

SUBCHAPTER E—EDUCATION

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§30.100 What is the purpose of this part?

(a) This part establishes regulations regarding standards, assessments, and an accountability system at BIE-funded schools consistent with section 1111 of the Elementary and Secondary Education Act of 1965. The Act requires the Secretary to develop or implement requirements for standards, assessments, and an accountability system for BIE-funded schools.

(b) Nothing in this part may be construed to affect, modify, or diminish the sovereign rights of Indian Tribes; statutory rights under law, including the right to use Native American languages as a medium of instruction as

described in the *Native American Languages Act*, Public Law 101-477; the Secretary's trust responsibility for Indian education; nor the trust responsibility of the United States to Indian Tribes or individual Indians. In carrying out the education mission of the Department, the BIE has an obligation to provide for a comprehensive multicultural and multilingual education program including the production and use of instructional materials, culturally appropriate methodologies and teaching and learning strategies that will reinforce, preserve, and maintain Indian and Alaska Native languages, cultures, and histories which school boards, Tribes and Alaska Native entities may utilize at their discretion.

(c) In carrying out activities under this part, the Secretary will be guided by the policies stated in 25 CFR part 32.

§ 30.101 What definitions apply to terms in this part?

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

Agency Plan means a BIE document that will provide Indian Tribes, parents, and stakeholders with quality, transparent information about how standards, assessments, and an accountability system will be implemented at a BIE-funded school.

BIE-funded school(s) means a school funded by the Bureau of Indian Education and includes Bureau-operated schools and tribally controlled schools.

Bureau or *BIE* means the Bureau of Indian Education.

Bureau-operated school means a school operated by the Bureau of Indian Education.

Department means the Department of the Interior.

Director means the Director of the Bureau of Indian Education.

English learner means an individual:

(1) Who is aged three (3) through twenty-one (21);

(2) Who is enrolled or preparing to enroll in an elementary school or secondary school;

(3)(i) Who was not born in the United States or whose native language is a language other than English;

(ii)(A) Who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(B) Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(iii) Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(4) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual;

(i) The ability to meet the challenging academic standards;

(ii) The ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) The opportunity to participate fully in society.

(5) This definition is not intended to affect the right to use Native American language as a medium of instruction.

Foster care means 24-hour substitute care for children placed away from their parents and for whom the agency under title IV-E of the Social Security Act has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, tribal, or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

Native American language means the historical, traditional languages spoken by members of federally recognized Indian Tribes, as defined in 25 U.S.C. 2021(20).

Peer review means, for purposes of this part, the process through which an entity demonstrates the technical soundness of an assessment system, including its validity and reliability for

the purposes for which the assessments are intended.

Proposal for alternative requirements means a proposal submitted by a tribal governing body or school board for requirements, in whole or in part, alternative to the ones adopted by the Secretary for standards, assessments, or an accountability system at BIE-funded schools except that an alternative proposal for a Bureau-operated school does not include any actions that would affect BIE's authority over inherently Federal functions as defined in 25 U.S.C. 2021(12).

Secretary means the Secretary of the Interior or a designated representative.

School board means, with respect to waiver and submission of alternative proposals for a BIE-funded school, either an "agency school board" as defined in 25 U.S.C. 2021(1), or a "local school board" as defined in 25 U.S.C. 2021(14).

School year means the academic school year as described by a school in the BIE's student information system.

Subgroup of students means:

- (1) Economically disadvantaged students;
- (2) Students from major racial and ethnic groups;
- (3) Children with disabilities; and
- (4) English learners.

Technical assistance means with regard to:

- (1) Comprehensive or targeted support and improvement or additional targeted support, subject to the availability of appropriations, assistance from the BIE to address issues impacting a school's or one or more subgroups within a school's ability to meet the BIE's academic goals and indicators developed or implemented in accordance with this part, including assistance to extend technical capabilities and training opportunities;

- (2) Proposals for alternative requirements, technical assistance means, subject to the availability of appropriations, assistance from the BIE and the Department of Education in the development of alternative requirements for standards, assessments, and an accountability system in part or in whole, including assistance in understanding what options may be available to enhance the exercise of sov-

ereignty in education and address the unique circumstances and needs of BIE-funded schools and the students served at such schools.

- (3) English language proficiency assessments and alternate English language proficiency assessments, assistance including training teachers on how to administer such assessments.

Tribal consultation means consultation conducted in accordance with the tribal consultation policy of the Department of the Interior.

Tribal governing body means with respect to waiver and submission of alternative proposals for:

- (1) Tribally controlled schools, the entity authorized under applicable tribal law to waive the Secretary's requirements and propose alternative requirements; and

- (2) A BIE-operated school, the recognized governing body of the Indian Tribe involved that represents at least ninety (90) percent of the students served by such school.

Tribally controlled school means, for the purposes of this part, a school operated under a Public Law 93-638 contract or Public Law 100-297 grant that is:

- (1) Operated by an Indian Tribe or a tribal organization, enrolling students in Kindergarten through grade twelve (12) of schools that may have varying structure, including a preschool;

- (2) Not a local education agency as defined in 25 U.S.C. 2511(5); and

- (3) Not directly administered by the Bureau of Indian Education.

Waiver means the exercise of authority by a tribal governing body or school board for a BIE-funded school to elect to implement requirements, in part or in whole, alternative to the ones adopted by the Secretary pursuant to this part at schools that are under the tribal governing body's or school board's jurisdiction following approval of the proposal for alternative requirements by the Secretary and the Secretary of Education pursuant to section 8204 of the Act, except that a tribal governing body's decision to exercise waiver authority under this part takes priority over a school board decision to exercise waiver authority under this part.

Subpart A—Standards, Assessments, and Accountability System Requirements

§ 30.102 What does the Act require of the Secretary?

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

(b) If a tribal governing body or school board determines that the requirements described in paragraph (a) of this section are inappropriate, it may waive these requirements, in part or in whole, and propose alternative requirements for standards, assessments, and an accountability system that meets the requirements of section 1111 of the Act, taking into account the unique circumstances and needs of the school or schools and the students served by such schools.

(c) The Secretary and the Secretary of Education will provide technical assistance, upon request, either directly or through a contract, to a tribal governing body or school board that seeks a waiver and alternative requirements described in paragraph (b) of this section.

§ 30.103 How will the Secretary implement Standards, Assessments, and Accountability System requirements?

(a) The Secretary, through the Director, must describe requirements for standards, assessments, and an accountability system for use at BIE-funded schools in accordance with this part. The Director must periodically review and revise these requirements, as necessary, but review will occur not less often than every four (4) years beginning with the school year for which the requirements become effective.

(b) The Director will develop an Agency Plan that will provide Indian Tribes, schools, parents, and other stakeholders with quality, transparent information about how the Act will be implemented at BIE-funded schools, in-

cluding the requirements that have been established for standards, assessments, and an accountability system for BIE-funded schools.

(c) The Secretary will engage in meaningful consultation with Indian Tribes and Alaska Native Villages, schools, parents, and other stakeholders, when developing and revising requirements for standards, assessments, and an accountability system for BIE-funded schools.

(d) The Secretary may voluntarily partner with States, or another Federal agency, in the development of challenging academic standards and assessments.

§ 30.104 How will the Secretary implement requirements for standards?

(a) The Secretary will implement requirements for academic standards for BIE-funded schools by adopting:

- (1) Challenging academic content standards; and
- (2) Aligned academic achievement standards consisting of at least three levels of achievement defined in the Agency Plan.

(b) Combined, both academic content standards and academic achievement standards are hereinafter collectively referred to as “challenging academic standards.”

(c) The academic content standards will apply to all BIE-funded schools and the students served at those schools. Such academic content standards will include:

- (1) Mathematics;
- (2) Reading or Language Arts;
- (3) Science;
- (4) Tribal civics, as appropriations become available; and
- (5) Any other subject determined by the Secretary.

(d) The academic content standards must be aligned to entrance requirements for credit-bearing coursework in higher education and relevant career and technical education standards.

(e) The Secretary must, through a documented and validated standards-setting process, adopt alternate academic achievement standards for students with the most significant cognitive disabilities that:

(1) Are aligned with the challenging academic content standards under paragraphs (a) and (b) of this section;

(2) Promote access to the general education curriculum, consistent with the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*);

(3) Reflect professional judgment as to the highest possible standards achievable by the students;

(4) Are designated in the individualized education program developed under section 614(d)(3) of IDEA (20 U.S.C. 1414(d)(3)) for each such student as the academic achievement standards that will be used for the student; and

(5) Are aligned to ensure that a student who meets the alternate academic achievement standards is on track to pursue postsecondary education or competitive integrated employment, consistent with the purposes of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act, as in effect on July 22, 2014.

(f) The Secretary will adopt English language proficiency standards that:

(1) Are derived from the four (4) recognized domains of speaking, listening, reading, and writing;

(2) Address the different proficiency levels of English learners; and

(3) Are aligned with the challenging academic standards.

§ 30.105 How will the Secretary implement requirements for academic content assessments?

(a) *Academic assessments.* The BIE will implement a set of high quality student academic assessments in mathematics, reading or language arts, and science. As appropriations become available, BIE will implement an assessment in tribal civics.

(b) *Requirements for academic assessments.* The academic assessments must:

(1) Except with respect to alternate assessments for students with the most significant cognitive disabilities, be:

(i) The same academic assessments used to measure the achievement of all BIE-funded school students; and

(ii) Administered to all BIE-funded school students, including the following highly-mobile student populations:

(A) Students with status as a migratory child;

(B) Students with status as a homeless child or youth;

(C) Students with status as a child in foster care;

(D) Students with status as a student with a parent who is a member of the armed forces on active duty or serves on full-time National Guard duty;

(2) Be aligned with the BIE's challenging academic standards, and provide coherent and timely information about student attainment of such standards and whether the student is performing at the student's grade level;

(3) Be used for purposes for which such assessments are valid and reliable, consistent with relevant, nationally recognized professional and technical testing standards; objectively measure academic achievement, knowledge, and skills; and use tests that do not evaluate or assess personal or family beliefs and attitudes, or publicly disclose personally identifiable information, except that this provision does not preclude the use of:

(i) Constructed-response, short answer, or essay questions; or

(ii) Items that require a student to analyze a passage of text or to express opinions;

(4) Be of adequate technical quality for each purpose required under the Act and consistent with the requirements of this section, the evidence of which will be made public, including on the BIE website;

(5) Be administered:

(i) In the case of mathematics and reading or language arts:

(A) In each of grades three (3) through eight (8); and

(B) At least once in grades nine (9) through twelve (12);

(ii) In the case of science, not less than one time during:

(A) Grades three (3) through five (5);

(B) Grades six (6) through nine (9); and

(C) Grades ten (10) through twelve (12); and

(iii) In the case of any other subject chosen by the BIE, at the discretion of the BIE;

(6) Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-

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order thinking skills, such as critical thinking, reasoning, analysis, complex problem solving, effective communication, and understanding of challenging content, which may:

(i) Include valid and reliable measures of student academic growth at all achievement levels to help ensure that the assessment results could be used to improve student instruction; and

(ii) Be partially delivered in the form of portfolios, projects, or extended performance tasks;

(7) At the BIE's discretion, be administered through:

(i) A single summative assessment; or

(ii) Multiple Bureau-wide interim assessments during the course of the academic year that result in a single summative score that provides valid, reliable, and transparent information on student achievement or growth;

(8) Produce individual student interpretive, descriptive, and diagnostic reports, consistent with paragraph (b)(3) of this section, regarding achievement on such assessments that allow parents, teachers, principals, and other school leaders to understand and address the specific academic needs of students, and that are provided to parents, teachers, and school leaders, as soon as is practicable after the assessment is given, in an understandable and uniform format, and to the extent practicable, in a language that parents can understand;

(9) Enable results to be disaggregated:

(i) Within the Bureau and each BIE-funded school by:

(A) Each major racial and ethnic group;

(B) Economically disadvantaged students as compared to students who are not economically disadvantaged;

(C) Children with disabilities as defined in section 602(3) of the IDEA compared to children without disabilities;

(D) English proficiency status;

(E) Gender;

(F) Migrant status;

(G) Status as a homeless child or youth as defined in section 725(2) of title VII, subtitle B of the McKinney-Vento Homeless Assistance Act, as amended;

(H) Status as a child in foster care; and

(I) Status as a student with a parent who is a member of the armed forces on active duty or serves on full-time National Guard duty.

(ii) Disaggregation is not required in the cases in which the number of students in a subgroup is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student;

(10) Enable itemized score analyses to be produced and reported, consistent with paragraph (b)(3) of this section, to BIE-funded schools, so that parents, teachers, principals, other school leaders, and administrators can interpret and address the specific academic needs of students as indicated by the students' achievement on assessment items; and

(11) Be designed and developed:

(i) To be valid and accessible for use by all students, including students with disabilities and English learners; and

(ii) To the extent practicable, using the principles of universal design for learning. For the purposes of this section, "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 English learners.

(c) *Exception for advanced mathematics in middle school.* The BIE will determine the use of this exemption in the Agency Plan.

(d) *Computer adaptive assessments.* (1) BIE retains the right to develop and administer computer adaptive assessments as the assessments described in this section, provided the computer adaptive assessments meet the requirements of this section, except that:

(i) The requirement that the same academic assessments must be used to measure the achievement of all BIE-

funded school students and that the assessments must be administered to all BIE-funded school students may not be interpreted to require that all students taking the computer adaptive assessment be administered the same assessment items; and

(ii) Such assessment:

(A) Must measure, at a minimum, each student's academic proficiency based on the challenging academic standards for the student's grade level and growth toward such standards; and

(B) May measure the student's level of academic proficiency and growth using items above or below the student's grade level, including for use as part of the accountability system.

(2) In developing and administering computer adaptive assessments for students with the most significant cognitive disabilities and English learners:

(i) The BIE will ensure that the computer adaptive assessments for students with the most significant cognitive disabilities:

(A) Assess a student's academic achievement based on the challenging academic content standards for the grade in which the student is enrolled;

(B) Meet the requirements of this section and §§30.106 through 30.110, including §30.108, except the assessments are not required to meet the requirements of paragraph (d)(1)(ii) of this section; and

(C) Assess the student's academic achievement to measure, in the subject being assessed, whether the student is performing at the student's grade level; and

(ii) The BIE may provide for the use of computer adaptive assessments that:

(A) Meet the requirements §§30.106 through 30.110 except the assessments are not required to meet the requirements of paragraph (d)(1)(ii) of this section; and

(B) Assess the student's English language proficiency, which may include growth towards such proficiency, in order to measure the student's acquisition of English.

(e) *Peer review and future guidance on academic assessments.* (1) The BIE assessments required by these regulations must undergo peer review with the exception of tribal civics and non-

content Native American language academic assessments.

(2) BIE will develop guidance on the use of academic assessments in a Native American language for purposes of compliance with these regulatory requirements, including evidence of technical validity and reliability, in consultation with the Department of Education, Tribes, and other stakeholders.

(f) *Rule of construction on parental rights.* Nothing in this section may be construed as preempting tribal law at a tribally controlled school regarding the decision of a parent to not have the parent's child participate in the academic assessments under this paragraph (f).

(g) *Limitation on assessment time.* The Secretary may set a target limit on the aggregate amount of time devoted to the administration of assessments for each grade, expressed as a percentage of annual instructional hours.

(h) *Students in Native American language schools or programs.* The BIE is not required to assess, using an assessment written in English, student achievement in meeting the BIE's challenging State academic standards in reading/language arts, mathematics, or science for a student who is enrolled in a school or program that provides instruction primarily in a Native American language if:

(1) The program or school provides an assessment in the Native American language to all students in the program or school and:

(i) Submits evidence to the BIE according to BIE guidelines developed under paragraph (e)(2) of this section regarding such assessment's technical validity and reliability for the purposes for which it is intended; and

(ii) BIE submits this evidence to Department of Education for approval; and

(2) For an English learner the BIE continues to assess the English language proficiency of such English learner, using the annual English language proficiency assessment required under §30.110, and provides appropriate services to enable him or her to attain proficiency in English.

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§ 30.106 How will the Secretary provide for the inclusion of all students in assessments?

The Secretary will provide assessment instruments that allow for:

- (a) The participation of all students, generally;
- (b) The participation of students with disabilities, as detailed in §§ 30.107 and 30.108; and
- (c) The participation of English learners, as detailed in § 30.109.

§ 30.107 How will the Secretary include students with disabilities in assessments?

(a) The BIE and BIE-funded schools must ensure that students with disabilities have the appropriate accommodations, such as interoperability with, and ability to use, assistive technology, for students with disabilities, including students with the most significant cognitive disabilities, necessary to measure the academic achievement of such children relative to the BIE's challenging academic standards or alternate academic achievement standards described in § 30.104(d) and (e).

(b) The Secretary must include students with disabilities in all assessments, with appropriate accommodations. For purposes of this section, students with disabilities, collectively, are:

(1) All children with disabilities as defined under section 602(3) of the IDEA;

(2) Students with the most significant cognitive disabilities who are identified from among the students in paragraph (a) of this section; and

(3) Students with disabilities covered under other acts, including:

(i) Section 504 of the Rehabilitation Act of 1973, as amended; and

(ii) Title II of the Americans with Disabilities Act (ADA), as amended.

(c) Appropriate accommodations for those students described in paragraph (b) of this section will be determined by:

(1) For each student under paragraphs (b)(1) and (2) of this section, the student's IEP team;

(2) For each student under paragraph (b)(3)(i) of this section, the student's placement team; or

(3) For each student under paragraph (b)(3)(ii) of this section, the individual or team designated by the school to make these decisions.

(d)(1) Except as provided in paragraph (d)(2) of this section, a student with a disability must be assessed with an assessment aligned with the BIE's challenging academic standards for the grade in which the student is enrolled.

(2) A student with the most significant cognitive disabilities may be assessed with:

(i) The general assessment under § 30.106(b); or

(ii) The alternate assessment under § 30.108 aligned with the BIE's challenging academic content standards for the grade in which the student is enrolled and the BIE's alternate academic achievement standards.

(e) The BIE and school must ensure that general and special education teachers, paraprofessionals, teachers of English learners, specialized instructional support personnel, and other appropriate staff receive necessary training to administer assessments and know how to administer assessments, including, as necessary, alternate assessments, and know how to make use of appropriate accommodations during assessment for all students with disabilities, consistent with section 1111(b)(2)(B)(vii)(III) of the Act.

(f) The BIE and school must ensure that the use of appropriate accommodations under paragraph (c) of this section does not deny a student with a disability:

(1) The opportunity to participate in the assessment; and

(2) Any of the benefits from participation in the assessment that are afforded to students without disabilities.

§ 30.108 How will the Secretary provide for alternate assessments for students with the most significant cognitive disabilities?

(a) *Alternate assessments aligned with alternate academic achievement standards.* The BIE will provide for alternate assessments aligned with the challenging academic content standards for the grade in which the student is enrolled and alternate academic achievement standards described in § 30.104(d)

and (e) for students with the most significant cognitive disabilities. The BIE must:

(1) Consistent with paragraph (b) of this section, ensure that, for each subject, the total number of students assessed in the subject using the alternate assessments does not exceed one (1) percent of the total number of all students in all BIE-funded schools who are assessed in the subject;

(2) With regard to the percentage of students assessed under this paragraph (a):

(i) Not prohibit a BIE-funded school from assessing more than one (1) percent of its assessed students in any subject for which assessments are administered with an alternate assessment aligned with alternate academic achievement standards;

(ii) Require that the BIE-funded school submit by October 1 information into the BIE's student information system regarding what assessment the student is to take and which must be consistent with the individualized education program (IEP);

(iii) Provide appropriate oversight of a BIE-funded school that is required to submit information to the BIE; and

(iv) Make the information submitted by a BIE-funded school under paragraph (a)(2)(ii) of this section publicly available, provided that such information does not reveal personally identifiable information about an individual student;

(3) With regard to IEP teams:

(i) Establish clear and appropriate guidelines, consistent with section 612(a)(16)(C) of the IDEA, and provide technical assistance as requested in writing, and monitor implementation of clear and appropriate guidelines for IEP teams to apply in determining, on a case-by-case basis, which students with the most significant cognitive disabilities will be assessed based on alternate academic achievement standards. Such guidelines must include a BIE definition of "students with the most significant cognitive disabilities" that addresses factors related to cognitive functioning and adaptive behavior, such that:

(A) The identification of a student as having a particular disability as defined in the IDEA or as an English

learner does not determine whether a student is a student with the most significant cognitive disabilities;

(B) A student with the most significant cognitive disabilities is not identified solely on the basis of the student's previous low academic achievement, or the student's previous need for accommodations to participate in general BIE assessments; and

(C) A student is identified as having the most significant cognitive disabilities because the student requires extensive, direct individualized instruction and substantial supports to achieve measurable gains on the BIE's challenging academic content standards for the grade in which the student is enrolled; and

(ii) Provide to IEP teams a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on alternate academic achievement standards, including any effects of BIE and BIE-funded school policies on a student's education resulting from taking an alternate assessment aligned with alternate academic achievement standards, such as how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma;

(4) Ensure that the parents of such students are clearly informed, as part of the process for developing the individualized education program (as defined in section 614(d)(1)(A) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A))):

(i) That their child's academic achievement will be measured based on the alternate academic achievement standards; and

(ii) How participation in the assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma;

(5) Promote, consistent with the IDEA (20 U.S.C. 1400 *et seq.*), the involvement and progress of students with the most significant cognitive disabilities in the general education curriculum;

(6) Describe the steps the Bureau has taken to incorporate universal design

for learning, to the extent feasible, in alternate assessments;

(7) Describe that general and special education teachers, and other appropriate staff:

(i) Know how to administer the alternate assessments; and

(ii) Make appropriate use of accommodations for students with disabilities on all assessments required under this paragraph (a);

(8) Develop, disseminate information on, and promote the use of appropriate accommodations to increase the number of students with significant cognitive disabilities:

(i) Participating in academic instruction and assessments for the grade level in which the student is enrolled; and

(ii) Who are tested based on the BIE’s challenging academic standards for the grade level in which the student is enrolled; and

(9) Not preclude a student with the most significant cognitive disabilities who takes an alternate assessment based on alternate academic achievement standards from attempting to complete the requirements for a regular high school diploma.

(b) *Responsibility under IDEA.* Subject to the authority and requirements for the IEP team for a child with a disability under section 614(d)(1)(A)(i)(VI)(bb) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)(i)(VI)(bb)), such team, consistent with the guidelines established by the BIE and required under section 612(a)(16)(C) of such Act (20 U.S.C. 1412(a)(16)(C)) and paragraph (a)(1) of this section, will determine when a child with a significant cognitive disability may participate in an alternate assessment aligned with the alternate academic achievement standards.

§30.109 How will the Secretary include English learners in academic content assessments?

(a) *English learners.* English learners must be:

(1) Assessed in a valid and reliable manner; and

(2) Provided appropriate accommodations on assessments administered including, to the extent practicable, as-

sessments in the language and form most likely to yield accurate data on what the students know and can do in academic content areas, until the students have achieved English language proficiency, consistent with standardized BIE-determined exit procedures.

(b) *Language or form of assessment.* Notwithstanding paragraph (a)(2) of this section, BIE-funded schools must provide for assessments (using tests in English) of reading or language arts of any student who has attended school in the United States for three (3) or more consecutive school years, except that if the BIE-funded school determines, on a case-by-case individual basis, that academic assessments in another language or form would likely yield more accurate and reliable information on what the student knows and can do, the BIE-funded school may make a determination to assess the student in the appropriate language other than English for a period that does not exceed two (2) additional consecutive years, provided that the student has not yet reached a level of English language proficiency sufficient to yield valid and reliable information on what the student knows and can do on tests (written in English) of reading or language arts. This requirement does not permit either the BIE or BIE-funded schools to exempt English learners from participating in the BIE’s assessment system.

(c) *BIE responsibilities.* The BIE must:

(1) Disseminate information and resources regarding English learners to, at a minimum, BIE-funded schools, and parents;

(2) Promote the use of accommodations for English learners to ensure that all English learners are able to participate in academic instruction and assessments; and

(3) Provide technical assistance when requested in writing.

(d) *Exception for recently arrived English learners.* With respect to recently arrived English learners who have been enrolled in a school in one of the 50 States in the United States or the District of Columbia for less than twelve (12) months, the BIE may choose to:

(1) Exclude:

(i) The English learner from one administration of the reading or language

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arts assessment required under § 30.105; and

(ii) The English learner's results on any of the assessments required under § 30.105(b)(5)(i) or § 30.110 for the first year of the English learner's enrollment in the school for the purposes of the BIE-determined accountability system under § 30.111; or

(2) Assess, and report the performance of:

(i) The English learner on the reading or language arts and mathematics assessments required under § 30.105(b)(5)(i) in each year of the student's enrollment in such a school; and

(ii) For the purposes of the BIE-determined accountability system:

(A) For the first year of the student's enrollment in the school, exclude the results on the assessments described in paragraphs (d)(1)(i) and (ii) of this section;

(B) Include a measure of student growth on the assessments described in paragraphs (d)(1)(i) and (ii) of this section in the second year of the student's enrollment in the school; and

(C) Include proficiency on the assessments in reading or language arts and mathematics described in this paragraph (d) in the third year of the student's enrollment in such a school, and each succeeding year of enrollment.

(e) *English learner subgroup.* With respect to a student previously identified as an English learner and for not more than four (4) years after the student ceases to be identified as an English learner, the BIE may include the results of the student's academic content assessments within the English learner subgroup of the subgroups of students as defined in § 30.101 for the purposes of the BIE-determined accountability system.

§ 30.110 How will the Secretary ensure BIE-funded schools will provide for annual assessments of English language proficiency for English learners?

(a) The BIE will ensure that BIE-funded schools will administer a valid and reliable annual assessment of English proficiency to all English learners in the schools served by the BIE.

(b) The BIE will require BIE-funded schools to use the assessment to assess

annually the English language proficiency, including reading, writing, speaking, and listening skills, of all English learners in kindergarten through grade twelve (12).

(c) The English language proficiency assessment must be aligned with the BIE's English language proficiency standards described in § 30.104(f).

(d) The assessment will be implemented, developed, and used consistent with the requirements of this section.

(e) The assessment will provide coherent and timely information about each student's attainment of the BIE's English language proficiency standards to parents.

(f) If an English learner has a disability that precludes assessment of the student in one or more domains of the English language proficiency assessment such that there are no appropriate accommodations for the affected domain(s) (*e.g.*, a non-verbal English learner who because of an identified disability cannot take the speaking portion of the assessment), as determined, on an individualized basis, by the student's IEP team, 504 team, or by the individual or team designated by the BIE-funded school to make these decisions under title II of the ADA, then the BIE must assess the student's English language proficiency based on the remaining domains in which it is possible to assess the student.

(g) The BIE must provide for an alternate English language proficiency assessment for English learners with the most significant cognitive disabilities who cannot participate in the assessment under this paragraph (g) even with appropriate accommodations.

(h) BIE will provide technical assistance, including training teachers on how to administer assessments, in regard to English language proficiency assessments and alternate English language proficiency assessments to BIE-funded schools as requested in writing.

§ 30.111 How will the Secretary implement requirements for an accountability system?

(a) The Secretary will define accountability system for BIE-funded schools consistent with this section and subpart C of this part, including

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provisions for a single Bureau-wide accountability system and system of support and improvement activities, taking into account the unique circumstances and needs of BIE-funded schools and the students served by BIE-funded schools.

(b) To improve student academic achievement and school success among all elementary and secondary schools within the BIE-funded school system, the Secretary will develop and implement a single, Bureau-wide accountability system that:

(1) Is based on the Bureau's challenging academic standards and academic assessments;

(2) Is informed by ambitious long-term goals and measurements of interim progress;

(3) Includes all the accountability indicators described paragraph (e) of this section;

(4) Takes into account the achievement of all elementary and secondary school students within the BIE-funded school system;

(5) Is the same accountability system used to annually, meaningfully differentiate all schools within the BIE-funded school system and the same accountability system used to identify schools for comprehensive and targeted support and improvement; and

(6) Includes the process that the Bureau will use to ensure effective development and implementation of school support and improvement plans, including evidence-based interventions, to hold all schools within the BIE-funded school system accountable for student academic achievement and school success.

(c) The inclusion of science and tribal civics will be phased into the Secretary's requirements for accountability system starting as a school quality or student success indicator and their continued use in such manner will be revisited as the accountability system is implemented.

(d) For all students and separately for each subgroup of students within the BIE-funded school system, the BIE will establish long-term goals and measurements of interim progress that will include, at a minimum, improved academic achievement, as measured by proficiency on the Bureau's annual as-

sessments in mathematics and reading or language arts under § 30.105(b)(5)(i), and high school graduation rates, including the four (4)-year adjusted cohort graduation rate, or at BIE's discretion one or more extended year graduation cohorts, and that will:

(1) Use the same multi-year length of time for all students and for each subgroup of students within the BIE-funded school system to meet the goals; and

(2) Take into account, for subgroups of students who are behind on the measurements of academic achievement and high school graduations rates, the improvement necessary to make significant progress in closing Bureau-wide proficiency and graduation rate gaps.

(e) For all students and separately for each subgroup of students within the BIE-funded school system, the BIE will include a long-term goal and measurements of interim progress for increases in the percentage of English learner students making progress in achieving English language proficiency as defined by the Secretary and measured by the assessments under § 30.110 within a timeline determined by the Bureau.

(f) For all students and separately for each subgroup of students the Bureau will establish and annually measure the following accountability indicators:

(1) For all schools, based upon the long-term goals established under paragraphs (b)(2) and (d) of this section, academic achievement:

(i) As measured by proficiency on the annual assessments of mathematics and reading or language arts described in § 30.105(b)(5)(i); and

(ii) At the BIE's discretion, for each high school, growth, as measured by such annual assessments.

(2) For elementary and secondary schools that are not high schools:

(i) A measure of student growth, if determined to be appropriate by the BIE; or

(ii) Another valid and reliable Bureau-wide academic indicator that allows for meaningful differentiation in school performance.

(3) For high schools, based upon the long-term goals established under paragraphs (b)(2) and (d) of this section:

(i) The four (4)-year adjusted cohort graduation rate; and

(ii) At the BIE's discretion, the extended-year adjusted graduation cohort rate, as defined in paragraph (j) of this section.

(4) For all schools, progress in achieving English language proficiency, as defined by the BIE and measured by the assessments of English language proficiency described in §30.110, within a BIE-determined timeline for all English learners:

(i) In each of grades three (3) through eight (8); and

(ii) In the high school grade for which such English learners are otherwise assessed in mathematics and reading or language arts.

(5) For all schools, not less than one indicator of school quality or student success that:

(i) Allows for meaningful differentiation in school performance;

(ii) Is valid, reliable, comparable, and Bureau-wide (with the same indicator or indicators used for each grade span, as such term is determined by the BIE); and

(iii) May include one or more of the following measures:

(A) Student or Educator engagement;

(B) Chronic absenteeism;

(C) Student access to and completion of advanced coursework;

(D) Postsecondary readiness;

(E) School climate and safety; and

(F) Any other indicator the BIE chooses that meets the requirements of this section.

(g) The BIE will establish a system for meaningfully differentiating, annually, all schools that will:

(1) Be based on all indicators described paragraph (f) of this section for all students and for each subgroup of students; and

(2) With respect to paragraphs (f)(1) through (4) of this section, afford:

(i) Substantial weight to each such indicator;

(ii) In the aggregate, much greater weight than is afforded to the indicator or indicators utilized by the BIE and described in paragraph (f)(5) of this section, in the aggregate; and

(iii) Include differentiation of any such school in which any subgroup of students is consistently underperforming, as determined by the BIE, based on all indicators described in paragraph (f) of this section.

(h) Based on the system of meaningful differentiation described in paragraph (g) of this section, the BIE will establish a methodology to identify:

(1) Beginning with the first full school year following April 27, 2020, and at least once every three (3) years thereafter, one (1) BIE-wide category of schools for comprehensive support and improvement, which will include:

(i) Not less than the lowest-performing five (5) percent of all schools receiving Title I funding;

(ii) All high schools failing to graduate one third ($\frac{1}{3}$) or more of their students; and

(iii) All schools identified for additional targeted support and improvement that receive ESEA Title I funding and do not meet exit criteria as provided in §30.124(a)(2).

(2) The BIE will provide technical assistance to all schools identified for comprehensive support and improvement, targeted support and improvement, or additional targeted support.

(i) The Bureau's accountability system will annually measure the achievement of at least ninety-five (95) percent of all students, and ninety-five (95) percent of each subgroup of students, who are enrolled in a school within the BIE-funded school system on the Bureau's assessments. The denominator for the purpose of measuring, calculating, and reporting on the academic achievement indicator will be the greater of:

(1) Ninety-five (95) percent of all students, or ninety-five (95) percent of each subgroup of students; or

(2) The number of students participating in the assessments.

(j) The performance of students that have not attended the same BIE-funded school for at least half ($\frac{1}{2}$) of a school year will not be included in the academic achievement, other academic, progress in achieving English language proficiency, or school quality or student success indicators for that school year, but will be used for the purpose of

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reporting on the Bureau and school report cards for that school year.

(k) Extended-year adjusted cohort graduation rate means the fraction—

(1) The denominator of which consists of the number of students who form the original cohort of entering first-time students in grade nine (9) enrolled in the high school, adjusted by—

(i) Adding the students who joined that cohort, after the date of the determination of the original cohort; and

(ii) Subtracting only those students who left that cohort, after the date of the determination of the original cohort, as described in paragraph (1) of this section; and

(2) The numerator of which—

(i) Consists of the sum of—

(A) The number of students in the cohort, as adjusted under paragraph (k)(1) of this section, who earned a regular high school diploma before, during, or at the conclusion of—

(1) One or more additional years beyond the fourth year of high school; or

(2) A summer session immediately following the additional year of high school; and

(B) All students with the most significant cognitive disabilities in the cohort, as adjusted under paragraph (k)(1) of this section, assessed using the alternate assessment aligned to alternate academic achievement standards under § 30.108 and awarded an alternate diploma that is—

(1) Standards-based;

(2) Aligned with the requirements for the regular high school diploma; and

(3) Obtained within the time period for which the BIE ensures the availability of a free appropriate public education under 20 U.S.C. 1412(a)(1); and

(ii) Does not include any student awarded a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.

(1) To remove a student from a cohort, a school or local educational agency must require documentation, or obtain documentation from the BIE, to confirm that the student has transferred out, immigrated to another country, transferred to a prison or juvenile facility, or is deceased.

(m) For purposes of this paragraph (m), the term “transferred out” has the meaning given the term in ESEA section 8101(25)(C).

(n) For those high schools that start after grade nine (9), the original cohort will be calculated for the earliest high school grade students attend no later than the date by which student membership data is collected annually by the BIE.

Subpart B—Accountability, Waiver of Requirements, Technical Assistance, and Approval of Proposals for Alternative Requirements

§ 30.112 May a tribal governing body or school board waive the Secretary’s requirements for standards, assessments, and an accountability system?

Yes. A tribal governing body or school board may waive the Secretary’s requirements for standards, assessments, and an accountability system in part or in whole, and the tribal governing body or school board’s alternative requirements will apply if they meet the requirements of section 1111, taking into account the unique circumstances and needs of the applicable school or schools and the students served by such school or schools, and are approved by the Secretary and the Secretary of Education. If the Secretary and the Secretary of Education do not approve the tribal governing body or school board’s proposal for alternative requirements, the Secretary’s requirements under this part continue to apply. Depending on the nature and content of such proposals for alternative requirements, and subject to the availability of appropriations, alternative requirements will generally be effective in the school year following the school year they are approved. Where a tribal governing body or school board proposes to use existing State requirements, approval of the use of such requirements is dependent upon the agreement of the applicable State.

§30.113 How does a tribal governing body or school board waive the Secretary's requirements?

(a) A tribal governing body or school board may waive the Secretary's requirements for standards, assessments, and an accountability system, in part or in whole.

(b) The tribal governing body or school board must notify the Secretary and the Secretary of Education in writing of the decision to waive the Secretary's requirements in part or in whole.

(c) Within sixty (60) days of the decision to waive the Secretary's requirements in part or in whole, the tribal governing body or school board must submit to the Secretary for review and, in coordination with the Secretary of Education, approval, a proposal for alternative requirements that are consistent with section 1111 of the Act, taking into account the unique circumstances and needs of the school or schools and the students served. The Secretary encourages a tribal governing body or school board to request and receive technical assistance well in advance of submission of a plan to the Secretary for review. The tribal governing body or school board must continue to follow the Secretary's requirements for standards, assessments, and an accountability system until a proposal for alternative requirements has been approved and until alternative requirements become effective.

(d) A tribal governing body or school board may request in writing an extension of the sixty (60) day deadline for the provision of technical assistance.

(e) A tribal governing body or school board must use this process anytime a tribal governing body or school board proposes alternative requirements for standards, assessments, and an accountability system, or proposes changes to approved alternative requirements.

(f) The Secretary will work with the Secretary of Education to develop and make available templates for proposals for alternative requirements that tribal governing bodies and school boards may use to assist in the development of such proposals for alternative requirements.

§30.114 What should a tribal governing body or school board include in a proposal for alternative requirements?

Proposals for alternative requirements must include an explanation of how the alternative proposal meets the requirements of section 1111 of the Act, taking into consideration the unique circumstances and needs of BIE-funded schools and the students served at such schools.

§30.115 May proposed alternative requirements use parts of the Secretary's requirements?

Yes, a tribal governing body or school board may use the Secretary's requirements in part or in whole. Alternative proposals must clearly identify any retained portions of the Secretary's requirements.

§30.116 Will the Secretary provide technical assistance to tribal governing bodies or school boards seeking to develop alternative requirements?

The Secretary and the Secretary of Education are required by statute to provide technical assistance, upon request, either directly or through contract, to a tribal governing body or a school board that seeks to develop alternative requirements. A tribal governing body or school board seeking such assistance must submit a request in writing to the Director. The Secretary will provide such technical assistance on an ongoing and timely basis.

§30.117 What is the process for requesting technical assistance?

(a) Requests for technical assistance must be in writing from a tribal governing body or school board to the Director of BIE and the Department of Education's Assistant Secretary of the Office of Elementary and Secondary Education.

(b) The Director, or designee, will acknowledge receipt of a request for technical assistance.

(c) No later than thirty (30) days after receiving the original request, the Director will identify a point-of-contact and begin the process of providing technical assistance. The Director and requesting tribal governing body or

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school board will work together to identify the form, substance, and timeline for the assistance.

§ 30.118 When should the tribal governing body or school board request technical assistance?

A tribal governing body or school board may request technical assistance in writing at any time. A tribal governing body or school board is welcomed and encouraged to request technical assistance before formally notifying the Secretary of its intention to waive the requirements established by the Secretary in order to maximize the time available for technical assistance.

§ 30.119 How does the Secretary review and approve alternative requirements?

(a) The Secretary and the Secretary of Education will jointly approve plans for alternative requirements for standards, assessments, and an accountability system or determine that the proposed alternative requirements do not meet the requirements of section 1111 of the Act.

(1) The Secretary will consult with the Secretary of Education through the review of a proposal for alternative requirements.

(2) Upon receipt of a proposal for alternative requirements for standards, assessments, and an accountability system, in part or in whole, the Secretary will begin coordination with the Secretary of Education on review and approval of the proposal.

(3) The Secretary will provide a status update regarding the processing of the proposal within 120 days of receipt of the proposal and every thirty (30) days thereafter to discuss the stage of the review process.

(b) If the Secretary and the Secretary of Education approve a proposal for alternative requirements, the Secretary will:

(1) Promptly notify the tribal governing body or school board; and

(2) Indicate the date for which the alternative proposal will be effective.

(c) If a proposal for alternative requirements is not approved, the tribal governing body or school board will be notified that:

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(1) The proposal has not been approved; and

(2) The reasons why the alternative proposal was not approved.

(d) If a proposal for alternative requirements is not approved, the Secretary will provide technical assistance to the tribal governing body or school board to help to overcome the reasons why the alternative proposal was not approved.

(e) If a proposal for alternative requirements is not approved, or is not moving forward, then Tribes may individually request formal consultation with the Secretary and Secretary of Education.

Subpart C—Support and Improvement

§ 30.120 How will the Secretary notify BIE-funded schools that they have been identified for school support and improvement activities?

The Secretary will notify each BIE-funded school that has been identified for comprehensive support and improvement as described in § 30.111(h).

§ 30.121 How will the Secretary implement requirements for comprehensive support and improvement activities?

(a) Once notified that it has been identified for comprehensive support and improvement, each BIE-funded school is required to develop and implement, in partnership with stakeholders (including principals and other school leaders, teachers, and parents), a comprehensive support and improvement plan to improve student outcomes that:

(1) Is informed by all indicators described in § 30.111(f), including student performance against BIE-determined long-term goals described in § 30.111(d);

(2) Includes evidence-based interventions;

(3) Is based on a school-level needs assessment;

(4) Identifies resource inequities, which may include a review of school-level budgeting, to be addressed through implementation of such comprehensive support and improvement plan;

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(5) Is approved by the school and the BIE; and

(6) Upon approval and implementation, is monitored and periodically reviewed by the BIE.

(b) In regard to high schools that have been identified as having failed to graduate one-third or more of their students, the BIE may:

(1) Permit differentiated improvement activities that use evidence-based interventions in the case of a school that predominantly serves students:

(i) Returning to education after having exited secondary school without a regular high school diploma; or

(ii) Who, based on their grade or age, are significantly off track to accumulate sufficient academic credits to meet high school graduation requirements; and

(2) In the case of a school that has a total enrollment of fewer than 100 students, permit the BIE-funded school to forego implementation of improvement activities.

§ 30.122 How will the Secretary implement requirements for targeted support and improvement activities?

(a) Using the system of annual meaningful differentiation of schools described in § 30.111(b)(5) and (f), the BIE will notify each BIE-funded school in which any subgroup of students is consistently underperforming in accordance with § 30.111(g)(2)(iii).

(b) Each school that has been notified must develop and implement, in partnership with stakeholders (including principals and other school leaders, teachers, and parents), a school-level targeted support and improvement plan to improve student outcomes based on the BIE's indicators for each subgroup of students that was the subject of such notification that:

(1) Is informed by all indicators described in § 30.111(f), including performance against long-term goals described in § 30.111(d);

(2) Includes evidence-based interventions;

(3) Is approved by the BIE prior to implementation of such plan;

(4) Is monitored by the BIE, upon submission and implementation; and

(5) Results in additional action following unsuccessful implementation of such plan after a number of years determined by the BIE.

§ 30.123 How will the Secretary implement requirements to identify schools for additional targeted support?

(a) The BIE will identify for additional support and improvement each school with one (1) or more subgroups that is performing as poorly as the lowest-performing five (5) percent of all Title I schools identified for comprehensive support and improvement in the BIE system using the BIE's system of annual meaningful differentiation of schools described in § 30.111(g).

(b) Each school identified for additional targeted support and improvement must develop and implement a school-level targeted support and improvement plan and identify resource inequities (which may include a review of BIE-funded school level budgeting), to be addressed through implementation of the plan.

§ 30.124 How will the Secretary implement continued support for Bureau-funded schools and school improvement?

(a) The Secretary will establish exit criteria for:

(1) Schools identified for comprehensive support and improvement, which, if not satisfied within a BIE-determined number of years (not to exceed four (4) years), will result in more rigorous BIE-determined action, such as implementation of interventions (which may include addressing school-level operations); and

(2) Schools identified for additional targeted support, which, if not satisfied within a BIE-determined number of years, will, in the case of schools receiving Title I funds, result in identification of the school by the BIE for comprehensive support and improvement.

(b) The Secretary will also periodically review resource allocation to support school improvement.

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Subpart D—Responsibilities and Accountability

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

The Bureau is required to prepare and disseminate widely to the public an annual report card for the BIE-funded school system as a whole, and also report cards for individual BIE-funded schools, consistent with the requirements of section 1111(h) of the Act. The BIE's annual report card will be made available on the internet along with all BIE-funded school report cards.

§ 30.126 What information collections have been approved?

The collections of information in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076-0191. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

PART 31—FEDERAL SCHOOLS FOR INDIANS

Sec.

- 31.0 Definitions.
- 31.2 Use of Federal school facilities.
- 31.3 Non-Indian pupils in Indian schools.
- 31.4 Compulsory attendance.
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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 conform-

ance 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 the children admitted in the public schools of such State or county.

(34 Stat. 1018, 35 Stat. 783, 40 Stat. 564; 25 U.S.C. 288, 289, 297)

[29 FR 5828, May 2, 1964]

§ 31.4 Compulsory attendance.

Compulsory school attendance of Indian children is provided for by law.

(60 Stat. 962; 25 U.S.C. 231)

CROSS REFERENCE: For penalties for the failure of Indians to send children to school and for contributing to the delinquency of minors, see § 11.424 of this chapter.

§ 31.6 Coercion prohibited.

There shall be no coercion of children in the matter of transfers from one school to another, but voluntary enrollment should be effected through maintenance of Federal Indian schools or programs which suit the needs and