



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

August 27, 2021

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

Dear Director Dearman:

I am writing in response to the Bureau of Indian Education's (BIE's) request on July 8, 2021, to the U.S. Department of Education (Department) to waive the requirements in section 1111(b)(2) of the Elementary and Secondary Education Act of 1965 (ESEA) to administer statewide assessments to all public elementary and secondary school students in BIE-funded schools in reading/language arts, mathematics, science and English language proficiency (ELP) for the 2020-2021 school year. BIE requested this waiver due to the significant impact the COVID-19 national pandemic has had on BIE administered schools.

The Department remains committed to supporting BIE and all States in assessing the learning of all students. Obtaining data on student learning includes high-quality statewide assessments, which can help identify where opportunity gaps are persistent and have been exacerbated – particularly during the pandemic – and, along with other data, can help you direct resources and support to close those gaps. At the same time, we must also recognize that during the 2020-2021 school year we were in the midst of a pandemic that required real flexibility. I note that on May 17 2021, the Department granted BIE a waiver of certain ESEA accountability, school identification and report card requirements for the 2020-2021 school year (see <https://oese.ed.gov/files/2021/05/BIE-Acct-Waiver-Response.pdf>).

In your request, you described how BIE schools operated in largely remote status in the 2020-2021 school year. You also described the efforts you took to administer the assessments despite the challenges of the COVID-19 pandemic, including extending the assessment window through the end of the school year. As we noted in our letter to BIE and all States on February 22, 2021, in places where students were unable to attend school safely in person because of the pandemic, they should not have been brought into school buildings for the sole purpose of taking a test (<https://oese.ed.gov/files/2021/02/DCL-on-assessments-and-acct-final.pdf>). BIE reported that, while it administered all of the required assessments, due to the pandemic, not all students were able to take the assessments. Based on the efforts documented by BIE to administer its assessments during the COVID-19 pandemic, and after carefully considering the specific circumstances described in BIE's request, the Department has determined that a waiver is not necessary.

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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.

I also want to note that BIE has civil rights obligations to English learners. These obligations include identification of students as ELs, the provision of appropriate language services, monitoring ELs' progress, and exiting them from EL status. In the absence of complete ELP assessment information for individual students, BIE should consider how it will fulfil these obligations. Please contact my staff at OESE.titleiii-a@ed.gov for support or if you wish to discuss this further.

In cases where students were unable to take the statewide summative assessments, we hope that SEAs and school districts use other assessments to measure student learning and progress and to provide information to parents and educators, as it appears BIE is planning to do. These data do not replace statewide summative assessments, but they can serve to provide valuable information to meet our goal of maximizing the number of students for whom we have quality data for the 2020-2021 school year.

As always, you can contact me or my staff at ESEA.Assessment@ed.gov.

Sincerely,



Ian Rosenblum
Deputy Assistant Secretary for Policy and Programs
Delegated the Authority to Perform the
Functions and Duties of the Assistant Secretary
Office of Elementary and Secondary Education

cc: Maureen Lesky, Program Analyst, Chief Academic Office, BIE