

Bureau of Indian Affairs, Interior

§ 30.105

§ 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.

Subpart A—Defining Adequate Yearly Progress

§ 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.

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

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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 requirements 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.

TECHNICAL ASSISTANCE

§ 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