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through twelve who are enrolled in a Bureau-funded school must be assessed.

§ 30.115 Which students' performance data must be included for purposes of AYP?

The performance data of all students assessed pursuant to § 30.114 must be included for purposes of AYP if the student is enrolled in a Bureau-funded school for a full academic year as defined by the Secretary or by an approved alternative definition of AYP.

§ 30.116 If a school fails to achieve its annual measurable objectives, what other methods may it use to determine whether it made AYP?

A school makes AYP if each group of students identified in § 30.107(b)(6) meets or exceeds the annual measurable objectives and participation rate identified in §§ 30.107(b)(9) and 30.107(b)(12) respectively, and the school meets the other academic indicators identified in § 30.107(b)(11). If a school fails to achieve its annual measurable objectives for any group identified in § 30.107(b)(6), there are two other

methods it may use to determine whether it made AYP:

(a) *Method A—“Safe Harbor.”* Under “safe harbor,” the following requirements must be met for each group referenced under § 30.107(b)(6) that does not achieve the school’s annual measurable objectives:

- (1) In each group that does not achieve the school’s annual measurable objectives, the percentage of students who were below the “proficient” level of academic achievement decreased by at least 10 percent from the preceding school year; and
- (2) The students in that group made progress on one or more of the other academic indicators; and
- (3) Not less than 95 percent of the students in that group participated in the assessment.

(b) *Method B—Uniform Averaging Procedure.* A school may use uniform averaging. Under this procedure, the school may average data from the school year with data from one or two school years immediately preceding that school year and determine if the resulting average makes AYP.

Subpart C—Failure To Make Adequate Yearly Progress

§ 30.117 What happens if a Bureau-funded school fails to make AYP?

Number of yrs of failing to make AYP in same academic subject	Status	Action required by entity operating school for the following school year
1st year of failing AYP	No status change	Analyze AYP data and consider consultation with outside experts.
2nd year of failing AYP	School improvement, year one.	Develop a plan or revise an existing plan for school improvement in consultation with parents, school staff and outside experts.
3rd year of failing AYP	School Improvement, year two.	Continue revising or modifying the plan for school improvement in consultation with parents, school staff and outside experts.
4th year of failing AYP	Corrective Action	Implement at least one of the six corrective actions steps found in 20 U.S.C. 6316(b)(7)(C)(iv).
5th year of failing AYP	Planning to Restructure	Prepare a restructuring plan and make arrangements to implement the plan.
6th year of failing AYP	Restructuring	Implement the restructuring plan no later than the beginning of the school year following the year in which it developed the plan.
7th year (and beyond) of failing AYP.	Restructuring	Continue implementation of the restructuring plan until AYP is met for two consecutive years.

§ 30.118 May a Bureau-funded school present evidence of errors in identification before it is identified for school improvement, corrective action, or restructuring?

Yes. The Bureau must give such a school the opportunity to review the data on which the bureau would identify a school for improvement, and

present evidence as set out in 20 U.S.C. 6316(b)(2).

§ 30.119 Who is responsible for implementing required remedial actions at a Bureau-funded school identified for school improvement, corrective action or restructuring?

(a) For a Bureau-operated school, implementation of remedial actions is the responsibility of the Bureau.

(b) For a tribally operated contract school or grant school, implementation of remedial actions is the responsibility of the school board of the school.

§ 30.120 Are Bureau-funded schools exempt from offering school choice and supplemental educational services when identified for school improvement, corrective action, and restructuring?

Yes, Bureau-funded schools are exempt from offering public school choice and supplemental educational services when identified for school improvement, corrective action, and restructuring.

§ 30.121 What funds are available to assist schools identified for school improvement, corrective action, or restructuring?

From fiscal year 2004 to fiscal year 2007, the Bureau will reserve 4 percent of its title I allocation to assist Bureau-funded schools identified for school improvement, corrective action, and restructuring.

(a) The Bureau will allocate at least 95 percent of funds under this section to Bureau-funded schools identified for school improvement, corrective action, and restructuring to carry out those schools' responsibilities under 20 U.S.C. 6316(b). With the approval of the school board the Bureau may directly provide for the remedial activities or arrange for their provision through other entities such as school support teams or educational service agencies.

(b) In allocating funds under this section, the Bureau will give priority to schools that:

- (1) Are the lowest-achieving schools;
- (2) Demonstrate the greatest need for funds; and
- (3) Demonstrate the strongest commitment to ensuring that the funds enable the lowest-achieving schools to meet progress goals in the school improvement plans.

(c) Funds reserved under this section must not decrease total funding under title I, part A of the Act, for any school below the level for the preceding year. To the extent that reserving funds under this section would reduce the title I, part A dollar amount of any school below the amount of title I, part A dollars the school received the previous year, the Secretary is authorized to reduce the title I, part A allocations of those schools receiving an increase in the title I, part A funds over the previous year to create the 4 percent reserve. This section does not authorize a school to receive title I, part A dollars it is not otherwise eligible to receive.

(d) The Bureau will publish in the FEDERAL REGISTER a list of schools receiving funds under this section.

§ 30.122 Must the Bureau assist a school it identified for school improvement, corrective action, or restructuring?

Yes, if a Bureau-funded school is identified for school improvement, corrective action, or restructuring, the Bureau must provide technical or other assistance described in 20 U.S.C. 6316(b)(4) and 20 U.S.C. 6316(g)(3).

§ 30.123 What is the Bureau's role in assisting Bureau-funded schools to make AYP?

The Bureau must provide support to all Bureau-funded schools to assist them in achieving AYP. This includes technical assistance and other forms of support.

§ 30.124 Will the Bureau apply for funds that are available to help schools that fail to meet AYP?

Yes, to the extent that Congress appropriates other funds to assist schools not meeting AYP, the Bureau will apply to the Department of Education for these funds.

§ 30.125 What happens if a State refuses to allow a school access to the State assessment?

(a) The Department will work directly with State officials to assist schools in obtaining access to the State's assessment. This can include direct communication with the Governor of the State. A Bureau-funded school may, if necessary, pay a State

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for access to its assessment tools and scoring services.

(b) If a State does not provide access to the State's assessment, the Bureau-funded school must submit a waiver for an alternative definition of AYP.

Subpart D—Responsibilities and Accountability

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

The Bureau has the following reporting responsibilities to the Department of Education, appropriate Committees of Congress, and the public.

(a) In order to provide information about annual progress, the Bureau must obtain from all Bureau-funded schools the results of assessments administered for all tested students, special education students, students with limited English proficiency, and disseminate such results in an annual report.

(b) The Bureau must identify each school that did not meet AYP in accordance with the school's AYP definition.

(c) Within its annual report to Congress, the Secretary shall include all of the reporting requirements of 20 U.S.C. 6316(g)(5).

§ 30.150 Information collection.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)(PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This part involves collections of information subject to the PRA in §§ 30.104(a)(1), 30.104(b), 30.106, 30.107, 30.110, and 30.118. These collections have been approved by OMB under control number 1076-0163.

PART 31—FEDERAL SCHOOLS FOR INDIANS

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AUTHORITY: Sec. 1, 41 Stat. 410; 25 U.S.C. 282, unless otherwise noted.

SOURCE: 22 FR 10533, Dec. 24, 1957, unless otherwise noted.

§ 31.0 Definitions.

As used in this part:

(a) *School district* means the local unit of school administration as defined by the laws of the State in which it is located.

(b) *Cooperative school* means a school operated under a cooperative agreement between a school district and the Bureau of Indian Affairs in conformance with State and Federal school laws and regulations.

(35 Stat. 72, 25 U.S.C. 295)

[33 FR 6472, Apr. 27, 1968]

§ 31.2 Use of Federal school facilities.

Federal Indian school facilities may be used for community activities and for adult education activities upon approval by the superintendent or officer in charge.

§ 31.3 Non-Indian pupils in Indian schools.

Indian and non-Indian children who are not eligible for enrollment in Bureau-operated schools under § 31.1 may be enrolled in such schools under the following conditions:

(a) In boarding schools upon payment of tuition fees, which shall not exceed the per capita cost of maintenance in the school attended, when their presence will not exclude Indian pupils eligible under § 31.1.

(b) In day schools in areas where there are no other adequate free school facilities available, tuition fees may be charged for such enrollment at the discretion of the superintendent or other officer in charge provided such fees shall not exceed the tuition fees allowed or charged by the State or county in which such school is located for