</sup>

## Hamley, Jeffrey

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**From:** Hamley, Jeffrey  
**Sent:** Tuesday, June 05, 2012 2:38 PM  
**To:** ESEA Consultation  
**Subject:** FW: Request for stakeholder input into BIE Flexibility Request  
**Attachments:** image002.png

**From:** BadWound, Everett  
**Sent:** Monday, June 04, 2012 10:01 AM  
**To:** Hamley, Jeffrey  
**Subject:** RE: Request for stakeholder input into BIE Flexibility Request

Hi Jeffrey. I was one of the people who helped Roxanne edit the first version before it was submitted. So I've offered some changes to it. I do like the fact that the BIE has moved to a reward system, and it has already implemented that vision through the Striving Readers Literacy grant (2 schools in this ELO were selected). I do wonder, however, about the BIE's Common Core – schools are receiving training through their state's common core and are ready to follow it. This may create some dissension amongst the ranks since schools have always followed the state's assessment. When the waiver gets approved, the schools will begin taking the unitary MAP testing, and some state's MAP assessment is based on the state's common core not the national common core. NWEA has core standards based on the national common core so I'm wondering if this is what each school will be required to take. I'm doing my best to alert schools about this AYP waiver but can only say so much when it has not yet been approved by the DOE.

The accountability index is a viable component since it includes school improvement planning and Title programming – the “growth model” component give schools opportunity to show progress even if they do not meet the AMO for the state. In my assessment of MAP testing this past year, schools are definitely making progress and we need to acknowledge this for schools and provide AYP rewards in the future.

Hope your travels have calmed down a little bit.

*Everett Bad Wound, Education Line Officer  
Minneapolis Education Line Office  
Bureau of Indian Education  
2001 Killebrew Drive, Suite 122  
Bloomington, MN 55425  
(T) 952-851-5421  
(F) 952-851-5439*

**From:** Hamley, Jeffrey  
**Sent:** Friday, June 01, 2012 5:13 PM  
**To:** ELOs - All  
**Cc:** Roessel, Charles; Stevens, Bartholomew; Brown, Roxanne  
**Subject:** Request for stakeholder input into BIE Flexibility Request

ELOs -

I am writing to request your input into the **BIE's Flexibility Request**, which will be submitted to the U.S. Department of Education. The Department of Education has offered states the opportunity to apply for flexibility on certain provisions of the federal Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of

2001 (NCLB). In exchange for flexibility waivers, applicant states have agreed to implement bold reforms around standards and accountability defined by four principles:

- 1) College- and career-ready expectations for all students;
- 2) Differentiated recognition, accountability, and support;
- 3) Support for effective instruction and leadership; and
- 4) Reduced duplication and unnecessary burden

The Bureau of Indian Education (BIE) is requesting flexibility from provisions of NCLB. **Stakeholder input into the waiver request is a key part of the process and will be used to revise the Flexibility Request.** If granted by the Department of Education, the Flexibility Request would give BIE an exceptional opportunity to improve the quality of instruction and increase student achievement in BIE-funded schools.

The ***draft BIE ESEA Flexibility Request*** and related documents are available at the BIE website: <http://www.bie.edu>



Comments may be submitted by email to: [eseaconsultation@bie.edu](mailto:eseaconsultation@bie.edu), or by U.S. mail to: BIE ESEA Flexibility Request Comments, Office of the Assistant Secretary – Indian Affairs, U.S. Department of the Interior, Mail Stop 4141 MIB, Washington, DC 20240. Comments will be accepted through June 30, 2012.

**Questions:** contact Jeffrey Hamley at [jeffrey.hamley@bie.edu](mailto:jeffrey.hamley@bie.edu) or (202) 208-4397.

Thank you.

**<<< See attached flyer – please share and distribute widely >>>**

Jeffrey Hamley, Ed.D.  
Associated Deputy Director  
Division of Performance & Accountability  
WA/DC: (202) 208-4397  
ABQ/NM: (505) 563-5260  
Cell: (b)(6)



**BUREAU OF INDIAN EDUCATION**

## Hamley, Jeffrey

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**From:** Ward, Amanda  
**Sent:** Wednesday, June 06, 2012 2:53 PM  
**To:** ESEA Consultation  
**Subject:** BIE Flexibility Request Comments

I am again optimistic reading the flexibility request documentation. As a Principal of an Off Reservation Boarding School (9-12) located in the state of Oregon, it has been disheartening to know that no matter what we did at the local school level, our school had a slim chance of making AYP according to Oregon standards, using the Oregon OAKS test.

As an ORBS, we have students from over 23 different states with as many accountability measures. We have no traditional feeder system in which students are held to the same standards from K-12. In Oregon, if 11<sup>th</sup> grade students came to our school by the mid-point in January, and were still enrolled on the first school day in May, they counted for our AYP. That gave Chemawa just over 3 months to identify and remediate any weaknesses that they brought with them. We have acknowledged that our students come to Chemawa a full 3-5 years behind in academic skills and knowledge, as assessed by NWEA progress assessments. We can show tremendous growth in individual students over the time that we have had them attend Chemawa, but the current accountability system unfairly penalizes our students by taking a snapshot of their achievement at one point in their Junior year, with as little as 3 months with us.

I am excited about the possibilities for Chemawa and this proposal. We have already started moving our teaching and instruction to the Common Core Standards, and are looking forward to a common assessment so that everyone in the BIE is playing on an level playing field. This will also give us a common "feeder" system that we so need in order to better educate and hold our students and faculty accountable.

I see nothing but positive outcomes. I look forward to the opportunity for our staff to improve the quality of instruction at Chemawa. I know that each and every one of my students are capable of learning and making tremendous growth. It will be a good thing to be able to quantify this and celebrate the successes that we have and have a better measure of assessing continuing needs.

Thank you!

Amanda Ward  
Chemawa Indian School  
Academic Principal

## Hamley, Jeffrey

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**From:** Adson, Lemuel  
**Sent:** Friday, June 22, 2012 11:25 AM  
**To:** ESEA Consultation  
**Cc:** ELOs - ADD Navajo; Klain, Veronica  
**Subject:** input to BIE waiver

P. 7 of the summary it reads that in SY 2014-15 the BIE will transition to one of the assessments developed by the two US Dept of Ed standards consortia or, alternately continue with its interim assessment. If we can't make a decision, then the document should offer the plan on what will assist in making a decision on the direction we decide.

My comment: A decision needs to be made now. It makes the BIE appear as if we can't make a decision. My suggestions is to use PARCC and name it as such.

Lemuel B. Adson  
Education Line Officer  
AZ Navajo North Line Office  
928-283-2218  
928-283-2286 fax  
(b)(6) mobile

## Hamley, Jeffrey

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**From:** Merk, Margaret  
**Sent:** Thursday, June 28, 2012 11:37 PM  
**To:** ESEA Consultation  
**Subject:** Flexibility Wavier comment

To Whom It May Concern,

At Yakama Nation Tribal School, located in Toppenish, Washington, we test both the M.P.E.(8th grade) and the H.S.P.E.(10th grade Reading and writing), as well as the State E.O.C. Algebra, Geometry, and Biology. We test the MAPS three times a year. At the present time we MAPS test the Language Arts, Math, and Reading. This battery took almost a month to complete at the end of the school year. The results for MAPS were returned immediately..Washington States will be back late September. Our students deserve better.

I understand that Washington State is requesting a Waiver. If this request is granted, hopefully we will be able to be tested in only one platform of testing. At the present time we are receiving state moneys through a public school. To continue this relationship, would we have to take the State of Washington's test? OR can we just take the new BIE test? I feel that our students will continue to improve in the testing arena. Being compared to other Native American schools would be very interesting. A level playing field would be nice to see where we truly stand in the Native American education system.

I feel the challenge set before the Native Community can be met. Bring on the Waiver..give us a chance.

Thank You for your time.

Margaret J. Merk  
Yakama Nation Tribal School  
P.O. Box 151  
Toppenish, WA. 98948  
Phone 509.865.4778  
Fax 509.865.6092

## Hamley, Jeffrey

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**Subject:** FW: Weigh In On BIE's No Child/ESEA Waiver Proposal: Announcing the NIEA Advocacy Wire Vol. 1, No. 4

**From:** Martin Reinhardt [<mailto:mreinhar@nmu.edu>]

**Sent:** Tuesday, June 26, 2012 1:53 PM

**To:** Campbell, Katherine

**Cc:** Drapeaux, Brian

**Subject:** RE: Weigh In On BIE's No Child/ESEA Waiver Proposal: Announcing the NIEA Advocacy Wire Vol. 1, No. 4

Aanii Kathy,

I had an opportunity to review the waiver proposal, and have the following feedback based on my review:

1. I agree that the waiver would be a good mechanism to allow the BIE to move toward a single accountability system for all BIE funded schools.
2. The move toward incorporation of the common core standards is something I support and would allow for greater continuity among BIE schools and between BIE schools and non-BIE schools. It will also serve to further legitimate BIE schools among non-BIE schools (the like factor).
3. I would like to see American Indian Interdisciplinary Thematic Unit (AIITU) development as part of the teacher and principal professional development plan. Demmert's work in the area of culturally based education has provided a solid base from which to approach CCS using an AIITU process.
4. The 15% flexibility for tribal schools to develop local standards for tribal languages, histories, etc. is a good, and needed, step in the right direction, but if this is seen only as supplemental and not part of the core, then it will not be ultimately given the support within the system that it needs to flourish.
5. Capacity building should include Tribal Education Agencies as important actors in the education of tribal citizens and others who may interact with tribes.

Another comment that didn't have much to do with the waiver application content, is about the public comment process. There should be a more convenient method for folks to provide input. At present they are given the BIE address and phone number. Why not have a website that has fields for comment submission, or an email address posted.

I hope these comments are helpful. I am willing to speak more to any of these comments if anyone has any questions.

Miigwech,

Marty

Martin Reinhardt, Ph.D.

Assistant Professor of Native American Studies

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DDP Website: <http://decolonizingdietproject.blogspot.com/>

"What is called education today was, for American Indians, a journey for learning to be fully human. Learning about the nature of the spirit in relationship to community and the environment was considered central to learning the full meaning of life" (Cajete, 1994).

"Because we gather knowledge from older beings who have the wisdom of the world within their grasp, we must maintain a relationship with the rest of creation" (Deloria, 2001).

**Sent:** Monday, June 18, 2012 12:20 PM

**To:** [mreinhar@nmu.edu](mailto:mreinhar@nmu.edu)

**Subject:** FW: Weigh In On BIE's No Child/ESEA Waiver Proposal: Announcing the NIEA Advocacy Wire Vol. 1, No. 4

The Chief of Staff asked that you review also, thanks!

**From:** National Indian Education Association [<mailto:niea@niea.org>]

**Sent:** Monday, June 18, 2012 12:01 PM

**Subject:** Weigh In On BIE's No Child/ESEA Waiver Proposal: Announcing the NIEA Advocacy Wire Vol. 1, No. 4



# ADVOCACY WIRE

## Action on Behalf of All Native Students



BIE Director Keith Moore (right, next to Brian Drapeaux) at NIEA's 2011 Legislative Summit

## BUREAU OF INDIAN EDUCATION SEEKS NO CHILD/ESEA WAIVER

Native education advocates must weigh in on effort by education agency to waive aspects of federal law

Native education advocates have an opportunity to weigh in on the U.S. Bureau of Indian Education's proposed request to the U.S. Department of Education to waive provisions of the No Child Left Behind Act/Elementary and Secondary Education Act. You can [submit comments](#) by June 30.

In submitting the application, the BIE has decided to participate in the Obama administration's process for granting states and education agencies waivers from Adequately Yearly Progress and other provisions of No Child/ESEA, the law governing federal education policy (including BIE affairs). Under the process, which began last year, the U.S. Department of Education has granted waivers to 19 states, including those with significant numbers of Native students such as Colorado, Minnesota, New Mexico.

NIEA has [issued a letter](#) to U.S. Secretary of Education Arne Duncan expressing concerns that the waiver process may end up allowing schools and districts to ignore Native students to which they should be

### Other Features

[Get Ready for NIEA2012 Convention](#)

[NIEA Pushes to Restore Upward Bound Funding](#)

[More on NIEA Advocacy](#)

[Other News and Notes](#)

[NIEA on the Move](#)

### READ & WATCH

- [National Dropout Prevention Center/Network features Dr. Dawn Mackety's piece on the need for better data in order to keep Native students in school](#)
- [NIEA'S letter to the U.S. Department of Education and Bureau of Indian Education on its memorandum of understanding on Native education](#)
- [NIEA Research](#)

providing high-quality education, and that states have not properly engaged Native communities about the waivers as required under the waiver process and federal law. (Another example of this problem was borne out by reviewers of New York State's waiver application, who said it was "unclear" whether that state sought the input of American Indian tribes there; New York still managed to be one of eight states granted waivers last month.)

In its waiver application, BIE proposes to bring accountability to all 173 schools it either operates or oversees as part of its contract relationship with Tribes; Tribes operate 115, or two-thirds, of schools within the BIE system. The agency is proposing this move because BIE schools must abide by the accountability systems within the 23 states in which they operate. Such a move would allow for Native educators and others to have standard information on the progress of American Indian children attending BIE schools no matter where they live. Under the plan, BIE would also move away from No Child's AYP requirements because unlike traditional districts serving mostly non-Native students, BIE schools serve few children that aren't American Indian or Alaska Native.

The accountability system proposed by BIE, called the Accountability Index, will use several measures to track the performance of students and schools. This includes the percentage of students reaching proficient levels in reading and math on tests, (which will account for 40 percent of rankings), and the growth in student progress in reading and math over time (another 40 percent). BIE notes that it will modify the index for high schools to track and reward high schools for preparing Native students for college and career success. This effort will be especially of interest among non-Native educators and school reformers who are looking to understand how to fashion accountability systems that better-monitor student achievement.

As required under the No Child/ESEA waiver process, BIE will also identify the five percent of its schools that are the lowest-performing within the system and designate them as "Priority-Turnaround" schools. Those schools will be the focus of school overhaul efforts, and must substantially improve student performance for three consecutive years. Another 15 percent of low-performing BIE schools will be identified as Focus-Needs Improvement Schools and must improve student achievement for two consecutive years under the BIE application.

BIE is also planning to implement Common Core State Standards in English/language arts and mathematics; with such a move, BIE would join 45 states that have already approved and begun implementing such standards. (NIEA, by the way, is working with its partners, the Campaign for High School Equity, to help states implement Common Core in ways that are both equitable and also allow for schools to provide culturally based education to all Native students that respects our traditions.)

The [BIE's waiver application](#) and [summary](#) of its request are available [here](#). [Submit your suggestions and comments](#) by June 30 in order to shape the quality of education our children receive in BIE schools.

## **JUST THE FACTS: BIE ACTIVITIES AND NO CHILD/ESEA WAIVERS**

- Earlier this year, BIE Director Keith O. Moore [told](#) NIEA leaders and advocates at our Legislative Summit that it is critical to gain and use data in tracking student achievement and justifying the existence of Native programs. You can [watch Moore's comments](#).

[Director Dr. Dawn Mackety's presentation on graduation and dropout rates](#)

- [NIEA's helps Native advocates in Oregon pass ban on the use of Native mascots by schools](#)
- [Profiles of partnerships between tribal education departments and local education agencies](#)

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- *The New York Times* and Politico reported on the U.S. Department of Education's decision last month to grant No Child/ESEA waivers to eight additional states.
- New Mexico, one of the first states granted waivers, received approval from Department of Education officials back in February even though it had not yet formally implemented a plan for evaluating teachers. This week, it has made some progress on that front. NIEA, CHSE, and advocates in that state are seeking to meet with New Mexico education officials to discuss the teacher evaluation plan and build stronger relationships to advance education for Native children.



OFFICE OF THE TRIBAL CHIEF PHYLISS J. ANDERSON  
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July 6, 2012

|   |  |
|---|--|
| Secretary of the Interior Ken Salazar<br>Department of the Interior<br>1849 C. Street, N.W.<br>Washington, DC 20240           | Secretary of Education Arne Duncan<br>Department of Education<br>400 Maryland Avenue, S.W.<br>Washington, DC 20202   |
| Brian Drapeaux, Acting Director<br>Bureau of Indian Education<br>1849 C Street, N.W.<br>MS 3609-MIB<br>Washington, D.C. 20240 | William Mendoza, Executive Director<br>White House Initiative on American<br>Indian and Alaska Native Education<br>400 Maryland Ave., S.W.<br>Washington, DC 22206 |

By Email: [Consultation@bia.gov](mailto:Consultation@bia.gov)  
And  
BY FAX: (202) 208-3312

**Re: Tribal Comments on draft DOI-ED MOU and draft BIE AYP Flexibility Plan**

Dear Sirs:

This letter submits comments of the Mississippi Band of Choctaw Indians on the draft DOI-ED MOU and the BIE's draft AYP Flexibility Plan.

### **THE DRAFT MOU**

Starting with enactment of the Indian Self-Determination and Education Assistance Act, P.L. 93-638 ("SDA") in 1975—reiterated by the 1988 and 1994 ISDA amendments (P.L. 100-472 and P.L. 103-413)—and enactment of the Tribally Controlled School Grants Act P.L. 100-297 ("TCSA")—the Congress has adopted the approach requested by the Tribes. That is, taking control of federally funded school programs on reservations away from federal agencies and transferring that control to the Tribes or to tribal organizations when requested by the governing bodies of those Tribes. Congress has explicitly rejected the notion that more federal bureaucratic control of reservation Indian schools is good for Indian students.

The Congress has made crystal clear its intention to give effective control over these schools to the tribes and tribal organizations which operate them and to keep federal involvement to a bare minimum. This intent is evidenced not only by the Titles and Congressional findings of that legislation but also by the express restrictions which that legislation—especially the TCSA—imposed on the federal agencies involved.

The words “tribally controlled” mean we get to decide how to run our schools. We don’t have to explain or justify our decisions on how to carry out our school programs to any federal agency. That is the fundamental point. So when we look at the draft MOU what we see is the opposite premise. What permeates the draft is the premise that you know better than us, the premise that your education ideas should supersede the tribes’ education ideas, and the premise that you can and should impose this agreement and your ideas on all the pass-through funds that flow from ED through DOI to our school. That is not permitted by the statute. You may have the authority to sign an MOU. You do not have authority to use an MOU to supersede the requirements and restrictions of the TCSA.

So our fundamental problem with this MOU is that it is premised on the notion that you are going to decide what is best for our schools, and you’re going to tell us: you dance to our tune, or you don’t get our money. But Congress has said, “no, you cannot do that.” The TCSA couldn’t be clearer in prohibiting the ED and BIE from imposing those kinds of conditions.

Why has Congress imposed such draconic restrictions on DOI and ED?

Because the Congress determined that Indian students in reservation schools would do better if those schools were tribally controlled rather than federally controlled; and, because the Congress was aware that the DOI had previously used reporting, compliance and monitoring requirements as a back doorway to control tribally operated schools even when a Tribe had determined to place those schools under tribal control; and, the Congress no longer trusted the agencies to voluntarily cede control to those tribes who chose to operate them.

There has historically been great bureaucratic resistance to giving up this control. That resistance has involved the imposition of ever more onerous, burdensome and duplicative assurance reporting and compliance requirements in flat contradiction to the plain mandate of the TCSA. That statute at 25 U.S.C. § 2503—and its implementing regulations at 25 C.F.R. Part 44.101—expressly limits what grant terms and conditions can be imposed and what reporting can be required. Part 44.101 states that the

Secretary cannot use anything that is not in the TCSA itself, the TCSA regulations or what a tribal TCSA school otherwise agrees to in constructing TCSA grant terms and conditions.

25 U.S.C. § 2502(b) states what reports the Secretary can require the TCSA schools to submit—annually. Nothing else can lawfully be required except what the NCLB legislation and its regulations (including the BIE regulations at 25 C.F.R. Part 30) implicitly engrafted into the TCSA. That includes the duty to adhere to the applicable NCLB standards and to include information on the schools' AYP results in the schools' annual TCSA report to BIE per 25 U.S.C. § 2502(b).

25 U.S.C. § 2503(a) says that all money awarded by DOI to TCSA schools—regardless of what agency appropriation it came from or under what federal education law it was authorized—must go in the single TCSA grant if requested by the tribal recipient.

Under 25 U.S.C. § 2503(b)(1) these restrictions and prohibitions apply with equal force to ED money channeled to TCSA schools through BIE as to DOI appropriated funds.

One result of all this is that neither ED nor BIE can lawfully withhold funds from a TCSA school for its refusal to submit reports or agree to grant terms not required by 25 C.F.R. Part 44.101 or 25 C.F.R. Part 30.

The Tribe has reviewed the proposed MOU with great care. Chief Anderson submitted preliminary comments addressing the MOU and related BIE initiatives on June 1, 2012. The Tribe has asked that those comments—together with Chief Anderson's letter to Stanley Holder of June 4, 2012—into the record of the June 5, 2012 MOU consultation in Nashville, Tennessee. That letter addressed tribal concerns with additional "assurances" and reporting requirements which BIE has sought to impose regarding 6111 pass-through funds transferred to BIE from ED and then awarded to tribes per their TCSA grants. Those comments are repeated here by reference.

Both of those tribal submissions set out the legal and policy bases for various tribal concerns that also apply to the draft MOU.

The core issues which underlie the Tribes' concerns about the draft MOU are addressed below.

First, the Tribe is committed to the principle of tribal control of its schools. Those schools—eight of them—have been under tribal control for over two decades. Their students—in all eight schools—in K-12 grades—are making

AYP academically. That is a good record. The Tribe knows how to run its schools. The Tribe has embraced the Congressional premise and promise of the TCSA—that tribal control of their BIE funded schools is a better path to achieving improvement of their students' education than federal control of those schools.

The proposed MOU would formalize a DOI duty to impose ever more detailed programmatic requirements, federal funding criteria, federal performance assessments and burdensome and duplicative reporting obligations—none of which can lawfully be imposed on TCSA schools. Doing this would fundamentally undermine effective tribal control of TCSA schools and force diversion of scarce school funding from the classroom to preparation of responses to these federal requirements. It would also be unlawful.

Underlying all of these requirements are the unstated but obvious—and obviously erroneous—premises that the best path for improving the quality of Indian education in BIE funded schools operated by Tribes pursuant to the TCSA is to increase the quantity, scale and scope of bureaucratically imposed federal compliance obligations detailed reporting requirements. In short, the draft MOU assumes that federal bureaucrats rather than tribal school officials should control how tribally-operated schools are run and how their students' lessons are designed and taught. We reject those premises.

We say these are the unstated premises which underlie the proposed MOU because nowhere in the draft MOU or in any of the referenced explanatory materials regarding it does DOI acknowledge and honor the superseding (and contrary) premise that the best path to long term improvement of Indian Education in the tribally controlled schools is to let the Tribes control them—to control their curriculum, their hiring, their expenditures—and to keep federal involvement to a minimum.

This reflects a deeper and more fundamental flaw underlying the proposed MOU: the notion that tribal communities are not capable of operating their own schools; that federal bureaucrats know what is best for the tribes; that giving more power and money to federal bureaucrats and less power and money to tribal schools will improve the quality of education in those schools. Again, we reject all of those premises.

In short, we know how to run a K-12 school program. The best things the BIE and ED could do for us is to lessen the burdensome funding criteria and reporting and compliance requirements now involved and leave us to allocate our federal education funds to best target our local school needs in the ways we deem to be most effective. We do not need any federal

bureaucrat to tell us how to run our schools. We certainly do not need more federal involvement or control.

It would, however, also be of significant help if DOI would reduce BIE's compliance staff and request authority to preprogram the savings to help fund the growing shortfall in TCSA school Administrative Cost Funding. Administration cost grants are now funded at only 61%. The tribes need more administrative support money and the DOI could dramatically help improve Indian Education in TCSA schools by getting smaller, not bigger, making more education funding available to the tribal schools.

It is not just our Tribe which holds these views. The Congress itself has recognized that the best path to long term improvement in Indian education in reservation schools operated by Tribes is to let these schools truly be tribally controlled. This means that beyond the core minimum curriculum standards set out in the ISEF and No Child Left Behind ("NCLB") statute and regulations—it should be left to the tribes—not the federal bureaucracy—to determine how those minimum standards will be achieved and how federal education monies should be spent to achieve AYP and other educational goals.

The Tribe rejects—as the Congress has rejected—the counter premise that increasing federal control of these schools will lead to better education for their students. The Congress in the TCSA chose to place control of these schools in tribal hands rather than in the hands of federal education bureaucrats.

The Congress has made these things clear in several ways.

First, the Congress strictly limited the number and content of what reports DOI can demand of the TCSA schools. This is made clear by 25 U.S.C. § 2505(b).

TCSA schools each year:

(b) **Annual reports**

(1) **In general**

Each recipient of a grant provided under this chapter shall complete an annual report which shall be limited to—

(A) an annual financial statement reporting revenue and expenditures as defined by the cost accounting established by the grantee;

(B) an annual financial audit conducted pursuant to the standards of the Single Audit Act of 1984;

(C) a biennial compliance audit of the procurement of personal property during the period for which the report is being prepared that shall be in compliance with written procurement standards that are developed by the local school board;

(D) an annual submission to the Secretary of the number of students served and a brief description of programs offered under the grant; and

(E) a program evaluation conducted by an impartial evaluation review team, to be based on the standards established for purposes of subsection (c)(1)(A)(ii)<sup>1</sup> of this section.

## (2) **Evaluation review teams**

Where appropriate, other tribally controlled schools and representatives of tribally controlled community colleges shall make up members of the evaluation review teams.

## (3) **Evaluations**

In the case of a school which is accredited, evaluations will be conducted at intervals under the terms of accreditation.

In furtherance of those goals, the TCSA at 25 U.S.C. § 2503(b)(3)(B) (formerly codified at § 2504(b)(3)(B)) expressly forbids the Department of Education from requiring DOI to impose (or the DOI from imposing) on TCSA schools any requirements or obligations—and this includes programmatic, reporting and compliance obligations—in connection with the award of any funds appropriated to carry out any federal education programs that would otherwise be imposed by ED by reason of the award of those funds. DOI is likewise barred from imposing its policy views on the tribal schools as to DOI appropriated funds. These statutory prohibitions could not be clearer:

§2503(b)(3)(B) Applicable of Bureau provisions Indian tribes and tribal organizations to which grants are provided under this part, and tribally controlled schools for which such grants are provided, shall not be subject to any requirements, obligations, restrictions, or limitations imposed by the Bureau that would

otherwise apply solely by reason of the receipt of funds provided under any law referred to in clause (i),(ii), or (iii) of subparagraph (A).

The BIA is likewise barred by its own TCSA regulations (25 C.F.R. Part 44) from imposing any additional funding, reporting, assurance, or compliance requirements whether in connection with ED funding awards to TCSA schools by BIE or as to funds from DOI appropriations. Specifically, § 44.101 of the regulations limits the grant conditions BIE can impose on TCSA schools to the following:

- §4.101 In making a grant under this part the Secretary will use only:
- (a) The Tribally Controlled Schools Act;
  - (b) The regulations in this part; and
  - (c) Guidelines, manuals and policy directives agreed to by the grantee.

If a TCSA school does not timely submit one or more of these things, BIE can offer technical assistance to secure compliance with these statutory requirements; and, that failing, can initiate Contract Disputes Act proceedings to secure compliance per 25 U.S.C. §2507(3), can impose High Risk Sanctions on the school as authorized by the Single Audit Act, 31 U.S.C. §7501 et seq. and OMB Circular A-133 (for tribal schools which fail to timely submit annual audits as there required) or—in extreme cases when all else fails and a TCSA school fails or refuses to submit one or more of these things—can initiate grant eligibility revocation proceedings per 25 U.S.C. §2505(e)(2).

We note in this regard that TCSA grants (except for large construction projects) are not ordinary grants governed by OMB circular A-102 & 43 C.F.R. part 12. Instead, they have the same legal status as P. L. 93-638 contractors and are enforceable as such. 25 U.S.C. § 2507(e). Section 2503(B) makes clear that large TCSA grants for construction are subject to the 43 C.F.R. Part 12 provisions, but not school operation grants. See, our Attorney’s Memorandum of June 30, 2010 to Sabrina McCarthy, DOI-Solicitor’s Office (copy enclosed).

As shown by the same provisions noted before—the Congress has expressly forbidden (and the TCSA regulations confirm) that no grant conditions can be included in a TCSA grant—whether as assurances, policy requirements, program requirements or reporting requirements—without the TCSA schools’ consent, except those expressly set out in the TCSA or its regulations.

Further, the TCSA requires that all funds awarded by DOI to a TCSA school must be included in a single TCSA grant instrument—which will contain only the TCSA requirements and any other provision agreed to by the Tribe—and nothing else without the consent of the Tribe.

This requirement is now reflected in 25 U.S.C. § 2503(a) which makes clear that all BIE funding awards to TCSA schools are to be included in one grant to those schools—no matter to what agency those funds were originally appropriated or under what federal law they were authorized—BIE’s present practice of imposing separate assurances and reporting and programmatic requirements for ED pass-through funds awarded to TCSA schools is patently unlawful. It is expressly forbidden—the proposed MOU would compound this illegality—by requiring BIE to carry out via increased reporting and increased compliance and enforcement obligations what the Congress has forbidden BIE to do and has forbidden ED to require BIE to do.

Under these provisions all funds awarded by BIE to TCSA schools shall (if requested by such school) be awarded in a single TCSA grant, with any supplemented BIE funding awards being carried out by means of a simple grant modification leaving all the funds awarded by BIE to that TCSA school governed by the same grant terms and conditions as are applicable to its ISEF funds awarded per 25 U.S.C. § 2001 et seq. Of course, the school will have a duty (as noted below) to spend funds appropriated to other agencies but transferred to BIE and awarded to a TCSA school per the TCSA to spend such funds only for approved program purposes, something that OMB Circular A-87 would require anyway. That Circular is made applicable to TCSA grants by 25 C.F.R. Part 44.110(a)(1) (incorporating 25 C.F.R. Part 900.45) and by 25 U.S.C. § 2507(a)(10) (incorporating 25 U.S.C. § 450j-1(k)). All this is also clear from the legislative history of the TCSA. House Report 100-95, to accompany H.R. 5:

Let us be clear. 25 U.S.C. § 2503 does not just prohibit BIE from requiring and enforcing special reporting and compliance obligations regarding DOI appropriated funds awarded to TCSA schools. That statute also bars ED from conditioning the transfer of those funds to BIE for award to TCSA schools or award of those funds to those schools on agreement of the BIE or the tribes to those additional requirements. This is the fundamental legal flaw of the draft MOU.

The core problem with the draft MOU is the policy premise that Indian education in TCSA schools will benefit from more federal oversight and reporting and from enforcement of federal views on how the schools should operate. These are just another means of exercising control—means which the Congress expressly recognized and prohibited.

Imposing additional assurances, terms, conditions and reporting requirements directly impedes and undermines that core Congressional objective of the TCSA and is unlawful. *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941) (actions or policies which stand “as an obstacle to the accomplishment of the full purposes and objectives of Congress” are unlawful), cited with approval in *Ramah Navajo School Board, Inc. v. Bureau of Rev. of N.M.*, 458 U.S. 832, 845 (1982);

The federal Executive Branch is statutorily barred from imposing its education policy views on TCSA schools except those contained in the TCSA (as amended by NCLB) or lawfully promulgated regulations. This is made clear at 25 C.F.R part 44.101 (quoted above) (which expressly forbids BIE from imposing any federal policy requirements or guidelines except those set out in the TCSA, the TCSA regulations or those “agreed to by the Tribal grantor”) and 25 U.S.C. § 450 I(c) Model Agreement (b)(11):

**(11) Federal program guidelines, manuals, or policy directives.**—Except as specifically provided in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) the Contractor is not required to abide by program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Contractor and the Secretary, or otherwise required by law.

Yet, the MOU would seek to circumvent this prohibition by imposing more and more reporting and compliance obligations in re ED pass-through funds.

Every time this is done—unless ignored by the tribes—diverts critical Indian education money away from the classroom to deal with these reporting demands.

No one is advocating that schools should be free to mispend the money, embezzle it, run terrible schools and have no accountability, we are not advocating that. We know that if the tribes don’t perform, you have the legal authority and the duty to do something about it. BIE does not need an MOU or new regulations to achieve that.

BIE already has the authority to sanction schools that don’t meet the AYP over a period of time. You already have the authority to sanction them if they don’t submit the required audits and the other reports. You don’t need any more authority to do that.

For troubled schools – and we know there are some that haven't filed an audit in years—why are they still open? The BIE has remedies for addressing those problems. You should not try to make it harder for the schools that are performing because some schools are not operating properly. The tribes that are doing what they're supposed to do are not the problem, and we don't want to be lost in your focus on the problem schools. This MOU would literally throw out the baby with the bath water.

The draft MOU is disappointing in another respect. BIE and Ed have asked for Tribal comments on a proposed amended MOU between those agencies. There are allusions in the draft MOU to restrictions imposed on these agencies by the TCSA at §IV.B.3 (p.6) (noting that ED's responsibilities for monitoring and enforcement are only "to the extent permitted by law") and in IV.B.4:

- in ii (p. 7) qualifying the compliance and assurance language by the notation such as requirements will be imposed "except where provisions of the Tribally Controlled Schools Act, as amended, other statutes, or DOI regulations control;"
- in i (p. 8) there is language about ED and BIE collaborating to "explore BIE's legal authority for both the monitoring...of compliance.. as well as assuring the proper expenditure of all funds transferred to tribally controlled grant schools or contract schools;" and,
- I (p. 8) there is language noting that BIE-funded schools will have certain responsibility "except as exempted by statute."

However, those references seem to view the congressional mandate that tribally-controlled schools operate with a bare minimum of federal involvement as negatives or barriers to be overcome through the joint efforts of BIE and ED rather than Congressionally mandated policies which should be fully embraced and enforced.

Indeed, it is shocking that nowhere in this 16 page draft MOU is there any real acknowledgment of the statutory rights of TCSA schools to operate their local BIE funded education programs free of burdensome federal control. Nor is there anything in the MOU which acknowledges that the Congressional decision to subject tribal schools to only a bare minimal level of federal oversight and control was a wise and deliberate decision. We think—and the Congress has determined—that approach is the wise and proper approach.

The MOU should be fundamentally revised to have ED and DOI acknowledge that TCSA schools have the legal right to operate BIE funded programs (included programs funded with ED program funds channeled through DOI)

free of “any requirements, obligations, restrictions, or limitations” imposed by virtue of those funds.

The TCSA bars ED from demanding that DOI impose these kinds of program requirements and compliance obligations just as much as it bars BIE from unilaterally imposing them.

Much of what appears in the draft MOU are statements of federal education policy views and aspirations which cannot lawfully be imposed on TCSA schools.

We now turn to specific provisions of the draft MOU.

Section I of the draft MOU identifies the Departments’ joint interest in improving Indian education but omits any reference to the role of the tribes in operating TCSA schools, or the TCSA provisions which bar either agency from imposing BIE or ED reporting or compliance provisions on TCSA schools which are not expressly authorized by TCSA—this is clear from 25 U.S.C. §§ 2503(b)(3)(B) and 2505(b). The agencies cannot alter or overcome these restrictions via the MOU.

Section II of the draft MOU says in so many words that all of its provisions will be imposed on TCSA schools. The exact language is:

Any transfers of funds between the agencies will be made through transfer of funds documents that incorporate the terms of this Agreement. Each party to this agreement will bear their own costs of performing their respective duties under this MOU.

Tribes were not at the table when these terms were negotiated and they cannot lawfully be imposed on TCSA schools without their consent. We recommend the agencies sit down with representatives of TCSA schools and explore what if any additional reporting requirements the schools might voluntarily agree to. The notion of these two agencies jointly deciding to impose those new requirements on TCSA schools without their consent is flatly contrary to the TCSA and its regulations. This is precisely the kind of thing the statute and regulations forbid.

The Mississippi Choctaws stand ready to work cooperatively with the BIE and ED on these issues, but any effort to unilaterally impose these reporting and compliance rules must be abandoned.

Section II of the draft MOU also says that the MOU will supersede any previously approved plan or application submitted to ED by BIE. To the

extent those plans or applications have been built into or incorporated into any existing TCSA grant agreements, neither agency has legal authority to unilaterally change those plans or applications. Any effort to do so will be actionable under the Contract Disputes Act and under 25 U.S.C. § 450 m-1.

Section III.A. of the draft MOU contemplates various committees and working groups and a data subcommittee—none of which would involve TCSA school representatives. If any progress is going to be made on the issues these groups and committees aim to address, TCSA schools have to be at the table—or they will have the legal right to simply say “no” to any data requests or reports these groups believe to be desirable.

Section III.B. of the draft MOU sets out various agency goals for improving Indian education based on the President’s Executive Order—most of those goals are unobjectionable in the abstract. What is missing is any acknowledgment of the critical role TCSA schools will play in determining their own Indian education goals and their decisions on how best to attain them. These are decisions those tribal schools will make—not DOI or ED.

Section III.C. calls for regular consultation with TCSA schools and tribes—yet we have been asking for many years for real dialog with BIE to work on legally acceptable TCSA grant terms and conditions—to no avail. See, our attorney’s letter of January 15, 2010 addressed to the Secretary and Assistant Secretary-Indian Affairs. (Copy enclosed).

One example—BIE continues to insist on receiving a bi-annual financial report from TCSA schools. § 2505(b)(1)(A) only requires an annual financial report. We have managed to get that demand removed as a grant condition—but BIE continues to demand it anyway.

Some years ago the MBCI worked jointly with some other tribes and BIE to secure a revision of the TCSA grant conditions. BIE wanted to continue its prior practice of issuing a guidance letter and a schedule of reports to be sent with the grant conditions. Tribes agreed to that so long as the letter contained an explicit disclaimer acknowledging that the letter was not a part of the grant conditions. For the first year the BIE’s non-binding guidance letters did contain that disclaimer (see, e.g. the enclosed BIE letter of July 2, 2010). Last year that disclaimer was eliminated from the BIE’s guidance letter—with no notice to or consultation with the tribes. (See, enclosed letter emailed on July 1, 2011). While that letter is still not a part of the grant conditions, DOI’s unilateral elimination of that disclaimer makes it easier for BIE to insist on compliance with the terms of that letter; and, the letter is now misleading.

Section IV.C.3. calls for increased money to be awarded to tribal education agencies. We believe all such funding increases should go to cover basic TCSA school operations and to fill the growing AC grant shortfall (now funded at only 61%).

Section IV.C.4. of the draft MOU views the legal barriers to federal control of TCSA schools as barriers to be overcome rather than a legal reality to be honored and supported.

Section IV.A. of the draft MOU should be renamed: "Plan for Imposing Federal Administrative Requirements Forbidden by the TCSA."

This whole section sets out the agencies joint plan for violating express prohibitions on additional obligations and requirements as set out in the TCSA and its regulations. This whole section needs to be eliminated

Section IV.B.3. references the Secretary's general authority to set federal Indian education policy for BIE operated schools. The TCSA bars extension of that policy formulation role to TCSA schools. Each TCSA school has the legal authority to set their own education policies and to determine how they can best address their educational goals free of interference from BIE or ED.

The TCSA schools must adhere to NCLB and ISEF funding standards except for areas in which the statute authorizes the substitution of tribal standards—but beyond that all the "how tos" and "whats" of Indian education policy as regard the TCSA schools is left—separately—to those schools.

Section IV.B.3. of the draft MOU calls for an increase in BIE oversight and control over TCSA school operations in flat contradiction of the TCSA and its regulations.

The TCSA starts from the premise that TCSA schools should be in charge of deciding how best to evaluate their students. These are not federal decisions. They are tribal or TCSA school board decisions.

Section IV of the MOU starts from the premise that more federal control of TCSA school operations is desirable and would help improve the quality of education at those schools. The Tribe rejects that premise and rejects the notion that ED and BIE have the legal authority to enforce the erroneous value judgment that underlies it.

Section IV.B.3. contemplates increased on-site monitoring of TCSA school operations by BIE and ED.

If BIE determines a TCSA school is not honoring its statutorily authorized TCSA grant terms and conditions—BIE has several remedies as noted before. Neither BIE nor ED have the legal authority to impose additional monitoring visits on TCSA schools.

Section IV.B.4.a.i. of the draft MOU calls for BIE to perform full SEA functions as to all BIE funded schools—including TCSA schools. BIE has no authority to assume that role as to the TCSA schools.

Section IV.B.4.b.i of the draft MOU sets out ED’s requirement that BIE be responsible to ensure all ED money awarded to BIE funded schools (including TCSA schools) was properly spent. This requirement can be satisfied via annual audit reviews and review of the annual financial reports required by § 2505(b)—we have no objection to that. What ED cannot lawfully do is impose any additional monitoring, reporting and compliance requirements on the BIE and require BIE to impose those requirements on TCSA schools.

Section IV.B.4.b.2 of the draft MOU halfheartedly acknowledges that there may be legal barriers to BIE’s ability to impose further compliance requirements on TCSA schools to ensure their “compliance with all statutory and regulatory requirements applicable to those programs, as well as ensuring the proper expenditures of all funds transferred to tribally controlled grant schools or contract schools.”

As to this we reiterate that neither ED nor BIE have legal authority to impose more compliance or reporting requirements than allowed by the TCSA and the TCSA regulations.

Section IV.B.6. of the draft MOU notes ED’s need for certain programmatic and performance data re ED funds transferred to BIE and awarded to TCSA schools—but does not contemplate inviting TCSA school representatives to participate in shaping how this goal might be achieved by agreement with the TCSA schools or otherwise in a manner that would be consistent with the statutory or regulatory restrictions imposed on ED and BIE.

Section V of the MOU contains various provisions—the first of which requires BIE to agree to § 9304/ESEA assurances. To the extent that provision contemplates BIE enforcement of those provisions against the TCSA schools, it is prohibited by the TCSA.

Basically, by every measure the proposed MOU is worse than the existing one, if that assessment is made based on whether the MOU will undermine

or facilitate effective tribal control of TCSA schools and the MOU's impact on improving the quality of education in those schools. The new MOU is replete with more ED requirements that BIE is expected to impose and enforce against the TCSA schools: more assurances, more grant conditions, more reporting, more monitoring and generally more DOI and ED oversight and control of TCSA schools.

There is nothing about this proposed MOU that will improve Indian education in TCSA schools. The only substantive changes from the existing MOU involve imposition of more federal control and decreased tribal control of the "how tos" of tribal school program operations. Whoever drafted this MOU must have thought that decreasing effective tribal control and increasing effective federal control would be a good thing. The Congress has rejected that premise and we reject that premise and no part of the Executive Branch has the moral right or the legal authority to substitute federal decisions for tribal decisions regarding how tribes should shape and carry out our TCSA school operations.

The old MOU more closely adheres to the statutory mandate that TCSA schools be left alone to operate their school programs—using DOI and ED funds awarded in a single TCSA grant per 2503 and not be subject to any additional "requirements, obligations, restrictions or limitations" per § 2503(b).

Tribal control means having the right to determine how to educate our students. Requiring money be spent for the purposes appropriated as verified by audit and measured against the applicable NCLB/AYP standards—but otherwise leaving the TCSA schools to determine how to best achieve our educational objectives.

The proposed MOU seeks to require BIE to go down a different path—a path that would increase federal control and undermine tribal control of TCSA schools. That is an egregious mistake of policy and plain legal error.

Neither DOI nor ED have legal authority to impose their policy judgments on how TCSA schools should structure and operate their school programs.

Indeed, we question why any MOU is required. The TCSA mandates that ED transfer monies appropriated or authorized under any "federal education law" to BIE for award to TCSA schools together with DOI funds in a single TCSA grant or "638 contract, without addition of any other "requirements, obligations, restrictions or limitations." This means that no additional assurances, reporting requirements or performance standards can be

imposed. The presence, absence or content of an MOU cannot alter those statutory requirements.

This does raise the question of what role BIE should play in regard to TCSA school operations. The Congressional answer is clear: very little.

We close these comments on the draft MOU by reference to legislative history regarding the TCSA. Legislative history that confirms Congress' intent to require that tribes which elect to operate their own schools be left alone to do so see, H.R. Conf. Rep. 100-567, p. 59, where the Conf. Committee emphasized that BIE is not to use even the limited TCSA reporting requirements as a means of retaining effective control over TCSA schools:

The House recedes/The Senate recedes, making technical clarifications, requiring that tribal standards be accepted by a generally recognized regional or State accreditation agency, and requiring that the applicable tribe(s) receive the required reports and notice of any audit exceptions.

The Conferees wish to emphasize that the statute is worded to require the grantee to submit the reports and the Secretary to register the receipt of required reports. There is no authority for the Secretary to review or approve the reports. It has been just this process of review which has been the most intrusive method used by the Bureau for retaining effective control over locally controlled schools. (Emphasis added)

### **THE BIE DRAFT FLEXIBILITY PLAN**

The Tribe's comments regarding the BIE's draft Flexibility Plan will be brief. By that plan BIE seeks to adopt its own uniform AYP standard for BIE operated schools. Basically, the Tribe does not oppose the BIE's efforts to adopt a unified AYP standard if that standard will be applicable only to BIE operated schools and so long as the following principals are honored.

TCSA schools must continue to have the right to choose which AYP standard they will apply to their schools from among the following choices:

a. The BIE AYP standard if such a standard is adopted and approved by ED pursuant to the proposed regulatory changes and a TCSA school elects to use it.

b. An approved AYP standard adopted by the tribe or by the local school board as provided at 25 C.F.R. Part 30.104(b).

c. The tribe or TCSA school may designate an approved ED state standard as its tribally selected standard. This latter option is particularly important for tribes located in states which have received a waiver from the ED and will no longer be administering or using an AYP standard previously approved by ED. The tribes and tribal school boards should also have the option of adopting an AYP standard from another state and making that the applicable standard for its schools so long as the standard selected has received the appropriate ED approval under the "no child left behind" requirements and otherwise satisfies 20 U.S.C. § 6311(b).

We do question whether BIE has the legal authority even with ED approval to adopt an alternative AYP standard that will be applicable only to BIE operated schools. It would appear that this option is only available to SEAs and BIE is not an SEA. One alternative that BIE should consider is seeking to revise the Part 30 regulations to authorize BIE to simply adopt one of the other state's standards as its standard to be applied uniformly to BIE operated schools even if it's a state standard from a different state than the one in which each BIE school is located. If 25 C.F.R. Part 30 is to be revised, we would recommend that BIE include that option in the proposed regulation to the extent that it is determined it does not have authority to adopt its own BIE generated AYP standard.

Finally, we reiterate that subject to the above understandings the tribe does not oppose BIE seeking to have applied to the schools which the BIE operates, a single AYP standard. It is critical, however, that neither BIE nor ED view or use the proposed flexibility plan as a vehicle for attempting to impose any such new BIE standard on TCSA schools.

### **CONCLUSION**

These comments may seem harsh. In part, that reflects our exasperation at the government's continued failure to fully embrace our right to control our school operations as authorized by Congress with only a minimal level of federal involvement.

We would welcome the opportunity to work with the ED and the DOI to revisit this draft MOU in a collaborative way. I will make our tribal education personnel and our tribal attorneys available to join with you in that kind of joint effort. Involving the tribes in this way is the only way that real progress can be made in improving Indian education in the TCSA schools.

Sincerely,

## **CONCLUSION**

These comments may seem harsh. In part, that reflects our exasperation at the government's continued failure to fully embrace our right to control our school operations as authorized by Congress with only a minimal level of federal involvement.

We would welcome the opportunity to work with the ED and the DOI to revisit this draft MOU in a collaborative way. I will make our tribal education personnel and our tribal attorneys available to join with you in that kind of joint effort. Involving the tribes in this way is the only way that real progress can be made in improving Indian education in the TCSA schools.

Sincerely,

(b)(6)

PHYLISS J. ANDERSON, Chief,  
Mississippi Band of Choctaw Indians

Enclosures: as indicated

Cc: Donald L. Kilgore, Choctaw Attorney General  
C. Bryant Rogers, Esq.

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January 15, 2010

Hon. Ken Salazar, Secretary  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

Hon. Larry Echo Hawk  
Assistant Secretary of Indian Affairs  
U. S. Department of the Interior  
1849 C Street, N.W., MS-3658-MIB  
Washington, D.C. 20240

**Re: *Comments by the Alamo Navajo School Board, Inc., Dibe Yazhi Habitiin Olta, Inc., (Borrogo Pass School), the Chitimacha Tribe of Louisiana, the Duckwater Shoshone Tribe of Nevada, the Mississippi Band of Choctaw Indians, and the Ramah Navajo School Board, Inc., and the National Indian School Board Association Regarding the Development of a Tribal Consultation Policy for the U.S. Department of the Interior***

Dear Secretary Salazar and Assistant Secretary Echo Hawk:

These comments are submitted jointly on behalf of a number of our clients, which are Indian tribes and organizations that operate Tribally Controlled School Grant Act (BIA funded) schools funded per Pub. L. 100-297 (25 U.S.C. § 2001 *et seq.*). Those tribes and tribal organizations include Alamo Navajo School Board, Inc., Dibe Yazhi Habitiin Olta, Inc., (Borrogo Pass School), the Chitimacha Tribe of Louisiana, the Duckwater Shoshone Tribe of Nevada, the Mississippi Band of Choctaw Indians, and the Ramah Navajo School Board. We are also authorized to submit these comments on behalf of the National Indian School Board Association ("NISBA").

It is somewhat telling and ironic that the Executive branch department with primary responsibility for managing the Nation's government to government and trust relationships with the federally recognized Indian tribes does not itself have a Department-wide Indian tribal consultation policy almost ten years after President Clinton issued Executive Order

13175, *Consultation and Coordination with Indian Tribal Governments* on November 9, 2000.

Instead, some but not all Interior Department agencies and bureaus have promulgated their own tribal consultation policies. Those range from the sparse (in the case of the U.S. Geological Survey, which does not even mention the government-to-government relationship of the United States and the Indian Tribes), to the more elaborate consultation policies of the Bureau of Land Management and the Bureau of Reclamation (94 pages with appendices.) Some Interior agency policies are clearly outdated. For example, the tribal consultation policy of the U.S. Fish and Wildlife Service, the agency that controls legal access to eagle feathers for tribal members, dates back to 1994. The Bureau of Indian Affairs tribal consultation policy was issued in December 2000.

In some instances, tribal consultation by an Interior agency is mandated by statute. See Native American Education Improvement Act of 2001 at § 2011(b)(1) and (b)(2)(B):

§ 2011(b)(1)

"All actions under this Act shall be done with active consultation with tribes. The United States acting through the Secretary and tribes shall work in a government-to-government relationship to ensure quality education for all tribal members.

\*\*\*

§2011(b)(2)(B):

(B) Discussion and joint deliberation

During discussions and joint deliberations, interested parties (including tribes and school officials) shall be given an opportunity--

(i) to present issues (including proposals regarding changes in current practices or programs) that will be considered for future action by the Secretary; and

(ii) to participate and discuss the options presented, or to present alternatives, with the views and concerns of the interested parties given effect unless the Secretary determines, from information available from or presented by the interested

parties during one or more of the discussions and deliberations, that there is a substantial reason for another course of action.

The comments here submitted are based on many years of experience in dealing with the BIA and subsequently the Bureau of Indian Education. In recent years, in particular, our firm on behalf of a number of tribal clients has repeatedly requested that the BIE engage in tribal consultation regarding the school grant conditions which BIE has imposed or attempted to impose upon Tribally Controlled School Grant Act (BIA funded) schools funded through Pub. L. 100-297. The concerns which have prompted these repeated requests over the last several years have arisen because those grant conditions as annually promulgated by BIE on a "take it or leave it" basis, contain numerous provisions which (1) cannot lawfully be imposed upon Tribally Controlled School Grant Act schools under the provisions of 25 C.F.R. Part 44.101 or 25 U.S.C. § 2011(b)(1)-(2), misquote or selectively quote controlling statutes in a misleading way, (2) cite to irrelevant statutory provisions regarding Federal Tort Claims Act coverage (25 U.S.C. § 450FR(c)) for such tribes without referencing the controlling statutory provisions which extend FTCA coverage to such tribes viz their school operations (Pub. L. 101-512, Title III, § 314, Act of November 5, 1990, 104 Stat. 1059, set out as a note to 25 U.S.C. § 450f); and, which in general needlessly complicates the funding process as contemplated by the Congress.

This has caused a number of our clients to have to footnote their non-agreement with some of those unlawful conditions or to negotiate other solutions to avoid signing grant conditions which BIE cannot lawfully require them sign. At the same time, BIE has recently refused to release our clients' annual funding by the July 1<sup>st</sup> statutory deadline per 25 U.S.C. § 2606(a)(1) unless the unlawful grant conditions are signed, or some negotiated solution to address those issues is worked out. This is a very expensive and inefficient process which could be avoided if a lawful set of school grant conditions were adopted pursuant to tribal consultation.

While these issues could be addressed in litigation (*see, Yankton Sioux Tribe v. Kempthorne*, 442 F.Supp.2d 774 (D.S.D. 2006)), we have sought to avoid litigation and have tried to work with BIE to find other solutions. Ultimately, however, full tribal consultation will be required to address these issues. We have had this discussion and have repeatedly relayed this request for consultation over the past several years with Sabrina McCarthy, Esq. in the Interior Solicitor's Office, and more recently with Edith Blackwell, Esq. in the Interior Solicitor's Office and with John Harrington, in the Southeast Regional Field Solicitor's Office. Mr. Harrington is presently the Interior Solicitor who is responsible for advising BIE regarding its tribal

consultation obligations. He has been willing to address this issue—but neither he, nor Ms. Blackwell nor Ms. McCarthy have succeeded in securing BIE's agreement to engage in tribal consultation regarding the school grant conditions.

We have also put this request directly to David Talayumptewa, BIE's assistant deputy director for administration. This occurred most recently at a meeting in Nashville, Tennessee on July 22, 2009 where Mr. Talayumptewa was asked to schedule tribal consultation on the BIE grant conditions. While on several occasions verbal agreement for consultation sessions regarding these school grant conditions has been reached, in every case BIE has backed out. This is intolerable. It also violates not only the Presidential consultation policies that have been in force, but also the particular statutory consultation obligation imposed on the Secretary set out at 25 U.S.C. § 2011(b)(1).

Our clients take this opportunity to again urge that BIE schedule a series of real tribal consultation sessions to talk through all of these issues and generate a set of grant conditions which is consistent with the law and our clients' rights under the law. In concert with the National Indian School Board Association ("NISBA"), we have previously offered and hereby renew those offers, to work with BIE and the Solicitor's Office to generate a draft set of school grant conditions consistent with the law, which might then be considered in the consultation process. BIE also needs to reconsider the whole point of generating new grant conditions each year, something not required by the statute or the regulations.

Many of our clients have consistently experienced similar problems with other divisions of Interior, especially the Bureau of Indian Affairs. Most of these problems involve the unilateral imposition of Interior policies buried in contract modifications which cannot lawfully be enforced against tribes or tribal organizations without their consent. See, 25 U.S.C. § 450(c), Section 1 (b) (11) and 25 C.F.R. Part 44.101(c). Too often, this results in avoidable delays and release of contract funds if Tribal contractors dispute those modifications.

Many times, however, tribal contractors are presented with and sign proposed modifications without realizing that buried within them are new policies which cannot lawfully be imposed without their consent. This is not a fair or good faith way to proceed. The failure to engage in meaningful tribal consultation regarding such policies exacerbates the problem. True consultation would surface these kinds of proposed changes so they can be identified and confronted collectively before tribal contractors are put to an

individual take it or leave it choice in the context of proposed contract modifications.

A key problem that has emerged from the above is that there is no designated "go to" person within the Interior Department responsible for ensuring that required tribal consultations actually occur nor are any sanctions imposed when such required consultations do not occur or when Interior personnel seek to impose conditions on tribes and tribal organizations which have not been vetted through tribal consultation and to withhold critically needed funds unless tribes accede to such requirements. Accordingly, if this Administration is serious about adopting, implementing and enforcing a meaningful tribal consultation policy, some or all of the provisions of the DHHS consultation policy outlined above should be adopted and integrated into Interior's own policy.

Our clients fully support the development of a Department-wide Tribal consultation policy for DOI. We respectfully request on behalf of the Tribes and grant schools we represent that any new tribal consultation policy acknowledge the mandatory consultation provisions such as those set forth in the Native American Education Improvement Act of 2001 at §2011(b)(1) and (b)(2)(B); and, that DOI create a central departmental point of contact (such as an Office of Tribal Consultation) with direct access to the Secretary's Office. The Department should look to the exemplary work in this area done by the Department of Health and Human Services.

We refer here to the Department of Health and Human Services (DHHS) department-wide Tribal Consultation Policy issued in 2008.<sup>1</sup> The DHHS Tribal Consultation Policy contains some very noteworthy and progressive elements, which could serve as a model for other Executive branch departments, including Interior, to-wit:

Para. 4 (A) – "Each HHS Operating and Staff Division (Division) shall have an accountable process to ensure meaningful and timely input by Tribal officials in the development of tribal policies that have Tribal implications."

Para. 5, Para. 7 (4) -- Designating the Office of Intergovernmental Affairs as the entity responsible for implementation and monitoring compliance with EO 13175 and the Department's Tribal Consultation Policy.

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<sup>1</sup><http://www.hhs.gov/intergovernmental/tribal/docs/tribalconsultationpolicyfeb08.pdf>.

Para. 6, Objectives, especially Para. 6 (7) with respect to charging and holding Division Heads responsible for implementation of the Consultation Policy; and, Para. 6 (1) and Para. 7 (4), which provide for a single point of contact within DHHS at a level that provides access to the Immediate Office of the Secretary, Deputy Secretary, Regions and Divisions. We also note that DHHS has appointed a Principal Advisor on Indian Affairs who serves at the point of contact for Indian tribes, and that the 2008 DHHS Tribal Consultation Report identifies Intergovernmental Affairs Specialists for each Regional Office and Departments such as the Indian Health Service.

Para. 7 (6, 7, and 8) -- Describing the responsibilities of various DHHS entities such as the Intradepartmental Council on Native American Affairs, the Regional Offices and HHS Divisions with respect to Tribal consultation.

We thank you for the opportunity to comment on the development of a Tribal Consultation Policy for the Department of Interior. The aforementioned Tribes and grant schools look forward to working with the Department and request that they be kept apprised of further developments or actions in this matter.

Sincerely,

VanAMBERG, ROGERS, YEP  
ABEITA & GOMEZ, LLP

(b)(6)  
By \_\_\_\_\_ (b)(6)  
C. BRYANT ROGERS  
\_\_\_\_\_  
(b)(6)

DAVID GOMEZ

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(b)(6)

# United States Department of the Interior

BUREAU OF INDIAN EDUCATION

South and Eastern States Agency

545 Marriott Drive, Suite 720

Nashville, Tennessee 37214

JUL 2 2010

RECEIVED

AUG 04 2010

CHIEF'S OFFICE



IN REPLY REFER TO:

BIE (Bureau of Indian Education)

# RECEIVED

AUG 24 2010

ATTORNEY  
GENERAL'S OFFICE

Mississippi Band of Choctaw Indians  
Honorable Beasley Denson, Tribal Miko  
P. O. Box 6010  
Choctaw, Mississippi 39350

Dear Grantee:

Because the Bureau of Indian Education (BIE) has received many questions about the conditions that attend Public Law 100-297 grants, this letter lists, for your convenience, legal authorities and responsibilities that pertain to Public Law 100-297 grantees. This letter sets out some information which BIE wishes to call to your attention. You have not been asked to agree to the matters addressed in this letter or in the enclosed school year 2010-2011 grant calendar. Neither that calendar nor this transmittal letter are a part of your grant conditions.

If you have questions about your responsibilities as a Public Law 100-297 grantee under the following authorities, please get in touch with your Grants Officer/Education Line Officer.

- Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. § 6301 et seq.
- Native American Education Improvement Act of 2001, as amended, 25 U.S.C. § 2000 et seq.
- Indian Self-Determination and Education Assistance Act of 1975, as amended, 25 U.S.C. § 450 et seq. (for P. L. 100-297 grant schools only the provisions made applicable by 25 U.S.C. § 2508)
- Indian Self-Determination and Education Assistance Act regulations at 25 C.F.R. Part 900, subparts F, H, I, N, P and 900.45, made applicable to P. L. 100-297 grant schools by 25 C.F.R. § 44.110
- Tribally Controlled Schools Act of 1988, as amended, 25 U.S.C. § 2501 et seq.
- Tribally Controlled Schools Act regulations, 25 C.F.R. Part 44
- Pub. L. 101-512, Title III, § 314, November 5, 1990, 104 Stat. 1959, as amended by Pub. L. 103-138, Title III, § 308, November 11, 1993, 107 Stat. 1416 extending FTCA coverage to tribally-controlled schools operated per Pub. L. 100-297 and their employees, set out as a note to 25 U.S.C. § 450f
- Indian Child Protection and Family Violence Prevention Act, as amended, 25 U.S.C. § 3201 et seq.
- Victims of Child Abuse Act of 1990, 42 U.S.C. § 13031
- OMB Circular A-133, Audits of States, Local Governments and Non-Profit organizations

Page 2

- 43 C.F.R. Part 12 (applicable to P. L. 100-297 school construction projects only)
- 2 C.F.R. Part 225, Cost Principles for State Local, and Indian Tribal Governments (OMB Circular A-87) Individuals with Disabilities Education Act, as amended, 20 U.S.C. § 1400 et seq.
- Resource Conservation and Recovery Act, 42 U.S.C. § 6961 et seq.
- Special Terms for Awards Made Under the American Recovery and Reinvestment Act of 2009 (ARRA), (DOE funds and DOI funds)

All tribally controlled grant schools have access to the Native American Student Information System (NASIS). Some schools have access to the Facility Management Information System (FMIS) and some to the BIE.edu e-mail system. Your employees who have access to these system(s) must complete the annual Security Awareness training.

The Environmental Protection Agency (EPA) has been inspecting BIE schools and has found numerous non-compliances. Each grantee is responsible for ensuring that all EPA non-compliances are abated in a timely and appropriate manner by dealing directly with the EPA outside the framework of this grant.

BIE recommends adoption and implementation of a policy for reporting Suspected Child Abuse and Neglect, a policy to prohibit cell phone use and texting while driving, and a motor vehicle operations policy. For sample policies, please get in touch with your Grants Officer/Education Line Officer, who can offer copies of BIE's own policies. BIE suggests that tribally-controlled schools adopt policies at least as stringent as the BIE policies.

New language will apply to the use of GSA vehicles, beginning July 1, 2010. Grantees will receive the new language to amend their grants as of July 1, 2010. Enclosed is a list of resources for information and a calendar of grant due dates. If there are any questions, please feel free to contact the Grants Officer/Education Line Officer at (615) 564-6639. We wish you great success in our partnership to educate Indian children.

Sincerely,

(b)(6)

Education Line Officer  
South and Eastern States Agency  
Education Line Office

Enclosure(s)



**United States Department of the Interior**  
BUREAU OF INDIAN EDUCATION  
South and Eastern States Agency  
545 Marriott Drive, Suite 720  
Nashville, Tennessee 37214

IN REPLY REFER TO:

BIE (Bureau of Indian Education)

Mississippi Band of Choctaw Indians  
Honorable Beasley Denson, Tribal Miko  
P. O. Box 6010  
Choctaw, Mississippi 39350

Dear Grantee:

Submitted for your information and use is a listing of the statutes and regulatory requirements that address your responsibilities as a Public Law 100-297 grantee or a Public Law 93-638 Contractor.

The following information is provided for your reference and use. If you have questions about your responsibilities as a Public Law 100-297 grantee under the following authorities, please contact your Grants Officer/Education Line Officer.

- Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. § 6301 et seq.
- Native American Education Improvement Act of 2001, as amended, 25 U.S.C. § 2000 et seq.
- Indian Self-Determination and Education Assistance Act of 1975, as amended, 25 U.S.C. § 450 et seq. (for P. L. 100-297 grant schools only the provisions made applicable by 25 U.S.C. § 2508)
- Indian Self-Determination and Education Assistance Act regulations at 25 C.F.R. Part 900, subparts F, H, I, N, P and 900.45, made applicable to P. L. 100-297 grant schools by 25 C.F.R. § 44.110
- Tribally Controlled Schools Act of 1988, as amended, 25 U.S.C. § 2501 et seq.
- Tribally Controlled Schools Act regulations, 25 C.F.R. Part 44
- Pub. L. 101-512, Title III, § 314, November 5, 1990, 104 Stat. 1959, as amended by Pub. L. 103-138, Title III, § 308, November 11, 1993, 107 Stat. 1416 extending FTCA coverage to tribally-controlled schools operated per Pub. L. 100-297 and their employees, set out as a note to 25 U.S.C. § 450f
- Indian Child Protection and Family Violence Prevention Act, as amended, 25 U.S.C. § 3201 et seq.
- Victims of Child Abuse Act of 1990, 42 U.S.C. § 13031
- OMB Circular A-133, Audits of States, Local Governments and Non-Profit organizations
- 43 C.F.R. Part 12 (applicable to P. L. 100-297 school construction projects only)

- 2 C.F.R. Part 225, Cost Principles for State Local, and Indian Tribal Governments (OMB Circular A-87) Individuals with Disabilities Education Act, as amended, 20 U.S.C. § 1400 et seq.
- Resource Conservation and Recovery Act, 42 U.S.C. § 6961 et seq.
- Special Terms for Awards Made Under the American Recovery and Reinvestment Act of 2009 (ARRA), (DOE funds and DOI funds)

All tribally controlled grant schools have access to the Native American Student Information System (NASIS). Some schools have access to the Facility Management Information System (FMIS) and to the BIE.edu e-mail system. More recently a new Emergency Management System (EMS) has been developed and implemented by the Bureau of Indian Affairs and addresses Environmental Protection Agency compliance issues. Your employees who have access to these system(s) must complete the annual Security Awareness training.

The Environmental Protection Agency (EPA) has been inspecting BIE schools and has found numerous non-compliances. Each grantee is responsible for ensuring that all EPA non-compliances are abated in a timely and appropriate manner by dealing directly with the EPA outside the framework of this grant. Please see the attached assurance statement.

BIE recommends adoption and implementation of a policy for reporting Suspected Child Abuse and Neglect (SCAN), a policy to prohibit cellular phone use and texting while driving, and a motor vehicle operations policy. For sample policies, please contact your Grants Officer/Education Line Officer, who can offer copies of BIE's own policies. BIE suggests that tribally-controlled schools adopt policies at least as stringent as the BIE policies.

Please be reminded that availability of ARRA funds is through September 30, 2011. Further guidance to address unobligated ARRA balances will be forthcoming.

If there are any questions, please feel free to contact the Grants Officer/Education Line Officer at (615) 584-6639. We wish you great success in our partnership to educate Indian children.

Sincerely,

(b)(6)

*for* Education Line Officer  
South and Eastern States Agency  
Education Line Office

Enclosure(s)

# VANAMBERG, ROGERS, YEPA, ABEITA & GOMEZ, LLP

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## MEMORANDUM

**TO: SABRINA MCCARTHY, ESQ.**

**FROM: C. BRYANT ROGERS, ESQ.**

**DATE: JUNE 30, 2010**

**RE: SCHOOL GRANT CONDITIONS**

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This Memorandum responds to your email of June 29, 2010.

- Perhaps the most basic legal reason (in addition to all the other reasons previously set out in my prior emails) why BIE cannot lawfully apply the 43 C.F.R. Part 12 and 25 C.F.R. Part 276 grant regulations to TCSA awards is that TCSA "grants" are not actually grants in the ordinary sense. Congress has given them a special legal status—the same legal status as Pub. L. 93-638 contracts—not the same legal status as Pub. L. 93-638 grants. See, 25 U.S.C. § 2503(b)(2) (" . . . tribally controlled schools for which grants are provided under this chapter shall be treated as contract schools. . .").

This is further evidenced by the statutory requirement that disputes arising under TCSA "grants" must be handled under the Contract Disputes Act, 41 U.S.C. Sec. 601 ("CDA") and can be decided by the Civilian Board of Contract Appeals ("CBCA"). See 25 U.S.C. §. 450m-1(d); 25 U.S.C. § 2507(e). Disputes involving ordinary grants of the type to which 43 C.F.R. Part 12 and 25 C.F.R. Part 276 apply are not covered by the CDA and cannot be decided by the CBCA.

This is also evidenced by the fact that the Secretary has no discretion to refuse to agree to a tribal decision to take over operation of their BIE funded schools and to administer those schools under a Pub. L. 100-297 grant arrangement, and has no discretion not to award the requested Pub. L. 100-297 grant including all funds required by the statute. 25 U.S.C. § 2503 ("The Secretary shall provide grants to Indian tribes and tribal organizations-- . . ."); 25 U.S.C. §§ 2503 ("The

grant provided under this Chapter . . . shall consist of . . .") and 2504 (defining tribal eligibility for TCSA grants).

The Part 276 and Part 12 regulations are intended to apply to true grants, the award of which is discretionary with the Secretary. Moreover, those grant regulations contemplate a decision by the Secretary on how grant payments will be made e.g. via an advance funding or on a cost reimbursement basis and permit the Secretary to set conditions respecting to what extent any of these methods will be used. *E.g.*, Part 276.10. In contrast, the Secretary is mandated by statute to pay the TCSA grantees 80% of their funding for the next year in advance per 25 U.S.C. § 2506(a)(1)(A) and provides for how the balance will be paid in § 2506(a)(1)(B) and at §§ 2506(a)(2)-(6).

25 U.S.C. § 2506(b) also spells out investment and deposit rules that apply to this funding which are different that the rules that apply to ordinary BIA grant funding at 25 C.F.R. § 276.3

2. The TCSA expressly incorporated 13 of the Pub. L. 93-638 contract provisions. See 25 U.S.C. § 2507(a) and (e) and leaves it to the tribes to decide whether to borrow other Pub. L. 93-638 contract provisions § 2507(b). The TCSA does not incorporate any of the Pub. L. 93-638 grant provisions set out at 25 U.S.C. § 450h. The Part 276 regulations were published under authority of Pub. L. 93-638 in 1975. Those are the regulations applicable to Pub. L. 93-638 grants awarded per 25 U.S.C. § 450h. This is the only reason these regulations are still in force. The original Pub. L. 93-638 contract regulations (formerly set out at 25 C.F.R. Part 271 and 41 C.F.R. Part 14H-70) were superseded by the 1988 amendments to Pub. L. 93-638 and later replaced with the present ISDA regulations at 25 C.F.R. Part 900. The Part 276 regulations are clearly not applicable to TCSA grants.
3. The TCSA regulations incorporates a number of Pub. L. 93-638 contract regulations. See 25 C.F.R. 33.110. The TCSA regulations do not incorporate any of the Pub. L. 93-638 grant regulations.
4. The reason why the 25 C.F.R. Part 44 TCSA regulations are so sparse and for example do not address e.g. "financial reporting requirements" or "monitoring and reporting program performance" or "grant closeouts" as referenced in the 25 C.F.R. Part 276 grant regulations at

§§ 276.8, 276.9 or 276.15, is because the statutes which apply to TCSA grants and ISEF funding, 25 U.S.C. § 2501 et seq. and 25 U.S.C. § 2001 et seq. (and in particular § 2008 thereof), address these kinds of requirements and the BIA may not use the Part 276 (or the 43 C.F.R. Part 12) regulations to impose different requirements addressing those issues than what the statutes require or authorize the Secretary to impose. For example, 25 U.S.C. § 2008(i) provides that 25 U.S.C. § 2008 shall apply to TCSA schools. There is no need for regulations to address those same topics. Likewise, the other ISEF provisions which are established by statute at 25 U.S.C. § 2001 et seq. automatically apply to the TCSA schools insofar as ISEF funding calculations are concerned because the ISEF funding is how those schools are supported.

Likewise, the TCSA statute at 25 U.S.C. § 2505(a) basically makes these TCSA grants perpetual, unless the grantee's eligibility is lawfully revoked by the Secretary for the limited reasons set out at 25 U.S.C. § 2505(c) per the ISDA reassumption procedures adopted at 25 C.F.R. § 44.110(5). In this regard, they are the legal equivalent of mature contracts under Title I of Pub. L. 93-638 or Title IV compacts under 25 U.S.C. § 458aa et seq. There is no need for "grant closeout" procedures on grants which are never going to end unless a tribal grantee decides to retrocede its school operations to the government or the government successfully reassumes operation of the school under the ISDA procedures and regulations which are incorporated into the TCSA Act and TCSA regulations. This is why there is really no reason for the tribes to be executing a new grant agreement each year. Instead, what the BIE should be doing is simply executing grant modification documents to reflect new money awarded each year.

Further, the TCSA statute at 25 U.S.C. § 2506(b) sets out the statutorily required financial reporting and performance reporting which BIE can require. This provision expressly bars the BIE from imposing any other reporting requirements.

Also, unlike grantees who receive ordinary grants which are subject to 25 C.F.R. Part 276 or 43 C.F.R. Part 12, TCSA grantees (and their employees) are covered by the Federal Tort Claims Act ("FTCA") to the same extent as Pub. L. 93-638 contractors. See, Pub. L. 101-512 (set as a note to 25 U.S.C.A. § 450f). Neither ordinary grantees (nor their employees) are covered by the FTCA.

Finally, as noted above, 25 U.S.C. § 2507(a) borrows 13 Pub. L. 93-638 contract provisions which cover many of the same issues that are

covered in the Part 276 and Part 12 regulations—but in substantively different ways.

In other words, the regulatory “gaps” BIE is concerned about and wishes to fill by the unauthorized imposition of the regular grant regulations at 25 C.F.R. Part 276 and 43 C.F.R. Part 12 either do not exist (because the TCSA statute and regulations and 25 U.S.C. § 2008 address those issues) or do exist because the Congress has given the Interior Department a much more limited role in overseeing the administration of TCSA funding than as regards ordinary DOI grantees or Pub. L. 93-638 grants.

5. Further bolstering the above are the legal doctrines that (a) specific statutes and regulations control over general ones, (b) more recent statutes and regulations control over older ones, (c) ambiguities on what regulations apply to TCSA awards must be construed in favor of the position advocated by the tribal grantees as set out here; and, the fact that the government did not apply or attempt to apply 25 C.F.R. Part 276 or 43 C.F.R. Part 12 to TCSA awards until very recently further undermining any argument that they have all along applied since 1988. Because of the short time frames within which we are all working—to try to get these issues resolved before tomorrow’s July 1, 2010 statutory funding deadline, we had not included case citations for the points set out in this Paragraph 5, but they are all supported by ample case law.
  
6. The proposed grant instruments which you forwarded last week do not identify 25 C.F.R. Part 276 or 43 C.F.R. Part 12 as being applicable to school grantees re their operations money. We do not dispute that those regulations apply (except for 43 C.F.R. Part 12.61) to Pub. L. 100-297 school construction project awards. This is because the Part 12 regulations, except for 12.61 were made applicable to school construction projects awarded under Pub. L. 100-297 by 25 U.S.C. § 2503(b)(4)(B) for projects over \$100,000 (see, my email of June 22, 2010), and the tribes have accepted the recommendations of the school construction work group that the Part 276 regulations should also be applied to awards for those projects. Thus, if BIE is willing to move forward with the form of grant instruments which we saw last week, it would be possible to use those instruments (preferably with the redline changes we identified) and we can argue later whether

either of those sets of regulations apply under ¶ 11 of Form 424B and the shorter version of the same form at ¶ 9 (are you sure meant to include 2 versions of the same form, one of which has 11 paragraphs and the other of which only has 9 paragraphs?). Those referenced paragraphs provide that the grantee "Will comply with all applicable requirements of all other Federal law, executive orders, regulations, and policies governing this program."

In other words, it may be that we are only arguing about what goes in the transmittal letter which BIE wants to send and which you have already agreed will not be considered part of the grant conditions. While we would prefer that the transmittal letter not contain misleading information, if proceeding with the proposed form of grant instruments which you forwarded last week (again, hopefully with out redline changes), will permit the timely payment of the first 80% which will be due to our clients (and to all TCSA grantees) on July 1<sup>st</sup>, this might be a better way to proceed than to force us to seek judicial relief. I also wish to point out that if the BIE fails to meet the July 1<sup>st</sup> payment deadline, it will be facing nationwide Prompt Payment Act interest claims which I would assume the BIE would prefer to avoid.

One closing note: In our redline edits to the events calendar which BIE proposed to include in its transmittal letter, we suggested changing the July 2010 initial funding deadline to July 1, 2010 to conform to the statute and gave the statutory cite for that requirement as 25 U.S.C. § 2010(a)(2)(A)(i). That statutory reference was erroneous; the correct statutory reference is 25 U.S.C. § 2506(a)(2)(A).

I will be in my office tomorrow. Please give me a call. I have been unable to reach you by telephone the last two days.

CBR/jt

S:\Rogers\Choctaw\CORRESPO\Email to Sabrina McCarthy (BIE) 063010.doc

# VANAMBERG, ROGERS, YEPA, ABEITA & GOMEZ, LLP

ATTORNEYS AT LAW

RONALD J. VANAMBERG (NM)  
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July 6, 2012

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**Re: Tribal Comments on draft DOI-ED MOU and draft BIE AYP  
Flexibility Plan**

Dear Sirs:

This letter submits comments re the draft DOI-ED MOU on behalf of four (4) Tribes or tribal organizations: the Chitimacha Tribe of Louisiana, the Duckwater Shoshone Tribe, the Ramah Navajo School Board, Inc. and the Alamo Navajo School Board, Inc.

All of these tribal entities operate BIE funded schools pursuant to the TCSA.

## **THE DRAFT MOU**

Starting with enactment of the Indian Self-Determination and Education Assistance Act, P.L. 93-638 ("SDA") in 1975—reiterated by the 1988 and 1994 ISDA amendments (P.L. 100-472 and P.L. 103-413)—and enactment of the Tribally Controlled School Grants Act P.L. 100-297 ("TCSA")—the Congress has adopted the approach requested by the Tribes. That is, taking

control of federally funded school programs on reservations away from federal agencies and transferring that control to the Tribes or to tribal organizations when requested by the governing bodies of those Tribes. Congress has explicitly rejected the notion that more federal bureaucratic control of reservation Indian schools is good for Indian students.

The Congress has made crystal clear its intention to give effective control over these schools to the tribes and tribal organizations which operate them and to keep federal involvement to a bare minimum. This intent is evidenced not only by the Titles and Congressional findings of that legislation but also by the express restrictions which that legislation—especially the TCSA—imposed on the federal agencies involved.

The words “tribally controlled” mean that tribal school personnel and the governing bodies of TCSA schools get to decide how to run their schools. We don’t have to explain or justify our decisions on how to carry out our school programs to any federal agency. That is the fundamental point. So when we look at the draft MOU what we see is the opposite premise. What permeates the draft is the premise that you know better than us, the premise that your education ideas should supersede the tribes’ education ideas, and the premise that you can and should impose this agreement and your ideas on all the pass-through funds that flow from ED through DOI to their schools. That is not permitted by the statute. You may have the authority to sign an MOU. You do not have authority to use an MOU to supersede the requirements and restrictions of the TCSA.

So our clients’ fundamental problem with this MOU is that it is premised on the notion that you are going to decide what is best for those schools, and you’re going to tell them: you dance to our tune, or you don’t get our money. But Congress has said, “no, you cannot do that.” The TCSA couldn’t be clearer in prohibiting the ED and BIE from imposing those kinds of conditions.

Why has Congress imposed such draconic restrictions on DOI and ED?

Because the Congress determined that Indian students in reservation schools would do better if those schools were tribally controlled rather than federally controlled; and, because the Congress was aware that the DOI had previously used reporting, compliance and monitoring requirements as a back doorway to control tribally operated schools even when a Tribe had determined to place those schools under tribal control; and, the Congress no longer trusted the agencies to voluntarily cede control to those tribes who chose to operate them.

There has historically been great bureaucratic resistance to giving up this control. That resistance has involved the imposition of ever more onerous, burdensome and duplicative assurance reporting and compliance requirements in flat contradiction to the plain mandate of the TCSA. That statute at 25 U.S.C. § 2503—and its implementing regulations at 25 C.F.R. Part 44.101—expressly limits what grant terms and conditions can be imposed and what reporting can be required. Part 44.101 states that the Secretary cannot use anything that is not in the TCSA itself, the TCSA regulations or what a tribal TCSA school otherwise agrees to in constructing TCSA grant terms and conditions.

25 U.S.C. § 2502(b) states what reports the Secretary can require the TCSA schools to submit—annually. Nothing else can lawfully be required except what the NCLB legislation and its regulations (including the BIE regulations at 25 C.F.R. Part 30) implicitly engrafted into the TCSA. That includes the duty to adhere to the applicable NCLB standards and to include information on the schools' AYP results in the schools' annual TCSA report to BIE per 25 U.S.C. § 2502(b).

25 U.S.C. § 2503(a) says that all money awarded by DOI to TCSA schools—regardless of what agency appropriation it came from or under what federal education law it was authorized—must go in the single TCSA grant if requested by the tribal recipient.

Under 25 U.S.C. § 2503(b)(1) these restrictions and prohibitions apply with equal force to ED money channeled to TCSA schools through BIE as to DOI appropriated funds.

One result of all this is that neither ED nor BIE can lawfully withhold funds from a TCSA school for its refusal to submit reports or agree to grant terms not required by 25 C.F.R. Part 44.101 or 25 C.F.R. Part 30.

Our clients have reviewed the proposed MOU with great care.

The core issues which underlie their concerns about the draft MOU are addressed below.

First, our clients are committed to the principle of tribal control of their schools. Those schools have been under tribal control for decades.

The proposed MOU would formalize a DOI duty to impose ever more detailed programmatic requirements, federal funding criteria, federal performance assessments and burdensome and duplicative reporting obligations—none of which can lawfully be imposed on TCSA schools. Doing this would

fundamentally undermine effective tribal control of TCSA schools and force diversion of scarce school funding from the classroom to preparation of responses to these federal requirements. It would also be unlawful.

Underlying all of these requirements are the unstated but obvious—and obviously erroneous—premises that the best path for improving the quality of Indian education in BIE funded schools operated by Tribes pursuant to the TCSA is to increase the quantity, scale and scope of bureaucratically imposed federal compliance obligations detailed reporting requirements. In short, the draft MOU assumes that federal bureaucrats rather than tribal school officials should control how tribally-operated schools are run and how their students' lessons are designed and taught. We reject those premises.

We say these are the unstated premises which underlie the proposed MOU because nowhere in the draft MOU or in any of the referenced explanatory materials regarding it does DOI acknowledge and honor the superseding (and contrary) premise that the best path to long term improvement of Indian Education in the tribally controlled schools is to let the Tribes control them—to control their curriculum, their hiring, their expenditures—and to keep federal involvement to a minimum.

This reflects a deeper and more fundamental flaw underlying the proposed MOU: the notion that tribal communities are not capable of operating their own schools; that federal bureaucrats know what is best for the tribes; that giving more power and money to federal bureaucrats and less power and money to tribal schools will improve the quality of education in those schools. Again, we reject all of those premises.

In short, our clients know how to run a K-12 school program. The best things the BIE and ED could do for us is to lessen the burdensome funding criteria and reporting and compliance requirements now involved and leave them to allocate our federal education funds to best target their local school needs in the ways they deem to be most effective. Our clients do not need any federal bureaucrat to tell them how to run their schools. They certainly do not need more federal involvement or control.

It would, however, also be of significant help if DOI would reduce BIE's compliance staff and request authority to preprogram the savings to help fund the growing shortfall in TCSA school Administrative Cost Funding. Administration cost grants are now funded at only 61%. The tribes need more administrative support money and the DOI could dramatically help improve Indian education in TCSA schools by getting smaller, not bigger, making more education funding available to the tribal schools.

It is not just our clients which hold these views. The Congress itself has recognized that the best path to long term improvement in Indian education in reservation schools operated by Tribes is to let these schools truly be tribally controlled. This means that beyond the core minimum curriculum standards set out in the ISEF and No Child Left Behind (“NCLB”) statute and regulations—it should be left to the tribes—not the federal bureaucracy—to determine how those minimum standards will be achieved and how federal education monies should be spent to achieve AYP and other educational goals.

Our clients reject—as the Congress has rejected—the counter premise that increasing federal control of these schools will lead to better education for their students. The Congress in the TCSA chose to place control of these schools in tribal hands rather than in the hands of federal education bureaucrats.

The Congress has made these things clear in several ways.

First, the Congress strictly limited the number and content of what reports DOI can demand of the TCSA schools. This is made clear by 25 U.S.C. § 2505(b).

TCSA schools each year:

(b) **Annual reports**

(1) **In general**

Each recipient of a grant provided under this chapter shall complete an annual report which shall be limited to—

(A) an annual financial statement reporting revenue and expenditures as defined by the cost accounting established by the grantee;

(B) an annual financial audit conducted pursuant to the standards of the Single Audit Act of 1984;

(C) a biennial compliance audit of the procurement of personal property during the period for which the report is being prepared that shall be in compliance with written procurement standards that are developed by the local school board;

(D) an annual submission to the Secretary of the number of students served and a brief description of programs offered under the grant; and

(E) a program evaluation conducted by an impartial evaluation review team, to be based on the standards established for purposes of subsection (c)(1)(A)(ii)<sup>1</sup> of this section.

(2) **Evaluation review teams**

Where appropriate, other tribally controlled schools and representatives of tribally controlled community colleges shall make up members of the evaluation review teams.

(3) **Evaluations**

In the case of a school which is accredited, evaluations will be conducted at intervals under the terms of accreditation.

In furtherance of those goals, the TCSA at 25 U.S.C. § 2503(b)(3)(B) (formerly codified at § 2504(b)(3)(B)) expressly forbids the Department of Education from requiring DOI to impose (or the DOI from imposing) on TCSA schools any requirements or obligations—and this includes programmatic, reporting and compliance obligations—in connection with the award of any funds appropriated to carry out any federal education programs that would otherwise be imposed by ED by reason of the award of those funds. DOI is likewise barred from imposing its policy views on the tribal schools as to DOI appropriated funds. These statutory prohibitions could not be clearer:

§2503(b)(3)(B) Applicable of Bureau provisions Indian tribes and tribal organizations to which grants are provided under this part, and tribally controlled schools for which such grants are provided, shall not be subject to any requirements, obligations, restrictions, or limitations imposed by the Bureau that would otherwise apply solely by reason of the receipt of funds provided under any law referred to in clause (i),(ii), or (iii) of subparagraph (A).

The BIA is likewise barred by its own TCSA regulations (25 C.F.R. Part 44) from imposing any additional funding, reporting, assurance, or compliance requirements whether in connection with ED funding awards to TCSA schools by BIE or as to funds from DOI appropriations. Specifically, § 44.101 of the regulations limits the grant conditions BIE can impose on TCSA schools to the following:

§4.101 In making a grant under this part the Secretary will use only:  
(a) The Tribally Controlled Schools Act;

- (b) The regulations in this part; and
- (c) Guidelines, manuals and policy directives agreed to by the grantee.

If a TCSA school does not timely submit one or more of these things, BIE can offer technical assistance to secure compliance with these statutory requirements; and, that failing, can initiate Contract Disputes Act proceedings to secure compliance per 25 U.S.C. §2507(3), can impose High Risk Sanctions on the school as authorized by the Single Audit Act, 31 U.S.C. §7501 et seq. and OMB Circular A-133 (for tribal schools which fail to timely submit annual audits as there required) or—in extreme cases when all else fails and a TCSA school fails or refuses to submit one or more of these things—can initiate grant eligibility revocation proceedings per 25 U.S.C. §2505(e)(2).

We note in this regard that TCSA grants (except for large construction projects) are not ordinary grants governed by OMB circular A-102 & 43 C.F.R. part 12. Instead, they have the same legal status as P. L. 93-638 contractors and are enforceable as such. 25 U.S.C. § 2507(e). Section 2503(B) makes clear that large TCSA grants for construction are subject to the 43 C.F.R. Part 12 provisions, but not school operation grants. See, our Memorandum of June 30, 2010 to Sabrina McCarthy, DOI-Solicitor's Office (copy enclosed).

As shown by the same provisions noted before—the Congress has expressly forbidden (and the TCSA regulations confirm) that no grant conditions can be included in a TCSA grant—whether as assurances, policy requirements, program requirements or reporting requirements—without the TCSA schools' consent, except those expressly set out in the TCSA or its regulations.

Further, the TCSA requires that all funds awarded by DOI to a TCSA school must be included in a single TCSA grant instrument—which will contain only the TCSA requirements and any other provision agreed to by the Tribe—and nothing else without the consent of the Tribe.

This requirement is now reflected in 25 U.S.C. § 2503(a) which makes clear that all BIE funding awards to TCSA schools are to be included in one grant to those schools—no matter to what agency those funds were originally appropriated or under what federal law they were authorized—BIE's present practice of imposing separate assurances and reporting and programmatic requirements for ED pass-through funds awarded to TCSA schools is patently unlawful. It is expressly forbidden—the proposed MOU would compound this illegality—by requiring BIE to carry out via increased

reporting and increased compliance and enforcement obligations what the Congress has forbidden BIE to do and has forbidden ED to require BIE to do.

Under these provisions all funds awarded by BIE to TCSA schools shall (if requested by such school) be awarded in a single TCSA grant, with any supplemented BIE funding awards being carried out by means of a simple grant modification leaving all the funds awarded by BIE to that TCSA school governed by the same grant terms and conditions as are applicable to its ISEF funds awarded per 25 U.S.C. § 2001 et seq. Of course, the school will have a duty (as noted below) to spend funds appropriated to other agencies but transferred to BIE and awarded to a TCSA school per the TCSA to spend such funds only for approved program purposes, something that OMB Circular A-87 would require anyway. That Circular is made applicable to TCSA grants by 25 C.F.R. Part 44.110(a)(1) (incorporating 25 C.F.R. Part 900.45) and by 25 U.S.C. § 2507(a)(10) (incorporating 25 U.S.C. § 450j-1(k)). All this is also clear from the legislative history of the TCSA. House Report 100-95, to accompany H.R. 5:

Let us be clear. 25 U.S.C. § 2503 does not just prohibit BIE from requiring and enforcing special reporting and compliance obligations regarding DOI appropriated funds awarded to TCSA schools. That statute also bars ED from conditioning the transfer of those funds to BIE for award to TCSA schools or award of those funds to those schools on agreement of the BIE or the tribes to those additional requirements. This is the fundamental legal flaw of the draft MOU.

The core problem with the draft MOU is the policy premise that Indian education in TCSA schools will benefit from more federal oversight and reporting and from enforcement of federal views on how the schools should operate. These are just another means of exercising control—means which the Congress expressly recognized and prohibited.

Imposing additional assurances, terms, conditions and reporting requirements directly impedes and undermines that core Congressional objective of the TCSA and is unlawful. *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941) (actions or policies which stand “as an obstacle to the accomplishment of the full purposes and objectives of Congress” are unlawful), cited with approval in *Ramah Navajo School Board, Inc. v. Bureau of Rev. of N.M.*, 458 U.S. 832, 845 (1982);

The federal Executive Branch is statutorily barred from imposing its education policy views on TCSA schools except those contained in the TCSA (as amended by NCLB) or lawfully promulgated regulations. This is made

clear at 25 C.F.R part 44.101 (quoted above) (which expressly forbids BIE from imposing any federal policy requirements or guidelines except those set out in the TCSA, the TCSA regulations or those “agreed to by the Tribal grantor”) and 25 U.S.C. § 450 l(c) Model Agreement (b)(11):

**(11) Federal program guidelines, manuals, or policy directives.**—Except as specifically provided in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) the Contractor is not required to abide by program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Contractor and the Secretary, or otherwise required by law.

Yet, the MOU would seek to circumvent this prohibition by imposing more and more reporting and compliance obligations in re ED pass-through funds.

Every time this is done—unless ignored by the tribes—diverts critical Indian education money away from the classroom to deal with these reporting demands.

No one is advocating that schools should be free to misspend the money, embezzle it, run terrible schools and have no accountability, we are not advocating that. We know that if the tribes don't perform, you have the legal authority and the duty to do something about it. BIE does not need an MOU or new regulations to achieve that.

BIE already has the authority to sanction schools that don't meet the AYP over a period of time. You already have the authority to sanction them if they don't submit the required audits and the other reports. You don't need any more authority to do that.

For troubled schools—and we know there are some that haven't filed an audit in years—why are they still open? The BIE has remedies for addressing those problems. You should not try to make it harder for the schools that are performing because some schools are not operating properly. The tribes that are doing what they're supposed to do are not the problem, and we don't want to be lost in your focus on the problem schools. This MOU would literally throw out the baby with the bath water.

The draft MOU is disappointing in another respect. BIE and Ed have asked for Tribal comments on a proposed amended MOU between those agencies. There are allusions in the draft MOU to restrictions imposed on these agencies by the TCSA at §IV.B.3 (p.6) (noting that ED's responsibilities for

monitoring and enforcement are only “to the extent permitted by law”) and in IV.B.4:

- in ii (p. 7) qualifying the compliance and assurance language by the notation such as requirements will be imposed “except where provisions of the Tribally Controlled Schools Act, as amended, other statutes, or DOI regulations control;”;
- in i (p. 8) there is language about ED and BIE collaborating to “explore BIE’s legal authority for both the monitoring...of compliance.. as well as assuring the proper expenditure of all funds transferred to tribally controlled grant schools or contract schools;” and,
- I (p. 8) there is language noting that BIE-funded schools will have certain responsibility “except as exempted by statute.”

However, those references seem to view the congressional mandate that tribally-controlled schools operate with a bare minimum of federal involvement as negatives or barriers to be overcome through the joint efforts of BIE and ED rather than Congressionally mandated policies which should be fully embraced and enforced.

Indeed, it is shocking that nowhere in this 16 page draft MOU is there any real acknowledgment of the statutory rights of TCSA schools to operate their local BIE funded education programs free of burdensome federal control. Nor is there anything in the MOU which acknowledges that the Congressional decision to subject tribal schools to only a bare minimal level of federal oversight and control was a wise and deliberate decision. We think—and the Congress has determined—that approach is the wise and proper approach.

The MOU should be fundamentally revised to have ED and DOI acknowledge that TCSA schools have the legal right to operate BIE funded programs (included programs funded with ED program funds channeled through DOI) free of “any requirements, obligations, restrictions, or limitations” imposed by virtue of those funds.

The TCSA bars ED from demanding that DOI impose these kinds of program requirements and compliance obligations just as much as it bars BIE from unilaterally imposing them.

Much of what appears in the draft MOU are statements of federal education policy views and aspirations which cannot lawfully be imposed on TCSA schools.

We now turn to specific provisions of the draft MOU.

Section I of the draft MOU identifies the Departments' joint interest in improving Indian education but omits any reference to the role of the tribes in operating TCSA schools, or the TCSA provisions which bar either agency from imposing BIE or ED reporting or compliance provisions on TCSA schools which are not expressly authorized by TCSA—this is clear from 25 U.S.C. §§ 2503(b)(3)(B) and 2505(b). The agencies cannot alter or overcome these restrictions via the MOU.

Section II of the draft MOU says in so many words that all of its provisions will be imposed on TCSA schools. The exact language is:

Any transfers of funds between the agencies will be made through transfer of funds documents that incorporate the terms of this Agreement. Each party to this agreement will bear their own costs of performing their respective duties under this MOU.

Tribes were not at the table when these terms were negotiated and they cannot lawfully be imposed on TCSA schools without their consent. We recommend the agencies sit down with representatives of TCSA schools and explore what if any additional reporting requirements the schools might voluntarily agree to. The notion of these two agencies jointly deciding to impose those new requirements on TCSA schools without their consent is flatly contrary to the TCSA and its regulations. This is precisely the kind of thing the statute and regulations forbid.

Our clients stand ready to work cooperatively with the BIE and ED on these issues, but any effort to unilaterally impose these reporting and compliance rules must be abandoned.

Section II of the draft MOU also says that the MOU will supersede any previously approved plan or application submitted to ED by BIE. To the extent those plans or applications have been built into or incorporated into any existing TCSA grant agreements, neither agency has legal authority to unilaterally change those plans or applications. Any effort to do so will be actionable under the Contract Disputes Act and under 25 U.S.C. § 450 m-1.

Section III.A. of the draft MOU contemplates various committees and working groups and a data subcommittee—none of which would involve TCSA school representatives. If any progress is going to be made on the issues these groups and committees aim to address, TCSA schools have to be at the table—or they will have the legal right to simply say “no” to any data requests or reports these groups believe to be desirable.

Section III.B. of the draft MOU sets out various agency goals for improving Indian education based on the President's Executive Order—most of those goals are unobjectionable in the abstract. What is missing is any acknowledgment of the critical role TCSA schools will play in determining their own Indian education goals and their decisions on how best to attain them. These are decisions those tribal schools will make—not DOI or ED.

Section III.C. calls for regular consultation with TCSA schools and tribes—yet a number of our clients have been asking for many years for real dialog with BIE to work on legally acceptable TCSA grant terms and conditions—to no avail. See, our letter of January 15, 2010 addressed to the Secretary and Assistant Secretary-Indian Affairs. (Copy enclosed).

One example—BIE continues to insist on receiving a bi-annual financial report from TCSA schools. § 2505(b)(1)(A) only requires an annual financial report. We have managed to get that demand removed as a grant condition—but BIE continues to demand it anyway.

Some years ago our clients worked jointly with some other tribes and BIE to secure a revision of the TCSA grant conditions. BIE wanted to continue its prior practice of issuing a guidance letter and a schedule of reports to be sent with the grant conditions. Tribes agreed to that so long as the letter contained an explicit disclaimer acknowledging that the letter was not a part of the grant conditions. For the first year the BIE's non-binding guidance letters did contain that disclaimer (*see, e.g.* the enclosed BIE letter of July 2, 2010). Last year that disclaimer was eliminated from the BIE's guidance letter—with no notice to or consultation with the tribes. (*See, enclosed letter emailed on July 1, 2011*). While that letter is still not a part of the grant conditions, DOI's unilateral elimination of that disclaimer makes it easier for BIE to insist on compliance with the terms of that letter; and, the letter is now misleading.

Section IV.C.3. calls for increased money to be awarded to tribal education agencies. We believe all such funding increases should go to cover basic TCSA school operations and to fill the growing AC grant shortfall (now funded at only 61%).

Section IV.C.4. of the draft MOU views the legal barriers to federal control of TCSA schools as barriers to be overcome rather than a legal reality to be honored and supported.

Section IV.A. of the draft MOU should be renamed: "Plan for Imposing Federal Administrative Requirements Forbidden by the TCSA."

This whole section sets out the agencies joint plan for violating express prohibitions on additional obligations and requirements as set out in the TCSA and its regulations. This whole section needs to be eliminated

Section IV.B.3. references the Secretary's general authority to set federal Indian education policy for BIE operated schools. The TCSA bars extension of that policy formulation role to TCSA schools. Each TCSA school has the legal authority to set their own education policies and to determine how they can best address their educational goals free of interference from BIE or ED.

The TCSA schools must adhere to NCLB and ISEF funding standards except for areas in which the statute authorizes the substitution of tribal standards—but beyond that all the "how tos" and "whats" of Indian education policy as regard the TCSA schools is left—separately—to those schools.

Section IV.B.3. of the draft MOU calls for an increase in BIE oversight and control over TCSA school operations in flat contradiction of the TCSA and its regulations.

The TCSA starts from the premise that TCSA schools should be in charge of deciding how best to evaluate their students. These are not federal decisions. They are tribal or TCSA school board decisions.

Section IV of the MOU starts from the premise that more federal control of TCSA school operations is desirable and would help improve the quality of education at those schools. The Tribe rejects that premise and rejects the notion that ED and BIE have the legal authority to enforce the erroneous value judgment that underlies it.

Section IV.B.3. contemplates increased on-site monitoring of TCSA school operations by BIE and ED.

If BIE determines a TCSA school is not honoring its statutorily authorized TCSA grant terms and conditions—BIE has several remedies as noted before. Neither BIE nor ED have the legal authority to impose additional monitoring visits on TCSA schools.

Section IV.B.4.a.i. of the draft MOU calls for BIE to perform full SEA functions as to all BIE funded schools—including TCSA schools. BIE has no authority to assume that role as to the TCSA schools.

Section IV.B.4.b.i of the draft MOU sets out ED's requirement that BIE be responsible to ensure all ED money awarded to BIE funded schools

(including TCSA schools) was properly spent. This requirement can be satisfied via annual audit reviews and review of the annual financial reports required by § 2505(b)—we have no objection to that. What ED cannot lawfully do is impose any additional monitoring, reporting and compliance requirements on the BIE and require BIE to impose those requirements on TCSA schools.

Section IV.B.4.b.2 of the draft MOU halfheartedly acknowledges that there may be legal barriers to BIE's ability to impose further compliance requirements on TCSA schools to ensure their "compliance with all statutory and regulatory requirements applicable to those programs, as well as ensuring the proper expenditures of all funds transferred to tribally controlled grant schools or contract schools."

As to this we reiterate that neither ED nor BIE have legal authority to impose more compliance or reporting requirements than allowed by the TCSA and the TCSA regulations.

Section IV.B.6. of the draft MOU notes ED's need for certain programmatic and performance data re ED funds transferred to BIE and awarded to TCSA schools—but does not contemplate inviting TCSA school representatives to participate in shaping how this goal might be achieved by agreement with the TCSA schools or otherwise in a manner that would be consistent with the statutory or regulatory restrictions imposed on ED and BIE.

Section V of the MOU contains various provisions—the first of which requires BIE to agree to § 9304/ESEA assurances. To the extent that provision contemplates BIE enforcement of those provisions against the TCSA schools, it is prohibited by the TCSA.

Basically, by every measure the proposed MOU is worse than the existing one, if that assessment is made based on whether the MOU will undermine or facilitate effective tribal control of TCSA schools and the MOU's impact on improving the quality of education in those schools. The new MOU is replete with more ED requirements that BIE is expected to impose and enforce against the TCSA schools: more assurances, more grant conditions, more reporting, more monitoring and generally more DOI and ED oversight and control of TCSA schools.

There is nothing about this proposed MOU that will improve Indian education in TCSA schools. The only substantive changes from the existing MOU involve imposition of more federal control and decreased tribal control of the "how tos" of tribal school program operations. Whoever drafted this MOU must have thought that decreasing effective tribal control and increasing

effective federal control would be a good thing. The Congress has rejected that premise and we reject that premise and no part of the Executive Branch has the moral right or the legal authority to substitute federal decisions for tribal decisions regarding how tribes should shape and carry out our TCSA school operations.

The old MOU more closely adheres to the statutory mandate that TCSA schools be left alone to operate their school programs—using DOI and ED funds awarded in a single TCSA grant per 2503 and not be subject to any additional “requirements, obligations, restrictions or limitations” per § 2503(b).

Tribal control means having the right to determine how to educate our students. Requiring money be spent for the purposes appropriated as verified by audit and measured against the applicable NCLB/AYP standards—but otherwise leaving the TCSA schools to determine how to best achieve our educational objectives.

The proposed MOU seeks to require BIE to go down a different path—a path that would increase federal control and undermine tribal control of TCSA schools. That is an egregious mistake of policy and plain legal error.

Neither DOI nor ED have legal authority to impose their policy judgments on how TCSA schools should structure and operate their school programs.

Indeed, we question why any MOU is required. The TCSA mandates that ED transfer monies appropriated or authorized under any “federal education law” to BIE for award to TCSA schools together with DOI funds in a single TCSA grant or “638 contract, without addition of any other “requirements, obligations, restrictions or limitations.” This means that no additional assurances, reporting requirements or performance standards can be imposed. The presence, absence or content of an MOU cannot alter those statutory requirements.

This does raise the question of what role BIE should play in regard to TCSA school operations. The Congressional answer is clear: very little.

We close these comments on the draft MOU by reference to legislative history regarding the TCSA. Legislative history that confirms Congress’ intent to require that tribes which elect to operate their own schools be left alone to do so see, H.R. Conf. Rep. 100-567, p. 59, where the Conf. Committee emphasized that BIE is not to use even the limited TCSA reporting requirements as a means of retaining effective control over TCSA schools:

The House recedes/The Senate recedes, making technical clarifications, requiring that tribal standards be accepted by a generally recognized regional or State accreditation agency, and requiring that the applicable tribe(s) receive the required reports and notice of any audit exceptions.

The Conferees wish to emphasize that the statute is worded to require the grantee to submit the reports and the Secretary to register the receipt of required reports. There is no authority for the Secretary to review or approve the reports. It has been just this process of review which has been the most intrusive method used by the Bureau for retaining effective control over locally controlled schools. (Emphasis added)

### **THE BIE DRAFT FLEXIBILITY PLAN**

Our clients' comments regarding the BIE's draft Flexibility Plan will be brief. By that plan BIA seeks to adopt its own uniform AYP standard for BIE operated schools. Basically, our clients do not oppose the BIE's efforts to adopt a unified AYP standard if that standard will be applicable only to BIE operated schools and so long as the following principals are honored.

TCSA schools must continue to have the right to choose which AYP standard they will apply to their schools from among the following choices:

- a. The BIE AYP standard if such a standard is adopted and approved by ED pursuant to the proposed regulatory changes and a TCSA school elects to use it.
- b. An approved AYP standard adopted by the tribe or by the local school board as provided at 25 C.F.R. Part 30.104(b).
- c. The tribe or TCSA school may designate an approved ED state standard as its tribally selected standard. This latter option is particularly important for tribes located in states which have received a waiver from the ED and will no longer be administering or using an AYP standard previously approved by ED. The tribes and tribal school boards should also have the option of adopting an AYP standard from another state and making that the applicable standard for its schools so long as the standard selected has received the appropriate ED approval under the "no child left behind" requirements and otherwise satisfies 20 U.S.C. § 6311(b).

We do question whether BIE has the legal authority even with ED approval to adopt an alternative AYP standard that will be applicable only to BIE

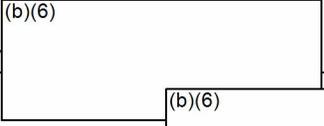
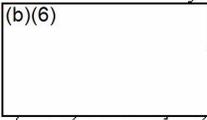
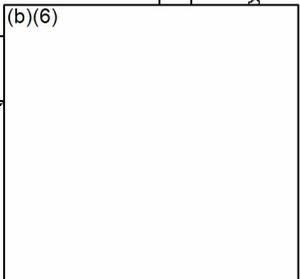
operated schools. It would appear that this option is only available to SEAs and BIE is not an SEA. One alternative that BIE should consider is seeking to revise the Part 30 regulations to authorize BIE to simply adopt one of the other state's standards as its standard to be applied uniformly to BIE operated schools even if it's a state standard from a different state than the one in which each BIE school is located. If 25 C.F.R. Part 30 is to be revised, we would recommend that BIE include that option in the proposed regulation to the extent that it is determined it does not have authority to adopt its own BIE generated AYP standard.

Finally, we reiterate that subject to the above understandings our clients do not oppose BIE seeking to have applied to the schools which the BIE operates, a single AYP standard. It is critical, however, that neither BIE nor ED view or use the proposed flexibility plan as a vehicle for attempting to impose any such new BIE standard on TCSA schools.

### **CONCLUSION**

These comments may seem strident. In part, that reflects our clients' frustration at the government's continued failure to fully embrace their right to control their school operations as authorized by Congress with only a minimal level of federal involvement.

They would welcome the opportunity to work with the ED and the DOI to re-visit this draft MOU in a collaborative way. Involving the TCSA schools in this way is the only path to real progress for improving Indian education in the TCSA schools.

Sincerely,   
  
  


CBR/jt

Enclosures: as indicated

Cc: Virginia Sanchez, Chairman, Duckwater Shoshone Tribe  
John Paul Darden, Chairman, Chitimacha Tribe of Louisiana  
Michael Hawkes, Executive Director, Alamo Navajo School Board, Inc.  
Bennie Cohoe, Executive Director, Ramah Navajo School Board, Inc.

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January 15, 2010

Hon. Ken Salazar, Secretary  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

Hon. Larry Echo Hawk  
Assistant Secretary of Indian Affairs  
U. S. Department of the Interior  
1849 C Street, N.W., MS-3658-MIB  
Washington, D.C. 20240

*Re: Comments by the Alamo Navajo School Board, Inc., Dibe Yazhi Habitiin Olta, Inc. (Borrogo Pass School), the Chitimacha Tribe of Louisiana, the Duckwater Shoshone Tribe of Nevada, the Mississippi Band of Choctaw Indians, and the Ramah Navajo School Board, Inc., and the National Indian School Board Association Regarding the Development of a Tribal Consultation Policy for the U.S. Department of the Interior*

Dear Secretary Salazar and Assistant Secretary Echo Hawk:

These comments are submitted jointly on behalf of a number of our clients, which are Indian tribes and organizations that operate Tribally Controlled School Grant Act (BIA funded) schools funded per Pub. L. 100-297 (25 U.S.C. § 2001 *et seq.*). Those tribes and tribal organizations include Alamo Navajo School Board, Inc., Dibe Yazhi Habitiin Olta, Inc., (Borrogo Pass School), the Chitimacha Tribe of Louisiana, the Duckwater Shoshone Tribe of Nevada, the Mississippi Band of Choctaw Indians, and the Ramah Navajo School Board. We are also authorized to submit these comments on behalf of the National Indian School Board Association ("NISBA").

It is somewhat telling and ironic that the Executive branch department with primary responsibility for managing the Nation's government to government and trust relationships with the federally recognized Indian tribes does not itself have a Department-wide Indian tribal consultation policy almost ten years after President Clinton issued Executive Order

13175, *Consultation and Coordination with Indian Tribal Governments* on November 9, 2000.

Instead, some but not all Interior Department agencies and bureaus have promulgated their own tribal consultation policies. Those range from the sparse (in the case of the U.S. Geological Survey, which does not even mention the government-to-government relationship of the United States and the Indian Tribes), to the more elaborate consultation policies of the Bureau of Land Management and the Bureau of Reclamation (94 pages with appendices.) Some Interior agency policies are clearly outdated. For example, the tribal consultation policy of the U.S. Fish and Wildlife Service, the agency that controls legal access to eagle feathers for tribal members, dates back to 1994. The Bureau of Indian Affairs tribal consultation policy was issued in December 2000.

In some instances, tribal consultation by an Interior agency is mandated by statute. See Native American Education Improvement Act of 2001 at § 2011(b)(1) and (b)(2)(B):

§ 2011(b)(1)

"All actions under this Act shall be done with active consultation with tribes. The United States acting through the Secretary and tribes shall work in a government-to-government relationship to ensure quality education for all tribal members.

\*\*\*

§2011(b)(2)(B):

(B) Discussion and joint deliberation

During discussions and joint deliberations, interested parties (including tribes and school officials) shall be given an opportunity--

(i) to present issues (including proposals regarding changes in current practices or programs) that will be considered for future action by the Secretary; and

(ii) to participate and discuss the options presented, or to present alternatives, with the views and concerns of the interested parties given effect unless the Secretary determines, from information available from or presented by the interested

parties during one or more of the discussions and deliberations, that there is a substantial reason for another course of action.

The comments here submitted are based on many years of experience in dealing with the BIA and subsequently the Bureau of Indian Education. In recent years, in particular, our firm on behalf of a number of tribal clients has repeatedly requested that the BIE engage in tribal consultation regarding the school grant conditions which BIE has imposed or attempted to impose upon Tribally Controlled School Grant Act (BIA funded) schools funded through Pub. L. 100-297. The concerns which have prompted these repeated requests over the last several years have arisen because those grant conditions as annually promulgated by BIE on a "take it or leave it" basis, contain numerous provisions which (1) cannot lawfully be imposed upon Tribally Controlled School Grant Act schools under the provisions of 25 C.F.R. Part 44.101 or 25 U.S.C. § 2011(b)(1)-(2), misquote or selectively quote controlling statutes in a misleading way, (2) cite to irrelevant statutory provisions regarding Federal Tort Claims Act coverage (25 U.S.C. § 450FR(c)) for such tribes without referencing the controlling statutory provisions which extend FTCA coverage to such tribes viz their school operations (Pub. L. 101-512, Title III, § 314, Act of November 5, 1990, 104 Stat. 1059, set out as a note to 25 U.S.C. § 450f); and, which in general needlessly complicates the funding process as contemplated by the Congress.

This has caused a number of our clients to have to footnote their non-agreement with some of those unlawful conditions or to negotiate other solutions to avoid signing grant conditions which BIE cannot lawfully require them sign. At the same time, BIE has recently refused to release our clients' annual funding by the July 1<sup>st</sup> statutory deadline per 25 U.S.C. § 2606(a)(1) unless the unlawful grant conditions are signed, or some negotiated solution to address those issues is worked out. This is a very expensive and inefficient process which could be avoided if a lawful set of school grant conditions were adopted pursuant to tribal consultation.

While these issues could be addressed in litigation (*see, Yankton Sioux Tribe v. Kempthorne*, 442 F.Supp.2d 774 (D.S.D. 2006)), we have sought to avoid litigation and have tried to work with BIE to find other solutions. Ultimately, however, full tribal consultation will be required to address these issues. We have had this discussion and have repeatedly relayed this request for consultation over the past several years with Sabrina McCarthy, Esq. in the Interior Solicitor's Office, and more recently with Edith Blackwell, Esq. in the Interior Solicitor's Office and with John Harrington, in the Southeast Regional Field Solicitor's Office. Mr. Harrington is presently the Interior Solicitor who is responsible for advising BIE regarding its tribal

consultation obligations. He has been willing to address this issue—but neither he, nor Ms. Blackwell nor Ms. McCarthy have succeeded in securing BIE's agreement to engage in tribal consultation regarding the school grant conditions.

We have also put this request directly to David Talayumptewa, BIE's assistant deputy director for administration. This occurred most recently at a meeting in Nashville, Tennessee on July 22, 2009 where Mr. Talayumptewa was asked to schedule tribal consultation on the BIE grant conditions. While on several occasions verbal agreement for consultation sessions regarding these school grant conditions has been reached, in every case BIE has backed out. This is intolerable. It also violates not only the Presidential consultation policies that have been in force, but also the particular statutory consultation obligation imposed on the Secretary set out at 25 U.S.C. § 2011(b)(1).

Our clients take this opportunity to again urge that BIE schedule a series of real tribal consultation sessions to talk through all of these issues and generate a set of grant conditions which is consistent with the law and our clients' rights under the law. In concert with the National Indian School Board Association ("NISBA"), we have previously offered and hereby renew those offers, to work with BIE and the Solicitor's Office to generate a draft set of school grant conditions consistent with the law, which might then be considered in the consultation process. BIE also needs to reconsider the whole point of generating new grant conditions each year, something not required by the statute or the regulations.

Many of our clients have consistently experienced similar problems with other divisions of Interior, especially the Bureau of Indian Affairs. Most of these problems involve the unilateral imposition of Interior policies buried in contract modifications which cannot lawfully be enforced against tribes or tribal organizations without their consent. See, 25 U.S.C. § 450(c), Section 1 (b) (11) and 25 C.F.R. Part 44.101(c). Too often, this results in avoidable delays and release of contract funds if Tribal contractors dispute those modifications.

Many times, however, tribal contractors are presented with and sign proposed modifications without realizing that buried within them are new policies which cannot lawfully be imposed without their consent. This is not a fair or good faith way to proceed. The failure to engage in meaningful tribal consultation regarding such policies exacerbates the problem. True consultation would surface these kinds of proposed changes so they can be identified and confronted collectively before tribal contractors are put to an

individual take it or leave it choice in the context of proposed contract modifications.

A key problem that has emerged from the above is that there is no designated "go to" person within the Interior Department responsible for ensuring that required tribal consultations actually occur nor are any sanctions imposed when such required consultations do not occur or when Interior personnel seek to impose conditions on tribes and tribal organizations which have not been vetted through tribal consultation and to withhold critically needed funds unless tribes accede to such requirements. Accordingly, if this Administration is serious about adopting, implementing and enforcing a meaningful tribal consultation policy, some or all of the provisions of the DHHS consultation policy outlined above should be adopted and integrated into Interior's own policy.

Our clients fully support the development of a Department-wide Tribal consultation policy for DOI. We respectfully request on behalf of the Tribes and grant schools we represent that any new tribal consultation policy acknowledge the mandatory consultation provisions such as those set forth in the Native American Education Improvement Act of 2001 at §2011(b)(1) and (b)(2)(B); and, that DOI create a central departmental point of contact (such as an Office of Tribal Consultation) with direct access to the Secretary's Office. The Department should look to the exemplary work in this area done by the Department of Health and Human Services.

We refer here to the Department of Health and Human Services (DHHS) department-wide Tribal Consultation Policy issued in 2008.<sup>1</sup> The DHHS Tribal Consultation Policy contains some very noteworthy and progressive elements, which could serve as a model for other Executive branch departments, including Interior, to-wit:

Para. 4 (A) – "Each HHS Operating and Staff Division (Division) shall have an accountable process to ensure meaningful and timely input by Tribal officials in the development of tribal policies that have Tribal implications."

Para. 5, Para. 7 (4) – Designating the Office of Intergovernmental Affairs as the entity responsible for implementation and monitoring compliance with EO 13175 and the Department's Tribal Consultation Policy.

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<sup>1</sup><http://www.hhs.gov/intergovernmental/tribal/docs/tribalconsultationpolicyfeb08.pdf>.

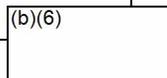
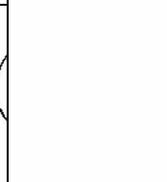
Para. 6, Objectives, especially Para. 6 (7) with respect to charging and holding Division Heads responsible for implementation of the Consultation Policy; and, Para. 6 (1) and Para. 7 (4), which provide for a single point of contact within DHHS at a level that provides access to the Immediate Office of the Secretary, Deputy Secretary, Regions and Divisions. We also note that DHHS has appointed a Principal Advisor on Indian Affairs who serves at the point of contact for Indian tribes, and that the 2008 DHHS Tribal Consultation Report identifies Intergovernmental Affairs Specialists for each Regional Office and Departments such as the Indian Health Service.

Para. 7 (6, 7, and 8) – Describing the responsibilities of various DHHS entities such as the Intradepartmental Council on Native American Affairs, the Regional Offices and HHS Divisions with respect to Tribal consultation.

We thank you for the opportunity to comment on the development of a Tribal Consultation Policy for the Department of Interior. The aforementioned Tribes and grant schools look forward to working with the Department and request that they be kept apprised of further developments or actions in this matter.

Sincerely,

VanAMBERG, ROGERS, YEP  
ABEITA & GOMEZ, LLP

By   
C. BRYANT ROGERS   
  
DAVID GOMEZ 

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**United States Department of the Interior**  
BUREAU OF INDIAN EDUCATION  
South and Eastern States Agency  
545 Marriott Drive, Suite 720  
Nashville, Tennessee 37214

IN REPLY REFER TO:

BIE (Bureau of Indian Education)

Mississippi Band of Choctaw Indians  
Honorable Beasley Denson, Tribal Miko  
P. O. Box 6010  
Choctaw, Mississippi 39350

Dear Grantee:

Submitted for your information and use is a listing of the statutes and regulatory requirements that address your responsibilities as a Public Law 100-297 grantee or a Public Law 93-638 Contractor.

The following information is provided for your reference and use. If you have questions about your responsibilities as a Public Law 100-297 grantee under the following authorities, please contact your Grants Officer/Education Line Officer.

- Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. § 6301 et seq.
- Native American Education Improvement Act of 2001, as amended, 25 U.S.C. § 2000 et seq.
- Indian Self-Determination and Education Assistance Act of 1975, as amended, 25 U.S.C. § 450 et seq. (for P. L. 100-297 grant schools only the provisions made applicable by 25 U.S.C. § 2508)
- Indian Self-Determination and Education Assistance Act regulations at 25 C.F.R. Part 900, subparts F, H, I, N, P and 900.45, made applicable to P. L. 100-297 grant schools by 25 C.F.R. § 44.110
- Tribally Controlled Schools Act of 1988, as amended, 25 U.S.C. § 2501 et seq.
- Tribally Controlled Schools Act regulations, 25 C.F.R. Part 44
- Pub. L. 101-512, Title III, § 314, November 5, 1990, 104 Stat. 1959, as amended by Pub. L. 103-138, Title III, § 308, November 11, 1993, 107 Stat. 1416 extending FTCA coverage to tribally-controlled schools operated per Pub. L. 100-297 and their employees, set out as a note to 25 U.S.C. § 450f
- Indian Child Protection and Family Violence Prevention Act, as amended, 25 U.S.C. § 3201 et seq.
- Victims of Child Abuse Act of 1990, 42 U.S.C. § 13031
- OMB Circular A-133, Audits of States, Local Governments and Non-Profit organizations
- 43 C.F.R. Part 12 (applicable to P. L. 100-297 school construction projects only)

- 2 C.F.R. Part 225, Cost Principles for State Local, and Indian Tribal Governments (OMB Circular A-87) Individuals with Disabilities Education Act, as amended, 20 U.S.C. § 1400 et seq.
- Resource Conservation and Recovery Act, 42 U.S.C. § 6961 et seq.
- Special Terms for Awards Made Under the American Recovery and Reinvestment Act of 2009 (ARRA), (DOE funds and DOI funds)

All tribally controlled grant schools have access to the Native American Student Information System (NASIS). Some schools have access to the Facility Management Information System (FMIS) and to the BIE.edu e-mail system. More recently a new Emergency Management System (EMS) has been developed and implemented by the Bureau of Indian Affairs and addresses Environmental Protection Agency compliance issues. Your employees who have access to these system(s) must complete the annual Security Awareness training.

The Environmental Protection Agency (EPA) has been inspecting BIE schools and has found numerous non-compliances. Each grantee is responsible for ensuring that all EPA non-compliances are abated in a timely and appropriate manner by dealing directly with the EPA outside the framework of this grant. Please see the attached assurance statement.

BIE recommends adoption and implementation of a policy for reporting Suspected Child Abuse and Neglect (SCAN), a policy to prohibit cellular phone use and texting while driving, and a motor vehicle operations policy. For sample policies, please contact your Grants Officer/Education Line Officer, who can offer copies of BIE's own policies. BIE suggests that tribally-controlled schools adopt policies at least as stringent as the BIE policies.

Please be reminded that availability of ARRA funds is through September 30, 2011. Further guidance to address unobligated ARRA balances will be forthcoming.

If there are any questions, please feel free to contact the Grants Officer/Education Line Officer at (615) 564-6639. We wish you great success in our partnership to educate Indian children.

Sincerely,

(b)(6)

for Education Line Officer  
South and Eastern States Agency  
Education Line Office

Enclosure(s)

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## MEMORANDUM

**TO: SABRINA McCARTHY, ESQ.**

**FROM: C. BRYANT ROGERS, ESQ.** (b)(6)

**DATE: JUNE 30, 2010** (b)(6)

**RE: SCHOOL GRANT CONDITIONS**

This Memorandum responds to your email of June 29, 2010.

1. Perhaps the most basic legal reason (in addition to all the other reasons previously set out in my prior emails) why BIE cannot lawfully apply the 43 C.F.R. Part 12 and 25 C.F.R. Part 276 grant regulations to TCSA awards is that TCSA "grants" are not actually grants in the ordinary sense. Congress has given them a special legal status—the same legal status as Pub. L. 93-638 contracts—not the same legal status as Pub. L. 93-638 grants. See, 25 U.S.C. § 2503(b)(2) (" . . . tribally controlled schools for which grants are provided under this chapter shall be treated as contract schools. . .").

This is further evidenced by the statutory requirement that disputes arising under TCSA "grants" must be handled under the Contract Disputes Act, 41 U.S.C. Sec. 601 ("CDA") and can be decided by the Civilian Board of Contract Appeals ("CBCA"). See 25 U.S.C. §. 450m-1(d); 25 U.S.C. § 2507(e). Disputes involving ordinary grants of the type to which 43 C.F.R. Part 12 and 25 C.F.R. Part 276 apply are not covered by the CDA and cannot be decided by the CBCA.

This is also evidenced by the fact that the Secretary has no discretion to refuse to agree to a tribal decision to take over operation of their BIE funded schools and to administer those schools under a Pub. L. 100-297 grant arrangement, and has no discretion not to award the requested Pub. L. 100-297 grant including all funds required by the statute. 25 U.S.C. § 2503 ("The Secretary shall provide grants to Indian tribes and tribal organizations-- . . ."); 25 U.S.C. §§ 2503 ("The

grant provided under this Chapter . . . shall consist of . . .") and 2504 (defining tribal eligibility for TCSA grants).

The Part 276 and Part 12 regulations are intended to apply to true grants, the award of which is discretionary with the Secretary. Moreover, those grant regulations contemplate a decision by the Secretary on how grant payments will be made e.g. via an advance funding or on a cost reimbursement basis and permit the Secretary to set conditions respecting to what extent any of these methods will be used. *E.g.*, Part 276.10. In contrast, the Secretary is mandated by statute to pay the TCSA grantees 80% of their funding for the next year in advance per 25 U.S.C. § 2506(a)(1)(A) and provides for how the balance will be paid in § 2506(a)(1)(B) and at §§ 2506(a)(2)-(6).

25 U.S.C. § 2506(b) also spells out investment and deposit rules that apply to this funding which are different that the rules that apply to ordinary BIA grant funding at 25 C.F.R. § 276.3

2. The TCSA expressly incorporated 13 of the Pub. L. 93-638 contract provisions. See 25 U.S.C. § 2507(a) and (e) and leaves it to the tribes to decide whether to borrow other Pub. L. 93-638 contract provisions § 2507(b). The TCSA does not incorporate any of the Pub. L. 93-638 grant provisions set out at 25 U.S.C. § 450h. The Part 276 regulations were published under authority of Pub. L. 93-638 in 1975. Those are the regulations applicable to Pub. L. 93-638 grants awarded per 25 U.S.C. § 450h. This is the only reason these regulations are still in force. The original Pub. L. 93-638 contract regulations (formerly set out at 25 C.F.R. Part 271 and 41 C.F.R. Part 14H-70) were superseded by the 1988 amendments to Pub. L. 93-638 and later replaced with the present ISDA regulations at 25 C.F.R. Part 900. The Part 276 regulations are clearly not applicable to TCSA grants.
3. The TCSA regulations incorporates a number of Pub. L. 93-638 contract regulations. See 25 C.F.R. 33.110. The TCSA regulations do not incorporate any of the Pub. L. 93-638 grant regulations.
4. The reason why the 25 C.F.R. Part 44 TCSA regulations are so sparse and for example do not address e.g. "financial reporting requirements" or "monitoring and reporting program performance" or "grant closeouts" as referenced in the 25 C.F.R. Part 276 grant regulations at

§§ 276.8, 276.9 or 276.15, is because the statutes which apply to TCSA grants and ISEF funding, 25 U.S.C. § 2501 et seq. and 25 U.S.C. § 2001 et seq. (and in particular § 2008 thereof), address these kinds of requirements and the BIA may not use the Part 276 (or the 43 C.F.R. Part 12) regulations to impose different requirements addressing those issues than what the statutes require or authorize the Secretary to impose. For example, 25 U.S.C. § 2008(i) provides that 25 U.S.C. § 2008 shall apply to TCSA schools. There is no need for regulations to address those same topics. Likewise, the other ISEF provisions which are established by statute at 25 U.S.C. § 2001 et seq. automatically apply to the TCSA schools insofar as ISEF funding calculations are concerned because the ISEF funding is how those schools are supported.

Likewise, the TCSA statute at 25 U.S.C. § 2505(a) basically makes these TCSA grants perpetual, unless the grantee's eligibility is lawfully revoked by the Secretary for the limited reasons set out at 25 U.S.C. § 2505(c) per the ISDA reassumption procedures adopted at 25 C.F.R. § 44.110(5). In this regard, they are the legal equivalent of mature contracts under Title I of Pub. L. 93-638 or Title IV compacts under 25 U.S.C. § 458aa et seq. There is no need for "grant closeout" procedures on grants which are never going to end unless a tribal grantee decides to retrocede its school operations to the government or the government successfully reassumes operation of the school under the ISDA procedures and regulations which are incorporated into the TCSA Act and TCSA regulations. This is why there is really no reason for the tribes to be executing a new grant agreement each year. Instead, what the BIE should be doing is simply executing grant modification documents to reflect new money awarded each year.

Further, the TCSA statute at 25 U.S.C. § 2506(b) sets out the statutorily required financial reporting and performance reporting which BIE can require. This provision expressly bars the BIE from imposing any other reporting requirements.

Also, unlike grantees who receive ordinary grants which are subject to 25 C.F.R. Part 276 or 43 C.F.R. Part 12, TCSA grantees (and their employees) are covered by the Federal Tort Claims Act ("FTCA") to the same extent as Pub. L. 93-638 contractors. See, Pub. L. 101-512 (set as a note to 25 U.S.C.A. § 450f). Neither ordinary grantees (nor their employees) are covered by the FTCA.

Finally, as noted above, 25 U.S.C. § 2507(a) borrows 13 Pub. L. 93-638 contract provisions which cover many of the same issues that are

covered in the Part 276 and Part 12 regulations—but in substantively different ways.

In other words, the regulatory “gaps” BIE is concerned about and wishes to fill by the unauthorized imposition of the regular grant regulations at 25 C.F.R. Part 276 and 43 C.F.R. Part 12 either do not exist (because the TCSA statute and regulations and 25 U.S.C. § 2008 address those issues) or do exist because the Congress has given the Interior Department a much more limited role in overseeing the administration of TCSA funding than as regards ordinary DOI grantees or Pub. L. 93-638 grants.

5. Further bolstering the above are the legal doctrines that (a) specific statutes and regulations control over general ones, (b) more recent statutes and regulations control over older ones, (c) ambiguities on what regulations apply to TCSA awards must be construed in favor of the position advocated by the tribal grantees as set out here; and, the fact that the government did not apply or attempt to apply 25 C.F.R. Part 276 or 43 C.F.R. Part 12 to TCSA awards until very recently further undermining any argument that they have all along applied since 1988. Because of the short time frames within which we are all working—to try to get these issues resolved before tomorrow’s July 1, 2010 statutory funding deadline, we had not included case citations for the points set out in this Paragraph 5, but they are all supported by ample case law.
  
6. The proposed grant instruments which you forwarded last week do not identify 25 C.F.R. Part 276 or 43 C.F.R. Part 12 as being applicable to school grantees re their operations money. We do not dispute that those regulations apply (except for 43 C.F.R. Part 12.61) to Pub. L. 100-297 school construction project awards. This is because the Part 12 regulations, except for 12.61 were made applicable to school construction projects awarded under Pub. L. 100-297 by 25 U.S.C. § 2503(b)(4)(B) for projects over \$100,000 (see, my email of June 22, 2010), and the tribes have accepted the recommendations of the school construction work group that the Part 276 regulations should also be applied to awards for those projects. Thus, if BIE is willing to move forward with the form of grant instruments which we saw last week, it would be possible to use those instruments (preferably with the redline changes we identified) and we can argue later whether

either of those sets of regulations apply under ¶ 11 of Form 424B and the shorter version of the same form at ¶ 9 (are you sure meant to include 2 versions of the same form, one of which has 11 paragraphs and the other of which only has 9 paragraphs?). Those referenced paragraphs provide that the grantee "Will comply with all applicable requirements of all other Federal law, executive orders, regulations, and policies governing this program."

In other words, it may be that we are only arguing about what goes in the transmittal letter which BIE wants to send and which you have already agreed will not be considered part of the grant conditions. While we would prefer that the transmittal letter not contain misleading information, if proceeding with the proposed form of grant instruments which you forwarded last week (again, hopefully with out redline changes), will permit the timely payment of the first 80% which will be due to our clients (and to all TCSA grantees) on July 1<sup>st</sup>, this might be a better way to proceed than to force us to seek judicial relief. I also wish to point out that if the BIE fails to meet the July 1<sup>st</sup> payment deadline, it will be facing nationwide Prompt Payment Act interest claims which I would assume the BIE would prefer to avoid.

One closing note: In our redline edits to the events calendar which BIE proposed to include in its transmittal letter, we suggested changing the July 2010 initial funding deadline to July 1, 2010 to conform to the statute and gave the statutory cite for that requirement as 25 U.S.C. § 2010(a)(2)(A)(i). That statutory reference was erroneous; the correct statutory reference is 25 U.S.C. § 2506(a)(2)(A).

I will be in my office tomorrow. Please give me a call. I have been unable to reach you by telephone the last two days.

CBR/jt

S:\Rogers\Choctaw\CORRESPO\Email to Sabrina McCarthy (BIE) 063010.doc

(b)(6)

**United States Department of the Interior**  
BUREAU OF INDIAN EDUCATION  
South and Eastern States Agency  
545 Marriott Drive, Suite 720  
Nashville, Tennessee 37214  
JUL 2 2010

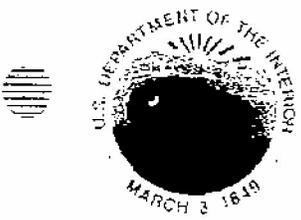
AUG 3 11 2010

GENERAL OFFICE

**RECEIVED**

AUG 24 2010

ATTORNEY  
GENERAL'S OFFICE



IN REPLY REFER TO:

BIE (Bureau of Indian Education)

Mississippi Band of Choctaw Indians  
Honorable Beasley Denson, Tribal Miko  
P. O. Box 6010  
Choctaw, Mississippi 39350

Dear Grantee:

Because the Bureau of Indian Education (BIE) has received many questions about the conditions that attend Public Law 100-297 grants, this letter lists, for your convenience, legal authorities and responsibilities that pertain to Public Law 100-297 grantees. This letter sets out some information which BIE wishes to call to your attention. You have not been asked to agree to the matters addressed in this letter or in the enclosed school year 2010-2011 grant calendar. Neither that calendar nor this transmittal letter are a part of your grant conditions.

If you have questions about your responsibilities as a Public Law 100-297 grantee under the following authorities, please get in touch with your Grants Officer/Education Line Officer.

- Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. § 6301 et seq.
- Native American Education Improvement Act of 2001, as amended, 25 U.S.C. § 2000 et seq.
- Indian Self-Determination and Education Assistance Act of 1975, as amended, 25 U.S.C. § 450 et seq. (for P. L. 100-297 grant schools only the provisions made applicable by 25 U.S.C. § 2508)
- Indian Self-Determination and Education Assistance Act regulations at 25 C.F.R. Part 900, subparts F, H, I, N, P and 900.45, made applicable to P. L. 100-297 grant schools by 25 C.F.R. § 44.110
- Tribally Controlled Schools Act of 1988, as amended, 25 U.S.C. § 2501 et seq.
- Tribally Controlled Schools Act regulations, 25 C.F.R. Part 44
- Pub. L. 101-512, Title III, § 314, November 5, 1990, 104 Stat. 1959, as amended by Pub. L. 103-138, Title III, § 308, November 11, 1993, 107 Stat. 1416 extending FTCA coverage to tribally-controlled schools operated per Pub. L. 100-297 and their employees, set out as a note to 25 U.S.C. § 450f
- Indian Child Protection and Family Violence Prevention Act, as amended, 25 U.S.C. § 3201 et seq.
- Victims of Child Abuse Act of 1990, 42 U.S.C. § 13031
- OMB Circular A-133, Audits of States, Local Governments and Non-Profit organizations

- 43 C.F.R. Part 12 (applicable to P. L. 100-297 school construction projects only)
- 2 C.F.R. Part 225, Cost Principles for State Local, and Indian Tribal Governments (OMB Circular A-87) Individuals with Disabilities Education Act, as amended, 20 U.S.C. § 1400 et seq.
- Resource Conservation and Recovery Act, 42 U.S.C. § 6961 et seq.
- Special Terms for Awards Made Under the American Recovery and Reinvestment Act of 2009 (ARRA), (DOE funds and DOI funds)

All tribally controlled grant schools have access to the Native American Student Information System (NASIS). Some schools have access to the Facility Management Information System (FMIS) and some to the BIE.edu e-mail system. Your employees who have access to these system(s) must complete the annual Security Awareness training.

The Environmental Protection Agency (EPA) has been inspecting BIE schools and has found numerous non-compliances. Each grantee is responsible for ensuring that all EPA non-compliances are abated in a timely and appropriate manner by dealing directly with the EPA outside the framework of this grant.

BIE recommends adoption and implementation of a policy for reporting Suspected Child Abuse and Neglect, a policy to prohibit cell phone use and texting while driving, and a motor vehicle operations policy. For sample policies, please get in touch with your Grants Officer/Education Line Officer, who can offer copies of BIE's own policies. BIE suggests that tribally-controlled schools adopt policies at least as stringent as the BIE policies.

New language will apply to the use of GSA vehicles, beginning July 1, 2010. Grantees will receive the new language to amend their grants as of July 1, 2010. Enclosed is a list of resources for information and a calendar of grant due dates. If there are any questions, please feel free to contact the Grants Officer/Education Line Officer at (615) 564-6639. We wish you great success in our partnership to educate Indian children.

Sincerely,

(b)(6)

Education Line Officer  
South and Eastern States Agency  
Education Line Office

Enclosure(s)

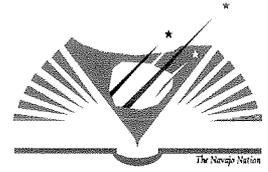


# DEPARTMENT OF DINÉ EDUCATION

## THE NAVAJO NATION

P.O. Box 670 ▪ Window Rock, Arizona 86515

PHONE: 928.871.7475 ▪ FAX: 928.871.7474



Ben Shelly  
President

Rex Lee Jim  
Vice-President

### **Navajo Nation Position Statement: The Bureau of Indian Education Elementary and Secondary Education Flexibility Wavier Request July 20, 2012**

The goal of the Navajo Nation is to develop an educational system that endorses its culture, sustains its language, and promotes the academic success of its children and adults. The Navajo Nation is taking initiatives to develop a functional department of education that would implement initiatives and policies as a Sovereign State. As such, the Navajo Nation does **NOT** support the Bureau of Indian Education's Flexibility NCLB Wavier.

The Navajo Nation outlines 3 major reasons why not support the BIE's NCLB flexibility Wavier:

1. Federal law stipulates that Flexibility Waivers are only available to state educational agencies; the BIE is not federally recognized State Educational Agency. The BIE's oversight of NCLB accountability for BIE funded schools comes from a 2001 agreement between the Departments of Interior and Education which grants BIE "...responsibilities comparable to those of a State Educational Agency (p.4)...and "...shall remain in effect for the period for which the NCLB reauthorizes the ESEA" (p.2). NCLB has not been reauthorized since 2008, which raises questions about whether authority for the agreement is still legal. More, Section 9401 of NCLB, which BIE references in its Flexibility Waiver as the authority for its proposal, extends the same right for waivers to LEAs, Indian Tribes, and schools (as BIE notes in footnote 5 of its document). The Navajo Nation's position is that the BIE does not have the authority to apply for a Flexibility Waiver under current law.
2. The U.S. Department of Interior with its administration of **BIE has failed** the Navajo Nation. BIE schools on the Navajo Nation continue to fail the students and Navajo communities. During the school year 2010 to 2011 64% of BIE schools on the Navajo Nation have not met Adequate Yearly Progress (AYP).
3. The BIE Flexibility Wavier fails to address the needs of American Indian students and is not representative of current issues impacting American Indian students. Since the Government Accountability Office's report of 2009 citing BIE failure to help schools the BIE Flexibility Wavier does not address the concerns raised in the report. The BIE continues to fail to help schools, tribes and students.

The following points elaborate the rationale for not supporting the BIE ESEA flexibility wavier:

1. The vast majority of Navajo students in the BIE schools (65%), do not meet academic standards as spelled out by NCLB law. The flexibility wavier does not describe a plan to address this issue. The flexibility wavier is broad and ambitious without specific information to meet student needs.
2. The flexibility wavier fails to describe how students will be college and career ready when there is no explanation of college and career ready outside of academics. Most BIE schools are K-6 and K-08 there is no discussion on how these schools will work with state public schools for seamless transitions of students into the public system.
3. BIE opted not to write a state accountability plan. Instead they directed their schools to implement and use the criterion reference test of the state accountability plan of which they were located. The flexibility wavier is unclear as to what is being waived in the state accountability plan and assessments and AYP.
4. The BIE plan is vague in terms of coordination between teacher preparation and transition to the common core, how their plan will be implemented and sustained.

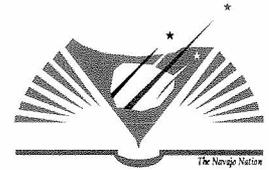


# DEPARTMENT OF DINÉ EDUCATION

## THE NAVAJO NATION

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PHONE: 928.871.7475 ▪ FAX: 928.871.7474



Ben Shelly  
President

Rex Lee Jim  
Vice-President

5. There is no discussion why BIE will use an interim assessment instead of using current state CRTs. The proposed interim assessment developed by Northwest Evaluation Association (NWEA) has not been peer reviewed or approved by U.S. Department of Education. This is out of order.
6. There is no discussion of the relative differences or merits of the NWEA, state assessments, PARCC or SBAC assessments.

### Navajo Sovereignty In Education

1. In 2005 the Navajo Nation's Tribal Council passed the *Sovereignty in Education Act*, which explicitly recognizes the authority and responsibility of the Navajo government for the education of its people.
2. The successful education of Navajo children will require the engaged commitment of parents and communities embedded in the culture and values of the Diné People. The Navajo Nation's Department of Diné Education has been developing Navajo curriculum related to key Navajo standards: culture, language, history, governance, and character (ké).
3. The Navajo Nation has submitted, through the BIE, a Consolidated Accountability Workbook to the U.S. Department of Education on May 28, 2009. The BIE has completed its peer review process and the Navajo Nation has responded to comments of the peer review committee and has rewritten and resubmitted the Accountability Workbook. The BIE has not responded to the Navajo Nation rewrite to the Navajo Nation Accountability Workbook.
4. The Navajo Nation Accountability Workbook gives the Department of Diné Education authority that would explicitly oversee the 34 Tribally controlled BIE grant schools located within the boundaries of the Navajo Nation.
5. In closing, Western education through the BIE and state public schools system, have been on the Navajo Nation for 142 years. We need to take more responsibility for our students to ensure that they receive a quality education because of the mere fact that these students are our future. When a quality education is absent from the lives of the students it seriously impacts the livelihood of the Navajo Nation. Our people need the basic academic skills to raise healthy families and to make positive contributions to our Navajo communities and society. The Navajo Nation absorbs the impact to the education of our people. We seek more control of our destiny and our nation through the development of a Navajo Education system that preserves our language and culture while providing a sound core academic content in reading, writing, math and science. As such, the Navajo Nation does not support the BIE NCLB Flexibility Wavier.

(b)(6)

Date 7/19/2012

Rex Lee Jim, Vice President, Navajo Nation

# Fond du Lac Band of Lake Superior Chippewa Reservation Business Committee

1720 Big Lake Rd.  
Cloquet, MN 55720  
Phone (218) 879-4593  
Fax (218) 879-4146

June 14, 2012



Chairwoman  
Karen R. Diver

Secretary/Treasurer  
Ferdinand Martineau, Jr.

Dist. I Representative  
Wally Dupuis

Dist. II Representative  
Sandra M. Shabiash

Dist. III Representative  
Mary S. Northrup

Executive Director,  
Tribal Programs  
Chuck Walt

**BIE ESEA Flexibility Request Comments  
Office of Assistant Secretary - Indian Affairs  
U.S. Department of the Interior  
Mail Stop 4141 MIB  
Washington, DC 20240**

**The Fond du Lac Band of Lake Superior Chippewa, on behalf of the Fond du Lac Ojibwe School (a Tribally Controlled K-12 school) is submitting the following comments and input on the Bureau Of Indian Education ESEA Flexibility Request.**

**We are committed to supporting BIE if the proposed plan were amended to 1) fairly and accurately measure the performance of all schools; 2) identify Title 1 schools that need the most assistance; 3) give schools the financial assistance needed to address needs and achieve meaningful school improvement; and 4) recognize our unique status as tribally-controlled schools and work with us as equal partners.**

**1. The BIE's efforts to focus on accountability for all BIE-funded schools are shared values. We, too, support schools making significant and demonstrated gains and progress toward improvement of student achievement and the quality of instruction.**

**2. The Ojibwe School is one of "those" schools under tribal control. BIE states in the flex plan that ". . . BIE therefore does not directly manage. . .or directly control schools in its system [and] has profound implications for sweeping reform efforts, which must be considered." The implication here is that if BIE does not control, then progress will not be made. This position of control is a consistent theme throughout BIE's flex plan.**

**3. BIE states that its flex plan is “[a] strategy to assist the tribal schools in adopting evaluation and support systems designed to increase the quality of instruction for students and improve student achievement has yet to be developed.”**

**It needs to be pointed out that the Ojibwe School has demonstrated and has hard evidence that it is making significant gains in student achievement. Thanks to BIE’s support and current program and funding strategy our school has dramatically improved both its reading and math programs.**

**In addition, we have invested in continuous school improvement implementing rigorous monitoring and evaluation methods that hold our school accountable for making effective, data driven decisions on instructional methods and learning strategies, annual evaluations of administrative, teaching and all support personnel, curriculum, student behavior, student support, and parental involvement and effective communication.**

**These accomplishments are readily evidenced in Native Star (June 2012); AdvancED Quality Assurance Review Accreditation Progress Report (May 2012); BIE’s DPA Special Education Integrated Monitoring Process (SEIMP) Report (October 2011); BIE’s School Safety and Security Site Visit & Survey (March 2012); Minnesota Comprehensive Assessments II’s (2011); Conquest Consulting For Reading Direct Instruction (May 2012); Math Direct Instruction Consultant (May 2012); Response To Intervention Consultant - Cooperative Educational Shared Services, (May 2012); Infinite Campus/NASIS (current); Minnesota Automated Reporting Student System (MARSS).**

**4. BIE stresses that tribally-controlled schools like the Fond du Lac Ojibwe School develop policies on their own. It is true that with direct involvement and support of the Fond du Lac Ojibwe School Board and Fond du Lac Tribal Council the Ojibwe School does develop and implement policies that establish clarity and consistency. Federal Policy supports tribal self-determination and self-governance.**

**BIE states that they can only suggest or encourage tribally-controlled schools to adopt key policies. BIE cites examples of policies that BIE developed on Suicide Prevention and Early/Post Intervention stating it is**

**mandatory for BIE-operated schools but not tribally-controlled schools to adopt these policies.**

**This is one example of how BIE generalizes claims as if tribal governments lack the skills and conviction to identify needs and then address those needs with policies. The facts are that the Fond du Lac Reservation has developed policies and procedures regarding many educational, social, and economical needs and among these include policies on teen and adult suicide.**

**The school has policies in place specific to suicide issues. Each school year the Ojibwe School provides orientation and training to all school staff on Child Protection Policies and Procedures. When the school year begins and students return, students receive training on how to use and access various support programs, including TXT4Life - a process where students can text (and/or call) for guidance and support when dealing with suicidal issues. Student support and annual training also includes topics and program such as "Mental Health and Rural Teens: Suicide Risks and Preventive Factors" and "Does Bullying = Suicide."**

**5. BIE states that its "... dilemma is twofold. One, treating schools as LEAs means that individual schools, many small in size, are responsible for carrying-out LEA activities, which are beyond their organizational capacity. Two, assignment of LEA status to schools undermines BIE's effort to fulfill LEA responsibilities at ELO/ADD level"**

**Does BIE believe that it is beyond Fond du Lac's organizational capacity to fulfill its obligations and responsibilities as LEA? We have not heard this position (arguing LEA status) from BIE in the recent past. Again, the reoccurring theme of control in BIE's flex plan resonates more than offering actual planning or strategy substance to impact school improvement.**

**6. BIE's Historical Perspective section again resonates in the tone of control instead of meaningful strategy and planning. BIE questions tribal schools status as LEA stating "... what is a LEA in the BIE system complicates the task of the development of teacher and principal evaluation and support systems by LEA's for approval by the BIE acting as SEA. ... BIE can implement reforms only in schools it operates. BIE cannot require the tribal schools to adopt teacher and principal evaluation and support systems . . . ."**

**BIE's purpose for aligning the issue of LEA status and school reform is confusing. If the question is how many schools have formal personnel evaluation policies then ask the question. Why infer that LEA status would interfere with adopting policies that impact making good decisions? And BIE does not implement reforms: schools implement reforms.**

**Fond du Lac has a formal policy that requires that all employees receive annual evaluations and performance ratings. For the school a site-based performance evaluation team performs annual evaluations. The team consists of a grade level teacher from K-4, 5-8, and 9-12. In addition, the team consists of a reading coach, math coach, building principal, and superintendent. Education personnel complete a self-evaluation at mid-year; the evaluation is then provided to the evaluation team for monitoring and input for the balance of the year. All personnel receive a final evaluation at the end of the year reflecting strengths, areas of attention, and recommendations. Personnel must also complete an Individual Development Plan for the upcoming year which is filed with the school's onsite license renewal committee.**

**7. BIE states that "... BIE funded schools will continue to be among the lowest performing in the nation . . . . [t]he lack of a unified accountability system has severely hampered the ability of BIE to implement school improvement initiatives."**

**At what point in this flex plan will BIE reflect on its own failed responsibility to bring about positive change to impact student success? Does anyone believe for a moment that BIE changing its authority from current into SEA will change anything? Rather than focusing on the negative as perceived by BIE in this flex plan, the BIE ought to rethink its responsibility and role and focus on identifying what the schools need and invest accordingly. When in any improvement initiative is it useful to use language of control to any benefit?**

**When has control impacted American Indians for anything positive? Our entire American Indian history has been one of being controlled. And now, once again, our children and education are being used against our better judgments. The history of assimilation is not forgotten; as we remember well, federal education policies impacted all nations with lasting effects. We cannot forget the lessons of history or it will certainly repeat.**

**8. BIE's goal of replacing AYP with an Accountability Index (AI) makes sense. We have long recommended that multiple measures more accurately demonstrate performance and reduce the stigma that a school "failed" when in fact it may have achieved numerous AYP ratings.**

**BIE is encouraged to expand its measurement of graduation rates. We recommend that BIE review Minnesota's functional specifications for Minnesota Graduation Rates, that includes providing ratings for the typical 4-year graduate, but also year 5 and 6 graduates (ESEA Flexibility Request, Minnesota Department of Education).**

**Our records indicate that many more of our American Indian students graduate in year 5 or 6 in comparison to the norm of year 4 graduates. We believe that graduating American Indian students is more important than some arbitrary time frame for that to occur.**

**9. BIE's plans to invest and expand opportunities for schools in Science, Technology, Engineering, and Mathematics (STEM) curriculum is encouraging.**

**The Ojibwe School's curriculum is aligned with the State of Minnesota's Standards and Assessments (School Board approved and adopted 1996). We use the Minnesota Math and Science Frameworks and the Blueprint for Literacy Plan and related extensive menus of support to build teaching capacity to improve service delivery of STEM college and career ready standards.**

**We recommend that BIE expand the effective strategy of developing and implementing a coaching/teaching model. The effectiveness of this investment is evidenced by the results of our reading and math coach strategy. We are on pace to again make AYP in Reading and our Math program has demonstrated extremely large measurable student growth. We have adopted and follow BIE's strategy to make improvements in reading and math and the benefits have generated great results.**

**Other related benefits of implementing this coaching model have resulted in reduced student behaviors; reduced referrals of students for special needs evaluation; increased academic achievement; greater use of instructional time; increased and more effective teacher/parent communication specific to discussions of how their child is progressing; and a modified report card that**

replaced letter grades with more accurate and descriptive language that measures students growth.

**Overall Comments**

BIE's intent as presented in the ESEA Flexibility Request is not clear. BIE states that "These changes will affect only one-third of the schools in the system, the BIE-operated schools. Related, a wildcard is the tribally-controlled schools, since BIE does not directly control these schools and therefore cannot as readily implement reforms as it can in BIE-operated schools."

BIE's plan is predictable. It is punitive and seeks to establish its educational credibility on its lack to control. It lacks any effort to reform or restructure itself to become viable in order to create a more collaborative and supportive agency to support all schools.

BIE has no overall Plan for Education. For consideration BIE might ground its plan for school improvement on: 1) Identifying and Securing Funding for the Future; 2) Better Early Childhood Education; 3) Reading Well by 3<sup>rd</sup> Grade; 4) Support Teaching for Better Schools; 5) Better Testing, Better Results; 6) Become an Agency that Provides Educational Leadership, Builds Trust and Mutual Support; and 7) Recognize the Unique Status & Effectiveness of Tribally-Controlled Schools.

**Chairperson**

**Fond du Lac Band of Lake Superior Chippewa**

(b)(6)

**Karen R. Diver:**

6/18/12

**Date:**

**Principal/Superintendent**

**Fond du Lac Ojibwe School**

(b)(6)

**Michael F. Rabideaux: (**

**Date: 6/19/12**

## Attachment 3

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Notice and information provided to the public regarding the request (i.e., Tribal Leaders and communities)



THE SECRETARY OF THE INTERIOR  
WASHINGTON

**JAN 14 2011**

Dear Tribal Leader:

At the Department of the Interior, we continue to take significant steps to implement President Obama's November 5, 2009, Executive Memorandum on Federal Consultation with Indian Tribes. Our goal is to create a policy that replicates the best consultation practices, responds to the needs and constraints of Tribal leaders participating in future consultations, and promotes more responsible policy development for Indian Country. The success of this consultation policy depends greatly upon the depth of input received from Indian Country.

In November 2009, I asked Interior to host a series of national consultation sessions designed to discuss the best process for meeting the President's charge for greater consultation. The feedback from Indian Country led to the creation of a joint Federal-Tribal team, who collaborated to write the attached draft consultation policy.

Thank you for your continuing support of this effort and your valuable input. The Department of the Interior consultation policy will honor the government-to-government relationship with Indian Tribes and will be a model for other consultation policies. Forging a strong role for Indian Tribes' involvement in the decision making process will benefit Federal Indian policy for generations to come.

Sincerely,

(b)(6)

Ken Salazar



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**JAN 14 2011**

Dear Tribal Leader:

The Department of the Interior is instituting a Department-wide policy for consultation with Indian Tribes and we would value your input.

Enclosed you will find the Department's Draft Tribal Consultation Policy. Please review the document and send your comments by e-mail to **consultation@doi.gov**. You may also mail your comments to Ms. Mary Milam at 1849 C Street NW, MS 4141 – MIB, Washington, D.C. 20240. **All Tribal leaders' comments must be received by March 14, 2011.**

Following a close review of your comments, the public will have an opportunity to comment before the policy is finalized. This draft policy document will continue to undergo legal review and the joint Federal-Tribal team will help integrate the feedback we receive. Thank you for your interest and participation.

Sincerely,

(b)(6)

Laura Davis  
Deputy Chief of Staff

## DEPARTMENT OF THE INTERIOR POLICY ON CONSULTATION WITH INDIAN TRIBES

### I. PREAMBLE

The obligation for Federal agencies to engage with Indian Tribes on a government-to-government basis is based on the Constitution, treaties, statutes, executive orders, and policies. Federal agencies meet that obligation through consultation with Indian Tribes. The Department of the Interior satisfies its Tribal consultation obligations—whether directed by statute or administrative action such as Executive Order 13175 (*Consultation and Coordination with Indian Tribal Governments*) or other applicable Secretarial Orders or policies—by adhering to the framework described in this policy. This Policy reflects the Department’s highest commitment to the principles embodied in this policy and the Secretary’s support of Tribal sovereignty.

The Department’s Bureaus and Offices shall review their existing practices and revise them as needed to comply with the Department’s policy as described in this document. All Bureaus and Offices will report to the Secretary’s designee on their efforts to comply with this policy and as described in a companion Secretarial Order.

### II. GUIDING PRINCIPLES

This policy broadly defines provisions for improving the Department’s consultation processes with Indian Tribes to the extent that a conflict does not exist with applicable law or regulations.

This policy requires that the Department’s government-to-government consultation involve the appropriate Tribal Officials and appropriate Departmental officials. The appropriate Departmental officials are knowledgeable about the matters at hand, are authorized to speak for Interior, and have decision-making authority in the disposition and implementation of a policy or are a program manager or staff who can ensure that Tribal concerns will be brought forward to final decision makers in the event that the decision makers are not present at the consultation meeting. The appropriate Departmental official will have an obligation to identify consulting parties early in the planning process and allow a reasonable opportunity for Indian Tribes to respond and participate as described in Section VIII. Department officials will make the effort to fully participate in the consultation process, ensure continuity, and demonstrate commitment to the process.

Consultation is a deliberative process that aims to create effective collaboration and informed decision making where all parties share a goal of reaching a decision together and it creates an opportunity for equal input from all governments. Consultation promotes an enhanced form of communication that emphasizes trust, respect, and shared responsibility and should be an open and free exchange of information. Federal consultation that is meaningful, effective, and conducted in good faith makes the Department’s operation and governance practices more efficient. Efficiencies that derive from including Indian Tribes at all stages of the Tribal consultation process and decision making process, help to ensure that future Federal action is achievable, comprehensive, long lasting, and reflects Tribal input.

The United States has established a long-standing and inter-governmental relationship with Indian Tribes. Appropriate consultation practices will honor the government-to-government relationship between Indian Tribes and the United States; and will comply with President Barack Obama's Executive Memorandum that affirms this relationship and obligates the Department of the Interior to meet the spirit and intent of Executive Order 13175.

The policy creates a framework for synchronizing the Department's consultation practices with its Bureaus and Offices by providing an approach that applies in all circumstances where statutory or Administrative opportunities to consult with Indian Tribes exist.

### **III. DEFINITIONS**

- A. Bureau or Office – As defined in the Department of the Interior Manual.
- B. Collaboration –The Department of the Interior working jointly with Indian Tribes to develop and implement positive solutions on issues that have an effect on Indian Tribes.
- C. Consultation Policies – Those institutionalized policies established to comply with the procedures described in Section VIII of this document.
- D. Departmental Action with Tribal Implications – Regulation, rulemaking, policy, guidance, legislative proposal made by the Department, grant funding formula changes, or operational activity that may have a substantial direct effect on Tribe or Tribal members' traditional way of life, Tribal lands, Tribal resources, or access to traditional areas of cultural or religious importance on Federally-managed lands; or the ability of the Tribe to govern its members or to provide services to its members; or that may impact the Tribe(s) relationship with the Department or the distribution of responsibilities between the Department and Indian Tribes. This term does not include matters that are the subject of litigation or in settlement negotiations, or matters undertaken in accordance with an administrative or judicial order.
- E. Indian Tribe – An Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.
- F. Tribal Consultation Team – The Secretary's designee has established and may develop a plan of action for the continued involvement of a joint Federal-Tribal Team including making recommendations on the implementation of this policy.
- G. Tribal Governance Officer (TGO)– An individual designated by the Department to assure compliance with the entire scope of this policy and any future policies related to the Executive Order 13175. The role of the TGO is to promote consultation as described in Section VIII of this policy and promote collaboration as defined in this section. The TGO will: be appropriately located within the Department so that the position shall be accessible to Tribal Officials; ensure tribal interests are considered by Bureaus and Offices in conjunction with TLOs; ensure that all Department consultation efforts as described in Section VIII are documented and reported to the Department's Point of Contact under the President's Executive Memorandum on consultation; and, in particular,

oversee the effective implementation of this policy with coordination of consultations across Bureaus and Offices. The TGO will be identified as serving in the office named under the most recent Departmental Action Plan.

- H. Tribal Liaison Official (TLO) – Each Bureau or Office will have at least one person designated to fill the role of a Tribal Liaison Official. The TLO will: advocate for opportunities and positions of Indian Tribes consistent with agency missions; promote collaboration between Tribes and the Liaison’s Bureau or Office; when appropriate, reply to an Indian Tribe’s request for consultation as described in section VIII of this policy; and strive to enhance trusting and ongoing relationships with Indian Tribes consistent with applicable statutes, regulations, and executive orders.
- I. Tribal Officials – An elected or duly appointed Tribal leader or official delegate designated in writing by an Indian Tribe.

#### **IV. TRAINING**

Trainings will aim to improve the Department’s capacity for promoting collaboration with Tribes and executing the consultation provisions of Section VIII. Training will:

- a) Promote consultation, communication, collaboration, and other interaction with Tribes;
- b) Outline and reinforce Department duties concerning tribal interests; and
- c) Describe the legal, trust, and protective obligation of the Federal-Tribal relationship. Transfer the knowledge, skills, and tools necessary for collaborative engagement to Tribal and Departmental staff engaged in the consultative process;

The Department, through DOIU and other appropriate sources, will develop and deliver innovative training opportunities as described in the Section VII which includes training to improve sensitivity and understanding of traditional American Indian cultures and governments.

#### **V. COMMUNICATION**

Each Office or Bureau is responsible for meaningful communication with Indian Tribes that promotes regular and early consultation as described in Section VIII of this policy. Communication will be open and transparent without compromising the rights of federally recognized Indian Tribes and the government-to-government consultation process. Communication methods should avoid impersonal forms of communication, effectively gain the attention of individual Tribal leaders, build on best practices, and utilize appropriate forms of technology.

A Bureau or Office will notify Indian Tribes that an opportunity for consultation exists when considering a Departmental Action with Tribal Implications as described in Section VIII.

A Bureau or Office may appropriately communicate with Indian Tribes about a Departmental Action with Tribal Implications through the use of meetings, telephone conversations, written notice, or a combination of all three; and may enlist workgroups of Tribal leadership and representatives that are particularly useful for identifying issues. A Bureau or Office will identify

the participants in the consultation process including the decision makers and the affected Indian Tribes. A Bureau or Office will seek and promote cooperation and participation between agencies with overlapping jurisdiction, special expertise, or related responsibilities regarding a Departmental Action with Tribal Implications.

Following initial notification of the opportunity for consultation, on-going communications concerning issues affecting Indian Tribes are meant to promote regular consultation. On-going communication will include communication about the design of the consultation process, the execution of that process, and the process' conclusion. When consultation is appropriate, ongoing communication will continue until the conclusion of the requirements under this policy.

The Department recognizes the value of communicating through a regular gathering of Indian Tribes which are meant to continue the discussion on improving consultation practices and the government-to-government relationship generally.

## **VI. ACCOUNTABILITY AND REPORTING**

Methods that ensure accountability and reporting are essential to regular and meaningful consultation. The heads of Bureaus and Offices will include in future annual performance plans, a standard performance measure consistent with this policy.

On an annual basis, Bureaus and Offices shall report to the Secretary the results of their efforts to promote consultation with Indian Tribes. Reporting is intended to be comprehensive and may include, but is not limited to, the scope of consultation efforts, the cost of these efforts, and the effectiveness of consultation activities. Bureaus and Offices should provide a comprehensive listing of the topics on which consultations were held, training, innovations, and the engagement of senior leadership in these efforts.

Reports will account for the documents and correspondence with Indian Tribes to satisfy the Implementation of Final Federal Action Stage described in Section VIII or alternatively, summaries of such documents and correspondence with information concerning how the complete documents might be obtained. Methods of reporting may be both a description of budget expenditures in the execution of consultation efforts, narratives describing significant consultation efforts, and anticipation of forthcoming consultation opportunities.

The Secretary of the Interior will provide an annual report to Indian Tribes and may use the Department's website to share the reporting information where appropriate.

For Federal block grants that only Indian Tribes are eligible to receive and in compliance with Federal statutes, a Bureau or Office will take special care to disclose actions it has taken to consult with Indian Tribes in the development of formulas to administer the block grants.

## **VII. INNOVATIONS IN CONSULTATION PRACTICES**

The Department's leadership will strive to advance Federal consultation practices and offer examples for innovation across the Administration. The Department will identify and seek to address impediments, both external and internal, to improving its consultation processes. The Department may consider soliciting Indian Tribes' evaluation of consultation practices.

The Department's Bureaus and Offices will be open to consultation opportunities initiated by Indian Tribes and seek opportunities to consult by communicating regularly with Indian Tribes. Communication outside of consultation is encouraged to the extent that a conflict does not exist with Federal statutes and does not interfere with Federal obligations under the government-to-government relationship.

The Department leadership may identify opportunities to inform Legislators and other Federal officials, where appropriate, of the benefits of meaningful tribal consultation.

Each Bureau and Office is to acknowledge and comply with existing processes for notifying its staff about the provisions in the Department's consultation policy and identify opportunities to train individual Federal staff as well as Indian Tribal representatives in a manner that promotes inter-governmental relationships. Bureau and Office leadership shall seek permissible opportunities to share trainings among Federal and Tribal representatives and to highlight Tribal leader involvement.

Where significant conflict occurs between Indian Tribes and a Bureau or Office in the consultation process, Bureau and Office leaders in conjunction with the Solicitor's Office are encouraged to promote the use of collaborative problem-solving, facilitation, mediation, and other existing processes for conflict resolution as tools to utilize in the consultation process.

### **VIII. CONSULTATION GUIDELINES**

Consultation guidelines are meant to establish uniform practices and common standards, that all Bureaus and Offices will use, except when otherwise agreed to in writing by a Bureau or Office and Indian Tribe through an individual protocol conforming with the guidelines in this section. Consultation and individual protocols will provide greater efficiency and transparency in Department practices in order to maximize Indian Tribes' participation.

- A. *Initiating Consultation*— A Bureau or Office must notify the appropriate Indian Tribe(s), of the opportunity to consult, when considering a Departmental Action with Tribal Implications. The Bureau or Office will strive to ensure that a notice is given at least 30 days prior to a scheduled consultation. If exceptional circumstances prevent notice within 30 days of the consultation, explanation for the abbreviated notification will be provided in the invitation letter.

Adequate notice entails providing a description of the topic(s) to be discussed. Notification of a consultation should include sufficient detail of the topic to be discussed to allow Tribal leaders an opportunity to fully engage in the consultation. This does not mean that the Bureau or Office has reached a preliminary decision on the issue which is the topic of the consultation. However, the component should provide a brief discussion of the issues, a timeline of the process, and possible outcomes.

Beginning at the Initial Planning Stage, a Bureau or Office will consult with Indian Tribes on a Departmental Action with Tribal Implications.

An Indian Tribe may request the Department provide consultation when it believes that a Bureau or Office is considering a Departmental Action with Tribal Implications. Requests should be made in writing to the Department's TGO and describe the specific a Departmental Action with Tribal Implications. However, the fact that an Indian Tribe may choose not to engage the TGO does not relieve a Bureau or Office of its obligation to engage in consultation as described by this Policy. In the event that the Bureau or Office makes an attempt to initiate consultation and does not receive a response, the Bureau or Office should make reasonable and periodic efforts throughout the process to repeat the invitation.

- B. *Role of Tribal Governance Officer in Consultation Processes* — When a Bureau or Office provides notification of the opportunity for consultation, the Department's TGO will document the notice of consultation. The TGO may serve as the Department representative in requests by an Indian Tribe for consultation to occur. The TGO will encourage Indian Tribes to request consultation directly from the appropriate Bureau or Office representative and help to ensure the resolution of all requests. In consultation efforts that are of national significance or involve multiple Bureaus or Offices, the TGO will take steps necessary to facilitate a government-to-government relationship that is honored by all parties.
- C. *Guidelines for Response to Request for Consultation* —The TGO or appropriate representative will promptly confirm receipt of a request for consultation from a Tribal Official. When the request is directed to the TGO, the request is to be forwarded to the appropriate Bureau or Office. The TGO or appropriate representative will treat an official request for consultation in a manner similar to a letter received from a state governor and respond in writing, using the most expedient methods to communicate to the Tribe, that the Department has received their request.
- D. *Stages of Consultation*— Bureaus and Offices will carry out the stages described below in order to satisfy consultation for a Departmental Action with Tribal Implications. Consultation on a Departmental Action with Tribal Implications that are operational in nature—those that are regional and discrete actions, with impacts on a limited number of Indian Tribes—should be carried out consistent with this Section, but with discretion to utilize only those protocols of this Section that are appropriate to the operational action.

1. Initial Planning Stage

Each Bureau or Office will consult at this stage when possible in consideration of a Departmental Action with Tribal Implications.

Initial planning activities include efforts preparatory to issuance of draft regulations, administration proposals, legislation, and national or large-scale regional changes in procedures or policies. This would include project scoping, when incorporating the input of Indian Tribes is appropriate or required by statute or regulation.

A Bureau or Office may conduct a meeting or other forms of interaction with Indian Tribes in order to receive and evaluate comments received as part of the Initial Planning Stage.

## 2. Proposal Development Stage

The Proposal Development Stage begins once the Department discloses the scope of a Departmental Action with Tribal Implications. Indian Tribes should be considered as appropriate collaborative partners, particularly where negotiated rule-making or a Tribal Leader Task Force is created.

The Bureau or Office will select a process for the Proposal Development Stage that maximizes the opportunity for timely input by Tribes and is consistent with both Tribal and Bureau schedules. The Bureau or Office should work with Indian Tribes to structure a process, which to the extent feasible, considers specific Indian Tribal structures, traditional needs, and schedules of the Tribes and may proceed with the expectation that interested Indian Tribes will respond within a reasonable time period. If litigation or legal requirements impact a Bureau's or Office's schedule for conducting consultation, then the Bureau or Office should explain these constraints to the Indian Tribe.

Examples of appropriate processes for the Proposal Development Stage include but are not limited to the following:

- **Negotiated Rule Making.** Where appropriate, the Bureau or Office should consider using negotiated rule making for developing significant regulations or other formal policies in accordance with the Federal Advisory Committee Act (FACA).
- **Tribal Leader Task Force.** The Bureau or Office may use a Tribal Leader Task Force on matters that impact Tribes across the country where negotiated rule making is impractical. A Tribal Leader Task Force may also be used, in appropriate circumstances, on regional or issue-specific (e.g., timber) matters. In each instance, the composition of the Task Force shall be collaboratively determined by the Tribes, provided that the Task Force shall be a process open to all Tribes and, to the extent possible, represent a cross-section of Tribal interests with respect to the matter at issue. The number of meetings to be held and their location will conform to the expressed views of the Tribes, to the extent practicable and permitted by law and in accordance with FACA.
- **Series of Open Meetings.** The Bureau or Office may provide open invitations to Tribal leaders as part of a series of open meetings to consider action(s). Open meetings can be used for national, regional, or subject-matter specific issues.
- **Single Meetings.** The Bureau or Office may host Tribal leaders in a single meeting to discuss a federal action under consideration. Single meetings are particularly appropriate for local, regional, or single Tribe issues.

The Bureau or Office will solicit the views of affected Tribes regarding the process' timeline to meaningfully consider a Departmental Action with Tribal Implications. The Bureau or Office should make all reasonable efforts to comply with the expressed views of the affected Tribes regarding the process timeline at this Stage, taking into account the level of impact, the scope, and the complexity of the issues involved in the Departmental action with Tribal Implications, along with the other factors driving the schedule. The process will be open and transparent. If the Bureau or Office determines that the Administrative Procedure Act or other Federal law or regulation expressly prohibits continued discussion at a specified point in the decision-making process, the Bureau or Office should so inform the Tribes at the outset of this Stage in the process. The Bureau or Office may proceed with the expectation that interested Indian Tribes will respond within a reasonable time period during this Stage.

### 3. Implementation of Final Federal Action Stage

In addition to any formal notice required by law or regulation, final decisions on Department Action should be communicated in writing to affected Tribes, with a short explanation of the final decision.

A Bureau or Office may consider implementing a post-consultation review process where it is consistent with law, regulations, and Executive Order 13175. Any review process shall not limit the Department's deliberative process or privilege regarding internal considerations or any other applicable privilege.

The Bureau or Office at this Stage will consider the need for training or technical assistance on a new regulation or policy.

- E. *Impact of Consultation* - Consultation as described in this section is not a basis for the Department to preclude requests or recommendations by Bureaus, Offices, or Indian Tribes to collaborate and foster trusting relationships between the Department and Indian Tribes outside of the processes described in this section. Exigent circumstances may allow the Department to take measures that deviate from this policy, but the Department should make every effort to comply and should explain to Indian Tribes as soon as emergency circumstances arise.

## **IX. SUPPLEMENTAL POLICIES**

Bureaus and Offices, in collaboration with the TGO, are to review existing policies that may be impacted by this policy. All Bureau and Office policies are to conform to the Department policy. Where necessary, a Bureau or Office may develop a new policy in order to conform to this policy.

Consistent with Federal appropriations law, the Department shall develop a policy for consultation with Alaska Native Corporations. The policy will address when a Department action impacts an Alaska Native Corporation's interest. The policy will not conflict with the

requirements of this document. The Secretary's designee will provide a Plan of Action for developing the Alaska Native Corporation consultation policy.

Other entities that are not Bureaus or Offices as defined in this policy may develop policies that conform to this policy. Other entities may develop such policies in coordination with the Secretary's designee.

## **X. DISCLAIMER**

Except to the extent already established by statute, this Policy is intended only to improve the internal management of the Department, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the Department or any person. The Department also does not waive any applicable privilege or immunity that it may hold by virtue of this Policy.



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**JUN 12 2012**

Dear Tribal Leader:

Thank you for your work to improve the quality of education for schools serving our Nation's tribal communities. While progress is being made by dedicated leaders and educators, the academic achievement of students attending schools funded by the Bureau of Indian Education (BIE) is a topic of shared concern. Sadly, students in BIE-operated and tribally-controlled schools achieve significantly below the national norms in reading and math. Bold action is required to correct this situation.

We write today to invite consultation about a proposal that would help BIE achieve the objectives of President Obama's Executive Order 13592 (White House Initiative) concerning improving educational opportunities provided to American Indian and Alaska Native students. This proposal would allow BIE to utilize an accountability system based on a unitary set of academic standards and assessments in BIE-funded schools, rather than the current system that is based on 23 states' standards and assessments. BIE and the U.S. Department of Education have been in discussions about how BIE can be part of a major initiative taking place across the nation. This effort is specifically designed to improve educational opportunities for elementary and secondary school students, adequately measure their progress, take action to help students improve academically, and prepare students for college or careers after graduation. Consistent with the objectives of the White House Initiative, BIE would like to participate in this effort to ensure that all students in BIE-funded schools are given educational opportunities to help them succeed.

In February 2012, the U.S. Department of Education began granting flexibility waivers from the No Child Left Behind Act of 2001 (NCLB) to 19 states. Eighteen additional states and the District of Columbia have submitted flexibility waiver requests, with decisions expected soon. BIE understands that additional states intend to submit flexibility waiver requests but have not yet done so. In exchange for these flexibility waivers, the states have agreed to implement bold reforms around standards and accountability, which include raising standards, improving accountability, and generally implementing essential changes to improve teacher effectiveness. The U.S. Department of Education's decision to provide these flexibility waivers followed extensive efforts to work with Congress to amend requirements that the NCLB introduced into the Elementary and Secondary Education Act of 1965 (ESEA). The ESEA is five years overdue for reauthorization.

For BIE, flexibility waivers from the NCLB accountability mandates are especially necessary because BIE-funded schools are measured against the accountability standards of the states in which they are located. In essence, BIE implements 23 accountability systems for BIE-funded schools. The unintended consequence of this scheme is that BIE must calculate adequate yearly progress (AYP) annually using 23 sets of standards and assessments resulting in a situation where student achievement data cannot be compared across all BIE-funded schools. The

progress (AYP) annually using 23 sets of standards and assessments resulting in a situation where student achievement data cannot be compared across all BIE-funded schools. The flexibility waivers the Department of Education is granting to states will pose additional challenges as the waivers will allow states to move to entirely new and disparate accountability systems beginning in the 2012-2013 school year. This will make it impossible for BIE to meaningfully assess student achievement across all BIE-funded schools.

Therefore, the BIE would like to consult on adopting a unitary accountability system for use in all BIE-funded schools. For example, Common Core Standards could serve as the foundation for the accountability system, and accompanying growth model assessments could measure the performance of schools toward meeting incrementally-increasing targets. The BIE's approach to teaching and learning would be standardized and strengthened as a result of reforms implementing common standards, curriculum, instruction, and assessments. This measure would give BIE an exceptional opportunity to improve the quality of instruction and increase student achievement.

The BIE would also like to consult on the actions it and the Department of Education could take to implement such a unitary accountability system. The actions under consideration include:

- The BIE could obtain ESEA flexibility waivers from the Department of Education, consistent with the flexibility waivers it grants to states;
- Upon approval of the BIE's flexibility waiver request, BIE will adopt an interim final rule to offer a unified accountability system across all BIE-funded schools in time for the 2012-2013 academic year, pending a negotiated rulemaking procedure to permanently modify the definition of AYP in BIE's regulations;
- Alternatively, if the Department of Education grants BIE's flexibility waiver request, the BIE could also request that the Department of Education waive the negotiated rulemaking requirement of NCLB to allow BIE to modify its regulations, through the notice-and-comment rulemaking procedures set forth in the Administrative Procedure Act, 5 U.S.C. § 553, to be consistent with the reforms outlined above.

Four consultation sessions are scheduled to discuss the BIE proposal:

Tuesday, July 17, 2012  
8:00 A.M. – 12:00 P.M.  
Magnuson Hotel and Meridian Convention Center  
737 S Meridian Ave.  
Oklahoma City, Oklahoma 73108

Friday, July 20, 2012  
8:00 A.M. – 12:00 P.M.  
Radisson Woodlands Hotel Flagstaff  
1175 W Route 66  
Flagstaff, Arizona 86001

Tuesday, July 24, 2012  
8:00 A.M. – 12:00 P.M.  
Renaissance Seattle Hotel  
525 Madison Street  
Seattle, Washington 98104

Friday, July 27, 2012  
8:00 A.M. – 12:00 P.M.  
Best Western Plus Seven Seas Hotel  
611 Old Red Trail  
Mandan, North Dakota 58554

Information about the BIE ESEA flexibility waiver request will be available on the following websites: [www.bie.gov](http://www.bie.gov) and [www.eseaconsultation@bie.edu](http://www.eseaconsultation@bie.edu).

Comments may be submitted by email to: [eseaconsultation@bie.edu](mailto:eseaconsultation@bie.edu), or by U.S. mail to: BIE ESEA Flexibility Waiver Request Comments, Office of the Assistant Secretary - Indian Affairs, U.S. Department of the Interior, Mail Stop 4141 MIB, Washington, DC 20240. Comments will be accepted through August 6, 2012.

Questions concerning the BIE ESEA flexibility waiver request should be sent to Dr. Jeffrey Hamley at [jeffrey.hamley@bie.gov](mailto:jeffrey.hamley@bie.gov).

Sincerely,

(b)(6)

A rectangular box with a black border, used to redact the signature of the official. The text "(b)(6)" is written in the top-left corner of the box.

Donald E. Laverdure

Acting Assistant Secretary-Indian Affairs

# Bureau of Indian Education



## Tribal Consultation

on the

### BIE ESEA Flexibility Request

**Tuesday, July 17, 2012**

**8:00am –12:00pm**

Magnuson Hotel and Meridian  
Convention Center  
737 S. Meridian Ave.  
Oklahoma City, OK 73108  
(405) 942-8511

**Friday, July 20, 2012**

**8:00am –12:00pm**

Little America Hotel \*  
2515 E. Butler Avenue  
Flagstaff, AZ 86004  
(928) 779-7900

**Tuesday, July 24, 2012**

**8:00am –12:00pm**

Renaissance Seattle Hotel  
515 Madison Street  
Seattle, WA 98104  
(206) 583-0300

**Friday, July 27, 2012**

**8:00am –12:00pm**

United Tribes Technical College \*  
3315 University Dr.  
Bismarck, ND 58504  
(701) 255-3285

\*These two meeting locations have been changed from the

Tribal Leader Letter dated June 12, 2012.



**Tribal Consultations**  
**Draft ESEA Flexibility Request**  
 Bureau of Indian Education, U.S. Department of the Interior

**Tribal Consultations**  
**Oklahoma City, OK - July 17, 2012**  
**Flagstaff, AZ – July 20, 2012**  
**Seattle, WA – July 24, 2012**  
**Bismarck, ND – July 27, 2012**

**Agenda**

|                         |  |
|-------------------------|--|
| 7:30 a.m.               | Registration   |
| 8:00 a.m. – 8:15 a.m.   | Opening Blessing   |
| 8:15 a.m. – 8:30 a.m.   | <p><b>Introduction and Opening Remarks – Review of BIE ESEA Flexibility Request.</b></p> <p>Brian Drapeaux, Acting Director, <i>Bureau of Indian Education</i></p> <p>Dr. Jeffrey Hamley, Associate Deputy Director, <i>Division of Performance and Accountability, Bureau of Indian Education</i></p> <p>Brian Bough, Supervisory Education Specialist, <i>Division of Performance and Accountability, Bureau of Indian Education</i></p> |
| 8:30a.m. – 10:30 a.m.   | Elected Tribal Leader Statements – Recommendations to the draft BIE ESEA Flexibility Request   |
| 10:30 a.m. – 10:45 a.m. | Break – 15 min   |
| 10:45 a.m. – 11:40 a.m. | Public Comment – Recommendations to the draft BIE ESEA Flexibility Request   |
| 11:40 a.m. – 11:50 a.m. | <p><b>Closing Remarks</b></p> <p>Brian Drapeaux, Acting Director, BIE</p> <p>Dr. Jeffrey Hamley, Associate Deputy Director, BIE</p>  |
| 11:50 a.m. – 12:00 p.m. | <p><b>Closing Ceremony</b></p> <p>Closing Blessing</p>   |

# **BIE ESEA Flexibility Request: Summary of Key Provisions**

**Bureau of Indian Education  
U.S. Department of the Interior**

## **Tribal Consultations**

*Oklahoma City, OK - July 17, 2012*

*Flagstaff, AZ – July 20, 2012*

*Seattle, WA – July 24, 2012*

*Bismarck, ND – July 27, 2012*

# Discussion

- No Child Left Behind (NCLB)/ ESEA
  - Background
- Challenges for BIE under NCLB/ESEA
  - Negotiated Rulemaking
  - 23 States' Accountability System
- ESEA Flexibility Request
  - USDOE Flexibility Offer
  - Principles of Flexibility Request
- Overview of BIE's Flexibility Request
  - BIE's New Accountability System
- Benefits of ESEA Flexibility for BIE
- Conclusion
  - Where to access the waiver proposal
  - How to submit comments

# No Child Left Behind (NCLB)/ESEA

- NCLB is the 2001 Reauthorization of the Elementary and Secondary Education Act (ESEA).
- Established school accountability systems based primarily on state standard assessments.
- Required all students to meet rigorous testing targets in reading/language arts and mathematics.
- Set 2014 for 100% student proficiency in reading/language arts and mathematics.

# Current Challenges for BIE under NCLB/ESEA

- NCLB mandated a Negotiated Rulemaking process to decide how BIE would implement NCLB.
- Negotiated Rulemaking final regulations directed the BIE to use the academic content standards, assessments, and accountability criteria of the state where the school is located.
- BIE consequently has 23 definitions of Adequate Yearly Progress.

# Why is the ESEA Flexibility Request needed?

- ESEA reauthorization now 5 years overdue.
- Secretary of Education Duncan offered flexibility from NCLB/ESEA provisions to states.
- In exchange for waivers, states committed to bold reforms around standards and accountability:
  - Raising standards
  - Improving accountability
  - Improving teacher effectiveness
- 18 of 23 states where BIE funds schools have applied for or received flexibility.

# ESEA Flexibility's Four Principles

BIE's Flexibility Request demonstrates how it will use this flexibility to implement the following principles:

- Principle 1: College-and career-ready expectations for all students
- Principle 2: State-developed differentiated recognition, accountability, and support
- Principle 3: Support for effective instruction and leadership
- Principle 4: Reducing duplication and unnecessary burden

# Principle 1: Standards and Assessments

- Adopt Common Core Standards, initially in reading/language arts and mathematics.
- Up to 15% standards to reflect tribal values.
- Employ a single assessment system for all BIE-funded schools.
- Assessment:
  - Assess all students 3 times per year
  - Assess grades 3-10 for accountability
  - Assessments used to establish growth targets

# Principle 2: Differentiated Recognition, Accountability, and Support Systems

- New Differentiated Recognition system established: Reward, Focus, and Priority.
- New Accountability Index scoring indicators:
  - Proficiency: Student Performance on academic assessments relative to a standard
  - Progress: Growth in student achievement across the academic year
  - Attendance (K-8) and Graduation (10-12) rates
- Reset “Annual Measurable Objectives” (AMO).
- Provides supports for lowest performing schools and rewards for high-performing schools.

# Principle 3: Teachers and Principals

- Develop evaluation and support systems:
  - Focus on effectiveness of teachers and principals
  - Inform professional development and improved practice
- Evaluation and support systems:
  - Interior policy for BIE-operated schools
  - Optional for tribally-controlled schools, except recipients of certain funds (i.e., SIG)
- Student growth data on current students:
  - Teachers of reading/language arts and mathematics

# Principle 4: Reducing Duplication & Unnecessary Burden

- Evaluate current SEA's administrative requirements:
  - Identify reporting requirements with little or no impact on student outcomes
- Based on outcome of evaluation:
  - Remove duplicative and burdensome reporting requirements
  - Lessen burden on schools

# Overview of BIE's Flexibility Request

- BIE intends to apply for a flexibility waiver.
- BIE first must amend 25 CFR 30.104(a), which requires the use of the 23 state accountability systems.
- Instead, BIE will implement a single, bureau-wide accountability system.
- Stakeholder input and tribal consultation are key components.
- BIE seeks input from tribal leaders about amending 25 CFR 30 and implementing a unified accountability system.

# Benefits of ESEA Flexibility

- Student achievement becomes the focus.
- Accountability determinations will be more reflective of school performance.
- Unified accountability system – standards, assessments, and accountability criteria – will level the playing field for all BIE schools.
- The accountability system will credit successful efforts and be less punitive.
- Alignment in accountability will allow BIE to better leverage Technical Assistance and Professional Development resources.

# Benefits of ESEA Flexibility

- Waiver is opportunity to effect significant reforms in BIE-funded schools, consistent with national reform movement.
- Most significant reform is unified accountability system across all BIE-funded schools in 23 states, consisting of:
  - Common Core Standards
  - Common assessments
  - Common accountability methodology

# Conclusion

- Questions and clarifications
- Websites for BIE ESEA Flexibility Request:  
<http://www.bie.edu> (BIE)  
<http://www.bia.gov/WhoWeAre/AS-IA/Consultation/index.htm> (DOI)
- Dedicated email address to submit comments:  
[eseaconsultation@bie.edu](mailto:eseaconsultation@bie.edu)
- Comments deadline is July 31, 2012.



## NEWS

### [Nominations for BIE National Advisory Board for Exceptional Children](#)

Nominations for the BIE National Advisory Board for Exceptional Children will be accepted until September 1, 2012. Please email application to [sue.bement@bie.edu](mailto:sue.bement@bie.edu) or fax application attention Sue Bement to (505) 563-5281. For questions regarding the Advisory Board applications, call Sue Bement at (505) 563-5274.

### [BIE ESEA Flexibility Request Documents](#)

BIE is requesting flexibility from certain provisions of NCLB. BIE has prepared a draft Flexibility Request outlining reforms designed to improve the quality of education for students attending BIE-funded schools. The Flexibility Request is being widely circulated for stakeholder input. Please access the document and provide feedback by June 30th for use in revising the document before submission to the U.S. Department of Education. Related documents:

- [Summary of BIE ESEA Flexibility Request \(13 pgs.\)](#)
- [Draft BIE ESEA Flexibility Request](#)

### [611 Grant – Invitation for Proposals](#)

Tribally-Operated Schools Only

### [Closure of Contracts Funded by REPP - memodated 12/08/2011](#)

### [Request to Carry Over 100% of the FY 2009 SIG Funds Available to LEAs to Compete with FY 2010 SIG Funds](#)

Letter to Assistant Secretary Dr. Thelma Melendez dated August 26, 2011. School comment period closes on September 2, 2011.

## EVENTS

### [BIE Flyer of Consultation Dates on BIE Streamlining](#)

BIE Flyer with Consultation locations and dates for BIE Streamlining.

### [Seattle Education Line Office Job Fair](#)

6/26/2012 Seattle, WA

### [Green Ribbon Schools Announcement](#)

### [BIE-Funded Schools to Have Opportunity to Participate in ED Green Ribbon Schools Program](#)

Press Release -- Corrected Release

### [DPA Calendar of Activities SY 2010-2011](#)

Division of Performance and Accountability  
Calendar of Activities SY 2010-2011

## CONSULTATIONS

See the latest BIE consultation items

## MISSION

As stated in Title 25 CFR Part 32.3, BIE's mission is to provide quality education opportunities from early childhood through life in accordance with a tribe's needs for cultural and economic well-being, in keeping with the wide diversity of Indian tribes and Alaska Native villages as distinct cultural and governmental entities. Further, the BIE is to manifest consideration of the whole person by taking into account the spiritual, mental, physical, and cultural aspects of the individual within his or her family and tribal or village context.

### [Native Star](#)

The Center for Innovation and Improvement web-based tool for educators.

### [New Annual Report Website Address](#)

The Annual Report web site has been migrated to the BIE.edu domain. Please use this web address to get to the Annual Report:  
<http://www.ar.bie.edu>

## 2012 BIE SUMMER INSTITUTE



**INDIAN COUNTRY**

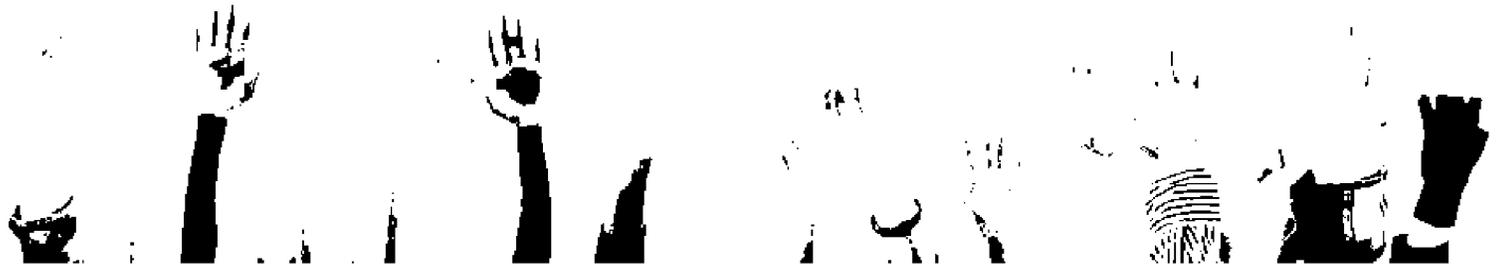
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## CONSULTATIONS

### **Bureau of Indian Education (BIE) Streamlining Consultations**

In tandem with the Indian Affairs consultations, the Bureau of Indian Education is consulting on the following items:

- **BIE Streamlining Plan**
  - [BIE Streamlining PowerPoint](#)
  - [BIE Organizational Chart](#)
  - [Chapter 8 of the Departmental Manual establishing the Bureau of Indian Education](#)
  - [List of Schools](#) by Associate Deputy Director
  - [FY 2011 Funding Level Chart](#)
- **Johnson O'Malley (JOM) Student Count Update**
  - [Summary Sheet concerning JOM Student Count](#)
  - [Summary Sheet for Public Law 100-297, Tribally Controlled School Grants Assurances](#)

Note: The Bureau of Indian Education has completed its tribal consultations on the JOM Student Count Update. As requested by Congress, BIE is asking JOM contractors and providers to update their number of eligible Indian students receiving JOM program services. BIE will be accepting the updated JOM Counts through October 31, 2012. See memorandum and spreadsheet below for specific instructions.

- [JOM Count Memorandum](#) to BIE Field Offices dated May 31, 2012
- [JOM Count Spreadsheet](#) (Adobe pdf) [JOM Student Count Spreadsheet](#) (MS Excel)(Format to use for 2012 Update to the JOM Student Count)
- [1995 JOM Student Count Spreadsheet](#)
- [Update on 2012 JOM Student Count Memorandum](#), dated July 24, 2012
- **Public Law 100-297 Assurance Statement**
  - [Draft Assurances - Focus Group Document](#)
  - [Tribal Consultation Agenda](#)

### **BIE - U.S. Department of Education -- Memorandum of Understanding**

- [Press Release](#)
- [Dear Tribal Leader Letter dated April 16, 2012](#)
- [Memorandum of Understanding signed in 2005](#)
- [Draft Memorandum of Understanding \(MOU\)](#)
- [MOU Appendix](#)

#### Consultation Meeting Minutes – MOU

- [Lincoln, California](#) -- May 18, 2012
- [Flagstaff, Arizona](#) -- May 24, 2012
- [Bloomington, Minneapolis](#) -- May 31, 2012
- [Nashville, Tennessee](#) -- June 5, 2012

### **BIE Flexibility Waiver Request from sections of the No Child Left Behind Act of 2001**

- [Draft BIE ESEA Flexibility Request](#)
- [Dear Tribal Leader Letter dated June 15, 2012](#)
- Meeting hotels were changed for the July 20 and July 27 consultations. Please [click on this link](#) for updated material.
- [Summary of BIE ESEA Flexibility Waiver Request](#)
- [PowerPoint of BIE ESEA Flexibility Waiver Request](#)

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## **BIE ESEA Flexibility Request Documents**

BIE is requesting flexibility from certain provisions of NCLB. BIE has prepared a draft Flexibility Request outlining reforms designed to improve the quality of education for students attending BIE-funded schools. The Flexibility Request is being widely circulated for stakeholder input. Please access the document and provide feedback by June 30th for use in revising the document before submission to the U.S. Department of Education.

Related documents:

- [Summary of BIE ESEA Flexibility Request \(13 pgs.\)](#)
- [Draft BIE ESA Flexibility Request](#)

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## CURRENT TRIBAL CONSULTATIONS

### Indian Affairs Administrative Organizational Assessment

Tribal Consultation Meeting Minutes

April 26, 2012 - Tribal Consultation Meeting on Administrative Assessment, BIA & BIE Streamlining, Airway Heights, Washington - pdf 1.226 kb

April 27, 2012- Johnson O'Malley Student Count Update and Draft SF-424B Assurance Statements - pdf 432 kb

April 19, 2012- Tribal Consultation Meeting on Administrative Assessment, Fort McDowell, Arizona - 1,597kb

April 20, 2012 - Tribal Consultation Meeting, Fort McDowell Arizona - pdf 855 kb

April 12, 2012 - Volume 1, Miccosukee Resort and Gaming, Miami, Florida - pdf 691 kb

May 10, 2012 - Volume 2, Choctaw Casino Resort, Durant Oklahoma - pdf 572 kb

May 3, 2012 - Rapid City, South Dakota - pdf 2,237 kb

May 4, 2012 - Rapid City, South Dakota - pdf 826 kb

May 17, 2012 - Lincoln, California - pdf 1,423 kb

May 18, 2012 - Lincoln, California - pdf 1,174 kb

May 23, 2012 - Anchorage, Alaska - pdf 852 kb

Final Report: Examination, Evaluation, And Recommendation for Support Functions - March 2012 - pdf 3.17 mb - [click here to download the report.](#)

Tribal Leader Letter, April 16, 2012 - Anchorage, AK Consultation Meeting Information - pdf 39kb

Tribal Leader Letter - Administrative Organizational Assessment Report - March 6, 2012 - pdf 617kb

Tribal Leader Letter - Administrative Organizational Assessment Report Consultation Schedule - March 26, 2012 - pdf 43 kb

Executive Summary for Tribal Consultations - April/May 2012 - pdf 233kb

Assessment Study Recommendations - April / May 2012 - 1, 126kb

Tribal Consultations Agenda - April / May 2012 - pdf 86kb

### BIA Streamlining Tribal Consultations

## REGIONS



Click the map to view our regions and their office contact information and the tribes served by that region

- ✦ [AS-IA Home](#)
- ✦ [Government-to-Government Consultations](#)
- ✦ [Presidential and BIA Consultation Documents](#)
- ✦ [Archived Consultation Material](#)

BIA Tribal Consultations Agenda - April / May 2012 - pdf 86kb

BIA Tribal Consultations Briefing Document - April / May 2012 - pdf 5, 387kb

Tribal Consultations Agenda - April / May 2012 - pdf 86kb

### BIE Streamlining Tribal Consultations

Summary Sheet for Assurances P.L. 100-297 Tribally Controlled School Grants - pdf 78kb

Draft Assurances Focus Group Document - pdf 90kb

Johnson-O'Malley Update on BIE Count Program Funding - pdf 11kb

Tribal Consultations Agenda - April / May 2012 - pdf 86kb

BIA Tribal Consultations Agenda - April / May 2012 - pdf 86kb

## **Bureau of Indian Education - U.S. Department of Education Memorandum of Understanding**

Tribal Letter, April 16, 2012 - BIE-U.S. Department of Education MOU Consultation - pdf 596kb

Memorandum of Understanding - pdf 362kb

MOU-Appendix - pdf 45kb

### **Consultation Meeting Minutes**

Nashville, TN - May 18, 2012 - pdf 221 kb

Flagstaff, Arizona - May 24, 2012 - pdf 494 kb

Bloomington, Minnesota - May 31, 2012 - pdf 250 kb

Lincoln, California - June 5, 2012 - pdf 1.14 mb

## **BIE Flexibility Waiver Request from sections of the No Child Left Behind Act of 2001**

- Draft BIE ESEA Flexibility Request
- Dear Tribal Leader Letter dated June 15, 2012
- Meeting hotels were changed for the July 20 and July 27 consultations. Please click on this link for updated material.
- Summary of BIE ESEA Flexibility Waiver Request
- PowerPoint of BIE ESEA Flexibility Waiver Request

## **Buy Indian Act**

Federal Register Notice - Acquisition Regulations; Buy Indian Act; Procedures for Contracting - July 26, 2012, pdf 250 kb

Dear Tribal Leader Letter on consultation schedule, locations and dates - June 29, 2012 - pdf 779 kb

Archived Material

## **Sacred Sites on Federal Lands**

Dear Tribal Leaders Letter - July 27, 2012 - pdf 406 kb

Federal Register Notice on Listening Sessions - July 27, 2012 - pdf 312 kb

Proposed Revisions to the Leasing Regulations to 25 CFR 162

## Transcripts of Consultation Sessions

Tribal Leasing Consultation Session - Seattle, WA, January 10, 2012 - pdf 385 kb

Tribal Leasing Consultation Session - Palm Springs, CA, January 12, 2012 - pdf 948 kb

Tribal Leasing Consultation Session - Rapid City, SD, January 18, 2012 - pdf 264 kb

Tribal Leaders Letter - November 28, 2011 - pdf 934 kb

Proposed Rule - Federal Register - pdf 365 kb

Supplemental Proposed Residential, Business, and Wind and Solar Leasing Regulations - pdf 77kb

Response to Comments Received During Tribal Consultation - pdf 149 kb

Leasing Comparison Chart Between Current Leasing Rule and Proposed Leasing Rule - pdf 49 kb

Frequently Asked Questions on Proposed Leasing Regulations - pdf 62 kb

Redlined Version of the Proposed Part 162 Leases and Permits - pdf 955kb

### Draft Regulations that would Establish Subparts to 25 CFR 162 (Leases and Permits)

For review and input, draft regulations that would establish subparts to 25 CFR 162 (Leases and Permits) addressing residential leasing, business leasing, and wind and solar permitting and leasing.

#### Consultation Meeting Transcripts

Las Vegas, NV - March 17, 2011 - pdf 392 kb

Minnesota - March 31, 2011 - pdf 180 kb

Albuquerque, NM - April 6, 2011 - pdf 173 kb

- Tribal Leaders Letter - pdf
- Draft Leasing Regulations - pdf
- Preliminary Draft of Part 162 - Leases and Permits (Purpose, Definitions, and Scope) - pdf

### Categorical Exclusion on National Environmental Policy Act (NEPA)

Tribal Leader Letter - March 7, 2012 - pdf 77kb

Justification for Establishing a Categorical Exclusion for Scattered Single-Family Homesites - pdf 508kb

### Draft Indian Affairs Manual (IAM), BIE Health and Wellness Policy for K-12 Schools

Tribal Leaders Letter - April 7, 2011 - pdf

IAM Health and Wellness in Bureau of Indian Education(BIE) Schools, K-12 - pdf

Appendix A - Health and Wellness Resources for Schools - pdf

### DOI Revising and Streamlining the Current Strategic Plan for FYs' 2011 to 2016.

The Department of the Interior is in the process of revising and streamlining the current Strategic Plan for fiscal years 2011-2016. The Plan is used as a roadmap for the Department, and a means of communication its goals and specific commitments to the public, stakeholders, and employees.

To get the entire Tribal Leaders Letter and consultation schedule click [here](#).

### Review of the "Current Guidance and Regulatory Standards" for Taking Land Into Trust for Gaming Purposes

On July 18, 2010, Secretary Salazar issued a directive recommending a thorough review of the "current guidance and regulatory standards" used to make decisions for two-part determinations under Section 20(b)(1)(A) or IGRA, 25 U.S.C. 2719(b)(1)(A). In accordance with the Secretary's directive, and with keeping with Interior's commitment to government-to-government consultation, we are engaging tribal governments on: (1) the January 3, 2008 Memorandum regarding Guidance on Taking Off-reservation

land into Trust for Gaming purposes; (2) the need to revise any of the provisions of 25 C.F.R. 292, Subpart A and Subpart C; and (3) whether the Department's process of requiring compliance with 25 C.F.R. Part 151 comes before or after the two-part determination.

To get the entire Tribal Leaders Letter and consultation schedule click [here](#).

January 3, 2008 Memorandum

### **DOI Tribal Consultation Policy**

- Signed Secretarial Order No. 3317 - Department of the Interior Policy on Consultation with Indian Tribes - December 1, 2011 - pdf 533 kb
- News Release - Secretary Salazar, Assistant Secretary Echo Hawk Launch Comprehensive Tribal Consultation Policy - December 1, 2011 - pdf 34 kb
- Draft Department of the Interior Policy on Consultation with Indian Tribes - January 14, 2011
- Secretary Salazar, Assistant Secretary Echo Hawk Submit Draft Consultation Policy to Tribal Leaders Press Release - January 14, 2011

In November 2009, the Department of the Interior announced efforts to develop its department-wide tribal consultation policy in accordance with the President's Executive Memorandum of November 5, 2009 implementing Executive Order 13175. Click on the links to download the following documents:

- The [letter](#) to tribal leaders dated November 23, 2009 in .pdf format.
- The news [release](#) dated November 25, 2009 in .pdf format.

### **Initial Consultation Sessions: December 2009 and January 2010**

The Department held tribal consultation sessions in December 2009 and January 2010 on developing DOI's tribal consultation policy. For more information, click on the links to download the following documents:

- The letter to tribal leaders dated November 23, 2009 in .pdf format.
- The news release dated December 2, 2009 in .pdf format.

The deadline for written comments was no later than January 15, 2010 by email to [tribalconsultation@bia.gov](mailto:tribalconsultation@bia.gov) or by postal service to the Office of the Assistant Secretary-Indian Affairs, U.S. Department of the Interior, 1849 C St., N.W., MS-4141-MIB, Washington, D.C. 20240.

### **Nominations for DOI Tribal Consultation Team Members**

In March 2010, the Department requested nominations from the federally recognized tribes of tribal officials or delegates from each BIA region for the DOI Tribal Consultation Team. The Team will draft the Department's tribal consultation policy in accordance with its plan of actions to implement the President's Executive Memorandum on Executive Order 13175. Click on the links to download the following documents:

- The [letter](#) to tribal leaders dated March 22, 2010, in .pdf format.
- The DOI [Plan](#) to Develop a Tribal Consultation and Coordination Policy.
- The DOI Consultation Team Nomination [Form](#).

The deadline for submitting nominations to the BIA Regional Directors was April 30, 2010. The nominations were to be sent to the BIA Regional Director appropriate to the submitting tribe at his or her Regional Office address.

### **Announcement of DOI Tribal Consultation Team Members**

In a letter to tribal leaders dated August 19, 2010, the Department announced the members of the DOI Tribal Consultation Team. The Team is comprised of DOI officials and tribal representatives who will be involved in the process of drafting DOI's department-wide tribal consultation policy. Click on the link to download the following document:

- The [letter](#) to tribal leaders dated August 19, 2010 in .pdf format.
- BIA Tribal Consultations Agenda - April / May 2012 - pdf 86kb

Dear Tribal Leader Letter for BIE consultation on streamlining - June 12, 2012 - pdf 262 kb

BIE Flyer with updated dates and locations for BIE Consultation on Streamlining - June, 2012 - pdf 40 kb

## Hamley, Jeffrey

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**From:** Hamley, Jeffrey  
**Sent:** Friday, June 01, 2012 4:13 PM  
**To:** ELOs - All  
**Cc:** Roessel, Charles (charles.roessel@BIE.EDU); Bart Stevens (bart.stevens@bie.edu); Roxanne Brown (roxanne.brown@bie.edu)  
**Subject:** Request for stakeholder input into BIE Flexibility Request

ELOs -

I am writing to request your input into the ***BIE's Flexibility Request***, which will be submitted to the U.S. Department of Education. The Department of Education has offered states the opportunity to apply for flexibility on certain provisions of the federal Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB). In exchange for flexibility waivers, applicant states have agreed to implement bold reforms around standards and accountability defined by four principles:

- 1) College- and career-ready expectations for all students;
- 2) Differentiated recognition, accountability, and support;
- 3) Support for effective instruction and leadership; and
- 4) Reduced duplication and unnecessary burden

The Bureau of Indian Education (BIE) is requesting flexibility from provisions of NCLB. **Stakeholder input into the waiver request is a key part of the process and will be used to revise the Flexibility Request.** If granted by the Department of Education, the Flexibility Request would give BIE an exceptional opportunity to improve the quality of instruction and increase student achievement in BIE-funded schools.

The ***draft BIE ESEA Flexibility Request*** and related documents are available at the BIE website: <http://www.bie.edu>



Comments may be submitted by email to: [eseaconsultation@bie.edu](mailto:eseaconsultation@bie.edu), or by U.S. mail to: BIE ESEA Flexibility Request Comments, Office of the Assistant Secretary – Indian Affairs, U.S. Department of the Interior, Mail Stop 4141 MIB, Washington, DC 20240. Comments will be accepted through June 30, 2012.

Questions: contact Jeffrey Hamley at [jeffrey.hamley@bie.edu](mailto:jeffrey.hamley@bie.edu) or (202) 208-4397.

Thank you.

**<<< See attached flyer – please share and distribute widely >>>**

Jeffrey Hamley, Ed.D.  
Associated Deputy Director  
Division of Performance & Accountability  
WA/DC: (202) 208-4397  
ABQ/NM: (505) 563-5260  
Cell: (b)(6)

## Hamley, Jeffrey

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**From:** Hamley, Jeffrey  
**Sent:** Friday, June 01, 2012 4:24 PM  
**To:** Principals - All BIE-Op  
**Subject:** Request for stakeholder input into BIE Flexibility Request  
**Attachments:** BIE-op Schools-Comment flyer\_060112-Sent.pdf

Principals:

I am writing to request your input into the ***BIE's Flexibility Request***, which will be submitted to the U.S. Department of Education. The Department of Education has offered states the opportunity to apply for flexibility on certain provisions of the federal Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB). In exchange for flexibility waivers, applicant states have agreed to implement bold reforms around standards and accountability defined by four principles:

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Comments may be submitted by email to: [eseaconsultation@bie.edu](mailto:eseaconsultation@bie.edu), or by U.S. mail to: BIE ESEA Flexibility Request Comments, Office of the Assistant Secretary – Indian Affairs, U.S. Department of the Interior, Mail Stop 4141 MIB, Washington, DC 20240. Comments will be accepted through June 30, 2012.

Questions: contact Jeffrey Hamley at [jeffrey.hamley@bie.edu](mailto:jeffrey.hamley@bie.edu) or (202) 208-4397.

Thank you.

**<<< See attached flyer – please distribute widely to teachers, staff,  
school board, students >>>**

Jeffrey Hamley, Ed.D.  
Associated Deputy Director  
Division of Performance & Accountability  
WA/DC: (202) 208-4397  
ABQ/NM: (505) 563-5260  
Cell: (b)(6)



# Request for Stakeholder Comment – BIE-operated School Communities *BIE ESEA Flexibility Request*

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Stakeholder input about *BIE's ESEA Flexibility Request* invited from **BIE-operated school communities**:

**Teachers**

**Staff**

**Parents**

**Administrators**

**Students**

**School Board members**

Note: Input from elected tribal leaders is being solicited separately through a tribal consultation process.

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The U.S. Department of Education has offered states the opportunity to apply for flexibility on certain provisions of the federal Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB). In exchange for flexibility waivers, applicant states have agreed to implement bold reforms around standards and accountability defined by four principles:

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- 2) Differentiated recognition, accountability, and support;
- 3) Support for effective instruction and leadership; and
- 4) Reduced duplication and unnecessary burden

The Bureau of Indian Education (BIE) is requesting flexibility from provisions of NCLB. Stakeholder input into the waiver request is a key part of the process and will be used to revise the Flexibility Request. If granted by the Department of Education, the Flexibility Request would give BIE an exceptional opportunity to improve the quality of instruction and increase student achievement in BIE-funded schools.

—○—○—○—○—○—○—○—○—○—○—○—○—

**DOCUMENTS**: The draft *BIE ESEA Flexibility Request* and related documents are available at the BIE website: <http://www.bie.edu>.



Comments may be submitted by email to: [eseaconsultation@bie.edu](mailto:eseaconsultation@bie.edu), or by U.S. mail to: BIE ESEA Flexibility Request Comments, Office of the Assistant Secretary – Indian Affairs, U.S. Department of the Interior, Mail Stop 4141 MIB, Washington, DC 20240. Comments will be accepted through June 30, 2012.

Questions: contact Jeffrey Hamley at [jeffrey.hamley@bie.edu](mailto:jeffrey.hamley@bie.edu) or (202) 208-4397.

## Hamley, Jeffrey

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**From:** Hamley, Jeffrey  
**Sent:** Friday, June 01, 2012 4:26 PM  
**To:** Principals - All Tribal-Op  
**Subject:** Request for stakeholder input into BIE Flexibility Request  
**Attachments:** Tribal Schools-Comment flyer 060112a -SENT.pdf

Principals:

I am writing to request your input into the **BIE's Flexibility Request**, which will be submitted to the U.S. Department of Education. The Department of Education has offered states the opportunity to apply for flexibility on certain provisions of the federal Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB). In exchange for flexibility waivers, applicant states have agreed to implement bold reforms around standards and accountability defined by four principles:

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Comments may be submitted by email to: [eseaconsultation@bie.edu](mailto:eseaconsultation@bie.edu), or by U.S. mail to: BIE ESEA Flexibility Request Comments, Office of the Assistant Secretary – Indian Affairs, U.S. Department of the Interior, Mail Stop 4141 MIB, Washington, DC 20240. Comments will be accepted through June 30, 2012.

**Questions:** contact Jeffrey Hamley at [jeffrey.hamley@bie.edu](mailto:jeffrey.hamley@bie.edu) or (202) 208-4397.

Thank you.

**<<< See attached flyer – please share and distribute widely >>>**

Jeffrey Hamley, Ed.D.  
Associated Deputy Director  
Division of Performance & Accountability  
WA/DC: (202) 208-4397  
ABQ/NM: (505) 563-5260  
Cell: (b)(6)

# Request for Stakeholder Comment – Tribally-controlled School Communities *BIE ESEA Flexibility Request*

Stakeholder input about *BIE's ESEA Flexibility Request* invited from tribally-controlled school communities:

**Teachers**

**Staff**

**Parents**

**Administrators**

**Students**

**School Board members**

Note: Input from elected tribal leaders is being solicited separately through a tribal consultation process.

—o—o—o—o—o—o—o—o—o—o—o—o—

The U.S. Department of Education has offered states the opportunity to apply for flexibility on certain provisions of the federal Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB). In exchange for flexibility waivers, applicant states have agreed to implement bold reforms around standards and accountability defined by four principles:

- 1) College- and career-ready expectations for all students;
- 2) Differentiated recognition, accountability, and support;
- 3) Support for effective instruction and leadership; and
- 4) Reduced duplication and unnecessary burden

The Bureau of Indian Education (BIE) is requesting flexibility from provisions of NCLB. Stakeholder input into the waiver request is a key part of the process and will be used to revise the Flexibility Request. If granted by the Department of Education, the Flexibility Request would give BIE an exceptional opportunity to improve the quality of instruction and increase student achievement in BIE-funded schools.

—o—o—o—o—o—o—o—o—o—o—o—o—

**DOCUMENTS:** The draft *BIE ESEA Flexibility Request* and related documents are available at the BIE website: <http://www.bie.edu>.



Comments may be submitted by email to: [eseaconsultation@bie.edu](mailto:eseaconsultation@bie.edu), or by U.S. mail to: BIE ESEA Flexibility Request Comments, Office of the Assistant Secretary – Indian Affairs, U.S. Department of the Interior, Mail Stop 4141 MIB, Washington, DC 20240. Comments will be accepted through June 30, 2012.

Questions: contact Jeffrey Hamley at [jeffrey.hamley@bie.edu](mailto:jeffrey.hamley@bie.edu) or (202) 208-4397.

## Hamley, Jeffrey

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**From:** Hamley, Jeffrey  
**Sent:** Thursday, May 24, 2012 6:37 PM  
**To:** Sue Bement (anita.bement@bie.edu)  
**Subject:** BIE ESEA Flexibility Request for review and comment  
**Attachments:** 0-BIEeseaflex.req.-052412-A--(Review\_Copy).docx; 1-ED-esea-flexibility-acc\_0--092311--KEY\_Document\_1.doc; 2-ED-review-guidance2--021012--KEY\_Document\_2.doc; 3-ED-Lessons Learned from Nov. Submissions 2012-01-18.ppt; 4-Summary Chart-Feb. Waivers-CCSSO.docx; 5-SRAS rubric 5 22-CII.pdf

Sue:

As we discussed, attached is the BIE Flexibility Request for review. Would you please forward this on to the advisory board. We would be pleased if they would review it and provide feedback at any level they feel able to do, given their other commitments.

I have numbered the attached files to make them easier to identify.

For reading:

0-BIEeseaflex.req-052412-A --- BIE Flexibility Request

Reference:

- 1-ED-esea flexibility – a key document from ED to understand the waiver fundamentals
- 2-ED-reivew guidance – a second key document from ED to evaluate the waiver
- 3-ED-Lessons Learned PowerPoint from ED
- 4-Summary chart-Feb. Waivers – an analysis from CCSSO of the states’ waiver requests – Interesting and very helpful
- 5-SRAS rubric – essential indicators evaluation document developed by CII -- also excellent

You may not need reference tools, but I am including in case you wish to use them.

Mainly what we are looking for is your estimation of whether our responses are suitable to the question, especially in your area of expertise. Did we miss something (surely did) or is something not clear (surely not). We have an editor so actual copy editing is not expected, but if you wish please feel free to edit away. You will see many opportunities to more elegantly state what has been collectively written.

Thank you.

Jeffrey Hamley, Ed.D.  
Associated Deputy Director  
Division of Performance & Accountability  
WA/DC: (202) 208-4397  
ABQ/NM: (505) 563-5260  
Cell: (b)(6)

## Attachment 4

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Evidence that the State has formally adopted college- and career-ready content standards consistent with the State's standards adoption process



## United States Department of the Interior

BUREAU OF INDIAN EDUCATION  
Washington, D.C. 20240

JUN 29 2012

IN REPLY REFER TO:

### MEMORANDUM

TO: All BIE Employees

FROM: Brian Drapeaux, Acting Director  
Bureau of Indian Education

SUBJECT: Common Core State Standards

(b)(6)

In order for the Bureau of Indian Education (BIE) to keep pace with the ever changing world of education, we are making further changes to the school system, as a whole. We seek to make these changes to ensure the best educational and social opportunities continue to be provided to all students attending our schools. In that regard, we are implementing the Common Core State Standards (Common Core).

In September 2011, Secretary of Education Arne Duncan announced that states could apply for a waiver of the requirements (flexibility waiver) of Public Law 107-110, the No Child Left Behind Act of 2001 (NCLB). A flexibility waiver presents an opportunity for the BIE to affect a meaningful reform that will improve student achievement and prepare students for college and future career opportunities.

The Common Core will serve as the foundation to the adoption of a unitary assessment. Unitary academic assessments will be used in all BIE-funded schools rather than the current system found at 25 CFR 30.104 stating the BIE must use the state assessment in which the school is located; which translates to 23 different state assessments.

By using the Common Core State Standards, the BIE can base the performance of schools on growth and other academic indicators. BIE's approach to teaching and learning will be standardized and strengthened as a result of implementing the Common Core Standards, curriculum, instruction, and assessment. Finally, proposals for the development of teacher and principal evaluations, as well as support systems, will facilitate effective instruction and leadership.

To assist the BIE in moving forward, a Common Core Working Group (CCWG) has been established to assist everyone in the implementation of the Common Core State Standards. Special Assistant to the Associate Deputy Director for the Division of Performance and Accountability Marlene Walker has been designated as the Project Lead for the CCWG. She can be reached by telephone at 505-563-5270 or by email at [marlene.walker@bie.edu](mailto:marlene.walker@bie.edu).

The roll-out of the Common Core is outlined in the attached.

## COMMON CORE STEPS

The following steps outline the process the BIE is utilizing to implement the Common Core. At every level there is a need for teacher, principal, and district training. Some of these trainings are independent of each other and some are in the form of school teams. The adoption of the Common Core gives the BIE an opportunity to change the way it does business. It offers a new way of teaching and a new way of learning.

### *PHASE I. Commitment to the Vision*

- Establish expectation of all stakeholders to implement Common Core during the school year (SY) 2012-2013.
- Develop a plan that establishes the academic vision of BIE as the first step toward implementation. All training and support must align with the plan. The professional development may take up to four months to complete. Consider looking at the training as four pillars:
  - Pillar 1: Continuous Improvement using Data
  - Pillar 2: Leadership and Decision Making for Change
  - Pillar 3: Curriculum and Instruction: Common Core State Standards
  - Pillar 4: School and Parent Community
- Collaborate with partners and stakeholders in the education of Common Core State Standards
- Create a common walk-through form to be used by BIE-operated and Tribal Grant or Contract Schools

### *PHASE II. Awareness for Associate Deputy Directors (ADDs), Education Line Officers (ELOs), Principals and Schools*

- Create a comprehensive awareness plan to ensure all parties know their roles and expectations.
- Conduct a needs assessment of the teacher, the principal, and the education line office to identify training needs
  - Schedule and communicate the Common Core training opportunities for all staff
    - Coordinate articulation meetings between content provider (Common Core Institute) and the ADD and the ELO
  - Deliver basic training that provides the details of expectations to ADDs, ELOs and principals
- Conduct a needs assessment of all schools to enable differentiated professional development for various Common Core skill levels
- Establish SWOT teams from ELO staff to support schools for implementation of the Common Core
  - Identify exemplary schools as training sites

*PHASE III. Implementation – Will take an entire year*

It is expected that teachers, principals and leadership will provide the monitoring needed through Native Star and the Native American Student Information System (NASIS) to assess implementation. An on-going training program will meet the needs of the various levels throughout the year.

- Schedule Common Core State Standard trainings
  - Provide Common Core training for teachers delivered by content provider (Common Core Institute)
  - Three waves of training to train all levels: teachers, principals and ELOs/ADDs

# Attachment 9

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## Table 2: Reward, Priority, and Focus Schools

**TABLE 2: REWARD, PRIORITY, AND FOCUS SCHOOLS**

Provide the SEA's list of reward, priority, and focus schools using the Table 2 template. Use the key to indicate the criteria used to identify a school as a reward, priority, or focus school.

| <b>TABLE 2: REWARD, PRIORITY, AND FOCUS SCHOOLS</b> |   |                        |                       |                      |                         |
|---|---|------------------------|-----------------------|----------------------|-------------------------|
| <b>LEA (ELO) Name</b>                               | <b>School</b>                               | <b>School NCES ID#</b> | <b>Reward Schools</b> | <b>Focus Schools</b> | <b>Priority Schools</b> |
| Minneapolis   | JKL Bahweting Anishnabe School              | 590008500080           | X                     |                      |                         |
| South and Eastern                                   | Chitimacha Day School                       | 590006100046           | X                     |                      |                         |
| New Mexico Navajo North                             | Navajo Preparatory School                   | 590004400144           | X                     |                      |                         |
| New Mexico Navajo Central                           | Tse'ii'ahi' Community School                | 590015500038           | X                     |                      |                         |
| Arizona Navajo North                                | Tuba City Boarding School                   | 590006300188           | X                     |                      |                         |
| Oklahoma  | Sequoyah High School                        | 590017400104           | X                     |                      |                         |
| South and Eastern                                   | Miccosukee Indian School                    | 590011500053           |                       |                      | X                       |
| New Mexico Navajo North                             | Sanostee Day School                         | 590017700147           | X                     |                      |                         |
| Arizona North                                       | Moencopi Day School                         | 590007200077           | X                     |                      |                         |
| South and Eastern                                   | Indian Island School                        | 590003600051           |                       | X                    |                         |
| New Mexico Navajo South                             | Baca-Dlo'ay Azhi Community School           | 590014700024           |                       | X                    |                         |
| Turtle Mountain                                     | Turtle Mountain Community Elementary School | 590014600170           |                       | X                    |                         |
| Arizona North                                       | Hopi Day School                             | 590000900073           |                       | X                    |                         |
| Arizona North                                       | Second Mesa Day School                      | 590013100079           |                       | X                    |                         |
| Arizona Navajo South                                | Pine Springs Day School                     | 590004900068           |                       | X                    |                         |
| Minneapolis   | Lac Courte Oreilles Ojibwa School           | 590012900087           |                       | X                    |                         |
| Minneapolis   | Menominee Tribal School                     | 590000500088           |                       | X                    |                         |
| Arizona South                                       | Noli School                                 | 590002100136           |                       | X                    |                         |
| Minneapolis   | Hannahville Indian School                   | 590002700086           |                       | X                    |                         |
| Minneapolis   | Oneida Nation School                        | 590009500090           |                       | X                    |                         |

**TABLE 2: REWARD, PRIORITY, AND FOCUS SCHOOLS**

| LEA (ELO) Name          | School                                  | School NCES ID# | Reward Schools | Focus Schools | Priority Schools |
|-------------------------|---|-----------------|----------------|---------------|------------------|
| New Mexico South        | Isleta Elementary School                | 590010800152    |                | X             |                  |
| Standing Rock           | Theodore Jamerson Elementary School     | 590013700165    |                | X             |                  |
| Arizona South           | Salt River Elementary School            | 590018600112    |                | X             |                  |
| Seattle                 | Coeur d' Alene Tribal School            | 590007000122    |                | X             |                  |
| South and Eastern       | Cherokee High School                    | 590019700045    |                | X             |                  |
| Arizona South           | Sherman Indian High School              | 590016300138    |                | X             |                  |
| Minneapolis             | Meskwaki Settlement School              | 590016600091    |                | X             |                  |
| Turtle Mountain         | Turtle Mountain Community Middle School | 590007800172    |                | X             |                  |
| New Mexico Navajo North | T'iis Nazbas Community School           | 590000600150    |                | X             |                  |
| Arizona Navajo Central  | Many Farms High School                  | 590016100013    |                | X             |                  |
| Turtle Mountain         | Twin Buttes Day School                  | 590011100173    |                | X             |                  |
| Arizona Navajo South    | Kin Dah Lichi'i Olta                    | 590018200067    |                | X             |                  |
| New Mexico South        | Jemez Day School                        | 590015000153    |                | X             |                  |
| Turtle Mountain         | Dunseith Day School                     | 590019400166    |                | X             |                  |
| Arizona North           | Hopi Jr-Sr High School                  | 590012100074    |                | X             |                  |
| South and Eastern       | Cherokee Elementary School              | 590015300044    |                | X             |                  |
| South and Eastern       | Red Water Elementary School             | 590004700055    |                | X             |                  |
| Arizona North           | First Mesa Elem School                  | 590019300078    |                | X             |                  |
| Arizona North           | Hotevilla Bacavi Community School       | 590016500075    |                | X             |                  |
| Arizona Navajo South    | Dilcon Community School                 | 590000800063    |                | X             |                  |
| New Mexico Navajo North | Red Rock Day School                     | 590013600146    |                | X             |                  |
| Turtle Mountain         | Ojibwa Indian School                    | 590010100168    |                | X             |                  |
| South and Eastern       | Choctaw Central Middle School           | 590001900048    |                | X             |                  |
| Arizona Navajo North    | Shonto Preparatory School               | 590013300186    |                | X             |                  |
| New Mexico North        | Te Tsu Geh Oweenge Day School           | 590004800098    |                | X             |                  |

**TABLE 2: REWARD, PRIORITY, AND FOCUS SCHOOLS**

| LEA (ELO) Name          | School                         | School NCES ID# | Reward Schools | Focus Schools | Priority Schools |
|-------------------------|--------------------------------|-----------------|----------------|---------------|------------------|
| Arizona Navajo Central  | Rock Point Community School    | 590012200016    |                | X             |                  |
| South and Eastern       | Bogue Chitto Elementary School | 590001800043    |                | X             |                  |
| New Mexico North        | Taos Day School                | 590017900097    |                | X             |                  |
| Cheyenne Eacgle Butte   | Cheyenne-Eagle Butte School    | 590001400004    |                | X             |                  |
| New Mexico Navajo North | Cove Day School                | 590016700143    |                | X             |                  |
| South and Eastern       | Choctaw Central High School    | 590010500047    |                |               | X                |
| Arizona South           | Casa Blanca Community School   | 590004000110    |                | X             |                  |
| Arizona Navajo Central  | Jeehdeez'a Academy Inc         | 590007900011    |                | X             |                  |
| Crow Creek Lower Brule  | Enemy Swim Day School          | 590005100020    |                | X             |                  |
| Cheyenne Eacgle Butte   | Pierre Indian Learning Center  | 590004100005    |                | X             |                  |
| New Mexico North        | Santa Fe Indian School         | 590013800096    |                | X             |                  |
| South and Eastern       | Pearl River Elementary School  | 590017600054    |                | X             |                  |
| South and Eastern       | Beatrice Rafferty School       | 590009100042    |                | X             |                  |
| New Mexico Navajo North | Aneth Community School         | 590003300139    |                | X             |                  |
| Arizona Navajo Central  | Lukachukai Community School    | 590011200012    |                | X             |                  |
| Standing Rock           | Tate Topa Tribal School        | 590009200164    |                | X             |                  |
| New Mexico Navajo North | Nenahnezad Community School    | 590008400145    |                | X             |                  |
| South and Eastern       | Indian Township School         | 590007100052    |                | X             |                  |
| Arizona South           | Gila Crossing Community School | 590001000111    |                | X             |                  |
| Oklahoma                | Riverside Indian School        | 590013000103    |                | X             |                  |
| Arizona South           | John F Kennedy Day School      | 590014200059    |                | X             |                  |
| Arizona Navajo North    | Dennehotso Boarding School     | 590015900176    |                | X             |                  |
| Arizona Navajo North    | Kayenta Community School       | 590012800180    |                | X             |                  |
| Arizona Navajo South    | Wide Ruins Community School    | 590015200070    |                | X             |                  |
| Arizona North           | Keams Canyon Elementary School | 590002900076    |                | X             |                  |

**TABLE 2: REWARD, PRIORITY, AND FOCUS SCHOOLS**

| LEA (ELO) Name            | School                                  | School NCES ID# | Reward Schools | Focus Schools | Priority Schools |
|---------------------------|---|-----------------|----------------|---------------|------------------|
| South and Eastern         | Standing Pine Elementary School         | 590008300056    |                | X             |                  |
| Turtle Mountain           | White Shield School                     | 590016000174    |                | X             |                  |
| Arizona Navajo North      | Tonalea Day School                      | 590018000187    |                | X             |                  |
| Arizona South             | Cibecue Community School                | 590008200058    |                |               | X                |
| Arizona Navajo North      | Greyhills Academy High School           | 590002600178    |                | X             |                  |
| New Mexico Navajo North   | Beclabito Day School                    | 590012500142    |                | X             |                  |
| New Mexico North          | Ohkay Owingeh Community School          | 590002000093    |                | X             |                  |
| Minneapolis               | Bug-O-Nay-Ge-Shig School                | 590000300081    |                |               | X                |
| Minneapolis               | Circle of Nations                       | 590011800083    |                | X             |                  |
| New Mexico Navajo North   | Atsa' Biya' a'zh Community School       | 590007400140    |                | X             |                  |
| Turtle Mountain           | Turtle Mountain High School             | 590003100171    |                |               | X                |
| Arizona Navajo North      | Kaibeto Boarding School                 | 590008900179    |                | X             |                  |
| Minneapolis               | Circle of Life Survival School          | 590007300082    |                | X             |                  |
| Arizona Navajo South      | Seba Dalkai Boarding School             | 590010900069    |                | X             |                  |
| Minneapolis               | Fond du Lac Ojibwe School               | 590015400085    |                |               | X                |
| Arizona South             | Pyramid Lake High School                | 590010300137    |                | X             |                  |
| Standing Rock             | Standing Rock Community School          | 590001700163    |                | X             |                  |
| Billings                  | St Stephens Indian School               | 590013200003    |                | X             |                  |
| Arizona Navajo North      | Naa Tsis'aan                            | 590005200183    |                | X             |                  |
| New Mexico Navajo Central | Na' Neelzhiin Ji'Olta                   | 590019600033    |                | X             |                  |
| Billings                  | Shoshone-Bannock School District No 512 | 590008600128    |                | X             |                  |
| New Mexico South          | Sky City Community School               | 590016200159    |                | X             |                  |
| Crow Creek Lower Brule    | Flandreau Indian Boarding School        | 590010700084    |                |               | X                |
| Oklahoma                  | Kickapoo Nation School                  | 590006900102    |                | X             |                  |
| Crow Creek Lower Brule    | Lower Brule Day School                  | 590014300021    |                |               | X                |

**TABLE 2: REWARD, PRIORITY, AND FOCUS SCHOOLS**

| LEA (ELO) Name          | School                                    | School NCES ID# | Reward Schools | Focus Schools | Priority Schools |
|-------------------------|---|-----------------|----------------|---------------|------------------|
| Crow Creek Lower Brule  | Crow Creek Sioux Tribal Elementary School | 590000200018    |                | X             |                  |
| Arizona Navajo North    | Leupp School Inc                          | 590017000181    |                | X             |                  |
| Arizona Navajo Central  | Cottonwood Day School                     | 590003200010    |                | X             |                  |
| South and Eastern       | Conehatta Elementary School               | 590016400050    |                | X             |                  |
| Arizona South           | Santa Rosa Ranch School                   | 590007600107    |                | X             |                  |
| New Mexico Navajo South | Bread Springs Day School                  | 590018800025    |                | X             |                  |
| South and Eastern       | Ahfachkee Day School                      | 590005500041    |                |               | X                |
| Arizona South           | San Simon School                          | 590014500105    |                | X             |                  |
| Turtle Mountain         | Mandaree Day School                       | 590006600167    |                | X             |                  |
| Arizona South           | Santa Rosa Boarding School                | 590019200106    |                | X             |                  |
| New Mexico South        | Laguna Middle School                      | 590005900155    |                | X             |                  |
| Arizona Navajo North    | Rocky Ridge Boarding School               | 590009900185    |                | X             |                  |
| Arizona Navajo South    | Greasewood Springs Community School       | 590009800064    |                | X             |                  |
| Arizona Navajo Central  | Chinle Boarding School Inc                | 590014800009    |                | X             |                  |
| Arizona Navajo North    | Chilchinbeto Community School             | 590000400175    |                | X             |                  |
| Billings                | Two Eagle River School                    | 590016900129    |                |               | X                |
| Seattle                 | Chief Leschi School                       | 590001300121    |                | X             |                  |
| South and Eastern       | Tucker Elementary School                  | 590012700057    |                | X             |                  |
| New Mexico North        | Santa Clara Day School                    | 590008700095    |                | X             |                  |
| Arizona South           | Tohono O'odham High School                | 590015600108    |                |               | X                |
| Seattle                 | Chemawa Indian School                     | 590003400120    |                |               | X                |
| Seattle                 | Lummi High School                         | 590011300123    |                |               | X                |
| New Mexico South        | Laguna Elementary School                  | 590019100154    |                |               | X                |
| Seattle                 | Lummi Tribal School System                | 590017300124    |                |               | X                |
| Cheyenne Eacgle Butte   | Takini School                             | 590009700006    |                |               | X                |

**TABLE 2: REWARD, PRIORITY, AND FOCUS SCHOOLS**

| LEA (ELO) Name            | School                               | School NCES ID# | Reward Schools | Focus Schools | Priority Schools |
|---------------------------|--------------------------------------|-----------------|----------------|---------------|------------------|
| Arizona Navajo Central    | Rough Rock Community School          | 590017100017    |                |               | X                |
| New Mexico Navajo South   | Tohaali' Community School            | 590003500151    |                | X             |                  |
| Arizona Navajo Central    | Nazlini Community School             | 590004300014    |                | X             |                  |
| Crow Creek Lower Brule    | Tiospa Zina Tribal School            | 590019000022    |                | X             |                  |
| New Mexico Navajo Central | T'iists'oozi'bi'olta                 | 590001100036    |                | X             |                  |
| New Mexico Navajo North   | Shiprock Northwest High School       | 590005600148    |                | X             |                  |
| Pine Ridge                | Pine Ridge School                    | 590018400117    |                |               | X                |
| New Mexico South          | San Felipe Pueblo Elementary School  | 590002400158    |                | X             |                  |
| Seattle                   | Wa He Lut Indian School              | 590018300131    |                |               | X                |
| Seattle                   | Quileute Tribal School               | 590012400127    |                |               | X                |
| Minneapolis               | Nay-Ah-Shing School                  | 590003800089    |                | X             |                  |
| Rosebud                   | St Francis Indian School             | 590019500134    |                |               | X                |
| Crow Creek Lower Brule    | Crow Creek Reservation High School   | 590017800019    |                |               | X                |
| Seattle                   | Paschal Sherman Indian School        | 590008000126    |                |               | X                |
| Rosebud                   | Marty Indian School                  | 590015100132    |                |               | X                |
| Arizona Navajo South      | Hunters Point Boarding School        | 590013900066    |                | X             |                  |
| New Mexico Navajo Central | Pueblo Pintado Community School      | 590011400035    |                | X             |                  |
| Cheyenne Eacgle Butte     | Tiospaye Topa School                 | 590014100007    |                |               | X                |
| New Mexico Navajo South   | Wingate High School                  | 590016800040    |                |               | X                |
| Arizona South             | Duckwater Shoshone Elementary School | 590006000135    |                | X             |                  |
| Pine Ridge                | Little Wound School                  | 590008100115    |                |               | X                |
| Pine Ridge                | American Horse School                | 590003900113    |                |               | X                |
| Pine Ridge                | Porcupine Day School                 | 590005000118    |                | X             |                  |
| Pine Ridge                | Wounded Knee District School         | 590009300119    |                | X             |                  |
| Billings                  | Northern Cheyenne Tribal School      | 590003000002    |                |               | X                |

**TABLE 2: REWARD, PRIORITY, AND FOCUS SCHOOLS**

| LEA (ELO) Name            | School                                | School NCES ID# | Reward Schools | Focus Schools | Priority Schools |
|---------------------------|---------------------------------------|-----------------|----------------|---------------|------------------|
| Pine Ridge                | Loneman Day School                    | 590014000116    |                | X             |                  |
| New Mexico Navajo South   | Wingate Elementary School             | 590012600039    |                | X             |                  |
| Seattle                   | Yakama Nation Tribal School           | 590010200030    |                | X             |                  |
| Arizona Navajo Central    | Black Mesa Community School           | 590019000008    |                | X             |                  |
| New Mexico North          | San Ildefonso Day School              | 590004600094    |                | X             |                  |
| New Mexico Navajo Central | Ojo Encino Day School                 | 590006400034    |                | X             |                  |
| Arizona North             | Havasupai Elementary School           | 590006200072    |                | X             |                  |
| New Mexico Navajo South   | Chi Chil'tah Comm School              | 590006500026    |                |               | X                |
| New Mexico Navajo Central | Mariano Lake Community School         | 590014400032    |                |               | X                |
| Seattle                   | Muckleshoot Tribal School             | 590004500125    |                |               | X                |
| Arizona Navajo North      | Little Singer Community School        | 590003700182    |                | X             |                  |
| New Mexico Navajo Central | Lake Valley Navajo School             | 590010400031    |                |               | X                |
| Arizona South             | Theodore Roosevelt School             | 590012000060    |                | X             |                  |
| New Mexico South          | Pine Hill Schools                     | 590015700157    |                | X             |                  |
| New Mexico South          | Mescalero Apache School               | 590011900156    |                |               | X                |
| Arizona Navajo South      | Crystal Boarding School               | 590011000062    |                | X             |                  |
| New Mexico Navajo Central | Dzilth-Na-O-Dith-Hle Community School | 590018700029    |                | X             |                  |
| New Mexico Navajo South   | Ch'ooshgai Community School           | 590011600061    |                |               | X                |
| New Mexico South          | T'siya Elementary and Middle School   | 590002800160    |                |               | X                |
| New Mexico Navajo Central | Dibe Yazhi Habitiin Olta' Inc         | 590013500027    |                |               | X                |
| Pine Ridge                | Crazy Horse School                    | 590001200114    |                |               | X                |
| New Mexico Navajo South   | To'hajiilee Day School                | 590007500037    |                |               | X                |
| New Mexico Navajo South   | Alamo Navajo School                   | 590009400023    |                |               | X                |
| Standing Rock             | Sitting Bull School                   | 590005700161    |                |               | X                |
| Standing Rock             | Rock Creek Grant School               | 590018500162    |                |               | X                |

**TABLE 2: REWARD, PRIORITY, AND FOCUS SCHOOLS**

| LEA (ELO) Name                 | School | School NCES ID# | Reward Schools | Focus Schools | Priority Schools |
|--------------------------------|--------|-----------------|----------------|---------------|------------------|
| <b>TOTAL # of Schools: 170</b> |        |                 |                |               |                  |

Total # of Title I schools in the BIE: 170

Total # of Title I-participating high schools in the BIE with graduation rates less than 60%: 27

| <b>Key</b>  |   |
|---|---|
| <p><b><u>Reward School Criteria:</u></b></p> <ul style="list-style-type: none"> <li>A. Highest-performing school</li> <li>B. High-progress school</li> </ul> <p><b><u>Priority School Criteria:</u></b></p> <ul style="list-style-type: none"> <li>A. Among the lowest 5 percent of Title I schools in the State based on the proficiency and lack of progress of the “all students” group</li> <li>B. Title I-participating or Title I-eligible high school with graduation rate less than 60% over a number of years</li> <li>C. Tier I or Targeted Tier III SIG school implementing a school intervention model</li> </ul> | <p><b><u>Focus School Criteria:</u></b></p> <ul style="list-style-type: none"> <li>A. Among the lowest 10 percent of Title I schools in the State based on the proficiency and lack of progress of the “all students” group</li> <li>B. Title I-participating or Title I-eligible high school with graduation rate less than 60% over a number of years</li> <li>C. Tier III addressing the requirements of sec. 1116 (g) of the ESEA as indicated in their continuous school improvement plan in Native Star.</li> </ul> |

## Attachment 12

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Letters between the Department of the Interior and the Department of Education regarding BIE Flexibility Request



# United States Department of the Interior

OFFICE OF THE SOLICITOR

1000 EAST FIRST AVENUE, SUITE 1000

WASHINGTON, DC 20010

APR 8 0 2011

Michael Yudin  
Acting Assistant Secretary for  
Elementary and Secondary Education  
U.S. Department of Education  
400 Maryland Ave S.W.  
Washington, D.C. 20202-6100

Dear Mr. Yudin:

The Bureau of Indian Education (BIE) is in discussions with the Department of Education about a reform proposal that would allow BIE to use an accountability system based on a unitary set of academic standards and assessments in BIE-funded schools beginning in the next school year. The reform proposal under consideration contemplates that the Department of Education will grant BIE flexibility waivers and that the BIE will modify its regulatory definition of "adequate yearly progress" in 25 C.F.R. § 30.104(a).

BIE intends to consult with tribes on the reform proposal, as required by 25 U.S.C. § 2011. In preparation for the consultation, BIE would like to confirm whether the Department of Education has the legal authority to grant certain waivers to BIE. Specifically, we would appreciate your written response to three questions:

1. Does the Department of Education have authority under Section 9401 of the Elementary and Secondary Education Act (ESEA), as amended, 20 U.S.C. § 7861, to grant the BIE flexibility waivers as a State educational agency when BIE is carrying out the activities of a State educational agency?
2. Does the Department of Education have authority under ESEA § 9401, 20 U.S.C. § 7861, to grant the BIE a waiver from the negotiated rulemaking requirement of ESEA § 1116(g)(1)(A)(i), 20 U.S.C. § 6316(g)(1)(A)(i), which pertains only to BIE?
3. Is the BIE required by Section 1138(b) and 1138(c)(2) of the Education Amendments of 1978, 25 U.S.C. § 2018(b) and 2018(c)(2), independent of 20 U.S.C. § 6316(g)(1)(A)(i), to use negotiated rulemaking in order to modify the BIE's regulatory definition of "adequate yearly progress," and if so, does the Department of Education have the legal authority to waive those statutory requirements?

Your response will help clarify the scope of tribal consultations. BIE would like to start consultations next month. We look forward to hearing from you.

Sincerely,

(b)(6)

Jeffrey C. Nelson  
Assistant Solicitor, Division of Indian Affairs

cc: Laura Jimenez, Special Assistant to the Assistant Secretary, Department of Education (via e-mail)



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

JUL - 5 2012

Jeffrey C. Nelson  
Assistant Solicitor, Division of Indian Affairs  
U.S. Department of the Interior  
Office of the Solicitor  
1849 C Street, NW, MS-6554  
Washington, DC 20240

Dear Mr. Nelson:

Thank you for your April 30, 2012 letter to Michael Yudin, then-Acting Assistant Secretary for Elementary and Secondary Education. In your letter, you indicated that the Bureau of Indian Education (BIE) is in discussions with the U.S. Department of Education (ED) regarding a reform proposal that would permit the BIE to use an accountability system based on a unitary set of academic standards and assessments in BIE-funded schools. I understand that this proposal is intended to align with the principles of ESEA flexibility, and I appreciate the work BIE is doing to take advantage of that opportunity.

In your letter, you asked about ED's authority to waive certain requirements for the BIE. Your specific questions and ED's responses are set forth below.

1. Does [ED] have authority under Section 9401 of the Elementary and Secondary Education Act [of 1965] (ESEA), as amended, 20 U.S.C. § 7861, to grant the BIE flexibility waivers as a State educational agency [SEA] when BIE is carrying out the activities of [an SEA]?

Response:

Yes. Consistent with section 9204 of the ESEA, in 2005, ED and the U.S. Department of the Interior (Interior) entered into an agreement regarding the distribution and use of certain ESEA program funds by BIE, including, among others, funds under Title I, Part A; Title II, Part A; Title IV, Part B; Title VI, Part B; and Title VII, Part A, Subpart 1 (2005 Agreement). The 2005 Agreement was amended in 2008 to include the School Improvement Grants (SIG) program under section 1003(g) of the ESEA. Additionally, ED and Interior recently reached an agreement on the terms of a Draft Agreement (Draft Agreement) that is currently being reviewed through tribal consultation and that, when finalized, will replace the 2005 Agreement. The Draft Agreement governs the distribution and use of funds under the programs set forth above, among others.

Both the 2005 Agreement and the Draft Agreement specifically provide that each agreement "extends to [BIE] the same right to seek waivers of ESEA requirements that section 9401

extends to SEAs, LEAs, Indian tribes, and schools.”<sup>1</sup> Accordingly, when the BIE acts as an SEA with respect to one of the programs covered by the 2005 Agreement, or that will be covered by the Draft Agreement, ED has the same authority under section 9401 of the ESEA to grant a waiver to BIE that it has under that provision to grant waivers to any SEA.

2. Does [ED] have authority under ESEA [section] 9401, 20 U.S.C. § 7861, to grant the BIE a waiver from the negotiated rulemaking requirement of ESEA [section] 1116(g)(1)(A)(i), 20 U.S.C. § 6316(g)(1)(A)(i), which pertains only to BIE?

**Response:**

Section 1116(g)(1)(A)(i) of the ESEA provides that “[t]he Secretary of the Interior . . . using the process set out in section 1138(b) of the Education Amendments of 1978, shall define adequate yearly progress, consistent with section 1111(b), for the schools funded by the Bureau of Indian Affairs . . . .” Under section 9401 of the ESEA, the Secretary may waive any statutory or regulatory requirement of the ESEA, except those that are enumerated in ESEA section 9401(c), including, for example, requirements that Federal funds be used to supplement, not supplant, State and local funds. Because the requirements in ESEA section 1116(g) are not among the enumerated requirements in ESEA section 9401(c), the Secretary has authority to waive the requirements of that provision, including the negotiated rulemaking requirement that pertains only to BIE. For the reasons discussed below in response to question 3, however, that does not necessarily mean that the BIE would not be required to use negotiated rulemaking to amend or modify its regulatory definition of adequate yearly progress (AYP).

3. Is the BIE required by Section 1138(b) and 1138(c)(2) of the Education Amendments of 1978, 25 U.S.C. § 2018(b) and 2018(c)(2), independent of 20 U.S.C. § 6316(g)(1)(A)(i), to use negotiated rulemaking in order to modify the BIE’s regulatory definition of “adequate yearly progress,” and if so, does [ED] have the legal authority to waive those statutory requirements?

**Response:**

In response to the first part of the question, ED cannot make a legal determination on this issue. Sections 1138(b) and 1138(c)(2) of the Education Amendments of 1978 govern programs administered by Interior, particularly programs administered by the Bureau of Indian Affairs. As such, ED is not in a position to interpret the obligations that may or may not be imposed on Interior by statutory provisions governing that agency.

In response to the latter part of the question, assuming for the present purposes that section 1138(c) does require BIE to use negotiated rulemaking to modify its regulatory definition of AYP, ED does not have the authority to waive that requirement. Section 9401 of the ESEA authorizes ED only to waive statutory or regulatory requirements of the ESEA; it does not

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<sup>1</sup> The 2005 Agreement refers to BIE by its former name — the Office of Indian Education Programs (OIEP).

authorize ED to waive requirements of statutes that govern programs administered by other agencies.

Thank you again for your interest in ESEA flexibility and in developing a proposal designed to increase the quality of instruction and improve the academic achievement of students attending BIE-funded schools. For more information on the requirements that are applicable to any waiver request submitted under ESEA section 9401, please see Section A of ED's Non-Regulatory Guidance on Title I, Part A Waivers (available at: <http://www2.ed.gov/programs/titleiparta/title-i-waiver.doc>), and for more information on ESEA flexibility, please visit the ESEA flexibility page on ED's website (available at: <http://www.ed.gov/esea/flexibility>). In addition, please feel free to contact Laura Jimenez of my staff at (202) 260-7052 or [laura.jimenez@ed.gov](mailto:laura.jimenez@ed.gov) if you have any further questions.

Sincerely,

(b)(6)

Deborah S. Delisle  
Assistant Secretary

## Attachment 13

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Business Rules: Accountability Index (AI)  
and Annual Measurable Objectives (AMO)

## **Business Rules: Accountability Index (AI)**

This document describes the steps necessary to calculate the AI for schools to determine whether they have performed sufficiently in terms of academic achievement to merit a “satisfactory” determination. For the Baseline Year document, please refer to the Annual Measurable Objectives Business Rules.

### **To calculate the AI, the following steps must be engaged:**

1. Generate an Enrollment Status Report for all students funded by the BIE through the Indian Student Equalization Program (ISEP) for the entire school year for each school.
2. Determine how many students were enrolled during the test window at the End of Year administration of the accountability assessment. Divide the total number of test results by the total number of students enrolled during the test window. This is the percentage of students participating in assessment.
3. Determine how many students were enrolled continuously for at least 90 days prior to the End of Year administration of the accountability assessment. This is the total number of Full Academic Year (FAY) students.
4. For all FAY students, determine the percentage of time prior to the End of Year administration of the accountability assessment that the student was enrolled using the Enrollment Status Report. This is the Student Enrollment Weight.
5. Sum the Student Enrollment Weights across all FAY students. This is the School Enrollment Weight.
6. At the Beginning or Middle of the Year administration of the assessment used for accountability purposes, whichever is earlier, generate for each student taking the assessment and for whom a valid score is produced a Progress Goal. The Progress Goal shall be the RIT or Scale Score that the student is required to attain to be judged as having made sufficient growth through the academic year.
7. For any student that does not score “Proficient” or “Advanced” on the End of Year administration of the accountability assessment, the student is assigned the value of zero for the Proficiency Indicator. For students scoring “Proficient” or “Advanced,” the student is assigned the value of one for the Proficiency Indicator. This is done for each subject area. This is the Proficiency Value.
8. At the student level, multiply Student Enrollment Weight by the Proficiency Value and sum across all FAY students. This is the School Raw Performance Score.
9. Divide the School Raw Performance Score by the School Enrollment Weight. This is the Subject Performance Score.
10. Multiply the Subject Performance Score by the ratio for the academic indicator as allocated in the AI. This is the Indicator Component for the Proficiency Component of each respective subject assessed.
11. For each student that meets the Progress Goal, the student is assigned a score of one. For every student who does not meet the Progress Goal, the student is assigned a score of zero. This is the Progress Value.
12. At the student level, multiply Student Enrollment Weight by the Progress Value and sum across all FAY students. This is the School Raw Progress Score.
13. Divide the School Raw Progress Score by the School Enrollment Weight. This is the Subject Progress Score.

14. For all schools where a non-high school grade is offered, calculate the Attendance Rate by dividing the Average Daily Attendance (ADA) by the Average Daily Membership (ADM).
15. For all schools where a high school grade is offered, calculate the Graduation Rate based on the required Adjusted Cohort Calculation Rate (ACGR). The BIE calculates graduation rate without lagging a year as is common in the states.
16. Multiply each Indicator Score by the proportion of the Accountability Index assigned to it. Sum across all Indicators. This is the school's AI Score.

### **Rewards and Penalties: Assessment Participation**

1. Any school that assesses less than 95% of its students in reading and mathematics at each test window shall lose all AI points for Participation in Assessments.
2. Any school that improperly assesses students receiving Special Education services or requiring accommodations on a 504 plan will see the affected student's test results counted as "Basic" and assigned no points for the affected students' scores in the AI.
3. Any school improperly assessing more than two students receiving Special Education services or identified as Limited English Proficient will lose all points on all subject areas for all academic indicators, effectively earning the school an "unsatisfactory" accountability determination.
4. Medical absences should be made-up during the testing window. However, for more serious illnesses or conditions requiring hospitalization or student incapacitation, schools will not have the student counted against the participation requirements if they can produce documentation of the illness or condition.
5. Students who do not test due to parents or guardians refusing to allow the student to be tested will be counted against the school for the participation indicator.

### **Rewards and Penalties: Disproportionality in Achievement**

1. For any school with 15 or more FAY students in the sub-groups of Special Education or Limited English Proficient, perform the following test on all Proficiency and Progress Indicators. Even if the minimum number of 15 is met, the t-test will not be performed if the sub-group is larger than non-sub-group peers.
2. Generate the mean Indicator values for the sub-group and the students that are not part of the sub-group.
3. Perform a t-test of the sub-group versus non-sub-group students.
4. If the results of the t-test find that the difference between the two groups is significant, assess the following Reward or Penalty to the AI for the school:
  - a. If the sub-group performs 2 standard deviations better than the non-sub-group, assess a Reward of 2% to the AI Score.
  - b. If the sub-group performs 1 standard deviation better than the non-sub-group, assess a Reward of 1% to the AI Score.
  - c. If the sub-group performs 1 standard deviation worse than the non-sub-group, assess a Penalty of 1% to the AI Score.
  - d. If the sub-group performs 2 standard deviations worse than the non-sub-group, assess a Penalty of 2% to the AI Score.

### **Rewards: Graduation Rate**

1. Upon appeal of the accountability determination, any school with a ACGR graduation rate of <80% may recover one AI point if one to four students that failed to graduate on-time are demonstrated to be returning to school in the fall. Two AI points could be recovered if more than four students are demonstrated to be returning for school in the subsequent school year.
2. Schools may also recover AI points for demonstrating that students have graduated with a regular diploma after failing to graduate on-time. For one to four students graduating after their cohort has completed school, one AI point is awarded. For five or more students graduating after their cohort has completed school, two AI points are awarded. Such reporting would need to be submitted alongside the rest of the accountability data.
3. Schools may benefit from both of these rewards by retaining non-graduating students beyond their official senior year and for graduating students beyond their cohort year.

### **Application of Rewards and Penalties**

1. All Rewards and Penalties apply to the Indicator within the AI resulting in full point changes to the AI score.
2. Penalties accruing to the improper assessment of students may not be offset by rewards at any other point in the AI.
3. Except as provided by immediately above, there are no limits on the number of Rewards or Penalties accruing to the AI.

### **Issuance of Determination**

The BIE will calculate the AI and associated Rewards and Penalties. If the AI score is equal to or greater than the Annual Measurable Objective for the school, then the school will receive a “satisfactory” accountability determination. On the other hand, if the school fails to meet the AMO, then the school will be issued an “unsatisfactory” accountability determination.

Schools failing to meet the AMO by less than five points and with 80% or more of their students meeting their Progress Goals can be deemed as making “Safe Harbor.” Unlike under AYP accountability systems, schools may not advance out of their differentiated recognition using Safe Harbor. However, Safe Harbor schools will not be identified for a lower category of differentiated recognition. No school may make Safe Harbor in more than two consecutive years – in year three of Safe Harbor, schools will be determined “unsatisfactory” for failing to meet the AMO.

Schools in the “High Achieving” differentiated recognition category may be deemed “satisfactory” if they miss their AMO by three points or less. The objective in the top category is to make improvements of 1-2 points on the AMO per year, but at the very least the school should be able to maintain its level of achievement. The AMO itself is set high at this level.

The BIE will issue accountability determinations by August 15 of each year. Schools will be officially notified of their status in writing by the Director of the BIE. The BIE will post all report cards to its web site for public review by August 15.

All accountability determination appeals must be submitted to the BIE no later than October 15 of the year in which the accountability determination was issued.

For schools under Alternate AYP systems, the dates for accountability determination notices and public reporting will be dependent upon the receipt of the assessment results by the schools. The BIE will strive to report these AYP determinations no later than September 1 and will entertain appeals until November 1 of the year in which the accountability determination was issued.

## **Business Rules: Annual Measureable Objectives**

As discussed at length within the flexibility request, the BIE is reconceiving how Annual Measureable Objectives are constructed and operationalized for accountability purposes. Because the BIE does not move from a legacy No Child Left Behind accountability system with a single assessment, it is not possible for the BIE to provide an accurate evaluation of its schools' performance on assessments. The consequence of this arrangement is that the BIE requires one year to baseline the new accountability system before operationalizing the AMOs.

In the Baseline Year, the BIE will generate proficiency and progress scores based upon arbitrary, generic cut scores and student growth estimates. How well schools achieve against these standards will determine their initial placement for Year One of the full accountability system where the AMOs will be enforced.

AMOs will be generated at two levels: at the indicator level and at the school level. Indicator level AMOs are for guidance only. Achievement of the indicator level AMOs will lead to the school making a satisfactory accountability determination on the school level AMO. The school level AMO is binding and schools must meet that goal to be judged as "satisfactory."

Assignment of AMOs to the schools will be through the normalization of the AI data around 70 as the mean and 50 and 90 as the lower and upper ends of the distribution based on Baseline Year AI score achievement. To do this, the BIE will aggregate all AI indicator component level scores across BIE schools, standardize the distribution ( $z$  scores), and then reapply the mean at 70 with 50 and 90 serving as the range. In some instances, outliers may fall below 50 or above 90. The use of this scale serves as shorthand for educators that are familiar with the A-F grading scale that derives values from a 0-100 scale.

Once the AI scores have been normalized, the BIE will identify schools into differentiated recognition by quintiles. The top and bottom quintiles will be further divided to reflect Reward, Focus, and Priority status. The result is a 7-category system. The differentiated recognition of the school will determine its AMO progression over a five year period of time. On a yearly basis, schools will be expected to make one to eight point gains to meet the AMOs of the track to which they have been assigned.

### **No Deviation from AMO Track**

No matter the success level of the schools in the flexibility system, the AMOs will remain constant throughout each five year period for which the accountability system is applied. Every five years, the AI is renormalized and schools will be assigned to new differentiated recognition statuses. Because the AMO works on a "bootstrap" concept where all AI values are normalized relative to other BIE schools, it will always be possible to generate a meaningful gap in achievement to be remediated unless all of the schools achieve 100% performance on all of the indicators – we will cross that bridge when we come to it.

### **AMOs and Differentiated Recognition**

For the Baseline Year and Year One of the flexibility system, schools in the BIE will see that their AI, AMOs, and Differentiated Recognition align with one another. This will not be the case in Year Two of the flexibility system if it continues to be implemented without interruption.

## Attachment 14

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“The Blended Assessment:  
Federal Approval,” G. Gage Kinsbury,  
NWEA, n.d.

## **The Blended Assessment: Federal Approval**

**G. Gage Kingsbury**  
**NWEA**

*In his white paper written as a precursor to NCLB, President Bush described the legislation as an opportunity to “build the mind and character of every child, from every background, in every part of America.” If we are to fulfill the vision of the law, we need to know as much as possible about each student, and we need to concentrate on helping each student grow to the state’s performance standards and beyond. The approach to testing suggested here will help provide educators with the information they need to help every student grow.*

The blended assessment approach provides an adaptive test within each grade that is aligned with the content standards for the grade. This information is used to make NCLB decisions. This information is augmented, where appropriate, with an adaptive test that is aligned with content standards that extend beyond the current grade level. The focus of this process is to provide information that is as accurate as possible for each student. If we can measure each student better than we do today, we will improve our capacity to make useful instructional decisions, and will be able to roll the information up to make accountability decisions that are more accurate and stable.

This approach provides additional information to the classroom teacher while generating an extremely accurate estimate of each student’s proficiency level. It allows educators to monitor the achievement growth of individual students as well as their proficiency level. The sensitivity of the measurement in the system will allow the state to use an accountability model that is based on both student proficiency status and student growth.

### **Overview of the Blended Assessment**

The test will consist of an adaptive test with two segments. The first segment of the test will adjust to the performance of each student, but will only allow the student to see items that are aligned with the content standards for the grade in which the

student is enrolled. This portion of the test will continue until one of three conditions occurs.

The first segment of the test will end if:

- It is clear to a very high degree of confidence that the student is above the proficiency level.
- It is clear to a very high degree of confidence that the student is below the proficiency level.
- The maximum test length for the whole test is reached.

The second segment, beginning as the first segment ends, is also tailored to student performance. This second segment, however, will choose items for the student's instructional level from content that will extend beyond the grade level content standards. The student will see both portions of the test as a single test. See Appendix A for a more detailed description of the Blended Assessment.

### **Advantages of the Blended Approach**

- The adaptive nature of the blended test provides districts and the state with the most accurate information about each student for any given time spent in testing.
- The design of the blended test can allow for more content coverage than any one fixed test form. For example, a state with 70 detailed mathematics content standards in a grade may only be able to sample 50 of them on a fixed test form of 50 items. On the blended test all 70 of the standards can be included in a test design of 50 items, with any one student seeing one standard 50/70<sup>ths</sup> of the time.
- The computer delivery of the assessment allows for immediate reporting of individual results, and allows for summary reporting within 72 hours for all assessments.
- The accuracy of the individual student scores should help stabilize AYP results from one year to the next for all schools. This will allow true improvement to be identified more quickly and allow the identification of schools in need of help to be identified more consistently.
- The blended approach allows the measurement of individual student growth with much more precision than a fixed-form test.
- The speed of reporting and the accuracy of student scores and student growth should allow the test results to be used directly in the classroom, to help specific students who either do not meet proficiency or exceed proficiency on their corresponding grade-level standards.

- The Blended Assessment model is able to report status and growth with one measure. It can also point to the appropriate zone of instruction for each student.

### **Would the Blended Assessment be Approved for NCLB?**

All of the requirements of peer review would need to be met for a blended assessment to be approved for use under NCLB, just as would be the case for any other test being considered for use under the law. However, the Blended Assessment does have several features that make it an excellent candidate for NCLB use that traditional adaptive tests have not had. Among these are the following:

- Each item used to make a decision concerning proficiency is selected as being grade-level appropriate by content specialists working for the state.
- Each student receiving an NCLB designation (Basic, Proficient, or Advanced) does so based solely on performance on items that are grade-level appropriate.
- Each student receiving an NCLB designation of “Proficient” will need to address and succeed on items at least as difficult as the proficiency level.
- Each student will receive a test balanced for content according to the blueprint established by the state. See Appendix B for more details concerning content alignment in the Blended Assessment.

Oregon’s OAKS test is an adaptive test that has been accepted for use under NCLB. While the Blended Assessment provides substantially more information to the state, schools, and teachers than the OAKS assessment, it shares the features described above. Provided all other requirements for peer review are met, the blended assessment should be acceptable for use for NCLB.

## Appendix A: Details of the Blended Assessment

### The Blended Adaptive Test Blueprint

Each Blended Test consists of two segments, blended together into a single, seamless test. The **Primary Segment** consists of items selected to match the student's performance and the state's content standards for the student's current grade. The primary segment is designed to provide extremely accurate information concerning each student's proficiency level. The **Extension Segment** consists of items selected to match the performance of the student. The Extension Segment is designed to add detail about student achievement and growth to the information captured in the Primary Segment.

#### Primary Segment

This segment will consist of at least 40 items (or a fixed number of items determined by the state) selected from a large item pool. Each of the items in this pool will be selected by educators to match the content standards in the grade being tested.

- **Item pool development** –For this segment, a unique item pool will be developed for each grade. Each item in each of the item pools will be chosen by content experts to match the content standards for the grade of interest. Content experts have substantial experience with the interpretation of the standards.
- **Item selection** –The item selection algorithm will choose items from the appropriate item pool for the student and will ensure that each student receives questions representing a broad variety of content, in the proportions designated by the state. The assessment will adapt to the performance of each student within the at-grade-level content in the item pool based on the response to each question.
- **Segment termination** –This segment will continue to a maximum test length determined by the state (we can use 60 items as an example maximum test length), unless the student has taken at least 40 items and the four-standard-error confidence interval around the student's score (approximately a 99.99% confidence interval) is completely above or completely below the proficiency level.

The score from the primary segment is used to place the student into the achievement categories used for federal accountability. This means that only grade-level content is used in making decisions about Adequate Yearly Progress. Using adaptive measurement with grade-level content is fully compliant within current NCLB policy.

#### Extension Segment

This segment will begin when the first segment terminates, and continue until the maximum test length is reached for the student. It will choose items from a larger pool of items that will enable the test to get more information beyond the range of grade-specific content for those students who are operating above or below grade level. This segment will only appear for those students who clearly demonstrate in the primary segment that additional content is needed to provide educators with more information for instructional decision making.

- **Item pool development** –For this segment, an expanded item pool will be developed for each grade that will include all of the content in the primary segment item pool, an upward extension, and a downward extension. The downward extension will include all of the items from earlier grades that are age-appropriate for the grade of interest. The upward extension will include all items from higher grades that could be answered without additional, specialized instruction. Each item pool will be chosen by content experts with substantial experience with instruction within the state.
- **Item selection** –The Extension Segment will use information from the Primary Segment as a starting point for adaptation. The item selection algorithm will again ensure a broad variety of content, in the proportions designated by the state. The assessment will adapt to the performance of each student to the limits of the available items.
- **Segment termination** –This segment will continue until the total number of items administered to the student (in both segments) reaches the maximum test length determined by the state. If a student's performance changes enough during the Extension Segment to change the proficiency level for the student the segment will terminate and the Primary Segment will resume.

Once the test is administered, it will be scored immediately. One score will be obtained for each student, combining the responses for the two segments of the test. Results can immediately be used to place students into proficiency categories and to create instructional reports.

This approach has four very desirable characteristics:

- No student will be judged Below Basic without having taken and not passed grade-level specific content on the test.
- No student will be judged proficient without having taken and passed grade-level specific content on the test.
- Every student will receive as accurate a test score as possible, given the time allotted for testing.
- Every student will be placed into a proficiency category as accurately as possible, given the time allotted for testing.

One of the key characteristics of this approach is the ability of the process to make accurate decisions, even for students very close to the proficiency decision point. For these students, the student will receive a 60-item adaptive test, all drawn from grade-specific content. This will allow very accurate decisions to be made for these students, and will allow them to be made in a fairly reasonable amount of testing time. Since an adaptive test commonly allows test length to be reduced by 50%with comparable accuracy, the 60-item adaptive test will

have accuracy equivalent to a 120-item conventional test. Even for those students somewhat farther from the proficiency decision point, the new approach will result in an adaptive test of at least 40 items related directly to grade-level-specific content standards. This is equivalent in accuracy to an 80-item fixed-form test. This level of accuracy is substantially higher than that seen in other state tests for which comparison information is available.

## **Appendix B: Adaptive Testing and Grade-Specific Content**

One element of the system that is worth discussing is the selection of the item pools for the adaptive tests based on grade-specific content. All items will be selected by content experts. To the extent that these items vary in their intrinsic difficulty, the adaptive nature of the test will provide more accurate information about each student than any fixed-form test could provide. In the past, when we have asked educators to select grade-level specific items for tests, the items have varied in difficulty by 1.5 to 2.0 standard deviations on either side of the proficiency decision point. It is expected that the variability of items selected for the grade-level specific item pools for the new blended test will be similar to that noted in the earlier test selection.

While it is obvious that questions addressing grade-level specific content do vary in difficulty, it is useful to discuss the reasons for this variability. The reasons include the variability in the content standards, the variety of learning that goes on through an entire school year, and the particular questions that are used to address the individual content standards. Since this natural variability in difficulty occurs regardless of the testing mechanism used, it is worthwhile to have an adaptive testing system that dynamically accounts for differences in difficulty and scores students accordingly. This assures that no student can achieve the proficiency level without taking and succeeding on challenging content. This keeps the test from being “dumbed-down” for any particular student, and avoids the problem of accidental “dumbing-down” that have occurred in several states due to equating errors of differentially difficult content from one year to the next.

Items chosen for each grade level match the content of the standards established by the state. The pool of these items provides a rich set of tasks that give every student the opportunity to do his or her best work. This provides a better test-taking experience as well as more precise information about skills levels.

# Attachment 15

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## Agency Roles in Building Capacity and Monitoring and Adjusting Our Plans

| Key Milestone or Activity | Detailed Timeline | Party or Parties Responsible | Evidence (Attachment) | Resources (e.g., staff time, additional funding) | Significant Obstacles |
|---------------------------|-------------------|------------------------------|-----------------------|--|-----------------------|
|---------------------------|-------------------|------------------------------|-----------------------|--|-----------------------|

**Principle 1: College-and Career-Ready Expectations For all Students**

|   |  |                              |  |  |   |
|---|--|------------------------------|--|--|---|
| <p>Alignment work with the Common Core Standards and developing infrastructure and building capacity for assuring ADDs, ELOs, teachers and administrators understand and can implement the Common Core Standards.</p> | <ul style="list-style-type: none"> <li>September 2012 – CCS Regional Training for Associate Deputy Directors, Education Line Officers, and School Administrators</li> <li>October 2012 – CCS Regional Training for Associate Deputy Directors, Education Line Officers, and School Administrators</li> <li>November 2012 – CCS Regional</li> </ul> | <p>BIE: (DPA/School Ops)</p> | <p>Successful implementation and evaluation of the BIE Common Core Standards Implementation 4-year timeline. Transition to Common Core Standards by 2013-14.</p> | <p>Staff time, consultants availability and expertise.</p> | <p>Managing continuing capacity.</p> <p>Sufficient resources for developing infrastructure and technical assistance for building capacity.</p> <p>Limited timeframe and funding at this time.</p> |
|---|--|------------------------------|--|--|---|

| Key Milestone or Activity  | Detailed Timeline  | Party or Parties Responsible | Evidence (Attachment)   | Resources (e.g., staff time, additional funding) | Significant Obstacles                  |
|--|--|------------------------------|---|--|--|
|  | <p>Training for Associate Deputy Directors, Education Line Officers, and School Administrators</p> <ul style="list-style-type: none"> <li>January 2013 – CCS Regional Training for Associate Deputy Directors, Education Line Officers, and School Administrators</li> </ul> |                              |   |  |  |
| Provide professional development on the CCS as the roll-out for the revised Native American Student Information System (NASIS) |  | BIE: (DPA)                   | Teachers are implementing the NASIS tool, reviewing gap analysis reports of their respective states previous standards and CCS, | Staff time                                       | Limited timeframe and limited funding. |

| Key Milestone or Activity   | Detailed Timeline | Party or Parties Responsible | Evidence (Attachment)   | Resources (e.g., staff time, additional funding) | Significant Obstacles  |
|---|-------------------|------------------------------|---|--|--|
|   |                   |                              | identifying appropriate curricula and organizing assignments aligned to the CCS while also evaluating student progress.   |  |  |
| Restructure administration and teacher evaluation process   |                   | BIE: (DPA/School Ops)        | Administration and teacher performance evaluation process will include CCS core elements.   | Staff time                                       | Managing continuing capacity.<br><br>Continued funding source. |
| Enter into formal agreements with the Partnership for the Assessment for College and career (PARCC) consortium, the Smarter Balanced Assessment Consortium (SBAC) and the National Aeronautics and Space Administration |                   | DOI                          | Accessibility to purchase assessments that is supported and in compliance with federal acquisition procedures. DOI's Strategic Plan for FY 2013-18 on the STEM Education and Employment Pathways Program. | Staff time                                       | Managing continuing capacity.<br><br>Continued funding source. |

| Key Milestone or Activity | Detailed Timeline | Party or Parties Responsible | Evidence (Attachment) | Resources (e.g., staff time, additional funding) | Significant Obstacles |
|---------------------------|-------------------|------------------------------|-----------------------|--|-----------------------|
|---------------------------|-------------------|------------------------------|-----------------------|--|-----------------------|

|  |  |                                 |  |                                  |  |
|--|--|---------------------------------|--|----------------------------------|--|
| (NASA).  |  |                                 |  |                                  |  |
| Increase the quality of instruction in every classroom and raise student achievement; including ELP students, disability students and low achieving students.                              |  | BIE                             | ELP Standards- will be assessed using WIDA to ensure LEP learners have the opportunity to achieve the BIE’s college-and career-ready standards on the same schedule as all students. | Staff time                       | Managing continuing capacity.<br><br>Continued funding source. |
| Provide professional development for Administrators and teachers via manuals and websites to build their knowledge and skills to implement UDL principles in their schools and classrooms. |  | BIE<br>Professional consultants | Administrators and teachers are practicing UDL principles by SY 2012-13.   | Staff time<br>Additional funding | Managing continuing capacity                                   |
| Prepare and submit an annual report to the Secretary of the Interior and Congress containing a description of the  |  | BIE, IA                         | The Secretary shall make this annual report available to the Secretary of Education.   | Staff time                       | Contingent upon legislative approval                           |

| Key Milestone or Activity  | Detailed Timeline | Party or Parties Responsible | Evidence (Attachment)  | Resources (e.g., staff time, additional funding) | Significant Obstacles        |
|--|-------------------|------------------------------|--|--|------------------------------|
| activities of the BIE Advisory Board for Exceptional Children for the preceding year.  |                   |                              |  |  |                              |
| Provide training and technical assistance on implementation of effective strategies in areas of dropout prevention, re-entry, and school completion models.  |                   | BIE Professional consultants | Established partnerships with National Dropout Prevention Center for Students with Disabilities (NDPC-SD) to work with 13 schools identified in Cohort II in the fall of 2012.                           | Staff time                                       | Managing continuing capacity |
| Attend annual data summit to examine and analyze a variety of Special Education data including the State Performance Plan (SPP) Indicators, Annual Performance Report (APR), criteria for school level of determination, and |                   | BIE Professional Consultants | Improved education results for students with disabilities through the examination and analysis of special education, including specific data related to accommodations and college-and career-readiness. | Staff time                                       | Managing continuing capacity |

| Key Milestone or Activity  | Detailed Timeline | Party or Parties Responsible         | Evidence (Attachment)   | Resources (e.g., staff time, additional funding) | Significant Obstacles                             |
|--|-------------------|--------------------------------------|---|--|---|
| other information (e.g., correction of noncompliance).   |                   |                                      |   |  |   |
| Annual monitoring process to analyze the implementations process of accommodation factors necessary to support college-and career-readiness for all children with disabilities.                |                   | BIE: (DPA/Special Education Program) | Improved education results and functional outcomes for all children with disabilities. Program Requirements under Part B are met. | Staff time                                       | Managing continuing capacity                      |
| Continue utilizing NASIS to analyze student IEP goals, the environments in which students receive instruction, accommodations and modifications, types of assessments, and assessment results. |                   | BIE: (DPA/Special Education Program) | Students with disabilities will have the opportunity to achieve to college-and career-readiness standards.                        | Staff time                                       | Managing continuing capacity                      |
| Expand access to college-level courses, dual enrollment  |                   | BIE                                  | Agreements in place between BIE high schools and local  | Staff time                                       | Cost-sharing agreements with Tribal Colleges in a |

| Key Milestone or Activity  | Detailed Timeline | Party or Parties Responsible | Evidence (Attachment)  | Resources (e.g., staff time, additional funding) | Significant Obstacles        |
|--|-------------------|------------------------------|--|--|------------------------------|
| courses and accelerated learning opportunities to prepare students for college and a career. |                   |                              | universities, such as Haskell Indian Nations University and SIPI, and colleges for BIE high schools to offer Advance Placement (AP) courses such as English III and IV, AP Calculus Exam, AP World History, AP U.S. Government and Politics, Navajo I and II, Engineering, Video Production, and Auto Mechanics. |  | timely manner.               |
| Establish uniform academic achievement standards for all students served by the BIE.         |                   | BIE                          | See attachment # BIE will adopt interim assessments for all BIE-funded schools beginning in SY 2012-13 and through SY 2013-14, until a national assessment is available.   | Staff time                                       | Managing continuing capacity |

| Key Milestone or Activity | Detailed Timeline | Party or Parties Responsible | Evidence (Attachment) | Resources ( <i>e.g.</i> , staff time, additional funding) | Significant Obstacles |
|---------------------------|-------------------|------------------------------|-----------------------|---|-----------------------|
|                           |                   |                              |                       |   |                       |

| Key Milestone or Activity | Detailed Timeline | Party or Parties Responsible | Evidence (Attachment) | Resources (e.g., staff time, additional funding) | Significant Obstacles |
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| <b>Principle 2: State-Developed Differentiated Recognition, Accountability, and Support</b>   |            |  |  |            |  |
|---|------------|--|--|------------|--|
| BIE will align its Accountability Index (AI), Annual Measurable Objectives (AMOs), and Differentiated Recognition system.   | SY 2012-13 | BIE: (DPA/Data Accountability Program – Data Unit) | The three, AI, AMO and Differentiated Recognition system will be aligned for the first two years after approval of the Flexibility Waiver Request, and BIE funded schools will be classified into a new Differentiated Recognition category. | Staff time | A tribe's choice to elect an Alternate Definition of AYP pursuant to 25 CFR § 30.104(b). |
| Efficiently deliver System of Support services to schools to improve instruction through the consolidation of standards and their measurements into a single set of criteria. | SY 2012-13 | BIE Tribal Schools                                 | Improved instruction and student achievement by which accountability determinations are made and differentiation recognized. Streamlined services.   | Staff time | A tribe's choice to elect an Alternate Definition of AYP pursuant to 25 CFR § 30.104(b). |
| Development of a quintile system of AMOs for differentiating school performance   |            | BIE Tribal Schools                                 | Academic improvements at the school level through challenging but achievable goals in  | Staff time | A tribe's choice to elect an Alternate Definition of AYP pursuant to 25 CFR § 30.104(b). |

| Key Milestone or Activity   | Detailed Timeline | Party or Parties Responsible                       | Evidence (Attachment)  | Resources (e.g., staff time, additional funding) | Significant Obstacles   |
|---|-------------------|--|--|--|---|
| and delivering of System of Support services.                               |                   |  | mathematics and reading/language arts.<br>Implement the 4 steps Baseline Year for the AMO approach.  |  |   |
| Implementation of an AI to replace the current system of AYP.               |                   | BIE: (DPA/Data Accountability Program – Data Unit) | Performance scores will be generated for each school that can be measured against and AMO to arrive at an accountability determination.  | Staff time                                       | A tribe’s choice to elect an Alternate Definition of AYP pursuant to 25 CFR § 30.104(b).  |
| Adopt NWEA MAP assessment for its students bureau-wide in an interim basis. |                   | BIE  | Computer-based, adaptive, and administered three times a year to measure how students grow relative to CCS to no less than 95% of students per school. Logs of data of academic indicator performances sent to ED. | Staff time                                       | BIE may change assessments in SY 2014-2015 as Common Core assessments developed by the U.S. Department of Education’s standards consortia will be available at that time.<br>A tribe’s choice to elect an Alternate Definition of AYP pursuant to 25 CFR § 30.104(b). |

| Key Milestone or Activity  | Detailed Timeline  | Party or Parties Responsible   | Evidence (Attachment)   | Resources (e.g., staff time, additional funding) | Significant Obstacles   |
|--|--|--|---|--|---|
| Implement non-academic indicators to account for 20% of the AI score.  |  | BIE: (DPA/Data Accountability Program – Data Unit)   | Schools receive credit for keeping students in-school rather than dropping out. Schools receive recognition for graduating students who do not graduate on-time.                      | Staff time                                       | The mandated use of the U.S. Department of Education’s Adjusted Cohort Graduation Rate (ACGR, or 4-year on-time rate) is not reflective of BIE’s completer patterns.  |
| Providing Technical Assistance to tribally controlled schools who opt to develop an Alternate Definition of Adequate Yearly Progress, in accordance with 25 CFR § 30.104(b). |  | BIE<br>Tribal Schools<br>Tribal Education Departments<br>Tribal Leaders<br>Tribal Communities ED | Tribal schools have developed indicators that reflect their values (i.e., language, culture, history) that satisfy the Alternate AYP mandate and are consistent with DOI regulations. | Staff time                                       | The requirements of Alternate AYP are so high (should successfully meet with U.S. Department of Education Peer Review processes: 25 C.F.R. § 30.113) and the resources are so scarce that, even with Technical Assistance provided by the BIE (25 C.F.R. § 30.109), the process is arduous. |
| Close the achievement gap by implementing a systemic change in   | <ul style="list-style-type: none"> <li>▪ SY 2012-2013 – All priority schools plan and initially</li> </ul> | BIE<br>Tribal Education departments<br>Tribal Leaders  | The identified needs of schools will be met by concentrating  | Staff time                                       | Tribal officials will need to help BIE intervene for tribally-controlled schools  |

| Key Milestone or Activity             | Detailed Timeline  | Party or Parties Responsible | Evidence (Attachment)   | Resources (e.g., staff time, additional funding) | Significant Obstacles  |
|---------------------------------------|--|------------------------------|---|--|--|
| <p>the lowest-performing schools.</p> | <p>implement interventions with preliminary results expected</p> <ul style="list-style-type: none"> <li>▪ SY 2013-2014 – All priority schools fully implement interventions with moderate results expected</li> <li>▪ SY 2014-2015 – All priority schools continue implementation of interventions with significant results expected</li> <li>▪ SY 2015-2016 and beyond – Lagging priority schools continue implementation of interventions with significant results expected</li> </ul> | <p>Consultants</p>           | <p>supports and interventions on the lowest performing schools in BIE’s system.</p> |  | <p>that fail to demonstrate improvement after three years.</p> |

| Key Milestone or Activity  | Detailed Timeline  | Party or Parties Responsible | Evidence (Attachment)  | Resources (e.g., staff time, additional funding) | Significant Obstacles |
|--|--|------------------------------|--|--|-----------------------|
| Create and distribute appropriate, effective incentives and support to schools to close achievement gaps.          |  | BIE                          | Log of distribution of incentives and support to both high performing and low performing schools supported by the implementation of the Seven Point Intervention Plan. | Staff time                                       |                       |
| Identify low-performing schools equal to at least 10 percent of the BIE system’s Title I schools as Focus Schools. | <ul style="list-style-type: none"> <li>▪ SY 2012-2013 – All focus schools plan and initially implement interventions with preliminary results expected</li> <li>▪ SY 2013-2014 – All focus schools fully implement interventions with moderate results expected</li> <li>▪ SY 2014-2015 – All focus schools continue implementation of interventions with significant</li> </ul> | BIE                          | Focus Schools will submit a Rapid Improvement Plan using the 99 Rapid Improvement Effective Practice Indicators in the Native Star system                              | Staff time                                       |                       |

| Key Milestone or Activity  | Detailed Timeline  | Party or Parties Responsible | Evidence (Attachment)  | Resources (e.g., staff time, additional funding) | Significant Obstacles |
|--|--|------------------------------|--|--|-----------------------|
|  | <p>results expected</p> <ul style="list-style-type: none"> <li>▪ SY 2015-2016 and beyond – Lagging focus schools continue implementation of interventions with significant results expected</li> </ul> |                              |  |  |                       |
| <p>Implement a process for monitoring and providing technical assistance to schools identified as persistently low achieving that qualified for SIG funds.</p> |  | <p>BIE</p>                   | <p>A 30%-40% gains in the numbers of students’ proficient and advance as measured by a criterion referenced assessment fall to spring.</p> | <p>Staff time</p>                                |                       |

| Key Milestone or Activity | Detailed Timeline | Party or Parties Responsible | Evidence (Attachment) | Resources (e.g., staff time, additional funding) | Significant Obstacles |
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| <b>Principle 3: Supporting Effective Instruction and Leadership</b>  |  |            |  |                   |   |
|--|--|------------|--|-------------------|---|
| <p>Develop and adopt guidelines for teacher and principle evaluation and support systems consistent with the SEA’s guidelines.</p> |  | <p>BIE</p> | <p>Initial Planning agendas.<br/>                     Formation of Educator Effectiveness Committee.<br/>                     Assign and task Teacher Evaluation Work Group.<br/>                     Planning meetings sign-in sheets, minutes that describe the design of an evaluation system with input from stakeholders.<br/>                     Revision of DOI policy manuals and the FISE-Interior CBA.<br/>                     Full implementation of evaluation and support systems timeline and action/target dates steps.</p> | <p>Staff time</p> | <p>Collective Bargaining Agreement between the Federation of Indian Service Employees Union and the Department of the Interior’s Office of Indian Affairs.<br/>                     OPM guidelines and policies affecting hiring in the federal government.<br/>                     The approach articulated in Principle 3 that the SEA develop guidelines and the LEAs separately develop evaluation systems for approval by the SEA is not tenable for the BIE as a federal agency.</p> |

| Key Milestone or Activity | Detailed Timeline | Party or Parties Responsible | Evidence (Attachment) | Resources ( <i>e.g.</i> , staff time, additional funding) | Significant Obstacles |
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| Key Milestone or Activity | Detailed Timeline | Party or Parties Responsible | Evidence (Attachment) | Resources (e.g., staff time, additional funding) | Significant Obstacles |
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| <b>Principle 4: Reducing Duplication and Unnecessary Burden</b>   |  |        |   |            |   |
|---|--|--------|---|------------|---|
| Reduce burdensome data collection and reporting in response to school and tribal concerns.                  |  | ED/BIE | The revision of administrative requirements to reduce duplication and unnecessary burden on LEAs (ADDs/ELOs) and schools. NASIS will be utilized in all BIE-funded schools for tracking student data. | Staff time | BIE funds schools rather than local education agencies as conceived under the Elementary and Secondary Education act – district level personnel that handle data for reporting do not exist in the current BIE structure. |
| Immediately cease reporting OSEP Table 8: Maintenance of Effort and Coordinated Early Intervening Services. |  | ED/BIE | A unified accountability system will help eliminate the differences introduced into the system through the use of varying state accountability standards, content standards, and assessments.         | Staff time | The primary impetus for reporting, however, remains with the requirements of the U.S. Department of Education.  |