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BUREAU OF INDIAN
EDUCATION

Improving Interior's
Assistance Would Aid Tribal
Groups Developing
Academic Accountability
Systems

Statement of Cornelia Ashby, Director
Education, Workforce, and Income Security





Highlights of [GAO-08-1125T](#), a report to the Subcommittee on Early Childhood, Elementary and Secondary Education, Committee on Education and Labor, House of Representatives

Why GAO Did This Study

The No Child Left Behind Act (NCLBA) requires states and the Department of the Interior's Bureau of Indian Education (BIE) to define and determine whether schools are making adequate yearly progress (AYP) toward the goal of 100 percent academic proficiency. To address tribes' needs for cultural preservation, NCLBA allows tribal groups to waive all or part of BIE's definition of AYP and propose an alternative, with technical assistance from BIE and the Department of Education, if requested. GAO is providing information on the extent of (1) BIE schools' adoption of BIE's definition of AYP; (2) tribal groups pursuit of alternatives and their reasons, as well as reasons for not pursuing alternatives; and (3) federal assistance to tribal groups pursuing alternatives. To prepare this testimony, GAO relied primarily on information from a recent GAO report, [GAO-08-679](#), and contacted BIE officials for updates on actions taken in response to GAO's prior recommendations.

To view the full product, including the scope and methodology, click on [GAO-08-1125T](#). For more information, contact Cornelia Ashby at (202)-512-7215 or AshbyC@gao.gov.

BUREAU OF INDIAN EDUCATION

Improving Interior's Assistance Would Aid Tribal Groups Developing Academic Accountability Systems

What GAO Found

Although almost all of the 174 BIE schools have officially adopted BIE's definition of AYP—the definition of AYP of the state where the school is located—BIE had not yet completed memoranda of understanding (MOU) to delineate BIE and state responsibilities concerning BIE schools' access to the states' assessment systems for 12 of the 23 states with BIE schools. Without MOUs, states could change their policies regarding BIE schools' access to assessments and scoring services.

Officials from the Navajo Nation, the Oceti Sakowin Education Consortium, and the Miccosukee Tribe have begun to develop alternatives to state AYP definitions, in part to make standards and assessments reflect their culture, while officials of other tribal groups have cited challenges, such as a lack of expertise, as reasons not to pursue alternatives. The three tribal groups developing alternatives, representing about 44 percent of the 48,000 BIE students, have requested technical assistance in developing their alternatives. Other tribal officials cited a desire to maintain compatibility with public schools and/or cited challenges, such as a lack of expertise, as reasons not to pursue alternatives.

The three tribal groups pursuing alternatives reported a lack of federal guidance and communication, although they have recently received some initial technical assistance from BIE and Education officials. These tribal groups reported receiving little guidance from BIE and difficulties in communicating with BIE and the BIE did not always have internal response timelines or meet the ones it had. Moreover, BIE education line officers—the primary points of contact for information on the alternative provision—generally indicated that they had received no guidance or training on the provision. During the course of GAO's prior review, BIE and Education officials began offering technical assistance to the tribal groups working to develop alternatives.

In response to GAO's recommendations in its June 2008 report that the Secretary of the Interior increase support, including technical assistance, guidance, training, and communication for tribal groups in their implementation of the provision for developing alternatives, BIE has taken several steps. In particular, BIE officials told GAO that they are in the process of working out the language for a memorandum of agreement with California state officials. In addition, BIE officials told GAO that the three tribal groups seeking alternatives were working closely with a contractor to develop proposals. With regard to the recommendation to provide guidelines and training on the process for pursuing alternative assessments, BIE officials told GAO that they have taken steps to develop a presentation on the process that they anticipated would be available in October 2008.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the extent to which the governing bodies of some schools funded by the Department of the Interior have sought or developed alternative methods of measuring children's academic progress and the challenges they have faced in doing so. The Department of the Interior's Bureau of Indian Education (BIE) is responsible for the education of the 48,000 Indian students in 174 BIE-funded schools across 23 states. In school year 2006-07, about one-third of these schools were operated directly by BIE and two-thirds by tribes under federal contracts or grants,¹ which offer the potential for tribal groups to take greater ownership of their children's education. As a condition for receiving grants under the No Child Left Behind Act (NCLBA), schools—including the BIE schools—must measure yearly progress in meeting standards in math, reading, and science. In 2005, the Secretary of the Interior determined that to measure such progress, each BIE school would use the definition of adequate yearly progress (AYP) of the state in which the school was located. Recognizing that students at BIE schools may have unique needs and special circumstances, NCLBA allows tribal groups to waive all or part of the Secretary's authorized definition of AYP and propose an alternative.

My testimony will focus on (1) the number of BIE schools that have adopted state definitions of AYP; (2) tribal groups that have sought alternatives and their reasons for doing so, as well as the reasons other tribal groups have not done so; and (3) the role the federal government has played in assisting those tribal groups developing alternatives. My testimony is based largely on a recently issued GAO report,² updated with information provided by BIE officials including the status of actions taken in response to our prior recommendations. To complete our review for that report, we visited the tribal groups that were in the process of developing alternative definitions of AYP—and some who were not doing so. In particular, 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), and Soboba Band of Luiseno Indians, as well as officials from the BIE off-reservation boarding school in California and the eight BIE-funded

¹For the 2006-07 school year.

²GAO, *Bureau of Indian Education Schools: Improving Interior's Assistance Would Help Some Tribal Groups Implement Academic Accountability Systems*, [GAO-08-679](#) (Washington, D.C.: June 27, 2008).

schools in Washington State, which serve students from multiple tribes. We interviewed state and federal education officials, as well as BIE officials and representatives from Indian organizations. We reviewed relevant documents, including regulations and existing memoranda of understanding (MOU) between BIE and the states.³ Our work was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In summary, following the policy BIE established in 2005 for measuring AYP, almost all of the 174 BIE-funded schools have measured academic progress in accordance with their state's definition of AYP, although three tribal groups representing 44 percent of BIE students are in the process of developing alternative definitions, as allowed under NCLBA. To establish the terms under which BIE schools access assessments and scoring arrangements, BIE has established agreements with about half of the states that have BIE schools. The remaining states, with the exception of California, have allowed BIE schools access to their assessments; however, there is increased risk in these states that the terms of access will change. The Navajo Nation, the Oceti Sakowin Education Consortium (OSEC), and the Miccosukee are seeking alternatives to state definitions of AYP, in part to have more culturally relevant standards and assessments. Other tribal groups are not developing alternatives, citing potential challenges—such as a lack of resources—or a desire to maintain compatibility with public schools with which they share students. The three tribal groups seeking alternatives reported a lack of federal guidance and communication, but they have more recently reported receiving some assistance from BIE and Education officials. BIE's education line officers (ELO)—who are the tribal groups' primary points of contact for information on developing an alternative—generally indicated that they had received no guidance or training on this provision. In communicating with tribal groups regarding alternative AYP definitions, 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. In our June 2008 report we made recommendations to the Secretary of the Interior aimed at increasing support, including improved

³In all, we visited seven states—Arizona, California, Florida, Mississippi, New Mexico, South Dakota, and Washington—and interviewed officials representing 21 schools across those states. For more details about how we conducted our review, please see [GAO-08-679](#).

assistance, guidance, training, and communication for tribal groups in their implementation of the provision for developing alternative definitions of AYP. Interior agreed with our recommendations and in subsequent conversations reported taking actions in response to our recommendations.

Background

NCLBA required the Secretary of the Interior to develop a definition of AYP⁴ for BIE schools, but also allows tribal groups to waive all or part of BIE's definition of AYP and propose an alternative.⁵ After a process of negotiated rulemaking,⁶ Interior issued regulations specifying that each BIE school must adopt the standards, assessments, and definition of the state in which the school is located.⁷ BIE has used agreements, or MOUs, with the states to delineate the terms of accessing state assessments and scoring arrangements. Tribal groups may submit an alternative proposal, but are obligated to use the state's definition, content standards, and assessments until the alternative is approved by the Secretaries of Interior and Education.⁸

Tribal groups are obligated to develop alternative definitions of AYP if states do not give tribal groups access to their assessments. However, the regulations do not delineate how to determine whether a school has achieved AYP in those cases in which schools cannot access state assessments and have not developed an alternative.⁹ Under BIE regulations, a tribal group that requires assistance in developing an

⁴Under NCLBA states are required to establish performance goals and hold their schools receiving funds under Title I 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.

⁵NCLBA allows a tribal governing body or school board to waive the BIE's definition of AYP "in part or in whole." (20U.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).

⁶NCLBA required the Secretary of the Interior to develop a definition of AYP for BIE schools through negotiated rulemaking. 20 U.S.C. § 6316(g)(1)(A).

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

⁸*See* 20 U.S.C. § 6316(g)(1)(B) and 25 C.F.R. §§ 105 and 30.113.

⁹In such cases, BIE has recently determined that it will not change the school's AYP status from the prior year.

alternative must submit a written request to BIE. Then, within given time frames, BIE must acknowledge receipt of the request for technical assistance and identify a point of contact to work with the tribal group.¹⁰ In providing such assistance to tribal groups, BIE has access to federal funds designated to assist with assessment-related activities.

BIE determined that for school year 2006-07, just under one-third of the 174 schools had made AYP, two-thirds had not, and 4 schools were held harmless, with no AYP determinations made. Under NCLBA, schools that fail to meet AYP for 2 consecutive years must implement specific types of remedial actions, although the requirements for BIE schools vary from those for public Title I schools (see table 1). 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 grants, implementation of remedial actions is the responsibility of the tribal group.

Table 1: 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

¹⁰25 C.F.R. § 30.110.

AYP	School status in the next year	Remedial actions for Public Title I schools	Remedial actions for BIE Title I schools
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.

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 their state's definition of AYP, content standards, and assessments, but BIE had signed MOUs that ensure access to state assessments with only 11 of the 23 states in which BIE schools are located, as of April 2008. In addition, BIE experienced some challenges in applying the state definitions to determine whether the 174 schools had met AYP.

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

Because BIE schools generally use state definitions of AYP, BIE officials must apply 23 different state definitions. BIE officials told us that the AYP determinations were made by applying the criteria filed with Education by the relevant state, except in California and Florida, where BIE schools did not administer the state assessment, and in Arizona and North Carolina where there was a data constraint.¹¹

The process is complex: some states assess students in additional areas, such as testing students in both reading and language arts, and the statistical formulas for calculating AYP also vary among states. Some states' formulas include multiple confidence bands while other states use none. Similarly, annual measurable objectives, alternate AYP indicators, and formulas for calculating graduation rates also vary across states.

BIE officials told us that, for several reasons, schools were not always notified of their AYP status prior to the beginning of the subsequent school

¹¹In particular, BIE officials told us that they had been unable to incorporate Arizona and North Carolinas' growth models—which track changes in proficiency levels or test scores over time. 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.

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 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 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.

In addition, BIE officials told us that four schools, two in California and two in Florida, were not administering the state assessments for reasons that are discussed in the next section. 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.

BIE Lacked Completed Agreements with about Half of the States with BIE Schools, Which Could 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.¹² The 12 states without signed MOUs enroll about two-thirds of the students in BIE schools, but BIE officials told us that they did not actively pursue MOUs with these states, in part because most states were allowing BIE schools to access state assessments and scoring arrangements without such agreements. The MOUs generally specify responsibilities for the state and BIE. For example, states may be responsible for including BIE schools in relevant training, informing BIE of changes to the state's definition of AYP, and scoring the BIE assessments. The MOUs also delineate responsibilities of BIE such as ensuring that staff are properly trained and that the assessments are administered according to state protocols.

However, California state officials told us they had neither signed an MOU nor given BIE access to the state assessments because they feared a breach in test security.¹³ They noted that such a breach in security could undermine the validity of the test, in which the state had invested millions

¹²The other seven states without signed MOUs are Louisiana, Michigan, Minnesota, North Carolina, Oklahoma, Utah, and Wisconsin.

¹³For example, the test may not be properly safeguarded or administered.

of dollars to develop.¹⁴ California officials stated that several entities, including private schools, had requested permission to administer the test and that their approach was to administer the test only 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 as security. 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.¹⁵

Officials in other states also told us that they have delayed or rescinded MOUs because tribal groups indicated that they had not been consulted about the terms of the agreements (see table 2). 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 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 2: 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

¹⁴There were also access issues in Mississippi due to the state’s security concerns. The eight BIE schools in Mississippi were able to administer the state assessment in both 2005-06 and 2006-07; however, they were initially unable to access a re-administration of the assessment in 2006-07. This situation was resolved through an agreement between the schools and the state of Mississippi.

¹⁵Under BIE regulations, BIE schools without access to their state’s assessment must submit a waiver to develop an alternative definition of AYP. 25 C.F.R. § 30.125(b). 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 proposing an alternative assessment in the foreseeable future.

State	Signed MOU	Issues in establishing the MOU	If issues were resolved, how so?
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	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 then worked together closely.

Source: GAO analysis.

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

As of March 2008, three tribal groups—the 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 3). The tribal groups began the process of developing alternatives at different times, but all were still in the early stages of doing so.

Table 3: Status of Tribal Groups' Early Efforts in Seeking Alternatives

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.

⁹In 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.

⁹The 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.

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 have recently (October 2007) requested technical assistance from BIE to develop an alternative "Navajo specific" measure that would influence AYP determination, regardless of the state in which the school was located.¹⁶

OSEC, a consortium of tribal groups in South Dakota,¹⁷ seeks to develop an alternative to improve student performance in its schools, to define the graduation rate to include 6 years rather than 4, and to replace the attendance component of the state's definition of AYP with a language and culture component. OSEC has submitted a proposal to BIE officials¹⁸ that provides a framework for developing academic content standards for math, reading, and science—the subject areas that must be covered in a state assessment—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 they did not want to implement the Florida assessment system because they thought it

¹⁶Navajo 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. Navajo 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.

¹⁷OSEC includes representatives from 11 BIE-funded schools.

¹⁸OSEC sent letters to BIE officials requesting technical assistance as early as spring 2005. OSEC sent a proposal for the BIE to review in the summer of 2007.

was flawed and inferior to 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.¹⁹ 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 assessment, including augmenting the current test, called 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 serve as the basis for 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 in their state, and potential challenges and resources required to develop 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. Officials from the BIE schools in Mississippi wanted to ensure that their students received the same diploma as other children in the state. Further, school officials and BIE 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 4). According to ELOs and school²⁰ and Education officials, the specialized knowledge needed to develop an alternative definition of AYP is generally beyond the capacity of tribal groups. With regard to financing the development of alternatives, Education officials stated that developing standards and assessments could cost tens of millions of dollars²¹— financial resources that some tribal representatives and BIE officials told us are generally not available among many tribal groups. Education officials and ELOs also agreed that developing alternatives requires an

¹⁹NCLBA 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.

²⁰Some ELOs and school officials we interviewed told us they are also members of a tribal group.

²¹In 2003, GAO estimated that test development costs under NCLBA would range from \$12 million to \$17 million per state.

extensive time commitment that may not be sustainable given changes in leadership.

Table 4: Key Potential Challenges Identified by ELOs 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.

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, ELOs, and school officials we spoke with said they had received little guidance about the process BIE uses to help tribal groups develop alternatives and some expressed frustration with the pace and quality of communication with BIE. 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 governing bodies and school boards to develop alternatives.

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.²² 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.²³ In addition, although BIE receives funds from Education that could be used to assist tribal groups with the development of alternatives, all 21 of BIE's ELOs told us they had not been instructed that BIE funds were available for this purpose.

Some school officials and tribal groups we interviewed reported slow responses to requests for assistance and a lack of communication from the BIE in other cases. 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. School officials we interviewed reported frustration with BIE's failure to 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.

²²BIE 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. Furthermore, 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 group's request for an alternative, even though providing technical assistance to tribal groups developing an alternative is included in their job responsibilities.

²³The other two ELOs could not specifically recall whether they had received any such information.

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.²⁴ 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 in addition to other major responsibilities.

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 tribal groups to pursue development of their alternatives. Likewise, officials from BIE and Education also met with representatives of the Navajo Nation in March 2008 to assess their technical assistance needs as they continue to pursue development of an alternative. Education officials told us they have also sent a contractor to assist tribal groups as they pursue the development of alternative assessments. Specifically, in South 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.²⁵ 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.²⁶ BIE officials stated that none of these funds had been spent on technical assistance, as no fundable requests had been received from the tribal groups developing alternatives.

²⁴BIE 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.

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

²⁶We requested accountings of BIE's 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.

However, the officials stated that they expected to spend some funds to provide technical assistance in the near future.

Prior Recommendations and Current Status

Our June report recommended that, in order to improve support for tribal governments and school boards in their adoption of definitions of AYP, the Secretary of the Interior should 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.

In written comments, the Department of the Interior agreed with our recommendations and indicated it had initiated steps to implement them. In preparation for this testimony, we requested an update on BIE's actions. With regard to our recommendation about completing MOUs, BIE officials told us that they are in the process of working out the language for a memorandum of agreement with California state officials. BIE officials told us that the agreement will include language to assure the state that the assessment will be secured and properly administered. In addition, BIE officials told us that the three tribal groups seeking alternatives were working closely with a contractor, and BIE intended to release some funding to them in late September 2008. With regard to the recommendation to provide guidelines and training on the process for pursuing alternative assessments, BIE officials told us that they have taken a preliminary step by developing a presentation that should be available to

attendees of the National Indian Education Conference in October 2008. Finally, they stated that the contractor that they have hired is also working with them to establish a process that will include internal time frames to ensure more timely communication with tribal groups.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have.

GAO Contacts

For further information regarding this testimony, please contact me at (202) 512-7215. Betty Ward-Zukerman, Nagla'a El-Hodiri, and Kris Trueblood made key contributions to this testimony.

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