



## STRENGTHENING TRIBAL WAIVERS AND TECHNICAL ASSISTANCE

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

The 2015 authorization of the Every Student Succeeds Act (ESSA) provided additional opportunities for tribes to exercise sovereignty by developing unique systems of standards, assessments, and accountability in Bureau-funded schools operated by tribes. Through this provision, tribes have the flexibility to develop culturally responsive education systems that integrate Native cultures, traditions, and histories. Under No Child Left Behind (NCLB), the Navajo Nation and the Miccosukee Tribe of Indians of Florida received waivers under a similar provision to develop a unique definition of adequate yearly progress.

### CRITICAL QUESTIONS

1. How will the BIE expand technical assistance for tribes that request a waiver to develop their own standards, assessment(s), and related accountability system?
2. How will the BIE ensure that the waiver process supports tribal sovereignty?

### STATUTORY REQUIREMENTS

Tribes and school boards have the authority to waive state-wide standards, assessments, and accountability systems and to develop, in whole or in part, alternative systems that address the unique needs of Native students if a tribe or school board determines that systems set by the BIE are inappropriate for students in tribal schools. Once a waiver has been submitted, the tribal governing body or school board must provide a proposal for alternative system for standards, assessments, and accountability within 60 days. Section 8204 of ESSA requires the Secretary of Interior and Secretary of Education to approve requests for tribal proposals that meet requirements set forth for states under Section 1111.

### TECHNICAL ASSISTANCE

ESSA stipulates that the Secretary of Interior and Secretary of Education must provide technical assistance to tribes that choose to waive state-wide education systems upon request. Under NCLB, many tribes faced barriers in obtaining appropriate technical assistance and waivers when implementing unique education systems for tribal students. Through negotiated rulemaking, tribal leaders, educators, and advocates may provide guidance and feedback to support technical assistance under Section 8204 of ESSA. Negotiators will consider how to streamline tools, resources, and federal processes for tribes that choose to develop unique systems for tribal schools.

### CONCLUSION

Under ESSA, tribes have the flexibility to develop unique education systems that fulfill the cultural and academic needs of Native students and prepare them for college, career, and community success. The negotiated rulemaking process provides an opportunity for tribes and Native educators to shape regulations that will provide guidelines for the waiver process and technical assistance. Tribal voices in this process are critical to creating a system that respects tribal sovereignty and promotes academic progress for Native students.

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