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BUREAU OF INDIAN
EDUCATION
SCHOOLS

Improving Interior's
Assistance Would Help
Some Tribal Groups
Implement Academic
Accountability
Systems



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Figure 1: BIE-funded Schools Are Located in 23 States

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Abbreviations

AYP	adequate yearly progress
BIA	Bureau of Indian Affairs
BIE	Bureau of Indian Education
ELO	education line officer
ESEA	Elementary and Secondary Education Act
MOU	memoranda of understanding
NCLBA	No Child Left Behind Act
OSEC	Oceti Sakowin Education Consortium
SES	Supplemental Educational Services

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United States Government Accountability Office
Washington, DC 20548

June 27, 2008

The Honorable George Miller
Chairman
Committee on Education and Labor
House of Representatives

The Honorable Dale E. Kildee
Chairman
Subcommittee on Early Childhood,
Elementary and Secondary Education
Committee on Education and Labor
House of Representatives

The Honorable Raúl M Grijalva
House of Representatives

The Honorable Stephanie Herseth Sandlin
House of Representatives

The 174 schools funded by the Department of the Interior's (Interior) Bureau of Indian Education (BIE) are required to measure their students' academic progress, as are public schools across the country. However, some Indian education experts express the view that the standards, assessments, and measures of achievement designed for particular states' public school students may not always address the unique needs of BIE schools and the 48,000 Indian students they serve in 23 states. The Elementary and Secondary Education Act (ESEA), as amended and reauthorized by the No Child Left Behind Act of 2001 (NCLBA),¹ authorizes federal aid to state and local education agencies, including BIE, for the education of disadvantaged students. As a condition for receiving grants under Title I-A of the act, states and BIE are accountable for the academic achievement of students in all public and BIE schools, respectively.² Specifically, NCLBA requires that states and BIE develop academic content and student achievement standards; measure student proficiency in math, reading, and science with assessments aligned to these standards;

¹Pub. L. No. 107-110 (2002).

² See 20 U.S.C. § 6311(b)(2) and 20 U.S.C. § 6316(g).

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 assessments by 2014. Recognizing that students at BIE schools may have unique needs and special circumstances, NCLBA provides for tribal governments or tribal school boards to waive all or part of BIE's definition of AYP and propose an alternative.³

As required by NCLBA, BIE established a definition of AYP for BIE-funded schools through the process of negotiated rulemaking, which involved federal and tribal officials.⁴ BIE issued regulations in 2005 defining adequate yearly progress for the BIE-funded schools as that of the state in which the school is located. BIE has used agreements, or memoranda of understanding (MOU), with the states to delineate the terms of accessing state assessments and scoring arrangements. BIE's regulations provide a framework for tribal governments or tribal school boards—collectively referred to as tribal groups throughout this report—to waive all or part of the state's definition of AYP, content standards, and assessments, and propose an alternative definition. Such alternatives are subject to the approval of the Secretaries of the Interior and Education. Upon request, BIE is required to provide technical assistance—for which it has access to federal funds designated to assist with assessment-related activities—to tribal groups that seek to develop an alternative definition of AYP. An agreement is in place between the Department of Education (Education) and Interior governing the approval of alternatives. In this engagement, we are providing information on the extent to which: (1) BIE schools have adopted state definitions of AYP, content standards, and assessments; (2) tribal groups have sought alternatives and their reasons as well as the reasons other tribal groups have not done so; and (3) the federal government has assisted the tribal groups developing alternatives.

To obtain information to address our research objectives, we conducted site visits to BIE schools, reviews of relevant documents and laws, and interviews with Indian associations and cognizant officials from BIE, Education, tribal groups and BIE schools, and state departments of

³NCLBA allows a tribal governing body or school board to waive the BIE's definition of AYP "in part or in whole." (20 U.S.C. § 6316(g)(1)(B)) BIE regulations state that this waiver applies to the definition of AYP, academic content and achievement standards, and assessments. (25 C.F.R. § 30.105)

⁴70 *Fed. Reg.* 22178 (Apr. 28, 2005).

education. We visited seven states—Arizona, California, Florida, Mississippi, New Mexico, South Dakota, and Washington, and interviewed officials from 21 BIE schools across those states. We selected the schools to provide perspectives from several tribes across the nation. The states we visited collectively account for 133 of the 174 BIE schools and a majority of BIE students. We also interviewed state education officials from those seven states.

To determine the extent to which tribal groups have adopted state definitions of AYP, content standards, and assessments, we reviewed BIE documentation, including existing MOUs, and interviewed state education officials from the seven states and BIE officials, including all 21 BIE education line officers (ELO), who serve a role analogous to that of a school district superintendent. To determine the extent to which tribal groups have sought or adopted alternatives, the nature of the alternatives, the rationale for seeking them, and the challenges the tribal groups faced, we interviewed Indian education associations, BIE's ELOs, as well as officials representing those tribal groups that had proposed using some alternative to a state definition of AYP, content standards, or assessments. In addition, we spoke with officials representing tribal groups that had neither administered their state's assessment nor proposed an alternative. We also interviewed officials of one tribal group that indicated its intent to continue to use the state's framework for AYP. We interviewed officials from the Navajo Nation, Miccosukee Tribe of Indians of Florida, Mississippi Band of Choctaw Indians, Seminole Tribe of Florida, Oceti Sakowin Education Consortium (OSEC),⁵ Soboba Band of Luiseno Indians, as well as officials from the BIE off-reservation boarding school in California and the eight BIE-funded schools in Washington State, which serve students from multiple tribes.⁶ While our focus was on the standards, assessments, and definitions of AYP tribal groups had adopted, we also collected some information through our interviews on the extent to which the adopted standards, assessments, and definitions of AYP had been implemented—for example, the extent to which standards had been incorporated into schools' curricula. To assess the federal role in

⁵The OSEC is a consortium of school boards and includes schools from the Lakota- and Dakota-speaking tribes.

⁶The off-reservation boarding school has students from several tribes from across the country. In Washington, we attended a conference with officials from all eight BIE schools, which enroll students from more than 90 tribes. We also visited one school affiliated with the Puyallup tribe as well as two schools affiliated with the Lummi tribe.

providing assistance, we interviewed officials of the schools we visited as well as the BIE education line officers and reviewed documentation of guidance provided by BIE. In addition, we conducted interviews with officials from Education and Interior and reviewed relevant federal laws and regulations. We conducted our work from June 2007 to June 2008 in accordance with generally accepted government auditing standards.

Results in Brief

BIE and almost all of the 174 BIE schools have adopted state definitions of AYP, which generally incorporate reference to specific state content standards and assessments; however, BIE has not completed agreements with several key states delineating the terms of BIE-funded schools' access to the state assessment systems. While almost all of the 174 BIE schools currently use the state definitions of AYP, not all BIE schools had fully aligned their curricula with the state standards, which could compromise students' opportunity to learn the material that is covered on the state assessment.⁷ Almost all BIE schools are currently using the states' assessments, the results of which BIE then uses for AYP determinations. However, for 12 of the 23 states with BIE schools, BIE has not completed MOUs to delineate BIE's and the states' responsibilities concerning BIE's access to the states' assessment system.⁸ While 9 of the 12 states without signed MOUs have voluntarily given the BIE schools full access to the assessments and scoring services, these states could readily change their policies with respect to BIE schools' access to their assessments and scoring services. In addition, BIE has encountered difficulty in completing MOUs with some states, and this has affected BIE-funded schools' access to state assessments in California and Mississippi.⁹ If a state does not provide access to the state's assessment, the BIE-funded school must submit a waiver for an alternative definition of AYP.¹⁰ However, officials from the two schools in this situation stated that developing an alternative definition of AYP was unreasonably burdensome and they had no intention of developing alternative assessments.

⁷NCLBA requires that states develop academic content standards and develop assessments to measure the progress of their students on these standards in the areas of math, reading, and science. 20 U.S.C. § 6311(b).

⁸As of April 2008.

⁹The BIE does not have a signed MOU with Florida and the BIE schools in Florida have chosen not to use the Florida assessment.

¹⁰25 C.F.R. § 30.125(b).

Officials from the Navajo Nation, the OSEC, and the Miccosukee Tribe of Indians have begun to develop alternatives to state AYP definitions, standards, and assessments in part to reflect their unique culture. Other tribal groups have opted to use state definitions, either because of potential challenges in developing alternatives or a desire to maintain compatibility with public schools. The tribal groups developing alternatives to the state definitions of AYP represent about 44 percent of the 48,000 BIE students. The Navajo Nation and OSEC are each trying to develop culturally-relevant standards, as well as assessments aligned with these standards. Officials from the Miccosukee tribe have informed BIE and Education that they prefer the assessment they are currently using to Florida's state assessment, although they have implemented Florida's content standards. Officials from other tribal groups told us that they preferred to use state content standards and assessments for various reasons, including a desire to be compatible with the public schools and the presence of potential challenges, such as the lack of resources needed to develop alternatives. For example, school officials and BIE ELOs cited a number of potential challenges to developing alternatives, including need for expertise in developing assessments or standards, limited tribal funds available, as well as the lengthy time commitment needed to undertake such a project.

Tribal groups seeking alternatives reported a lack of federal guidance and communication; however, two tribal groups have more recently reported receiving some initial assistance from BIE and Education officials. Similarly, in our interviews, BIE ELOs—who were the primary points of contact for information on developing an alternative—generally indicated that they had received no guidance or training on the provision for doing so. In particular, about half of BIE's education line officers told us they were not knowledgeable about the process to seek an alternative, and eight of the ELOs had been in their current position for 1 year or less. In addition, all three alternative-seeking tribal groups reported difficulties in communicating with BIE. In reviewing their requests, BIE did not always have internal timelines or meet the ones it had, nor did BIE consistently apply its processes for providing accurate and timely responses. For example, one tribal group alerted BIE of its intent to use an alternative assessment as early as October 2006 but did not receive any response from BIE until June 2007 and technical assistance was not provided until November 2007. Delays caused some tribal officials to conclude that BIE's focus on technical points was intended to hinder their progress, rather than facilitate their requests for technical assistance or to waive the state assessment. During the course of our review, BIE and Education officials began offering technical assistance to the tribal groups working to develop

alternatives. For example, officials from BIE and Education have visited the Navajo Nation, OSEC, and the Miccosukee to assess their needs.

To improve support for tribal governments and school boards in their development and implementation of AYP definitions, we are making recommendations to the Secretary of the Interior related to BIE's ensuring access to state assessments, as well as improving assistance in defining assessment options, guidance and training on the process for seeking alternatives, and communication with tribal groups seeking alternative definitions of AYP by establishing internal time frames and processes.

We provided copies of this report to Interior and Education for review and comment. In responding to a draft of this report, Interior agreed with our recommendations. Interior's comments are in appendix I; Education did not provide comments on our recommendations. We received technical clarifications from both the Departments of the Interior and Education, which we incorporated as appropriate.

Background

Bureau of Indian Education

The federal government established education provisions for American Indians through treaties dating back to the late 1700s. Since the early 1800s the federal government has funded schools to educate American Indians, and Interior's BIE currently administers this school system.¹¹ These federally funded schools were established in order to provide educational opportunities for American Indian children who largely live in remote areas.

Today, an estimated 10 percent¹² of American Indian children attend the 174 schools and 12 dormitories¹³ that receive funding from the Department

¹¹Until recently, the schools were under the purview of Interior's Bureau of Indian Affairs (BIA). However in 2006, the Secretary of the Interior established the BIE as a co-bureau along with BIA.

¹²The Congressional Research Service reported in 2007 that it is commonly estimated that BIE schools serve roughly 10 percent of Indian students, public schools serve roughly 90 percent, and private schools serve 1 percent or less. These general percentages, however, are not certain.

of the Interior's BIE. Although these schools are located in 23 states across the nation (see fig. 1), the majority of BIE students (83 percent) attend BIE schools in 6 states—Arizona, Mississippi, New Mexico, North Dakota, South Dakota, and Washington. According to BIE, in the 2006-07 school year, educational opportunities were provided to approximately 48,000 students in these schools located across 63 reservations. According to BIE, American Indian students enrolled in the BIE-funded schools represent 228 tribes, but the majority of students belong to a small number of tribes.¹⁴

¹³These 12 dormitories house American Indian students who attend nearby local public schools. Two additional dormitories provide schooling for some students and are required to be counted as schools for AYP purposes.

¹⁴As of April 4, 2008, there were 562 federally recognized Indian tribes in the continental United States and Alaska, 73 *Fed. Reg.* 18553 (Apr. 4, 2008). There are no BIE-funded schools in Alaska.

school boards, offering the potential for tribal groups to take greater ownership of their children’s education.

Table 1: BIE-Funded School Facilities by Type, School Year 2006-07

School type	Responsibility for operations		Total
	BIE	Grant/contract	
Day schools	31	89	120
Boarding schools, on-reservation	24	21	45
Boarding schools, off-reservation	4	3	7
Dormitories ^a	1	13	14
Total	60	126	186

Source: GAO analysis of BIE data.

^aTwo of the dormitories also provide educational services to some students.

BIE Organization

The BIE is organized into two major divisions, with one division located in Albuquerque, New Mexico—called Central Office–West— and the other division located in Washington, D.C.—called Central Office–East. The Central Office–East division conducts research, policy analysis, and planning, and houses the Division of Post Secondary Education, which operates two post-secondary institutions and administers operating grants for 24 colleges operated by tribes and tribal organizations. The BIE performs some functions of a state education agency and receives grants from Education. Further, at the time of our review, BIE Central Office–West had oversight responsibilities for 21 BIE education line offices located in 10 states that provide assistance and/or oversight for the 186 schools and dormitories. Each education line office houses an ELO who functions similarly to a public school district superintendent in managing the schools and providing technical assistance to those schools that tribal groups operate through grants or contracts with the BIE. Throughout this report, we refer to officials from BIE’s Central Offices (East and West) as “BIE officials” and, while we recognize that the ELOs are also BIE officials, we refer to them as “ELOs.”

NCLBA

Under NCLBA states are required to establish performance goals and hold their Title I schools accountable for students’ performance by determining whether or not schools have made AYP. The act requires states to set challenging academic content and achievement standards in reading or language arts, mathematics, and science, and determine whether school

districts and schools make AYP toward meeting these standards. To make AYP, schools generally must:

- show that the percentage of students scoring at the proficient level or higher meets the state proficiency target for the school as a whole and for designated student groups,
- test 95 percent of all students and those in designated groups, and
- meet goals for an additional academic indicator, such as the state's graduation rate.

NCLBA requires states to establish these performance goals so that all students reach proficiency in reading/language arts, mathematics, and science by 2014.¹⁵ Schools that have not met their states' performance goals for 2 or more consecutive years are identified for improvement and must implement certain remedial actions that are meant to improve student academic achievement.¹⁶

NCLBA required the Secretary of the Interior to develop a definition of AYP for BIE schools, through negotiated rulemaking.¹⁷ Interior established a No Child Left Behind Negotiated Rulemaking Committee (committee) to develop proposed rules to implement this requirement, among others. By law, the committee was to be comprised of representatives of the federal government and tribes served by BIE-funded schools.¹⁸ The committee held a series of meetings from June 2003 through October 2003 to develop its recommendations. After a public comment period, the final rule was published in April 2005.¹⁹ Under the rule, each BIE school must adopt the academic content standards, assessments, and definition of AYP of the state in which the school is located beginning with the 2005-06 school year. Moreover, if states do not give tribal groups access to their assessments, the tribal groups are obligated to develop alternative definitions of AYP. The regulations do not delineate how to determine AYP

¹⁵20 U.S.C. § 6311(b)(2)(F).

¹⁶20 U.S.C. § 6316(b).

¹⁷20 U.S.C. § 6316(g)(1)(A).

¹⁸20 U.S.C. § 6316(g)(1)(A)(i) and 25 U.S.C. § 2018(b)(3). There were 19 tribal representatives.

¹⁹70 *Fed. Reg.* 22178 (Apr. 28, 2005).

in the cases in which schools cannot access state assessments and have not developed an alternative.²⁰ While NCLBA requires that states' assessments be aligned with their standards, neither NCLBA nor BIE regulations require that schools' curricula be aligned with state standards or assessments.

Under the Secretary's definition of AYP—i.e., that of the state in which the school is located—determining the AYP status of the 174 BIE schools requires that BIE officials apply 23 different definitions of AYP. The process is complex because of the many differences in assessments and criteria for AYP determination across the states. For example, some states assess students in additional areas, such as testing students in both reading and language arts. In addition, the complexity of state statistical formulas for calculating AYP also varies among states. Some states' formulas include multiple confidence bands while other states use none; some states reference students' improvement over their past performance while others use only current individual performance data on students. Similarly, annual measurable objectives, alternate AYP indicators, and formulas for calculating graduation rates also vary across states.

Under NCLBA, tribal governments or school boards (tribal groups) must either adopt the Secretary's definition of AYP—i.e., that of the state in which they are located—or waive all or part of the definition and propose an alternative. Specifically, tribal groups that waive all or part of the state's definition of AYP must submit a proposal for an alternative definition of AYP within 60 days of the decision to waive.²¹ BIE regulations state that BIE will notify the tribal group within 60 days of receiving the proposed alternative definition whether the proposal is complete and, if complete, an estimated timetable for the final decision.²² All proposed alternatives are subject to the approval of the Secretaries of Interior and Education,²³ with the tribal groups obligated to use the state's definition, content standards, and assessments unless the alternative is approved.²⁴ BIE is required to provide technical assistance upon request, to a tribal group

²⁰In such cases, BIE has recently determined that it will not change the school's AYP status from the prior year.

²¹25 U.S.C. § 6316(g)(1)(B) and 25 C.F.R. § 30.106.

²²25 C.F.R. § 30.113(b).

²³20 U.S.C. § 6316(g)(1)(B) and 25 C.F.R. § 30.113.

²⁴25 C.F.R. § 105.

that seeks to develop an alternative definition.²⁵ Under BIE regulations, a tribal group that requires assistance in developing an alternative must submit a written request to BIE specifying the type of assistance it requires. BIE must acknowledge receipt of the request for technical assistance within 10 days of receiving the request. Within 30 days after receiving the original request for technical assistance, the BIE must identify a point of contact who will immediately begin working with the tribal group.²⁶ In providing technical assistance to tribal groups in developing alternatives, the BIE can consult with Education.

Under BIE regulations, in providing assistance, BIE may use funds provided by Education for assessment-related activities under section 6111 of the ESEA, as amended by NCLBA.²⁷ According to BIE officials, BIE has used some of these funds on professional development training, development of a reporting system, and improvements to its student information management and tracking systems, which are appropriate uses of these funds. BIE officials stated they used most of these funds to develop BIE's student information tracking system—the Native American Student Information System.²⁸ In addition, BIE can use these funds to provide technical assistance to tribal groups in developing AYP alternatives.

With respect to achievement under NCLBA, in the 2006-07 school year, BIE reported 51 of the 174 BIE schools made AYP as defined by the states in which the schools are located. Schools that fail to meet AYP for 2 consecutive years must implement remedial actions as required under NCLBA, although the requirements for BIE schools vary from those for public Title I schools (see table 2). For a BIE-operated school, implementation of required remedial actions is the responsibility of the BIE, whereas for schools that are tribally operated through contracts or

²⁵20 U.S.C. § 6316(g)(1)(C).

²⁶25 C.F.R. § 30.110.

²⁷25 C.F.R. § 30.109. Section 6111 of the ESEA, as amended by NCLBA (20 U.S.C. § 7301), authorizes grants to states for assessment-related activities.

²⁸In addition to collecting student data, the system is also a full-scale management system for the BIE schools, according to BIE officials. Although BIE officials indicated the system is now operational, they expressed concern about the quality of the data being entered into the system because it is self-reported at the school level. Officials stated they have been working on developing a student information system intermittently since the late 1970s.

grants, implementation of remedial actions is the responsibility of the tribal group.

Table 2: Remedial Actions for Public Title I and BIE Title I Schools That Fail to Make AYP

AYP	School status in the next year	Remedial actions for Public Title I schools	Remedial actions for BIE Title I schools
First year missed	Not applicable	None	Analyze AYP data and consider consultation with outside experts
Second year missed	Public school choice (first year of improvement)	Required to develop a school improvement plan and offer public school choice	Required to develop a school improvement plan Not required to offer public school choice
Third year missed	Supplementary Educational Services (SES) (second year of improvement)	Required to offer public school choice and SES	Continue revising or modifying school improvement plan Not required to offer either public school choice or SES
Fourth year missed	Corrective action (third year of improvement)	Implement certain corrective actions and offer public school choice and SES	Implement certain corrective actions Not required to offer either public school choice or SES
Fifth year missed	Planning for restructuring (fourth year of improvement)	Plan for a change in governance (restructuring) and offer public school choice and SES	Prepare a restructuring plan Not required to offer either public school choice or SES
Sixth year missed	Implementation of restructuring (fifth year of improvement)	Implement a change in governance (restructuring) and offer public school choice and SES	Implement the restructuring plan Not required to offer either public school choice or SES
Seventh year missed (and beyond)	Restructuring	Continue implementation of the restructuring plan until AYP is met for 2 consecutive years	Continue implementation of the restructuring plan until AYP is met for 2 consecutive years

Source: GAO analysis of NCLBA and Education's regulations.

Unlike public schools, BIE schools that have an AYP status of school improvement, corrective action, or restructuring are exempt from offering public school choice and supplemental educational services.²⁹ While the remedial actions applied to public schools and BIE schools under NCLBA may include change in governance, BIE officials told us that there was no provision to implement such a change with retrocession—reverting from

²⁹ 42 U.S.C. § 6316(g)(2).

grant or contract to BIE-operated status or from BIE-operated to another status—based on continued failure to meet AYP.³⁰

BIE and BIE-Funded Schools Have Generally Used State Definitions of AYP, but BIE Has Not Taken Steps to Ensure Continued Access to All State Assessments

Almost all of the BIE schools adopted the definition of AYP, content standards, and assessments of the state in which the school is located. While BIE had signed MOUs delineating the terms of accessing and scoring state assessments with 11 of the 23 states in which BIE schools are located, it had not completed MOUs with the other 12, as of April 2008. In addition, BIE experienced some challenges in applying the state definitions to determine whether the 174 schools had met AYP, and some schools, including about half of the schools we contacted, indicated they had not aligned their curricula with the state content standards.

BIE Uses 23 State AYP Definitions to Make AYP Determinations; however, There Were Some Difficulties Applying the Various State Definitions

BIE officials told us that their schools generally use state definitions of AYP, content standards, annual proficiency goals, and assessments. Therefore, BIE makes AYP determinations for almost all 174 schools using the AYP definition of the state in which the school is located. Using the 23 state definitions of AYP, BIE reported that in 2006-07, 51 of the 174 schools had made AYP, 119 had not, and 4 did not have determinations. BIE officials told us that the AYP determinations were made by applying the criteria filed with Education by the relevant state,³¹ except in California and Florida, where BIE schools did not take the state assessment, and in Arizona and North Carolina where there was a data constraint.

³⁰Under NCLBA, there are several ways to implement the alternative governance arrangements: reopening the schools as public charter schools, replacing all or most school staff who are relevant to the failure, entering into a contract with a private management company to operate the school, turning the operation of the school over to the state, or “any other major restructuring of the school’s governance arrangement that makes fundamental reforms. . . to improve student academic achievement. . . and that has substantial promise of enabling the school to make [AYP]. . .” 20 U.S.C. § 6316(b)(8)(B). NCLBA states, however, that these actions as applied to BIE schools should “take into account the unique circumstances and structure of [BIE schools] and the laws governing that system.” 20 U.S.C. § 6316(g)(4)(B).

³¹Education required states to file accountability workbooks to detail the basic elements of the state’s NCLBA accountability system.

BIE officials told us that it was challenging to apply the various definitions of AYP and report their determinations to the schools prior to the beginning of the subsequent school year. As of December 2007, 93 of the 174 schools had been notified of their AYP status for school year 2006-07. By March 2008, the number of schools notified had increased to 146. BIE officials told us that, while they were aware that schools should have been notified of their AYP status prior to the beginning of the 2007-08 school year, the delay in notification was prolonged due to staffing issues, as well as schools and states missing deadlines to report assessment data. For example, BIE officials told us that there was a delay getting assessment results for the BIE schools in New Mexico due to a statewide scoring delay. In addition, BIE officials told us that it had been hard to collect attendance data and graduation data needed to make AYP determinations; however, they stated that these data will be more readily available in their new student information system—the Native American Student Information System.

BIE officials told us that for the 2006-07 school year, they were unable to apply one feature of Arizona and North Carolina’s new definitions of AYP and made determinations for the 51 schools in Arizona and the 2 in North Carolina using those states’ respective AYP definitions without this new feature. In particular, BIE officials told us that Arizona and North Carolina had recently begun to use a growth model, which BIE was unable to use, as required by the states’ definition of AYP.³² Some growth models measure individual student progress across time and require a student data system that can link the individual students’ current test scores to those of prior years. BIE officials told us that their new Native American Student Information System has such capabilities, but had not been fully implemented. Officials expressed optimism they would be able to incorporate growth model-based components of AYP in the next round of AYP determinations (2007-08).

In addition, BIE officials told us that four schools, two in California and two in Florida, were not administering the state exams. These schools were continuing to administer the standardized tests they had used in prior years. Officials from all four schools told us that their schools had adopted the academic content standards of their respective states, but had not administered the state assessments for different reasons. In these

³²“Growth model” is a term that refers to a variety of methods for tracking changes in proficiency levels or test scores over time.

cases, BIE initially made AYP determinations for the 2005-06 school year but has recently suspended the AYP determinations for the four schools until issues regarding how to assess their students are resolved.

In terms of content standards, BIE's ELOs and some school officials told us that while the schools generally have access to state content standards and reported adopting them, some schools have not aligned their curricula to these standards. In particular, 10 of the 21 BIE ELOs stated that some schools in their purview had not aligned their curricula to the state standards for various reasons, including teacher turnover and resistance to change. For example, one ELO told us that some teachers who had been teaching the same material for over 40 years resisted changing the curriculum and preferred to continue to teach as they had been doing for years. Furthermore, officials from at least nine schools we contacted told us that their schools had not fully aligned their curriculum with the state content standards. For example, one school official told us that the school's elementary reading curriculum was aligned with state content standards, but the elementary science curriculum was not.

BIE Lacked Completed Agreements with about Half of the States with BIE Schools, Which Can Affect Access to State Assessments

BIE uses MOUs with states to delineate the terms of BIE-funded schools' access to the states' assessment systems; however it had not completed MOUs with 12 of the 23 states, including 5 we visited—Arizona, California, Florida, Mississippi, and New Mexico.³³ The 12 states without signed MOUs enroll about two-thirds of the students in BIE schools. BIE officials told us that in 2005, BIE asked the ELOs to work with state officials to establish MOUs with all 23 states in which BIE schools are located. By March 2006, 11 agreements had been completed, and no new agreements had been completed as of April 2008. The MOUs contain various aspects of administering and scoring the assessment, including delineating responsibilities for state and BIE officials (see table 3). For example, under the MOUs, the state's responsibilities include inviting BIE school personnel to assessment-related training and informing the BIE of any changes to the state's AYP definition and assessment system. The BIE's responsibilities address, among other things, test security to ensure that the contents of the test are not improperly disclosed and proper test administration. BIE officials told us that they did not actively pursue MOU's with the remaining states, in part because BIE's leadership had not

³³The other seven states without signed MOUs are Louisiana, Michigan, Minnesota, North Carolina, Oklahoma, Utah, and Wisconsin.

viewed the completion of the MOUs as a priority—most states were allowing BIE schools to access state assessments and scoring arrangements without such agreements.

Table 3: Features of Completed MOUs

Responsibilities	
Under the MOU, the state will	Invite BIE-funded schools to all assessment related public school training (including security).
	Assure BIE-funded schools access to the same scoring arrangements as all schools in the state. ^a
	Ensure that BIE receives all pertinent data (achievement level cut scores, high school graduation goal, other indicators used to determine AYP).
	Inform BIE of changes to any data points, indicators, or the assessment system.
	Recognize there is no transfer of authority from BIE to the state.
The BIE will	Send all electronic and other reports to the BIE ELO. ^b
	Ensure that BIE funded schools will administer the state assessments.
	Ensure that officials of BIE funded schools attend assessment related training.
	Ensure principal and faculty understand their responsibility to administer the assessment appropriately, inform the state of any violations, and perform onsite inspections to ensure compliance.
	Secure the assessments – adhere to state guidelines for securing, packaging and shipping for scoring. BIE will perform onsite inspections to ensure compliance.
	Recognize that the MOU does not affect preexisting or future agreements between the BIE-funded schools and the local school districts. ^c

Source: GAO analysis of MOUs.

^aThe MOU with Iowa does not specify a scoring arrangement.

^bMontana, Oregon, Washington, and Idaho. The remaining MOUs do not specify who receives these reports.

^cWashington.

While BIE schools in 9 of the 12 states without signed MOUs were given access to the state assessments, BIE schools in California and, to a lesser degree in Mississippi, have encountered issues in accessing the state

assessments.³⁴ In particular, California state officials have not given the two BIE schools in California access to the state assessments. State officials in California told us that the state had invested millions of dollars on test development and that a breach in security could undermine the validity of the test.³⁵ These officials also stated that several entities, including private schools, had requested permission to administer the test and that their approach was to restrict the test to public schools in California. State officials were willing to make an exception for BIE schools to administer the assessment, but requested a \$1 million bond for security reasons. BIE and Education officials told us that they were trying to work with the state to resolve the issue. Education officials told us that they were hopeful that a solution, such as having BIE students assessed at public schools, could be worked out. Under BIE regulations, BIE schools without access to their state's assessment must submit a waiver to develop an alternative definition of AYP.³⁶ However, officials from the two BIE schools in California stated that developing an alternative definition was unreasonably burdensome and that they had no intention of submitting an alternative assessment in the foreseeable future.

The eight BIE schools in Mississippi were able to administer the state assessment in both 2005-06 and 2006-07; however, they were not initially able to access a re-administration of the assessment in 2006-07 that some students needed in order to graduate. Tribal officials explained that they had to sign a special agreement personally guaranteeing the security of the test to administer the test in that instance. State officials and school officials told us that having a signed MOU in place could have expedited access to the test.

In addition to concerns regarding test security, state officials we interviewed cited the lack of tribal input as a reason for delaying or rescinding an MOU (see table 4). For example, state officials in Washington told us that when they received the request to sign the MOU, they contacted tribal groups and realized that the tribal groups had been informed of the MOU, but not consulted regarding its details. After

³⁴The two BIE schools in Florida have chosen not to take the Florida assessment and therefore have not requested access to the test.

³⁵According to these officials, such a breach could cost the state millions of dollars to develop a new assessment and California students would not be tested while the state developed this assessment.

³⁶25 C.F.R. § 30.125(b).

consulting with tribal groups, Washington state officials modified the proposed MOU and signed it. In addition, BIE does not currently have a valid MOU with New Mexico because the Governor of New Mexico suspended the state’s MOU with BIE shortly after signing it, in part because tribal groups indicated that they had not been consulted about the terms of the MOU.

Table 4: Issues Encountered in Establishing MOUs in the Seven States We Visited

State	Signed MOU	Issues in establishing the MOU	If issues were resolved, how so?
Arizona	No	Impasse regarding language of the MOU	Unresolved
California	No	Concerns about test security, Request for \$1 million bond	Unresolved
Florida	No	Tribal groups do not wish to take Florida state test	Unresolved
Mississippi	No	Test security Release of results	Added additional language, currently being reviewed.
New Mexico	No	Rescinded—tribal groups expressed that they had not been involved in the process	Unresolved
South Dakota	Yes	No issues in establishing MOU; however, a state education official told us that he informed BIE that the state will not cover the \$140,000 costs for the assessments beginning with the 2009-10 school year. ^a	May need to renegotiate current MOU.
Washington	Yes	Initially tribal groups had not been included in the process	State brought tribal groups into the discussion. State and tribal groups worked together closely.

Source: GAO analysis.

^aThe negotiated MOUs do not include specific language with regard to fees for accessing the state assessments.

Three Tribal Groups Have Officially Begun Developing AYP Alternatives in Part to Integrate Culture or Language, While Other Tribal Groups Have Chosen Not to Do So, in Part Because of Substantial Potential Challenges

Officials from three tribal groups—the Navajo Nation, OSEC, and the Miccosukee Tribe of Indians—have informed BIE officials that they wish to pursue alternatives to state AYP definitions³⁷ for a variety of reasons, including the desire to ensure that standards and assessments include components of native culture. However, the remaining tribal groups have not indicated that they will waive state definitions of AYP, in an effort to maintain compatibility with public schools or because of potential challenges to developing alternatives. According to ELOs and the school officials we interviewed, there are significant potential challenges involved in developing alternatives, as well as advantages to using the state assessments, including compatibility with public schools.

Three Tribal Groups, Representing about 44 Percent of BIE Students, Have Begun to Develop Alternatives to State Definitions of AYP, in Part to Ensure That Content Standards and Assessments Reflect Native Culture

As of March 2008, three tribal groups—Navajo Nation, OSEC, and Miccosukee—had formally notified the BIE of their intent to develop alternatives to state definitions of AYP. These tribal groups represent BIE-funded schools in five states and include about 44 percent of BIE students (see table 5). The tribal groups began the process of developing alternatives at different times, but all were still in the early stages of doing so.

³⁷In addition, the Seminole Tribe of Florida, which operates one BIE-funded school, has not administered the Florida state assessment. While officials from the tribe have notified BIE that they will not administer the state assessment, they have not formally requested technical assistance from BIE.

Table 5: Student Data for Tribal Groups Seeking Alternatives and Status of Request

Tribal group	No. of schools	No. of students (SY 2006-07)	Progress to date				States in which affected BIE-funded schools are located
			Met with BIE and Education	Tribes report technical assistance had started	Funding requested	Funding received ^b	
Navajo Nation	60	16,598	✓	No ^a	✓	No	Arizona, New Mexico, Utah
OSEC	11	4,442	✓	✓	✓	No	South Dakota
Miccosukee	1	152	✓	✓	No	No	Florida

Source: GAO analysis.

^aIn March 2008 a meeting took place with officials from Education, Interior, and the Navajo Nation to discuss technical assistance needs. However, a representative of the Navajo Nation declined to characterize the focus of the meeting as technical assistance, stating that Education officials did not seem to want to consider the factors the Navajo had identified, such as a school's remoteness or a child's mental health, in making AYP determinations.

^bThe BIE, in technical comments on our draft report, stated that BIE cannot transfer funds for continued technical assistance to a tribal group until a fundable request has been developed. BIE's comments indicated that no request that it regarded as fundable had been received from any tribal group as of June 12, 2008.

Officials from the Navajo Nation, with BIE schools in three states, have requested technical assistance for developing an alternative definition of AYP, citing the desire to include cultural components in the standards and assessments and to compare the progress of Navajo students across states. Navajo officials told us that they currently do not have a consistent method of measuring the academic progress of their students across the states in which they are enrolled.³⁸ Navajo officials have recently (October 2007) requested technical assistance from BIE in their effort to develop an alternative to the relevant states' definition of AYP. In their proposal to BIE, Navajo officials stated that while they are willing to work with existing assessment procedures as much as possible, they were seeking to develop a "Navajo specific" measure that would influence AYP determination, regardless of the state.

³⁸Navajo children attend public, private, or BIE-funded schools in Arizona, New Mexico, Utah, and Colorado. There are no BIE-funded schools in Colorado. Currently, the students are assessed using the various state assessment systems.

OSEC, a consortium of tribal groups including representatives from 11 BIE-funded schools in South Dakota, has also requested technical assistance as it seeks to develop an alternative definition of AYP, primarily to improve student performance in its schools and to more accurately reflect the length of time it takes some students to graduate. First, it plans to define graduation rates differently from the state. In particular, South Dakota uses a 4-year window to determine graduation rates. OSEC officials told us that a definition of graduation rate that included those who successfully completed high school within 6 years would more accurately reflect the reality that many students take more than 4 years to graduate. In addition, OSEC officials told us that they wanted to replace the attendance component of the state's definition of AYP with a language and culture component.

Furthermore, OSEC would like to develop standards and assessments for its students in subject areas currently covered by the state assessment, such as reading, math, and science. To this end, the consortium has submitted a proposal to BIE officials that provides a framework for developing academic content standards for math, reading, and science, as well as developing an assessment. OSEC officials consulted with BIE officials regarding the proposal, and BIE has since forwarded the proposal to Education for review. Education officials met with officials from BIE and OSEC in November 2007 to evaluate OSEC's needs and offer technical assistance. Education officials told us that they have a consultant who could help OSEC ensure that the new standards and assessments meet Education's guidelines.

Officials from the Miccosukee Tribe have informed BIE that, while they have aligned their curriculum to Florida's academic content standards, they do not intend to administer the Florida state assessment system in their school. Miccosukee tribal officials explained that they did not want to implement the Florida assessment system because they thought it was flawed and inferior to the Terra Nova—the standardized test they were already using. They also told us that because attendance in the Miccosukee School was not compulsory, they rejected the use of attendance as an additional AYP indicator.³⁹ After having met with Education officials and a consultant, the Miccosukee told us that they were considering various options in their development of an alternative

³⁹NCLBA requires schools to have at least one other academic indicator for AYP. The law requires that the additional indicator be graduation rates for high schools, but does not specify the indicator for grades 3 through 8.

assessment, including augmenting the Terra Nova or developing a new assessment based on a modified version of Florida's academic content standards. Officials also told us that they were working on developing standards for Miccosukee culture and language to implement an assessment that would serve as the additional AYP indicator in lieu of attendance for their students in third through eighth grade.

Most Remaining Tribal Groups Have Not Pursued Alternatives for Various Reasons, including the Desire to Maintain Compatibility with Public Schools and Potential Challenges to Developing Alternatives

Officials representing BIE schools in California, Mississippi, and Washington told us that it was important that their schools be compatible with the local public schools. For example, officials from the BIE schools in Mississippi told us that they wanted their students to take the same tests as students attending Mississippi public schools, in part to ensure that they received the same diploma. In addition, officials from one California school explained that their students come from public schools and may return to public schools in high school. These officials told us that it made more sense for the students to take the state tests for continuity. In addition, BIE school officials in California, Mississippi, and Washington told us that because they followed the state curriculum, it would be logical to administer the state assessment. However, while the tribal groups representing the eight BIE schools in Washington have not waived the state definition of AYP, they have proposed a technical change that would affect how BIE officials determine AYP for these schools. In particular, BIE considers the 2002-03 school year as the baseline for its AYP determinations; however, officials representing the BIE schools in Washington told us that the 2005-06 school year is a more appropriate baseline, as it is the first year in which they administered the state assessment for AYP purposes.⁴⁰ While the Washington state superintendent approved the schools' request to change the baseline school year, BIE officials have not done so. As a result, officials representing one of the schools challenged BIE's AYP determination for the 2005-06 school year.

⁴⁰While Interior's regulations required that BIE-funded schools use their state's assessment beginning in 2005-06, they did not change the baseline year for calculating AYP. Schools that implemented the state assessment for the first time in 2005-06 could not show improvement in test scores from the prior year, which put them at a relative disadvantage, as they could not make AYP using the safe harbor provisions that year because they did not have 2 years of consistent assessment data available. Safe harbor provisions allow a school to make AYP if the percentage of students in designated groups who were not proficient decreased by 10 percent from the prior year, and the group makes progress on another academic indicator. 20 U.S.C. § 6311(b)(2)(I)(i).

School officials and education line officers identified several potential challenges that tribal groups might encounter in their efforts to develop alternative standards or assessments, including a lack of expertise, funding, and time (see table 6). According to ELOs and school⁴¹ and Education officials, the specialized knowledge needed to develop an alternative definition of AYP is generally beyond the capacity of tribal groups. For example, ELOs and Education officials stated that the technical expertise needed to develop an assessment was not available among members of some tribes and would need to be obtained through consultant contracts. School officials from Mississippi and Washington agreed that developing such alternatives would require expertise beyond that available within their tribal groups. With regard to financing the development of alternatives, Education officials stated that developing standards and assessments could cost tens of millions of dollars⁴²—financial resources that are generally not available among many tribal groups for this purpose.

Table 6: Key Potential Challenges That Tribal Groups Could Face When Developing an Alternative Definition of AYP

Challenge ^a	Number of ELOs identifying the challenge ^b
Financing the development of an assessment or standards would be burdensome for tribes.	14
Expertise for developing assessments or cultural/language standards generally not available among tribal members.	14
The process for developing, piloting, and testing an assessment is lengthy.	8
The BIE process for waiving state definitions of AYP and proposing and implementing alternatives is burdensome.	6
Changes in tribal leadership or BIE leadership could erode support for such a project due to changes in priorities.	5
Financing data collection and scoring of assessments would be burdensome.	3

Source: GAO analysis.

^aThese challenges, with the exception of “Financing data collection and scoring of assessments would be burdensome,” were also identified by some school officials during our interviews.

^bAmong 21 ELOs responding to an open-ended question.

⁴¹Some education line officers and school officials we interviewed told us they are also members of a tribal group.

⁴²In 2003, GAO estimated that test development costs under NCLBA would range from \$12 million to \$17 million per state.

Education officials and ELOs also agreed that developing alternatives requires an extensive time commitment that may not be sustainable given changes in leadership. In particular, Education officials told us that developing, piloting, and testing alternative content standards or assessments can take from 12 months to 3 years. Some of the education line officers we interviewed volunteered that the required time commitment could affect support for such a project. Five of the ELOs and two school officials specifically noted that the time needed to develop an alternative would be a challenge for their tribal groups or school boards, with one school official citing the time commitment needed to help teachers understand and incorporate alternative standards into their lesson plans. One school official stated that changes in BIE leadership had led to different interpretations of how to implement the NCLBA provision related to developing alternatives.

Tribal Groups Considering Alternatives and School Officials Reported a Lack of Federal Guidance and Communication, but BIE and Education Have Recently Begun Providing Some Initial Assistance

Most tribal groups, school officials, and ELOs we spoke with said they had little guidance about the process BIE uses to help tribal groups develop alternatives. In addition, school officials and tribal groups we interviewed reported communication problems with BIE, including lengthy delays and a lack of response. Recently, however, BIE and Education officials have offered both technical assistance and funds to those tribal groups seeking to develop alternatives.

Tribal Groups, School Officials, and BIE's ELOs Reported a Lack of Federal Guidance about the Process for Seeking or Developing an Alternative

Most tribal groups, ELOs, and school officials we spoke with said they had received little guidance about the process BIE uses to help tribal groups develop alternatives. Officials representing the two tribal groups and one consortium that have formally requested technical assistance stated they were uncertain about the BIE process for applying for an alternative. Likewise, we found school officials were also unsure of BIE's process for applying for an alternative. For example, officials from the two BIE schools in California said they had no knowledge of the BIE process to

assist tribal groups and school boards to develop alternatives. In addition, officials from one school said they hired legal counsel to assist them with their request because they were uncertain about BIE's process for applying for an alternative.

About half of the ELOs, despite being the first point of contact, told us they did not have enough information to accurately describe the process a tribal group would use to waive the Secretary of the Interior's definition and pursue development of an alternative definition of AYP. This may be at least partly due to turnover among ELOs. Eight of the 21 ELOs said they had been in their current position for 12 months or less while 7 had been in their current position from 1 to 3 years. BIE officials told us that about 25 percent of the ELOs who attended training on the process to develop an alternative were no longer employed in that position. According to BIE officials, ELOs had received such training in 2005—although no requested documentation of this training and guidance was provided to us. During the course of our review, 19 of the 21 ELOs we interviewed also stated they had not received any training or written guidance on the BIE's policy for approving a tribal groups' request for an alternative, even though providing technical assistance to tribal groups developing an alternative is included in their job responsibilities. During our interviews, 11 of the 21 ELOs indicated they were knowledgeable about the NCLBA provision that allows tribal groups to waive the Secretary's definition and develop an alternative and would be able to describe the provision to tribal groups.

During our interviews, almost all of the ELOs (19 of 21) told us that they had not received any information from BIE officials on their role in providing technical assistance to tribes in developing content standards, assessments, or definitions of AYP.⁴³ As a result, most tribal groups have not received any information from ELOs on the availability of technical assistance for developing alternatives. In particular, only 3 of the 21 ELOs stated they had provided any information on the availability of technical assistance for developing alternatives to tribal groups within their jurisdiction.

BIE receives funds from Education that could be used to assist tribal groups with the development of alternatives, but BIE's ELOs told us they had not been instructed that BIE funds were available for this purpose. All

⁴³The other two ELOs could not specifically recall whether they had received any such information.

21 ELOs told us they had not received any guidance from BIE on BIE funds that might be used to assist tribal groups seeking to develop alternatives.

Some School Officials and Tribal Groups Reported Lengthy Delays in Communicating with BIE

Some school officials and tribal groups we interviewed reported a lack of response from the BIE or lengthy delays in responding to requests for assistance related to development of alternative standards, assessments, or definitions of AYP. For example, OSEC's written request for technical assistance in developing an alternative definition of AYP was not acted upon for 8 months. In another case, the Miccosukee's written request to waive the state assessment and develop an alternative went unanswered by the BIE from October 2006 to June 2007. BIE officials, in acknowledging their slow response to the tribal groups' requests for technical assistance, stated that in some cases tribal groups' written requests were not always clear about what they wanted from the BIE or had not adhered to the regulation that requires the waiver request be submitted by either a tribal governing body or school board.

Other tribal groups we interviewed reported frustration in communicating with BIE due to BIE's failure to proactively initiate communication when necessary. For example, officials from one of the BIE schools in California stated that, although BIE officials were aware that the state had not given the schools access to the state assessment, BIE had not communicated with or offered any type of assistance to the schools.⁴⁴ Further, OSEC submitted to BIE a written request for guidance and funds to pay for the development of assessment tools on developing an alternative definition of AYP. In its response, the BIE denied the consortium's written request without further discussion or inquiry, noting that the request did not come from either a school board or a tribal governing body but rather a consortium of schools.

BIE officials told us that their prior focus had been on ensuring that BIE schools were accessing and using the state standards and assessments and

⁴⁴In 2005-06, BIE mistakenly allowed one of the California schools to make AYP despite administering the wrong assessment. By March 2007, BIE was aware that the California schools were not administering the state assessment, but did not offer guidance on how to resolve the situation. School officials began contacting BIE in response to BIE's 2007 determination that the school had failed to make AYP for 2 years, and needed to submit a school improvement plan. At the time of our visit (December 2007), school officials had not heard back from BIE.

therefore did not devote resources to assist those tribal groups who sought to develop alternatives to the state systems. In addition, BIE officials told us that BIE had not initially been proactive in working with Education on issues related to alternative assessments.

Officials from BIE and Education Have Recently Begun to Offer Technical Assistance

To address tribal groups' requests for technical assistance, BIE assigned a staff person as the primary BIE contact for tribal groups that are requesting technical assistance or seeking to develop alternatives.⁴⁵ However, this BIE staff person has several other key responsibilities including responsibility for applying 23 state AYP definitions to calculate the AYP status of BIE schools and responsibility for overseeing the special education program for all BIE schools. In addition, BIE officials informed Education officials in September 2007 of the OSEC and Miccosukee's requests for technical assistance, and in November 2007 of the Navajo's request for technical assistance.⁴⁶

In response to the requests, BIE and Education officials have recently offered technical assistance to those tribal groups that are seeking to develop alternatives. For example, officials from BIE and Education met with the Miccosukee and OSEC in November 2007 to assess the type of technical assistance needed in order for the tribe to pursue development of its alternative. Likewise, officials from BIE and Education also met with the Navajo Nation in March 2008 to assess their technical assistance needs as they continue to pursue development of an alternative. In addition to identifying the types of technical assistance needed by those tribal groups that have formally submitted a request to waive state standards, assessments, or definitions of AYP, Education officials told us they have also sent a contractor to assist tribal groups as they pursue the development of alternative assessments. Specifically, in Florida, the Education contractor is charged with helping the Miccosukee to identify the steps needed to ensure its assessment complies with relevant regulations under NCLBA by reflecting Florida's state standards—or any modified standards that the Miccosukee may adopt. Similarly, in South

⁴⁵BIE officials also sent Education's: "Standards and Assessments Peer Review Guidance: Information and Examples for Meeting the Requirements of the No Child Left Behind Act of 2001" to a tribal group in an effort to respond to its request for technical assistance.

⁴⁶The Memorandum of Agreement between Education and Interior does not specify a timeline for BIE to seek assistance from Education after receiving requests for technical assistance, or after acknowledging that the technical assistance needed is beyond the BIE's realm of expertise.

Dakota, the Education contractor is charged with working with the OSEC consortium to identify the actions needed to ensure that its alternative assessment will comply with NCLBA regulations.

As of February 2008, according to BIE officials, none of the funds provided by Education to BIE under the NCLBA provision supporting assessment-related expenses had been spent to provide technical assistance to tribal groups seeking to develop alternatives.⁴⁷ The BIE reported receiving from Education a total of \$11.7 million for school years 2002-03 through 2007-08, that was targeted to assessment-related expenses. According to BIE, all of these funds had been obligated, primarily for improvements to BIE's student information and tracking systems and other assessment-related uses, including professional development.⁴⁸ In fact, some tribal groups told us they were not aware that BIE received funds that might be available to assist with development of alternatives. BIE officials stated that none of these funds had been spent on technical assistance, but said that they expected to spend some funds to provide technical assistance in the near future.

Conclusions

In most cases, BIE schools that wish to adopt their state's definition of AYP, standards, and assessments, have had no problems doing so, but the lack of MOUs between BIE and some states exposes the BIE schools in those states to the potential risk of losing access to state assessments. Under the existing MOUs, the state (or BIE) may terminate the agreement, but notice is required. Additionally, the MOU ensures that tribes' access to tests is not dependent on decisions made by particular state officials or administrations, who could otherwise terminate or impose conditions on the sharing arrangements without notice. In part because BIE may have little leverage in negotiating with state education departments, BIE may encounter difficulty in reaching agreement on these MOUs, especially if a state imposes challenging conditions. In addition, a large burden is placed on tribal groups and schools that lack access to state assessments—in terms of developing an alternative assessment that meets federal

⁴⁷BIE regulations provide that funds provided by Education under NCLBA section 6111 may be used in providing technical assistance. 25 C.F.R. § 30.109.

⁴⁸We requested accountings of BIEs expenditure of section 6111 funds from both BIE and Education. Education officials told us that they did not specifically require that BIE report on the expenditure of these funds and BIE officials had not provided GAO a thorough accounting by the end of our audit. Rather, they provided a spreadsheet indicating the funds had been primarily obligated for BIE's student information system.

guidelines. Without prompt assistance, such schools may lack appropriate measures of what children know and can do that could support plans for educational improvement. Similarly, lack of alignment between curricula and standards or inability to promptly produce determinations of performance can slow the pace of improvement for students and schools.

Clearly, if tribal groups wish to propose an alternative, they must understand the process in place to pursue this option. Developing alternatives requires clear and timely communication between BIE and tribal groups, as well as between BIE and Education. To date, guidance from BIE on developing alternatives has been limited and BIE's communication with tribal groups, BIE ELOs, and Education has been slow or lacking. Without improved guidance to tribal groups and ELOs, those tribal groups seeking to develop alternatives may lack information or receive inaccurate information about how to develop an acceptable alternative definition. Further, unless BIE establishes response time frames and processes, the communication between BIE and those tribal groups seeking alternatives will remain ineffective. As a result, these tribal groups could continue to view BIE as a hindrance rather than a partner in the process. While BIE and Education have recently begun offering technical assistance, clear guidance from BIE and timely communication between BIE and tribal groups could not only improve working relations, but also facilitate the use of the provision allowing the alternatives to address the unique cultural needs of the students.

Recommendations for Executive Action

To improve support for tribal governments and school boards in their adoption of definitions of AYP, we are making the following four recommendations. We recommend that the Secretary of the Interior direct BIE to:

- Coordinate with relevant tribal groups in pursuing negotiation of MOUs with states that lack them, seeking facilitation from Education when necessary and appropriate.
- In close coordination with Education, provide prompt assistance to tribal groups in defining assessment options, especially in instances in which tribal groups are not accessing state assessments. Such assistance could include delineating options—such as using an already established assessment, augmenting an assessment, or incorporating cultural components as an additional academic indicator—and their associated costs.

-
- Provide guidelines and training on the process for seeking and approving alternatives to all tribal governments, tribal school boards, and education line offices.
 - Establish internal response time frames and processes to ensure more timely responses to all correspondence with tribal groups as well as proactive communication with tribal groups and Education to resolve issues related to waivers, requests for technical assistance, and development of alternative definitions of AYP.

Agency Comments and Our Evaluation

We provided a draft of this report to Interior and Education for review and comment. Interior provided a written response to the report (see app. D); Education did not. Both agencies provided technical comments, which we incorporated in the report where appropriate.

Interior agreed with all of our recommendations. In responding to our first recommendation, Interior explained that BIE is continuing to work jointly with Education to facilitate agreements with the states to ensure access to state assessments and to establish MOUs with those states where none currently exist.

With respect to our second recommendation, Interior reported that the BIE has established a Scope of Work that addresses the full range of technical assistance needed to assist tribal groups that seek to waive all or part of the state's definition of AYP, content standards, or assessments.

In regard to our third recommendation, BIE stated that, in addition to continuing to provide guidance and training to tribal groups and tribal school boards, it has developed information on the process for seeking and approving alternatives that will be posted on its Web site as well as distributed to tribal groups and tribal school boards.

In responding to our final recommendation, BIE stated it would continue to be more proactive in its communication with tribal groups and Education to resolve issues related to waivers of the state's definition of AYP, requests for technical assistance, and development of alternative definitions of AYP. Moreover, as part of the project management with tribal entities that have sought technical assistance, a consultant will maintain a management document that identifies timelines, among other things. In addition to the steps BIE has mentioned, we continue to believe it is important for BIE to establish internal timelines to ensure more timely responses to all correspondence with tribal groups.

We are sending copies of this report to the Secretaries of Education and the Interior; the Director of the Bureau of Indian Education; representatives of tribal groups identified in the report, relevant congressional committees, and other interested parties. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>. Please contact me on (202) 512-7215 if you or your staff have any questions about this report. Contact points for our offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix II.

Cornelia M. Ashby

Cornelia M. Ashby, Director
Education, Workforce and Income Security Issues

Appendix I: Comments from the Department of the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



JUN 12 2008

Ms. Cornelia M. Ashby
Director, Education, Workforce, and Income Security Issues
United States Government Accountability Office
441 G Street, NW
Washington D.C. 20548

Dear Ms. Ashby:

We appreciate the opportunity to review and comment on the draft Government Accountability Office Report entitled, *BUREAU OF INDIAN EDUCATION SCHOOLS: Improving Interior's Assistance Would Help Some Tribal Groups Implement Academic Accountability.* (GAO-08-679). Indian Affairs and the Bureau of Indian Education (BIE) agree with the Recommendations for Executive Action provided on page 33 of the draft report.

The BIE provides the following information in response to the recommendations as follows:

Recommendation 1: Coordinate with relevant tribal groups in pursuing negotiation of MOUs with states that lack them, seeking facilitation from Education when necessary and appropriate.

Response: The Bureau of Indian Education (BIE) agrees. The BIE has established MOUs with some states and is pursuing establishing additional MOUs with states where no MOUs currently exist. The BIE has a good working relationship with the Department of Education and is working jointly with the Department of Education to facilitate negotiating agreements with the states to ensure access to state assessments and establish agreements. The BIE and the Department of Education are committed to continuing this effort.

Recommendation 2: In close coordination with Education, provide prompt assistance to tribal groups in defining assessment options, especially in instances in which tribal groups are not accessing state assessments. Such assistance could include delineating options—such as using an already established assessment, augmenting an assessment, or incorporating cultural components as an additional academic indicator – and their associated costs.

Response: The Bureau of Indian Education agrees. The BIE has provided an initial technical assistance (TA) session for each tribe during which an external Education

identified consultant provided all basic information surrounding an accountability system, including assessments. The BIE has established a Scope of Work (SOW) which addresses the full range of technical assistance that could be requested or otherwise identified as being needed to assist tribal entities in fully understanding all of the requirements for any portion of the alternate Adequate Yearly Progress (AYP) definition or criteria they may wish to waive. The SOW specifies the external consultant must have a high level of knowledge and expertise in the development of standards, assessments, and accountability at a state level. The provision of TA at this level is designed to help the tribal groups develop an alternate definition of AYP that will meet the stringent requirements identified under the No Child Left Behind Act (NCLB). The consultant must have extensive experience in all aspects of compliance and the Peer Review process. They must also have knowledge in expectations for alternate AYP as identified in 25 CFR, Part 30.

Recommendation 3: Provide guidelines and training on the process for seeking and approving alternatives to all tribal governments, tribal school boards, and education line offices.

Response: The BIE agrees. The BIE continues to provide guidance and training at national meetings and conferences throughout the United States. A few examples are: the National Indian School Board sessions, National Indian Education Association sessions, Navajo School Board sessions, Grant School Board meetings and other places as requested. The Education Line Officers have also received information during Education Line Officers specific meetings.

Included in the SOW mentioned in the response to Recommendation 2, above, is the development of a PowerPoint type of document that the BIE can post on its website as well as distribute to the tribal groups and tribal school boards. The BIE will continue to have a presence at the education related meetings and conventions that have an audience of American Indians and Alaska Natives.

Recommendation 4: Establish internal response timeframes and processes to ensure more timely responses to all correspondence with tribal groups as well as proactive communication with tribal groups and Education to resolve issues related to waivers, requests for technical assistance, and development of alternative definitions of AYP.

Response: The BIE agrees. The BIE will continue to do or will implement the following:

- Log all correspondence and responses, including all e-mails.
- Upon receipt of a request for technical assistance (TA), a BIE contact will be identified who will coordinate all subsequent TA requests.
- After the initial session with the tribal entity, a consultant will provide guidance; and, in a collaborative effort, the consultant will develop and maintain a project management document that identifies the activities and timelines for the TA with the tribal entity.

**Appendix I: Comments from the Department
of the Interior**

- A progress report will be required at regular intervals. The schedule will depend on the activity.
- Education Line Officers will receive initial training on standards, assessments and accountability expectations for alternate definitions of AYP. Each ELO will be informed of the process for requesting TA.

The enclosure provides specific comments on the full report grouped by subject area.

If you have any questions concerning the response, please communicate with Mr. Stanley Holder, BIE Chief, Division of Performance and Accountability, at 505-563-5251.

Sincerely,



George T. Skibine
Acting Deputy Assistant Secretary
for Policy & Economic Development

Enclosure

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

Cornelia M. Ashby (202) 512-7215 or ashbyc@gao.gov

Acknowledgments

Betty Ward-Zukerman, Assistant Director, and Nagla'a El-Hodiri, Analyst-in-Charge, managed this assignment. Kris Trueblood and Tahra Nichols made significant contributions to all aspects of the work. Nora Boretti, Kimberly Granger, Angela Jacobs, Annamarie Lopata, and Sara Pelton assisted with data collection. Charlie Willson and Jessica Orr provided assistance in report preparation; Jeffery Malcolm provided expertise on Indian issues; James Rebbe and Doreen Feldman provided legal support; Jean McSween and John Mingus provided technical support; and Lise Levie verified our findings.

Related GAO Products

No Child Left Behind Act: Education Actions Could Improve the Targeting of School Improvement Funds to Schools Most in Need of Assistance. [GAO-08-380](#). Washington, D.C.: February 29, 2008.

No Child Left Behind Act: States Face Challenges Measuring Academic Growth That Education's Initiatives May Help Address. [GAO-06-661](#). Washington, D.C.: July 17, 2006.

Bureau of Indian Affairs Schools: Expenditures in Selected Schools Are Comparable to Similar Public Schools, but Data Are Insufficient to Judge Adequacy of Funding and Formulas. [GAO-03-955](#). Washington, D.C.: September 4, 2003.

Bureau of Indian Affairs Schools: New Facilities Management Information System Promising, but Improved Data Accuracy Needed. [GAO-03-692](#). Washington, D.C.: July 31, 2003.

Title I: Characteristics of Tests Will Influence Expenses; Information Sharing May Help States Realize Efficiencies. [GAO-03-389](#). Washington, D.C.: May 8, 2003.

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