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*** THE FEDERAL REGISTER ***

TITLE 25 -- INDIANS
CHAPTER I -- BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR
SUBCHAPTER E -- EDUCATION
PART 30 -- ADEQUATE YEARLY PROGRESS

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25 CFR 30.100

§ 30.100 What is the purpose of this part?

This part establishes for schools receiving Bureau funding a definition of "Adequate Yearly Progress (AYP)." Nothing in this part:

- (a) Diminishes the Secretary's trust responsibility for Indian education or any statutory rights in law;
- (b) Affects in any way the sovereign rights of tribes; or
- (c) Terminates or changes the trust responsibility of the United States to Indian tribes or individual Indians.

§ 30.101 What definitions apply to terms in this part?

Act means the No Child Left Behind Act, Public Law 107-110, enacted January 8, 2002. The No Child Left Behind Act reauthorizes and amends the Elementary and Secondary Education Act (ESEA) and amends the Education Amendments of 1978.

Bureau means the Bureau of Indian Affairs in the Department of the Interior.

Department means the Department of the Interior.

OIEP means the Office of Indian Education Programs in the Bureau of Indian Affairs.

School means a school funded by the Bureau of Indian Affairs.

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

Secretaries means the Secretary of the Interior and the Secretary of Education.

§ 30.102 Does the Act require the Secretary of the Interior to develop a definition of AYP for Bureau-funded schools?

Yes, the Act requires the Secretary to develop a definition of AYP through negotiated rulemaking. In developing the Secretary's definition of AYP, the No Child Left Behind Negotiated Rulemaking Committee (Committee) considered a

variety of options. In choosing the definition in § 30.104, the Committee in no way intended to diminish the Secretary's trust responsibility for Indian education or any statutory rights in law. Nothing in this part:

- (a) Affects in any way the sovereign rights of tribes; or
- (b) Terminates or changes the trust responsibility of the United States to Indian tribes or individual Indians.

§ 30.103 Did the Committee consider a separate Bureau definition of AYP?

Yes, the Committee considered having the Bureau of Indian Affairs develop a separate Bureau definition of AYP. For a variety of reasons, the Committee reached consensus on the definition in § 30.104. This definition is in no way intended to diminish the United States' trust responsibility for Indian education nor is it intended to give States authority over Bureau-funded schools.

§ 30.104 What is the Secretary's definition of AYP?

The Secretary defines AYP as follows. The definition meets the requirements in 20 U.S.C. 6311(b).

(a) Effective in the 2005-2006 school year, the academic content and student achievement standards, assessments, and the definition of AYP are those of the State where the school is located, unless an alternative definition of AYP is proposed by the tribal governing body or school board and approved by the Secretary.

(1) If the geographic boundaries of the school include more than one State, the tribal governing body or school board may choose the State definition it desires. Such decision shall be communicated to the Secretary in writing.

(2) This section does not mean that the school is under the jurisdiction of the State for any purpose, rather a reference to the State is solely for the purpose of using the State's assessment, academic content and student achievement standards, and definition of AYP.

(3) The use of the State's definition of AYP does not diminish or alter the Federal Government's trust responsibility for Indian education.

(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.

§ 30.105 May a tribal governing body or school board use another definition of AYP?

Yes. A tribal governing body or school board may waive all or part of the Secretary's definition of academic content and achievement standards, assessments, and AYP. However, unless an alternative definition is approved under § 30.113, the school must use the Secretary's definition of academic content and achievement standards, assessments, and AYP.

§ 30.106 How does a tribal governing body or school board propose an alternative definition of AYP?

If a tribal governing body or school board decides that the definition of AYP in § 30.104 is inappropriate, it may decide to waive all or part of the definition. Within 60 days of the decision to waive, the tribal governing body or school board must submit to the Secretary a proposal for an alternative definition of AYP. The proposal must meet the require-

ments of 20 U.S.C. 6311(b) and 34 CFR 200.13-200.20, taking into account the unique circumstances and needs of the school or schools and the students served.

§ 30.107 What must a tribal governing body or school board include in its alternative definition of AYP?

(a) An alternative definition of AYP must meet the requirements of 20 U.S.C. 6311(b)(2) of the Act and 34 CFR 200.13-200.20, taking into account the unique circumstances and needs of the school or schools and the students served.

(b) In accordance with 20 U.S.C. 6311(b) of the Act and 34 CFR 200.13-200.20, an alternative definition of AYP must:

- (1) Apply the same high standards of academic achievement to all students;
- (2) Be statistically valid and reliable;
- (3) Result in continuous and substantial academic improvement for all students;
- (4) Measure the progress of all students based on a high-quality assessment system that includes, at a minimum, academic assessments in mathematics and reading or language arts;
- (5) Measure progress separately for reading or language arts and for mathematics;
- (6) Unless disaggregation of data cannot yield statistically reliable information or reveals personally identifiable information, apply the same annual measurable objectives to each of the following:
 - (i) The achievement of all students; and
 - (ii) The achievement of economically disadvantaged students, students from major racial or ethnic groups, students with disabilities, and students with limited English proficiency;
- (7) Establish a starting point;
- (8) Create a timeline to ensure that all students are proficient by the 2013-2014 school year;
- (9) Establish annual measurable objectives;
- (10) Establish intermediate goals;
- (11) Include at least one other academic indicator which, for any school with a 12th grade, must be graduation rate; and
- (12) Ensure that at least 95 percent of the students enrolled in each group under § 30.107(b)(6) are assessed.

(c) If a Bureau-funded school's alternative definition of AYP does not use a State's academic content and student achievement standards and academic assessments, the school must include with its alternative definition the academic standards and assessment it proposes to use. These standards and assessments must meet the requirements in 20 U.S.C. 6311(b) and 34 CFR 200.1-200.9.

§ 30.108 May an alternative definition of AYP use parts of the Secretary's definition?

Yes, a tribal governing body or school board may take part of the Secretary's definition and propose to waive the remainder. The proposed alternative definition of AYP must, however, include both the parts of the Secretary's AYP definition the tribal governing body or school board is adopting and those parts the tribal governing body or school board is proposing to change.

§ 30.109 Will the Secretary provide assistance in developing an alternative AYP definition?

Yes, the Secretary through the Bureau, shall provide technical assistance either directly or through contract to the tribal governing body or the school board in developing an alternative AYP definition. A tribal governing body or school board needing assistance must submit a request to the Director of OIEP under § 30.110. In providing assistance, the Secretary may consult with the Secretary of Education and may use funds supplied by the Secretary of Education in accordance with 20 U.S.C. 7301.

§ 30.110 What is the process for requesting technical assistance to develop an alternative definition of AYP?

(a) The tribal governing body or school board requesting technical assistance to develop an alternative definition of AYP must submit a written request to the Director of OIEP, specifying the form of assistance it requires.

(b) The Director of OIEP must acknowledge receipt of the request for technical assistance within 10 days of receiving the request.

(c) No later than 30 days after receiving the original request, the Director of OIEP will identify a point of contact. This contact will immediately begin working with the tribal governing body or school board to jointly develop the specifics of the technical assistance, including identifying the form, substance, and timeline for the assistance.

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

In order to maximize the time the tribal governing body or school board has to develop an alternative definition of AYP and to provide full opportunity for technical assistance, the tribal governing body or school board should request technical assistance before formally notifying the Secretary of its intention to waive the Secretary's definition of AYP.

§ 30.113 How does the Secretary review and approve an alternative definition of AYP?

(a) The tribal governing body or school board submits a proposed alternative definition of AYP to the Director, OIEP within 60 days of its decision to waive the Secretary's definition.

(b) Within 60 days of receiving a proposed alternative definition of AYP, OIEP will notify the tribal governing body or the school board of:

- (1) Whether the proposed alternative definition is complete; and
- (2) If the definition is complete, an estimated timetable for the final decision.

(c) If the proposed alternative definition is incomplete, OIEP will provide the tribal governing body or school board with technical assistance to complete the proposed alternative definition of AYP, including identifying what additional items are necessary.

(d) The Secretaries will review the proposed alternative definition of AYP to determine whether it is consistent with the requirements of 20 U.S.C. 6311(b). This review must take into account the unique circumstances and needs of the schools and students.

(e) The Secretaries shall approve the alternative definition of AYP if it is consistent with the requirements of 20 U.S.C. 6311(b), taking into consideration the unique circumstances and needs of the school or schools and the students served.

(f) If the Secretaries approve the alternative definition of AYP:

- (1) The Secretary shall promptly notify the tribal governing body or school board; and
- (2) The alternate definition of AYP will become effective at the start of the following school year.

(g) The Secretaries will disapprove the alternative definition of AYP if it is not consistent with the requirements of 20 U.S.C. 6311(b). If the alternative definition is disapproved, the tribal governing body or school board will be notified of the following:

- (1) That the definition is disapproved; and
- (2) The reasons why the proposed alternative definition does not meet the requirements of 20 U.S.C. 6311(b).

(h) If the Secretaries deny a proposed definition under paragraph (g) of this section, they shall provide technical assistance to overcome the basis for the denial.

SUBPART B -- ASSESSING ADEQUATE YEARLY PROGRESS

§ 30.114 Which students must be assessed?

All students in grades three through eight and at least once in grades ten 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

Status

Action required by entity

failing to make AYP in same academic subject		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 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.