



## ASSESSMENTS

### Bureau of Indian Education Negotiated Rulemaking on Standards, Assessments, and Accountability

#### Issue Brief

*The National Indian Education Association (NIEA) is the nation's largest and most inclusive organization advocating for comprehensive culture-based educational opportunities for American Indians, Alaska Natives, and Native Hawaiians.*

#### BACKGROUND

In December 2015, Congress passed the Every Student Succeeds Act (ESSA) to ensure states develop high-quality academic assessments aligned to state-defined standards in mathematics, reading or language arts, and science. Under Section 8204 of ESSA, the Bureau of Indian Education (BIE) is required to engage in negotiated rulemaking to develop regulations that guide the development and implementation of assessments similar to those required of states.

Assessments that appropriately measure student progress in Native language and culturally responsive curricula provide critical data to track student achievement, empowering tribes and schools to make decisions that give Native students their best chance at success. The recent BIE Strategic Direction highlights the importance of data transparency and culturally-aligned assessments that help educators support student strengths and address weaknesses for postsecondary success.

Through the negotiated rulemaking process, tribal leaders, and communities have an opportunity to shape assessments so that they accurately measure student progress in culture-based classrooms and language immersion programs at Bureau-funded schools. Tribes and Native communities must have access to the tools necessary to promote student achievement in the classroom and beyond.

#### CRITICAL QUESTIONS FOR CONSIDERATION

1. What assessment or set of assessments will the BIE adopt to measure student achievement in reading, math, and science?
2. What alternate assessments will BIE adopt for students with the most significant cognitive disabilities?
3. Should BIE include other subjects as part of its assessment system?
4. How can the BIE provide technical assistance and funding to develop Native language assessments and streamline the approval process to support tribal sovereignty in education?

#### ANNUAL STATE-WIDE ASSESSMENTS

Under ESSA, the BIE is required to administer the same high-quality assessments in mathematics, reading or language arts, and science to students in all Bureau-funded schools. Like public schools, Bureau-funded schools must provide appropriate testing accommodations to students with disabilities and English language learners.

When developing guidelines for assessments under ESSA, the BIE has flexibility to develop and administer computer adaptive assessments and to set a limit on the overall amount of time spent administering assessments. Negotiators and tribal leaders will consider the best approach to implementing an assessment system, including whether to develop computer-adaptive assessments and limits associated with administering assessments, among other issues, during the negotiated rulemaking process for Bureau-funded schools.

Subject of Assessment	Frequency of Testing
Mathematics and Reading or Language Arts	<ul style="list-style-type: none"><li>• Annually in Grades 3-8</li><li>• Once in Grades 9-12</li></ul> <p><i>Note: Students in advanced math courses may take the state high school math test in Grade 8, as long as such students take a more advanced math assessment in Grades 9-12.</i></p>
Science	<ul style="list-style-type: none"><li>• Once in Grades 3-5</li><li>• Once in Grades 6-9</li><li>• Once in Grades 10-12</li></ul>
Additional Assessments	<ul style="list-style-type: none"><li>• As Determined by the State</li></ul>

In an effort to promote participation in assessments and ensure accurate data, ESSA requires that the BIE assess at least 95 percent of all students and 95 percent of students in each historically underserved subgroup. However, parents retain the right to opt out of assessments on behalf of their children.

#### **OPPORTUNITIES FOR NATIVE LANGUAGE ASSESSMENTS**

Current regulations from the Department of Education (Department) provide authority for Native language immersion schools to waive English-only assessments in mathematics, English, language arts, and science in grades 3-8 (34 CFR 200.7(d)). States must submit such assessments for peer review and approval by the Department. Despite these requirements, state and federal agencies have struggled to appropriately assess Native language students due to the number of unique Native languages and lack of technical expertise outside of tribal communities. Consistent with the federal trust responsibility, deference on Native language assessments should be provided to tribes that operate Native immersion schools across the country.

#### **ALTERNATIVE ASSESSMENTS FOR STUDENTS WITH SIGNIFICANT COGNITIVE DISABILITIES**

ESSA includes new provisions on the use of alternate assessments for students with the most significant cognitive disabilities. Congress placed a state cap on the percentage of students who can be tested via alternate assessments, limiting such exams to one (1) percent of the total student population. Such statutory protections ensure that students with disabilities have access to the equitable opportunities to succeed in the classroom and beyond. The BIE is required to develop and oversee implementation of an alternate assessment aligned with alternate achievement standards in Bureau-funded schools.

#### **DATA DISAGGREGATION AND REPORTING**

Any assessment administered by the BIE under ESSA must provide high-quality data to tribal leaders and school officials through student reports and score analyses at the state, local educational agency (LEA), and school levels. All assessments must produce results that can be disaggregated by (1) each major racial and ethnic group, (2) low income students, (3) students with disabilities, (4) English language learners, (5) gender, and (6) migrant status. ESSA provides states, including the BIE, flexibility to amend this list only if there are an insufficient number of students to produce statistically reliable information or the results would reveal personal student information. Through the negotiated rulemaking process, tribal representatives will consider how to define various subgroups of students for data disaggregation and reporting purposes when assessing students in Bureau-funded schools.

#### **LOCAL ASSESSMENTS**

Though the BIE is required to develop and implement a state-wide system of assessments, LEAs have the opportunity to utilize a nationally-recognized high school assessment in lieu of the state assessments. States must establish criteria to evaluate and approve alternative assessments submitted by LEAs. Such evaluation criteria will be considered during the negotiated rulemaking process for Bureau-funded schools.

#### **OPPORTUNITY FOR TRIBAL WAIVERS**

ESSA provides flexibility for tribes to create a unique system of assessments consistent with that required of states. This provision expands opportunities for tribes to exercise sovereignty in the education of tribal students and to create education systems that serve the unique needs of Native students. However, some tribes have experienced challenges in seeking waivers for assessments that best suit the needs of Native students due to high costs and technical expertise associated with the development of alternative assessments. Tribes must have access to high quality technical assistance that respects Native pedagogy, consistent with tribal sovereignty. To find out more, please read NIEA's issue brief titled "Strengthening Tribal Waivers and Technical Assistance."

#### **CONCLUSION**

Assessments that appropriately measure student progress in culturally responsive and language immersion classrooms have the potential to ensure that Native students thrive. Through negotiated rulemaking, tribes and tribal organizations have the opportunity to shape assessments and testing procedures at Bureau-funded schools to accurately reflect student progress in culture-based standards valued and set by tribal communities.

*For additional information or questions, please contact Adrienne Elliott, the National Indian Education Association Legislative Analyst, at [aelliott@niea.org](mailto:aelliott@niea.org) or 202-847-0040.*