



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

November 28, 2018

Tony Dearman
Director
Bureau of Indian Education
United States Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Director Dearman:

This letter is in regard to the Bureau of Indian Education's (BIE) implementation of Title I requirements under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). Specifically, BIE must complete several important actions, such as the development and adoption of new challenging academic standards and aligned assessments and a new accountability system that meets the requirements under the ESEA, as amended by ESSA. To address these issues, this letter outlines changes to BIE's existing Corrective Action Plan (CAP).

As you are aware, the U.S. Department of Education (Department) and BIE entered into a Memorandum of Agreement (MOA) in December 2012, which was subsequently extended in July 2017, in which BIE assumed the responsibilities of a State educational agency (SEA) for managing the ESEA-covered programs. As such, BIE is obligated to implement a full accountability system, including: (1) annually administer all Title, I Part A assessments to all students including students with disabilities in the appropriate grade spans; (2) report data to the Secretary; (3) produce annual SEA and local educational agency (LEA) report cards; (4) ensure federal funds are properly spent in accordance with the intent of the respective programs; and (5) provide supports and interventions to its lowest-performing schools in accordance with the requirements in section 1111 of the ESEA. Further, the MOA specifically stipulates that the Department "may take such as may be proper including withholding of funds and requiring corrective action as permitted by law or regulation, in the event of any non-compliance with such statutory and regulatory requirements."

The Department engaged in tribal consultation and collaborated with BIE in a joint listening session and consultation earlier this year. During these events, we received input on BIE's administration of federal funds provided by the Department to BIE for the benefit of BIE-funded schools and its students, specifically under the ESEA and Part B of the Individuals with Disabilities Education Act (IDEA). We considered this input before making the decision to require the further corrective actions described below regarding the BIE's implementation of an ESSA compliant accountability system, and continuing corrective action. The areas identified below are those that the Department identified as most important to effectively implement the ESEA and support BIE's schools and students.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Corrective Actions Beginning in School Year (SY) 2019-2020 Regarding Challenging Academic Standards and Aligned Assessments and an Accountability System

The ESEA section 8204(c) requires BIE to establish new regulations to govern its challenging academic standards, aligned assessments, and an accountability system so that the system is operational by SY 2017-2018. Even though the Department extended the time period for BIE to meet this statutory requirements, BIE failed to complete this task in SY 2018-2019. As noted in a letter dated July 3, 2018, the Department expects that the final regulations will be in place to ensure that the overall system will be implemented by the beginning of the SY 2019-2020.

BIE has begun the negotiated rulemaking process, however the Department remains concerned that BIE is not prepared to implement its regulations and ensure it has challenging academic standards and aligned assessments, and an accountability system in place by the start of SY 2019-2020. This is an essential and fundamental component of the educational system and is already seriously delayed. The Department is therefore requiring that BIE to address its progress towards the implementation of challenging academic standards and aligned assessments, and its accountability system in the quarterly CAP.

Actions Required:

- Submit to the Department by January 7, 2019, an implementation plan for Title I, Part A that includes a timeline for the implementation of new challenging academic standards and aligned academic assessments (meeting the applicable requirements of section 1111(b)(2)) and its new accountability system. Further, this timeline must include: (1) how BIE will ensure all required assessments are available and ready for schools to administer in SY 2019-2020; and (2) when BIE will identify schools for support and intervention using its new accountability system.
- Finalize an MOA with the Department by July 1, 2019, that includes, at a minimum, BIE's plans for the use of the funds transferred under each covered program, and the achievement measures and program objectives of each program to assess program effectiveness, as required by the ESEA.
- Submit to the Department by January 7, 2019 a plan and timeline to meet the reporting requirements in ESEA section 1111(h) to produce SEA and LEA report cards.
- Submit an annual statement of assurance that BIE has administered all required Title I assessments in all BIE-funded schools until such time BIE is notified in writing by the Department that this is no longer required.

Please note that if the BIE is unable to implement its challenging academic standards and aligned assessments and accountability system by the beginning of SY 2019-2020, it may result in additional enforcement actions being taken by the Department, up to and including the withholding of funds.

Corrective Actions for SY 2018-2019

Based on the Department's prior monitoring of BIE's administration of Title I, Part A, BIE was required to develop a CAP to address Title I, Part A findings documented in the monitoring reports. BIE is required to submit quarterly reports to the Department regarding its progress in implementing the CAP. While the Department notes that BIE has made progress in correcting certain areas of non-compliance described in the CAP, BIE has failed to complete all corrective actions, and lags in implementing the requirements of Title I. Therefore, the Department is requiring further corrective actions for SY 2018-2019.

A. Assessment Requirements

In BIE's Consolidated State Performance Report (CSPR) for SYs 2015-2016 and 2016-2017, BIE did not report assessment results for all required Title I, Part A assessments. In particular, the data submitted by BIE indicates that fewer than the total number of students in its system took the required reading/language arts and mathematics general and alternate assessments. Further, the Department understands BIE is not consistently administering science assessments, for both the general assessments and alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities. Lastly, the Department understand that BIE is not administering the required English language proficiency (ELP) assessments to English learners (ELs) in all BIE-funded schools.

As a result, BIE is out of compliance with the requirements under section 1111(b)(2) of the ESEA, which requires a State to implement high-quality, yearly student academic assessments in reading/language arts, mathematics and science and to measure student achievement on those assessments; to administer an alternate assessment for students with the most significant cognitive disabilities who cannot participate in the State's general assessments even with appropriate accommodations; and to administer ELP assessments to ELs.

The Department is concerned about BIE's ability to annually administer all required Title I, Part A assessments. In addition to Title I, Part A funds, BIE receives an annual appropriation of Title I, Part B funds, Grants for State Assessments (approximately \$1.8 million), which provides funding to develop and administer its assessments. Because BIE has not yet established regulations in ESEA section 8204(c), and will not be implementing its ESSA compliant accountability system for SY 2018-2019, BIE must meet the requirements under ESEA section 1111(k) and BIE's current regulations, which requires that each BIE-funded school administers the assessments of the State in which it is located.

Action Required in SY 2018-2019:

- BIE is required to administer assessments in reading/language arts, mathematics, science (including both general and alternate assessments based on alternate academic achievement standards to students with the most significant cognitive disabilities), and ELP assessments for all ELs (or ensure the administration of the State assessments for all BIE-funded schools).

B. Data Reporting

The Department is maintaining BIE's CAP action steps in the areas of data reporting and reports cards. While BIE has reported its data on-time to the Secretary for SYs 2015-2016 and 2016-2017, BIE's submissions did not contain all of the required elements. In conversations with the Department, BIE indicated that it has not received assessment results from all SEAs with which it has agreements and, in some cases, from certain schools. In addition, BIE has not produced SEA or LEA report cards for SYs 2015-2016 and 2016-2017. Timely and accurate information is essential for BIE and its schools in order to make informed decisions regarding student performance, allocate resources effectively, and provide transparent information to parents and the public about how schools are performing.

The Department is also concerned with the requirements under the IDEA which require BIE to make available to the public and report to the public with the same frequency and in the same detail as it reports on the assessment of non-disabled children, data on the participation and performance of children with disabilities on State assessments.

Actions Required in SY 2018-2019:

- BIE must submit SY 2017-2018 annual reports to the Secretary. BIE must submit all available data and meet the timelines identified by the Department to certify its submission on-time. Where data are missing, BIE must provide documentation of its efforts to secure data from external parties, where applicable.
- As necessary, BIE must show evidence of corrective actions it has taken against schools which fail to comply with the requirements in the law to provide data to BIE so that it may report on its performance.
- BIE must take steps to ensure it improves the accuracy of the data required for reporting to the Department. After submitting its annual performance data to the Secretary, BIE must respond to the Department’s data quality feedback to address identified issues. Further, BIE must make progress in the quality and completeness of the data submitted by BIE on the performance of each of its schools.
- BIE must meet the SEA and LEA report card requirements in ESEA sections 1111(h)(1) and 1111(h)(2), respectively, which require BIE to make key information publicly available about BIE and each of its schools, including assessment results and other pertinent information on school performance beginning with SY 2016-2017.¹
- BIE must continue working with the Comprehensive Center, and report to the Department on how it utilizes these services, to build its capacity and correct identified deficiencies related to data.

C. School Improvement/Supports for Low Performing Schools

Based on data in BIE’s CSPR for SYs 2015-2016 and 2016-2017, BIE is out of compliance with the provisions in ESEA section 1111 to identify schools in need of improvement and to provide the appropriate supports and interventions to BIE’s identified schools. To the Department’s knowledge, BIE has not updated its list of schools in need of improvement since SY 2010-2011. In its CSPR for SYs 2015-2016 and 2016-2017, BIE did not report data related to schools that are identified in corrective action or restructuring statuses under ESEA, as amended by No Child Left Behind (NCLB), nor provided a sufficient explanation of how funds are allocated to support these schools. BIE has an obligation to continue to support its lowest performing schools during its transition to ESSA.²

Actions Required in SY 2018-2019:

- By February 1, 2019, BIE must: (1) identify schools in need of improvement using its most recently available data (i.e., SYs 2015-2016 and 2016-2017) and its current approved methodology; (2) publish this information on its website; and, (3) provide evidence to the Department that BIE has completed this task.

¹ For SY 2016-2017, the report card requirements remain under the ESEA, as amended by the NCLB. Beginning with report cards for SY 2017-2018, the report card requirements follow the ESEA, as amended by ESSA. The Department’s Dear Colleague Letter issued on December 18, 2015 describes the orderly transition authority that modified the reporting requirements for SEAs and LEAs for SY 2014-2015 through 2016-2017. See: <https://www2.ed.gov/policy/elsec/leg/essa/transition-dcl.pdf>.

² The Department’s letter on April 10, 2017, required SEAs to continue to support low-performing schools in SY 2017-2018 school year in the same manner as in the 2016–2017 school year but provided some flexibility to SEAs. See: <https://www2.ed.gov/policy/elsec/leg/essa/dcltr410207.pdf>.

- BIE must: (1) submit a plan to the Department by February 1, 2019 for how BIE will provide supports and interventions to the schools on its list of identified schools; and, (2) continue to report on school supports and interventions through quarterly reports to the Department.
- Submit documentation by February 1, 2019, that BIE notified all schools whose designation or status changed. In addition, provide documentation that BIE or its schools notified parents of changes to the schools' designations.

D. Use of Funds

The Department continues to monitor BIE's compliance with sub-recipient fiscal monitoring requirements. Since BIE has not yet demonstrated sufficient internal controls and a fully implemented fiscal monitoring system to ensure the appropriate use of Title I funds by its schools, BIE must continue to report on its performance to the Department through quarterly CAP progress reports.

Actions Required:

- BIE must continue to annually implement a fiscal monitoring system that includes: (1) making annual risk determinations of all of its school (including BIE-operated and tribally controlled); (2) determining its cycle of monitoring of all its schools; and (3) annually overseeing all of its schools to ensure the proper use of funds and to take enforcement actions against schools which fail to appropriately use federal funds.

E. School Improvement Grants (SIG) and Section 1003 Funds

BIE has an obligation to ensure that it is providing funds, consistent with the ESEA, to schools identified as in need of improvement. In the appendix of the July 2017 MOA, BIE established that it will set aside the amount calculated under ESEA section 1003(a) for school improvement. That amount is the greater of 7 percent of BIE's Title I, Part A award or the sum of the amount BIE reserved for fiscal year 2016 under section 1003 of the ESEA, as amended by NCLB, and the amount received for fiscal year 2016 under the SIG program (section 1003(g) of the ESEA, as amended by NCLB). BIE must allocate 95 percent of those funds on a formula or competitive basis to schools for comprehensive or targeted support and improvement activities. Because BIE does not have its accountability system in place yet, BIE is required to continue to providing supports to low-performing schools in SY 2018-2019, as noted previously.²

BIE has not demonstrated that it set aside the required amount under section 1003(a) for school improvement in SY 2017-2018 and whether and how those funds were allocated to schools. In addition, the Department understands that BIE has not spent all its available SIG funds.

Actions Required in SY 2018-2019:

- Submit a plan and timeline to the Department by February 1, 2019, describing how it will use fiscal year 2017 and fiscal year 2018 funds it set aside under section 1003(a) of the ESEA to support identified schools. This includes providing documentation of its process for awarding such funds, including requiring an application that meets the requirements in section 1003 of ESEA.
- Submit a plan to the Department by February 1, 2019, as to how it will use its remaining SIG funds, including the amount of SIG funds remaining from each fiscal year's allocation and a plan

and timeline to spend such funds in identified schools consistent with either the SIG final requirements³ or consistent with the requirements in section 1003 of the ESEA.⁴

In conclusion, the actions detailed in this letter are necessary because of the importance of identifying schools in need of improvement and providing supports for those schools and students. In addition, it is important that BIE quickly and thoroughly plan for its successful transition to the ESEA requirements and to provide supports to schools and stakeholders in this important work. BIE must report on its compliance with the requirements through CAP quarterly progress reports as detailed in this letter. The Department continues to be interested in supporting your work. As you know, BIE can access technical assistance services through the Comprehensive Centers to address transitioning to ESSA implementation including assistance with accountability systems, assessments, data practices and internal capacity building.⁵

We appreciate our continued relationship with BIE and remain committed to working with you. We hope that our ongoing collaboration will lead to improved outcomes for Native youth. If you have any questions please contact Robert Salley of my staff at: OSS.BIE@ed.gov. Thank-you for your continued commitment to ensuring that all students have access to a high-quality education.

Sincerely,

/s/

Frank T. Brogan
Assistant Secretary for Elementary and
Secondary Education

Enclosure

cc: James Cason, Associate Deputy Secretary
Tara Sweeney, Assistant Secretary, Indian Affairs
Mark Cruz, Deputy Assistant Secretary, Indian Affairs

³ The provisions set forth in 80 FR 7223, published Feb. 9, 2015, comprise the SIG final requirements.

⁴ The Department issued a letter on January 9, 2018, which describes these two options available to States to use the remainder of any SIG funds. See: <https://www2.ed.gov/policy/elsec/leg/essa/sigflexibilitiesdci.pdf>

⁵ Pursuant to Sections 203-207 of the Educational Technical Assistance Act of 2002, and specifically the authority granted to the Secretary in Title III of Division H of the Consolidated Appropriations Act 2016 (P.L. 114-113), and successive appropriations acts. BIE is an eligible entity for technical assistance through the Comprehensive Center. Where noted, in this letter, BIE should continue to report through the CAP on how it uses these services to either meet the CAP requirements –or– to build its internal capacity.

Corrective Actions Summary

New Challenging Academic Standards and Aligned Assessments and Accountability System Beginning in SY 2019-2020 and Subsequent Years

Indicator	Tasks	Deliverable Deadlines
ESEA	<ul style="list-style-type: none"> Plan and timeline to implement new standards, assessments, implement its new accountability system and identifying schools for improvement. 	January 7, 2019
MOA	<ul style="list-style-type: none"> Finalize new MOA with the Department. 	July 1, 2019
Reporting	<ul style="list-style-type: none"> SEA and LEA report cards. 	January 7, 2019
Assessments	<ul style="list-style-type: none"> Statement of assurance. 	Annually

Actions for SY 2018-2019

Indicator	Tasks	Deliverable/Reporting Deadlines
Assessments	<ul style="list-style-type: none"> Administer reading/language arts, mathematics, and science general and alternate assessments and ELP assessments. 	During SY 2018-2019 and reporting quarterly
Data Reporting	<ul style="list-style-type: none"> Annual Report to the Secretary for SY 2017-2018. Publish SEA and LEA Report Cards SYs 2016-2017 & 2017-2018. Corrective actions against schools as necessary. Improving data accuracy. 	The Department's annual deadlines and reporting quarterly
School Improvement	<ul style="list-style-type: none"> Identify/exit schools in need of improvement. Notify parents. Provide supports and interventions. 	February 1, 2019 and reporting quarterly thereafter
Use of Funds/Fiscal	<ul style="list-style-type: none"> Fiscal monitoring system (<i>Found in Section C of the CAP</i>) 	Annually and reporting quarterly
SIG & 1003 Funds	<ul style="list-style-type: none"> Use of 1003a funds. Use of remaining SIG funds. 	February 1, 2019