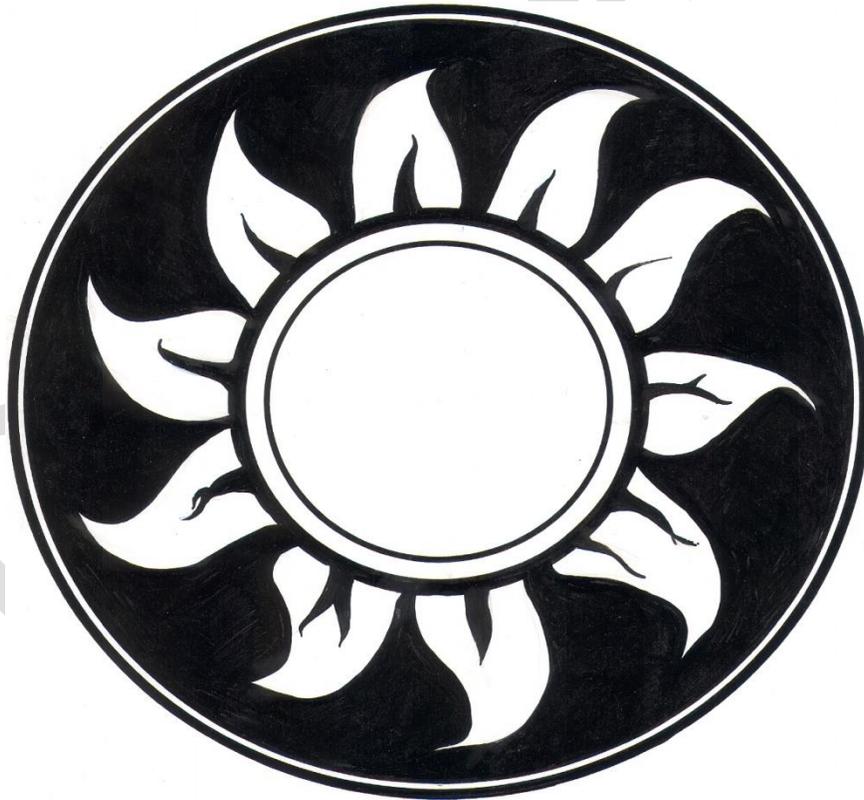


**Bureau of Indian Education**  
**Division of Performance and Accountability**

Special Education Practices and Processes

September 2012



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Special Education Practices and Processes**

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## **Bureau of Indian Education Special Education Practices and Processes**

### **I. PREFACE.**

The Bureau of Indian Education (BIE) provides funds for one hundred and eighty-three (183) facilities. One hundred and twenty-four (124) facilities are tribally operated under contracts or grants with the remaining BIE operated.

In addition the BIE funds twenty-four (24) Tribal Colleges and Universities and operates two (2) Postsecondary Schools: Haskell Indian Nations University in Lawrence, Kansas and Southwestern Indian Polytechnic Institute in Albuquerque, New Mexico.

The mission of the Bureau of Indian Education is:

To provide quality education opportunities from early childhood through life in accordance with the Tribes' needs for cultural and economic well-being in keeping with the wide diversity of Indian Tribes as distinct cultural and governmental entities. The Bureau shall manifest consideration for the whole person, taking into account the spiritual, mental, physical, and cultural aspects of the person within family and Tribal contexts. (25 CFR §32.3)

States in which BIE-funded schools are located include:

Arizona	South Dakota
California	Oklahoma
Florida	Oregon
Idaho	Nevada
Iowa	New Mexico
Kansas	North Carolina
Louisiana	North Dakota
Maine	Utah
Michigan	Washington
Minnesota	Wisconsin
Mississippi	Wyoming
Montana	

BIE-funded schools must utilize the special education eligibility criteria and the State standards and assessment systems of the specific State in which they are located, unless they follow alternative Adequate Yearly Progress (AYP) criteria. In addition, if the BIE-funded school is opting to utilize a response to intervention (RTI) process for the identification of specific learning disabilities, they must utilize the RTI process of the state in which they are located.

The BIE is responsible for ensuring that the requirements of Part B of the Individuals with Disabilities Education Act (IDEA) are carried out. The BIE must have in effect Practices and Processes to ensure that it complies with the monitoring and enforcement requirements in IDEA and its implementing regulations (34 CFR, Parts 300).

These Special Education Practices and Processes will be disseminated to all BIE-funded schools and made available to tribes, school boards and all interested parties.

## **II. INTRODUCTION**

### **II.A. PURPOSES (§300.1)**

1. The purposes of these BIE Special Education Practices and Processes are consistent with IDEA – P.L. 108-446, as amended, and implementing regulations 34 CFR Part 300. The purposes are:
  - a. To ensure that all students with disabilities have a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for future education, employment, and independent living;
  - b. To ensure that the rights of students with disabilities and their parents are protected;
  - c. To assist BIE-funded schools and other agencies as appropriate to provide for the education of all students with disabilities; and
  - d. To assess and ensure the effectiveness of efforts to educate students with disabilities.

### **II.B. BIE SPECIAL EDUCATION PRACTICES AND PROCESSES – APPLICABILITY (§300.2)**

1. These Practices and Processes are binding for the BIE and all agencies involved in the education of children with disabilities on reservations aged four (4) (if he/she turns five (5) by December 31 of that school year – ISEP regulation [CFR 39.106])) through the school year in which the student turns twenty-two (22) (ISEP regulation [CFR 39.106]), inclusive, enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of Interior – Bureau of Indian Education including:
  - a. BIE-funded elementary and secondary schools; and
  - b. BIA funded and Tribal juvenile and adult correctional facilities.
2. The BIE and all BIE-funded elementary and secondary schools are responsible for ensuring that the rights and protections under Part B of IDEA are given to Indian children with disabilities referred to or placed in private schools and facilities by the BIE and/or BIE-funded schools.
3. Applicable regulations for BIE (§300.716)
  - a. The BIE is required to comply with specific regulations listed in §300.716. The applicable regulations are:
    - (1) §§300.103 – 300.108
    - (2) §§300.110 – 300.124
    - (3) §§300.145 – 300.154

- (4) §§300.156 – 300.160
- (5) §300.165
- (6) §§300.170 – 300.186
- (7) §300.226
- (8) §§300.300 – 300.606
- (9) §§300.610 – 300.646
- (10) §§300.707 – 300.716

**II.C. BIE RESPONSIBILITIES FOR GENERAL SUPERVISION (§300.149)**

- 1. The BIE is responsible for ensuring that:
  - a. The requirements of IDEA are implemented.
  - b. Each educational program for students with disabilities provided by BIE-funded schools:
    - (1) Is under the general supervision of BIE Special Education
    - (2) Meets the educational standards of the state in which the BIE-funded school is located.
  - c. In carrying out this part, with respect to homeless children, the requirements of subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act are met.
- 2. The BIE Special Education Integrated Monitoring Process (SEIMP) integrates the components of general supervision through an ongoing cycle and consists of:
  - a. BIE State Performance Plan
  - b. Desk Audit
  - c. Focused Monitoring
  - d. Due Process, Parent Concerns, Indian School Equalization Program (ISEP)

**II.D. DEFINITIONS (§§300.4 – 300.45)**

- 1. **Act** (§300.4) means the Individuals with Disabilities Education Act, as amended.
- 2. **Adult student** means a student with a disability, usually eighteen (18) or older to whom rights have transferred under the Individuals with Disabilities Education Act (IDEA), Family Education Rights Privacy Act (FERPA) and State law and/or Tribal code.
- 3. **Age of majority** means the age, at which, by law, a child assumes the responsibilities of an adult. In most cases, the age of majority is eighteen (18).

4. **Assistive technology device** (§300.5). Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.
5. **Assistive technology service** (§300.6). Assistive technology service means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:
  - a. The evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment;
  - b. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disability;
  - c. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
  - d. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
  - e. Training or technical assistance for a student with a disability or, if appropriate, that student's family; and
  - f. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that student.
6. **Behavior Intervention Plan (BIP)** means an individualized plan, including positive interventions, designed to assist a student to decrease inappropriate behaviors and increase or teach an alternative appropriate behavior.
7. **Bureau of Indian Education (BIE) funded school** means an elementary or secondary school that is BIE operated or tribally operated under (P.L.93-638), or grant (P.L.100.297. All of the BIE-funded schools receive funding and are provided oversight from the BIE.
8. **Complaint** means a formal written statement submitted to the Bureau of Indian Education by an individual or organization that contains one or more allegations that a BIE-funded school or school has violated a requirement of Part B of IDEA.
9. **Consent** (§300.9) means that:
  - a. The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

- b. The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
  - c. The parent understands that the granting of consent is voluntary on their part, and may be revoked at any time. If a parent revokes consent, the revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).
10. **Contract school** (P.L.93-638) means a BIE-funded school that is operated by a tribe or tribal organization through a contract.
11. **Core academic subjects** (§300.10) means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history and geography.
12. **Coordinated Services Plan (CSP)** (§300.713) means a written plan developed by the BIE for the coordination of services for all Indian children with disabilities residing on reservations served by a BIE-funded school. The plan provides for the coordination of services benefiting those children from whatever source including tribes, IHS, other BIA divisions, Federal agencies, state education agencies, and state, local and tribal juvenile and adult correctional facilities. CSP on BIE website [www.bie.edu](http://www.bie.edu)
13. Current Educational Placement
14. **Day, business day, school day** (§300.11)
- a. **Day** means calendar day unless otherwise indicated as business day or school day;
  - b. **Business day** means Monday through Friday, except for Federal and State holidays; and
  - c. **School day** means any day, including a partial day that children are in attendance at school for instructional purposes. School day has the same meaning for all students in school, including students with and without disabilities.
15. **Disciplinary removal** means suspension, expulsion, or other removal from school for disciplinary reasons. It does not include:
- a. Removals by other agencies; and
  - b. Removals for public health reasons (e.g., head lice, immunizations, communicable diseases, etc.).
  - c. In-school suspensions if the student continues to have access to the general curriculum and to special education and related services as described in the

student's IEP, and continues to participate with nondisabled students to the extent they would in their current placement.

16. **Early Assistance Program** is a program offered by the BIE to parents or organizations through which they can request mediation or help. The program provides an opportunity to solve the problem before a written complaint is filed.
17. **Education Line Office (ELO)** means the BIE unit within the Bureau of Indian Education in charge of education functions at a School/Area to whom the BIE-funded school supervisor and educators report.
18. **Education records** means the type of records covered under the definition of "education records" in FERPA.
19. **Educational service school** (§300.12)
  - a. A regional public multiservice school authorized by State law to develop, manage, and provide services or programs to schools. These agencies are recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State;
  - b. Includes any other public institution or school having administrative control and direction over a public elementary or secondary school; and
  - c. Includes entities that meet the definition of intermediate educational unit of the Act.
20. **Elementary and Secondary Education Act (ESEA)** is a United States Federal statute enacted in 1965. The Act is an extensive statute, which funds elementary and secondary education. The funds provided via ESEA are authorized for professional development, instructional materials, resources to support educational programs, and parental involvement promotion. The reauthorized ESEA is known as P.L. 107-110, the No Child Left Behind Act of 2001.
21. **Elementary school** (§300.13) means a nonprofit institutional day or residential school, including a public charter school that provides elementary education, as determined under State law.
22. **Equipment** (§300.14) means:
  - a. Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and
  - b. All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other

technological aids and devices; and books, periodicals, documents, and other related materials.

23. **Evaluation (§300.15)** is a term referring to procedures used in accordance with Section IV – Evaluation and Eligibility of these Practices and Processes to determine whether a student has a disability and the nature and extent of the special education and related services that the student needs.
24. **Excess costs** are the costs a school incurs as a result of providing special education services but which are not covered by BIE or Federal special education funding sources.
25. **Expulsion** is the removal of the right and obligation of a student to attend a school, and for a period of time generally set by a school board. Expulsions may be imposed with or without continuing educational services.
26. **Family Educational Rights Privacy Act (FERPA)** (CFR 34, Part 99) is a Federal law designed to protect the privacy of a student’s records.
27. **Free appropriate public education (FAPE)** (§300.17) means special education and related services that:
  - a. Are provided at public expense, under public supervision and direction, and without charge;
  - b. Meet the standards of the state in which the BIE-funded school is located and the requirements of IDEA;
  - c. Include an appropriate elementary or secondary school education funded by the BIE; and
  - d. Are provided in conformity with an individualized education program (IEP) that meets IDEA requirements.
28. **Functional Behavior Assessment (FBA or FUBA)** means an individualized assessment of the student that result in a team hypothesis about the function of a student’s behavior and, as appropriate, recommendations for a behavior intervention plan.
29. **Grant school** means a BIA funded school that is operated by a tribe or tribal organization under a P.L.100-297 grant.
30. **Highly qualified special education teachers (§300.18)**
  - a. Requirements for special education teachers teaching core academic subjects: For any BIE-funded elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified is that definition that is approved by the specific State in which the special education teacher is teaching.

31. **Homeless children** (§300.19) (McKinney-Vento Homeless Assistance Act, Section 725 (42 U.S.C. 1143a)

a. Homeless children and youth mean individuals who lack a fixed, regular and adequate nighttime residence. Including children and youth who:

(1) Are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(2) Children and youth who have a primary nighttime residence that is a public or private place not designated for or ordinarily used as a regular sleeping accommodation for human beings;

(3) Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(4) Migratory children who qualify because they living in circumstances described in Section II.E.30.a. (1) – (3) above.

32. **IDEA**. The Individuals with Disabilities Education Improvement Act (20 U.S.C. 1400, P.L.108-446) and its implementing regulations (34 C.F.R. Part 300). Part B of IDEA pertains to children ages three (3) through twenty-one (21).

33. **Include**. (§300.20) Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

34. **Indian and Indian tribe** (§300.21)

a. Indian means an individual who is a member of an Indian tribe;

b. Indian tribe means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village corporation; and

c. The Secretary of the Interior is not required to provide services or funding to a State Indian tribe that is not listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1194, 25 U.S.C. 479a-1.

35. **Indian Student Equalization Program (ISEP)** (25 C.F.R. Part 39) is a federal regulation that provides for uniform direct funding of bureau operated and tribally operated day schools, boarding schools and dormitories.

36. **Individualized education program (IEP).** (§300.22) Individualized education program or IEP means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with IDEA.
37. **Individualized education program team (IEP Team).** (§300.23) Individualized education program team or IEP Team means a group of individuals that is responsible for developing, reviewing, or revising an IEP for a student with a disability. The required team members are the parent of the student, a LEA representative, a general education teacher, a special education teacher, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate, a person who can interpret the instructional implications of evaluation results, and whenever appropriate, the child with a disability.
38. **Institution of Higher Education (IHE).** (§300.26)
- a. Has the meaning of the term in Section 101 of the Higher Education Act.
  - b. Also includes any community college receiving funds from the Secretary of Interior under the Tribally Controlled Community College or University Assistance Act.
39. **Juvenile Detention Center Education Program** is a BIE program that provides technical assistance, training, and funding to BIE-funded tribal juvenile detention centers in support of educational services for students with disabilities incarcerated within their facilities.
40. **Letter of Acknowledgement** is a letter from the BIE to the parties involved in a formal complaint under IDEA. Once the complaint is received by the BIE, the parties involved receive the letter of acknowledgement.
41. **Limited English proficient (LEP):** (§300.27)
- a. A student who has limited skills in speaking, reading, and/or writing English as measured by the BIE's LEP assessment.
42. **Local educational school:** (§300.28)(c)
- a. All BIE-funded schools are considered a local educational agency (LEA). BIE-funded schools include elementary or secondary schools funded by the Bureau of Indian Education, and not subject to the jurisdiction of any state education agency (SEA) other than the BIE, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under IDEA with the smallest student population.
43. **Native American Student Information System (NASIS)** is a computerized, web-based system utilized by the BIE and BIE-funded schools for the purposes of

- managing student information, streamlining educational processes, and sharing data such as enrollment, scheduling, attendance, grading, and IEPs.
44. **Native language** (§300.29) when used with respect to an individual who is limited English proficient means the following:
- a. The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child;
  - b. In all direct contact with the child (including evaluation of the child), the language normally used by the child in the home or learning environment; and
  - c. For an individual with deafness or blindness, or an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).
45. **No Child Left Behind (NCLB)** is a law also known as the Elementary and Secondary Education Act (ESEA). It is a United States Federal statute enacted in 1965. The Act is an extensive statute, which funds elementary and secondary education. The funds provided are authorized for professional development, instructional materials, and resources to support educational programs, and parental involvement.
46. **Parent** (§300.30) means:
- a. A biological or adoptive parent of a child;
  - b. A foster parent, unless State or Tribal law, regulations, or contractual obligations with a State, Tribe, or local entity prohibit a foster parent from acting as a parent;
  - c. A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not the State or Tribe if the child is a ward of the State or Tribe);
  - d. An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare;
  - e. A surrogate parent who has been appointed in accordance with Section VIII.W. of these Practices and Processes; and
  - f. The biological or adoptive parent, when attempting to act as the parent and when more than one party is qualified to act as a parent, must be presumed to be the parent unless said parent does not have legal authority to make educational decisions for the student. If a judicial decree or order identifies a specific person or persons to act as the “parent” of a student or to make educational decisions on behalf of the student, then such person or persons shall be determined to be the parent for purposes of these Practices and Processes.

**47. Parent training and information center (§300.31)**

- a. Parent training and information center means a center assisted by IDEA funds from the Department of Education. The system of parent training and information centers consists of one national and six regional centers; and
- b. In addition to these centers, the Department of Education has also funded one nationwide center (National Indian Parent Information Center, Grants Pass, OR) to serve as a resource for Indian nations, tribes, clans, parent centers and others. The purpose of these parent training and information centers is to provide training and information to parents of infants, toddlers, children and youth with disabilities and to professionals who work with students with disabilities.

**48. Personally identifiable (§300.32) means information that includes:**

- a. The name of the student, the student's parent, or other family member;
- b. The address of the student;
- c. A personal identifier, such as the student's social security number or student number; and
- d. A list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

**49. Public school (§300.33) includes the SEA, LEA, educational service agencies (ESAs), nonprofit public charter schools that are not otherwise included in LEAs or ESAs and are not a school of a LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.****50. Related services (§300.34)**

- a. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools and parent counseling and training;
- b. Exception: Services that apply to children with surgically implanted devices, including cochlear implants;
- c. Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device;

## d. Nothing in this section:

- (1) Limits the right of a student with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in the definition of related services in this section) that are determined by the IEP Team to be necessary for the student to receive FAPE; and
- (2) Limits the responsibility of a public school to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school.

## e. The related services are defined as follows:

- (1) **Audiology** includes:
  - (a) Identification of children with hearing loss;
  - (b) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
  - (c) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation; and
  - (d) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- (2) **Counseling services** means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
- (3) **Early identification and assessment** of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a student's life.
- (4) **Interpreting services** includes, with respect to students who are deaf and hard of hearing, oral transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and special interpreting services for students who are deaf-blind.
- (5) **Medical services** means services provided by a licensed physician to determine a student's medically related disability that

results in the student's need for special education and related services.

(6) **Occupational therapy** means services provided by a qualified occupational therapist; and includes:

- (a) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
- (b) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
- (c) Preventing, through early intervention, initial or further impairment or loss of function.

(7) **Orientation and mobility services** means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community, and includes teaching students the following, as appropriate:

- (a) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
- (b) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;
- (c) To understand and use remaining vision and distance low vision aids; and
- (d) Other concepts, techniques, and tools.

(8) **Parent counseling and training** means assisting parents in understanding the special needs of their child, providing parents with information about child development, and helping parents or acquire the necessary skills that will allow them to support the implementation of their child's IEP.

(9) **Physical therapy** means services provided by a qualified physical therapist.

(10) Psychological services includes:

- (a) Administering psychological and educational tests, and other assessment procedures;

- (b) Interpreting assessment results;
  - (c) Obtaining, integrating, and interpreting information about student behavior and conditions relating to learning;
  - (d) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation and behavioral evaluations;
  - (e) Planning and managing a program of psychological services including psychological counseling for children and parents; and
  - (f) Assisting in developing positive behavioral intervention strategies.
- (11) **Recreation** includes:
- (a) Assessment of leisure function.
  - (b) Therapeutic recreation services.
  - (c) Recreation programs in schools and community agencies.
  - (d) Leisure education.
- (12) **Rehabilitative counseling services** means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes Vocational Rehabilitation programs funded under the Rehabilitation Act of 1973, 20 U.S.C. 701.
- (13) **School health services** and school nurse services means health services that are designed to enable a student with a disability to receive FAPE as described in the student's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified nurse or other qualified person.
- (14) **Social work services** in schools includes:
- (a) Preparing a social or developmental history of a student with a disability;
  - (b) Group and individual counseling with the child and family;

- (c) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
  - (d) Mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program; and
  - (e) Assisting in developing positive behavioral intervention strategies.
- (15) Speech-language pathology services include:
- (a) Identification of students with speech or language impairments;
  - (b) Diagnosis and appraisal of specific speech or language impairments;
  - (c) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
  - (d) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
  - (e) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.
- (16) Transportation includes:
- (a) Travel to and from school and between schools;
  - (b) Travel in and around school buildings; and
  - (c) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student with a disability.

51. **Residential Educational Placement Program (REPP)** is Bureau of Indian Education program, which facilitates the placement, and funding of students with disabilities whose IEP Teams have determined that they are in need of residential educational placement and services.

52. **Scientifically based research** (§300.35) (Section 910(37) of the Elementary and Secondary Education Act (ESEA)) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs, including:

- a. Employs systematic, empirical methods that draw on observation or experiment;
- b. Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
- c. Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
- d. Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
- e. Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
- f. Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

53. **Secondary school** (§300.36) means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

54. **Special education** (§300.39) means:

- a. Specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.
- b. Special education includes the following if the services meet the requirements noted in the paragraph above:
  - (1) Speech- language pathology services, or any other related service, if the service is considered special education rather than a related service under the standards of the State in which the BIE-funded school is located;
  - (2) Travel training;
  - (3) Vocational education; and
  - (4) Special education terms defined as follows:

- (a) **At no cost** means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to non-disabled students or their parents as a part of the regular education program.
- (b) Physical education means:
  - (i) The development of physical and motor fitness;
  - (ii) Fundamental motor skills and patterns;
  - (iii) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and
  - (iv) Includes special physical education, adapted physical education, movement education, and motor development.
- c. **Specially designed instruction** means adapting, as appropriate, to the needs of an eligible student under IDEA, the content, methodology, or delivery of instruction in order to:
  - (1) Address the unique needs of the student that result from the student's disability; and
  - (2) Ensure access of the student to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the BIE-funded school that applies to all students.
- d. **Travel training** means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to:
  - (1) Develop an awareness of the environment in which they live; and
  - (2) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).
- e. **Vocational education** means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

55. **Special Education Integrated Monitoring Process (SEIMP)** is an integrated monitoring and special education improvement process utilized by the BIE and BIE-funded schools. The SEIMP integrates the components of general supervision through an ongoing cycle and consists of:

- a. State Performance Plan
  - b. Monitoring Activities:
    1. Due Process;
    2. Parent Concerns;
    3. Indian School Equalization Program (ISEP);
    4. Desk Audit; and
    5. Focused Monitoring.
56. **State** (§300.40) means each of the 50 States.
57. **State Education Agency (SEA)** (§300.41) means the State board of education or other school or officer primarily responsible for the state supervision of public elementary and secondary schools. If there is no such officer or school, an officer or school designated by the Governor or State law. For the purpose of IDEA, the Bureau of Indian Education is considered the SEA.
58. **Student with Disability** (§300.8) means a child evaluated in accordance with the requirements noted in Section IV – Evaluation and Eligibility of these Practices and Processes, as having intellectual disabilities, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, any other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. If a student has one of the above disabilities, but only needs a related service and not special education, then the child is not a child with a disability.
59. **Supplementary aids and services** (§300.42) means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with IDEA.
60. **Team** used in the educational arena includes a variety of structures and memberships, such as:
- a. Evaluation Team means a group of qualified professionals (special and general educators, related services personnel and administration) and the parent of the student. This team is often referred to as a multidisciplinary team. The purpose of the evaluation team is to determine what, if any, disability is present in a student.
  - b. IEP Team means a group that is responsible for developing, reviewing, or revising an IEP for a student with a disability. The group of individuals includes:

- (1) The parents of the child;
- (2) Not less than one (1) regular education teacher (if the student is, or may be, participating in the regular education environment);
- (3) Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;
- (4) A representative of the BIE or BIE-funded school who:
  - (a) Is qualified to provide, or supervise the provision of specially designed instruction to meet unique needs of students with disabilities.
  - (b) Is knowledgeable about the general education curriculum.
  - (c) Is knowledgeable about the availability of resources of the BIE or BIE-funded school.
- (5) An individual who can interpret instructional implications of evaluation results;
- (6) At the discretion of the parent or school, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and
- (7) Whenever appropriate, the student with a disability. The student must be invited if the purpose of the meeting will be transition services and postsecondary goals.

- c. Problem-solving team – often called teacher assistance team (TAT) is a group of education professionals who regularly convene at a school level for the purposes of supporting classroom teachers on a day to day basis, problem solving, and developing student-based interventions. This team activity is a general education process. The TAT team may be composed of the referring teacher, counselor, general educators, special education representative and other professionals.

61. **Transition services** (§300.43) means a coordinated set of activities for a student with a disability that:

- a. Is designed to be within a results-oriented process, is focused on improving the academic and functional achievement of the student with a disability to facilitate the student’s movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation’

- b. Is based on the individual student's needs, taking into account the student's strengths, preferences, and interests, and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation; and
  - c. Transition for students with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist the student with a disability to benefit from special education.
62. **Ward of the tribe** means a child who, as determined by the tribe where the student resides, is a foster child, or ward of the Tribe.
63. **Ward of the State** (§300.45) is a child who, as determined by the State where the student resides, is a foster child, a ward of the State, or in the custody of a public child welfare agency. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent as defined in the definitions in this section.

### III. CHILD FIND SYSTEM

#### III.A. WHAT IS CHILD FIND AND WHO BENEFITS FROM IT? (§300.111, §300.101, §300.102)

1. All Bureau of Indian Education funded schools shall adopt Practices and Processes to ensure that:
  - a. All children with disabilities on reservations aged four (4) (if he/she turns five (5) by December 31 of that school year through the school year in which the student turns twenty-two (22) – ISEP regulation 25 CFR39.106, inclusive, enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of Interior – Bureau of Indian Education, including children with disabilities that are homeless children or are wards of the State or Tribe, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special and related services, are identified, located, and evaluated;
  - b. A practical method is developed and implemented for determining which children are currently receiving needed special education and related services;
  - c. Adhere to the definition of developmental delay of the State in which they are located. This term applies to children between the ages of three (3) through nine (9) or subsets of this age range depending on the particular State. A BIE-funded school has the option of not utilizing the categorical label of developmental delay, however, if opting to use the label the school must use the definition used in the state where their school is located; and
  - d. Adhere to the eligibility criteria of the State in which they are located. Therefore, only if the applicable State allows a non-categorical eligibility label, can a BIE-funded school utilize that label.
2. The activities are to locate and identify the following children:
  - a. Children who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade;
  - b. Highly mobile children, including migrant children;
  - c. Students who have been suspended or expelled from school;
  - d. Students with severe behavioral challenges or frequent school infractions;
  - e. Students who have not graduated with a regular high school diploma;
  - f. Students in juvenile detention centers or adult correctional facilities; and
  - g. Children who have dropped out of school.
3. Child find processes are a collaborative effort between tribal agencies, the BIE, BIE-funded schools, public schools and other relevant agencies.

### **III.B. WHAT ARE COORDINATED EARLY INTERVENING SERVICES(CEIS)? (§300.226, §300.711)**

1. BIE-funded schools may use up to fifteen percent (15%), but no more, of their Part B allotment for any fiscal year in combination with other amounts (including non-education funds) for the development and provision of these early intervening services.
2. These services, which may include interschool financing structures, are for students in kindergarten through grade twelve (12).
3. Early intervening services are for students who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment. These services should have an emphasis on students in kindergarten through grade three (3).
4. In implementing coordinated, early intervening services, BIE-funded schools may carry out activities that include:
  - a. Professional development (which may be provided by entities other than schools) for teachers and other school staff to enable them to deliver scientifically based academic and behavioral based literacy instruction, and where appropriate, instruction on the use of adaptive and instructional software;
  - b. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction; and
  - c. Nothing in this section regarding early intervening services shall be construed to either limit or create a right to FAPE or to delay appropriate evaluation of a child suspected of having a disabilities.
5. Each BIE-funded school that develops and maintains coordinated, early intervening services under this section, must annually report to the BIE on:
  - a. The number of children served who received early intervening services; and
  - b. The number of children served who received early intervening services and subsequently receive special education and related services during the preceding two-year period.
6. Funds made available to carry out this part may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

### **III.C. WHAT IS AND WHO CAN MAKE A REFERRAL?**

1. A referral should first be made to a school based problem-solving team (often called Teacher Assistance Team [TAT]) prior to a formal special education evaluation referral. This team is typically made up of general and special educators, school counselor, related services staff, and administration. If, after the problem-solving team develops and implements a range of research-based interventions and subsequently determines them to be unsuccessful, a referral for special education evaluation is made.
2. A parent or a BIE-funded school may, at any time, initiate a referral for evaluation to determine if the student qualifies for special education services. As appropriate, parents and school staff members should strongly consider the utilization of the school problem solving process/Teacher Assistance Team (TAT) prior to making a special education referral.
3. Parents must be informed of their right to bypass the school problem solving process at any time in favor of requesting a formal evaluation to determine the need for special education services.

### **III.D. HOW DO WE DETERMINE THE EXISTENCE OF A SPECIFIC LEARNING DISABILITY? DO WE USE RESPONSE TO INTERVENTION PROCESS (RTI)? (§300.309)**

1. BIE-funded schools must follow the eligibility criteria of the State in which they are located. In addition, if the BIE-funded school opts to use an RTI process for the identification of specific learning disabilities, they must utilize the RTI process of the state in which they are located. Therefore, an RTI process to determine whether a student has a specific learning disability based on response to scientific, research-based intervention(s) can only be utilized if applicable per specific State eligibility regulations. BIE-funded schools must link with the appropriate State Department of Education to obtain information regarding the specific process (see [www.bie.edu](http://www.bie.edu) for list and to review ).

### **III.E. WHAT IS SCREENING? (300.302)**

1. Schools utilize various screening processes to collect information regarding the academic and behavioral progress, and issues and challenges related to all students. Data obtained via this screening process may be used by the school problem solving committee as a basis for further intervention activities, and/or to initiate a request for an initial evaluation.

Screening for instructional purposes is not evaluation. A teacher or specialist may utilize various screening processes in order to determine appropriate instructional strategies for curriculum implementation.

**IV. WHAT IS EVALUATION AND ELIGIBILITY?**

**IV.A. WHAT ARE EVALUATION REQUIREMENTS? (§300.122)**

1. Students with disabilities must be evaluated in accordance with §§300.300 – 300.311. BIE-funded schools must follow the eligibility criteria of the State in which they are located. If the BIE-funded school is opting to use an RTI process for the identification of specific learning disabilities, they must utilize the RTI process of the state in which they are located.

**IV.B. WHEN DO WE USE “REVIEW OF EXISTING EVALUATION DATA FOR INITIAL EVALUATIONS (IF APPROPRIATE) AND FOR REEVALUATIONS”? (§300.305)**

1. As part of any initial evaluation (if appropriate) and as part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, must:
  - a. Review existing evaluation data on the student, including:
    - (1) Evaluations and information provided by the parents of the student;
    - (2) Current classroom-based, local or BIE assessments, and classroom-based observations; and
    - (3) Observations by teachers and related services providers; and
  - b. On the basis of that review, and input from the student’s parents, identify what additional data, if any, are needed to determine:
    - (1) Whether the student is a student with a disability and the educational needs of the student; or, in the case of a reevaluation of a student, whether the student continues to have such a disability, and the educational needs of the student;
    - (2) The present levels of academic achievement and related developmental needs of the student;
    - (3) Whether the student needs special education and related services; or, in the case of a reevaluation of a student, whether the student continues to need special education and related services; and
    - (4) Whether any additions or modifications to the special education and related services are needed, in the case of either an initial evaluation or a reevaluation of a student, to enable the student to meet the measurable annual goals set out in the IEP of

the student and to participate, as appropriate, in the general education curriculum.

2. The IEP Team and other qualified professionals, as appropriate, may conduct its review of existing data for an initial evaluation or reevaluation without a meeting.
3. The BIE-funded school must administer such assessments and other evaluation measures as may be needed to produce the data needed to determine continuing eligibility.
4. If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student with a disability, and to determine the student's educational needs, the BIE-funded school must notify the student's parents of:
  - a. That determination and the reasons for the determination; and
  - b. The right of the parents to request an assessment to determine whether the student continues to be a student with a disability, and to determine the student's educational needs.
5. The BIE-funded school is not required to conduct the assessment for reevaluation unless requested to do so by the student's parents.

#### **IV.C. DO WE HAVE TO OBTAIN PARENTAL CONSENT FOR INITIAL EVALUATIONS AND REEVALUATIONS? (§300.300)**

1. The BIE-funded school proposing to conduct an initial evaluation to determine if a student qualifies as a student with a disability under these Practices and Processes must, after providing written prior notice (see section VIII.E.2 of these Practices and Processes) to the parent, obtain informed consent from the parent of the student before conducting the evaluation.
2. Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.
3. The BIE-funded school must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is a student with a disability.
4. For initial evaluations only, if the student is a ward of the State or Tribe and is not residing with the student's parent, the BIE-funded school is not required to obtain informed consent from the parent if:
  - a. Despite reasonable efforts to do so, the BIE-funded school cannot discover the whereabouts of the parent of the student;

- b. The rights of the parents of the student have been terminated in accordance with State or Tribal law; or
  - c. The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State or Tribal law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the student.
5. If the parent of a student enrolled in a BIE-funded school or seeking to be enrolled in a BIE-funded school does not provide consent for initial evaluation, or the parent fails to respond to a request to provide consent, the BIE-funded school may, but is not required to, pursue the initial evaluation of the student by utilizing the procedural safeguards, including mediation, or the due process procedures in these Practices and Processes. The BIE-funded school does not violate its obligation under the Child Find provisions of these Practices and Processes if it declines to pursue the evaluation by utilizing the procedural safeguards or the due process procedures.
6. Parental consent is not required before:
  - a. Reviewing existing data as part of an evaluation or a reevaluation; or
  - b. Administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.
7. To meet the reasonable efforts requirement of this section, the BIE-funded school must document its attempts to obtain parental consent as described in section IV.D later in this chapter.
8. Parental consent for reevaluations. (§300.300)
  - a. Each BIE-funded school must obtain informed parental consent prior to conducting any reevaluation of a student with a disability;
  - b. If the parent refuses to consent to the reevaluation, the BIE-funded school may, but is not required to, pursue the reevaluation by using the consent override procedures provided in the procedural safeguards, and including mediation or due process procedures;
  - c. The BIE-funded school does not violate its obligation under Child Find if it declines to pursue the reevaluation; and
  - d. The informed parental consent need not be obtained if the BIE-funded school can demonstrate that:
    - (1) It made reasonable efforts to obtain such consent; and
    - (2) The student's parent has failed to respond.

**IV.D. IS IT APPROPRIATE TO CONDUCT AN EVALUATION OR REEVALUATION WITHOUT A PARENT IN ATTENDANCE? (§300.322(d))**

1. A meeting may be conducted without a parent in attendance if the BIE-funded school is unable to convince the parents that they should attend. In this case, the BIE-funded school must keep a record of its attempts to arrange a mutually agreed on time and place, such as—
  - a. Detailed records of telephone calls made or attempted and the results of those calls;
  - b. Copies of correspondence sent to the parents and any responses received; and
  - c. Detailed records of visits made to the parent’s home or place of employment and the results of those visits.

**IV.E. WHAT ARE THE EVALUATION PROCEDURES FOR BOTH INITIAL EVALUATIONS AND REEVALUATIONS?(§300.301 and §300.304)**

1. In conducting the evaluation, the BIE-funded school must:
  - a. Provide written notice to the parents that describe any evaluation procedures the school proposes to conduct and why it proposes to conduct the evaluation.
  - b. Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, which may assist in determining:
    - (1) Whether the student is a student with a disability as defined in the definitions in Section I and in Section IV.J. below; and
    - (2) The content of the student’s IEP, including information related to enabling the student to be involved in and progress in the general education curriculum.
  - c. Not use any single measure or assessment as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student; and
  - d. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
  - e. Each BIE-funded school must ensure that assessments and other evaluation materials used to assess a student:
    - (1) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
    - (2) Are provided and administered in the student’s native language or other mode of communication and in the form most

likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;

(3) Are used for the purposes for which the assessments or measures are valid and reliable;

(4) Are administered by trained and knowledgeable personnel; and

(5) Are administered in accordance with any instructions provided by the producer of the assessments.

f. The BIE-funded school must ensure that:

(1) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient;

(2) Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure);

(3) The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(4) Assessments of students with disabilities who transfer from one BIE-funded school to another BIE-funded school in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations;

(5) In evaluating each student with a disability, the evaluation is sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not commonly linked to the disability category in which the student has been classified; and

(6) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student are provided.

**IV.F. WHAT IS THE INITIAL EVALUATION TIMELINE? (§300.301(c))**

1. The initial evaluation:
  - a. Must be conducted within sixty (60) (calendar) days of receiving parental consent for the evaluation; and
  - b. Must consist of procedures to determine:
    - (1) If the student is a student with a disability (as defined in the definitions in Section I and in IV.J. below); and
    - (2) The educational needs of the student.
  - c. Either a parent or the BIE-funded school may initiate a request for initial evaluation.
2. The timeframe shall not apply to a BIE-funded school if:
  - a. The parent of a student repeatedly fails or refuses to produce the student for the evaluation; or
  - b. A student enrolls in a school served by the BIE-funded school after the relevant timeframe has begun, and prior to a determination by the student's previous BIE-funded school as to whether the student is a student with a disability; and
  - c. The exception in IV.F.2.b. applies only if the subsequent BIE-funded school is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent BIE-funded school agree to a specific time when the evaluation will be completed.

**IV.G. WHAT ARE THE REEVALUATION PROCEDURES? §300.303)**

1. A BIE-funded school must ensure that a reevaluation of each student with a disability is conducted:
  - a. If the BIE-funded school determines that the educational or related service needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or
  - b. If the student's parent or teacher requests a reevaluation.
2. A reevaluation:
  - a. May occur not more than once a year, unless the parent and the BIE-funded school agree otherwise; and
  - b. Must occur at least once every three (3) years; unless the parent and the BIE-funded school agree that a reevaluation is unnecessary.

**IV.H. IS A REEVALUATION NECESSARY BEFORE CHANGE IN ELIGIBILITY? (§300.305(e))**

1. A BIE-funded school must evaluate a student with a disability before determining that the student is no longer a student with a disability eligible for IDEA services.
2. The evaluation is not required before the termination of a student's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.
3. For a student whose eligibility terminates due to graduation from secondary school with a regular high school diploma or due to exceeding the age eligibility for FAPE under State law, a BIE-funded school must provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

**IV.I. WHAT IS DETERMINATION OF ELIGIBILITY? (§300.306)**

1. Upon completion of the administration of assessments and other evaluation measures:
  - a. The eligibility determination team made up of a group of qualified professionals and the parent of the student determine eligibility under Part B of the IDEA and these Practices and Processes, including:
    - (1) Whether that student is a student with a disability, and
    - (2) The educational needs of the student.
2. The BIE-funded school shall provide the parent with a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.
3. A student must not be determined to be a student with a disability:
  - a. If the determinant factor for that determination is:
    - (1) Lack of appropriate instruction in reading, including the essential components of reading instruction (phonemic awareness, alphabetic principle, vocabulary, comprehension, and fluency);
    - (2) Lack of appropriate instruction in math; or
    - (3) Limited English proficiency; and
  - b. If the student does not otherwise meet the eligibility criteria under 300.8(a).
    - (1) If determined, through appropriate evaluation, that a child has one of the disabilities described in §300.8, but only needs a related service and not special education, the child is not a child with a disability under this part.

4. Procedures for determining eligibility and educational need.
  - a. In interpreting evaluation data for the purpose of determining if a student is a student with a disability, and the educational needs of the student, each BIE-funded school must:
    - (1) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and
    - (2) Ensure that information obtained from all of these sources is documented and carefully considered.
  - b. If a determination is made that a student has a disability and needs special education and related services, an IEP must be developed for the student within thirty (30) calendar days and implemented as soon as possible.

**IV.J. WHAT ARE THE CATEGORICAL DEFINITIONS, CRITERIA, AND PROCEDURAL REQUIREMENTS? (§300.8)**

**BIE Eligibility Criteria Requirements.** This section specifies the definitions, by category, for determining eligibility for students with disabilities. BIE-funded schools are required to follow the eligibility criteria of the states in which they are located.

**1. Developmental Delay. (§300.8(b))**

- a. Developmental Delay in a student ages 3 through 9, means a significant delay in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development. The delay must adversely affect a student’s educational performance; and
- b. BIE-funded schools that choose to use the classification of developmental delay must conform to the State’s definition of developmental delay.

**2. Autism. (§300.8(c)(1))**

- a. Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely affects a student’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences;
- b. Autism does not apply if a student’s educational performance is adversely affected primarily because the student has an emotional disturbance or an intellectual disability, as defined in these Practices and Processes; and

- c. A student who manifests the characteristics of autism after age 3 could be identified as having autism if the team determines that the student meets the definition of autism under these Practices and Processes.

3. **Deaf-blindness.** (§300.8(c)(2))

- a. Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.

4. **Deafness.** (§300.8(c)(3))

- a. Deafness means a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, and that adversely affects a student's educational performance.

5. **Emotional Disturbance.** (§300.8(c)(4))

- a. Emotional Disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:
  - (1) An inability to learn that cannot be explained by intellectual, sensory, or health factors;
  - (2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
  - (3) Inappropriate types of behavior or feelings under normal circumstances;
  - (4) A general pervasive mood of unhappiness or depression; and
  - (5) A tendency to develop physical symptoms or fears associated with personal or school problems.
- b. Emotional disturbance includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance.

6. **Hearing Impairment.** (§300.8(c)(5))

- a. Hearing Impairment means impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness.

7. **Intellectual Disability** (§300.8(c)(6))

- a. Intellectual Disability means significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.

**8. Multiple Disabilities. (§300.8(c)(7))**

- a. Multiple Disabilities means concomitant impairments (such as intellectual disabilities-blindness or intellectual disabilities-orthopedic impairment), that affect a student's educational performance. The combination of disabilities causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The multiple disabilities category does not include deaf-blindness.

**9. Orthopedic Impairment. (§300.8(c)(8))**

- a. Orthopedic Impairment means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

**10. Other Health Impairment. (§300.8(c)(9))**

- a. Other Health Impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome, that adversely affects a student's educational performance.

**11. Specific Learning Disabilities. (§300.8(c)(10))**

- a. Specific Learning Disabilities means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, that affects a student's educational performance.
- b. "Specific Learning disability" does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; of intellectual disabilities; of emotional disturbance; or of environmental, cultural, or economic disadvantage.

**12. Speech/Language Impairment. (§300.8(c)(11))**

- a. Speech or Language Impairment means a communication disorder, such as stuttering, impaired articulation, language impairment, or a voice impairment, that adversely affects a student's educational performance.

**13. Traumatic Brain Injury. (§300.8(c)(12))**

- a. Traumatic Brain Injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech, that affects a student's educational performance. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

**14. Visual Impairment (Including Blindness). (§300.8(c)(13))**

- a. Visual Impairment means impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

**IV.K. WHAT ARE THE ADDITIONAL PROCEDURES FOR IDENTIFYING STUDENTS WITH SPECIFIC LEARNING DISABILITIES? (§300.307 - §300.311)**

- 1. BIE-funded schools must use the eligibility criteria of the state in which they are located in determining whether a student has a specific learning disability (SLD). Also, if opting to use an RTI process for the identification of specific learning disabilities, BIE-funded school must use the RTI process of the State in which their school is located.
- 2. The following procedures are included in IDEA for identifying students with Specific Learning Disabilities (§300.307):
  - a. The State's SLD eligibility criteria and process for determination:
    - (1) Must not require the use of a severe discrepancy between intellectual ability and achievement;
    - (2) Must permit the use of a process based on the student's response to research-based intervention; and
    - (3) May permit the use of other alternative research-based procedures.

- b. Team members (§300.308) The determination of whether a student suspected of having a specific learning disability is a student with a disability must be made by the student's parents and a team of qualified professionals, including:
- (1) The student's general education teacher; or
  - (2) If the student does not have a general education teacher, a general education classroom teacher qualified to teach a student of his or her age; or
  - (3) At least one person qualified to conduct individual diagnostic examinations of students, such as a school psychologist, speech/language pathologist, reading teacher or reading specialist, or special education teacher.
- c. Determining the existence of a specific learning disability (§300.309). The team described may determine that a student has a specific learning disability if:
- (1) The student does not achieve adequately for the student's age or to meet State approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the student's age or State-approved grade-level standards:
    - (a) Oral expression;
    - (b) Listening comprehension;
    - (c) Written expression;
    - (d) Basic reading skills;
    - (e) Reading fluency skills;
    - (f) Reading comprehension;
    - (g) Mathematics calculation; and
    - (h) Mathematics problem solving.
  - (2) When using a process based on the student's response to scientific, research-based intervention; Response to Intervention (RTI) Method. The student does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in **IV.K.2.c.(1)** of these Practices and Processes (the team must refer to the Special Education Practices and Processes of the specific State in which they are located when using this method); or
  - (3) The group determines that its findings are not primarily the result of:
    - (a) A visual, hearing, or motor disability;

- (b) Intellectual disability;
- (c) Emotional disturbance;
- (d) Cultural factors;
- (e) Environmental or economic disadvantage; or
- (f) Limited English proficiency.

(4) The learning disability must adversely affect the student's educational performance.

(5) The student with the learning disability must need special education and related services (§300.8(a)).

d. Evaluation (§300.309(b-c))

(1) To ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation:

- (a) Data that demonstrate that prior to, or as a part of, the referral process, the student was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
- (b) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents.

(2) The BIE-funded school must promptly request parental consent to evaluate the student to determine if the student needs special education and related services, and must adhere to the sixty (60) calendar day evaluation timeframe, unless extended by mutual written agreement of the student's parents and a group of qualified professionals:

- (a) If, prior to a referral, a student has not made adequate progress after an appropriate period of time as determined by the BIE-funded school when provided appropriate instruction, and
- (b) Whenever a student is referred for an evaluation.

e. Observation (§300.310(a-c)) The BIE-funded school must ensure that the student is observed in the student's learning environment (including the regular classroom setting) to document the student's academic performance and behavior in the areas of difficulty.

(1) The team must decide to:

- (a) Use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an evaluation; or
  - (b) Have at least one member of the team conduct an observation of the student's academic performance in the regular classroom after the student has been referred for an evaluation and parental consent is obtained.
- (2) In the case of a student of less than school age or out of school, a group member must observe the student in an environment appropriate for a student of that age.
- f. Specific documentation for the eligibility determination (§300.311) The team's documentation of the determination of eligibility of a student with a specific learning disability must contain a statement of:
- (1) Whether the student has a specific learning disability;
  - (2) The basis for making the determination and an assurance that the determination has been made in accordance with the procedures outlined in Section IV.I.4.a. of these Practices and Processes;
  - (3) The relevant behavior, if any, noted during the observation of the student and the relationship of that behavior to the student's academic functioning;
  - (4) The educationally relevant medical findings, if any;
  - (5) Whether the student:
    - (a) Does not achieve adequately for the student's age or to meet State-approved grade-level standards; and
    - (b) Does not make sufficient progress to meet age or State-approved grade-level standards based on a response to scientific, research-based intervention **or**
    - (c) The student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with the procedures noted in IV.B and IV.E.
  - (6) The determination of the team concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic

disadvantage; or limited English proficiency on the student's achievement level; and

(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention-

- (a) The instructional strategies used and the student-centered data collected; and
- (b) The documentation that the student's parents were notified about:
  - (i) The BIE's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided (the team must refer to the *State Specific Learning Disability Eligibility Guidelines* of the State in which their school is located when using this method);
  - (ii) Strategies for increasing the student's rate of learning; and
  - (iii) The parents' right to request an evaluation.

#### **IV.L. WHEN DO WE NEED PARENTAL CONSENT FOR SERVICES? (§300.300(b)(d))**

1. A BIE-funded school that is responsible for making FAPE available to the student with a disability must obtain informed consent from the parent of a child before the initial provision of special education and related services.
2. BIE-funded schools must make reasonable efforts (to be determined at the local level appropriate for that specific BIE-funded school) to obtain informed consent from the parent for the initial provision of special education and related services.
3. If the parent of a child fails to respond or refuses to consent to services described in IV.L.1 above, the school may not use the procedures described in Section VIII – Procedural Safeguards of these Practices and Processes in order to obtain agreement or a ruling that the services may be provided to the student.
4. If the parent of a child refuses to consent to the initial provision of special education and related services or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public school –
  - a. Will not be considered to be in violation of the requirement to make FAPE available to the student for the failure to provide the student with special education and related services for which the parent refuses or fails to provide consent, and

- b. Is not required to convene an IEP Team meeting or develop an IEP for the student for the special education and related services for which the BIE-funded school requests such consent.

**IV.M. WHEN CAN A PARENT REVOKE CONSENT? (300.9(C)(1))**

1. If at any time following the initial provision of special education and related services, the parent of the student revokes consent in writing for the continued provision of special education and related services, the BIE-funded school:
  - a. May not continue to provide special education and related services to the student, but must provide prior written notice as described in Section VIII – Procedural Safeguards, before terminating special education and related services;
  - b. May not use the procedures described in Section VIII – Procedural Safeguards in order to obtain agreement or a ruling that services may be provided to the student;
  - c. Will not be considered to be in violation of the requirement to make FAPE available because of failure to provide the student with further special education and related services;
  - d. Is not required to convene an IEP team meeting or develop an IEP for further provision of special education and related services to the student; and
  - e. Is not required to amend the child’s education records to remove any references to the child’s receipt of special education and related services because of the revocation of consent.
2. A BIE-funded school may not use a parent’s refusal to consent for one service or activity to deny the parent of student any other service, benefit or activity of the public school, except as required by this part (§300.300).

**IV.N. WHAT ARE THE PROHIBITIONS OF MANDATORY MEDICATION? (§300.174)**

1. The BIE prohibits any of its personnel, and personnel from BIE-funded schools from requiring parents to obtain a prescription for substances identified under schedules I, II, II, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a student as a condition of:
  - a. Attending school;
  - b. Receiving a special education evaluation; or
  - c. Receiving special education services.
2. Teachers and other school personnel are, however, allowed to consult or share classroom-based observations with parents or guardians, regarding a student’s

academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services related to Child Find.

**V. INDIVIDUALIZED EDUCATION PROGRAM. (§300.112)**

The term individualized education program or IEP means a written statement for each student with a disability that is developed, reviewed, and revised in a meeting.

The BIE ensures compliance at the BIE-funded school level with the following IEP regulations through its general supervision activities, including the annual compliance monitoring activity.

**V.A. WHEN MUST IEPS BE IN EFFECT?(§300.323)**

1. At the beginning of each school year, each BIE-funded school must have an IEP in effect, for each student with a disability within its jurisdiction. *Jurisdiction* includes students who are placed by the school in residential settings, and BIE-funded school students placed by judicial authorities in juvenile detention facilities and adult prisons.
2. For **Initial IEPs**, each BIE-funded school must ensure that:
  - a. A meeting to develop an IEP for a student is conducted within thirty (30) calendar days of a determination that the student needs special education and related services; and
  - b. As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.

**V.B. WHAT MUST WE KNOW ABOUT TRANSFER STUDENTS AND THEIR IEPS?(§300.323(e)(f)(g))**

1. IEPs for students who transfer between BIE-funded schools or from a public school to a BIE-funded school in the same State.
  - a. If a student with a disability (who had an IEP that was in effect in a previous BIE-funded school in the same State) transfers to a new BIE-funded school or public school in the same State, and enrolls in the new BIE-funded school within the same school year, the new BIE-funded school (in consultation with the parents) must provide FAPE to the student (including services comparable to those described in the student's IEP from the previous BIE-funded school or public school), until the new school either—
    - (1) Adopts the student's IEP from the previous BIE-funded school; or
    - (2) Develops, adopts, and implements a new IEP that meets the applicable requirements.

2. IEPs for students who transfer from one BIE-funded school to another BIE-funded school or from a public school to a BIE-funded school in another State.
  - a. If a student with a disability (who had an IEP that was in effect in a previous BIE-funded school or public school in another State) transfers to a BIE-funded school in a new State, and enrolls in the new BIE-funded school within the same school year, the new BIE-funded school (in consultation with the parents) must provide the student with FAPE (including services comparable to those described in the student's IEP from the previous BIE-funded school/public school), until the new BIE-funded school:
    - (1) Conducts an evaluation (if determined to be necessary by the new BIE-funded school); and
    - (2) Develops, adopts, and implements a new IEP, if appropriate.
3. Transmittal of records.
  - a. To facilitate the transition for a student who transfers between BIE-funded schools or from outside BIE-funded schools:
    - (1) The new school in which the student enrolls must promptly obtain the student's records, including the IEP and supporting documents and any other records (including evaluation summary reports and/or protocols) relating to the provision of special education or related services to the student, from the previous school in which the student was enrolled, pursuant to FERPA, and
    - (2) The previous school in which the student was enrolled must promptly respond to the request from the new school.

**V.C. HOW DO WE ENSURE PARENT PARTICIPATION AND PARENT NOTIFICATION OF AN IEP MEETING? (§300.322, §300.328)**

1. Each BIE-funded school must take steps to ensure that one or both of the parents of a student with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including:
  - a. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
  - b. Scheduling the meeting at a mutually agreed on time and place.
2. Notice of Meeting Information provided to parents.
  - a. The notice required under Section IV.C.1. of these Practices and Processes must:
    - (1) Indicate the purpose, time, and location (ex. home, chapter house, school) of the meeting and who will be in attendance; and

- (2) Inform the parents of the provisions in IV.D.1.f. (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the student).
  - b. For a student with a disability beginning not later than the first IEP to be in effect when the student turns sixteen (16), or younger if determined appropriate by the IEP Team, the notice also must:
    - (1) Indicate:
      - (a) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the student; and
      - (b) That the school will invite the student; and
      - (c) Identify any other school that will be invited to send a representative.
3. Other methods to ensure parent participation.
  - a. If neither parent can attend an IEP Team meeting, the BIE-funded school must use other methods to ensure parent participation, including individual or conference telephone calls and video conferences.
4. Conducting an IEP Team meeting without a parent in attendance.
  - a. A meeting may be conducted without a parent in attendance if the BIE-funded school is unable to convince the parents that they should attend. In this case, the BIE-funded school must keep a record of its attempts to arrange a mutually agreed on time and place, such as:
    - (1) Detailed records of telephone calls made or attempted and the results of those calls;
    - (2) Copies of correspondence sent to the parents and any responses received; and
    - (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
5. Use of interpreters or other action, as appropriate.
  - a. The BIE-funded school must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
6. Parent copy of child's IEP.
  - a. The BIE-funded school must give the parent a copy of the child's IEP at no cost to the parent.

**V.D. WHO IS INCLUDED IN IEP TEAM MEMBERSHIP? (§ 300.321(a)-(d), §300.323(d))**

1. The BIE-funded school must ensure that the IEP Team for each student with a disability includes:
  - a. The parents of the child; and
  - b. Not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment);
2. Regular education responsibilities include:
  - a. A regular education teacher of a student with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the student, including the determination of:
    - (1) Appropriate positive behavioral interventions and supports and other strategies for the student; and
    - (2) Supplementary aids and services, program modifications, and support for school personnel.
  - b. Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;
  - c. A representative of the school who:
    - (1) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;
    - (2) Is knowledgeable about the general education curriculum;
    - (3) Is knowledgeable about the availability of resources of the school; and
    - (4) A BIE-funded school may designate a school member of the IEP Team to also serve as the representative of the school, if the above criteria (V.D.1.d.) are satisfied.
  - d. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described above in this section;
  - e. At the discretion of the parent or the school, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate;
  - f. The determination of the knowledge or special expertise of any individual described in Section V.D.1.f. of these Practices and Processes must be made by the party (parents or public school) who invited the individual to be a member of the IEP Team; and

- g. Whenever appropriate, the student with a disability.
- 3. If the purpose of the IEP is to consider Transition services (see Section VI.F. of these Practices and Processes) the IEP Team must meet the requirements discussed in this section.
- 4. For **all IEPs**, each BIE-funded school must ensure that the student's IEP is:
  - a. Accessible to each regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation; and
  - b. Each teacher and provider is informed of:
    - (1) His or her specific responsibilities related to implementing the student's IEP; and
    - (2) The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

**V.E. WHAT IS ENTAILED IN IEP TEAM ATTENDANCE/EXCUSAL?  
(§ 300.321(e))**

- 1. A member of the IEP Team is not required to attend an IEP Team meeting, in whole or in part, if the parent of a student with a disability and the BIE-funded school agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
- 2. A member of the IEP Team may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:
  - a. The parent, in writing, and the school consent to the excusal; and
  - b. The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

**V.F. WHAT IS INCLUDED IN THE CONTENT OF THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)? (§300.320)**

- 1. The IEP must include a statement of the student's **Present Levels of Academic Achievement and Functional Performance (PLAAFP)**, including:
  - a. How the student's disability affects the student's involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled students).
- 2. The IEP must include a statement of **Measurable Annual Goals**, including academic and functional goals, designed to:

- a. Meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and
  - b. Meet each of the student's other educational needs that result from the student's disability;
3. For students with disabilities who take alternate assessments aligned to alternate achievement standards, a description of **Benchmarks or Short-term Objectives**;
  4. The IEP must include a description of **Progress Reporting**:
    - a. How the student's progress toward meeting the annual goals will be measured; and
    - b. When periodic reports to the parents on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
  5. The IEP must include a statement of the **Special Education and Related Services and Supplementary Aids and Services** to be provided to the student, or on behalf of the student based on peer-reviewed research to the extent practicable. The statement must also, if needed, include the **Program Modifications or Supports** for school personnel that will be provided to enable the student:
    - a. To advance appropriately toward attaining the annual goals;
    - b. To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and
    - c. To be educated and participate with other students with disabilities and non-disabled students in the activities described in this section.
  6. The IEP must include an **Explanation of the Extent, If Any, To Which the Student Will Not Participate With Non-Disabled Students** in the regular education environment and in the activities described in this section;
  7. The IEP must include a statement of any **Needed Accommodations for School-wide Assessments or Reason For and Type of Alternate Assessment**.
    - a. Any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on State and school wide assessments; and
    - b. If the IEP Team determines that the student must take the State's alternate assessment instead of the regular State or school wide assessment of student achievement, a statement of why:
      - (1) The student cannot participate in the regular assessment; and

- (2) The particular alternate assessment selected is appropriate for the student.
8. The IEP must include the **Projected Date for the Beginning of the Services and Modifications, and the Anticipated Frequency, Location, and Duration of those Services and Modifications**. All BIE-funded schools are required to document services to students through the use of service logs maintained by the service provider(s).
9. Transition Services. Beginning not later than the first IEP to be in effect when the student turns sixteen (16), or younger if determined appropriate by the IEP Team and updated annually, the IEP must include:
  - a. Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;
  - b. The transition services (including courses of study) needed to assist the student in reaching those goals; and
  - c. Annual IEP goals related to the student's transition needs.
10. Beginning not later than one year before the student reaches the age of majority under State law, the IEP must include a statement that the student has been informed of the rights under Part B of IDEA that will transfer to the student upon reaching the age of majority.
11. Nothing in this section shall be construed to require:
  - a. That additional information be included in a student's IEP beyond what is explicitly required in IDEA; and
  - b. The IEP Team to include information under one component of a student's IEP that is already contained under another component of the student's IEP.
12. In developing each student's IEP, the IEP Team must consider: (§300.324(a)(1))
  - a. The strengths of the student;
  - b. The concerns of the parents for enhancing the education of their child;
  - c. The results of the initial or most recent evaluation of the student; and
  - d. The academic, developmental, and functional needs of the student.
13. In developing each student's IEP, the IEP Team must consider **Special Factors**. (§300.324(a)(2))
  - a. In the case of a student whose **Behavior** impedes the student's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

- b. In the case of a student with **Limited English Proficiency**, consider the **Language Needs** of the student as those needs relate to the student's IEP;
- c. In the case of a student who is **Blind Or Visually Impaired**, provide for **Instruction in Braille and the Use of Braille unless** the IEP Team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of **Braille is not appropriate for the student**;
- d. Consider the **Communication Needs Of The Student**, and in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and
- e. Consider whether the student needs **Assistive Technology** devices and services.

14. Assistive Technology Devices or Assistive Technology Services. (§300.105)

- a. Each BIE-funded school must ensure that assistive technology devices or assistive technology services, or both, are made available to a student with a disability if required as a part of the student's:
  - (1) Special education;
  - (2) Related services; or
  - (3) Supplementary aids and services.
- b. On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the student's IEP Team determines that the student needs access to those devices in order to receive FAPE.

15. Routine checking of hearing aids and external components of surgically implanted medical devices. (§300.113)

- a. Each BIE-funded school must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.
- b. External components of surgically implanted medical devices;
  - (1) Subject to paragraph b (2) of this section, each BIE-funded school must ensure that the external components of surgically implanted medical devices are functioning properly; and

- (2) For a student with a surgically implanted medical device who is receiving special education and related services under this part, a BIE-funded school is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

16. Nonacademic services (§300.107)

- a. Through its general supervision activities, the BIE ensures the following:
  - (1) Each BIE-funded school must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford the student with disabilities an equal opportunity for participation in those services and activities; and
  - (2) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public school, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school and assistance in making outside employment available.

17. Physical Education Services/Specially Designed Physical Education Services. (§300.108)

- a. The BIE ensures compliance with the IDEA regulations regarding physical education described in this section services through its general supervision activities;
- b. Physical education services, specially designed if necessary, must be made available to every student with a disability receiving FAPE, unless the BIE-funded school enrolls students without disabilities and does not provide physical education to students without disabilities in the same grades;
- c. Each student with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled students unless:
  - (1) The student is enrolled full time in a separate facility; or
  - (2) The student needs specially designed physical education, as prescribed in the student's IEP.

- d. If specially designed physical education is prescribed in a student's IEP, the BIE-funded school responsible for the education of that student must provide the services directly or make arrangements for those services to be provided through other public or private programs; and
- e. The BIE-funded school responsible for the education of a student with a disability who is enrolled in a separate facility must ensure that the student receives specially designed physical education services if deemed appropriate by the IEP team.

18. Extended School Year (ESY) Services. (§300.106)

- a. Extended school year services must be provided only if a student's IEP Team determines, on an individual basis, that the services are necessary for the provision of FAPE to the student. Extended school year services means special education and related services that:
  - (1) Are provided to the student with a disability;
    - (a) Beyond the normal school year of the BIE-funded school, including school breaks;
    - (b) In accordance with the student's IEP; and
    - (c) At no cost to the parents of the student; and
- b. Each BIE-funded school must ensure that extended school year services are available as necessary to provide a free and appropriate education (FAPE).
- c. In implementing the requirements of this section, a public school may not:
  - (1) Limit extended school year services to particular categories of disability; or
  - (2) Unilaterally limit the type, amount, or duration of those services.

**V.G. WHAT IF THE IEP NEEDS TO BE AMENDED OR CHANGED?**  
**(§300.324(a)(4)(6))**

- 1. In making changes to a student's IEP after the annual IEP Team meeting for a school year, the parent of a student with a disability and the BIE-funded school may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the student's current IEP.
- 2. If changes are made to the student's IEP in accordance with paragraph 1 of this section, the BIE-funded school must ensure that the student's IEP Team including the parent is informed of those changes.

3. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as described in paragraph 1 of this section, by amending the IEP rather than by redrafting the entire IEP.
  4. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

**V.H. WHAT IS INVOLVED IN THE ANNUAL REVIEW AND REVISION OF THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)? (§300.324(b)(1)(2)(3)(5))**

1. Annual Review Timeline:
  - a. The IEP Team must review the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved.
2. The IEP must be revised, as appropriate, to address—
  - a. Any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate;
  - b. The results of any reevaluation conducted;
  - c. Information about the student provided to, or by, the parents;
  - d. The student's anticipated needs; or
  - e. Other matters.
3. Failure to meet transition objectives and/or activities:
  - a. Participating school failure. If a participating school, other than the BIE-funded school fails to provide the transition services described in the IEP, the BIE-funded school must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the student set out in the IEP; and
  - b. Nothing in IDEA relieves any participating school, including a State or Tribal Vocational Rehabilitation school, of the responsibility to provide or pay for any transition service that the school would otherwise provide to students with disabilities that meet the eligibility criteria of that school.
4. In conducting a review of the student's IEP, the IEP Team must consider the special factors.
5. A regular education teacher of the student, as a member of the IEP Team, must, participate in the review and revision of the IEP of the student.
6. Consolidation of IEP Team meetings. (§300.324(a)(5))

- a. To the extent possible, the public school must encourage the consolidation of reevaluation meetings for the student and other IEP Team meetings for the student.

**V.I. WHAT IS INVOLVED WITH PRIVATE SCHOOL PLACEMENTS BY PUBLIC SCHOOL? (§300.325)**

1. The BIE-funded school must initiate and conduct a meeting to develop an IEP prior to placing or referring a student with a disability to a private school or facility.
2. The BIE-funded school must ensure that a representative of the private school/facility attends the meeting.
  - a. If the representative cannot attend, the school must use other methods to ensure participation including individual or conference calls or video conferencing.
3. Once the student enters a private school or facility, any meetings to review or revise the student's IEP may be initiated and conducted by the private school/facility at the discretion of the sending BIE-funded school.
  - a. If the private school or facility initiates and conducts IEP meetings, the sending BIE-funded school must ensure that the parents and a BIE-funded school representative:
    - (1) Are involved in any decision about the student's IEP and agree to any proposed changes in the IEP before they are implemented.
4. If a private school or facility implements a student's IEP, responsibility for compliance with this part remains with the BIE and appropriate BIE-funded school.

**VI. TRANSITION AND SECONDARY SERVICES.****VI.A. IDEA PURPOSE – RELATING TO TRANSITION. (§300.1)**

1. To ensure that all students with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living.

**VI.B. WHAT ARE TRANSITION SERVICES? (§300.43)**

1. Transition services are a coordinated set of activities for a student with a disability that:
  - a. Are designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.
  - b. Are based on the individual student's needs, taking into account the student's strengths, preferences and interests; and includes:
    - (1) Instruction;
    - (2) Related services;
    - (3) Community experiences;
    - (4) The development of employment and other post-school adult living objectives; and
    - (5) If appropriate, acquisition of daily living skills, and provision of a functional vocational evaluation.
2. Transition services for students with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a student with a disability to benefit from special education.

**VI.C. WHAT IS INCLUDED IN A TRANSITION IEP? (§300.320)**

1. Beginning not later than the first IEP to be in effect when the student turns sixteen (16) (such as in an IEP meeting conducted when the student is fifteen (15) years old), and updated annually thereafter, the IEP must include:
  - a. Appropriate measurable postsecondary goals, including academic and functional goals, based upon age-appropriate transition assessments related to training or education, employment, and, where appropriate, independent living skills;

- b. The transition services, including courses of study, needed to assist the student in reaching the student's postsecondary goals; and
- c. Annual IEP goals related to transition services.

**VI.D. WHO PROVIDES CONSENT FOR TRANSITION SERVICES?(§300.622(b)(2)), §300.9, §300.321)**

1. Consent must be obtained from parent or student (if age of majority) before personally identifiable information is released to officials of participating agencies providing or paying for transition services.
2. To the extent, appropriate, with the consent of the parent or a student who is age eighteen (18) years or older, the BIE- funded school must invite a representative of any participating school that is likely to be responsible for providing or paying for transition services.

**VI.E. WHAT IS CONTAINED IN THE NOTICE FOR PARENT PARTICIPATION? (§300.322)**

1. In notifying a parent or a student of the age of majority, the notice of the meeting must indicate:
  - a. The purpose of the meeting will be postsecondary goals and transition services for the student;
  - b. The BIE-funded school will invite the student; and
  - c. Identify any other school that will be invited, with the consent of the parent(s) or student age eighteen (18) years or older, to send a representative.

**VI.F. HOW DOES THE IEP TEAM DEVELOP A TRANSITION PLAN? (§300.321)**

1. For an IEP Team meeting addressing the development of a transition plan:
  - a. The BIE-funded school must invite the student with a disability to attend their IEP meeting if the purpose of the meeting will be postsecondary goals and transition services needed to assist the student in reaching those goals;
  - b. If the student does not attend the IEP meeting, the BIE-funded school must take other steps to ensure that the student's preferences and interests are considered;
  - c. To the extent appropriate, with the consent of the parent(s) or a student who is age eighteen (18) years or older, the BIE-funded school must invite a representative of any participating school that is likely to be responsible for providing or paying for transition services;

**VI.G. WHAT HAPPENS IF THERE IS A FAILURE TO MEET TRANSITION OBJECTIVES? (§300.324(c))**

1. If a participating school, other than the BIE-funded school fails to provide the transition services described in the IEP, the BIE-funded school must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.
2. Nothing relieves any participating agency (non-school), including a State or Tribal Vocational Rehabilitation school, of the responsibility to provide or pay for any transition service that the school would otherwise provide to students with disabilities that meet the eligibility criteria of that State or Tribal school.
3. If any public agency other than an educational agency is obligated under Federal or State law, or an interagency agreement, to provide or pay for any services that are also considered special education or related services, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement or as provided in an interagency agreement.
4. Such services referenced in paragraph 3 of this section include those services relating to assistive technology devices, assistive technology services, related services, supplementary aids and services, and transition services that are necessary for ensuring FAPE.

**VI.H. WHEN DOES TRANSFER OF RIGHTS OCCUR? (§300.320(c) and §300.520, §300.520(b))**

1. Beginning not later than one year before the student reaches the age of majority under state law, the IEP must include a statement that the student and the student's parent(s) have been informed of the student's rights under Part B of IDEA that will transfer to the student on reaching the age of majority (except for a student with a disability who has been determined to be incompetent by a court). These rights include the right to approve his or her own educational placement and IEP without help from parents, family, or special advocates if he or she desires.
2. If the student has reached the age of majority, but does not have the ability to provide informed consent, but is not considered incompetent by state/tribal law, then the BIE-funded school must have procedures identified for appointing the parent of the student or another appropriate individual if the parent is not available to represent the educational interests of the student throughout their eligibility under IDEA.
3. BIE-funded schools must follow the State law in the state where the school is located, or tribal law where applicable, regarding the authority to appoint the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of IDEA, if under the State law, or tribal law, a child who has

- reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program. If the State law does not recognize tribal guardianship orders, or if the school is located on tribal lands are required by tribal law to comply with tribal guardianship orders, the school must follow tribal guardianship law and not the State law.
4. BIE-funded schools must provide any notice required by Part B of IDEA and these Practices and Processes to both the student and the parent(s).
  5. All rights afforded to parent(s) under Part B of IDEA transfer to the student upon reaching the age of majority.

**VI.I. WHAT SERVICES DO WE PROVIDE FOR STUDENTS WITH DISABILITIES IN ADULT PRISONS? (§300.324, §300.102, §300.320)**

1. The requirement regarding statewide assessments (see Section V.F.6. of these Practices and Processes) does not apply for students with disabilities incarcerated in adult prisons.
2. The IEP Team may modify the student's IEP or placement if the BIE-funded school has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.
3. The requirements of §300.320 and §300.112 relating to IEPs and FAPE do not apply with respect to the modifications described in VI.I.2.
4. The requirements relating to transition planning and services, do not apply to students whose eligibility under Part B of IDEA will end, because of their age (through 21 years of age), before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.
5. The obligation to provide FAPE to students with disabilities does not apply to students eighteen years of age up to the time the student reaches the age of twenty-two, if, their last educational placement prior to their incarceration in an adult correctional facility the student;
  - a. Was not identified as being a student with a disability, and
  - b. Did not have an IEP under IDEA.
6. The obligation to provide FAPE does apply to students with disabilities through twenty-one years of age, who:
  - a. Had been identified as a student with a disability and had received services in accordance with an IEP, but who left school prior to their incarceration; or

- b. Did not have an IEP in their last educational setting, but who had been identified as a student with a disability.

**VI.J. DOES GRADUATION AND TERMINATION OF ELIGIBILITY CONSTITUTE A CHANGE OF PLACEMENT? (§300.305)**

1. The obligation of the BIE-funded school to make FAPE available to all students with disabilities does not apply to students with disabilities who have graduated from high school with a regular high school diploma.
  - a. This does not apply to students that have graduated from high school but have not been awarded a regular high school diploma. The term “regular high school diploma” does not include an alternative degree that is not fully aligned with the BIE-funded school’s academic standards, such as a certificate of attendance or a general educational developmental (GED) credential;
  - b. Graduation from high school with a regular high school diploma constitutes a change in placement, **requiring written prior notice**; and
  - c. The prior written notice must contain all the requirements noted in VIII.E.2. and must be given at least 5 days before the school proposes to terminate the student’s eligibility under IDEA by issuing the student a diploma.
2. An evaluation is not required before the termination of a student’s eligibility under this part due to graduation from secondary school with a regular high school diploma, or due to exceeding the age of eligibility for FAPE (through age twenty one (21)).
3. For a student whose eligibility terminates due to graduation from secondary school with a regular diploma, or due to exceeding the age of eligibility for FAPE, the BIE-funded school must provide the student with a summary of the student’s academic achievement and functional performance. This document, referred to as a Summary of Performance (SOP) must include recommendations on how to assist the student in meeting the student’s postsecondary goals.

## **VII. LEAST RESTRICTIVE ENVIRONMENT (LRE)**

### **VII.A. WHAT ARE LRE REQUIREMENTS? (§300.114)**

1. In determining the least restrictive environment for the child's needs, the IEP team at each BIE-funded school shall ensure that the following requirements are met:
  - a. To the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are nondisabled; and
  - b. Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
2. The BIE utilizes a funding distribution mechanism which is based on the provision of FAPE, and the unique needs of students with disabilities as described in their IEP and not on the type of setting in which a student is served.

### **VII.B. WHAT ARE TECHNICAL ASSISTANCE AND TRAINING ACTIVITIES? (§300.119)**

1. The BIE, through its general supervision responsibilities, carries out activities to ensure that teachers and administrators in all BIE-funded schools are fully informed about their responsibilities for implementing LRE requirements noted in Section VII.A. above and are provided with technical assistance and training necessary to assist them in this effort.

### **VII.C. WHAT ARE MONITORING ACTIVITIES? (§300.120)**

1. Through monitoring and data collection activities, the BIE ensures that LRE requirements are implemented by each BIE-funded school. If there is evidence that a school makes placements that are inconsistent with such requirements, the BIE reviews the school's justification for its actions and assists in planning and implementing any appropriate corrective action procedures.

### **VII.D. WHAT IS INCLUDED IN CONTINUUM OF ALTERNATIVE PLACEMENTS? (§300.115)**

1. BIE-funded schools must ensure that a continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services.

2. This continuum must:
  - a. Include the alternative placements listed in the definition of special education in Section II.B.50. of these Practices and Processes. These placements must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions; and
  - b. Make provisions for supplementary services (such as resource or itinerant instruction) to be provided in conjunction with regular class placement.

**VII.E. WHO DETERMINES PLACEMENTS AND LRE DETERMINATION AND WHAT IS INCLUDED? (§300.116)**

1. In determining the educational placement of a student with a disability, the IEP team at each BIE-funded school shall ensure that:
  - a. The placement decision is made by a group of persons, including the parents and other persons knowledgeable about the:
    - (1) Student;
    - (2) The meaning of the evaluation data; and
    - (3) The placement options.
  - b. The placement is made in conformity with the LRE requirements in Section VII.A. D., H., and E. of these Practices and Processes.
2. The student’s placement must:
  - a. Be determined at least annually;
  - b. Be based on the student’s IEP; and
  - c. Be as close as possible to the student’s home.
3. Unless the IEP of a student with a disability requires some other arrangement, the student is educated in the school that he or she would attend if nondisabled.
4. In making the placement decision, the team must consider any potential harmful effect on the student or on the quality of services that he or she needs.
5. A student with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

**VII.F. WHAT ARE PROGRAM AND CURRICULAR OPTIONS? (§300.110)**

1. BIE-funded schools must take steps to ensure that students with disabilities have available to them the variety of educational programs and services available to nondisabled students. Programs and services include art, music, industrial arts, consumer and homemaking education, and vocational education.

**VII.G. WHAT ARE NONACADEMIC SETTINGS AND SERVICES? (§300.117, §300.107)**

1. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities described in Section VII.G.4. of these Practices and Processes, BIE-funded schools must ensure that each student with a disability participates with nondisabled students in the extracurricular services and activities to the maximum extent appropriate to the needs of that student.
2. BIE-funded schools must ensure that each student with a disability has the supplementary aids and services determined by the student's IEP team to be appropriate and necessary for the student to participate in nonacademic settings.
3. BIE-funded schools must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford the student with a disability an equal participation in those services and activities.
4. Nonacademic and extracurricular services and activities may include:
  - a. Counseling services;
  - b. Athletics;
  - c. Transportation;
  - d. Health services;
  - e. Recreational activities;
  - f. Special interest groups or clubs sponsored by the school or other public agencies; and
  - g. Referrals to agencies that provide assistance to individuals with disabilities and employment of students, including both employment by the public agencies and assistance in making outside employment available.

**VII.H. WHAT ARE WE RESPONSIBLE FOR REGARDING STUDENTS IN PUBLIC OR PRIVATE INSTITUTIONS?(§300.118)**

1. Except as discussed in Section VI - Transition and Secondary Services of these Practices and Processes regarding the responsibility of the BIE for general supervision for some individuals in adult prisons, the BIE ensures that the LRE requirements in Section VII.A of these Practices and Processes are effectively implemented. This includes, if necessary, making arrangements with public or private institutions (such as a memorandum of agreement or special implementation procedures).

## **VIII. PROCEDURAL SAFEGUARDS: DUE PROCESS PROCEDURES FOR PARENTS AND STUDENTS.**

### **VIII.A. WHAT ARE THE PROCEDURAL SAFEGUARDS REQUIREMENTS? (§§300.500 – 536)**

1. The BIE must ensure that all BIE-funded schools establish, maintain and implement procedural safeguards. **Notice of Procedural Safeguards Parent and Child Rights in Special Education Under the Individuals with Disabilities Education Act, Part B and the BIE** (Revised 2012) and BIE model forms are posted to the BIE website (Appendix A).

### **VIII.B. WHAT ARE THE RESPONSIBILITIES OF BIE-FUNDED SCHOOLS? (§300.504, §300.121)**

1. BIE-funded schools must provide parents with a copy of the **Notice of Procedural Safeguards Parent and Child Rights in Special Education Under the Individuals with Disabilities Education Act, Part B and the BIE** (Revised 2012), at a minimum of one time per year and at any time one of the following occurs:
  - a. Initial referral or parent request for evaluation;
  - b. Upon receipt of the first State complaint;
  - c. First request for due process hearing in a school year;
  - d. Request for mediation;
  - e. When a decision is made to suspend or remove a child for discipline reasons that would result in a disciplinary change in placement; and
  - f. Upon parent request.

### **VIII.C. WHO HAS AN OPPORTUNITY TO EXAMINE RECORDS AND PARTICIPATE IN MEETINGS? (§300.501, §300.322, §300.327)**

1. Parents of a student with a disability must be afforded an opportunity to inspect and review all educational records with respect to the identification, evaluation, and educational placement of the student and the provision of FAPE to the student.
2. The parents of a student with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation and educational placement of the student and the provision of FAPE. Each BIE-funded school must provide notice (see Section VII.E. of these Practices and Processes) to ensure the parents of students with disabilities have the opportunity to participate in meetings.

3. A meeting does not include informal or unscheduled conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that BIE-funded schools engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.
4. Each BIE-funded school must ensure that a parent of each student with a disability is a member of any group that makes decisions on the educational placement of the parent's child, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed upon time and place.
5. The notice of the meeting must indicate the purpose(s), time, location, and who will be in attendance, and inform the parents of their right to bring other individuals who have knowledge or special expertise about the student.
6. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, BIE-funded schools must use other methods to ensure their participation, including individual or conference calls or video conferencing.
7. An IEP Team, without the involvement of the parent, may make a placement decision if the BIE-funded school is unable to obtain the parent's participation in the decision. In this case, the BIE-funded school must document all attempt(s) to ensure parental participation.

#### **VIII.D. WHAT IS INVOLVED IN AN "INDEPENDENT EDUCATIONAL EVALUATION"? (§300.502)**

1. **Independent educational evaluation** means an evaluation conducted by a qualified examiner who is not employed or contracted by the BIE-funded school responsible for the education of the student in question.
2. Through its general supervision requirements and activities, the BIE ensures that the following independent educational evaluation regulations are followed:
  - a. The parents of a student with a disability have the right to obtain an independent educational evaluation of the student at public expense if they disagree with an evaluation obtained by a BIE-funded school;
    - (1) **Public expense** means that the BIE-funded school either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parents.
  - b. BIE-funded schools must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained;

- c. If a parent requests an independent educational evaluation at the BIE-funded school expense, the BIE-funded school must immediately, either file a due process complaint to request a hearing to show that its evaluation is appropriate, or ensure that an independent educational evaluation is provided at public expense, unless the school demonstrates in a hearing that the evaluation obtained by the parent did not meet the criteria;
- d. If the school files a due process complaint notice to request a hearing and the final decision is that the school's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at the BIE-funded school's expense;
- e. If a parent requests an independent educational evaluation, the school may ask for the parent's reason why he or she objects to the BIE-funded school's evaluation. However, the explanation by the parent may not be required and the school may not unreasonably delay either providing the independent educational evaluation at public expense or requesting a due process hearing to defend the public evaluation;
- f. A parent is entitled to only one independent educational evaluation at the BIE-funded school's expense each time the school conducts an evaluation with which the parent disagrees;
- g. If the parent obtains an independent educational evaluation at public expense or shares with the BIE-funded school an evaluation obtained at private expense, the results of the evaluation must be considered by the BIE-funded school, if it meets the qualifying criteria of the agency in which the school is located. This consideration must be given in any decision made with respect to the provision of FAPE to the student. The results of the evaluation may also be presented by any party as evidence at a hearing on a due process complaint regarding that student;
- h. If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at the BIE-funded school's expense;
- i. If an independent educational evaluation is at the BIE-funded school expense, the criteria under which the evaluation is obtained must be the same as the criteria that the school uses when it initiates an evaluation, i.e. location of evaluation and qualification of examiner. Such criteria must be consistent with the parent's right to an independent educational evaluation;
- j. Except for the criteria described above, BIE-funded schools may not impose additional conditions or timelines related to obtaining an independent educational evaluation at the school's expense; and
- k. Further information on an independent educational evaluation is included in the **Notice of Procedural Safeguards Parent and Child Rights in Special Education Under the Individuals with Disabilities Education Act, Part B**

**and the BIE** (Revised 2012) information distributed by the BIE annually.  
(See VIII. B. 1 above)

**VIII.E. WHAT IS A PRIOR WRITTEN NOTICE AND WHEN IS IT PROVIDED? (§300.503)**

1. Prior Written Notice must be given to the parents of a child with a disability within a reasonable time before the BIE-funded school:
  - a. Proposes to initiate or change the identification, evaluation or educational placement of the student or the provision of FAPE to the student (Graduating from High School is a change of placement); and
  - b. Refuses to initiate or change the identification, evaluation or educational placement of the student or the provision of FAPE to the student.
2. The notice must include:
  - a. A description of the action proposed or refused by the school;
  - b. An explanation of why the school proposes or refuses to take the proposed or refused action;
  - c. A description of each evaluation procedure, assessment, record or report the school used as a basis for the proposed or refused action;
  - d. A statement that the parents of a child with a disability have protection under the procedural safeguards of IDEA, and if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
  - e. Sources for parents to contact to obtain assistance in understanding the procedural safeguards;
  - f. A description of other options that the IEP Team considered and the reasons why those options were rejected; and
  - g. A description of other factors that is relevant to the school's proposal or refusal.
3. The notice must be written in language understandable to the general public, provided in the native language or other mode of communication used by the parent, unless it is clearly not feasible to do so.
4. If the native language or other mode of communication used by the parent is not a written language, the BIE-funded school must ensure:
  - a. The notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
  - b. That the parent understands the content of the notice; and
  - c. That there is written evidence of these requirements.

**VIII.F. WHAT INFORMATION IS INCLUDED IN THE PROCEDURAL SAFEGUARDS NOTICE? (§300.504)**

1. A copy of the **Notice of Procedural Safeguards Parent and Child Rights in Special Education Under the Individuals with Disabilities Education Act, Part B and the BIE** (Revised 2012) must be given to the parents of a child with a disability at a minimum one (1) time a school year. The parent acknowledges receipt at the IEP meeting on the IEP. A copy must also be given to the parent when the following occurs:
  - a. Upon initial referral or parent request for evaluation;
  - b. Upon receipt of a first complaint to the BIE or first request for a due process hearing in a school year;
  - c. When a disciplinary change of placement/removal has been initiated; and
  - d. Upon request by a parent.
  
2. The **Notice of Procedural Safeguards Parent and Child Rights in Special Education Under the Individuals with Disabilities Education Act, Part B and the BIE** (Revised 2012) includes a full explanation of all the procedural safeguards available under these Practices and Processes on the following:
  - a. Independent educational evaluations;
  - b. Prior written notice;
  - c. Parental consent;
  - d. Access to education records;
  - e. Opportunity to present and resolve complaints through the due process hearing and BIE complaint procedures, including:
    - (1) The time period in which to file a complaint;
    - (2) The opportunity for the school to resolve the complaint;
    - (3) The difference between due process hearing and BIE complaint procedures, jurisdictions, issues that may be raised, timelines, and relevant procedures;
    - (4) The availability of mediation;
    - (5) The student's placement during the due process hearing;
    - (6) Procedures for students subject to placement in an interim alternative educational setting;
    - (7) Requirements for unilateral placements by parents of students in private schools at the BIE-funded school's expense;

- (8) Due process hearings including requirements for disclosure of evaluation results and recommendations;
  - (9) Civil actions, including timelines; and
  - (10) Attorney fees.
- f. The notice must meet the same requirements for understandable language as for the written prior notice described in Section VIII.E. of these Practices and Processes; and
  - g. BIE and BIE-funded schools may place a current copy of the **Notice of Procedural Safeguards Parent and Child Rights in Special Education Under the Individuals with Disabilities Education Act, Part B and the BIE** (Revised 2012) on its internet web site.

#### **VIII.G. CAN I PROVIDE DOCUMENTS BY ELECTRONIC MAIL TO THE PARENTS? (§300.505)**

- 1. If the BIE-funded school makes electronic mail option available, the parent of a child with a disability may elect to receive written prior notice, procedural safeguards notice, and forms to request due process hearing, mediation and a state complaint investigation through this method.

#### **VIII.H. WHAT IS THE PURPOSE OF MEDIATION? (§300.506)**

- 1. The BIE has procedures that allow parties involved in disputes related to any matter regarding Part B of IDEA, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process. The mediation procedures are provided to BIE-funded schools and Education Line Offices by the BIE. The mediation procedures:
  - a. Are voluntary on the part of the parties;
  - b. May not be used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under IDEA; and
  - c. Are conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- 2. For parents who choose not to use the mediation process, the BIE-funded school must provide for these parents an opportunity to meet at a time and location convenient to the parents, with a third party:
  - a. Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center, or a community parent resource center of the State where the school is located; and
  - b. Who would explain the benefits of and encourage the use of the mediation process to the parents.

3. BIE responsibility for mediation is as follows:
  - a. The BIE maintains a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services;
  - b. The BIE selects mediators on a random, rotational, or other impartial basis;
  - c. The BIE bears the cost of the mediation process, including the costs of meetings related to this process; and
  - d. Each session in the mediation process is scheduled in a timely manner and is held in a location that is convenient to all parties involved in the dispute.
4. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that:
  - a. States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
  - b. Is signed by both the parent and a representative of the school who has the authority to bind the school.
5. A written, signed mediation agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal, or State court.
6. An individual who serves as a mediator under this section:
  - a. May not be an employee of the BIE or a BIE-funded school or residential facility that is involved in the education or care of the student;
  - b. Must not have a personal or professional interest that conflicts with the person's objectivity; and
  - c. Who otherwise qualifies as a mediator is not an employee of the BIE or a BIE-funded school solely because the person is paid by the school to serve as a mediator.

**VIII.I. WHAT IS REQUIRED FOR FILING A DUE PROCESS COMPLAINT?  
(§300.507)**

1. A parent or a BIE-funded school may file a due process complaint on any of the matters relating to the identification, evaluation, or educational placement of a student with a disability, or the provision of FAPE to the student.
2. The due process complaint must allege a violation that occurred not more than two (2) years before the date the parent or BIE-funded school knew or should have known

about the alleged action that forms the basis of the due process complaint, except if the parent was prevented from filing a due process complaint due to:

- a. Specific misrepresentations by the school that it had resolved the problem forming the basis of the due process complaint; or
  - b. The BIE-funded school's withholding of information from the parent that was required under IDEA to be provided to the parent.
3. A BIE-funded school must inform the parent of any free or low-cost legal and other relevant services available in the area if:
- a. The parent requests the information; and
  - b. The parent requests a hearing under IDEA procedural safeguards.

**VIII.J. WHAT MUST BE INCLUDED WHEN FILING A DUE PROCESS COMPLAINT? (§300.508)**

1. It is the policy of the BIE and BIE-funded schools that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential). These procedures are provided to the schools in technical assistance documents.
2. The party filing a due process complaint must forward a copy of the due process complaint to the Bureau of Indian Education.
3. The due process complaint must include:
  - a. The name of the student;
  - b. The address of the residence of the student;
  - c. The name of the school the student is attending;
  - d. In the case of a homeless student or youth (see Section II.E of these Practices and Processes), available contact information for the student and the name of the school the student is attending;
  - e. A description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem; and
  - f. A proposed resolution of the problem to the extent known and available to the party at the time.
4. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements listed above.
5. The required due process complaint must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in

writing, within fifteen (15) calendar days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements.

- a. Within five (5) calendar days of receipt of notification, the hearing officer must make a determination on the face of the due process complaint whether the due process complaint meets the requirements, and must immediately notify the parties in writing of that determination,
  - b. A party may amend its due process complaint only if:
    - (1) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution meeting;
    - (2) The hearing officer grants permission, except that the hearing officer may not grant permission to amend at any time not later than five (5) calendar days before the due process hearing begins; or
    - (3) If a party files an amended due process complaint, the timelines for the resolution meeting and the time period to resolve the complaint begin again with the filing of the amended due process complaint.
6. If the BIE-funded school has not sent a written prior notice to the parent regarding the subject matter contained in the parent's due process complaint, the BIE-funded school must, within ten (10) calendar days of receiving the due process complaint, send to the parent a response that includes:
    - (1) An explanation of why the BIE-funded school proposed or refused to take the action raised in the due process complaint;
    - (2) A description of other options that the IEP Team considered and the reasons why those options were rejected;
    - (3) A description of each evaluation procedure, assessment, record, or report the BIE-funded school used as the basis for the proposed or refused action; and
    - (4) A description of the other factors that are relevant to the school's proposed or refused action.
  7. The BIE-funded school's response does not preclude it from asserting that the parent's due process complaint was insufficient, where appropriate.
  8. A party receiving a due process complaint must, within ten (10) days of receiving the due process complaint, send to the other party a response that specifically addresses the issue raised in the due process complaint.

**VIII.K. ARE BIE MODEL FORMS AVAILABLE? (§300.509)**

1. The BIE has developed model forms to assist parents in filing a State complaint and a due process hearing complaint; and to request mediation. These forms are available on the BIE website, at BIE Education Line Offices, and at BIE-funded schools. Parties are not required to use the BIE model forms. Parents, BIE-funded schools, and other parties may use the appropriate model form or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements for filing a due process or State complaint. The model forms are as follows:
  - a. State complaint form
  - b. Request for mediation form
  - c. Request for a due process hearing form

**VIII.L. WHAT IS THE RESOLUTION PROCESS? (§300.510)**

1. Within fifteen (15) days of receiving the notice of the parent's due process complaint, and prior to the initiation of a due process hearing, the BIE-funded school must convene a meeting with the parent and the relevant members of the IEP Team who have specific knowledge of the facts identified in the complaint:
  - a. That includes a school administrator from the BIE-funded school who has decision-making authority; and
  - b. May not include an attorney of the BIE-funded school unless the parent is accompanied by an attorney.
2. The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the factual basis of the complaint so the BIE-funded school has an opportunity to resolve the dispute.
3. The resolution meeting need not be held if:
  - a. The parent and the BIE-funded school agree in writing to waive the meeting; or
  - b. The parent and the BIE-funded school agree to use the mediation process.
4. The parent and the BIE-funded school determine the relevant IEP Team members to attend the meeting.
5. If the BIE-funded school has not resolved the complaint to the satisfaction of the parent within thirty (30) calendar days of the receipt of the complaint, the due process hearing may occur. The timeline for issuing a final decision begins at the end of this thirty (30) day calendar time period.

6. The failure of the parent to participate in the resolution meeting that has not been mutually agreed to be waived, will delay the timelines for the resolution process and due process hearing until the resolution meeting is held.
7. If the BIE-funded school is unable to obtain the participation of the parent after reasonable efforts have been made and documented, the school may, at the conclusion of the thirty (30) day calendar period, request the hearing officer dismiss the parent's due process complaint.
8. If the BIE-funded school fails to hold the resolution meeting with fifteen (15) calendar days of receiving the complaint or fails to participate in the meeting, the parent may request that the hearing officer begin the hearing timeline.
9. The forty-five (45) day timeline for the due process hearing starts the day after one of the following events:
  - a. Both parties agree in writing to waive the resolution meeting.
  - b. After either the mediation or resolution meeting starts but before the end of the thirty (30) day resolution period, the parties agree in writing that no agreement is possible; or
  - c. If both parties agree in writing to continue the mediation at the end of the thirty (30) day resolution period, but later, one party withdraws from the mediation process.
10. If a resolution to the dispute is reached at the resolution meeting, the parties must execute a legally binding agreement that is:
  - a. Signed by both the parent and the BIE-funded school representative who has authority to legally bind the school; and
  - b. Enforceable in any State court of competent jurisdiction, or a District court of the U.S.
11. Either party may void the agreement within three (3) business days of the agreement's execution.

#### **VIII.M. WHAT IS AN IMPARTIAL DUE PROCESS HEARING? (§300.511)**

1. Whenever a due process complaint is filed, the parents or the BIE-funded school involved in the dispute must have an opportunity for an impartial due process hearing.
2. The impartial due process hearing shall be conducted by an impartial hearing officer selected on a rotational basis.
3. At a minimum, a hearing officer must:
  - a. Not be an employee of the BIE or the BIE-funded school that is involved in the education or care of the student; or

- b. Not be a person having a personal or professional interest that conflict with the person's objectivity in the hearing;
  - c. Must possess knowledge of, and the ability to understand, the provisions of Part B of IDEA, Federal and State regulations pertaining to Part B of IDEA, and legal interpretations of Part B of IDEA by Federal, State and Tribal courts;
  - d. Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
  - e. Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.
4. A person who otherwise qualifies to conduct a hearing is not an employee of the BIE or BIE-funded school solely because he or she is paid by the BIE to serve as a hearing officer.
  5. The BIE keeps a list of the persons who serve as hearing officers and a statement of their qualifications.
  6. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint, unless the other party agrees otherwise.
  7. A parent or BIE-funded school must request an impartial hearing on their due process complaint within two (2) years of the date the parent or BIE-funded school knew or should have known about the alleged action that forms the basis of the due process complaint.
  8. The timeline described in Section VIII.L. of these Practices and Processes does not apply to a parent if the parent was prevented from filing a due process complaint due to:
    - a. Specific misrepresentations by the BIE-funded school that it had resolved the problem forming the basis of the due process complaint; or
    - b. The BIE-funded school's withholding of information from the parent that was required to be provided by the parent.
  9. The BIE monitors all due process hearings to ensure adherence to required procedures.

#### **VIII.N. WHAT ARE HEARING RIGHTS? (§300.512)**

1. Any party to a hearing or an appeal has the right to:
  - a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with

- disabilities, except when parties have the right to be represented by non-attorneys at due process hearings as determined under BIE Practices and Processes;
- b. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
  - c. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing; and
  - d. Obtain a written, or, at the option of the parents, electronic verbatim record of the hearing and findings of fact and decisions.
2. At least five (5) business days prior to a hearing, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.
  3. A hearing officer may bar any party from introducing the relevant evaluation or recommendation not disclosed at least five (5) business days prior to the hearing at the hearing without the consent of the other party.
  4. Parents involved in hearings must be given the right to:
    - a. Have the student who is the subject of the hearing present;
    - b. Open the hearing to the public; and
    - c. Have the record of the hearing and the findings of fact and decisions provided at no cost to parents.

**VIII.O. WHO HAS THE AUTHORITY TO MAKE HEARING DECISIONS?  
(§300.513)**

1. A hearing officer's determination of whether the student received FAPE must be based on substantive grounds.
2. In matters alleging a procedural violation, a hearing officer may find that a student did not receive FAPE only if the procedural inadequacies:
  - a. Impeded the student's right to FAPE;
  - b. Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or
  - c. Caused a deprivation of educational benefit.
3. Nothing in Sections VIII.I. through VIII.O. of these Practices and Processes shall be construed to preclude a hearing officer from ordering a BIE-funded school to comply with procedural requirements.

4. A parent has the right to file a separate due process complaint on an issue separate from a due process complaint already filed.
5. The BIE, after deleting any personally identifiable information:
  - a. Transmits the findings and decisions on the due process complaint to the BIE Advisory Board for Exceptional Children; and
  - b. Makes those findings and decisions available to the BIE Education Line Offices, BIE-funded schools, and public.
6. §300.514 Finality of decision; appeal; impartial review.
  - a. A decision made in a due process hearing is final, except that any party involved in the hearing may appeal the decision by filing a civil action in state, tribal, or federal court.

**VIII.P. WHAT ARE THE TIMELINES AND CONVENIENCE OF HEARINGS? (§300.515)**

1. The BIE must ensure that not later than forty-five (45) calendar days after the expiration of the thirty (30) calendar day resolution period, or the adjusted time periods resulting from the resolution process:
  - a. A final decision is reached in the hearing; and
  - b. A copy of the decision is mailed to each of the parties.
2. A hearing officer may grant specific extensions of time at the request of either party.
3. Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and student involved.

**VIII.Q. WHAT IS INVOLVED IN A CIVIL ACTION? (§300.516)**

1. A decision made in a due process hearing is final, except that any party involved in the hearing may appeal the decision by filing a civil action in State or Federal court.
2. The party bringing the action shall have ninety (90) calendar days from the date of the decision of the hearing officer to file a civil action.
3. In any civil action, the court receives the records of the administrative proceedings; hears additional evidence at the request of a party; and, basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.
4. The district courts of the United States have jurisdiction of actions brought under the procedural safeguards section of IDEA without regard to the amount in controversy.

5. Nothing in this part restricts or limits, procedures, and remedies available under the Constitution, the American with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of students with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under the procedural safeguards of Part B of IDEA, the procedures must be exhausted to the same extent as would be required had the action been brought under 615 of the Act.

#### **VIII.R. WHO IS RESPONSIBLE FOR THE ATTORNEYS' FEES? (§300.517)**

1. In any action or proceeding brought under the procedural safeguards of this section of these Practices and Processes, the court, in its discretion, may award reasonable attorneys' fees as part of the costs:
  - a. To the prevailing party who is the parent of a child with a disability;
  - b. To a prevailing party who is the BIE or BIE-funded school against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
  - c. To the BIE or BIE-funded school against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.
2. IDEA Part B funds **may not** be used to pay attorneys' fees or costs of a party related to any action or proceeding. BIE or BIE-funded schools **may** use Part B funds for conducting an action or proceeding under the procedural safeguards of Part B of IDEA.
3. A court awards reasonable attorneys' fees consistent with the following:
  - a. Fees awarded must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished;
  - b. No bonus or multiplier may be used in calculating the fees awarded; and
  - c. The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.
4. Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the BIE, for mediation under Section VIII.H. of these Practices and Processes.
5. A resolution meeting shall not be considered a meeting convened as a result of an administrative hearing or judicial action for purposes of attorneys' fees in this section.

6. An award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.
7. The court reduces, accordingly, the amount of the attorneys' fees awarded, if the court finds that:
  - a. The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
  - b. The parent, or the parent's attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation and experience;
  - c. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
  - d. The attorney representing the parent did not provide the BIE-funded school appropriate information in the due process request notice.
8. The above regulations regarding attorneys' fees do not apply in any action or proceeding if the court finds that the BIE or BIE-funded school unreasonably protracted the final resolution of the action or proceeding or there was a violation of the procedural safeguards of IDEA.

**VIII.S. WHAT IS THE STUDENT'S STATUS DURING PROCEEDINGS?  
(§300.518)**

1. During the pendency of any administrative or judicial proceeding regarding a request for a due process hearing, unless the BIE or BIE-funded school and the parents of the student agree otherwise, the student involved in the complaint must remain in his or her current educational placement.
2. If the complaint involves an application for initial admission to a BIE-funded school, the student, with the consent of the parents, must be placed in the BIE-funded school until the completion of all the proceedings.
3. If the decision of a hearing officer in a due process hearing conducted by the BIE agrees with the student's parents that a change of placement is appropriate, that placement must be treated as an agreement between the BIE-funded school and the parents.

**VIII.T. WHAT IS THE MEANING OF STATE IMPLEMENTATION OF  
PROCEDURAL SAFEGUARDS? (§300.150)**

1. The BIE must have in effect procedures to inform BIE-funded schools and other appropriate Bureau of Indian Affairs agencies of its responsibility for ensuring effective implementation of procedural safeguards for students with disabilities served by BIE-funded schools. Through BIE provides on-going training and

technical assistance documents regarding procedural safeguards for schools and families to ensure these requirements are met.

**VIII.U. WHAT ARE THE STATE COMPLAINT PROCEDURES? (§§300.151 - 300.153)**

1. The BIE has adopted procedures for resolving any complaint under Part B of IDEA and these BIE Special Education Practices and Processes. This includes a complaint filed by an organization or individual from any of the States in which a BIE-funded school is located. The procedures include:
  - a. The signed complaint must be in writing to the BIE Special Education Supervisory Education Specialist. If the parents are unable to file in writing, they may contact their BIE-funded school, BIE Education Line Office, or the BIE for assistance; and
  - b. The party filing the complaint must forward a copy to the BIE funded school serving the child at the same time the party files the complaint with the BIE Supervisory Education Specialist.
2. The complaint must include the following:
  - a. A statement that the BIE-funded school has violated a requirement of Part B of IDEA or these Practices and Processes;
  - b. The facts on which the statement is based;
  - c. The signature and contact information for the complainant;
  - d. If alleging violations with respect to a specific student:
    - (1) The name and address of the residence of the student.
    - (2) The name of the school the student is attending.
    - (3) In the case of a homeless student, available contact information for the student and the name of the school the student is attending;
    - (4) A description of the nature of the problem of the student, including facts relating to the problem; and
    - (5) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is received.
3. The complaint must allege a violation that occurred not more than one (1) year prior to the date that the complaint is received by the BIE.
4. Once the complaint is received by the BIE, the parties involved must receive a “Letter of Acknowledgement” from the BIE. This letter includes:
  - a. Reference number assigned to the complaint;

- b. Timeline for investigation of the complaint within sixty (60) calendar days;
  - c. Probability of a site visit;
  - d. Summary of the allegation(s); and
  - e. BIE contact person and contact information.
5. Within the sixty (60) day time limit, the BIE shall:
- a. Conduct an independent investigation and, if appropriate, an on-site investigation;
  - b. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
  - c. Respond to the complaint including a proposal to resolve the concern(s) and provide the opportunity for the parent and BIE to voluntarily engage in mediation consistent with the requirements of Section VIII.H. of these Practices and Processes.;
  - d. Review all relevant information and make a determination as to whether the BIE-funded school is violating a requirement of the BIE Special Education Practices and Processes;
  - e. Issue a written decision to the complainant and the BIE-funded school involved in the complaint, which addresses each allegation in the complaint and contains:
    - (1) Findings of fact and conclusions.
    - (2) The reason for the BIE final decisions.
  - f. Permit an extension of the sixty (60) day time limit if:
    - (1) Exceptional circumstances exist with respect to a particular complaint; and
    - (2) The parent, individual or organization, and the BIE staff involved, agree to extend the time to engage in mediation or other alternative means of dispute resolution available within the BIE. If an extension is required, the BIE will inform all parties of the extension and the date by which findings are issued.
  - g. Determine procedures for the effective implementation of the BIE final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance;
  - h. In resolving a complaint in which it has been found a failure to provide appropriate services, the BIE (BIE-funded school) must address:
    - (1) How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or

other corrective action appropriate to the needs of the student; and

- (2) Appropriate future provision of services for all students with disabilities.
- i. If a written State complaint is received that is also the subject of a due process hearing under the Due Process Hearing Procedures in these Practices and Processes, or contains multiple issues of which one or more are part of a hearing, the BIE must set aside any part of the complaint that is being addressed in the hearing until its conclusion. Any issue in the complaint that is not a part of a due process hearing must be resolved using the time limit and complaint procedures described in this section.
  - j. If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, then the hearing decision is binding on that issue. The BIE must inform both parties of this fact. A complaint alleging a BIE-funded school's failure to implement a due process decision, however, must be resolved by the BIE.
  - k. Parents and other interested individuals, parent training and information centers, representatives of protection and advocacy agencies, and other appropriate entities, shall be informed of these procedures through:
    - (1) **BIE Notice of Procedural Safeguards Parent and Child Rights in Special Education Under the Individuals with Disabilities Education Act, Part B and the BIE** (Revised 2012) and complaint procedures provided by BIE and BIE-funded schools;
    - (2) Presentations and other training events conducted by BIE and BIE-funded school staff; and
    - (3) Dissemination of informational materials regarding procedural safeguards and BIE complaint procedures throughout BIE-funded school communities.

#### **VIII.V. WHEN IS THE USE OF A SURROGATE PARENT NECESSARY? (§300.519)**

1. The BIE has Practices and Processes to ensure that BIE-funded schools make certain that the rights of a student are protected when:
  - a. No parent can be identified (see definition of *parent* in Section II of these Practices and Processes);
  - b. The BIE-funded school, after reasonable efforts, cannot locate a parent;
  - c. The student is a ward of the State or Tribe under the laws of the State or Tribe;

- d. The child is an unaccompanied homeless youth as defined by 756(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 1143a(6)). (See definition of *homeless children* in Section II of these Practices and Processes.); and
  - e. The BIE ensures that BIE-funded schools adhere to the surrogate parent requirements of this section through its general supervision activities, including monitoring.
2. The duties of the BIE-funded school include the assignment of an individual to act as the surrogate for the parents. This must include a method:
    - a. For determining whether a student needs a surrogate parent; and
    - b. For assigning a surrogate parent to the student.
  3. In the case of a student who is a ward of the State or Tribe, the surrogate parent alternatively may be appointed by the judge overseeing the student's case, providing that the surrogate meets the requirements listed in this section.
  4. Criteria for selection of surrogate parents:
    - a. The BIE-funded school may select a surrogate parent in any way permitted under BIE Special Education Policy and Procedures;
    - b. Schools must ensure that a person selected as a surrogate parent:
      - (1) Is not an employee of the BIE or BIE-funded schools, or any other agency that is involved in the education or care of the student;
      - (2) Has no personal or professional interest that conflict with the interest of the student the surrogate parent represents; and
      - (3) Has knowledge and skills that ensure adequate representation of the student.
    - c. A person otherwise qualified to be a surrogate parent as described in Section VIII. 4. is not an employee of the school solely because he or she is paid by the school to serve as a surrogate parent;
    - d. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents until a surrogate parent can be appointed that meets all of the requirements of this section;
    - e. The surrogate parent may represent the student in all matters relating to:
      - (1) The identification, evaluation, and educational placement of the student; and

- (2) The provision of FAPE to the student.
- f. The BIE must make reasonable efforts to ensure the assignment of a surrogate parent not more than thirty (30) days after a BIE-funded school determines that the student needs a surrogate parent.

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## IX. CONFIDENTIALITY OF INFORMATION AND RECORDS MANAGEMENT

### IX.A. WHAT ARE THE BIE METHODS OF ASSURANCE REGARDING CONFIDENTIALITY OF INFORMATION AND RECORDS MANAGEMENT?

1. All BIE-funded schools adhere to the regulations pertaining to confidentiality of information and records management that are noted in this section. The BIE, through its general supervision activities, monitoring, NASIS processes, technical assistance, and annual training of BIE, BIE-funded schools and Education Line Office staff, ensures compliance with the regulations.

### IX.B. WHAT IS CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION? (§300.123, §§310.610 –300.611)

1. The BIE has established the following Practices and Processes regarding confidentiality of personally identifiable information to which the BIE and all BIE-funded schools must adhere. This pertains to any personally identifiable information collected, used, or maintained under Part B of IDEA.

### IX.C. DEFINITIONS (§300.611, §300.32, §99.3, §99.21)

1. Definitions related to these confidentiality regulations:
  - a. **Destruction** means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
    - (1) **Education records** means the type of records covered under the definition of “education records” in FERPA, 34 CFR Part 99. These are records, files, documents, and other materials which:
      - (a) Contain information directly related to a student; and
      - (b) Are maintained by an educational agency or institution or by a person acting for such agency or institution.
    - (2) The term "education records" does not include:
      - (a) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary which are in the sole possession of the maker and are not accessible or revealed to any other person except a substitute;
      - (b) Records maintained by a law enforcement unit of the educational agency or institution that were

created by that law enforcement unit for the purpose of law enforcement;

- (c) In the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or
  - (d) Records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.
- b. **Participating agency** means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under IDEA, Part B.
- c. **Personally identifiable** means information that contains:
- (1) Name of the child, parent, or other family member;
  - (2) Address of child;
  - (3) Personal identifier including social security number or student number;
  - (4) List of personal characteristics or information that would make it possible to identify the child with reasonable certainty; and
  - (5) Native American Student Information System (NASIS) number.

#### **IX.D. WHAT IS INVOLVED IN THE NOTICE TO PARENTS? (§300.612, §300.123, §99.21)**

1. All BIE-funded schools must give notice that is adequate to fully inform parents about the requirements relating to confidentiality of personally identifiable

information (§300.123). The notice is referred to as *The Parents Rights Brochure*. The notice must include the following:

- a. A description of the extent that the notice is given in the languages of the various population groups within BIE-funded schools and communities;
  - b. A description of the students on whom personally identifiable information is maintained, the types of information sought, the methods the BIE and BIE-funded school intends to use in gathering the information (including the sources from whom the information is gathered), and the uses to be made of the information;
  - c. A summary of the Practices and Processes that the BIE-funded schools must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
  - d. A description of all rights of parents and students regarding the information noted in Section IX.D. – Access Rights, including the rights under FERPA.
2. Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the BIE-funded school community.

#### **IX.E. What does ACCESS RIGHTS involve? (§300.613) (§300.615)**

1. The BIE-funded schools must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the school under IDEA regulations. If any education record includes information on more than one student, the parents of those students have the right to inspect and review only the information relating to their child or to be informed of that specific information.
2. The BIE-funded school must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing or resolution session, and in no case more than forty-five (45) days after the request has been made.
3. The right to inspect and review education records includes the following:
  - a. The right to a written or verbal response from the BIE-funded schools to reasonable requests for explanations and interpretations of the records;
  - b. The right to request that the BIE-funded school provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
  - c. The right to have a representative of the parent inspect and review the records.
4. A BIE-funded school may presume that the parent has authority to inspect and review records relating to his or her child unless the school has been advised that the parent

does not have the authority under applicable State or Tribal law governing such matters as guardianship, separation, and divorce.

**IX.F. WHAT IS RECORD OF ACCESS? (§300.614)**

1. BIE-funded schools must keep a record of parties obtaining access to education records collected, maintained, or used under IDEA regulations (except access by parents and authorized employees of the school), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

**IX.G. WHEN MUST A LIST OF TYPES AND LOCATIONS OF EDUCATIONAL RECORDS BE PROVIDED? (§300.616)**

1. BIE-funded schools must provide parents, upon request, a list of the types and locations of education records collected, maintained, or used by the school.

**IX.H. WHEN ARE FEES CHARGED? (§300.617)**

1. BIE-funded schools may charge a fee for copies of records that are made for parents related to IDEA if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. The BIE-funded school may not charge the parent for copies of their child's current IEP and/or current evaluation.
2. BIE-funded schools may not charge a fee to search for or to retrieve information under IDEA.

**IX.I. IS AMENDMENT OF RECORDS AT PARENT'S REQUEST ALLOWABLE? (§300.618, §300.619)**

1. A parent who believes that information in the education records collected, maintained, or used under IDEA is inaccurate or misleading or violates the privacy or other rights of their child may request the school that maintains the information to amend the information.
2. The BIE-funded school must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
3. If the school refuses to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing.

**IX.J. WHY PROVIDE OPPORTUNITY FOR A HEARING REGARDING EDUCATIONAL RECORDS? (§300.619)**

1. BIE-funded schools must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that the information in the records is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

**IX.K. WHY PROVIDE HEARING PROCEDURES REGARDING EDUCATIONAL RECORDS? (§300.621, §§99.21 – 99.22)**

1. A hearing related to a challenge to information in educational records must be conducted according to the procedures in FERPA. The procedures require that:

**IX.L. WHAT HAPPENS IN THE RESULT OF HEARING REGARDING EDUCATIONAL RECORDS? (§300.620)**

1. If, as a result of the hearing, a BIE-funded school decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, it must amend the information accordingly and then inform the parent in writing.
2. If, as a result of the hearing, a BIE-funded school decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of their right to place, in the school's records maintained on the student, a statement commenting on the information or describing any reasons for disagreeing with the decision of the school.
3. Any explanation placed in the records of the student related to this regulation must:
  - a. Be maintained by the school as part of the records of the student as long as the school maintains the record or contested portion; and
  - b. If the records of the student or the contested portion are disclosed by the school to any party, the explanation must also be disclosed to the party.

**IX.M. WHEN MUST YOU HAVE PARENTAL CONSENT? (§300.622)**

1. Parental consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies for purposes of meeting a requirement of IDEA, unless the information is contained in education records, and the disclosure is authorized without parental consent under FERPA.
2. Parental consent or the consent of the eligible student, if he or she has reached the age of majority under State law, must be obtained before personally identifiable

information is released to officials of participating agencies providing or paying for transition services.

3. If a student is enrolled, or is going to enroll in a private school that is not located near the BIE-funded school of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials of the private school and the officials of the BIE-funded school of the parent's residence.

#### **IX.N. WHAT ARE SAFEGUARDS? (§300.623, §300.123)**

1. The BIE-funded schools must:
  - a. Protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages;
  - b. Designate at least one official to assume responsibility for ensuring the confidentiality of any personally identifiable information;
  - c. Ensure that all persons collecting or using personally identifiable information receive training or instruction related to confidentiality, records management and FERPA; and
  - d. Maintain, for public inspection, a current listing of the names and positions of its employees who may have access to personally identifiable information.

#### **IX.O. WHEN IS DESTRUCTION OF INFORMATION CARRIED OUT? (§300.624)**

1. BIE-funded schools must inform parents when personally identifiable information collected, maintained, or used under IDEA, is no longer needed to provide educational services to the student.
2. The information, which is no longer needed, must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

#### **IX.P. WHEN DO YOU TRANSFER STUDENT'S RIGHTS? (§300.625)**

1. Under the regulations for FERPA (34 CFR 99.5(a)), the rights of parents regarding educational records are transferred to the student at age eighteen (18) unless the student has been declared incompetent by State or Tribal Court.
2. BIE-funded schools must provide any notice required under IDEA to the student and the parents if rights are transferred to the student at age eighteen (18).

**IX.Q. WHAT CONSTITUTES ENFORCEMENT? (§300.626)**

1. Practices and Processes regarding these confidentiality requirements must be regularly reviewed at the BIE-funded school level.
2. Enforcement may be applied and could include and are not limited to, the withholding of all or part of the school's Part B funds; or distributing their Part B funds on a delayed schedule due to noncompliance factors.

As required by DOI, school personnel must take FERPA and confidentiality training.

**IX.R. WHAT IS DEPARTMENT USE OF PERSONALLY IDENTIFIABLE INFORMATION? (§300.627)**

1. If the BIE collects any personally identifiable information regarding students with disabilities that is not subject to FERPA, they apply the applicable provisions of 5 U.S.C. 552a and the implementing regulations in 34 C.F.R. Part 5b – the Privacy Act of 1974 and its applicable regulations.

**X. DISCIPLINE §300.518, §300.530(b)(e)(f), §300.531, (§300.532(a)(c), §300.533, §300.534, §300.535, §300.536**

**X.A. DEFINITIONS**

1. In general, the BIE applies the following definitions when considering disciplinary action:
  - a. **Behavioral intervention plan** means an individualized plan, including positive interventions, designed to assist a student to decrease inappropriate behavior and increase or teach an alternative appropriate behavior;
  - b. **Current educational placement** means the type of educational placement of the student as described in the student's IEP at the time of the disciplinary removal. It does not mean the specific location or school but the type of placement on the continuum of placement options;
  - c. **Disciplinary removal** means suspension, expulsion, or other removal from school for disciplinary reasons. This does not include:
    - (1) Removals by other agencies;
    - (2) Removals for public health reasons (e.g., head lice, immunizations, communicable diseases, etc.); or
    - (3) In-school suspensions if:
      - (a) The student continues to have access to the general curriculum and to special education and related services as described in the student's IEP, and
      - (b) The student continues to participate with nondisabled students to the extent they would in their current placement.
  - d. **Manifestation determination** (see Section X.M.) is a decision made by the BIE-funded school, the parent and relevant members of the child's IEP team (as determined by the parent and the school) in a team meeting to determine if:
    - (1) A student's conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
    - (2) If the conduct in question was the direct result of the BIE-funded school's failure to implement the IEP.
  - e. **Functional behavioral assessment** means an individualized assessment of the student, which results in a team hypothesis about the function of a student's behavior and, as appropriate, recommendations for a behavior intervention plan;
  - f. **Suspension** means any disciplinary removal. If a student is suspended from school, the student must continue to receive educational services that allow

him or her to continue to participate in the general education curriculum and progress toward meeting the goals set out in the IEP.

- g. **Expulsion** is generally of a longer term than a suspension. If a student is expelled from school, the student must continue to receive educational services that allow him or her to continue to participate in the general education curriculum and progress toward meeting the goals set out in the IEP.

**X.B. HOW ARE SUSPENSION AND EXPULSION RATES MONITORED?**

**(§ 300.170)**

1. The BIE monitors suspension and expulsion rates by collecting and analyzing data required under IDEA. This data is referred to as the 618 tables (referring to section 618 of the IDEA statute).
2. The BIE examines 618 Data Table 5, Discipline, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of students with disabilities:
  - a. Among BIE-funded schools; or
  - b. Compared to the rates for nondisabled students within those schools.
3. If there are significant discrepancies occurring, the BIE must review the schools Practices and Processes relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards and issue findings of non-compliance.

**X.C. WHAT IS A DISCIPLINARY CHANGE OF PLACEMENT? (§300.536)**

1. A disciplinary removal of a student with a disability constitutes a change in the student's educational placement and occurs when:
  - a. The removal is for more than ten (10) consecutive school days; or
  - b. The student has been subjected to a series of removals that constitute a pattern:
    - (1) Because the series of removals total more than ten (10) school days in a school year;
    - (2) Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
    - (3) Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

2. The BIE-funded school determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
3. This determination regarding a pattern of removals is subject to review through due process and judicial proceedings (see Section VIII.I. of these Practices and Processes).
4. In the case of a disciplinary change of placement, a manifestation determination meeting must be held (see Section X.M. of these Practices and Processes).
5. School must use the Native American Student Information System (NASIS) Change of Placement Form when making a change of placement.

**X.D. WHAT EDUCATIONAL AND RELATED SERVICES ARE PROVIDED DURING A DISCIPLINARY REMOVAL? (§300.530(d) and (§300.531)**

1. A student with a disability who is removed from the student's current educational placement must:
  - a. Continue to receive educational services, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and
  - b. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.
2. The services may be provided in an interim alternative educational setting.
3. If the removal is a change of educational placement, the student's IEP Team determines appropriate services to be provided during the removal. (§300.531)

**X.E. WHAT IS THE 10 DAY RULE IN THE DISCIPLINARY REMOVAL OF STUDENTS WITH DISABILITIES? (§300.530(b)), (§300.530(d)(3))**

1. The BIE-funded school may remove students with disabilities from their current educational placement to an appropriate interim alternative educational setting, another setting, or suspension, for up to ten (10) school days in a school year to the same extent, and with the same notice, for violation of a code of conduct as for students without disabilities. These removals are not considered a change in placement.
2. During disciplinary removals for up to ten (10) school days in a school year:

- a. The BIE-funded school is required to provide services to a student with a disability if it provides services to a student without a disability who is similarly removed; and
- b. The BIE-funded school is not required to determine whether the student's behavior resulting in the disciplinary removal is a manifestation of the student's disability.

**X.F. WHAT ARE THE PROCEDURES FOR DISCIPLINARY REMOVALS OF MORE THAN TEN (10) CUMULATIVE SCHOOL DAYS AND REMOVALS THAT DO NOT CONSTITUTE A PATTERN OF REMOVAL ?(§300.530(b))**

1. **If the removals do not constitute a pattern**, a BIE-funded school may remove students with disabilities from their current educational placement for separate incidents of misconduct to an appropriate interim alternative educational setting, another setting, or suspension for additional periods of up to ten (10) days in a school year to the same extent, and with the same notice as for students without disabilities, These removals do not constitute a change in placement. (300.530(b)(1))
2. In determining whether removals of additional periods of up to ten (10) school days constitute a **pattern of removals**, school personnel will consider, on a case-by-case basis:
  - a. Whether the behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals totaling more than 10 school days in a school year; and
  - b. Additional factors such as the length of each removal, the total number of days of removal, and the proximity of removals to one another.
3. During removals of additional periods of up to ten (10) school days in a school year that **do not constitute a pattern**, the BIE-funded school will provide services that are necessary to enable the student to:
  - a. Continue to participate in the general education curriculum;
  - b. Progress toward achieving the goals in the student's IEP; and
  - c. The services and location for delivery of services in this section will be determined by school personnel, in consultation with at least one of the student's teachers.
4. The determination regarding whether a series of removal constitutes a pattern is subject to review in an expedited due process hearing.

**X.G. WHAT ARE THE PROCEDURES FOR DISCIPLINARY REMOVALS OF MORE THAN TEN (10) CUMULATIVE SCHOOL DAYS AND**

**REMOVALS THAT DO CONSTITUTE A PATTERN OF REMOVAL?  
(§300.536)**

1. **If the removals do constitute a pattern**, these removals constitute a change in placement (see Section X.C. of these Practices and Processes).
2. In determining whether removals of additional periods of up to ten (10) school days constitute a **pattern of removals**, school personnel will consider, on a case-by-case basis:
  - a. Whether the behavior is substantially similar to the student’s behavior in previous incidents that resulted in the series of removals totaling more than 10 school days in a school year; and
  - b. Additional factors such as the length of each removal, the total number of days of removal, and the proximity of removals to one another.
3. The determination regarding whether a series of removal constitutes a pattern is subject to review through due process and judicial proceedings (see Section X.K.6. of these Practices and Processes).

**X.H. WHAT IS THE QUALIFYING CRITERIA FOR REMOVAL TO AN INTERIM ALTERNATIVE EDUCATIONAL SETTING FOR NOT MORE THAN FORTY-FIVE (45) DAYS BY THE BIE-FUNDED SCHOOL UNDER SPECIAL CIRCUMSTANCES? (§300.530(g))**

1. The BIE-funded school may remove a student with a disability from the student’s current educational placement to an appropriate interim alternative educational setting, but for not more than forty-five (45) school days for a drug or weapon violation (see Section X.H.2. of these Practices and Processes), or for infliction of serious bodily injury, without regard to whether the behavior is a manifestation of the student’s disability. This removal is considered a change in placement. School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order such a removal, such as:
  - a. The student carries a weapon or possesses a weapon on school premises or to a school function;
  - b. Possesses or uses illegal drugs, sells or solicits the sale of a controlled substance while at school, school premises or school functions;
  - c. Has inflicted serious bodily injury upon another person at school, school premises or at a school function.
2. For the purpose of determining a drug or weapon violation or serious bodily injury, the BIE-funded school will apply the following definitions:

- a. **Controlled substance** means a drug or other substance that cannot be distributed without a prescription, identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
  - b. **Illegal drug** means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
  - c. **Serious bodily injury** means bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty (18 USC 1365). Serious bodily injury does not include a cut, abrasion, bruise, burn, disfigurement, physical pain, illness, or impairment of the function of a bodily member, organ or mental faculty that is temporary (20 USC 1365).
  - d. **Weapon** means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2-1/2 inches (18 USC 930).
3. On the date that the BIE-funded school decides to remove a student to an interim alternative educational placement because of a drug or weapon violation or for serious bodily injury, the BIE-funded school notifies the parent(s) of the decision and provides the parent(s) the Procedural Safeguards Notice (see Section VIII.F. of these Practices and Processes).
  4. Within ten (10) school days of any decision to remove the student to an interim alternative educational placement because of a drug or weapon violation or for serious bodily injury, the BIE-funded school:
    - a. Convenes a meeting (note makeup of this team in Section X.M. of these Practices and Processes) to determine whether the behavior is a manifestation of the student's disability; and
    - b. Conducts, as appropriate, a functional behavior assessment, and develops a behavior intervention plan based on the functional behavior assessment that is designed to address the behavior so it does not recur.

**X.I. WHAT ARE THE PROCEDURES FOR REMOVAL TO AN INTERIM ALTERNATIVE EDUCATIONAL SETTING FOR NOT MORE THAN FORTY-FIVE (45) DAYS BY A HEARING OFFICER FOR INJURIOUS BEHAVIOR?(§300.532(b)(2)(ii) AND §300.532 (B)(3))**

1. The BIE-funded school may request an expedited due process hearing to obtain a hearing officer's order to remove a student to an interim alternative educational setting for not more than forty-five (45) school days if the student is exhibiting

injurious behavior. For the purpose of this request, “injurious behavior” is defined as behavior that is substantially likely to result in injury to the student or to others.

2. The interim alternative educational setting must meet the requirements of the “Interim Alternative Educational Setting”, Section X.J. of these Practices and Processes.

**X.J. WHAT IS AN INTERIM ALTERNATIVE EDUCATIONAL SETTING? (§300.531)**

1. When a student with a disability is placed in an interim alternative educational setting, the setting:
  - a. Is determined by the student’s IEP Team; and
  - b. Enables the student to:
    - (1) Continue to participate in the general curriculum, although in another setting;
    - (2) Progress toward achieving the goals in the student’s IEP; and
    - (3) Receive services and modifications designed to address the misconduct that led to placement in the interim alternative educational setting and to prevent the misconduct from recurring.

**X.K. WHAT IS THE DISCIPLINE APPEAL PROCESS? (§300.532)**

1. The parent of a child with a disability who disagrees with any decision regarding placement or the manifestation determination may appeal the decision by requesting a hearing.
2. A BIE-funded school, which believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing.
3. The hearing is requested by filing a complaint as described in Section VIII. J. and K. of these Practice and Processes.
4. A hearing officer hears, and makes a determination regarding an appeal. In making the determination, the hearing officer may:
  - a. Return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of Sections IX.E through IX.H of these Practices and Processes or that the student’s behavior was a manifestation of the student’s disability; or
  - b. Order a change of placement of the student with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing officer determines that maintaining the current placement

of the student is substantially likely to result in injury to the student or to others.

5. The appeal procedures may be repeated, if the BIE-funded school believes that returning the student to the original placement is substantially likely to result in injury to others.
6. **Expedited due process hearing.** Whenever a hearing is requested because of a disagreement with a decision regarding a disciplinary change of placement or a manifestation determination, the parents or the BIE-funded school involved in the dispute must have an opportunity for an impartial due process hearing. The following procedures must be followed:
  - a. The BIE arranges the due process hearing, which must occur within twenty (20) school days of the date the complaint requesting the hearing is filed;
  - b. The hearing officer must make a determination on this complaint within ten (10) school days after the hearing;
  - c. Unless the parents and BIE-funded school agree in writing to waive the resolution meeting described below, or agree to use the mediation process described VIII.H.
    - (1) A resolution meeting must occur within seven (7) days of receiving notice of the due process complaint; and
    - (2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) days of the receipt of the due process complaint.
  - d. The decisions on expedited due process hearings are appealable as described in Section VIII.P. of these Practices and Processes.

**X.L. WHAT IS THE EDUCATIONAL PLACEMENT FOR THE STUDENT PENDING DUE PROCESS APPEALS? (§300.533)**

1. If a parent or BIE-funded school disagrees with the manifestation determination or any decision about placement related to the disciplinary removal and requests a due process hearing, the student will remain in the interim alternative educational setting pending the decision of the hearing officer, or until the end of the disciplinary removal, whichever is shorter, unless the parent and BIE-funded school agree to another placement pending the hearing.

**X.M. WHAT ARE THE REQUIREMENTS AND PROCESSES FOR CONDUCTING A MANIFESTATION DETERMINATION REVIEW? (§300.530(e)(g))**

1. Within ten (10) school days of any decision to change the placement of a student with a disability for disciplinary reasons, the BIE-funded school convenes a manifestation determination meeting.
2. The team includes the parent(s), BIE-funded school representatives, and other relevant members of the IEP Team, as determined by the parent and BIE-funded school.
3. The team reviews all relevant student information, including the student’s IEP, teacher observations, and information provided by the parent.
4. The team concludes that the conduct in question is a manifestation of the student’s disability if it determines the behavior was caused by, or had a substantial relationship to, the student’s disability, or if it was the direct result of the BIE-funded school’s failure to implement the IEP:
  - a. If the team determines that the BIE-funded school did not implement the student’s IEP or identifies other deficiencies in the student’s IEP or placement, the BIE-funded school corrects the identified deficiencies immediately; and
  - b. Regardless of whether the behavior was a manifestation of the student’s disability, the BIE-funded school may remove the student to an interim alternative educational setting for weapons or drug violations or for infliction of serious bodily injury (refer to Section X.H. 1-3 of these Practices and Processes) for up to forty-five (45) days.
5. When Behavior is a Manifestation of Disability
  - a. If the team concludes that the behavior was a manifestation of the student’s disability:
    - (1) The BIE-funded school conducts a functional behavioral assessment and develops a behavior intervention plan to address the behavior that led to the disciplinary action. If the BIE-funded school has already conducted a functional behavioral assessment or, if the student already has a behavior intervention plan regarding that behavior, the BIE-funded school reviews, modifies as necessary, and implements the plan to address the behavior;
    - (2) The BIE-funded school may review and revise the student’s IEP and placement through normal IEP and placement processes;

- (3) The BIE-funded school may enter into an agreement with the parent to change the student's placement as part of the modification of the behavioral intervention plan; and
- (4) If the BIE-funded school believes that maintaining the current placement of the student is substantially likely to result in injury to the student or to others, the BIE-funded school may appeal the decision of the manifestation determination team by requesting an expedited due process hearing. The hearing may be requested by filing a complaint as described in Section VIII.I. and J. of these Practices and Processes. A hearing officer who concludes that maintaining the current educational placement is substantially likely to result in injury to the student or to others may order a change in placement to an interim alternative educational setting for no more than forty-five (45) days.

6. When Behavior is Not a Manifestation of Disability

- a. If the IEP Team determines that the student's behavior is not a manifestation of the student's disability, the BIE-funded school may proceed with disciplinary removals, in the same manner and for the same duration, as would be applied to students without disabilities. If the BIE-funded school takes such action, applicable to all students, the BIE-funded school:
  - (1) Notifies the parent(s) of the decision to remove the student on the date that decision is made and gives the parents a **Notice of Procedural Safeguards Parent and Child Rights in Special Education Under the Individuals with Disabilities Act, Part B and the BIE** (Revised 2012);
  - (2) Gives the parent(s) prior written notice of any proposed change in placement;
  - (3) Provides services to the student in an interim alternative educational setting that is determined by the IEP Team; and
  - (4) Provides, as appropriate, a functional behavioral assessment, develops appropriate behavioral interventions to address the behavior, and implements those interventions.

**X.N. WHAT PROTECTIONS ARE AVAILABLE FOR STUDENTS NOT YET ELIGIBLE FOR SPECIAL EDUCATION BUT IN THE REFERRAL AND EVALUATION PROCESS? (§300.534)**

1. The BIE-funded school will follow all special education disciplinary procedures for any student who has not yet been identified as a student with a disability if the BIE-funded school has knowledge that the student has a disability and needs special education.
2. The BIE-funded school is presumed to have such knowledge if, before the behavior that precipitated the disciplinary action occurred:
  - a. The child's parent(s) expressed a concern in writing to supervisory or administrative school personnel, or to a teacher of the student, that the student is in need of special education and related services;
  - b. The child's parent(s) requested a special education evaluation of the student and gave their informed written consent; or
  - c. The student's teacher or other school personnel expressed specific concerns about a pattern of behavior demonstrated by the student directly to the BIE-funded school's special education director or other BIE-funded school supervisory personnel.
3. The BIE-funded school is not presumed to have knowledge of a disability if:
  - a. The parent has not allowed an evaluation of the student or has refused the initial provision of special education services to the student; or
  - b. The student has been evaluated and found not eligible for special education services.
4. If the BIE-funded school did not have knowledge before taking disciplinary action against the student, the BIE-funded school may take the same disciplinary actions as applied to students without disabilities who engaged in comparable behaviors. However:
  - a. If a special education evaluation is requested, or if the BIE-funded school initiates a special education evaluation, the evaluation will be conducted in an expedited manner;
  - b. Until the evaluation is completed, the student may remain in the educational placement determined by school personnel, which may include suspension or expulsion without educational services;
  - c. Upon completion of the evaluation, if the student is determined to be a student with a disability, the BIE-funded school will conduct an IEP meeting to develop an IEP and determine placement and will provide special education and related services in accordance with the IEP; and

- d. The BIE-funded school will apply the IDEA discipline protections beginning on the date of the eligibility determination.

**X.O. WHEN CAN SCHOOL PERSONNEL MAKE A REFERRAL TO LAW ENFORCEMENT AND JUDICIAL AUTHORITIES? (§300.535)**

1. Nothing in this part prohibits a BIE-funded school from reporting a crime committed by a student with disabilities to appropriate authorities.
2. Nothing in this part prevents Law Enforcement and Judicial Authorities (Federal, State, Tribal) from exercising their responsibilities with regard to the application of Federal, State, and Tribal law to crimes committed by a student with a disability.
3. A BIE-funded school reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted to the appropriate agency to which the school reports the crime. Such records may only be transmitted to the extent permitted by FERPA.

**X.P. WHEN IS THE USE OF STATE ENFORCEMENT MECHANISMS APPROPRIATE? (§300.537)**

1. Notwithstanding §300.506(b)(7) and §300.510(d)(2) (see Sections VIII.H. and VIII.L.), which provides for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in this part that would prevent:
  - a. The BIE from using other mechanisms to seek enforcement of that agreement:
    - (1) Provided that use of such mechanisms is not mandatory and does not delay or end a party the right to seek enforcement of the written agreement; and
    - (2) In a Federal or State court of competent jurisdiction.

## **XI. WHAT ARE THE RESPONSIBILITIES OF THE BUREAU OF INDIAN EDUCATION?**

### **XI.A. FAPE – METHODS AND PAYMENTS (§300.103)**

1. The BIE and BIE-funded schools may use whatever local, federal, and private sources of support available, and authorized by federal statute and regulation, to meet the requirements of Part B of IDEA.
2. Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a student with a disability.
3. BIE ensures there shall be no delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education and related services to that student has yet to be determined. The adherence to timelines in IDEA is monitored at the BIE-funded school level by the BIE as a part of their general supervision responsibilities.

### **XI.B. HOW ARE STUDENTS IN OTHER SETTING AFFECTED? (§§300.145 – 300.147, §300.104, §300.148)**

1. Students with disabilities in facilities placed or referred by a BIE-funded school. (§§300.145 – 300.147)
  - a. For students with disabilities who are or have been placed in or referred to a facility by a BIE-funded school as a means of providing special education and related services, the BIE ensures that a student:
    - (1) Is provided special education and related services in conformance with an IEP that meets the requirements of these BIE Special Education Practices and Processes;
    - (2) The services are provided at no cost to the parents; and
    - (3) Has all of the rights of a student with a disability who is served by a BIE-funded school.
2. Residential placement. (§300.104)
  - a. If placement in a public or private residential program is necessary to provide special education and related services to an eligible student, the program including non-medical care and room and board must be at no cost to the parents of a child; and
  - b. Referrals for such a placement are made through the student's school or medical facility. The school facilitates the placement and financial arrangements for students who are placed in a public or private placement for the provision of special education and related services. Case management

responsibilities remain with the BIE-funded school as per Section XI.B.1. of these Practices and Processes.

3. Placement of children by parents when FAPE is an issue. (§300.148)

- a. The BIE-funded school is not required to pay for the cost of the education, including special education and related services, of a student with a disability at a facility if that BIE-funded school made a FAPE available to the student and the parents elected to place the student in a private school or facility;
- b. If the parents of a student with a disability, who previously received special education and related services under the authority of the BIE-funded school, enroll the student in a secondary school without the consent of or referral by the BIE-funded school, a court or a hearing officer may require the BIE-funded school to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the BIE-funded school had not made a FAPE available to the student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the standards that apply to education provided by the BIE and BIE-funded school;
- c. The cost of reimbursement may be reduced or denied if:
  - (1) At the most recent IEP Team meeting that the parents attended prior to the removal of the student from the BIE-funded school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the BIE-funded school to provide a FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense;
  - (2) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the student from the BIE-funded school, the parents did not give written notice to the BIE-funded school of their rejection of the school's proposed services to provide FAPE and their intent to enroll the child in a private school at BIE expense;
  - (3) If, prior to the parents' removal of the student from the BIE-funded school, the BIE-funded school informed the parents, through the written prior notice requirements of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or
  - (4) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

- d. A parent's cost of reimbursement:
  - (1) Must not be reduced or denied for failure to provide the notice if:
    - (a) The BIE-funded school prevented the parents from providing the notice;
    - (b) The parents had not received written prior pursuant to the procedural safeguards noted in Section VIII.F. of these Practices and Processes and the notice requirements of XI.D. (1) – (2); and
    - (c) Compliance with d. (1) above would likely result in physical harm to the student;
- e. May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice, if:
  - (1) The parents are not literate or cannot write in English; or
  - (2) Compliance with d. (1) would likely result in serious emotional harm to the student.

**XI.C. WHAT ARE METHODS OF ENSURING SERVICES? (§300.154, §300.708(1), §300.708(f))**

1. The Director of the BIE or designee must ensure that, if necessary, an interagency agreement or other mechanism for interagency coordination is in effect between non-educational public agencies and the BIE, in order to ensure that all services that are needed to meet FAPE are provided including the provision of these services during the pendency of any dispute.
2. Determination of responsibility for services and interagency coordination may be met through statute, regulation, memorandums of agreement, or other types of written agreements.
3. All interagency agreements or related mechanisms include:
  - a. Practices and Processes to determine and identify the interagency coordination responsibilities of each school to promote the coordination and timely and appropriate delivery of services described in this section, including the provision of these services during the pendency of any dispute;
  - b. Identification of a method for defining the financial responsibilities of each school for providing services;
    - (1) The financial responsibility of each non-educational public school, such as Indian Health Services, obligated under Federal, State or Tribal law, or assigned responsibility under State or Tribal policy to provide or pay for any

services that are also considered special education or related services, including the State Medicaid school and other public insurers of students with disabilities, must precede the financial responsibility of the BIE-funded school.

- c. Procedures for resolving interagency disputes (including procedures under which schools may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism;
  - d. The conditions, terms, and procedures under which a BIE-funded school must be reimbursed by other agencies;
  - e. Procedures under which BIE-funded schools may initiate proceedings to secure reimbursement from agencies that are parties; and
  - f. Procedures for agencies to determine and identify the interschool coordination responsibilities of each school to promote the coordination and timely and appropriate delivery of services.
4. The Secretary of the Interior – Bureau of Indian Education has established with the Secretary of Health and Human Services – Indian Health Services (IHS) a Memorandum of Understanding (MOU) for the coordination of services, resources and personnel between their respective Federal, State, Tribal, and local offices and with the States and local education agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations. The MOU provides for the apportionment of responsibilities and costs including child find, evaluation, diagnosis, remediation, or therapeutic measures and where appropriate equipment and medical or personal supplies as needed for a child with a disability to remain in school or program (§300.708(i)). Representatives from Indian Health Services and the Bureau of Indian Education revisit the MOU on a yearly basis to ensure its applicability and evaluate its effectiveness. Each BIE Funded school that has an IHS Clinic within close proximity should write a local MOU. The MOU is available on the BIE website. Annual training will be provided by the BIE.
  5. The BIE has established a coordinated services plan to provide guidance to the BIE, Education Line Offices, and BIE funded schools on how to meet the educational and related service needs of Indian children with disabilities through the coordinated linkage of all appropriate service providers such as HIS, Head Start, Tribal Health and Behavioral Services, state/tribal Vocational Rehabilitation, and the Department of Health and Human Services (DHHS). Services with tribal juvenile and adult correctional facilities, and other Federal and private service providers and appropriate Bureau of Indian Affairs agencies (§300.708(f)) would also be considered. This coordinated services plan (CSP) is provided to all BIE-funded schools and education line offices and on the BIE website. Annual training will be provided by the BIE.

## 6. Obligation of non-educational public agencies (§300.154(b))

a. If any public agency other than an educational agency is otherwise obligated under Federal, State, Tribal law, or assigned responsibility to provide or pay for any services that are also considered special education or related services as defined in these Practices and Processes that are necessary for ensuring FAPE to students with disabilities within the BIE and BIE-funded schools, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangements.

- (1) A non-educational public agency described in this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in the school context;
- (2) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in this section, the BIE-funded school must provide or pay for these services to the student in a timely manner. The BIE-funded school is authorized to claim reimbursement for the services from the non-educational public agency that failed to provide or pay for these services and that agency must reimburse the BIE-funded school in accordance with the terms of the interschool agreement or other mechanism described in this section; and
- (3) Services that are considered special education or related services such as, but not limited to, services described in §300.5 relating to assistive technology devices, §300.6 relating to assistive technology services, §300.34 relating to related services, §300.41 relating to supplementary aids and services, and §300.42 relating to transition services.

## 7. Students with disabilities who are covered by public benefits or insurance. (§300.154(d))

- a. The BIE-funded school may use Medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under this section, as permitted under the public insurance program, except as provided in the paragraph b below; and
- b. With regard to services required to provide FAPE to an eligible student as described in this section, the BIE-funded school:
  - (1) May not require parents to sign up for or enroll in public insurance programs in order for their child to receive a FAPE under Part B of IDEA;

- (2) May not require parents to incur an out-of-pocket expense, such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided as described in this section, but may pay the cost that the parent otherwise would be required to pay;
- (3) May not use a student's benefits under a public insurance/benefits program(s) if that use would:
  - (a) Decrease available lifetime coverage or any other insured benefit;
  - (b) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;
  - (c) Increase premiums or lead to the discontinuation of benefits or insurance; and
  - (d) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.
- (4) Must obtain parental consent each time that access to public benefits or insurance is sought; and
- (5) Notify parents that their refusal to allow access to their public benefits or insurance does not relieve the school or other public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

8. Students with disabilities who are covered by private insurance. (§300.154(e))

- a. With regard to services required to provide FAPE to an eligible student as described in these Practices and Processes, a BIE-funded school may access a parent's private insurance proceeds only if the parent provides consent. Each time the school proposes to access the parent's private insurance proceeds, it must:
  - (1) Obtain parental consent; and
  - (2) Inform the parents that their refusal to permit the school to access their private insurance does not relieve the school of its responsibility to ensure that all required services are provided at no cost to the parents.

9. Use of Part B funds.

- a. If the school is unable to obtain parental consent to use the parent's private insurance, or public benefits, or insurance when the parent would incur a cost

for a specified service required under these Practices and Processes to ensure FAPE, the school may use its Part B funds to pay for the service; and

- b. To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the school may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's benefits or insurance (e.g., the deductible or co-pay amounts).
10. Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR 80.25 – regarding gross income received by the grantee.
  11. Nothing in this section should be construed to alter the requirements imposed on a State Medicaid Agency, or any other school administering a public benefits or insurance program by Federal statute, regulations, or policy under Title XIX or Title XX of the Social Security Act, or any other public benefits or insurance program.

**Training will be provided annually on the regulatory requirements for students with disabilities.**