North Dakota Department of Public Instruction

The Individuals with Disabilities Education Act

Early Childhood Special Education Services for Children ages 3 through 5 Residing on a Reservation

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Providing guidance to local school districts on important topics
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Introduction

Many children ages 3 through 5 in North Dakota reside on a reservation within the service delivery area of a Local Education Agency, LEA. Reservations often include schools that fall under the jurisdiction of the Secretary of the Interior and are administered by the Bureau of Indian Education, BIE. Because of the complex nature these administrative relations pose, confusion can arise as to who is responsible for the provision of special education services such as child find, service provision, and state and federal reporting.

The purpose of this document is to provide guidance to professionals who are providing special education services for children ages 3 through 5 who reside on a reservation in ND. The information presented in the document is for general informational and educational purposes only. It is based on similar documents developed through the the Regional Resource Center Program (RRCP), the Early Childhood Technical Assistance Center (ECTA), and the Bureau of Indian Education (BIE) and from valuable input from ND professionals.

1. Under the Individuals with Disabilities Education Act (IDEA), who is responsible for the provision of special education services for children ages 3 through 5 residing on reservations?

The ultimate responsibility for service provision under IDEA Part B for children ages 3 through 5 residing on reservations lies with the State Education Agency, SEA, and Local Education Agency, LEA, in which that child resides. In North Dakota, the LEA is responsible for conducting child find and providing early childhood special education and related services for children ages 3 through 5 who reside on a reservation within the LEA's jurisdiction.

As defined in ND Administrative Code, an LEA is the school district that the child will be attending when he/she begins elementary school. In ND, a single or multidistrict special education unit, SEU, works with the school district(s) within the SEUs jurisdiction to assure the provision of IDEA B services.

ND Administrative Code Chapter 67-23-01
"Local education agency" means a school district, multidistrict special education unit organized under North Dakota Century Code chapter 15.1-33, or legally constituted public authority for administrative control or direction of, or to perform a service function for, public elementary or secondary schools.

2. How are the IDEA B funds provided to the Secretary of the Interior used?

Under IDEA Part B, reservations are provided funding to assist States with screening, identification, and coordination of special education services and to refer children when appropriate. The ultimate responsibility for making a free appropriate public education, FAPE, available to children with disabilities ages 3 through 5 resides with the SEA and the LEA.

34 CFR § 300.712 Payments for education and services for Indian children with disabilities aged three through five

(a) General. With funds appropriated under section 611(i) of the Act, the Secretary makes payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged three through five on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of the payments under paragraph (b) of this section for any fiscal year is equal to 20 percent of the amount allotted under Sec. 300.701(b).

(b) Distribution of funds. The Secretary of the Interior must distribute the total amount of the payment under paragraph (a) of this section by allocating to each tribe, tribal organization, or consortium an amount based on the number of children with disabilities aged three through five residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

(c) Submission of information. To receive a payment under this section, the tribe or tribal organization must submit the figures to the Secretary of the Interior as required to determine the amounts to be allocated under paragraph (b) of this section. This information must be compiled and submitted to the Secretary.

(d) Use of funds.

1) The funds received by a tribe or tribal organization must be used to assist in child find, screening, and other procedures for the early identification of children aged three through five, parent training, and the provision of direct services. These activities may be carried out directly or through contractors or cooperative agreements with the BIA, LEAs, 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.

2) The tribe or tribal organization, as appropriate, must make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

3. How is the child's public school district determined when making a referral?

The child's public school district is the school the child will be attending when he/she begins elementary school. The professionals referring a child to determine eligibility under IDEA B must determine the child's public school district and then determine the LEA and Special Education Unit, SEU, that is responsible for the provision of IDEA B services for that district.

4. When a child transfers from early childhood special education services into an elementary school, who is responsible for the provision of special education services?

If a child is enrolled in a public school district, the LEA responsible for that district would provide special education and related services. The BIE provides special education and related services for five-year-old children with disabilities enrolled in elementary schools operated or funded by the BIE.

Under IDEA, the BIE receives funds to provide special education and related services for children with disabilities on reservations ages 5 through 21 enrolled in elementary and secondary schools operated or funded by the BIE.

34 CFR § 300.707.
(b) *Provision of amounts for assistance.* The Secretary provides amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior…..
(c) *Additional Requirements.* With respect to all other children aged 3 to 21, inclusive, on reservations, the SEA of the State in which the reservation is located must ensure that all of the requirements of Part B are implemented.

5. Under IDEA B, who is responsible for reporting special education data for children ages 3 through 5 residing on reservations?

Each state is required to submit an annual report of the number of students receiving special education and related services. An LEA is responsible for conducting child find and providing special education and related services to children with disabilities ages 3 through 5 who reside on a reservation within the LEA's jurisdiction. Therefore, the LEAs are responsible for including those children in their child count, reporting data under section 618 of IDEA, reporting in the State Automated Reporting System (STARS), completing evaluations, determining eligibility, and if a child is found eligible, the development of an individualized education program.

6. Are there additional steps in completing the STARS report for children ages 3 through 5 residing on a reservation?

When the child's public school district is determined (see question 3), the LEA should follow district procedures to submit the child's demographic information into STARS. For each child who is referred to an LEA to determine eligibility for special education and related services, STARS data must be sent to TIENET. TIENET, Technology for Improving Education, is a web-based student file system containing forms and reports required for students receiving special education services. For a child who is ages 3 through 5 and residing on a reservation, the BIE checkbox must be marked when completing the child's demographic information in STARS. This will allow the child's information to flow from STARS to TIEnet.

7. What process should the LEA complete when the child exits early childhood special education services and enters an elementary school operated or funded by the BIE?

When a child is transferring from early childhood special education services into an elementary school operated or funded by the BIE, the LEA does need to complete an exit form in TIENET. The reason on the exit form should be identified as "Moved-known to be continuing." The LEA must enter the end date and exit code in the district enrollment in STARS.

8. The State Performance Plan requires reporting on three early childhood Indicators. Who is responsible for data collection and reporting for the Indicators?

The LEA is responsible for data collection and reporting for all children ages 3 through 5 receiving early childhood special education services. This includes data regarding the three early childhood Indicators in the state performance plan and annual performance report.

Copies of these reports can be found on the DPI Specially Designed Services website.

Indicator 6 - On December 1st of each year, the NDDPI collects least restrictive environment (LRE) data through the STARs for children ages 3 through 5 receiving special education services. The data for this LRE report is gathered from each child's IEP.

Indicator 7 – As part of the ND Early Childhood Outcomes Process, the LEA is responsible to complete entry ratings on the Child Outcome Summary Form, COSF, for each child with an IEP when they begin receiving early childhood special education services. Exit information must be completed when the child exits early childhood special education services. Guidance regarding the ND Early Childhood Outcomes Process is available on DPI Specially Designed Services website.

Indicator 12 – All children who have been served by Part C and referred to Part B and turn 3 during the current data year must be documented in TIENET or the NDDPI Indicator 12 spreadsheet. The LEA should report only those children who are defined as potentially eligible, and the LEA has received an official notification for Indicator 12. NDDPI has developed a Question and Answer document, *Early Childhood Transition from Part C to Part B Indicator 12 LEA Documentation Process,* to assist early childhood special education professionals in determining when and how to document children who have been officially referred from Part C to Part B for eligibility determination. Contact 701-328-2277 to receive a copy of this document.

9. Is the BIE or State Agencies responsible for the transition process from Part C to Part B services?

Initial team leadership in the transition process is generally provided by the ND Department of Human Services, Early Intervention Services. Joint conferences with early intervention services staff, LEA staff, and parents occur when the child is 2 years, 7 months old and 2 years, 9 months old. Once the LEA initiates services, such as the evaluation process to determine Part B eligibility and the development of an IEP, they will facilitate the planning process.

Both federal and state regulations clearly identify steps in the process and timelines that must be met in order to ensure a smooth transition. Both the early intervention program and LEA have responsibility for providing information and resources throughout this process.

Additional information relating to the Early Childhood Transition process can be found in the guidance document: *Understanding Early Childhood Transition: A Guide for Professionals and Families*.

10. What educational environments should be considered when determining the least restrictive environment for children ages 3 through 5 who reside on reservations?

The Least Restrictive Environment, LRE, requirements apply to all children ages 3 through 5 with disabilities who are entitled to receive free appropriate public education, FAPE. The purpose of the LRE discussion is to consider the continuum of educational environments and document decisions made by the IEP team regarding the environment in which the child will receive most of his/her special education and related services.

The LRE continuum for preschool-aged children with disabilities includes those early childhood settings designed primarily for children without disabilities. These environments allow children with disabilities to participate in appropriate activities and opportunities that support children achieving age-relevant abilities and skills.

Children ages 3 through 5 residing on reservations are entitled to a continuum of environmental settings. This means that special education services are provided, to the maximum extent appropriate, in the least restrictive environment. The school must ensure that each child's placement is in the LRE in which the unique needs of that child can be met, based upon the child's IEP, and that meets all of the other requirements of the law.

Sec, 300.115 Continuum of alternative placements (a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. (b) The continuum required in paragraph (a) of this section must- 1) Include the alternative placements listed in the definition of special education under Sec. 300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and 2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(5)) Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(5))

Sec. 300.116 Placements In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that— a) The placement decision— 1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and 2) Is made in conformity with the LRE provisions of this subpart, including Sec. Sec. 300.114 through 300.118; (b) The child's placement— 1) Is determined at least annually; 2) Is based on the child's IEP; and 3) Is as close as possible to the child's home; (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she 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 he or she needs; and (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412 (a) (5))

11. What is the FACE program? Does this program provide special education services under Part B for children ages 3 through 5 residing on a reservation?

Family and Child Education (FACE) is a BIE program that was initiated in 1990 with a focus on providing support to American Indian families in the areas of early childhood development. FACE provides center-based early childhood services to children aged 3 through 5. One of the goals of the program is to promote early identification and services to children with special needs. The FACE program may assist and support with child find, screening, and service provision, but they are not ultimately responsible for the provision of special education services under the IDEA.

For detailed information on the FACE program, see www.faceresources.org. Early Intervention and Preschool Services for Children on Reservations with BIE Funded Programs.

12. If a child receives services in a FACE program, would this setting be considered the environmental setting for data reporting purposes?

The FACE program is an option for all children and thus may be considered an LRE setting in which a child is served alongside typically developing peers.

Decisions relating to the most appropriate educational environment must be determined on an individualized case-by-case basis according to the individual needs of the child. For Part B, the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

FACE is a center-based program that could meet the current definitions of a "regular early childhood program" used by OSEP in its annual data collection on educational environments for preschool children.

13. How can States and the BIE work together to ensure that children ages 3 through 5 residing on a reservation receive the IDEA services to which they are entitled?

Memorandums of Understanding (MOU) should be established to ensure that responsibilities are clearly defined and that coordination and communication protocols are established across local and state education agencies and the BIE.

MOUs should:

- define which services will be provided by each entity;
- identify what early identification and child find strategies will be used by each entity;
- ensure that children eligible for special education or related services under Part B receive those services at no cost to the parent, as required by law, and to the maximum extent appropriate, in the least restrictive environment for those preschoolers;
- ensure that each party cooperatively maintains communication and shares leadership responsibilities at the local level to ensure available resources are used in the most effective manner; and
- ensure that cooperative arrangements between LEAs and FACE are developed, implemented, and maintained specific to all applicable aspects of systems and services.

A sample of an MOU template is located in the document, *Early Intervention and Preschool Special Education Services for Children who Live on Reservation.* This document was developed by the Regional Resource Center Program, the Early Childhood Technical Assistance Center, and the Bureau of Indian Education.