

BUREAU OF INDIAN EDUCATION

SPECIAL EDUCATION POLICIES & PROCEDURES

[##] IAM [#-LETTER]



Bureau of Indian Education
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FOREWORD

The Bureau of Indian Education (“BIE”) is responsible for ensuring that its implementation of Part B of the Individuals with Disabilities Education Act (“IDEA”)¹ meets applicable requirements including those under 20 U.S.C. § 1411(h)(2) and 34 C.F.R. §§ 300.708 and 300.716. To that end, BIE has developed these policies and procedures to apply to BIE-funded schools, which encompass schools operated pursuant to grants under the Tribally Controlled Schools Act (“TCSA”) of 1988,² schools operating contracts authorized and governed by the Indian Self-Determination and Education Assistance Act (“ISDEAA”),³ and educational programs and activities conducted by the U.S. Department of the Interior (“Department or Agency”), including BIE-operated elementary and secondary schools. For purposes of this policy, tribally controlled schools (“TCS”) includes both grant and contract schools operated through TCSA and ISDEAA, respectively.

This policy is intended only to set forth procedures for complying with BIE’s obligation to comply with IDEA and its regulations and does not create any independent or new rights, benefits, or trust responsibility, substantive or procedural, enforceable by law or equity, by a party against the United States, its agencies, its officers, or any person.

[Signature]

[DATE]

[Name]

Date

Director, Bureau of Indian Education

¹ 20 U.S.C. § 1400 *et seq.*

² 25 U.S.C. § 2501 *et seq.*

³ 25 U.S.C. § 5301 *et seq.*

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Purpose

It is BIE's policy that children with disabilities on reservations, including enrolled in BIE funded schools, as well as their parents/guardians, enjoy the full scope of rights and privileges regarding special education services as specified in IDEA.

This Handbook provides the policies and procedures for ensuring parental consent and involvement, referral of determination and eligibility, placement, dispute resolution, child find, early intervening services, discipline, transition services, and exiting special education.

Authority

The U.S. Department of Education transfers IDEA funds to BIE for children with disabilities and stipulates that BIE must comply with IDEA and applicable regulations.⁴

Scope

This policy applies to all BIE-funded schools, including grant and contract schools and BIE operated schools. When appropriate, TCS schools have flexibility to follow timelines and procedures established by the geographic state where they are located, and these instances are also included within the policy.

This policy is intended only to set forth procedures for complying with BIE's obligation to comply with IDEA and its regulations and does not create any independent or new rights, benefits, or trust responsibility, substantive or procedural, enforceable by law or equity, by a party against the United States, its agencies, its officers, or any person.

This policy covers ten topic areas as summarized below:

1. Parental Consent, Involvement & Procedural Safeguards
2. Referral and Determination of Eligibility
3. Individual Education Program (IEP), IEP Development and Least Restrictive Environment
4. Dispute Resolution
5. Child Find
6. Early Intervening Services
7. Discipline
8. Transition Services
9. Exiting Special Education
10. Confidentiality

⁴ 20 U.S.C. § 1411(h); 34 C.F.R. §§ 300.708 and .716.

Roles and Responsibilities

Director, Bureau of Indian Education is responsible for providing general oversight for all BIE programs and activities, including approving this policy. The Division of Performance and Accountability (DPA) is overseen by the Director and conducts oversight of BIE's general supervision, a system of accountability and support to BIE-funded schools, on the implementation of IDEA.

Division of Performance and Accountability (DPA) The primary focus of DPA-IDEA Team's work is on improving educational results and functional outcomes for all children with disabilities and ensuring that the BIE meets the IDEA program requirements with a particular emphasis on those requirements that are most closely related to improving education results for children with disabilities. The BIE's General Supervision System is designed to support practices that improve educational results and functional outcomes for children with disabilities; to use multiple methods to identify and correct noncompliance; and to use a variety of mechanisms to encourage and support improvement; and to enforce compliance.

BIE's General Supervision System consists of eight components related to the implementation of IDEA; the components are related to as well as inform one another and the system as a whole include the following:

1. Data
2. Dispute Resolution
3. Fiscal Management
4. Implementation of Policies & Procedures
5. Integrated Monitoring Activities
6. State Performance Plan/Annual Performance Report (SPP/APR)
7. Sustaining Compliance & Improvement
8. Technical Assistance and Professional Development

Associate Deputy Directors (Bureau-Operated, Navajo & Tribally Controlled Schools) are responsible for overseeing the BIE-funded schools within their region, including the BIE-funded schools' implementation of all funded educational programs within BIE (i.e.; the Indian School Equalization Program (ISEP), the Every Student Succeeds Act (ESSA) and IDEA).

- a. Disseminate information to BIE-funded schools and providing technical assistance to principals.
- b. Education Program Administrators are responsible for program improvement and technical assistance to BIE-funded schools within the Education Resource Center's (ERC) region.

Education Resource Centers (ERCs) are responsible for providing oversight and support to BIE's base program in a variety of areas including schools' academic programs, fiscal

management and compliance with IDEA. ERCs also support schools' implementation of all funded educational programs within BIE (i.e., ISEP, ESSA and IDEA). The ERCs are located throughout the country and within the three ADD Offices.

Education Specialists – Special Education are responsible for:

- a. Annual special education file reviews;
- b. ISEP special education monitoring consistent with the provisions contained in the BIE [High Risk Fiscal Oversight Handbook \(30 IAM 19-H\)](#) with regard to children within their assigned schools, including children with disabilities, children who receive services through Individual Education Plans (IEP) and children who receive accommodations through Section 504;
- c. Providing individualized special education technical assistance to BIE-funded schools under the direction of the ADDs; and
- d. Annually communicating to their assigned schools the roles and responsibilities of the ERC Office regarding the oversight, management, and support of special education services. At a minimum, each school will receive such annual notice no later than October 1st of each year.

Parental Consent, Involvement & Procedural Safeguards (34 CFR § 300.300, § 300.322, § 300.501, §§ 300.503-300.504)

BIE-funded schools must include parents and/or eligible guardians in the process of determining whether a child is to receive special education services, or to renew these services. Consistent with 34 C.F.R. § 300.30 Parents mean:

- a) A biological or adoptive parent of a child;
- b) A foster parent, unless State law, regulations, or contractual obligations with a State 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 if the child is a ward of the State);
- 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; or
- e) A surrogate parent who has been appointed in accordance with IDEA.

Except as provided by 34 C.F.R. § 300.30(b)(2) the biological or adoptive parent, when attempting to act as the parent under IDEA and when more than one party is qualified under 34 C.F.R. § 300.30(a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. If a judicial decree or order identifies a specific person or persons under 34 C.F.R. § 300.30(a)(1) through (4) of IDEA to act as the "parent" of a child

or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this section.

Parents must give their written and fully informed consent, for their child to participate in evaluations and to determine the initial special education services. Parents may also end the provision of special education services at any time. BIE-funded schools must document all communication with parents related to consent, including their attempts to contact parents who do not respond or cannot be found. Communication with parents must be in a language understandable to the general public and in the native language of the parent unless it is clearly not feasible to do so. If the recipient’s native language or other mode of communication is not a written language, the school must take steps to ensure that: (i) the notice is translated orally if a translator is accessible, or by other means to the parent in his or her native language or other mode of communication; (ii) the parent understands the content of the notice; and (iii) there is written evidence that the parent has received and understood the information.

Procedural Safeguards Notice (§ 300.504)

- a) A copy of the Notice of Procedural Safeguards is made available to parents of a child with a disability at least once a year and must be given to the parents, at a minimum:
 - i. Upon initial referral or parent request for evaluation;
 - ii. Upon receipt of the first State complaint under §§300.151 through 300.153 and upon receipt of the first due process complaint under §300.507 in a school year;
 - iii. In accordance with the discipline procedures in §300.530(h); and
 - iv. Upon request by a parent.

- b) The Notice of Procedural Safeguards notice must include a full explanation of all of the procedural safeguards available and the State complaint procedures available relating to:
 - i. Independent educational evaluation;
 - ii. Prior written notice;
 - iii. Parental consent;
 - iv. Access to educational records;
 - v. Opportunity to present and resolve complaints through mediation and/or the due process complaint and/or State complaint procedures.
 - vi. The child’s placement during pendency of due process proceedings;
 - vii. Procedures for students who are subject to placement in an interim alternative educational setting;
 - viii. Requirements for unilateral placement by parents of children in private schools at public expense;
 - ix. Mediation;
 - x. Due process hearing components, including requirements for disclosure of evaluation results and recommendations;
 - xi. Appeals (if applicable);
 - xii. Civil actions;
 - xiii. Attorneys’ fees; and

- xiv. Compliance procedures including a description of how to file a complaint and the timelines under those procedures.
- c) Notice. The required Notice of Procedural Safeguards must meet understandable language requirements including that it must be written in a language understandable to the general public; and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
 - i. If the parent's native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; that the parent understands the content of the notice; and that there is written evidence that the requirements in this section have been met.

Parental Consent (§ 300.300)

- a) Each BIE-funded school must obtain informed parental consent for any of the following:
 - i. Prior to conducting any assessment as part of an initial evaluation;
 - ii. Prior to implementation (provision of services) of the initial IEP; and/or
 - iii. Prior to conducting any assessment as part of a reevaluation, except that such consent is not required if the BIE-funded school can demonstrate that it had taken reasonable measures to obtain such consent and the parent failed to respond.
- b) Consistent with 34 C.F.R § 300.9 consent means that:
 - i. The parent has been fully informed of all information relevant to the activity for which consent is sought, in their native language, or through another mode of communication.
 - ii. The parent understands and agrees in writing to the carrying out of the activity for which their consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom.
 - iii. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
- c) Parent consent for initial evaluation.
 - i. The BIE-funded school proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability must, after providing notice, obtains informed consent from the parent of the child before conducting the evaluation.
 - ii. Parent consent for initial evaluation must not be construed as consent for initial provision of special education and related services (initial IEP).
 - iii. The BIE-funded school must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.
 - iv. For a ward of the State, a BIE-funded school must make reasonable effort to obtain parental consent for an initial evaluation. Parental consent need not be obtained for an initial evaluation after reasonable efforts, if:

1. The parent cannot be found;
 2. Parental rights have been terminated; or
 3. Parental rights have been subrogated for purposes of consenting to eligibility by a court of competent jurisdiction and consent has been given by an individual the court has appointed.
- v. For initial assessment and re-evaluation, if a parent refuses to provide consent and the BIE-funded school and the parent have not agreed to other action, the BIE-funded school may request a due process hearing to obtain consent necessary for the special education evaluation.
- d) Parent consent for services.
- i. The BIE-funded school that is responsible for making free appropriate public education (FAPE) available to a child with a disability must obtain informed consent from the parent or guardian of the child before the initial provision of special education and related services to the child.
 - ii. The BIE-funded school must make reasonable efforts to obtain informed consent from the parent or guardian for the initial provision of special education and related services to the child.
 - iii. If a parent refuses to provide consent, or fails to respond to the request, for implementation of the initial IEP, the BIE-funded school:
 1. May not seek to compel consent through mediation or due process procedures to obtain parental agreement;
 2. Will not be determined to have denied the child FAPE because the child failed to receive necessary special education and related services; and
 3. Is not required to convene an IEP Team meeting or develop an IEP for the child.
 4. Consent for special education services may be revoked by the parent, in writing, at any time. If the parent of a child revokes consent, the BIE-funded school may not continue to provide special education and related services to the child, but must provide prior written notice before ceasing the provision of special education and related services;
 5. May not use mediation or due process procedures in order to obtain agreement or a ruling that the services may still be provided to the child;
 6. Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
 7. Is not required to convene an IEP Team meeting or develop an IEP for the child for further provision of special education and related services.
- e) Parental consent for reevaluations.
- i. Each BIE-funded school:
 1. Must obtain informed parental consent prior to conducting any reevaluation of a child with a disability.

2. If the parent refuses to consent to the reevaluation, the BIE-funded school may, but is not required to, pursue the reevaluation by using mediation or due process procedures.
 3. If the parent refuses to consent to the reevaluation, the BIE-funded school does not violate its obligation under Evaluation, Reevaluations, Determination of Eligibility and Child Find.
 - ii. The informed parental consent does need not be obtained if the BIE-funded school can demonstrate that:
 1. It made reasonable efforts to obtain such consent;
 2. The child's parent has failed to respond.
- f) Other consent requirements.
 - i. Parental consent is not required before a BIE-funded school:
 1. Reviews existing data as part of the child's evaluation or reevaluation; or
 2. Administering a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from parents of all children.
 - ii. In addition to the parental consent requirements described above, the BIE may require parental consent for other services and activities under this part if it ensures that the BIE-funded school establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.
 - iii. A BIE-funded school may not use a parent's refusal to consent to one service or activity (e.g., consent for initial evaluation, initial provision of service or reevaluation) to deny the parent or child any other service, benefit, or activity of the BIE-funded school.
 - iv. The BIE-funded school must maintain documentation of reasonable efforts to obtain parental consent for initial evaluations, to provide special education and/or related services for the first time, for reevaluations, and to locate the parents of wards of the State for initial evaluations. The documentation must include a record of the BIE-funded school's efforts, 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.

Independent Educational Evaluation (34 CFR § 300.502)

- a) General. Upon completion of an initial evaluation or reevaluation, a parent may request an independent educational evaluation if there is disagreement with the initial evaluation or a reevaluation provided by a BIE-funded school.
 - i. If a parent requests an independent educational evaluation, the BIE-funded school may ask the parent to explain why they object to the BIE's evaluation. However, the BIE cannot require such an explanation and will not delay either

providing the independent educational evaluation or initiating a due process hearing to defend the BIE's evaluation.

- b) A parent is entitled to only one independent educational evaluation at BIE's expense each time the BIE-funded school conducts an initial evaluation or reevaluation with which the parent disagrees.
- c) Such independent educational evaluation(s) are provided at no cost to the parent unless the BIE-funded school initiates a due process hearing to show that its evaluation is appropriate and a final determination to that effect is made following the hearing.
- d) Upon receipt of the parental request, the BIE-funded school must provide the parent with information about where an independent educational evaluation may be obtained and the criteria for independent educational evaluations.
- e) The BIE-funded school shall take steps to ensure that the independent educational evaluation is provided without undue delay. BOS schools have no later than 20 calendar days after receipt of the parental request for the independent educational evaluation. TCS have the flexibility to follow the timelines established by the geographic state where they are located. The school shall request the due process hearing.
- f) Any independent educational evaluation funded by the BIE-funded school shall:
 - i. Be conducted according to the same criteria as that used by the BIE-funded school when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation; and
 - ii. Be obtained from another public school district, educational services commission, jointure commission, a medical clinic or agency, or private practitioner, who is appropriately certified and/or licensed, where a license is required.
- g) For any independent educational evaluation, whether obtained through the BIE-funded school's expense or by the parent at private expense, the BIE-funded school permits the evaluator to observe the child in the classroom or other educational setting, as applicable.
- h) If an administrative order that an independent educational evaluation be conducted is received, the independent educational evaluation shall be obtained by the BIE-funded school in accordance with the decision or order of the administrative law judge, and the BIE-funded school must pay the cost of the independent educational evaluation.
- i) Whenever possible, the independent educational evaluation shall be completed, and a written report sent no later than 30 calendar days after the date the parent requests the independent educational evaluation. TCS have the flexibility to follow the timelines established by the geographic state where they are located. If the independent educational evaluation is funded by a BIE-funded school, the report is sent to the parents and to the BIE-funded school providing a report that summarizes, in writing, the procedures used, the assessments, any results, and the diagnostic impressions as well as educationally relevant recommendations for meeting any identified needs of the child.
- j) Any independent educational evaluation submitted to the BIE-funded school, including an independent educational evaluation obtained by the parent at private expense, must be considered in making decisions regarding special education and

related services and may be presented by any party as evidence at a hearing on a due process complaint regarding that child.

- i. Within 10 calendar days from the time the BIE-funded school receives the report of the independent educational evaluation, the IEP Team must reconvene and consider the independent educational evaluation and whether a new or amended IEP is appropriate. TCS have the flexibility to follow the timelines established by the geographic state where they are located.

Prior Written Notice (§ 300.503)

- a) A BIE-funded school must give a parent prior written notice (PWN) before it:
 - i. Proposes to initiate or to change the identification, evaluation, or educational placement of a child, or the provision of FAPE; or
 - ii. Refuses to initiate or to change the identification, evaluation, or educational placement of a child, or the provision of FAPE.
- b) All PWN to parents must:
 - i. Describe the action that the BIE-funded school proposes or refuses to take;
 - ii. Explain why the BIE-funded school is proposing or refusing to take the action;
 - iii. Describe each evaluation procedure, assessment, record, or report the BIE-funded school used in deciding to propose or refuse the action;
 - iv. Include a statement that parents have protections under the IDEA;
 - v. Inform parents how they can obtain a copy of the Notice of Procedural Safeguards;
 - vi. Include resources for parents to contact for help understanding their rights;
 - vii. Describe any other options that the child's IEP Team considered and the reasons why those options were rejected; and
 - viii. Provide a description of other factors that are relevant to the BIE-funded school's proposal or refusal.
- c) The PWN must be:
 - i. Written in a language that is understandable to the general public; and
 - ii. Provided in a parent's native language or other mode of communication that they use, unless it is clearly not feasible to do so.
 - iii. If the parent's native language or other mode of communication is not a written language, the BIE-funded school must ensure that:
 1. The PWN is translated orally or by other means in the parent's native language or other mode of communication;
 2. The parent understands the content of the PWN; and
 3. There is written evidence that these conditions have been met.

Opportunity to Examine Records; Parent participation in meetings (§ 300.501)

- a) Opportunity to examine records. The parents of a child with a disability must be afforded, in accordance IDEA's procedures, an opportunity to inspect and review all education records with respect to—
 - i. The identification, evaluation, and educational placement of the child; and

- ii. The provision of FAPE to the child.
- b) Parent participation in meetings.
 - i. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to—
 - 1. The identification, evaluation, and educational placement of the child; and
 - 2. The provision of FAPE to the child.
 - ii. Each BIE-funded school must provide advance notice consistent with 34 C.F.R. § 300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in IEP meetings and other related meetings concerned their child.
 - iii. A meeting does not include informal or unscheduled conversations involving BIE-funded school personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.
- c) Parent involvement in placement decisions.
 - i. Each BIE-funded school must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent’s child.
 - ii. The BIE-funded school must use consistent procedures to notify the parent of the meeting early enough to ensure they will have an opportunity to attend.
 - iii. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the BIE-funded school must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.
 - iv. A placement decision may be made by a group without the involvement of a parent, if the BIE-funded school is unable to obtain the parent’s participation in the decision. In this case, the BIE-funded school must have a record of its attempt to ensure their involvement.

Evaluations and Reevaluations (34 CFR §§ 300.301-300.306)

Before a child who is suspected of having a disability is placed in a special education program, an evaluation must be made in accordance with the IDEA to determine whether the child is a child with a disability. A BIE-funded school has the option to pursue the initial evaluation of a child using the procedural safeguards, including requesting a due process hearing, if a parent does not provide consent or fails to respond to a request to provide consent for an initial evaluation. 34 C.F.R. § 300.300 (a)(3).

Initial Evaluations (§ 300.301)

- a) General. A BIE-funded school must conduct a full and individual initial evaluation before provision of special education and related services to a child with a disability.

- b) Request for evaluation. Either a parent of a child or a BIE-funded school may initiate a request for an initial evaluation to determine if a child is a child with a disability.
- c) The initial evaluation must be conducted, and the eligibility determination made within 60 calendar days of receiving parental consent for the evaluation. TCS have the flexibility to follow the timelines established by the geographic state where they are located.
- d) Exception. The 60 calendar day time frame does not apply if:
 - i. The parent of a child repeatedly fails or refuses to produce the child for evaluation; or
 - ii. A child enrolls in a school of another public agency after the relevant time frame has begun, and prior to a determination of the child's previous public agency as to whether the child is a child with a disability.
- e) The exception only applies if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

Screening for Instructional Purposes Is Not Evaluation (§ 300.302)

- a) The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

Reevaluations (§ 300.303)

- a) General. A BIE-funded school must ensure that a reevaluation of each child with a disability is conducted in accordance with 34 C.F.R. §§ 300.304 through 300.311.
 - i. A reevaluation may occur if the school determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant reevaluation; or
 - ii. If the child's parent or teacher requests a reevaluation.
- b) Limitation
 - i. A reevaluation must occur once at least every three years, but not more than annually, unless the parent and the school agree otherwise.

Evaluation Procedures (§ 300.304)

- a) Notice. When a child is referred for an evaluation, the BIE-funded school must provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the BIE-funded school proposes to conduct.
- b) Conduct of evaluation. In conducting an evaluation, each BIE-funded school must:
 - i. Use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent that may assist in determining:
 - 1. Whether a child is a child with a disability and in determining the content of the child's IEP; and

2. Related to enabling the child to be involved in and progress in the general education curriculum or to participate in appropriate activities;
 - ii. Not use any single procedure as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child;
 - iii. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- c) Each BIE-funded school must ensure that:
 - i. Assessment and evaluation procedures including, but not limited to, tests and other evaluation materials used to assess the child:
 1. Are selected and administered so as not to be racially or culturally discriminatory; and
 2. Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer; and
 3. Any standardized tests that are administered:
 - a. Have been validated for the purpose(s) for which they are administered;
 - b. Are administered by licensed and/or certified trained and knowledgeable personnel; and
 - c. Are administered in accordance with any instructions provided by the producer of the assessment.
 - ii. Ensure that the child is assessed in all areas of suspected disability;
 - iii. Use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided; and
 - iv. Ensure that tests are selected, administered, and interpreted so that when a child has sensory, manual, or communication impairments, that the results accurately reflect the ability that procedure purports to measure, rather than the impairment, unless that is the intended purpose of the testing.
 - v. Assessments of children with disabilities who transfer from one BIE-funded school to another BIE-funded school in the same school year are coordinated between the two BIE-funded schools, as necessary and as quickly as possible to ensure completion of full evaluations.
- d) Required assessments may include:
 - i. An assessment in all areas related to the suspected disability; and
 - ii. An assessment of the child's attention skills, participation behaviors, communication skills, memory, and social relations with groups, peers, and adults.
 - iii. The school must thoroughly evaluate and provide a narrative description of the child's educational and developmental potential.
- e) Optional assessments include:

- i. A comprehensive health assessment by a licensed physician that identifies medical problems or constraints that may affect the child's education. The school nurse may add additional relevant health information from the child's school health records.
 - ii. A psychological assessment by a licensed school psychologist, licensed psychologist, or licensed educational psychologist, including an individual psychological examination.
 - iii. A home assessment that may be conducted by a nurse, psychologist, social worker, guidance or clarify- adjustment counselor, or teacher, that includes information on pertinent family history and the child's home situation and may include a home visit with the agreement of a parent or guardian.
- f) The evaluation is conducted by a multi-disciplinary Team of professionals consisting of a minimum of two members of the child study , where appropriate, other specialists who conduct the evaluation. A minimum of one evaluator must be knowledgeable in the area of the suspected disability.
- g) In evaluating a child with a disability, the evaluation must be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not they are commonly linked to the suspected disability or eligibility category.
- h) Assessment tools and strategies should provide relevant information that directly assists persons in determining the educational needs of the child.

Additional Requirements for Evaluations and Reevaluations (§ 300.305)

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

- annual goals set in the child's IEP, and to participate, as appropriate, in the general education curriculum.
- b) Requirements if additional data are needed. The BIE-funded school must administer such assessments and other evaluation measures as may be needed to produce the data identified under the review of existing evaluation data.
 - c) Requirements if additional data are not needed.
 - i. If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the BIE-funded school must notify the child's parents of
 - 1. The determination and the reason for the determination; and
 - 2. The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.
 - ii. The BIE-funded school is not required to conduct the assessment unless requested to do so by the child's parents.
 - d) Evaluations before change in eligibility.
 - i. A BIE-funded school must evaluate a child with a disability before determining that the child is no longer a child with a disability.
 - ii. An evaluation is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law where the school is geographically located.
 - iii. For a child whose eligibility terminates, the BIE-funded school must provide the child with a Summary of Performance, summary of the child's academic achievement and functional performance, which include recommendations on how to assist the child in meeting the child's postsecondary goals.

Determination of Eligibility (§ 300.306)

BIE-funded schools must evaluate children before the child receives special education services, subject to applicable parental notification and consent. Evaluation by licensed and/or certified and trained professionals must include multiple procedures (including reviewing existing evaluation data), be comprehensive, and be culturally appropriate. Parents and/or guardians may request an independent educational evaluation at public expense if the parents or guardians disagree with a specific BIE evaluation. The independent evaluator's qualifications must be at least equivalent to those established by the appropriate licensing and certification authorities of the State in which the BIE-funded school is located. Children receiving services must be re-evaluated at least once every three years. All evaluations and re-evaluations must be fully documented and a variety of materials must be reviewed and analyzed. Additional procedures for specific learning disability must also be adhered to.

- a) Each person conducting an assessment shall summarize in writing the results of the procedure and the diagnostic impressions and define in detail and in educationally relevant and common terms, the child's needs. The assessor(s) may provide their recommendations for the means of meeting the child specific needs but may not recommend specific classrooms, staff assignment, or schools.

- b) Within 60 calendar days of the parental consent for evaluation, a group of qualified professionals and the parent of the child will determine through consensus whether a child is a child with a disability and the educational needs of that child. TCS have the flexibility to follow the timelines established by the geographic state where they are located.
- c) The BIE-funded school provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent-
- d) Determinant factors. A child must not be determined to be a child with a disability if the determinant factor is:
 - i. Lack of appropriate instruction in reading, including the essential components of reading instruction; or
 - ii. Lack of appropriate instruction in math; or
 - iii. Limited English proficiency.
- e) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed in accordance with 34 C.F.R. §§ 300.320 through 300.324.

Additional Procedures for Identifying Children with Specific Learning Disability (34 CFR §§ 300.307-300.310)

Specific Learning Disabilities (§ 300.307)

- a) General. The BIE adopts the criteria established by the geographical State of the BIE-funded school for determining whether a child has a specific learning disability and:
 - i. Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability as defined in § 300.8(c)(10);
 - ii. Must permit the use of a process based on the child's response to scientific, research-based intervention; and
 - iii. May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability.
- b) BIE-funded schools must use the criteria adopted by the geographical State of the BIE-funded school in determining whether a child has a specific learning disability.

Additional group members (§ 300.308)

- a) The determination of whether a child suspected of having a specific learning disability is a child with a disability must be made by the child's parents and Team of qualified professionals, who must include:
 - i. The child's general education teacher; or
 - ii. If the child does not have a general education teacher, a general classroom teacher qualified to teach a child of his or her age; or

- iii. For a child of less than school age, an individual qualified by the BIE to teach a child of his or her age; and
- iv. At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

Determining the existence of a specific learning disability (§ 300.309)

- a) The group of qualified professionals and the parent of the child may determine that a child has a specific learning disability if:
 - i. The child does not achieve adequately for the child's age or to meet BIE-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or BIE-approved grade-level standards:
 - a. Oral expression.
 - b. Listening comprehension.
 - c. Written expression.
 - d. Basic reading skill.
 - e. Reading fluency skills.
 - f. Reading comprehension.
 - g. Mathematics calculation.
 - h. Mathematics problem solving.
 - i. The child does not make sufficient progress to meet age or grade-level standards in one or more of the areas identified when using a process based on the child's response to scientific, research-based intervention; or
 - j. The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments; and
 - k. The group determines that its findings are not primarily the result of:
 - l. A visual, hearing, or motor disability;
 - m. An intellectual disability;
 - n. Emotional disturbance;
 - o. Cultural factors;
 - p. Environmental or economic disadvantage; or
 - q. Limited English proficiency.
- b) To ensure that underachievement in a child 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:
 - i. Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in general education settings, delivered by qualified personnel; and

- ii. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of the child's progress during instruction, which was provided to the child's parents.
- c) The BIE-funded school must promptly request parental consent to evaluate the child to determine if the child needs special education and related services and must adhere to a 60 calendar day evaluation time frame, unless extended by mutual written agreement of the child's parents and a group of qualified professionals. TCS have the flexibility to follow the timelines established by the geographic state where they are located.

Observation (§ 300.310)

- a) The BIE-funded school must ensure that the child is observed in the child's learning environment (including the general classroom setting) to document the child's academic performance and behavior in the areas of difficulty.
- b) The group, in determining whether a child has a specific learning disability, must decide to:
 - i. Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
 - ii. Have at least one member of the group of qualified professional conduct an observation of the child's academic performance in the general classroom after the child has been referred for an evaluation and parental consent has been obtained.
- c) In the case of a child of less than school age or who is out of school, a member of the group of qualified professionals must observe the child in an environment appropriate for a child of that age.

Specific documentation for the eligibility determination (§ 300.311)

- a) For a child who is suspected of having a specific learning disability, the documentation of the determination of eligibility must contain a statement of:
 - i. Whether the child has a specific learning disability;
 - ii. The basis for making the determination, including an assurance that the determination has been made;
 - iii. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
 - iv. The educationally relevant medical findings, if any;
 - v. Whether the child does not achieve adequately for the child's age or to meet BIE-approved grade-level standards identified at <https://www.bie.edu/landing-page/standards-assessments>; and
 - 1. Whether the child does not make sufficient progress to meet age or BIE-approved grade-level standards; or
 - 2. The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, BIE-approved grade level standards or intellectual development;

- vi. The determination of the group concerning the effects of a visual, hearing, motor, or intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
 - vii. If the child has participated in a process that assesses the child's response to scientific, research-based intervention:
 - 1. The instructional strategies used and the student-centered data collected; and
 - 2. The documentation that the child's parents were notified about:
 - a. The amount and nature of child performance data collected and the general education services provided;
 - b. Strategies for increasing the child's rate of learning; and
 - c. The parents' right to request an evaluation.
- b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

Individualized Education Programs, Development of IEP & Least Restrictive Environment (34 C.F.R. §§ 300.320-300.323, §§ 300.324-300.328, §§ 300.114-300.120, § 300.533, § 300.536)

To the greatest extent possible, children with disabilities should be educated along with non-disabled children and in the least restrictive environment (LRE). Upon placement in any special education program, a written Individualized Education Program (IEP) should be developed that identifies current levels of achievement; a statement of measurable annual goals and how these goals will be measured and they will meet the child's educational needs; description of services that will be provided; the extent to which the child will not participate with non-disabled children; any necessary accommodations and/or modifications; and a projected timeline of services. Goals and objectives are developed and implemented for children taking the alternate assessment.

Individualized Education Program (§ 300.320)

- a) General. The IEP is a written statement for each child with a disability that is developed, reviewed, and revised in a meeting. A meeting to develop the IEP must be held within 30 calendar days of a determination that a child is eligible for special education and related services. TCS have the flexibility to follow the timelines established by the geographic state where they are located. An IEP must be in effect before special education and related services are provided to a child with a disability and the IEP should be implemented as soon as possible following the IEP meeting.
- b) Requirements. An IEP must include:
 - i. A statement of the child's present levels of academic achievement and functional performance, including:

1. How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
2. For preschool children, as appropriate, how the disability affects the child's participation in their age appropriate activities;
- ii. A statement of measurable annual goals, including academic and functional goals designed to:
 1. Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
 2. Meet each of the child's other educational needs that result from the child's disability.
 3. For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives;
- iii. A description of:
 1. How the child's progress toward meeting the annual goals will be measured; and
 2. When periodic reports on the progress the child 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;
- iv. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:
 1. To advance appropriately toward attaining the annual goals;
 2. To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and
 3. To be educated and participate with other children with disabilities and nondisabled children;
- v. An explanation of the extent, if any, to which the child will not participate with nondisabled children in the general education class and in activities;
- vi. A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on assessments; and if the IEP Team determines that the child must take the BIE alternate assessment instead of the BIE English Language Arts and Math assessment, a statement of why:
 1. The child cannot participate in the BIE ELA and Math regular assessment; and
 2. The particular BIE alternate assessment selected is appropriate for the child; and

- vii. The projected date for the beginning of the services and modifications, and the anticipated frequency, location, and duration of those services and modifications.
 - 1. The IEP Team also determines if a child is eligible for Extended School Year (ESY) services. The IEP Team should continue to utilize BIE's existing guidance regarding ESY services (Bureau of Indian Education Extended School Year Special Education Guidance Document, May 2016).
- c) Transition of services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger, if determined appropriate by the IEP Team, or if the school follows the state's requirement in which they are geographically located and that requirement is younger than age 16, and updated annually, thereafter, the IEP must include:
 - i. Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
 - ii. The transition services (including courses of study) needed to assist the child in reaching those goals.
- d) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the legal age of majority in the state where the school is located, the IEP must include a statement that the child and child's parent have been informed of the child's rights, if any, that will transfer to the child when they reach the age of majority.
- e) Nothing in this document shall be construed to require:
 - i. That additional information is included in a child's IEP beyond what is explicitly required under the IDEA; or
 - ii. The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

The IEP Team (§ 300.321)

- a) General. The IEP Team, includes the child's parents, is responsible for developing a legal written document that details the specific information about the child's disability and how that disability impacts their ability to access the general education curriculum, needs of the child, and how those needs will be addressed in both instruction and assessment. As part of that process, the Team describe the child's present level of academic achievement and functional performance (PLAAFP) and based on that information, then determine individual need and how those needs will be addressed in both instruction and assessment. The team determines whether the child will receive appropriate services. That is (either expand by adding modifications/supplementary aids and services, etc. or delete the following) selects accommodations that address those needs and provide the child equitable access to grade-level instruction. The team must determine which of those selected accommodations are allowable in the BIE English Language Arts (ELA) and Math Spring Assessment (or the required standardized assessments). Accommodations that meet the criteria for use in assessments are usually referenced separately in the IEP. The IEP process is completed within 30 calendar days of the eligibility determination.

TCS have the flexibility to follow the timelines established by the geographic state where they are located.

- b) Requirements. The IEP is developed by the IEP Team. Each BIE-funded school shall ensure that the IEP Team each child with a disability includes:
 - i. The parents or guardians of the child;
 - ii. Not less than one general education teacher of the child (if the child is, or may be, participating in the general education environment);
 - iii. Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
 - iv. A representative of the BIE-funded school who:
 - 1. Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - 2. Is knowledgeable about the general education curriculum; and
 - 3. Is knowledgeable about the availability of resources of the BIE-funded school.
 - v. An individual who can interpret the instructional implications of evaluation results, who may be a member of the Team;
 - vi. At the discretion of the parent or the BIE-funded school, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
 - vii. Whenever appropriate, the child with a disability.
- c) Transition services participants.
 - i. The BIE-funded school must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals.
 - ii. If the child does not attend the IEP Team meeting, the BIE-funded school must take other steps to ensure that the child's preferences and interests are considered.
 - iii. To the extent appropriate, with the consent of the parents or a child who has reached the legal age of majority, the BIE-funded school must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.
- d) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual must be made by the party (parents or BIE-funded school) who invited the individual to be a member of the IEP Team. The parent may invite an advocate at their discretion. If the parent or BIE-funded school determines that the child's friend, relative, or mentor can provide helpful knowledge about the child with a disability, that person can attend the IEP meeting. If an official from another agency is invited, the team member inviting the person must obtain parental consent (or consent from a child who has reached the age of majority) for the person to participate in the IEP meeting. The BIE-funded school may designate a member of the IEP Team to serve as the BIE-funded school representative.
- e) IEP Team attendance.

- i. A member of the IEP Team is not required to attend an IEP Team meeting, in whole or in part, if the parent of the child 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.
- ii. 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:
 1. The parent, in writing, and the BIE-funded school consent to the excusal; and
 2. The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

Parent Participation at IEP (§ 300.322)

- a) General. Each BIE-funded school must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including:
 - i. Notifying parents of the meeting early enough for them to participate, ten days in advance of meeting is generally recommended, to ensure that they will have an opportunity to attend; and
 - ii. Scheduling the meeting at a mutually agreed upon time and place, which may include hosting a remote meeting online or via phone, when necessary.
- b) Requirements.
 - i. Each notice sent to parents must:
 1. Indicate the purpose, time, and location of the meeting and who will be in attendance; and
 2. Inform the parents of the participation of any other individuals on the IEP Team who have knowledge or special expertise about the child or other representatives of the system at the initial IEP Team meeting for a child who has been previously served.
 - ii. For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must:
 1. Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child; and
 2. The BIE-funded school will invite the student to the meeting; and
 3. Identify any other agency that will be invited to send a representative to the meeting.
- c) Other methods to ensure parent participation. 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 or web-enabled conference, consistent with alternative means of meeting participation. Parents may also be given the opportunity to provide feedback or child input in writing, for the Team consider at a meeting.
- d) Conducting an IEP Team meeting without a parent in attendance. A meeting may generally be conducted without a parent in attendance if the BIE-funded school is

unable to convince the parents that they should attend the meeting. 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:

- i. Detailed records of telephone calls made or attempted and the results of those calls;
 - ii. Copies of correspondence sent to the parents and any responses received; and
 - iii. Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- e) Use of interpreters or other action, as appropriate. 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, unless it is clearly not feasible to do so.
- f) Parent copy of child's IEP. The BIE-funded school must give the parent a copy of the child's IEP at no cost to the parent.

When IEPs Must Be in Effect (§ 300.323)

- a) General. At the beginning of each school year, each BIE-funded school must have in effect, for each child with a disability enrolled within the BIE-funded school, an IEP.
- b) Initial IEPs; provision of services. Each BIE-funded school must ensure that:
 - i. A meeting to develop an IEP for a child is conducted within 30 calendar days of the eligibility determination that the child needs special education and related services; and
 - ii. As soon as possible following development of the IEP, after the date of the meeting, special education and related services are made available to the child in accordance with the child's IEP.
- c) Accessibility of an IEP to teachers and others. The BIE-funded school must ensure that:
 - i. The IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and
 - ii. Each teacher and/or service provider is informed of their specific responsibilities related to implementing the child's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.
- d) IEPs for children who transfer between public agencies. If a child with a disability (who had an IEP that was in effect in a previous public agency) transfers to a BIE-funded school within the same school year, the BIE-funded school (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the BIE-funded school either:
 - i. Adopts the child's IEP from the previous public agency; or
 - ii. Develops, adopts, and implements a new IEP that meets the applicable requirements.
- e) IEPs for children who transfer from another state. If a child with a disability (who had an IEP that was in effect in a previous public agency in another state education

agency or state) transfers to a BIE-funded school, within the same school year, the BIE-funded school (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the BIE-funded school:

- i. Conducts an evaluation (if determined to be necessary by the transferred to BIE-funded school new public agency); and
 - ii. Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements.
- f) Transmittal of records. To facilitate the transition for a child, the BIE-funded school must take reasonable steps to promptly obtain the child's records, including the IEP, the consent of initial services and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled.

Development, review, and revision of the IEP (§ 300.324)

- a) Development of IEP
- i. In developing each child's IEP, the IEP Team must consider:
 1. The strengths of the child;
 2. The concerns of the parent and/or child for enhancing the education of their child;
 3. The results of the initial or most recent evaluation of the child; and
 4. The academic, developmental, and functional needs of the child.
 - ii. Consideration of special factors. The IEP Team must:
 1. In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
 2. In the case of a child identified as an English Language Learner with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
 3. In the case of a child 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 child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child'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 child;
 4. Consider the communication needs and preferences of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, communication preferences, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

5. Consider whether the child needs assistive technology devices and services.
- iii. A requirement with respect to general education teacher. A general education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of:
 1. Appropriate positive behavioral interventions and supports and other strategies for the child; and
 2. Supplementary aids and services, program modifications, and support for school personnel.
- iv. Amendments. Changes to the IEP may be made by the IEP Team at an IEP Team meeting by amending the IEP rather than by developing a new IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.
- v. Agreement for amendments.
 1. In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child 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 child's current IEP.
 2. If changes are made to the child's IEP, the BIE-funded school must ensure that the child's IEP Team is informed of those changes.
- vi. To the extent possible, the BIE-funded school must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.
- b) Review and revision of IEPs. The BIE-funded school must ensure that each member of an IEP Team:
 - i. Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved or if they should be revised; and
 - ii. Revises the IEP, as appropriate, to address:
 1. Any lack of expected progress toward the annual goals, and in the general education curriculum, if appropriate;
 2. The results of any reevaluation conducted;
 3. Information about the child provided to, or by, the parents; or
 4. The child's anticipated needs; or
 5. Other matters.
 - iii. In conducting a review of the child's IEP, the IEP Team must consider the child's special factors.
 - iv. Requirement with respect to general education teachers. A general education teacher of the child, as a member of the IEP Team, must participate in the review and revision of the IEP of the child.
- c) Failure to meet transition objectives
 - i. If a participating agency, 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 child, as defined in the IEP.

- ii. Nothing in this part relieves any participating agency, including a state or Tribal vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

Private School Placements by Public Agencies (§ 300.325)

- a) General. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and special classes, separate schooling, or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- b) Developing IEPs.
 - i. Before the BIE-funded school places a child with a disability in, or refers a child to, a private school or facility, the BIE-funded school must initiate and conduct a meeting to develop an IEP for the child.
 - ii. The BIE-funded school must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the BIE-funded school must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.
- c) Reviewing and revising IEPs.
 - i. After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the BIE-funded school.
 - ii. If the private school or facility initiates and conducts these meetings, the BIE-funded school must ensure that the parents and a representative of the BIE-funded school:
 1. Are involved in any decision about the child's IEP; and
 2. Agree to any proposed changes in the IEP before those changes are implemented.
- d) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the BIE-funded school and the BIE.

Educational Placements (§ 300.327)

- a) The BIE-funded school must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

Alternative Means of Meeting Participation (§ 300.328)

- a) When conducting IEP Team meetings and placement meetings and carrying out administrative matters (e.g., scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and the BIE-funded school may agree to use alternative means of meeting participation, such as video conferences and/or conference calls.

LRE Requirements (§ 300.114)

- a) Least restrictive environment (LRE) means that placement of children with disabilities in special classes, separate schools and other removal from the general educational environment occurs only when the nature or severity of the disability is such that, even with the use of supplementary aids and services, education cannot be satisfactorily achieved. The placement of an individual child with a disability in the LRE must:
 - i. Provide the special education needed by the child;
 - ii. Provide for education of the child to the maximum extent appropriate, with other children who do not have disabilities; and
 - iii. Be as close as possible to the child's home and, unless the child's IEP requires some other arrangement, the child must be educated in the school they would have attended if not disabled.
- b) Each BIE-funded school must ensure that:
 - i. To the maximum extent appropriate, a child with a disability is educated with children who are not disabled;
 - ii. Special classes, separate schooling or other removal of a child with a disability from the child's general education class occurs only when the nature or severity of the educational disability is such that education of the child in a general education classroom with the use of appropriate supplementary aids and services cannot be achieved satisfactorily.
 - iii. The BIE-funded school shall provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.
 - iv. A BIE-funded school may not be required to place a child in a general education classroom when the child:
 - 1. Engages in dangerous conduct requiring intensive counseling and supports.
 - 2. Will not receive a sufficient educational benefit in a general education classroom, even with the provision of supplementary aids and services.
 - 3. Requires so much of the teacher's time and attention that their presence substantially interferes with the learning of others in the classroom.
 - 4. Threatens the safety of other children or poses a danger to himself.
 - 5. Engages in significantly disruptive behavior that interferes with the education of classmates.
 - 6. Will require so much modification in the curriculum that the general education program has to be altered beyond recognition.

7. Made earlier progress in the general education setting, but that progress was the result of intensive one-to-one instruction.
8. Has intensive academic needs that cannot be met in a general education classroom.
9. Has been in a special education classroom for only a brief time, and therefore there hasn't been time to collect sufficient data to determine whether the child is succeeding there.

Continuum of Alternative Placements (§ 300.115)

- a) General. There must be a continuum of alternative placements available to meet the needs of children with disabilities for special education and related services.
- b) The continuum of alternative placements must:
 - i. Include the alternative placements listed in the definition of special education (instruction in general education classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and
 - ii. Make provisions for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with general education class placement.

Placements (§ 300.116)

- a) In determining the educational placement of a child with a disability, the BIE-funded school must ensure that the placement decision is made by the IEP Team and conforms with LRE.
- b) The child's placement –
 - i. Is determined annually
 - ii. Is based on the child's IEP and
 - iii. Is as close as possible to the child's home.
- c) Unless the IEP of a child with a disability requires some other arrangement, which may include an off-reservation boarding school, the child is educated in the school that they would attend if nondisabled;
- d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that they need; and
- e) A child with a disability is not removed from education in age-appropriate general education classrooms solely because of needed modifications in the general education curriculum.

Nonacademic Settings (§ 300.117)

- a) In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and other services and activities, the BIE-funded school must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The BIE-funded school must ensure that each child with a disability has the supplementary aids and services

determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

Children in Public or Private Institutions (§ 300.118)

- a) The BIE-DPA must ensure that LRE requirements is effectively implemented, including, if necessary, making necessary arrangements with other public and private institutions (such as a memorandum of agreement or special implementation procedures).

Technical Assistance and Training Activities (§ 300.119)

- a) The BIE must ensure that teachers and administrators in all BIE-funded schools are fully informed about their IDEA responsibilities and that they are provided with technical assistance and any training that is necessary to assist them in this effort.

Monitoring Activities (§ 300.120)

- a) The BIE-DPA must ensure that LRE requirements are implemented by each BIE-funded school.
- b) If there is evidence that a BIE-funded school makes placements that are inconsistent with LRE requirements, the BIE-DPA must—
 - i. Review the BIE-funded school's justification for its action(s); and
 - ii. Assist in planning and implementing any necessary corrective action(s).

Dispute Resolution (34 CFR §§ 300.506- 300.518 & 300.151-153)

If a parent and a BIE-funded school have a dispute regarding a child's access to and receipt of a free appropriate public education to which a child with a disability is entitled, or any of the applicable IDEA regulations and requirements, it is BIE's policy to use the following dispute resolution system to promote the resolution of a dispute.

The BIE's dispute resolution procedures include 1. mediation, 2. State complaint procedures and 3. due process complaints and due process hearing procedures. BIE-funded schools must provide model forms for filing State complaints and due process complaints. These forms are also posted to the BIE website at <https://www.bie.edu/topic-page/dispute-resolution>.

Mediation (§ 300.506)

- a) General. The BIE must ensure that mediation procedures are established and implemented to allow parties in disputes involving any matter regarding Part B of the Individuals with Disabilities Education Act (IDEA) to engage in mediation at no cost. The mediation procedures are described in the BIE's procedural safeguards and can

be used at any time or throughout the timeline involving a dispute related to IDEA Part B, including prior to filing a complaint.

- b) Requirements. The procedures must meet the following requirements:
- i. The procedures must ensure that the mediation process:
 1. Is voluntary on the part of the parties;
 2. Is not used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under Part B of IDEA;
 3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques; and
 4. Is timely and convenient so that 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, which may include online or alternate remote means. For parents who choose not to use the mediation process, a BIE-funded school will provide for these parents an opportunity to meet at a time and location convenient to the parents, with a neutral/impartial disinterested party:
 - a. Who is under contract with an appropriate alternative dispute resolution entity, a parent training and information center, or a community parent resource center as identified with BIE's procedural safeguards; and
 - b. Who can explain the benefits of and encourage the use of the mediation process to the parents.
 - ii. The BIE maintains a list of individuals who are qualified mediators who are knowledgeable in laws and regulations relating to the provision of special education and related services.
 1. The BIE-DPA selects mediators on a random, rotational, or other impartial basis. Both parties must be involved in selecting the mediator and agree with the selection of the individual who will mediate the dispute, from the BIE provided list of mediators.
 - iii. The BIE will bear the costs of the mediation process, including the cost of meetings between parents and neutral/impartial disinterested parties, even when parents later choose not to move forward with the mediation process.
 - iv. Each session in the mediation process must be scheduled in a timely manner, generally not more than 10 days after a written request is received and must be held in a location that is convenient to the parties in the dispute.
 1. An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.
 2. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and:
 - 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. The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process; and

- b. Is signed by both the parent and a representative of the BIE-funded school administrator who has the authority to bind the school to the agreement.
- 3. A written, signed mediation agreement is enforceable in any court of competent jurisdiction or in a district court of the United States.
- c) Impartiality of mediator.
 - i. An individual who serves as a mediator:
 - 1. May not be an employee of the BIE or a BIE-funded school that is involved in the education or care of the child; and
 - 2. Must not have a personal or professional interest that conflicts with the person's objectivity.
 - ii. A person who otherwise qualifies as a mediator is not an employee of the BIE or BIE-funded school solely because they are paid by the BIE to serve as a mediator.

Filing a Due Process Complaint (§ 300.507)

- a) General. 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 child with a disability, or the provision of FAPE to the child.
- b) Requirements. The due process complaint must allege a violation that occurred not more than two 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.
- c) Information for Parents. The BIE-DPA must inform the parent of any free or low-cost legal and other relevant services available in the area if—
 - i. The parent requests the information; or
 - ii. The parent or the BIE-funded school files a due process complaint.

Due Process Complaint (§ 300.508)

- a) General.
 - i. In order to request a hearing, a parent or the BIE-funded school (parent's attorney or the BIE-funded school attorney) must submit a written request for a due process hearing to the other party. That request for a due process hearing must contain all the content listed below and must be kept confidential.
 - ii. The parent or the BIE-funded school, whichever one filed the complaint, must also provide a copy of the due process complaint to the BIE-DPA. The complaint is filed once received by BIE-DPA.
- b) Content of the complaint. The due process complaint must include:
 - i. The name of the child;
 - ii. The address of the child's residence;
 - iii. The name of the child's school;
 - iv. If the child is a homeless child or youth, the child's contact information and the name of the school the child is attending;

- v. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; and
 - vi. A proposed resolution of the problem to the extent known and available to parent or the BIE-funded school at the time.
- c) Notice required before a hearing on a due process complaint.
- i. The parent or the BIE-funded school may not have a due process hearing until the parent or the BIE-funded school, or the parent's attorney or the BIE-funded school's attorney, files a due process complaint that includes the information listed above.
- d) Sufficiency of complaint.
- i. In order for a request for a due process hearing to go forward, it must be considered sufficient. The request for a due process hearing will be considered sufficient (to have met the content requirements above) unless the party receiving the request for a due process hearing (the parent or the BIE-funded school) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the request for a due process hearing, that the receiving party believes that the request for a due process hearing does not meet the sufficiency requirements listed above.
 - ii. Within five calendar days of receiving the notification regarding sufficiency, the hearing officer must decide if the request for a due process hearing meets the requirements listed above and notifies the parent and the BIE-funded school in writing immediately.
 - iii. The parent or the BIE-funded school may amend the due process complaint only if:
 - 1. The other party approves of the changes in writing and is given the chance to resolve the concerns in the due process hearing request through a resolution meeting; or
 - 2. By no later than five calendar days before the due process hearing begins, the hearing officer grants permission for the changes.
 - iv. If a party makes changes to the complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the request for a due process hearing) start again on the date the amended request for a due process hearing is filed. The general due process timelines may be extended during periods of national emergency, if the parties mutually agree to the necessity of the delay and to a revised timeframe.
- e) BIE-funded school response to a due process complaint.
- i. If the BIE-funded school has not sent a prior written notice to the parent regarding the subject matter contained in the due process complaint, the BIE-funded school must, within 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 request for a due process hearing;
 - 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 BIE's funded school proposed or refused action.
 - ii. Providing the information in items above does not prevent the BIE-funded school from asserting that the parent's due process complaint was insufficient, where appropriate.
- f) Other party response to a request for a due process hearing.
 - i. The party receiving a request for a due process hearing must, within 10 calendar days of receiving the request for a due process hearing, send the other party a response that specifically addresses the issues in the request for a due process hearing. This response must also be sent to the BIE; the BIE's Dispute Resolution points of contact can be found at: <https://www.bie.edu/topic-page/dispute-resolution>.

Model Forms (§ 300.509)

- a) The BIE-DPA must develop model forms to assist parents and BIE-funded schools in filing a due process complaint and to assist parents and other parties in filing a State complaint. However, the BIE-DPA and BIE-funded schools may not require the use of the model forms. These forms are also posted to the BIE website at <https://www.bie.edu/topic-page/dispute-resolution>.
- b) 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 in filing a due process complaint, or the requirements for filing a State complaint.

Resolution Process (§ 300.510)

- a) Resolution meeting.
 - i. Within 15 calendar 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 resolution session meeting with the parent and the relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the complaint that:
 1. Includes a school administrator from the BIE-funded school who has decision-making authority; and
 2. May not include an attorney of the BIE-funded school unless the parent is accompanied by an attorney.
 - ii. 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.
 - iii. The resolution meeting need not be held if:
 1. The parent and the BIE-funded school agree in writing to waive the meeting; or

2. The parent and the BIE-funded school agree to use the mediation process instead of the meeting.
- iv. The parent and the BIE-funded school determine the relevant IEP Team members to attend the meeting.
- b) Resolution period.
 - i. If the BIE-funded school has not resolved the complaint to the satisfaction of the parent within 30 calendar days of the receipt of the complaint, the due process hearing may occur.
 - ii. The timeline for issuing a final decision begins at the end of this 30-calendar-day time period.
 - iii. The failure of the parent to participate in the resolution meeting that has not been mutually agreed upon to be waived will delay the timelines for the resolution process and due process hearing until the resolution meeting is held.
 - iv. If the BIE-funded school is unable to obtain the participation of the parent after reasonable efforts have been made and documented, the BIE-funded school may, at the conclusion of the 30-calendar day period, request the hearing officer dismiss the parent's due process complaint.
 - v. If the BIE-funded school fails to hold the resolution meeting in 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.
- c) Adjustments to 30-day resolution period.

The 45-day timeline for the due process hearing starts the day after one of the following events occurs:

 - i. Both parties agree in writing to waive the resolution meeting.
 - ii. After either the mediation or resolution meeting starts but before the end of the 30-day resolution period, the parties agree in writing that no agreement is possible.
 - iii. If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later one party withdraws from the mediation process.
- d) Written Settlement Agreement. If a resolution to the dispute is reached at the resolution meeting, the parties must execute a legally binding agreement that is:
 - i. Signed by both the parent and the BIE-funded school representative who has authority to bind the BIE-funded school; and
 - ii. Enforceable in any court of competent jurisdiction, or a District court of the United States.
- e) Agreement Review Period. Either party may void the agreement within three business days of the agreement's execution.

Impartial Due Process Hearing (§ 300.511)

- a) General. Whenever a due process complaint is received, the parents or the BIE-funded school must have an opportunity for an impartial due process hearing.
- b) The hearing is conducted by the Office of Hearing and Appeals and BIE-DPA provides general oversight.
- c) Impartial hearing officer. At a minimum, a hearing officer must not be—

- I. An employee of the BIE or the BIE-funded school that is involved in the education or care of the student; or
 - II. A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;
 - i. Must possess knowledge of and the ability to understand the provisions of the IDEA, Federal regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;
 - ii. Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
 - iii. Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.
 - ii. A person who otherwise qualifies to conduct a hearing is not an employee of the BIE solely because he or she is paid by the BIE to serve as a hearing officer.
 - iii. The BIE-DPA maintains a list of the persons who serve as IDEA hearing officers. The list includes a statement of the qualifications of each of those persons.
- d) Subject matter of due process hearings. 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.
- e) Timeline for requesting a hearing. A parent or the BIE-funded school must request an impartial hearing on their due process complaint within two 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.
- f) Exceptions to the timeline. The timeline does not apply to a parent if the parent was prevented from filing a due process complaint due to:
- i. Specific misrepresentations by the BIE-funded school that it had resolved the problem forming the basis of the due process complaint; or
 - ii. The BIE-funded school's withholding of information from the parent that was required under this part to be provided to the parent.

Hearing Rights (§ 300.512)

- a) General. Any party to a hearing or an appeal has the right to:
 - i. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except when parties have the right to be represented by non-attorneys at due process hearings as determined under law;
 - ii. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
 - iii. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing; and
 - iv. Obtain a written, or at the option of the parents, electronic verbatim record of the hearing and findings of fact and decisions.
- b) Additional disclosure of information.
 - i. At least five 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.
- ii. A hearing officer may prevent any party from introducing the relevant evaluation or recommendation not disclosed at least five business days prior to the hearing at the hearing without the consent of the other party.
- c) Parental rights at hearings. Parents involved in hearings must be given the right to:
 - i. Have the child who is the subject of the hearing present;
 - ii. Open the hearing to the public; and
 - iii. Have the record of the hearing and the findings of fact and decisions provided at no cost to parents.

Hearing Decisions (§ 300.513)

- a) Decision of hearing officer on the provisions of FAPE.
 - i. A hearing officer's determination of whether the child received FAPE must be based on substantive grounds.
 - ii. In matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies:
 - 1. Impeded the child right to FAPE;
 - 2. Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or
 - 3. Caused a deprivation of educational benefit.
- b) Nothing shall be construed to preclude a hearing officer from ordering a BIE-funded school to comply with procedural requirements or to prevent the right of a parent to file an appeal of the due process hearing decision with the BIE-DPA, if a State level appeal is available.
- c) Separate request for a due process hearing.
 - i. A parent has the right to file a separate due process complaint on an issue that differs from a due process complaint already filed.
- d) Findings and decisions. The BIE-DPA, after deleting any personally identifiable information, must:
 - i. Transmit the findings and decisions on the due process complaint to the BIE Special Education Advisory Board for Exceptional Students; and
 - ii. Make the findings and decisions available to the public.

Finality of Decisions; Appeal; Impartial Review (§ 300.514)

- a) Finality of hearing decision. A decision made in a hearing is final, except that any party involved in the hearing may appeal the decision under the provisions concerning Civil Action.
- b) Appeal of decisions; impartial review.
 - i. If a hearing is conducted by a public agency other than the BIE-DPA, any party aggrieved by the findings and decision in the hearing may appeal to the BIE-DPA.
 - ii. If there is an appeal, the BIE-DPA must conduct an impartial review of the findings and decision appealed. The official conducting the review must:

1. Examine the entire hearing record;
 2. Ensure that the procedures at the hearing were consistent with the requirements of IDEA due process hearings; and
 3. Seek additional evidence if necessary. If a hearing is held to receive additional evidence, then the hearing must:
 4. Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
 5. Make an independent decision on completion of the review; and
 6. Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.
- c) Findings and decision to advisory panel and general public. The BIE-DPA, after deleting any personally identifiable information, must:
- i. Transmit the findings and decisions referred to the Special Education Board for Exceptional Students and
 - ii. Make those findings and decisions available to the public and posted on BIE's website.
- d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action.

Timelines and Convenience of Hearings and Reviews (§ 300.515)

- a) The BIE-DPA must ensure that not later than 45 calendar days after the expiration of the 30-calendar-day resolution period, or the adjusted time periods resulting from the resolution process:
 - i. A final decision is reached in the hearing; and
 - ii. A copy of the decision is mailed to each of the parties.
- b) The BIE-DPA must ensure that no later than 30 calendar days after the receipt of a request for a review:
 - i. A final decision is reached in the review; and
 - ii. A copy of the decision is mailed to each of the parties.
- c) A hearing officer may grant specific extensions of the timelines in a) and b) above at the request of either party.
- d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

Civil Action (§ 300.516)

- 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 Federal court.
- b) The party bringing the action shall have 90 calendar days from the date of the decision of the hearing officer to file a civil action, or the time limit allowed under law.
- c) In any civil action, the court:
 - i. Receives the records of the administrative proceedings;
 - ii. Hears additional evidence at the request of a party; and

- iii. Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.
- d) The district courts of the United States have jurisdiction of actions brought under the procedural safeguards of IDEA without regard to the amount in controversy.
- e) 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 individuals 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 the Act.

Attorneys' Fees. (§ 300.517)

- a) In any action or proceeding brought under BIE's procedural safeguards, the court, in its discretion, may award reasonable attorneys' fees as part of the costs:
 - i. To the prevailing party who is the parent of a child with a disability;
 - ii. 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
 - iii. 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.
- b) 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.
- c) A court awards reasonable attorneys' fees consistent with the following:
 - i. 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. No bonus or multiplier may be used in calculating the fees awarded.
 - 1. 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.
- d) 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. Attorneys' fees may not be awarded, and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent if:
 - i. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
 - ii. The offer is not accepted within 10 days; and

- iii. 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.
- e) 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.
- f) The court reduces, accordingly, the amount of the attorneys' fees awarded if the court finds that:
 - i. The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
 - ii. 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;
 - iii. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
 - iv. The attorney representing the parent did not provide the BIE-funded school appropriate information in the due process request notice.
- g) 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.

Child's Status During Proceedings (§ 300.518)

- a) 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 child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.
- b) If the complaint involves an application for initial admission to a BIE-funded school, the child, with the consent of the parents, must be placed in the BIE-funded school until the completion of all the proceedings.
- c) If the decision of a hearing officer in a due process hearing conducted by the BIE agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the BIE and the parents.

State Complaint Procedures & Filing a State Complaint (§ 300.151-300.153)

An IDEA complaint is a formal written statement submitted to the BIE by an individual or organization that contains one or more allegations that a BIE-funded school has violated a requirement of Part B of the IDEA.

- a) An individual or organization filing a complaint must follow the following procedures:
 - i. The signed complaint must be in writing to the BIE-DPA. If the parents are unable to file in writing, they may contact their BIE-funded school, BIE Education Program Administrator, BIE-DPA or the BIE for assistance.

- ii. 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-DPA.
- b) The complaint must include the following:
 - i. A statement that the BIE-funded school has violated a requirement of Part B of the IDEA;
 - ii. The facts on which the statement is based;
 - iii. The signature and contact information for the complainant; and
 - iv. If alleging violations with respect to a specific child:
 - 1. The name and address of the residence of the child;
 - 2. The name of the school the child is attending;
 - 3. In the case of a homeless child, available contact information for the child and the name of the school the child is attending;
 - 4. A description of the nature of the problem of the child, 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.
- c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received by the BIE;
- d) The party filing the complaint must forward a copy of the complaint to the BIE-funded school serving the child at the same time the party files the complaint with the BIE.
- e) Within the 60 calendar day time limit, the BIE shall:
 - i. Conduct an independent investigation and, if appropriate, an on-site investigation.
 - ii. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.
 - iii. 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.
 - iv. Review all relevant information and make a determination as to whether the BIE-funded school is violating a requirement of the IDEA, and if any corrective action(s) are necessary for IDEA compliance.
 - v. 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; and
 - 2. The reason for the BIE final decisions.
 - vi. Permit an extension of the 60 calendar day time limit if:
 - 1. Exceptional circumstances exist with respect to a particular complaint; or
 - 2. The parent and the BIE-funded school agree to extend the time to engage in mediation or other alternative means of dispute resolution if available within the BIE. The BIE-DPA will inform all parties of the extension and the date by which findings are issued.

- vii. Determine procedures for the effective implementation of the BIE final decision, if needed, including technical assistance activities, negotiations, and/or corrective actions to achieve compliance.
- viii. In resolving a complaint in which it has been found a failure to provide appropriate services, the BIE-funded school must address:
 - 1. How to remediate the denial of those services, including, as appropriate, the awarding of any needed compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the child; and
 - 2. Appropriate future provision to ensure the IDEA requirements and services are provided for all children with disabilities.
- ix. If a written complaint is received that is also the subject of a due process hearing under the Due Process Hearing Procedures or contains multiple issues of which one or more are part of that 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.
- x. If an issue is raised in a complaint that is filed that has previously been decided in a due process hearing involving the same parties, then the previously issued hearing decision is binding on that issue. The BIE must inform both parties of this fact and dismiss the duplicative complaint. However, a complaint alleging that a BIE-funded school's failure to implement a due process decision must be resolved by the BIE and may be opened for an investigation.
- xi. 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's Notice of Procedural Safeguards
 - 2. Presentations and other training events conducted by BIE and BIE-funded school staff.
 - 3. Dissemination of informational materials regarding parents' procedural safeguards and the BIE complaint procedures throughout BIE-funded school communities.

Child Find (34 CFR § 300.111) & FAPE Requirements (34 CFR §§ 300.101, 300.104-300.108, 300.110, and 300.113)

BIE-funded schools are required to identify children who might qualify for special education services because of academic, developmental, social, or behavioral difficulties. Children with developmental delays, high mobility, suspensions and expulsions, drop-outs, non-regular diplomas, delayed graduation, excessive absences, or other potential signs of disabilities should be evaluated for potential services. BIE procedures must adhere to those set forth in this handbook, the federal regulations, and the standard definitions for a FAPE.

Child Find (§ 300.111)

- a) Child Find processes are a collaborative effort between Tribal agencies, the BIE, BIE-funded schools, public schools, and other agencies.
- b) General. BIE must have in effect policies and procedures to ensure that:
 - i. All children with disabilities who enrolled in a BIE-funded school, five (if the child turns five by December 31 of the school year) through the school year in which the child turns 21, including children with disabilities who are homeless 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 education and related services, are identified, located, and evaluated; and
 - ii. A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.
- c) For BIE-funded schools, the following provisions apply with respect to implementing the Child Find requirements of this section:
 - i. A BIE-funded school must conform to both the State's definition of Developmental Delay and to the age range that has been adopted by the State where the school is geographically located.
- d) Other children in child find. Child Find also must include:
 - i. 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; and
 - ii. Highly mobile children, including migrant children.
- e) Nothing requires that children be classified by their disability so long as each child who has a disability and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the IDEA.
- f) Children with Disabilities Aged 3 through 5 residing on reservations. (20 U.S.C. § 1411(h)(4)); 34 C.F.R. § 300.712.
 - i. Funds received by a Tribe or Tribal organization under 20 U.S.C. § 1411(h)(4) must be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The Tribe or Tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The Tribe or Tribal organization shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

Free Appropriate Public Education (§ 300.101)

- a) General. A free appropriate public education must be available to all children with disabilities who are enrolled in a BIE-funded school, who are 5 (if the child turns five

- by December 31 of the school year) through 21, inclusive, including children with disabilities who have been suspended or expelled from school.
- b) Children advancing from grade to grade.
 - i. The BIE must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade.
 - ii. The determination that a child is eligible must be made on an individual basis by the group responsible within the child's BIE-funded school for making eligibility determinations.
 - c) FAPE must be available for children with disabilities aged three to five on reservations served by elementary schools and secondary schools for Indian children operated or funded by DOI.

Other FAPE Requirements

Residential Placement (§ 300.104)

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

Assistive Technology (§300.105)

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

Extended school year services (§ 300.106)

Extended school year services are those special education and related services that are provided to a child with a disability when determined by the child's IEP team:

- i. Beyond what is the normal school year of the BIE-funded school;
 - ii. In accordance with the child's IEP; and
 - iii. At no cost to the parents of the child; and
 - iv. Meet the standards of the BIE.
- a) Each BIE-funded school must ensure that extended school year services are available, as necessary, to provide FAPE. Extended school year services must be provided only

if a child's IEP Team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child.

- b) BIE-funded schools may not:
 - i. Limit extended school year services to particular disability categories; or
 - ii. Unilaterally limit the type, amount, or duration of extended school year services.

Nonacademic services (§ 300.107)

The BIE must ensure the following:

- a) Each BIE-funded school must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.
- b) 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 agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of children, including both employment by the BIE-funded school and assistance in making outside employment available.

Physical education (§ 300.108)

The BIE must ensure that BIE-funded schools comply with the following:

- a) Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the BIE-funded school enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.
- b) Each child with a disability must be afforded the opportunity to participate in the general physical education program available to nondisabled children unless—
 - i. The child is enrolled full time in a separate facility; or
 - ii. The child needs specially designed physical education, as prescribed in the child's IEP.
- iii. If specially designed physical education is prescribed in a child's IEP, the BIE-funded school responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.
- iv. The BIE-funded school responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services.

Program options (§ 300.110)

The BIE must ensure that each BIE-funded school takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

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.
 - i. Each BIE-funded school must ensure that the external components of surgically implanted medical devices are functioning properly.
 - ii. For a child 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).

Early Intervening Services (34 CFR §§ 300.226 & 300.711)

Early intervening services are for students in kindergarten through grade twelve who are not currently identified as needing special education or related services, but who need additional academic and behavioral support(s) to succeed in the general education environment with emphasis on students in kindergarten through grade three. These may include professional development for staff, evaluations, behavior supports, and literacy instruction. These services must be reported annually to the BIE.

General

- a) 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) to develop and implement coordinated, early intervening services.
- b) In implementing coordinated, early intervening services, a BIE-funded school may carry out activities that include:
 - i. Professional development (which may be provided by entities other than the BIE-funded school) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

- ii. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.
- 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 disability.
- d) Each BIE-funded school that develops and maintains coordinated, early intervening services under this section must annually report to the BIE on:
 - i. The number of children served under this section who received early intervening services; and
 - ii. The number of children served under this section who received early intervening services and subsequently receive special education and related services during the preceding two-year period.
- e) Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), as amended by the Every Student Succeeds Act (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.

Discipline (34 CFR §§ 300.170, 300.530-532, 300.534-300.535)

Discipline of children with disabilities will comply with the provisions of IDEA. Such disciplinary procedures, if anticipated, will be discussed with the parent/guardian during the IEP process. In developing the IEP, the IEP team shall review the needs of the child and the manner in which the disability may affect behavior. If it is determined that the child cannot be expected to follow acceptable behavior patterns because of substantial interference from the disabling condition(s), conditions, the IEP must specify the procedures to follow if unacceptable behavior occurs. Nothing in this section is intended to negate or diminish the due process rights afforded to non-disabled children.

Suspension and Expulsion Rates (§ 300.170)

- a) General. The BIE-DPA examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities:
 - i. Among BIE-funded schools; or
 - ii. Compared to the rates for nondisabled children within those schools.
- b) If there are statistically significant discrepancies that are occurring, then the BIE and/or BIE-funded school will review and, if appropriate, revise its Policies and Procedures relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these Policies and Procedures comply with the IDEA.
- c) The BIE-DPA monitors school suspension and expulsion rates by collecting and analyzing data required under IDEA.

Authority of School Personnel (§ 300.530)

- a) Case-by-case determination. BIE-funded school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of child conduct.
- b) General. School personnel under this section may remove a child with a disability who violates a code of child conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement).
 - i. After a child with a disability has been removed from their current placement for 10 school days in the same school year, during any subsequent days of removal the BIE-funded school must provide services to the extent required.
- c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities.
- d) Services. A child with a disability who is removed from their current placement pursuant to this section must:
 - i. Continue to receive educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
 - ii. 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.
- e) A BIE-funded school is only required to provide services during periods of removal of a child with a disability who has been removed from their current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.
 - i. After a child with a disability has been removed from their current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement, school personnel in consultation with at least one of the child's teachers, determine the extent to which services are needed so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.
 - ii. If the removal is a change of placement, the child's IEP Team determines appropriate services.
- f) Manifestation determination. Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of child conduct, the BIE-funded school, the parent, and relevant members of the child's IEP

Team must review all relevant information in the child's file, including the IEP, any teacher observations, and any relevant information provided by the parents to determine:

- i. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
 - ii. If the conduct in question was the direct result of the BIE-funded school's failure to implement the IEP.
- g) Determination that behavior was a manifestation. If the BIE-funded school, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team either:
- i. Conduct a functional behavioral assessment, unless the BIE-funded school had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
 - ii. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
 - iii. Return the child to the placement from which the child was removed, unless the parent and the BIE-funded school agree to a change of placement as part of the modification of the behavioral intervention plan.
- h) Special circumstances. BIE-funded school personnel may remove a child to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:
- i. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a BIE-funded school;
 - ii. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a BIE-funded school; or
 - iii. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a BIE-funded school.
- i) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of child conduct, the BIE-funded school must notify the parents of that decision and provide the parents the procedural safeguards notice revised 2021.
- j) For the purpose of determining drug or weapon violations or serious bodily injury, the BIE-funded school will apply the following definitions:
- i. 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));
 - ii. 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;

- iii. 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 U.S.C. § 1365);
- iv. 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 U.S.C. § 930).

Determination of Setting (§ 300.531)

- a) The IEP Team determines the interim alternative educational setting for services.
 - i. When a child with a disability is placed in an interim alternative educational setting, the setting:
 - 1. Is determined by the child's IEP Team; and
 - 2. The interim placement should enable the child to:
 - a. Continue to participate in the general curriculum, although in another setting;
 - b. Progress toward achieving the goals in the child's IEP; and
 - c. Receive as appropriate, a functional behavioral assessment, and behavioral intervention 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.

Appeal (§ 300.532)

- a) General. The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination, or a BIE-funded school that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a due process complaint.
- b) Authority of hearing officer.
 - i. A hearing officer hears and makes a determination regarding an appeal.
 - ii. In making the determination, the hearing officer may:
 - 1. Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation or that the child's behavior was a manifestation of the child's disability; or
 - 2. Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.
 - i. The procedures may be repeated, if the BIE-funded school believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

- c) Expedited due process hearing.
 - i. Whenever a hearing is requested, the parents or the BIE-funded school involved in the dispute must have an opportunity for an impartial due process hearing.
 - ii. The BIE-DPA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.
 - iii. Unless the parents and the BIE-funded school agree in writing to waive the resolution meeting:
 - 1. A resolution meeting must occur within seven 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 15 days of the receipt of the due process complaint.
 - iv. The BIE may establish different procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings.
 - v. The decisions on expedited due process hearings are appealable.

Placement During Appeals (§ 300.533)

- a) When an appeal has been made by either the parent or the BIE-funded school, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified, whichever occurs first, unless the parent and the BIE or BIE-funded school agree otherwise.

Protections for Children Not Determined Eligible for Special Education and Related Services (§ 300.534)

- a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of child conduct, may assert any of the protections provided for in this part if the BIE-funded school had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
- b) Basis of knowledge. A BIE-funded school must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:
 - i. The parent of the child expressed concern in writing to supervisory or administrative personnel of the BIE-funded school, or a teacher of the child, that the child is in need of special education and related services;
 - ii. The parent of the child requested an evaluation of the child; or
 - iii. The teacher of the child, or other personnel of the BIE-funded school, expressed specific concerns about a pattern of behavior demonstrated by the child directly to any of the following:
 - 1. BIE-funded school personnel: Special Education Lead Teacher, School Special Education Coordinator, or School Principal/Administrator; or

2. ERC personnel: Education Program Administrator or Education Specialist; or
 3. ADD personnel: Associate Deputy Director, or Education Specialist (Special Education); or
 4. BIE Division of Performance and Accountability; or
 5. BIE Central Office: Chief Academic Office, Directors Office, or Chief Performance Office.
- c) Exception. A BIE-funded school would not be deemed to have knowledge if:
- i. The parent of the child:
 1. Has not allowed an evaluation of the child; or
 2. Has refused services under this part; or
 3. The child has been evaluated and determined to not be a child with a disability under this part.
- d) Conditions that apply if no basis of knowledge. If a BIE-funded school does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors.
- i. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted by the BIE-funded school in an expedited manner.
 - ii. Until the evaluation is completed, the child remains in the educational placement determined by BIE-funded school authorities, which can include suspension or expulsion without educational services.
 - iii. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the BIE-funded school and information provided by the parents, the BIE-funded school must provide special education and related services.

Referral to and Action by Law Enforcement and Judicial Authorities (§ 300.535)

- a) Rule of construction. Nothing in this part prohibits a BIE-funded school from reporting a crime committed by a child with a disability to the appropriate authorities or prevents law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal, State, or Tribal law to crimes committed by a child with a disability.
- b) Transmittal of records.
 - i. A BIE-funded school reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.
 - ii. A BIE-funded school reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by BIE's regulations on the maintenance and control of child records in bureau schools found in 25 C.F.R. Part 43 as well as the Privacy Act of 1974 ("Privacy Act"), 5 U.S.C. § 552(a) and the

Department of Interior's (DOI) implementing regulations at 43 C.F.R. Part 2 and DOI's System of Records Notice for BIE records. Tribally controlled schools must also follow the Family Educational Rights and Privacy Act.

Change of Placement Because of Disciplinary Removals (§ 300.536)

- a) For purposes of disciplinary removal of a child with a disability from the child's current educational placement. A change of placement occurs if:
 - i. A removal is for more than 10 consecutive school days; or
 - ii. The child has been subjected to a series of removals that constitute a pattern:
 - 1. Because the series of removals total more than 10 school days in a school year;
 - 2. Because the child's behavior is substantially similar to the child'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 child has been removed, and the proximity of the removals to one another.
- b) The BIE-funded school determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
- c) The determination is subject to review through due process and judicial proceedings.

Transition Services (34 CFR § 300.43)

The purpose of transition and secondary services is to ensure that all children 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. Transition services are included within all IEPs for children with disabilities beginning no later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the child's IEP Team, or if the BIE-funded school follows the state requirement in which they are geographically located, and that requirement is younger than age 16. Transition services are reviewed and updated annually.

Transition Services (§ 300.43)

- a) Transition services means a coordinated set of activities for a child with a disability that:
 - i. Is designed to be within a results-oriented process, that is, focused on improving the academic and functional achievement of the child with a disability to facilitate the child'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;
 - ii. Is based on the individual child's needs, taking into account the child'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.
- b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

Exiting Special Education (34 CFR § 300.305)

Before exiting a child from special education, a BIE-funded school must evaluate a child with a disability unless the child is exiting special education due to graduation or aging out. BIE-funded schools should consider the effect of exiting a child from special education who has received special education and related services for many years and how the removal will affect the child's educational progress, particularly for a child who is in the final year(s) of high school. The IEP Team should consider whether the child's instruction and overall special education program have been appropriate as part of this process. If the special education instruction has been appropriate and the child has not been able to exit special education in the past, this would be strong evidence the child's eligibility needs to be maintained.

For a child whose eligibility terminates due to graduation or aging out, the BIE-funded school must provide the child with a summary of their performance which includes recommendations on how to assist the child in meeting the child's postsecondary goals.

Confidentiality of Personally Identifiable Information (34 C.F.R §§ 300.123 and 300.611-300.626)

BIE-funded schools must protect the confidentiality of any personally identifiable information collected, used or maintained under Part B of the IDEA. Bureau Operated Schools must also follow applicable federal privacy laws including, BIE's regulations on the maintenance and control of student records in Bureau schools in 25 C.F.R. Part 43, the Privacy Act of 1974 ("Privacy Act"), 5 U.S.C. § 552(a), the Department of the Interior's ("DOI") implementing regulations at 43 C.F.R. Part 2 and DOI's System of Records Notice for BIE records. Tribally Controlled Schools must consult with their counsel to determine which privacy laws, in addition to the IDEA regulations discussed throughout this policy apply.

- a) The following definitions apply to this part:
 - i. *destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
 - ii. *education records* means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the

Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

- iii. *participating agency* means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.
- b) BIE-funded schools will provide notice to parents that fully informs them about the requirements to protect the confidentiality of personally identifiable information. The notice will occur before any major identification, location, or evaluation activity, the notice will be circulated to give adequate notice to parents. Notice will include:
 - i. A description of the extent that the notice is given in the native languages of the various populations attending BIE-funded schools;
 - ii. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the BIE uses to gather the information (including the sources from whom information is gathered), and the uses to be made of the information;
 - iii. A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
 - iv. A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.

Consent for Disclosure of Personally Identifiable Information (§ 300.622)

BIE-funded schools must obtain parental consent before disclosing personally identifiable information, unless the information is contained in education records and the disclosure is authorized without parental consent consistent with applicable federal privacy laws. Personally identifiable information, however, may be disclosed without parental consent to officials of participating agencies where the disclosure is for the purpose of meeting a requirement of the IDEA except in the following circumstances:

- a) A parent's consent must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.
- b) If a child is enrolled or is going to enroll in a private school that is not a BIE-funded school, the BIE-funded school must obtain the parent's consent before any personally identifiable information about the child is released between officials at the BIE-funded school and non BIE-funded school.

Access to Education Record (§ 300.613)

- a) The BIE-funded schools must permit parents to inspect and review any education records relating to the parent's child that are collected, maintained, or used by the BIE-funded school under IDEA. The BIE-funded schools must comply with requests without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 300.507 or § 300.530 through 300.532, or resolution session pursuant to

§ 300.510 and in no case more than 45 days after the request has been made. The right to inspect and review education records under this section includes:

- i. The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
- ii. The right to request that the agency 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
- iii. The right to have a representative of the parent inspect and review the records.

BIE-funded schools may presume that the parent has authority to inspect and review records under applicable law governing such matters as guardianship, separation, and divorce.

Consistent with 34 C.F.R. § 300.614, BIE-funded schools must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. A parent's right to inspect their child's education records pertains to information relating only to the parent's child. If any education record includes information on more than one child, the parent may only inspect, review, and be informed of the information relating to the parent's child consistent with 34 C.F.R. § 300.615.

Lists of Types and Location of Information (§ 300.616)

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

Fees (§ 300.617)

BIE-funded schools may charge a fee for copies of the records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. A fee cannot be charged to search for or to retrieve information under this part.

Amendment of Records at Parent's Request (§ 300.618)

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

Opportunity for a Hearing (§ 300.619)

Parents must be provided with an opportunity to challenge information in education records regarding their child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

Hearing Procedures (§ 300.621)

A hearing held under 34 C.F.R. § 300.619 must be conducted according to the procedures in 34 C.F.R. § 99.22. The hearing must meet, at a minimum, the following requirements:

- a) The hearing must be held within a reasonable time after receipt of the request for the hearing from the parent or eligible child.
- b) Parent or eligible child must receive notice of the date, time, and place, reasonably in advance of the hearing.
- c) The hearing may be conducted by any individual who does not have a direct interest in the outcome of the hearing.
- d) Parent or eligible child must be given a full and fair opportunity to present evidence relevant to the issue 34 C.F.R. § 300.618. The parent or eligible child may, at their own expense, be assisted or represented by one or more individuals of their own choice, including an attorney.
- e) The decision must be in writing within a reasonable period of time after the hearing.
- f) The decision must be solely on the evidence presented at the hearing and must include a summary of the evidence and the reasons for the decision.

Safeguards (§ 300.623)

BIE-funded schools and applicable public agencies must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at each BIE-funded school must assume responsibility for ensuring the confidentiality of any personally identifiable information. In addition, all persons collecting or utilizing personally identifiable information must receive training or instruction from the BIE regarding the BIE's policies and procedures regarding confidentiality under Part B of the IDEA and FERPA, if applicable. BIE-funded schools must maintain, for public inspection, a current listing of the names and positions of its employees who may have access to personally identifiable information.

Destruction of Information (§ 300.624)

BIE-funded schools must inform a parent when personally identifiable information collected, or maintained, or used under Part B of the IDEA is no longer needed to provide educational services to their child. Under these circumstances, the information must be destroyed at the request of the parent; however, a permanent record of a student's name, address, and phone number, their grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

Children's Rights (§ 300.625)

The rights of privacy afforded to parent(s) are transferred to eligible student as defined in 25 C.F.R. § 43.2, taking into consideration the age of the child and type or severity of disability.

Consistent with 25 C.F.R. §§ 43.2 and 43.5 the rights of parent(s) regarding education records are transferred to the student at age 18 or if the student is otherwise eligible.

If the rights accorded to parents under Part B of the IDEA are transferred to an eligible student, consistent with 34 C.F.R. § 300.520, the rights regarding educational records must also be transferred to such students. The BIE funded school must provide any notice required under 34 C.F.R. § 300.615 to the student and the parent(s).