

STATEMENT OF ANNE DUDRO
CHIEF OF STAFF FOR
THE OFFICE OF ELEMENTARY AND SECONDARY EDUCATION
U.S. DEPARTMENT OF EDUCATION
BEFORE THE
HOUSE EARLY CHILDHOOD, ELEMENTARY AND SECONDARY
EDUCATION SUBCOMMITTEE
COMMITTEE ON EDUCATION AND LABOR

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“Challenges Facing Bureau of Indian Education Schools in Improving
Student Achievement”

I. Introduction

Thank you, Chairman Kildee, Ranking Member Castle, and all the members of the Subcommittee for inviting the U.S. Department of Education to share with you what we are doing to improve the education of Indian children and provide technical assistance to tribal schools. My name is Anne Dudro, I am the Chief of Staff for the Office of Elementary and Secondary Education, and I am pleased to be here today to speak on behalf of the Department about the recent Government Accountability Office (GAO) report entitled, *Bureau of Indian Education Schools: Improving Interior’s Assistance Would Help Some Tribal Groups Implement Academic Accountability Systems*. (GAO-08-679)

II. Requirements for Assessments and Accountability under No Child Left Behind

The Elementary and Secondary Education Act (ESEA), as amended and reauthorized by the No Child Left Behind Act of 2001 (NCLB), authorizes Federal aid to State and local educational agencies, as well as the Bureau of Indian Education (BIE), for the education of disadvantaged students. As a condition for receiving grants under Title I, Part A of ESEA, States and the BIE are held accountable for the academic achievement of students in all public schools, including BIE-funded ones.

The U.S. Department of Education (the Department) provides Title I, Part A, and other formula grant funds to the U.S. Department of the Interior (DOI) for its use and for distribution to tribally controlled schools and BIE-operated schools under the provisions of section 9204 of the ESEA. Under section 9204(a)(2), the Department provides these funds to Interior under an Agreement entered into by both agencies consistent with the requirements of the programs.

Specifically, Title I requires that states and the BIE develop academic content and student

achievement standards; measure student proficiency in math, reading, and science with assessments aligned with these standards; and determine whether schools are making adequate yearly progress (AYP) toward meeting the goal that all students will meet or exceed the State's proficient level of academic achievement on the State reading and mathematics assessments by 2014.

Section 1116(g)(1)(A) of the ESEA requires the Secretary of the Interior to adopt a definition of AYP and use it to make accountability determinations for Bureau of Indian Affairs¹ (BIA)-funded schools. In 2005, after a negotiated rulemaking involving Federal and tribal officials, the Department of the Interior published a final rule establishing the definition of AYP for BIE-funded schools as the definition of AYP used by the State in which a BIE-funded school is located.

However, in recognition of the sovereign nature of tribes, section 1116(g)(1)(B) of the ESEA allows the tribal governing body or school board of a BIE-funded school to apply for a waiver from all or part of its State's definition of AYP and propose an alternative definition. Such alternatives are subject to the approval of the Secretaries of the Interior and Education. In addition, section 1111(m) of the ESEA identifies the various assessments that BIE-funded schools may use depending on who accredits those schools, and gives the Secretary of the Interior responsibility for approving the use of assessments where the school would not use the assessments of the state in which the school is located.

In February of 2007, the Departments of the Interior and Education signed an agreement to establish basic procedures for review and approval of any alternative definitions of AYP that a tribal governing body or school board of a school funded by the BIE might submit to DOI. Provision for such procedures between the two agencies is governed by section 1116(g)(1)(B) of the ESEA and by final DOI regulations in 25 CFR Part 30.

When a tribal governing body or school board requests technical assistance in developing an alternative definition of AYP, the BIE is responsible for providing that technical assistance. The interagency agreement calls for BIE to notify the Department's Office of Elementary and Secondary Education, which oversees the accountability provisions under Title I of the ESEA, of all requests by tribal governing bodies or school boards for technical assistance. Also under the agreement, the BIE is to request guidance as needed in providing technical assistance.

¹ The Bureau of Indian Education (BIE), formerly the Office of Indian Education in the Bureau of Indian Affairs (BIA) was formed in late June 2006. The BIE is now a separate bureau from the BIA.

III. Requests for Alternate Definitions of AYP

Over the past year, the Department has worked with the BIE to provide technical assistance to three tribal groups that have requested alternatives to State AYP definitions, particularly in the form of developing new standards and assessments that include components of native culture.

On August 23, 2007, GAO held an Entrance Conference with the Department. At that time, the Department had not been informed of any tribal requests for technical assistance related to alternative definitions. On September 5, 2007, the BIE sent an email to the Department requesting a teleconference regarding assessment issues, which ED convened for the next day. During this teleconference, the BIE informed the Department of requests BIE had received from the Miccosukee Tribe and from a consortium of the Dakota tribes, the Oceti Sakowin Education Consortium (OSEC). Also during this teleconference, the Department asked BIE to forward the formal requests from the Miccosukee and OSEC. Upon receiving the request from the Miccosukee on September 25, and after follow-up conversations with BIE, three staff persons from the Department traveled to the Miccosukee reservation in Florida on November 20 to provide technical assistance. On November 29 of that year Department staff participated in a similar meeting in Rapid City, South Dakota to provide technical assistance to the OSEC. Upon the conclusion of these two meetings, the Department contracted with an external expert, who is a former assessment director for a State educational agency, to provide technical assistance to both tribal groups.

On December 5, 2007, the BIE informed Department staff of a request BIE had received from the Navajo Nation for technical assistance, during a Title I monitoring review in Albuquerque. At that meeting, the BIE provided the Department with a copy of the Navajo Nation request and a copy of BIE's response to the Navajo request proposing a meeting between the three parties. According to the BIE, the Navajo Tribe was delayed in responding, but on March 6, 2008, Department staff and a contractor participated in a technical assistance meeting with the Navajo Tribe in Albuquerque. The Navajo meeting focused on a conceptual framework for their assessment and accountability systems, and we have received no communication regarding any subsequent meetings.

IV. Requirements for Alternatives to State Definitions of AYP

The requests from the OSEC and Navajo Nations for alternatives to State definitions of adequate yearly progress include consideration of both an accountability component and a standards and assessment component, while the request from the Miccosukee focuses solely on the development and implementation of new assessments. The accountability component is involved when different elements, such as the use of an oral language proficiency assessment, are considered when determining if a school has made AYP. The standards and assessment component involves developing an assessment other than that provided by a State (e.g, a more culturally appropriate assessment than that used by the State).

While accountability and assessment are related activities, the approval process for these various requests is different. Accountability relates to the annual determination of whether a school or local educational agency is making AYP; it depends upon the assessment results as well as other factors such as the assessment participation rate, the attendance or graduation rates, and, in the request of OSEC, oral language proficiency. The ESEA leaves the authority for the determination of proficiency and adequate yearly progress to the State educational agencies or other appropriate entity so long as the certain statutory requirements are met. While it is reasonable for a tribe to desire to develop its own accountability system, any request by a BIE-funded school to deviate from the State's assessments or process to calculate AYP would need to be submitted by the tribe to the BIE. These tribal amendments would need to be reflected in the BIE's accountability plan, and submitted for review and approval by ED. This is the same procedure used for all other States' accountability plans. The BIE would need to note in their accountability plan that certain amendments to AYP definitions would apply only to the tribal schools requesting the alternative definition.

The development and implementation of new standards and assessments must meet the statutory and regulatory requirements of Title I which are guided by the Department's *Standards and Assessments Peer Review Guidance*, first published in April 2004, and updated in December of 2007. There are seven requirements outlined in statute and regulations and further elaborated in the peer review guidance. Under Title I, States, or in this case tribes, must: (1) develop academic **content** standards that specify what all students are expected to know and be able to do in reading/language arts, mathematics, and science; (2) develop academic **achievement** standards that are aligned with the State or tribe's academic content standards; (3) use a single assessment system for all students; (4) demonstrate that the assessments meet standards for technical quality, including that they are valid and reliable measures of student knowledge (5) demonstrate that the assessments are aligned with the State or tribe's content standards; (6) provide for the inclusion of all students, including students with disabilities, in the State or tribe's assessment system; and (7) produce reports at the individual student, school, LEA, and SEA levels.

When the assessment system is fully developed it must be presented to the Department for a Peer review. The Peer review process does not involve looking at individual content standards or the format or content of the tests. It is focused on whether the organization, whether it is a state or a tribe, followed certain processes for assessment development as outlined in the Department's *Peer Review Guidance* to ensure the tests are valid and reliable for the purposes for which they are designed.

V. Conclusion

In conclusion, the Department has been working with our colleagues at the BIE to respond in a timely manner to the requests we have received for technical assistance from the tribes. Department staff, once made aware of any requests, have met with the tribes to discuss the issues and provide initial technical assistance and the Department has provided and paid for, and will continue to provide and pay for, continued technical

assistance through a contractor who is an expert in State standards and assessment systems. We have a Federal responsibility that all schools that receive Federal education funding abide by the applicable statute and regulations and we are doing all we can to support our colleagues at the BIE to meet the needs of the tribes and BIE-funded schools.

Thank you for the opportunity to appear before you today. I will be happy to answer any questions you may have.