



# **SPECIAL EDUCATION POLICIES & PROCEDURES**

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## Introduction

Choctaw Tribal School's educational beliefs are based on a commitment to lifelong learning, to education as a means of assuring informed tribal citizens, and to the protection of Choctaw culture and language.

Choctaw education extends from birth through late life, with services provided through community schools and an array of specialized educational programs. Historic educational neglect of tribal members has not only imposed profound responsibilities, but has also created opportunities for the development of exceptional educational systems. Choctaw education has become a critical element within the communities, serving to support successful tribal government, economic growth, and individual self-worth. Its role is unique, that of providing diverse educational opportunities and also promoting aspirations, transmitting values, building self-esteem, and communicating aspects of culture required for functioning in the Indian and non-Indian worlds.

Under these circumstances, the ultimate goal of the Choctaw Tribal Schools is to provide educational opportunities for all Choctaw children, including children with special needs, encouraging the self-discipline required for learning, and drawing parents in as equal partners in the schooling of their children. Source: [www.choctaw.org](http://www.choctaw.org)

# Choctaw Tribal Schools

To learn more about the Exceptional Education Programs at the Choctaw Tribal Schools, go to [www.sped.choctawtribalschools.com](http://www.sped.choctawtribalschools.com).

The Choctaw Tribal School District consists of eight schools. There are six elementary schools and one high school. They are:

Bogue Chitto Elementary School

Pearl River Elementary School

Choctaw Central High School

Red Water Elementary School

Choctaw Central Middle School

Standing Pine Elementary School

Conehatta Elementary School

Tucker Elementary School

## CTS Objectives

1. To provide a well-rounded, quality education for all students, including students with special needs, through a creative, safe, and orderly environment that promotes self-discipline, self-reliance, and positive values.
2. To build and establish in each student a positive self-esteem.
3. To teach the values and aspects of the Choctaw culture.
4. To provide each student with the understanding that traditional education and cultural education are the critical elements for successful tribal government, successful economic growth, and individual self-worth.
5. To cooperate with the community and all other social levels in developing each student's maximum potential – mentally, spiritually, physically, morally, and socially.

The Choctaw Tribal Schools (CTS) Special Education Policies and Procedures are aligned with the Individuals with Disabilities Education Act (IDEA) and reflect the philosophy and objectives of the school system.

<b>THE PURPOSES OF THE POLICIES AND PROCEDURES ARE:</b>
To ensure that all students with disabilities have a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for future education, employment, and independent living.
To ensure that the rights of students with disabilities and their parents are protected.
To assist Choctaw Tribal Schools and other agencies, as appropriate, to provide for the education and support of all students with disabilities.
To assess and ensure the effectiveness of efforts to educate students with disabilities.

## Chapter 1: CHILD FIND (§300.111, §300.101, §300.102)

IDEA requires schools to have Policies and Procedures in place to assure that all children with disabilities, who are in need of special education and related services, are identified, located, and evaluated.

The CHILD FIND process is a collaborative effort between Choctaw Tribal Schools, tribal agencies and other relevant agencies. The CHILD FIND process seeks to locate and identify the following children:

- 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.
- Highly mobile children, including migrant children.
- Students who have dropped out of school, or have been suspended or expelled from school.
- Students with severe behavioral challenges or frequent school infractions.
- Students who have not graduated with a regular high school diploma.
- Students in juvenile detention centers or adult correctional facilities.
- Children who are homeless or are wards of the state or Tribe.



# CTS Child Find Procedures

- Newspaper and TV announcements regarding CHILD FIND and special education services. Choctaw Tribal Schools Administration Office facilitates this activity.
- Teacher Support Team– This group meets regularly (meeting times and frequency varies at each of the buildings), as a response to intervention team, to discuss and brainstorm solutions regarding child specific as well as school wide concerns. Intervention ideas are generated and provided to appropriate staff members. The TST follows up to ensure that the plans are implemented and are successful. If needed, follow up meetings are held and alternative plans are developed and implemented.
- Collaboration with early childhood providers for CHILD FIND and parent training.
- Collaboration with the local juvenile detention center (JDC) in on-going CHILD FIND activities. CTS communicates with the JDC's concerning the availability of special education services and informs them of the referral process for Choctaw Tribal School students. Transition specialists arrange for the provision of special education services to eligible students on site; they also provide information and support to the centers in the area of special education.
- Training of general education teachers about special education services and disabilities; yearly training is provided.
- Collaboration with the Parent Center and Health Center/Clinic; both sites have CHILD FIND posters



and/or flyers and make this information available to interested individuals.

- The special education department provides information at community and school events during the year and documents those efforts through the parental involvement calendar.
- Letters are sent to the Health Center and to the local hospitals regarding special education services.
- Data collection and analysis of:
  - RTI universal screening information.
  - RTI intervention results data.
  - Attendance.
  - Grades.
  - Behavior/discipline incidents.
  - School wide assessments.
  - Interviews with students who have graduated or dropped out of the school.

The Choctaw Tribal School's Central Office, in conjunction with the transition specialists, facilitates the CHILD FIND activities with the Exceptional Education Coordinator serving as the CHILD FIND coordinator.

### **Transitioning from Early Childhood Programming to Kindergarten and CHILD FIND Efforts**

Choctaw Early Childhood providers (Head Start and Early Intervention) must hold a transition IEP meeting for all special education eligible children in the spring of the school year. The purpose of the meeting is for the "sending" program to share appropriate information about the child in order to assist the "receiving" program in its planning and preparation for the student's kindergarten (including special education and related services) programming. This information sharing and transition planning meeting should occur by May 1st or at least 90 days prior to the ending of the student's early childhood program experience.

A *Pre-K to K Transition Information form* (included in Appendix) is completed by preschool, Head Start (or other sending program). The Choctaw Tribe Early Intervention Program personnel should facilitate and assist in the completion of this form. This communication is critical in order to ensure that all students who are eligible for special education services receive them in a timely manner. It is also important that the kindergarten program and school where the student will be attending are made aware of the numbers of students transitioning, their specific needs, etc.

In the fall of the student's kindergarten year, the new IEP Team reviews the IEP and amends it as appropriate. Amendments to the IEP can be done without a formal meeting, depending on the depth of changes needed.

### **Early Intervening Services (EIS) (§300.226, §300.711)**

Per IDEA, Choctaw Tribal Schools may use up to fifteen percent (15%), but no more, of their Part B allotment for any fiscal year in combination with other amounts (including non-education funds) for the development and provision of early intervening services.

These services, which may include interagency financing structures, are for students in kindergarten through grade twelve (12).

Early intervening services are for students who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment. These services should have an emphasis on students in kindergarten through grade three (3). Choctaw Tribal Schools refers to early intervening services as our Response to Intervention (RTI) process. The district has RTI

teams and a coordinator for RTI at each school.

In implementing coordinated, early intervening services, Choctaw Tribal Schools carry out activities that include:

- Professional development for teachers and other school staff to enable them to deliver scientifically based academic and behavioral based literacy instruction, and where appropriate, instruction on the use of adaptive and instructional software.
- Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

CTS utilizes IDEA funding to implement early intervening services throughout its schools. The focus and activities vary depending on the particular school site. Each school collects data and submits it to the central office for submission to the BIE. Data collected and submitted includes:

- The number of children served who received early intervening services; and
- The number of children served who received early intervening services and subsequently receive special education and related services during the preceding two-year period.

Early Intervening funds may also be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA (Elementary and Secondary Education Act/No Child Left Behind) if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services.

## **Early Intervening Services Process**

### **REFERRAL TO TST/RTI**

A referral should first be made to the school's teacher support team/response to intervention (TST/RTI) prior to a formal special education evaluation request/referral. The TST is made up of general and special educators, school counselor, related services staff, and administration. If, after the TST develops and implements a range of research-based interventions and subsequently determines them to be unsuccessful, a referral for special education evaluation may be made. The TST process is a general education problem-solving process and is not a part of the special education evaluation process. The referral to this team occurs after multi tiered general education interventions (RTI) have been implemented without success. RTI forms and information is available through the general education Curriculum central office.

A parent or Choctaw Tribal Schools may, at any time, initiate a referral for evaluation to determine if the student qualifies for special education services. As appropriate, however, parents and school staff members should utilize the school's Response to Interventions (RTI) process. Then, if unsuccessful, refer the student to the TST. The TST will determine if a referral for a special education evaluation is appropriate and timely.

### **MAKE UP OF TST/RTI**

Each of the Choctaw Tribal Schools has an active teacher support team. The membership at each site varies but typically includes the following:

Principal	Transition Specialist
Counselor	General educators
School nurse	Referring teacher
Curriculum Coordinator	

## **Screening (300.302)**

Choctaw Tribal Schools utilizes various screening processes to collect information regarding academic and behavioral progress, and issues and challenges related to all students. Screening data is used as a basis for intervention activities, further consideration and study, and if appropriate, to initiate a request for an initial evaluation. CTS conducts a specific screening process in the areas of math and reading as a part of its RTI procedures. This screening helps to identify students in need of multi tiered interventions (e.g. small group, individualized, intensive).

Screening for instructional purposes is not a special education evaluation. This universal screening process is also in place for vision, hearing, speech/language, academic, behavior and dyslexia. Windows for screening are posted by the district Curriculum office. A teacher or specialist may utilize various screening processes in order to determine appropriate instructional strategies for curriculum implementation.

## **Chapter 2: Evaluation and Eligibility (§300.122)**

The BIE requires that Choctaw Tribal Schools follow the eligibility guidelines and criteria of the state of Mississippi. If CTS chooses to use the RTI process to determine the existence of specific learning disabilities, they must follow the processes of Mississippi. However, at this time, CTS utilizes the data gathered during the RTI processes at each of the schools for informational purposes, but conducts a full and individual evaluation upon a student referral and parental consent. All RTI data will be used in the development of the assessment plan and also in the development of the student's IEP if the student is determined to be eligible for special education and related services.

### **Parental Consent for Initial Evaluations and Reevaluations (§300.300)**

Choctaw Tribal Schools, when proposing to conduct an initial evaluation to determine eligibility for special education and related services, provides written prior notice to the parent, and obtains informed consent from the parent before conducting the evaluation.

Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

Choctaw Tribal Schools makes reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is a student with a disability. Multiple efforts are made to contact the parents including by mail, phone calls, electronic means, and visits to the home or place of employment. Staff members are required to document parental contacts in the approved student information system. The transition specialist at each of the schools assures that informed consent is obtained and that appropriate documentation is completed and filed.

### **WHEN PARENT CONSENT IS NOT REQUIRED FOR INITIAL EVALUATION**

For initial evaluations only, if the student is a ward of the State or Tribe and is not residing with the student's parent, Choctaw Tribal Schools is not required to obtain informed consent from the parent if any of the following have occurred:

- Despite reasonable efforts to do so, CTS cannot discover the whereabouts of the parent of the student.
- The rights of the parents of the student have been terminated in accordance with State or Tribal law.
- The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State or Tribal law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the student.

### **WHEN PARENT DOESN'T PROVIDE CONSENT**

If the parent of a student enrolled in Choctaw Tribal Schools or seeking to be enrolled in Choctaw Tribal Schools does not provide consent for initial evaluation, or the parent fails to respond to a request to provide consent, CTS may, but is not required to, pursue the initial evaluation of the student by utilizing the procedural safeguards, including mediation, or due process. Choctaw Tribal Schools does not violate its obligation under the CHILD FIND

regulations if it declines to pursue the evaluation by utilizing the procedural safeguards or the due process procedures.

### **OTHER TIMES WHEN PARENTAL CONSENT IS NOT REQUIRED**

Parental consent is not required before:

- Reviewing existing data as part of an evaluation or a reevaluation.
- Administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

If a parent of a student who is placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, Choctaw Tribal Schools may not use the procedural safeguards including mediation and due process procedures, and Choctaw Tribal Schools is not required to consider the student as eligible for special education and related services.

### **Reevaluation and Parent Consent Requirements**

Choctaw Tribal Schools must obtain informed parental consent prior to conducting any reevaluation of a student with a disability.

If the parent refuses to consent to the reevaluation, Choctaw Tribal Schools may, but is not required to, pursue the reevaluation by using the consent override procedures provided in the procedural safeguards, and including mediation or due process procedures.

Choctaw Tribal Schools does not violate its obligation under CHILD FIND if it declines to pursue the reevaluation.

The informed parental consent need not be obtained if CTS can demonstrate that it made reasonable efforts to obtain such consent and the student's parent has failed to respond.

### **Conducting an Evaluation or Reevaluation (Eligibility Determination) Meeting Without a Parent in Attendance (§300.322(d))**

If Choctaw Tribal Schools is unable to convince the parents that they should attend, they must keep a record of attempts to arrange a mutually agreed on time and place, such as:

- Detailed records of telephone calls made or attempted and the results of those calls.
- Copies of correspondence sent to the parents and any responses received.
- Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- Use student information system/parent contact tab for the above documentation reasons. It is recommended that parents be informed of the results through certified mail or direct home delivery from CTS staff person.



## **Evaluation Procedures for Both Initial Evaluations and Reevaluations**

In conducting the evaluation, Choctaw Tribal Schools must:

- Provide written notice to the parents that describe any evaluation procedures the school proposes to conduct and why it proposes to conduct the evaluation.
- Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, which may assist in determining:
  - Whether the student is a student with a disability, and
  - The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum.
- Not use any single measure or assessment as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student.
- Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

Choctaw Tribal School's assessments and other evaluation materials used to assess a student are:

- Selected and administered so as not to be discriminatory on a racial or cultural basis.
- Provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.
- Used for the purposes for which the assessments or measures are valid and reliable.
- Administered in accordance with any instructions provided by the producer of the assessments.

Choctaw Tribal Schools ensures that:

- Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
- The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
- Assessments of students with disabilities who transfer from one BIE funded school to another BIE funded school in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.
- In evaluating each student with a disability, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.
- Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student are provided.

## **Review of Existing Evaluation Data for Initial Evaluations (if Appropriate) and for Reevaluations (§300.305)**

As part of any initial evaluation (if appropriate) and as part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, must:

- Review existing evaluation data on the student, including:
  - Evaluations and information provided by the parents of the student.
  - Current classroom-based, local or state assessments, and classroom-based observations.
  - Observations by teachers and related services providers.
- On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:
- The educational needs of the student.
  - The present levels of academic achievement and related developmental needs of the student.
  - Whether the student is a student with a disability.
  - Whether the student needs special education and related services; or, in the case of a reevaluation of a student, whether the student continues to need special education and related services; and
  - Whether any additions or modifications to the special education and related services are needed, in the case of either an initial evaluation or a reevaluation of a student, to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum.
- If no additional data is needed to determine eligibility and education need as a part of the reevaluation, CTS informs parents of their right to request an evaluation/further assessment.
- CTS makes the eligibility decision without any additional data and completes and provides to parents.
- The student's IEP Team and other qualified professionals, as appropriate, may conduct its review of existing data for an initial evaluation or reevaluation without a meeting.
- If the IEP Team decides that additional data is needed as a part of the reevaluation both are completed and sent to the parents.
- Choctaw Tribal Schools is not required to conduct further assessment for reevaluation unless requested to do so by the student's parents.
- Choctaw Tribal School parents can also agree that a reevaluation is not necessary.

## **Initial Evaluation Timeline (§300.301(c))**

### **THE INITIAL EVALUATION**

- Must be conducted within sixty (60) calendar days of receiving parental consent for the evaluation; and
- Must consist of procedures to determine:
  - If the student is a student with a disability (see definition in "Categorical Definitions, Criteria, and Procedural Requirements" later in this section).
  - The educational needs of the student.
- Either a parent or Choctaw Tribal Schools may initiate a request for initial evaluation. Choctaw Tribal Schools takes all requests for referral through the school's Teacher Support Team as its initial step in the process.

## **WHEN 60 DAY TIMELINE DOES NOT APPLY**

The 60 day timeframe shall not apply to Choctaw Tribal Schools if:

- The parent of a student repeatedly fails or refuses to produce the student for the evaluation; or
- A student enrolls in Choctaw Tribal Schools after the relevant timeframe has begun, and prior to a determination by the student's previous BIE funded school as to whether the student is a student with a disability. The **exception** to this statement applies only if Choctaw Tribal Schools is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and Choctaw Tribal Schools agree to a specific time when the evaluation will be completed.

## **Reevaluation Procedures (§300.303)**

Choctaw Tribal Schools must ensure that a reevaluation of each student with a disability is conducted:

- If CTS determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or
- If the student's parent or teacher requests a reevaluation.

Reevaluation timing:

- May occur not more than once a year, unless the parent and Choctaw Tribal Schools agree otherwise; and
- Must occur at least once every three (3) years unless the parent and CTS agree that a reevaluation is unnecessary.

## **Reevaluation Before Change in Eligibility (§300.305(e))**

Choctaw Tribal Schools must evaluate a student with a disability before determining that the student is no longer a student with a disability eligible for IDEA services.

The evaluation is not required before the termination of a student's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under BIE and ISEP regulations – (age four [4] – if 5 by December 31st of that school year) through the school year in which the student turns twenty-two [22]).

For a student whose eligibility terminates due to graduation from secondary school with a regular high school diploma or due to exceeding the age eligibility for FAPE, Choctaw Tribal Schools must provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals. The school's transition specialist and special education teacher complete the summary of performance.

## **Determination of Eligibility (300.306)**

Upon completion of the administration of assessments and other evaluation measures, the eligibility determination team made up of a group of qualified professionals and the parent of the student determine eligibility, including:

- Whether that student is a student with a disability.
- The educational needs of the student.





CTS provides the parent a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

### **Evaluation Decision-Making Procedures and Factors**

A student must not be determined to be a student with a disability if the determinant factor for that determination is:
<ul style="list-style-type: none"><li>• Lack of appropriate instruction in reading, including the essential components of reading instruction (phonemic awareness, alphabetic principle, vocabulary, comprehension, and fluency).</li></ul>
<ul style="list-style-type: none"><li>• Lack of appropriate instruction in math.</li></ul>
<ul style="list-style-type: none"><li>• Limited English proficiency.</li></ul>
<ul style="list-style-type: none"><li>• If the student does not otherwise meet the eligibility criteria.</li></ul>
<ul style="list-style-type: none"><li>• If the student only needs related services and not special education, they do not qualify as a student with a disability.</li></ul>
In interpreting evaluation data for the purpose of determining if a student has a disability, and the educational needs of the student, Choctaw Tribal Schools must:
<ul style="list-style-type: none"><li>• Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.</li></ul>
<ul style="list-style-type: none"><li>• Ensure that information obtained from all of these sources is documented and carefully considered.</li></ul>
If a determination is made that a student has a disability and needs special education and related services, an IEP must be developed for the student within thirty (30) calendar days and implemented as soon as possible.

### **IDEA Eligibility Criteria and Procedural Requirements (§300.8)**

All BIE funded schools are required to follow the specific eligibility criteria of the states in which they are located. In addition, if the BIE funded school uses a Response to Intervention (RTI) process for the identification of specific learning disabilities, the school must utilize the RTI process of the state in which they are located. Choctaw Tribal Schools follows the eligibility criteria and the RTI processes of the state of Mississippi as required by the BIE. If CTS opts to use the RTI process and data to determine whether a student has a specific learning disability, they will utilize Mississippi's RTI process.

### **Parental Consent for Services (§300.300(b)(d))**

Choctaw Tribal Schools is responsible for making FAPE available to the student with a disability, and must obtain informed consent from the parent of a child before the initial provision of special education and related services. Choctaw Tribal Schools must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services.

If the parent of a child fails to respond or refuses to consent to services, Choctaw Tribal Schools may not use the procedures described in the Procedural Safeguards section of these Policies and Procedures in order to obtain agreement or a ruling that the services may be provided to the student.

If the parent of a child refuses to consent to the initial provision of special education and related services or the

parent fails to respond to a request to provide consent for the initial provision of special education and related services, Choctaw Tribal Schools:

- Will not be considered to be in violation of the requirement to make FAPE available to the student for the failure to provide the student with special education and related services for which the parent refuses to or fails to provide consent.
- Is not required to convene an IEP Team meeting or develop an IEP for the student.

If, at any time following the initial provision of special education and related services, the parent of the student revokes consent in writing for the continued provision of special education and related services, Choctaw Tribal Schools:

- May not continue to provide special education and related services to the student, but must provide prior written notice as described in the procedural safeguard section of these Policies and Procedures before terminating special education and related services.
- May not use the procedures described in the procedural safeguard section of these Policies and Procedures in order to obtain agreement or a ruling that services may be provided to the student.
- Will not be considered to be in violation of the requirement to make FAPE available because of failure to provide the student with further special education and related services.
- Is not required to convene an IEP Team meeting or develop an IEP for further provision of special education and related services to the student.

Choctaw Tribal Schools may not use a parent's refusal to consent for one service or activity to deny the parent or student any other service, benefit or activity of Choctaw Tribal Schools, except as required by §300.300.

### **Prohibition of Mandatory Medication (§300.174)**

Choctaw Tribal School staff are prohibited from requiring parents to obtain a prescription for substances identified under schedules I, II, II, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c) for a student as a condition of:

- Attending school.
- Receiving a special education evaluation.
- Receiving special education services.

Teachers and other school personnel are, however, allowed to consult or share classroom-based observations with parents or guardians, regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services related to CHILD FIND. Choctaw Tribal School provides training to all staff regarding this and other special education policies to assure compliance.

## Summary of CTS Evaluation and Eligibility Processes and Timelines

1. CTS Transition Specialists develop a listing of all special education students at their assigned buildings; these listings contain all of the pertinent due dates and timelines, such as annual review and three year reevaluation. This is done to assure that the special education staff does not miss any of the timelines regarding prior notice, meeting invitation, annual reviews, and 3 year reevaluations.
2. Not less than 90 days prior to the student's reevaluation due date, the student's IEP Team meets for the following purposes: <ul style="list-style-type: none"><li>• To consider whether a reevaluation is needed – if determined to not be necessary, the team must provide the parent with prior written notice indicating their right to request reevaluation.</li><li>• To determine if additional data is needed in order to reevaluate the student.</li></ul>
3. If additional data is needed, an assessment plan and parent consent to evaluate/reevaluate is completed and provided to the parent. Prior written notice is also provided at this time.
4. In the case of an initial evaluation, the school's transition specialist provides oversight to ensure that timelines are followed and all necessary data and processes are completed appropriately prior to the eligibility determination meeting.
5. Once a student is referred for an evaluation, the IEP Team monitors the process carefully to assure that timelines are in compliance. The evaluation may consist of a review of existing data, the completion of additional evaluation(s) or both.
6. The three-year reevaluation meeting is scheduled in conjunction with the student's IEP annual review if at all possible.
7. At the evaluation or reevaluation meeting, evaluation data and/or existing data is discussed along with implications for programming. If the team determines that the student continues to be eligible for special education and related services, the IEP team develops the IEP. The initial IEP must be developed within 30 days of the eligibility documentation. The IEP must be developed immediately following a reevaluation if the student continues to be eligible.

## Activities to Ensure Successful Eligibility and Entitlement Process

- All special educators have had training in the use of the web-based special education documentation process and forms. The web-based system is entitled the Native American Student Information System (NASIS). NASIS includes all pertinent forms utilized within the special education cycle.
- The special education administration and transition specialists arrange for ongoing training and support of all special and general educators in areas related to special education processes, roles and responsibilities, and forms.
- Choctaw Tribal Schools and special education staff make reasonable efforts to obtain parental consent as well as arrange mutually agreeable times for meetings. The school's special education staff keeps detailed logs of dates, methods and results regarding parental contacts. These contacts are recorded in the student information system.

## Chapter 3: Individualized Education Program (§300.112)

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

### When IEPS Must be In Effect (§300.323)

Choctaw Tribal Schools has current IEPs in effect for each student with a disability who is eligible for special education services within its jurisdiction. Jurisdiction includes students who are placed by Choctaw Tribal Schools in residential settings, and CTS students placed by judicial authorities in juvenile detention facilities and adult prisons.



For **Initial** IEPs, Choctaw Tribal Schools ensure that:

- A meeting to develop an IEP for a student is conducted within thirty (30) calendar days of a determination that the student needs special education and related services.
- As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP. This typically occurs within days of the IEP development.

### Transfer Students and Their IEPs (§300.323(e)(f)(g))

#### **IEPS FOR STUDENTS WHO TRANSFER TO CTS FROM A PUBLIC OR PRIVATE SCHOOL WITHIN MISSISSIPPI:**

If a student with a disability (who had an IEP that was in effect in a previous public or private school within Mississippi) transfers to CTS, within the same school year, Choctaw Tribal Schools (in consultation with the parents) must provide FAPE to the student (including services comparable to those described in the student's IEP from the previous public or private school), until CTS —

- Adopts the student's IEP from the previous public or private school; or
- Develops, adopts, and implements a new IEP that meets IDEA requirements.

#### **IEPS FOR STUDENTS WHO TRANSFER FROM A BIE FUNDED SCHOOL OR A PUBLIC OR PRIVATE SCHOOL OUTSIDE OF MISSISSIPPI TO CTS:**

If a student with a disability (who had an IEP that was in effect in a previous BIE funded school or public or private school in another State besides Mississippi) transfers to CTS, within the same school year, CTS (in consultation with the parents) must provide the student with FAPE (including services comparable to those described in the student's IEP from the previous BIE funded school, public school or private school, until CTS:

- Conducts an evaluation (if determined to be necessary by CTS); and
- Develops, adopts, and implements a new IEP, if appropriate. CTS may implement the current IEP if the team decides that it is appropriate.

## **Transmittal of Records**

To facilitate the transition for a student who transfers between BIE-funded schools or from public schools:

- CTS takes reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous school in which the student was enrolled, pursuant to FERPA.
- The previous school in which the student was enrolled must take reasonable steps to promptly respond to the request from Choctaw Tribal Schools.
- CTS special education administration and the transition specialists assist in facilitating the timely transmittal of records.

# **CTS Practices & Timelines - Transfer Students**

When a new student enrolls at Choctaw Tribal Schools, attempts are made during student and family interviews to find out if the student had been receiving special education services in their previous school.

The school counselor, registrar, and/or transition specialist makes contact with the student's last school of attendance and requests all pertinent student files/records (including special education files, if applicable). If the student had been attending another BIE funded school, the Native American Student Information System (NASIS) on-line database and records will be obtained electronically.

If the records are not received in a timely manner, follow-up phone calls are made to the student's last school. Depending on the distance of the other school from Choctaw Tribal Schools, the home-school liaison, school staff support personnel, or school counselor may make a site visit in order to retrieve the student's records.

## **Parent Participation and Parent Notification of an IEP Meeting (§300.322, §300.328)**

Choctaw Tribal Schools must take steps to ensure that one or both of the parents of a student with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including:

- Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend.
- Scheduling the meeting at a mutually agreed on time and place.

## **Notice of Meeting Information Provided to Parents**

Choctaw Tribal Schools sends parents an invitation to participate in an upcoming IEP or other meeting pertaining to their child's special education program. This notice includes the purpose, time and location of the meeting as well as who will be in attendance. The notice will also indicate that the student will be invited to participate if determined appropriate by the IEP team.

The notice for students age 14 and above must include the following:

- That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the student.
- An indication that the student is also invited to participate in the meeting.
- The identification of any other agency that will be invited to send a representative. Agency participation in the meeting requires parental or student consent (if the student is 18 or above). This process is discussed in Chapter 4 – Transition and Secondary Services later in this document.

## **Other Methods to Ensure Parent Participation**

If neither parent can attend the IEP Team meeting, Choctaw Tribal Schools must use other methods to ensure parent participation, including individual or conference telephone calls and videoconferences.

### **CTS Parent Invitation Practices and Timelines**

CTS notifies parents via mail, phone and/or e-mail about an upcoming IEP meeting. This notice occurs approximately 3 weeks prior to the IEP meeting date.

It is Choctaw Tribal School's procedure to contact parents at least three times in order to schedule a mutually agreed upon place and time for the meeting.

If parents are unable to attend, the school's transition specialist or another staff person arranges another meeting time or visits the parent at their place of employment or their home in order to secure their participation in the IEP and their signature indicating consent for the implementation of the IEP.

## **Conducting an IEP Team Meeting Without a Parent in Attendance**

A meeting may be conducted without a parent in attendance, if Choctaw Tribal Schools is unable to convince the parents that they should attend. In this case, Choctaw Tribal Schools keeps a record of its attempts to arrange a mutually agreed on time and place. Documentation includes:

- Detailed records of telephone calls made or attempted and the results of those calls.
- Copies of correspondence sent to the parents and any responses received.
- Detailed records of visits made to the parent's home or place of employment and the results of those visits.

This documentation is kept on the parent information contact tab. All confidential records, such as those printed at the end of the school year and kept in the student's confidential special education file.

It is permissible to develop a draft IEP, but parents must be provided with a copy of the draft IEP content prior to the meeting in order to give the parents an opportunity to review the IEP recommendations. This enables the parent to be better able to engage in a full discussion of the proposed IEP.

## **Use of Interpreters or Other Action, as Appropriate**

Choctaw Tribal Schools takes 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.

## Parent Copy of Child's IEP

CTS must provide a copy of the IEP to the parent/guardian at the close of the IEP team meeting. The parent/guardian must initial the IEP form indicating that they have received a copy of the document. The copy that the parent/guardian leaves with following the meeting is the official copy of the team's decisions. It does not need to be "pretty" but it does need to contain the decisions made by the team during the meeting. The district can retype the document to improve its appearance and send another copy to the parents after the meeting; however, the content cannot be altered.

### IEP Team Membership (§ 300.321(a)-(d), §300.323(d))

Choctaw Tribal School IEP Team Membership
The parents of the child.
Not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment).
Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student.
A representative of the school who: <ul style="list-style-type: none"><li>• Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities.</li><li>• Is knowledgeable about the general education curriculum.</li><li>• Is knowledgeable about the availability of resources of the school.</li></ul>
CTS may designate a school member of the IEP Team to also serve as the representative of the school, if the above criteria are satisfied.
An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described above in this section.
At the discretion of the parent or Choctaw Tribal Schools, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate. The determination of the knowledge or special expertise of such an individual must be made by the party (parents or CTS) who invited the individual to be a member of the IEP team.
With the consent of the parent, CTS invites representative(s) of any participating agency that is likely to be responsible for providing or paying for any of the transition services. CTS provides the form entitled Permission for Consent Prior to Inviting Agencies Related to Transition to the parent prior to the IEP meeting and asks for their consent.
Whenever appropriate, the student with a disability participates. If the purpose of the IEP is to consider transition services (beginning at age 14), the student must be invited to participate in the IEP team. If the student does not attend, CTS obtains information from them regarding their preferences and interests so this can be a focus of the IEP planning.



## Regular Education Responsibilities Related to IEPs

A regular education teacher of a student with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the student, including the determination of the following:

- Appropriate positive behavioral interventions and supports and other strategies for the student.
- Supplementary aids and services, program modifications, and support for school personnel.

For all IEPs, Choctaw Tribal Schools ensures that all regular education teachers and all other appropriate staff are provided access to pertinent portion of the IEP and are provided copies of the sections of the IEP which pertain to their specific role, such as accommodations, modifications and supports needed by the student in the general education setting. Special education teachers facilitate the sharing of IEP information. The NASIS system allows access for all appropriate staff to the sections of the IEP, which are pertinent to them specifically.

## **WHAT TEACHERS AND OTHER APPROPRIATE STAFF MEMBERS NEED TO KNOW ABOUT A STUDENT'S IEP:**

- His or her specific responsibilities related to implementing the student's IEP.
- The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.
- The student's IEP goals related to the staff member's roles and responsibilities.
- Content of any Behavior Improvement Plan and/or Individualized Health Plan.

## **IEP Team Attendance/Excusal (§ 300.321(e))**

A member of the IEP Team is not required to attend an IEP Team meeting, in whole or in part, if the parent of a student with a disability and Choctaw Tribal Schools agree, in writing, that the attendance of the teacher or service provider is not necessary because their particular area of the curriculum or related services is not being modified or discussed in the meeting.



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:

- The parent, in writing, and the school consent to the excusal; and
- The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.



## CTS IEP Team Attendance/Excusal Practices and Timelines

Choctaw Tribal School's special education staff provides information to their respective schools regarding IEP roles, responsibilities and excusal processes annually.
Specific student IEP annual review dates are established and provided to appropriate teachers and related service providers.
The need for team meeting excusals is determined (2 weeks prior to the meeting).
If needed, the NASIS form entitled Excusal Form is prepared and sent to the parents (At least 2 weeks prior to the meeting).
Excused IEP team members provide input regarding the IEP prior to the meeting (At least 3 school days prior to the meeting).

## Content of the Individualized Education Program (IEP) (§300.320)

The IEP must include a statement of the student's Present Levels of Academic Achievement and Functional Performance (PLAAFP), including:

- How the student's disability affects the student's involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled students).

The IEP must include a statement of **Measurable Annual Goals**, including academic and functional goals designed to:

- Meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum.
- Meet each of the student's other educational needs that result from the student's disability.

For students with disabilities who take alternate assessments aligned to alternate achievement standards, a description of **Benchmarks** or **Short-term Objectives**.

The IEP must include a description of **Progress Reporting** including:

- How the student's progress toward meeting the annual goals will be measured.
- When periodic reports to the parents on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.

The IEP must include a statement of the **Special Education and Related Services and Supplementary Aids and Services** to be provided on behalf of the student. The statement must also, if needed, include the **Program Modifications or Supports** for school personnel that will be provided to enable the student:

- To advance appropriately toward attaining the annual goals.
- To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities.
- To be educated and participate with other students with disabilities and non-disabled students in the activities described in this section.
- The IEP must include an explanation of the extent, if any, to which the student will not participate with non-disabled students in the regular education environment.

The IEP must include a statement of any **needed accommodations for school-wide assessments** or reason for and

type of alternate assessment. This statement must include the following:

- Any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on State and school wide assessments.
- If the IEP Team determines that the student must take the State's alternate assessment instead of the regular State or school wide assessment of student achievement, a statement related to:
  - Why the student cannot participate in the regular assessment.
  - Why the particular alternate assessment selected is appropriate for the student.

The IEP must include the **Projected Date for the Beginning of the Services and Modifications**, and the **Anticipated Frequency, Location, and Duration** of those Services and Modifications.

### **Transition Services and IEP Content**

Beginning not later than the first IEP to be in effect when the student turns fourteen (14), or younger if determined appropriate by the IEP Team and updated annually, the IEP must include:

- Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- The transition services (including courses of study) needed to assist the student in reaching those goals.

Beginning not later than one year before the student reaches the age of majority (eighteen years old (18)), the IEP must include a statement that the student and the parent has been informed of the rights under Part B of IDEA that will transfer to the student upon reaching the age of majority.

### **IMPORTANT CONSIDERATIONS FOR IEP TEAMS (§300.324(A)(1))**

- The strengths of the student.
- The concerns of the parents for enhancing the education of their child.
- The results of the initial or most recent evaluation of the student.
- The academic, developmental, and functional needs of the student.
- Special factors:
  - In the case of a student whose behavior impedes the student's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.
  - In the case of a student with Limited English Proficiency, consider the Language Needs of the student as those needs relate to the student's IEP;
  - In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student.
  - Consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode.
  - Consider whether the student needs assistive technology devices and services.

### **Assistive Technology Devices or Assistive Technology Services (§300.105)**

Choctaw Tribal Schools provides assistive technology devices, assistive technology services, or both, to a student with a disability if required as a part of the student's special education, related services, or supplementary aids and services.

On a case-by-case basis, the IEP Team determines if school-purchased assistive technology devices are needed in the student home or other setting in order to receive FAPE.

### **Surgically Implanted Medical Devices (§300.113)**

Choctaw Tribal Schools ensures that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. CTS, however, 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).

### **Participation in Non-Academic Activities and Extracurricular Activities (§300.107)**

Choctaw Tribal Schools take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford the student with disabilities an equal opportunity for participation in those services and activities.

Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by Choctaw Tribal Schools, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school and assistance in making outside employment available.

### **Physical Education Services/Specially Designed Physical Education Services. (§300.108)**

Choctaw Tribal Schools provides specially designed physical education services for students with disabilities when the student's IEP Team deems this appropriate.

Each student with a disability is afforded the opportunity to participate in the regular physical education program available to nondisabled students unless:

- The student is enrolled full time in a separate facility; or
- The student needs specially designed physical education, as prescribed in the student's IEP.

If specially designed physical education is prescribed in a student's IEP, Choctaw Tribal Schools provides the services directly.



Choctaw Tribal Schools is responsible for the education of a student with a disability who is enrolled in a separate facility and therefore must ensure that the student receives specially designed physical education services if deemed appropriate by the IEP Team.

### **Specific Factors Related to CTS Students Enrolled in Separate Facilities:**

If Choctaw Tribal Schools has a student who is enrolled in a separate facility, the special education staff, upon enrollment of the student, discusses the student's IEP with the new facility staff, including the need for specially designed physical education services.

The BIE has clearly outlined the role of Choctaw Tribal Schools (as the student's home school) as the case manager when a student is placed in another facility in order to receive FAPE. These case management responsibilities include facilitating the appropriate implementation of the student's IEP.

### **Extended School Year (ESY) Services (§300.106)**

Extended school year services means special education and related services that are provided to a student with a disability:

- Beyond the normal school year of the BIE funded school.
- In accordance with the student's IEP.
- At no cost to the parents of the student.



### **SERVICES BEYOND THE SCHOOL YEAR ARE ESY WHEN:**

- The IEP Team has made an individualized determination that there is a need for such services to insure an appropriate education for a student with a disability.
- The need and the services are documented in the IEP.
- The student's progress is provided and monitored by appropriate special education personnel.

### **DETERMINING ELIGIBILITY:**

- ESY must be made available if it is necessary in order for a child to receive a free and appropriate education.
- No single criteria can be used as a sole determining factor in determining eligibility for ESY.
- Decisions require a look into data from multiple sources. Another issue to be considered is whether benefits accrued by the child during the regular school year will be jeopardized if the student is not provided ESY.
- ESY determinations are noted within the IEP.

**PLEASE NOTE: SUMMER SCHOOL AND ESY ARE NOT THE SAME THING**

<b>SUMMER SCHOOL</b>	<b>EXTENDED SCHOOL YEAR SERVICES</b>
<b>Definition:</b> An optional or permissive program provided beyond the regular school year. A school may elect whether to operate summer classes.	<b>Definition:</b> Services required by IDEA are to be provided beyond the traditional school year for any child with a disability who needs special education services and/or related services in order to receive FAPE.
<b>Purpose:</b> Teaching new content or enrichment and/or offering recreational or academic opportunities not present during the regular school year. Children with and without disabilities benefit from additional educational opportunities.	<b>Purpose:</b> Ensuring a child's meaningful progress during the regular school year (FAPE) by maintaining learned skills and preventing loss of critical skills. If services are not provided, child's skills are temporarily or permanently lost, jeopardizing progress. ESY services are not provided for the purpose of helping children with disabilities advance in relation to their peers.
<b>Cost:</b> Free or on a fee basis.	<b>Cost:</b> Free to parents.
<b>Duration:</b> Typically operated on a set schedule for a number of weeks during the summer for all those who participate.	<b>Duration:</b> Schedule, setting, and extent of services designed to meet the individual needs of a child in order to assure FAPE. The amount and duration of services cannot be determined arbitrarily by a school's summer school schedule.
<b>Location:</b> General education setting; based on needs and interests of all children.	<b>Location:</b> Varies depending upon each child; the IEP has more flexibility regarding location of services.
<b>Eligibility:</b> A child's participation does not depend on a team determination of need.	<b>Eligibility:</b> IEP team determines need and extent of services to meet the unique needs of the child.

Source: *A Primer on the Provision of Extended School Year Services for Parents and Educators*, 2004, Mountain Plains Regional Resource Center.

**Amendment of the Individualized Education Program (IEP) (§300.324(a)(4)(6))**

In making any changes to a child's IEP after the annual IEP meeting, the parent or CTS may agree not to convene an IEP Team meeting in order to make the changes needed. They may decide to develop a written document to amend or modify the current IEP. If the IEP is amended without an IEP Team meeting, CTS informs the IEP Team, including the parents, of the changes made. CTS provides the parents with a copy of the amended IEP (specific portion which was amended).

## **Annual Review and Revision of the Individualized Education Program (IEP)** **§300.324(b)(1)(2)(3)(5))**

The IEP Team must review the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved. The IEP must be revised, as appropriate, to address:

- Any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate.
- The results of any reevaluation conducted.
- Information about the student provided to, or by, the parents.
- The student's anticipated needs.
- Other matters.

### **IEP REVIEW – SPECIAL FACTORS:**

A regular education teacher of the student, as a member of the IEP Team, must participate in the review and revision of the IEP of the student.

Choctaw Tribal Schools encourages the consolidation of reevaluation meetings and other IEP related meetings whenever possible.

### **FAILURE TO MEET TRANSITION OBJECTIVES AND/OR ACTIVITIES:**

If a participating agency, other than Choctaw Tribal Schools, fails to provide the transition services described in the IEP, CTS must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

Nothing in IDEA 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 students with disabilities that meet the eligibility criteria of that agency.

### **Private School Placements by Public Agency (§300.325)**

Choctaw Tribal Schools must initiate and conduct a meeting to develop an IEP prior to placing or referring a student with a disability to a private school or facility. CTS must ensure that a representative of the private school/facility attends the meeting. If the representative cannot attend, Choctaw Tribal Schools must use other methods to ensure participation including individual or conference calls or video conferencing.

Once the student enters a private school or facility, any meetings to review or revise the student's IEP may be initiated and conducted by the private school/facility at the discretion of Choctaw Tribal Schools.

Even if the private school or facility initiates and conducts IEP meetings, Choctaw Tribal Schools must ensure that the parents and a CTS representative:

- Are involved in any decision about the student's IEP, and

- Agree to any proposed changes in the IEP before they are implemented.

Even if a private school or facility implements a student's IEP, responsibility for compliance with this part remains with the BIE and Choctaw Tribal Schools.

CHOCTAW TRIBAL SCHOOL PRACTICES AND TIMELINES RELATED TO PRIVATE SCHOOL PLACEMENT	
Upon a student's placement in a private school/facility, the school's transition specialist contacts the private school to set up a conference call and/or meeting to discuss special education programming.	
This "change in placement" to a private school necessitates a revised IEP. This will be facilitated by the new school/facility in conjunction with the CTS transition specialist.	
Choctaw Tribal Schools participates in all IEP meetings conducted by private school/facility.	
Choctaw Tribal Schools informs the parent of upcoming IEP meetings at the private school/facility and assists the parents in participating in the meetings.	
Choctaw Tribal Schools works with the BIE during all compliance-monitoring activities, to review/monitor those IEPs of any student in a private school placement.	

Choctaw Tribal Schools is responsible for ensuring that the rights and protections under Part B of IDEA are given to Indian children with disabilities referred to or placed by CTS (or another Choctaw tribal agency) in private schools and facilities.

- When a student is placed in a residential school or facility in order to receive educational service, Choctaw Tribal Schools, carries out the case management responsibilities as
- If the student is placed in a private school, the CTS special education transition specialist from the student's home school communicates facilitates ongoing case management activities, communication between the residential program and the school and ensures the implementation of the IEP.

## Chapter 4: Transition and Secondary Services

The transition services described in this chapter apply for students 16 and above, however, IEP Teams have the option of providing transition services for students at a younger age, if the team feels that this is appropriate.

### Purpose and Definition of Transition Services (§300.1 and §300.43)

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

Transition services means a coordinated set of activities for a student with a disability that is:

- Designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the 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.
- Based on the individual student's needs, taking into account the student's strengths, preferences and interests; and includes:
  - Instruction
  - Related services.
  - Community experiences.
  - The development of employment and other post-school adult living objectives.
  - If appropriate, acquisition of daily living skills, and provision of a functional vocational evaluation.



Transition services for students with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a student with a disability to benefit from special education.

### IEP That Includes Transition Services (§300.320)

Beginning not later than the first IEP to be in effect when the student turns fourteen (14) or younger if determined appropriate by the IEP Team, and updated annually thereafter, the IEP must include:

- Appropriate measurable postsecondary goals, including academic and functional goals, based upon age-appropriate transition assessments related to training or education, employment, and, where appropriate, independent living skills.
- The transition services, including courses of study, needed to assist the student in reaching the student's post-secondary goals.
- If the student does not attend the IEP meeting, there must be documentation related to the consideration the student's preferences and interests.



## **Consent in Regard to Transition Services (§300.622(b)(2)), §300.9, §300.321)**

Consent must be obtained from parent or students (if age of majority) before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

To the extent, appropriate, with the consent of the parents or a student who is age eighteen (18) or older, Choctaw Tribal Schools must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

## **IEP Team Addressing Transition Services (§300.321 and §300.322)**

The IEP Team Meeting notice for the parent or a student over the age of 18, must include the following:

- That one purpose of the meeting will be consideration of the postsecondary goals and transition services for the student.
- That the student will be invited to the meeting.
- The identification of any other agency that will be invited to send a representative, with the consent of the parents or student age eighteen (18) or older.

## **Preparation of the Student Prior to the Meeting**

The transition specialist and special education teachers assist the student in their preparation for the transition IEP meeting. The following areas are focused on in this preparation:

- Post-secondary goals.
- Strengths and challenges.
- Disability and learning characteristics.
- Accommodations and modifications that help them in the classroom, work sites, and community.
- How to advocate for themselves and being as independent as possible, and
- How to communicate and be an active member of their IEP Team.

## **Failure to Meet Transition Objectives (§300.324(c))**

If a participating agency, other than Choctaw Tribal Schools fails to provide the transition services described in the IEP, CTS must reconvene the IEP Team to identify alternative strategies to meet the transition services for the student set out in the IEP or modify the transition services. The transition activities and IEP goals are all carefully monitored by the special education teacher and transition specialist.

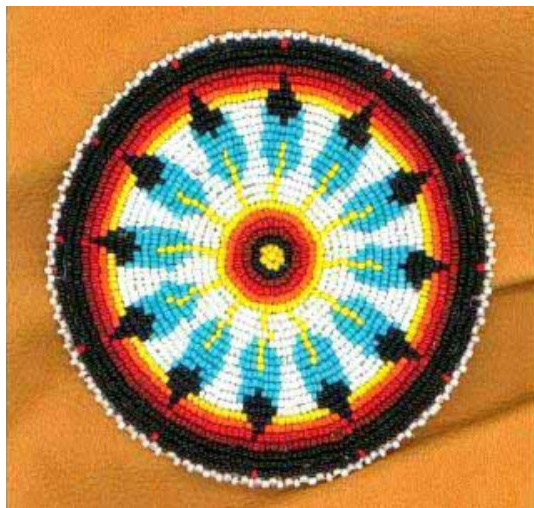
Nothing relieves any participating non-school agency, including a State or Tribal Vocational Rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities that meet the eligibility criteria of the agency.

If any public agency other than an educational agency is obligated under Federal or State law, or assigned responsibility under BIE or BIA policy or an interagency agreement, to provide or pay for any services that are also considered special education or related services, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement or as provided in an interagency agreement. Services include those relating to assistive technology devices, assistive technology services, related services, supplementary

aids and services, and transition services that are necessary for ensuring FAPE.

### **Transfer of Rights at Age of Majority (§300.320(c), §300.520. §300.520(b))**

Beginning not later than one year before the student reaches the age of majority (18 for legally binding contracts in the state of Mississippi), the IEP must include a statement that the student and the student's parents have been informed of the student's rights under Part B of IDEA that will transfer to the student on reaching the age of majority (except for a student with a disability who has been determined to be incompetent by a court). These rights include the right to approve their own educational placement and IEP without help from parents, family, or special advocates helping if he or she desires.



If the student has reached the age of majority, but does not have the ability to provide informed consent, but is not considered incompetent by state/tribal law, Choctaw Tribal School's transition specialist and the student's case manager identifies another appropriate individual to represent the educational interests of the student throughout their eligibility under IDEA if the parent is not available. The IEP Team makes this determination regarding informed consent of the student.

Choctaw Tribal Schools must provide any notice required by Part B of IDEA and these Policies and Procedures to both the adult-age student and the parents.

All rights afforded to parents under Part B of IDEA transfer to the student upon reaching the age of majority.

All rights afforded to parents under Part B of IDEA transfer to students who are incarcerated in an adult or juvenile, State, local or BIA funded or Tribal correctional institution.

### **Students With Disabilities in Adult Prisons (§300.324, §300.102, §300.320)**

The requirement regarding statewide assessments in the IEP section of these Policies and Procedures does not apply for students with disabilities incarcerated in adult prisons.

The IEP Team may modify the student's IEP or placement if Choctaw Tribal Schools has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

The requirements of §300.320 and §300.112 relating to IEPs do not apply with respect to the modifications described in the paragraph above.

The requirements relating to transition planning and services, do not apply with respect to those students whose eligibility under Part B of IDEA will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

The obligation to make FAPE available to all students with disabilities does not apply with respect to students who are eighteen to twenty-two, in their last educational placement prior to their incarceration in an adult correctional facility:

- Were not actually identified as being a student with a disability, and
- Did not have an IEP under IDEA.

The obligation to make FAPE available does apply to students with disabilities, ages eighteen through twenty-two), who:

- Had been identified as a student with a disability and had received services in accordance with an IEP, but who left school prior to their incarceration, or
- Did not have an IEP in their last educational setting, but who had actually been identified as a student with a disability.

### **Incarcerated CTS Students with Disabilities**

Choctaw Tribal Schools track a student's incarceration location and educational services carefully; this is the job of the CTS Transition Specialists. If educational services are provided by the particular school/juvenile facility, the IEP is shared and there is on-going communication between the school and facility. If educational services are not provided at the site, Choctaw Tribal School coordinates the provision of these services.

### **Graduation and Termination of Eligibility as a Change of Placement (§300.305) (§300.102)**

The obligation of Choctaw Tribal Schools to make FAPE available to all students with disabilities does not apply to students with disabilities who have graduated from high school with a regular high school diploma or due to exceed the age of eligibility for FAPE under State law. This does apply to students that have graduated from high school but have not been awarded a regular high school diploma, i.e. Occupational Diploma.

Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice.

The written prior notice must contain all the requirements noted in the procedural safeguard section entitled "Prior Notice", including being given a reasonable time before the school proposed to terminate the student's eligibility under IDEA by issuing the student a diploma. The written prior notice regarding the termination of special education services and eligibility due to high school graduation with a diploma is provided a minimum of 30 days prior to graduation.

The IEP Team may amend CTS graduation requirements and must document in the IEP the nature and extent of any modifications, substitutions, and/or exemptions made to accommodate the needs of a student with disabilities. Student's graduation requirements and particular graduation diploma route is typically discussed and determined as the student is entering the 9th grade.

An evaluation is not required before the termination of a student's eligibility under this part due to graduation from secondary school with a regular high school diploma, or due to exceeding the age of eligibility for FAPE (through the end of the school year which the student turns twenty-two (22)).

For a student whose eligibility terminates due to graduation from secondary school with a regular diploma, or due

to exceeding the age of eligibility for FAPE, CTS must provide the student with a summary of the student's academic achievement and functional performance. CTS has elected to provide all special education exiting students with a summary of performance. This summary must include recommendations on how to assist the student in meeting the student's postsecondary goals.

## Chapter 5: Least Restrictive Environment (LRE) (§300.114)

Choctaw Tribal Schools ensures the following:

- To the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are nondisabled.
- Special classes separate schooling, or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

### Continuum of Alternative Placements (§300.115)

Choctaw Tribal Schools provides a continuum of alternative placements to meet the needs of students with disabilities for special education and related services.

CONTINUUM INCLUDES:
Alternative placement including instruction in regular classes, special classes, special schools, home instruction, hospital, and other residential settings as determined by the IEP team.
Supplementary services (such as resource or itinerant instruction) are also provided in conjunction with regular class placement.

### Placements and LRE Determination (§300.116)

In determining the educational placement of a student with a disability, Choctaw Tribal Schools ensures that this decision is made by the multi-disciplinary team, which includes the parents and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.

The student's placement must:

- Be determined at least annually.
- Be based on the student's IEP.
- Be as close as possible to the student's home.

Unless the IEP of a student with a disability requires some other arrangement, the student should attend the school that he or she would attend if nondisabled.

In making the placement decision, the team must consider any potential harmful effect on the student or on the quality of services that they need.

A student with a disability must not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

CTS special education staff provides training and support for all school staff regarding the requirements of least restrictive environment. The emphasis is on educating the student with a disability in the general education environment with the provision of appropriate supports.

In the development of the IEP, the IEP Team discusses the student's LRE including all of the services and supports the student may need while involved with non-disabled peers. Needed services and supports regarding LRE are documented within the IEP.

### **Program and Curricular Options (§300.110)**

Choctaw Tribal Schools ensures that students with disabilities have available to them the variety of educational programs and services available to nondisabled students. Programs and services include art, music, industrial arts, consumer and homemaking education, and vocational education.

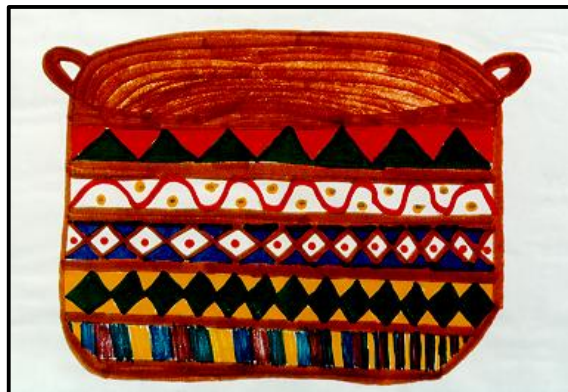
### **Nonacademic Settings and Services (§300.117, §300.107)**

Students with disabilities at Choctaw Tribal Schools participate with nondisabled students in nonacademic settings and extracurricular services and activities to the maximum extent appropriate for that student.

Supplementary aids and services are identified and documented by the student's IEP Team in order for the student to participate in nonacademic activities and extracurricular activities, if appropriate.

Nonacademic and extracurricular services and activities may include:

- Counseling services.
- Athletics.
- Transportation.
- Health services.
- Recreational activities.
- Special interest groups or clubs sponsored by CTS or other public agency.
- Referrals to agencies that provide assistance to individuals with disabilities and employment of students, including both employment by the school and assistance in making outside employment available.



Artwork by Kenita McMillan

### **Students in Public or Private Institutions (§300.118)**

Except as discussed in the Transition and Secondary Services section of these Policies and Procedures regarding the responsibility of Choctaw Tribal Schools for general supervision for some individuals in adult prisons, CTS must ensure that the LRE requirements are effectively implemented for students with disabilities placed in public or private institutions. This is done through a memorandum of agreement (MOA) or a memorandum of understanding (MOU) between CTS and the public or private institution or through procedure and/or policy statements.

CTS staff (generally the transition specialist) participate in all IEP meetings of its students who are being served in another setting.

Choctaw Tribal Schools is involved in the compliance monitoring that is conducted by the education line office and the BIE. This compliance monitoring includes a review of services and IEP files for students who are served in alternate settings.

## **Chapter 6: Procedural Safeguards: Due Process Procedures for Parents and Students (§§300.500 – 536)**

Choctaw Tribal School implements the following due process Policies and Procedures for students with disabilities and their families.

### **Opportunity to Examine Records and Participate in Meetings (§300.501, §300.322, §300.327)**

Choctaw Tribal Schools permits parents to inspect and review any education record relating to their children that are collected, maintained or used by CTS. Requests must be granted without unnecessary delay and before any meeting regarding an IEP, or any hearing, or resolution session.

#### **Meeting Participation**

The parents of a student with a disability must be afforded an opportunity to participate in meetings that deal with the identification, evaluation and/or educational placement of the student and the provision of FAPE. Choctaw Tribal Schools must provide notice to ensure the parents of students with disabilities have the opportunity to participate in meetings.

Invitation and prior notice is not required in the following situations:

- Informal or unscheduled conversations on issues such as teaching methodology, lesson plans, or coordination of service provision.
- Preparatory activities that CTS engages in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

Choctaw Tribal Schools must ensure that a parent of each student with a disability is a member of any group that makes decisions on the educational placement of the parent's child, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed upon time and place. CTS makes it a practice to invite parents a reasonable amount of time ahead (usually 2 weeks prior to a meeting) with multiple documented attempts to participate.

**Meeting Notice:** The CTS meeting notice/invitation must indicate the purpose(s), time, location, and who will be in attendance, and inform the parents of their right to bring other individuals who have knowledge or special expertise about the student.

If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, Choctaw Tribal Schools must use other methods to ensure their participation, including individual or conference calls, home visits and video conferencing.

An IEP Team, without the involvement of the parent, may make a placement decision if the Choctaw Tribal Schools is unable to obtain the parent's participation in the decision. In this case, Choctaw Tribal Schools must document its attempt to ensure parental participation.

## Independent Educational Evaluation (§300.502)

CTS INDEPENDENT EVALUATION POLICIES & PROCEDURES (§300.502)	
An independent evaluation is conducted by a qualified examiner who is not employed or contracted by Choctaw Tribal Schools responsible for the education of the student in question.	
The parents of a student with a disability have the right to obtain an independent educational evaluation of the student at public expense if they disagree with an evaluation obtained by Choctaw Tribal Schools. Public expense means that CTS either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parents.	
Choctaw Tribal Schools must provide to parents, upon request for an independent educational evaluation, information about where such an evaluation may be obtained, and the BIE criteria applicable for independent educational evaluations (see Chapter 2: Evaluation and Eligibility).	
If a parent requests an independent educational evaluation at Choctaw Tribal Schools expense, CTS must immediately either file a due process complaint to request a hearing to show that its evaluation is appropriate, or ensure that an independent educational evaluation is provided at public expense, unless CTS demonstrates in a hearing that the evaluation obtained by the parent did not meet the criteria.	
If Choctaw Tribal Schools files a due process complaint notice to request a hearing and the final decision is that the CTS evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at CTS expense.	
If a parent requests an independent educational evaluation, Choctaw Tribal Schools may ask for the parent's reason why he or she objects to the school's evaluation. However, the explanation by the parent may not be required and CTS may not unreasonably delay either providing the independent educational evaluation and paying for it, or requesting a due process hearing to defend the public evaluation.	
A parent is entitled to only one independent educational evaluation at the school's expense each time CTS conducts an evaluation with which the parent disagrees.	
If the parent obtains an independent educational evaluation at public expense or shares with CTS an evaluation obtained at private expense, Choctaw Tribal Schools must consider the results of the evaluation, if the evaluation meets Mississippi evaluation criteria. This consideration must be given in any decision made with respect to the provision of FAPE to the student. The results of the evaluation may also be presented by any party as evidence at a hearing on a due process complaint regarding that student.	
If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be Choctaw Tribal School's expense.	
If an independent educational evaluation is at Choctaw Tribal School's expense, the criteria under which the evaluation is obtained must be the same as the criteria that CTS uses when it initiates an evaluation, i.e. location of evaluation and qualification of examiner. Such criteria must be consistent with the parent's right to an independent educational evaluation.	
Except for the criteria described above, Choctaw Tribal Schools may not impose additional conditions or timelines related to obtaining an independent educational evaluation at CTS expense.	

## Prior Notice (§300.503)

Written notice must be given to the parents of a child with a disability a reasonable time before Choctaw Tribal Schools:

- Proposes to initiate or change the identification, evaluation or educational placement of the student or the



- provision of FAPE to the student; or
- Refuses to initiate or change the identification, evaluation or educational placement of the student or the provision of FAPE to the student.

The notice (***Prior Written Notice of Proposed Action***) must include all of the following components:

- A description of the action proposed or refused by Choctaw Tribal Schools.
- An explanation of why CTS proposes or refuses to take the proposed or refused action.
- A description of each evaluation procedure, assessment, record or report Choctaw Tribal Schools used as a basis for the proposed or refused action.
- A statement that the parents of a child with a disability have protection under the procedural safeguards of IDEA, and if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.
- Sources for parents to contact to obtain assistance in understanding the procedural safeguards.
- A description of other options that the IEP Team considered and the reasons why those options were rejected.
- A description of other factors that are relevant to Choctaw Tribal School's proposal or refusal.

The notice must be written in language understandable to the parent, provided in the native language or other mode of communication used by the parent, unless it is clearly not feasible to do so.

If the native language or other mode of communication used by the parent is not a written language, CTS must 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.
- That there is written evidence of these requirements.

### **Procedural Safeguard Notice (§300.504)**

A copy of the procedural safeguards (developed and disseminated to BIE funded schools by the BIE) is required to be given to the parent of a child with a disability only one (1) time a school year, except that a copy also must be given to the parents:

- Upon initial referral or parent request for evaluation.
- Upon receipt of a first complaint to the BIE or first request for a due process hearing in a school year.
- When a disciplinary change of placement/removal has been initiated.
- Upon request by a parent.

The *Procedural Safeguards Notice* used by CTS includes a full explanation of all the procedural safeguards relating to:

- Independent educational evaluation.
- Prior written notice.
- Parental consent.
- Access to education records.
- Opportunity to present and resolve complaints through the due process hearing and BIE complaint procedures, including:
  - The time period in which to file a complaint.
  - The opportunity for the agency to resolve the complaint.

- The difference between due process hearing and BIE complaint procedures, jurisdictions, issues that may be raised, timelines, and relevant procedures.
- The availability of mediation.
- The student's placement during the due process hearing.
- Procedures for students subject to placement in an interim alternative educational setting.
- Requirements for unilateral placements by parents of students in private schools at Choctaw Tribal School's expense.
- Due process hearings including requirements for disclosure of evaluation results and recommendations.
- Civil actions, including timelines.
- Attorney fees.

Choctaw Tribal Schools has a current copy of the procedural safeguards notice on its Internet web site.

### **Electronic Mail (§300.505)**

Choctaw Tribal Schools has made an electronic mail option available to parents. The parent of a child with a disability may elect to receive a written prior notice, procedural safeguards notice, and due process complaint through this means. A statement to this fact and the parent's email address is listed in the IEP meeting notes when a parent opts to receive these notices by email.

### **Mediation (§300.506)**



Choctaw Tribal Schools utilizes procedures which allow parties involved in disputes related to any matter regarding Part B of IDEA, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process. The mediation procedures are provided to BIE funded schools and Education Line Offices by the BIE. The mediation procedures:

- Are voluntary on the part of the parties.
- May not be used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under IDEA.
- Are conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

For parents who choose not to use the mediation process, CTS provides these parents an opportunity to meet, at a time and location convenient, with a third party:

- Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center, or a community parent resource center in Mississippi. The Empower Community Resource Center in Greenville, MS. (662-332-4852), and the MS Parent Training Institute (PTI) in Jackson, MS. (601-969-0601) are both appropriate resources.
- Who would explain the benefits of and encourage the use of the mediation process to the parents.

CTS will facilitate the arrangements for the third party meeting if the meeting is necessary. They will also reimburse the parent center staff for their travel expenses. A parent may refuse this third party assistance and meeting.

## BIE and Mediation

### BIE Mediation Responsibilities

The BIE maintains a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

The BIE selects mediators on a random, rotational, or other impartial basis.

The BIE bears the cost of the mediation process, including the costs of meetings related to this process.

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.

If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and:

- 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.
- Is signed by both the parent and a representative of the school who has the authority to bind the school.

A written, signed mediation agreement is enforceable in any State Court of competent jurisdiction or in a district court of the United States.

Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal or State court.

An individual who serves as a mediator under this section:

- May not be an employee of the BIE, Choctaw Tribal Schools or residential facility that is involved in the education or care of the student.
- Must not have a personal or professional interest that conflict with the person's objectivity.
- A person who otherwise qualifies as a mediator is not an employee of the BIE or Choctaw Tribal Schools solely because the person is paid by the BIE to serve as a mediator.

## Filing a Due Process Complaint (§300.507)

A parent or Choctaw Tribal Schools may file a due process complaint on any of the matters relating to the identification, evaluation, or educational placement of a student with a disability, or the provision of FAPE to the student.

The due process complaint must allege a violation that occurred not more than two (2) years before the date the parent or CTS knew or should have known about the alleged action that forms the basis of the due process complaint, except if the parent was prevented from filing a due process complaint due to:

- Specific misrepresentations by the school that it had resolved the problem forming the basis of the due process complaint, or
- The Choctaw Tribal Schools withholding of information from the parent that was required under IDEA to be provided to the parent.

CTS must inform the parent of any free or low-cost legal and other relevant services available in the area if:

- The parent requests the information.
- The parent requests a hearing under IDEA procedural safeguards.

Choctaw Tribal Schools' special education administration has made a listing of free and low-cost legal and other relevant services within the local, regional and state to assist the parent upon their request and at the point of a request for a due process hearing. This information is made available to the parent at the appropriate times.

Choctaw Tribal Schools will provide assistance to the parent in the completion of the forms and with navigating the process as needed.

### **Due Process Complaint (§300.508)**

When Choctaw Tribal Schools or a parent, or an attorney representing them, files a due process complaint, a copy is given to the other party. The due process report must remain confidential to all others.

The party filing a due process complaint must forward a copy of the due process complaint to the Bureau of Indian Education.

THE DUE PROCESS COMPLAINT MUST INCLUDE THE FOLLOWING:	
1.	Name of the student.
2.	Address of the student.
3.	Name of the school the student is attending.
4.	In the case of a homeless student or youth, available contact information for the student and the name of the school the student is attending.
5.	A description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem.
6.	A proposed resolution of the problem to the extent known and available to the party at the time.

A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements listed above.

The required due process complaint must be deemed efficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within fifteen (15) calendar days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements.

- Within five (5) calendar days of receipt of notification, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements, and must immediately notify the parties in writing of that determination.
- A party may amend its due process complaint only if:
  - The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution meeting, or
  - The hearing officer grants permission, except that the hearing officer may not grant permission to amend at any time not later than five (5) calendar days before the due process hearing begins.
- If a party files an amended due process complaint, the timelines for the resolution meeting and the time period to resolve the complaint begin again with the filing of the amended due process complaint.

If Choctaw Tribal Schools has not sent a written prior notice to the parent regarding the subject matter contained in the parent's due process complaint, CTS, within ten (10) calendar days of receiving the due process complaint must:

- Send to the parent a response (using the Prior Written Notice of Proposed Action form) that includes:
- An explanation of why Choctaw Tribal Schools proposed or refused to take the action raised in the due process complaint.

- A description of other options that the IEP Team considered and the reasons why those options were rejected.
- A description of each evaluation procedure, assessment, record, or report Choctaw Tribal Schools used as the basis for the proposed or refused action.
- A description of the other factors that are relevant to the school's proposed or refused action.
- Choctaw Tribal School's response does not preclude it from asserting that the parent's due process complaint was insufficient, where appropriate.

A party receiving a due process complaint must, within ten (10) days of receiving the due process complaint, send to the other party a response that specifically addresses the issue raised in the due process complaint.

### **Model Forms (§300.509)**

The BIE has developed model forms to assist parents in filing a BIE complaint and a due process hearing complaint. These forms are available on the BIE website, at BIE Education Line Offices, and at Choctaw Tribal Schools. Parties are not required to use the BIE model forms. Parents and Choctaw Tribal Schools may use the appropriate model form or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements for filing a due process or BIE complaint. In the event that CTS files a complaint or a parent wishes to file a complaint, the BIE model forms will be used by CTS and offered for use by the parent.

### **Resolution Process (§300.510)**

Within fifteen (15) days of receiving the notice of the parent's due process complaint, and prior to the initiation of a due process hearing, Choctaw Tribal Schools must convene a meeting with the parent and the relevant members of the IEP Team who have specific knowledge of the facts identified in the complaint that:

- Includes a representative from Choctaw Tribal Schools who has decision-making authority.
- May not include an attorney of Choctaw Tribal Schools unless an attorney accompanies the parent.
- 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 CTS has an opportunity to resolve the dispute.

The resolution meeting need not be held if:

- The parent and Choctaw Tribal Schools agree in writing to waive the meeting, or
- The parent and CTS agree to use the mediation process.

The parent and Choctaw Tribal Schools determine the relevant IEP Team members to attend the meeting.

If Choctaw Tribal Schools has not resolved the complaint to the satisfaction of the parent within thirty (30) days of the receipt of the complaint, the due process hearing may occur.

The timeline for issuing a final decision begins at the end of this thirty (30) day time period.

The failure of the parent to participate in the resolution meeting that has not been mutually agreed to be waived, will delay the timelines for the resolution process and due process hearing until the resolution meeting is held.

If Choctaw Tribal Schools is unable to obtain the participation of the parent after reasonable efforts have been made and documented, CTS may, at the conclusion of the thirty (30) day period, request the hearing officer dismiss the

parent's due process complaint.

If Choctaw Tribal Schools fails to hold the resolution meeting with fifteen (15) days of receiving the complaint or fails to participate in the meeting, the parent may request that the hearing officer begin the hearing timeline.

The forty-five (45) day timeline for the due process hearing starts the day after one of the following events:

- Both parties agree in writing to waive the resolution meeting.
- After either the mediation or resolution meeting starts but before the end of the thirty (30) day resolution period, the parties agree in writing that no agreement is possible.
- If both parties agree in writing to continue the mediation at the end of the thirty (30) day resolution period, but later, one party withdraws from the mediation process.

If a resolution to the dispute is reached at the resolution meeting, the parties must execute a legally binding agreement that is:

- Signed by both the parent and school representative who have authority to legally bind the school.
- Enforceable in any State court of competent jurisdiction, or a District court of the U.S.

Either party may void the agreement within three (3) business days of the agreement's execution.

### **Impartial Due Process Hearing (§300.511)**

Whenever a due process complaint is filed, the parents or Choctaw Tribal Schools involved in the dispute must have an opportunity for an impartial due process hearing.

The impartial due process hearing shall be conducted by the BIE. The BIE Supervisor of Special Education or designee shall assign an impartial hearing officer on a random (rotation) basis.

<b>REQUIREMENTS REGARDING THE HEARING OFFICER</b>
Must not be an employee of the BIE or Choctaw Tribal Schools that is involved in the education or care of the student.
Must not be a person having a personal or professional interest that conflict with the person's objectivity in the hearing.
Must possess knowledge of, and the ability to understand, the provisions of Part B of IDEA, Federal and State regulations pertaining to Part B of IDEA, and legal interpretations of Part B of IDEA by Federal, State and Tribal courts.
Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice, and
Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.
A person who otherwise qualifies to conduct a hearing is not an employee of the BIE or Choctaw Tribal Schools because he or she is paid by the BIE to serve as a hearing officer.

The BIE keeps a list of the persons who serve as hearing officers and a statement of their qualifications.

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.

A parent or Choctaw Tribal Schools must request an impartial hearing on their due process complaint within two (2) years of the date the parent or Choctaw Tribal Schools knew or should have known about the alleged action that forms the basis of these due process complaint.

The timeline described in “Resolution Process” earlier in this section of these Policies and Procedures does not apply to a parent, if the parent was prevented from filing a due process complaint due to:

- Specific misrepresentations by Choctaw Tribal Schools that it had resolved the problem forming the basis of the due process complaint, or
- The Choctaw Tribal Schools withholding of information from the parent that was required to be provided by the parent.

The BIE monitors all due process hearings to ensure adherence to required procedures.

### **Hearing Rights (§300.512)**

Any party to a hearing or an appeal has the right to:

- Be accompanied and advised by the counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities, except when parties have the right to be represented by non-attorneys at due process hearings as determined under State law.
- Present evidence and confront, cross-examine, and compel the attendance of witnesses.
- Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing.
- Obtain a written, or, at the option of the parents, electronic verbatim record of the hearing and findings of fact and decisions.

At least five (5) business days prior to a hearing, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party’s evaluations that the party intends to use at the hearing.

A hearing officer may bar any party from introducing the relevant evaluation or recommendation not disclosed at least five (5) business days prior to the hearing at the hearing without the consent of the other party.

Parents involved in hearings must be given the right to:

- Have the student who is the subject of the hearing present.
- Open the hearing to the public.
- Have the record of the hearing and the findings of fact and decisions provided at no cost to parents.

### **Hearing Decisions (§300.513)**

A hearing officer’s determination of whether the student received FAPE must be based on substantive grounds.

In matters alleging a procedural violation, a hearing officer may find that a student did not receive FAPE only if the procedural inadequacies:

- Impeded the student’s right to FAPE.
- Significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of FAPE to the parent’s child, or

- Caused a deprivation of educational benefit.

A hearing officer may, at any time, order CTS to comply with all procedural requirements.

A parent has the right to file a separate due process complaint on an issue separate from a due process complaint already filed.

The BIE, after deleting any personally identifiable information:

- Transmits the findings and decisions on the due process complaint to the BIE Advisory Board for Exceptional Children.
- Makes those findings and decisions available to the BIE Education Line Offices, BIE funded schools, and public.

### **Finality of Decision (300.514)**

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.

### **Timelines and Convenience of Hearings (§300.515)**

The BIE must ensure that not later than forty-five (45) calendar days after the expiration of the thirty (30) calendar day resolution period, or the adjusted time periods resulting from the resolution process:

A final decision is reached in the hearing, and

A copy of the decision is mailed to each of the parties.

A hearing officer may grant specific extensions of time at the request of either party (parent or CTS).

Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and student involved.

### **Civil Action (§300.516)**

Choctaw Tribal Schools or a parent has the right to bring a civil action. The party bringing the action has ninety (90) calendar days from the date of the decision of the hearing officer to file a civil action.

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.

In any civil action, the court receives the records of the administrative proceedings; hears additional evidence at the request of a party; and, basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

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



## **Attorneys' Fees (§300.517)**

In any action or proceeding brought under the procedural safeguards of this section of these Policies and Procedures, the court, in its discretion, may award reasonable attorneys' fees as part of the costs:

- To the prevailing party who is the parent of a child with a disability.
- To a prevailing party who is the BIE or Choctaw Tribal Schools 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.
- To the BIE or Choctaw Tribal Schools 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.

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 Choctaw Tribal Schools may use Part B funds for conducting an action or proceeding under the procedural safeguards of Part B of IDEA.

A court awards reasonable attorneys' fees consistent with the following:

- 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.
- 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.

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, noted in the part entitled "Mediation" earlier in this section of these Policies and Procedures.

A resolution meeting shall not be considered a meeting convened as a result of an administrative hearing or judicial action for purposes of attorneys' fees in this section.

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.

The court reduces, accordingly, the amount of the attorneys' fees awarded, if the court finds that:

- The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy.
- 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.
- The time spent and legal services furnished were excessive considering the nature of the action or proceeding, or
- The attorney representing the parent did not provide Choctaw Tribal Schools appropriate information in the due process request notice.

The above regulations regarding attorneys' fees do not apply in any action or proceeding if the court finds that the BIE or Choctaw Tribal Schools unreasonably protracted the final resolution of the action or proceeding or there was

a violation of the procedural safeguards of IDEA.

### **Student's Status During Proceedings (§300.518)**

During the pendency of any administrative or judicial proceeding regarding a request for a due process hearing, unless the BIE or Choctaw Tribal Schools and the parents of the student agree otherwise, the student involved in the complaint must remain in his or her current educational placement.

If the complaint involves an application for initial admission to Choctaw Tribal Schools, the student, with the consent of the parents, must be placed in Choctaw Tribal Schools until the completion of all the proceedings.

If the decision of a hearing officer in a due process hearing conducted by the BIE agrees with the student's parents that a change of placement is appropriate, that placement must be treated as an agreement between Choctaw Tribal Schools and the parents.

### **State Implementation of Procedural Safeguards (§300.150)**

The BIE has made Choctaw Tribal Schools aware of its responsibility for ensuring effective implementation of procedural safeguards for students with disabilities served by BIE funded schools. The BIE provides on-going training related to procedural safeguards and provides technical assistance documents regarding procedural safeguards for schools and families.

### **State Complaint Procedures (§§300.151 - 300.153)**

The BIE has adopted procedures for resolving any complaint under Part B of IDEA. This includes a complaint filed by an organization or individual from any of the States in which a BIE funded school is located. The procedures include:

- The signed complaint must be in writing to the BIE Special Education Supervisor. If the parents are unable to file in writing, they may contact Choctaw Tribal Schools, the BIE Education Line Office, or the BIE for assistance.
- The party filing the complaint must forward a copy to the specific school serving the child within Choctaw Tribal Schools at the same time the party files the complaint with the BIE.

Prior to filing a complaint with the BIE, a parent or organization may request assistance from the BIE – Early Assistance Program to solve the concern before a written complaint is filed. This is voluntary on the part of the parent or organization.

A COMPLAINT MUST INCLUDE THE FOLLOWING:	
1.	A statement that Choctaw Tribal Schools has violated a requirement of Part B of IDEA or these Policies and Procedures.
2.	The facts on which the statement is based.
3.	The signature and contact information for the complainant.
4.	If alleging violations with respect to a specific student: <ul style="list-style-type: none"><li>• The name and address of the residence of the student.</li><li>• The name of the school the student is attending.</li></ul>

5. In the case of a homeless student, available contact information for the student and the name of the school the student is attending.
6. A description of the nature of the problem of the student, including facts relating to the problem.
7. A proposed resolution to the problem to the extent known and available to the party at the time the complaint is received.

The complaint must allege a violation that occurred not more than one (1) year prior to the date that the complaint is received by the BIE, unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received by the BIE.

Once the complaint is received by the BIE, the parties involved must receive a “Letter of Acknowledgement” from the BIE. This letter includes:

- Reference number assigned to the complaint.
- Timeline for investigation of the complaint within sixty (60) calendar days.
- Probability of a site visit.
- Summary of the allegation(s).
- BIE contact person and contact information.

WITHIN THE SIXTY (60) DAY TIME LIMIT, THE BIE:
Conducts an independent investigation and, if appropriate, an on-site investigation.
Gives the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.
Responds 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 IDEA requirements.
Reviews all relevant information and make a determination as to whether Choctaw Tribal Schools is violating a requirement of the BIE Special Education Policies and Procedures.
Issues a written decision to the complainant and Choctaw Tribal Schools involved in the complaint, which addresses each allegation in the complaint and contains: <ul style="list-style-type: none"> <li>• Findings of fact and conclusions.</li> <li>• The reason for the BIE final decisions.</li> </ul>
Permits an extension of the sixty (60) day time limit if: <ul style="list-style-type: none"> <li>• Exceptional circumstances exist with respect to a particular complaint.</li> <li>• The parent, individual or organization, and the BIE staff involved, agree to extend the time to engage in mediation or other alternative means of dispute resolution available within the BIE. If an extension is required, the BIE will inform all parties of the extension and the date by which findings are issued.</li> </ul>
Determines procedures for the effective implementation of the BIE final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.
In resolving a complaint in which it has been found a failure to provide appropriate services, the BIE addresses: <ul style="list-style-type: none"> <li>• How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student.</li> <li>• Appropriate future provision of services for all students with disabilities.</li> </ul>

If a written State complaint is received that is also the subject of a due process hearing under the Due Process Hearing Procedures in these Policies and 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 described in this section.

If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, then the hearing decision is binding on that issue. The BIE must inform both parties of this fact. A complaint alleging Choctaw Tribal Schools failed to implement a due process decision, however, must be resolved by the BIE.

Parents and other interested individuals, including staff from Education Line Offices, BIA agencies such as Indian Health Services, parent training and information centers, representatives of protection and advocacy agencies, and other appropriate entities, shall be informed of these procedures through:

- BIE Procedural Safeguards Notice and complaint procedures provided by BIE and Choctaw Tribal Schools.
- Presentations and other training events conducted by BIE and Choctaw Tribal Schools.
- Dissemination of informational materials regarding procedural safeguards and BIE complaint procedures throughout BIE funded school communities.

Choctaw Tribal Schools provides training regarding the procedural safeguards and complaint processes. The special education staff also provides parents with a review of these procedures and rights when providing parents with a copy of these procedures.

### **Surrogate Parent (§300.519)**

The BIE has Policies and Procedures to ensure that Choctaw Tribal Schools make certain that the rights of a student are protected when:

- No parent can be identified (see definition in the appendix).
- Choctaw Tribal Schools, after reasonable efforts, cannot locate a parent.
- The student is a ward of the State or Tribe under the laws of the State or Tribe.
- The child is an unaccompanied homeless youth as defined by 756(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 1143a(6)). (See definition of homeless children in the appendix.)

The BIE ensures that Choctaw Tribal Schools adheres to the surrogate parent requirements of this section through its general supervision activities, including monitoring.

The duties of Choctaw Tribal Schools include the assignment of an individual to act as the surrogate for the parents. CTS has developed a process for determining whether a student needs a surrogate parent, and for assigning a surrogate parent to the student.

In the case of a student who is a ward of the State or Tribe, the judge overseeing the student's case, providing that the surrogate meets the requirements listed in this section, alternatively may appoint the surrogate parent.

### **Criteria for Section of Surrogate Parents**

<b>Choctaw Tribal Schools may select a surrogate parent in any way permitted under IDEA.</b>
Schools must ensure that a person selected as a surrogate parent: <ul style="list-style-type: none"><li>• Is not an employee of the BIE or CTS or any other agency that is involved in the education or care of the student.</li><li>• Has no personal or professional interest that conflict with the interest of the student the surrogate parent represents, and</li><li>• Has knowledge and skills that ensure adequate representation of the student.</li></ul>

A person otherwise qualified to be a surrogate parent is not an employee of the school solely because he or she is paid by the school to serve as a surrogate parent.

In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents until a surrogate parent can be appointed.

**THE SURROGATE PARENT MAY REPRESENT THE STUDENT IN ALL MATTERS RELATING TO:**

- The identification, evaluation, and educational placement of the student.
- The provision of FAPE to the student.

Choctaw Tribal School must make reasonable efforts to ensure the assignment of a surrogate parent not more than thirty (30) days after it is determined that the student needs a surrogate parent.

Choctaw Tribal School's special education administration has developed list of potential surrogate parents.

Choctaw Tribal Social Services Division is typically involved with this process, i.e. locating potential surrogates and assisting in training regarding roles and responsibilities.

CTS special education staff is provided training regarding the surrogate parent training requirements, e.g. when they are needed, timelines, roles and responsibilities, and how an appointment is made.

The IEP Team and central office special education administration facilitates the appointment of the surrogate parent and the principal facilitates the payment for the surrogate parent based on pre-determined rates, including travel expenses.

## Chapter 7: Confidentiality of Information and Records Management

Choctaw Tribal Schools has established the following Policies and Procedures regarding confidentiality of personally identifiable information to which all of its schools must adhere. This pertains to any personally identifiable information collected, used, or maintained under IDEA.

### Definitions Related to Confidentiality Regulations (§300.611, §300.32, §99.3, §99.21)

1. **Destruction** means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
2. **Education records** means the type of records covered under the definition of “education records” in FERPA, 34 CFR Part 99. These are records, files, documents, and other materials which:
  - Contain information directly related to a student; and
  - Are maintained by an educational agency or institution or by a person acting for such agency or institution.The term "education records" does not include:
  - Records of instructional, supervisory, and administrative personnel and educational personnel ancillary which are in the sole possession of the maker and are not accessible or revealed to any other person except a substitute;
  - Records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement.
  - In the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or
  - Records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.
3. **Participating agency** means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under IDEA.
4. **Personally identifiable** means information that contains:
  - Name of the child, parent, or other family member.
  - Address of child.
  - Personal identifier including social security number or student number.
  - List of personal characteristics or information that would make it possible to identify the child with reasonable certainty.



## **Notice to Parents (§300.612, §300.123, §99.21)**

Choctaw Tribal Schools must give notice that is adequate to fully inform parents about the requirements relating to confidentiality of personally identifiable information (§300.123). The notice must include the following:

- A description of the extent that the notice is given in the languages of the various population groups within the Choctaw Tribal School communities.
- A description of the students on whom personally identifiable information is maintained, the types of information sought, the methods that CTS intends to use in gathering the information (including the sources from whom the information is gathered), and the uses to be made of the information.
- A summary of the Policies and Procedures that Choctaw Tribal Schools must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information.
- A description of all rights of parents and students regarding the information noted in the section entitled “Access Rights” noted below, including the rights under FERPA.

Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the CTS community.

## **Access Rights (§300.613)**

Choctaw Tribal Schools must permit parents to inspect and review any education records relating to their child that are collected, maintained, or used by CTS under IDEA regulations. Choctaw Tribal Schools must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing or resolution session, and in no case more than forty-five (45) days after the request has been made.

## **Parent Rights Regarding Record Inspection and Review**

The right to a written and verbal response from Choctaw Tribal Schools to reasonable requests for explanations and interpretations of the records.
--

The right to request that Choctaw Tribal Schools 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.
--

The right to have a representative of the parent inspect and review the records.
--

CTS may presume that the parent has authority to inspect and review records relating to his or her child unless they have been advised that the parent does not have the authority under applicable State or Tribal law governing such matters as guardianship, separation, and divorce.

## **Record of Access (§300.614)**

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

## **Records on More Than One Student (§300.615)**

If any education record includes information on more than one student, the parents may inspect and review only the information relating to their child or be informed of that specific information.



### **List of Types and Locations of Information (§300.616)**

Choctaw Tribal Schools must provide parents, upon request, a list of the types and locations of education records collected, maintained, or used by the school.

### **Fees (§300.617)**

Choctaw Tribal Schools may charge a fee for copies of records that are made for parents related to IDEA if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. Choctaw Tribal Schools may not charge the parent for copies of their child's current IEP and/or current evaluation. Choctaw Tribal Schools may not charge a fee to search for or to retrieve information under IDEA.

### **Amendment of Records at Parent's Request (§300.618, §300.619)**

A parent who believes that information in the education records collected, maintained, or used under IDEA is inaccurate or misleading or violates the privacy or other rights of their child may request Choctaw Tribal Schools to amend the information.

CTS must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

If Choctaw Tribal Schools refuses to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing.

### **Opportunity for A Hearing Regarding Educational Records (§300.619)**

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

### **Hearing Procedures Regarding Educational Records (§300.621, §§99.21 – 99.22)**

Choctaw Tribal Schools shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student (who has reached the age of majority).
Choctaw Tribal Schools must give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.
Any individual, including an official of the BIE or Choctaw Tribal Schools who does not have a direct interest in the outcome of the hearing, may conduct the hearing.
Choctaw Tribal Schools shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues regarding educational records, which may have inaccurate or misleading information or may be in violation of the privacy rights of the student. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.
Choctaw Tribal Schools shall make its decision in writing within a reasonable period of time after the hearing.
The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.



## Results of Hearing Regarding Educational Records (§300.620)

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

## Consent Required for Access to Records (§300.622)

Parental consent must be obtained before personally identifiable information is disclosed to anyone other than authorized individuals or agencies for purposes of meeting a requirement of IDEA. CTS may not release information from education records to participating agencies without parental consent unless under FERPA.

Parental consent or the consent of the eligible student (if age of majority), must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If a student is enrolled, or is going to enroll in a private school that is not located where the parent lives, parental consent must be obtained before any personally identifiable information about the child is released between officials of the private school and the officials of Choctaw Tribal Schools.

## Safeguards (§300.623, §300.123)

Choctaw Tribal Schools must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

Choctaw Tribal Schools must designate at least one official to assume responsibility for ensuring the confidentiality of any personally identifiable information. The transition specialists facilitate the special education records management and confidentiality at each of the Choctaw Tribal Schools in conjunction with the school's records manager.

CTS ensures that all persons collecting or using personally identifiable information receive training or instruction regarding these Special Education Policies and Procedures related to confidentiality, records management and FERPA.

Choctaw Tribal 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)**

Choctaw Tribal Schools must inform parents when personally identifiable information collected, maintained, or used under IDEA, is no longer needed to provide educational services to the student.

The information, which is no longer needed, must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

CTS will maintain education records to demonstrate fiscal and program compliance with IDEA requirements. The school must inform a parent/adult student when personally identifiable information collected, maintained, or used is to be destroyed because it is no longer needed to provide educational services to the child.

The parent must be informed of the personally identifiable information that the school intends to destroy and that the information will be destroyed no earlier than 45 days from the date of the notice. The parent must also be informed of the procedure to follow if he or she wishes to formally object to the destruction of the information and wants the records sent to him or her.

Written records of individual children are confidential and must be shredded or burned under supervision of the staff member responsible for the records if not released to the parent. The records manager should maintain a log that documents the date of destruction or release of records.

The school may maintain a permanent record of the child's name, address, phone number, grades, classes attended, attendance record, grade level, and year completed. Immunization records and test scores will be included unless the parent objects to this inclusion. Any other personally identifiable information must be destroyed at the request of the parent/adult student if it is no longer needed to provide special education. When informing the parent/adult student of his or her rights, the school should remind the parent that the records might be needed for Social Security benefits or other purposes in the future.

### **Student's Rights (§300.625)**

Choctaw Tribal Schools afford rights of privacy similar to those afforded to parents taking into consideration the age of the student and the type or severity of disability.

All of the parental rights in these Special Education Policies and Procedures are extended to the student upon reaching the age of eighteen (18) unless the State or Tribal Court has declared the student incompetent.

Choctaw Tribal Schools provides any notice required under IDEA to the student and the parents if rights are transferred to the student at age eighteen (18).

Under the regulations for FERPA (34 CFR 99.5(a)), the rights of parents regarding educational records are transferred to the student at age eighteen (18) unless the student has been declared incompetent by State or Tribal Court.

## **Enforcement (§300.626)**

These confidentiality procedures and policies are regularly reviewed by CTS. This is done as part of the Choctaw Tribal Schools self-assessment (a part of the BIE SEIMP- Special Education Integrated Monitoring Process), on-site monitoring, and through the implementation and on-going review of CTS Special Education Policies and Procedures.

## **Department use of Personally Identifiable Information (§300.627)**

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

## Chapter 8. Discipline

Choctaw Tribal Schools applies the following definitions when considering disciplinary action:

1. **Behavioral intervention plan** means an individualized plan, including positive interventions, designed to assist a student to decrease inappropriate behavior and increase or teach an alternative appropriate behavior.
2. **Current educational placement** means the type of educational placement of the student as described in the student's IEP at the time of the disciplinary removal. It does not mean the specific location or school but the type of placement on the continuum of placement options.
3. **Disciplinary removal** means suspension, expulsion, or other removal from school for disciplinary reasons. This does not include:
  - Removals by other agencies.
  - Removals for public health reasons (e.g., head lice, immunizations, communicable diseases, etc.).
  - In-school suspensions if:
    - The student continues to have access to the general curriculum and to special education and related services as described in the student's IEP, and
    - The student continues to participate with nondisabled students to the extent they would in their current placement.
4. **Manifestation determination** (described later in this section) is a decision made by Choctaw Tribal Schools and parent in a team meeting to determine if:
  - A student's conduct in question was caused by, or had a direct and substantial relationship to, the student's disability.
  - If the conduct in question was the direct result of Choctaw Tribal Schools failure to implement the IEP.
5. **Functional behavioral assessment** means an individualized assessment of the student, which results in a team hypothesis about the function of a student's behavior and, as appropriate, recommendations for a behavior intervention plan.
6. **Suspension** means any disciplinary removal other than expulsion.
7. **Expulsion** is the removal of the right and obligation of a student to attend a school, and for a period of time generally set by a school board. Expulsions may be imposed with or without continuing educational services.

### Disciplinary Change of Placement (§300.536 and §300.530(a))

A disciplinary removal of a student with a disability constitutes a change in the student's educational placement and occurs when:

- The removal is for more than ten (10) consecutive school days; or
- The student has been subjected to a series of removals that constitute a pattern:
  - Because the series of removals total more than ten (10) school days in a school year;
  - Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
  - Because of such additional factors as the length of each removal, the total amount of time the

student has been removed, and the proximity of the removals to one another.

CTS may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a student with a disability who violates a code of student conduct. This determination regarding a pattern of removals is subject to review through due process and judicial proceedings (see “Filing a Due Process Complaint” in Chapter 6 of these Policies and Procedures).

In the case of a disciplinary change of placement, a manifestation determination meeting must be held.

### **Services During a Disciplinary Removal (§300.530(d) and §300.531)**

A student with a disability who is removed from the student’s current educational placement must:

- Continue to receive educational services, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student’s IEP.
- 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.

The services may be provided in an interim alternative educational setting (IAES). The IEP Team determines the IAES for the student. The definition for an IAES is found in the section “Disciplinary Change of Placement” found later in this chapter.

If the removal is a change of educational placement, the student’s IEP Team determines appropriate services to be provided during the removal.

### **Disciplinary Removals for Up To Ten (10) School Days (§300.530(b), §300.530(d)(3))**

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

### **REQUIREMENTS FOR DISCIPLINARY REMOVALS FOR UP TO TEN (10) SCHOOL DAYS IN A SCHOOL YEAR:**

- Choctaw Tribal Schools is required to provide services to a student with a disability if it provides services to a student without a disability who is similarly removed; and
- Choctaw Tribal Schools is not required to determine whether the student’s behavior resulting in the disciplinary removal is a manifestation of the student’s disability.

### **Disciplinary Removals of More Than Ten (10) Cumulative School Days and Not a Pattern of Removal (§300.530(b))**

If the removals do not constitute a pattern, Choctaw Tribal Schools may remove students with disabilities from their current educational placement for separate incidents of misconduct to an appropriate interim alternative educational setting, another setting, or suspension for additional periods of up to ten (10) days in a school year to

the same extent, and with the same notice as for students without disabilities, These removals do not constitute a change in placement.

In determining whether removals of additional periods of up to ten (10) school days constitute a pattern of removals, school personnel will consider, on a case-by-case basis:

- Whether the behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals totaling more than 10 school days in a school year.
- Additional factors such as the length of each removal, the total number of days of removal, and the proximity of removals to one another.



**DURING REMOVALS OF ADDITIONAL PERIODS OF UP TO TEN (10) SCHOOL DAYS IN A SCHOOL YEAR THAT DO NOT CONSTITUTE A PATTERN, CHOCTAW TRIBAL SCHOOLS MUST PROVIDE SERVICES THAT ARE NECESSARY TO ENABLE THE STUDENT TO:**

- Continue to participate in the general education curriculum.
- Progress toward achieving the goals in the student's IEP.

The services and location for delivery of services in this section will be determined by school personnel, in consultation with at least one of the student's teachers, or by the student's IEP Team.

The determination regarding whether a series of removal constitutes a pattern is subject to review in an expedited due process hearing.

**Disciplinary Removals of More Than Ten (10) Cumulative School Days and a Pattern of Removal (§300.530(b)(2))**

If the removals do constitute a pattern, these removals constitute a change in placement. In determining whether removals of additional periods of up to ten (10) school days constitute a pattern of removals, CTS personnel will consider, on a case-by-case basis:

- Whether the behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals totaling more than 10 school days in a school year.
- Additional factors such as the length of each removal, the total number of days of removal, and the proximity of removals to one another.

The determination regarding whether a series of removal constitutes a pattern is subject to review in an expedited due process hearing.

**Removal to an interim alternative educational setting for not more than forty-five (45) days by the BIE funded school under special circumstances (§300.530(g) and §300.531(g))**

Choctaw Tribal Schools may remove a student with a disability from the student's current educational placement to an appropriate interim alternative educational setting, but for not more than forty-five (45) school days, without regard to whether the behavior is a manifestation of the student's disability. This removal is considered a change in placement.

Choctaw Tribal Schools consider any unique circumstances on a case-by-case basis when determining whether to order such a removal, such as:

- The student carries a weapon or possesses a weapon on school premises or to a school function.
- Possesses or uses illegal drugs, sells or solicits the sale of a controlled substance while at school, school premises or school functions.
- Has inflicted serious bodily injury upon another person at school, school premises or at a school function.

## Definitions:

For the purpose of determining a drug or weapon violation or serious bodily injury, Choctaw Tribal Schools will apply the following definitions:

### **DEFINITIONS FOR DRUG OR WEAPON VIOLATION OR SERIOUS BODILY INJURY**

1. **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)).
2. **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.
3. **Serious bodily injury** means bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty (18 USC 1365). Serious bodily injury does not include a cut, abrasion, bruise, burn, disfigurement, physical pain, illness, or impairment of the function of a bodily member, organ or mental faculty that is temporary (20 USC 1365).
4. **Weapon** means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2-1/2 inches (18 USC 930).

On the date that Choctaw Tribal Schools decides to remove a student to an interim alternative educational placement because of a drug or weapon violation or for serious bodily injury, Choctaw Tribal Schools notifies the parent(s) of the decision and gives the parent(s) a Procedural Safeguards Notice. This notice is available on the BIE website. The IEP Team determines the interim alternative educational placement.

Within ten (10) school days of any decision to remove the student to an interim alternative educational placement because of a drug or weapon violation or for serious bodily injury, Choctaw Tribal Schools:

- Convenes a meeting (note makeup of this team in “Conduct and Outcome of Manifestation Determination” later in this chapter) to determine whether the behavior is a manifestation of the student’s disability; and
- Conducts, as appropriate, a functional behavior assessment, and develops a behavior intervention plan based on the functional behavior assessment that is designed to address the behavior so it does not recur.

### **Removal to an Interim Alternative Educational Setting for Not More Than Forty-five (45) Days by a Hearing Officer for Injurious Behavior (§300.532)**

Choctaw Tribal Schools may request an expedited due process hearing to obtain a hearing officer’s order to remove a student to an interim alternative educational setting for not more than forty-five (45) school days if the student is

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

The interim alternative educational setting must meet the requirements of the “Interim Alternative Educational Setting” described on the following chart.

INTERIM ALTERNATIVE EDUCATIONAL SETTING (IAES) REQUIREMENTS	
The student’s IEP Team determines IAES.	
An IAES must enable the student to:	
<ul style="list-style-type: none"><li>• Continue to participate in the general curriculum, although in another setting.</li><li>• Progress toward achieving the goals in the student’s IEP.</li><li>• Receive services and modifications designed to address the misconduct that led to placement in the interim alternative educational setting and to prevent the misconduct from recurring.</li></ul>	

### **Discipline Appeal Process (§300.532)**

The parent of a child with a disability who disagrees with any decision regarding placement or the manifestation determination may appeal the decision by requesting a hearing.

If CTS believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, they may appeal the decision by requesting a hearing.

The hearing is requested by filing a complaint as described in Chapter 6 – Procedural Safeguards.

A hearing officer hears, and makes a determination regarding an appeal. In making the determination, the hearing officer may:

- Return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of the discipline procedures - §300.530, or that the student’s behavior was a manifestation of the student’s disability; or
- Order a change of placement of the student with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

The appeal procedures may be repeated, if Choctaw Tribal Schools believes that returning the student to the original placement is substantially likely to result in injury to others.

### **Expedited Due Process Hearing**

Whenever a hearing is requested because of a disagreement with a decision regarding a disciplinary change of placement or a manifestation determination, Choctaw Tribal Schools or the parents involved in the dispute must have an opportunity for an impartial due process hearing.



### IMPARTIAL DUE PROCESS HEARING PROCEDURES

The BIE arranges the expedited due process hearing, which must occur within twenty (20) school days of the date the complaint requesting the hearing is filed.

The hearing officer must make a determination on this complaint within ten (10) school days after the hearing.

Unless the parents and Choctaw Tribal Schools agree in writing to waive the resolution meeting described below, or agree to use the mediation process.

A resolution meeting must occur within seven (7) days of receiving notice of the due process complaint.

The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) days of the receipt of the due process complaint.

The decisions on expedited due process hearings are appealable as described in “Finality of Decision” in Chapter 6 – Procedural Safeguards.

### Placement During Appeals (§300.533)

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

### Conduct and Outcome of a Manifestation Determination (§300.530(e) and (g))

Within ten (10) school days of any decision to change the placement of a student with a disability for disciplinary reasons, Choctaw Tribal Schools convenes a manifestation determination meeting.

The team includes the parent(s), Choctaw Tribal School’s representatives, and other relevant members of the IEP Team, as determined by the parent and CTS.

The team reviews all relevant student information, including the student’s IEP, teacher observations, and information provided by the parent.

The team concludes that the conduct in question is a manifestation of the student’s disability if it determines the behavior was caused by, or had a substantial relationship to, the student’s disability, or if it was the direct results of Choctaw Tribal Schools failure to implement the IEP:

- If the team determines that Choctaw Tribal Schools did not implement the student’s IEP or identifies other deficiencies in the student’s IEP or placement, Choctaw Tribal Schools corrects the identified deficiencies immediately; and
- Regardless of whether the behavior was a manifestation of the student’s disability, Choctaw Tribal Schools may remove the student to an interim alternative educational setting for weapons or drug violations or for infliction of serious bodily injury for up to forty-five (45) days.

## When Behavior is a Manifestation of Disability

### IF THE TEAM CONCLUDES THAT THE BEHAVIOR WAS A MANIFESTATION OF THE STUDENT'S DISABILITY:

Choctaw Tribal Schools conducts a functional behavioral assessment and develops a behavior intervention plan to address the behavior that led to the disciplinary action. If CTS has already conducted a functional behavioral assessment or, if the student already has a behavior intervention plan regarding that behavior, the school reviews, modifies as necessary, and implements the plan to address the behavior;

CTS may review and revise the student's IEP and placement through normal IEP and placement processes;

Choctaw Tribal Schools may enter into an agreement with the parent to change the student's placement as part of the modification of the behavioral intervention plan; and

If Choctaw Tribal Schools believes that maintaining the current placement of the student is substantially likely to result in injury to the student or to others, CTS may appeal the decision of the manifestation determination team by requesting an expedited due process hearing. The hearing may be requested by filing a complaint (described in Chapter 6 – Procedural Safeguards). A hearing officer who concludes that maintaining the current educational placement is substantially likely to result in injury to the student or to others may order a change in placement to an interim alternative educational setting for no more than forty-five (45) days.

## When Behavior is Not a Manifestation of Disability

If the IEP Team determines that the student's behavior is not a manifestation of the student's disability, Choctaw Tribal Schools may proceed with disciplinary removals, in the same manner and for the same duration, as would be applied to students without disabilities. If the BIE funded school takes such action, applicable to all students, Choctaw Tribal Schools:

- Notifies the parent(s) of the decision to remove the student on the date that decision is made and gives the parents a Procedural Safeguards Notice;
- Gives the parent(s) prior written notice of any proposed change in placement (Use form entitled Prior Written Notice of Proposed Actions);
- Provides services to the student in an interim alternative educational setting that is determined by the IEP Team; and
- Provides, as appropriate, a functional behavioral assessment, develops appropriate behavioral interventions to address the behavior, and implements those interventions.

## Protections for Students Not Yet Eligible for Special Education (§300.534)

Choctaw Tribal Schools will follow all special education disciplinary procedures for any student who has not yet been identified as a student with a disability if the school has knowledge that the student has a disability and needs special education

**CTS IS PRESUMED TO HAVE SUCH KNOWLEDGE IF, BEFORE THE BEHAVIOR THAT  
PRECIPITATED THE DISCIPLINARY ACTION:**

The child's parent(s) expressed a concern in writing to supervisory or administrative school personnel, or to a teacher of the student, that the student is in need of special education and related services;

The child's parent(s) requested a special education evaluation of the student; or

The student's teacher or other Choctaw Tribal Schools personnel expressed specific concerns about a pattern of behavior demonstrated by the student directly to the school's special education director or other Choctaw Tribal School's supervisory personnel.

**CHOCTAW TRIBAL SCHOOLS IS NOT PRESUMED TO HAVE KNOWLEDGE  
OF A DISABILITY IF:**

The parent has not allowed an evaluation of the student or has refused the initial provision of special education services to the student; or

The student has been evaluated and found not eligible for special education services.

If Choctaw Tribal Schools did not have knowledge before taking disciplinary action against the student, CTS may take the same disciplinary actions as applied to students without disabilities who engaged in comparable behaviors. However:

- If a special education evaluation is requested, or if CTS initiates a special education evaluation, the evaluation will be conducted in an expedited manner.
- Until the evaluation is completed, the student may remain in the educational placement determined by school personnel, which may include suspension or expulsion without educational services.
- Upon completion of the evaluation, if the student is determined to be a student with a disability, Choctaw Tribal Schools will conduct an IEP meeting to develop an IEP and determine placement and will provide special education and related services in accordance with the IEP.
- CTS will apply the IDEA discipline protections beginning on the date of the eligibility determination.

### **Referral to Law Enforcement and Judicial Authorities (§300.535)**

Nothing in IDEA prohibits Choctaw Tribal Schools from reporting a crime committed by a student with disabilities to appropriate authorities or prevents Law Enforcement and Judicial Authorities (Federal, State, Tribal) from exercising their responsibilities with regard to the application of Federal, State, and Tribal law to crimes committed by a student with a disability.

Choctaw Tribal Schools, when reporting a crime committed by a student with a disability, must ensure that copies of the special education and disciplinary records of the student are transmitted to the appropriate agency to which the school reports the crime. Such records may only be transmitted to the extent permitted by FERPA.

### **State Enforcement Mechanisms (§300.537)**

Notwithstanding §300.506(b)(7) and §300.510(d)(2) ("Mediation" and "Resolution Process" described in Chapter 6 – Procedural Safeguards) which provides for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in this part that would prevent:

The BIE and Choctaw Tribal Schools from using other mechanisms to seek enforcement of that agreement:

- Provided that use of such mechanisms is not mandatory and does not delay or end a party the right to seek enforcement of the written agreement.
- In a Federal or State court of competent jurisdiction.

### CHOCTAW TRIBAL SCHOOL'S PRACTICES RELATED TO DISCIPLINE AND POSITIVE BEHAVIOR SUPPORTS

Choctaw Tribal School staff development activities regularly include the topics of positive school wide discipline, IDEA discipline related regulations, behavior improvement plans, functional behavior assessment, and manifestation determination.

CTS special education staff includes a behavior specialist whose roles and responsibilities include the provision of technical assistance in behavior management and positive behavioral interventions. The behavior specialist also facilitates the development and implementation of behavior intervention plans.

Special education staff members and the school administrator receive extensive training in manifestation determinations processes.

The special education team and school administrator identify possible interim alternative educational settings prior to needing to access one.

Prior to any disciplinary actions taken by CTS related to a student with a disability, the school carefully reviews the discipline regulations of these Policies and Procedures and seeks legal guidance from the school or tribal attorney if needed.

## Chapter 9: Other Responsibilities of Choctaw Tribal Schools

Choctaw Tribal Schools has a multitude of miscellaneous special education related responsibilities to which it must adhere. These responsibilities are noted in this chapter.

### **FAPE – Methods and Payments (§300.103)**

The BIE and Choctaw Tribal Schools may use whatever local, federal, and private sources of support available to meet the requirements of Part B of IDEA.

Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a student with a disability.

Choctaw Tribal School ensures there shall be no delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education and related services to that student has yet to be determined. The adherence by Choctaw Tribal Schools to timelines in IDEA is monitored by the BIE as a part of their general supervision responsibilities.

### **Students in Other Settings (§§300.145 – 300.147, §300.104, §300.148)**

For students with disabilities who are or have been placed in or referred to a private school or facility by Choctaw Tribal Schools as a means of providing special education and related services (§§300.145 – 300.147), the BIE and Choctaw Tribal Schools ensure that a student:

- Is provided special education and related services in conformance with an IEP that meets the requirements of these BIE Special Education Policies and Procedures.
- The services are provided at no cost to the parents.
- Is provided an education that meets the standards that apply to education provided by Choctaw Tribal Schools including the requirements of IDEA.
- Has all of the rights of a student with a disability who is served by Choctaw Tribal Schools.

The BIE in partnership with Choctaw Tribal Schools:

- Monitors compliance in these private school settings through written reports, on-site visits, data review via NASIS, and parent questionnaires.
- Disseminates copies of applicable standards to each private school and facility to which a public agency has referred or placed a student with a disability.
- Provides an opportunity for those private schools and facilities to participate in the development and revision of special education policies and procedures that apply to them.



## **Residential Placement (§300.104)**

If placement in a public or private residential program is necessary to provide special education and related services to an eligible student, the program including non-medical care, and room and board must be at no cost to the parents of a child. Alternative placements in residential facilities are intended for a small number of students with highly specialized needs. These decisions made by IEP teams require careful and thoughtful consideration.

The role of the local school in residential placement is paramount – the BIE is no longer funding or facilitating residential placements. Therefore, schools must perform the tasks of locating quality locations, contracting, allocating funds, overseeing the program, and transitioning the student when the residential program has been completed or the student needs to move elsewhere.

### **CONSIDERATIONS WHEN MAKING A RESIDENTIAL PLACEMENT**

- Residential placement must be necessary for educational purposes and not primarily due to medical or family issues.
- Residential placement using IDEA funds is not appropriate for a student with serious emotional or behavioral issues at home/community but is progressing educationally at school.
- Residential placement is not appropriate when other less restrictive settings can meet the student's identified needs.

<b>WHEN CONSIDERING RESIDENTIAL PLACEMENT, TEAMS MUST GATHER AND REVIEW THIS DOCUMENTATION</b>
Frequency, duration, and intensity of behaviors of concern.
Written description of the impact to this student if maintained in the current environment.
Written description of the potential detriment to the safety of student and/or peers.
A functional behavior assessment.
Behavior intervention plan – including documentation of the plan's implementation and reviews of the effectiveness.

### **School Principal/Authorized Designee Roles and Responsibilities in Residential Placements**

- Must be involved in every step of placement and must be a member of the IEP team.
- Help in making decisions about allocating funds.
- Keep BIE Education Line Officer in the loop by providing quarterly updates about number of students in residential placement.

### **Case Manager Roles and Responsibilities in Residential Placement**

- Must be a member of the student's IEP team.
- Is usually the special educator, counselor, or school social worker – someone very familiar with the student and special education.
- Must carry out these responsibilities year round (even in summer).
- Assure that student is entered into the NASIS system and has a current IEP (on NASIS forms).
- Link with the residential placement site for progress update information; participate in all IEP team meetings regarding the student.

- Assure that the continuum of placement options is discussed at every IEP meeting (initial, annual review, and reevaluations).

### **IEP Team Roles and Responsibilities**

- Develop an appropriate IEP.
- Complete the LRE review – gathering and reviewing all necessary documentation.
- Develop a reintegration plan (what are our outcomes and timelines/hopes and dreams for this student?).
- Make decisions regarding type of residential facility.
- Take part in all IEP meetings.
- Ensure student is entered into NASIS and that current IEP is in NASIS system.
- Complete waiver necessary to receive ISEP funding.
- Monitor progress of student.
- Facilitate the smooth reintegration of student upon move to a “step down” facility or his/her home school.

### **Business Manager Roles and Responsibilities**

- Must maintain accurate records.
- Assist with procurement process.
- Facilitate timely payments to residential facilities.
- Assist with accessing necessary funding.
- Maintain records for unmet needs application and waiver requests.
- Collaborate with SPED on development and review of contracts.

### **Contracting Process**

- Make sure facility is appropriate for the needs of the student – certified program, check school calendar/hours of education provided, licensing, etc.).
- Follow typical contracting procedures.
- Follow typical accounting procedures.

### **Placement of Children by Parents When FAPE is an Issue. (§300.148)**

Choctaw Tribal Schools are responsible for ensuring that the rights and protections under Part B of IDEA are given to Indian children with disabilities referred to or placed in private schools and facilities by their parents when FAPE is an issue. Such disagreements between Choctaw Tribal Schools and parents regarding the availability of a program appropriate for the student and the question of financial reimbursement are subject to the due process procedures in Chapter 6 of these Policies and Procedures.

Choctaw Tribal Schools is not required to pay for the cost of the education, including special education and related services, of a student with a disability at a private school or facility if Choctaw Tribal Schools made FAPE available to the student and the parents elected to place the student in a private school or facility.

If the parents of a student with a disability, who previously received special education and related services under the authority of Choctaw Tribal Schools enroll the student in a private elementary or secondary school without the consent of or referral by CTS, a court or a hearing officer may require Choctaw Tribal Schools to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that Choctaw Tribal Schools had not made FAPE available to the student in a timely manner and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the standards that



apply to education provided by the BIE and Choctaw Tribal Schools.

The cost of reimbursement may be reduced or denied if:

- At the most recent IEP Team meeting that the parents attended prior to the removal of the student from Choctaw Tribal Schools, the parents did not inform the IEP Team that they were rejecting the placement proposed by Choctaw Tribal Schools to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense.
- At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the student from CTS, the parents did not give written notice to Choctaw Tribal Schools of their rejection of the school's proposed services to provide FAPE and their intent to enroll the child in a private school at BIE expense.
- If, prior to the parents' removal of the student from Choctaw Tribal Schools, CTS informed the parents, through the written prior notice requirements of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or
- Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

<b>PARENT'S COST OF REIMBURSEMENT</b>	
Must not be reduced or denied for failure to provide the notice if:	<ul style="list-style-type: none"><li>• CTS prevented the parents from providing the notice;</li><li>• The parents had not received written prior notice pursuant to the procedural safeguards noted in Chapter 6 of this document and in "Students in Other Settings" in this section, and</li><li>• Compliance with the notice requirements would likely result in physical harm to the student.</li></ul>
May, at the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice, if:	<ul style="list-style-type: none"><li>• The parents are not literate or cannot write in English; or</li><li>• Compliance with "Students in Other Settings" (earlier in this chapter) would likely result in serious emotional harm to the student.</li></ul>

### **Personnel Qualifications (§300.156)**

Choctaw Tribal Schools ensures that the qualifications of all personnel hired and/or contracted by CTS (special education, related services and paraprofessionals) meet the State approved or recognized certification, licensing, registration or other comparable requirements that apply to the discipline in which these personnel are providing special education or related services within Mississippi.

Choctaw Tribal Schools, through the human resources department, implements procedures for the recruitment, hiring, training and retaining of highly qualified personnel to provide special education and related services to students with disabilities.

Notwithstanding any other individual right of action that a parent or student may maintain under this part: Nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of Choctaw Tribal Schools, employee or contracted staff to be highly qualified; or To prevent a parent from filing a complaint with the BIE related to staff qualifications (see the "Procedural Safeguards Notice Contents" in Chapter 6 of these Policies and Procedures").



## **Performance Goals and Indicators (§300.157)**

The BIE has established goals for the performance of students with disabilities served in all BIE funded schools that:

- Promote the purposes of Part B of IDEA.
- Are the same as the state of Mississippi's objectives for progress by students in its definition of adequate yearly (progress objectives for students with disabilities (111(b)(2)(C) of the ESEA).
- Address graduation rates and dropout rates, and other factors the BIE has identified.
- Are consistent, to the extent appropriate, with any other goals and academic standards for students established by the BIE.

The BIE has established performance indicators that the BIE will use to assess progress toward achieving those goals, including measurable annual objectives for progress by students with disabilities under ESEA. These performance goals and indicators are identified in the BIE's State Performance Plan which is disseminated to all BIE funded schools, and Education Line Offices.

Choctaw Tribal Schools reports annually to the Bureau of Indian Education and the public on all appropriate performance indicators identified by the BIE. Central office special education administration gathers and submits this data to the U.S. Department of Education.

## **BIE Monitoring and Enforcement (§300.600, §300.604)**

The BIE monitors, through its SEIMP – Special Education Improvement Monitoring Process, the implementation of the IDEA, enforces implementation, and annually reports on the performance of BIE funded schools.

The BIE enforces the implementation of their special education Policies and Procedures at the BIE funded school level by using appropriate mechanisms including technical assistance, conditions on Part B funding of a BIE funded school, corrective action or improvement plans, withholding funds in whole or part until the BIE funded school has sufficiently addressed the areas needing intervention.

The primary focus of the BIE's monitoring activities is on:

- Improving educational results and functional outcomes for all students with disabilities; and
- Ensuring that BIE funded schools meet the program requirements under Part B of IDEA, with a particular emphasis on those requirements that are most closely related to improving educational results for students with disabilities.

As a part of its responsibilities, the BIE uses quantifiable indicators to adequately measure performance in the priority areas. These indicators are established by the Secretary of Education for the BIE State Performance Plan (SPP).

The BIE Division of Performance and Accountability (DPA) monitors all BIE funded schools using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

- Provision of FAPE in the least restrictive environment.
- General supervision, including CHILD FIND, effective monitoring, the use of resolution meetings, mediation, and a system of transition services.

In exercising its monitoring responsibilities, the BIE ensures that when it identifies noncompliance with the

requirements by BIE funded schools, the noncompliance is corrected as soon as possible and in no case later than one year after the identification of the noncompliance.

The BIE reports annually on the performance of the BIE and of each BIE funded school as provided in §300.602. This performance is detailed in the BIE's annual performance plan (APR) which is placed on the BIE website and made available to all BIE funded schools and education line offices.

<b>CHOCTAW TRIBAL SCHOOL'S PROCEDURES RELATED TO MONITORING INCLUDE:</b>
Choctaw Tribal Schools actively participates in the BIE SEIMP monitoring process.
All non-compliances are corrected in a timely manner.
All required data is collected and submitted, including self-assessments, per the timelines established by the BIE and data related to the BIE performance indicators.
Based on the BIE monitoring findings, Choctaw Tribal Schools develop the LSPP (local school performance plan), which is updated quarterly and submitted to the BIE.

### **State Use of Targets and Reporting (§300.602)**

The BIE uses the targets established in the SPP and the priority areas to analyze the performance of each BIE funded school. Based on this analysis, the BIE places each of the BIE funded schools in a "level of determination" (meets requirements, needs assistance, needs intervention, or needs substantial intervention). Each school must then develop and implement a local school performance plan (LSPP) based on its specific level of determination.

<b>CTS PROCEDURES FOR DEVELOPING THE LSPP INCLUDE:</b>
Choctaw Tribal Schools organizes a team to develop and update the LSPP on a quarterly basis.
The team consists of administrator, special and general education representatives, related service providers, education line officer, and parents.
The team reviews data and identifies goals and strategies for addressing the performance indicators
The team submits the LSPP to the BIE in a timely manner.
The team facilitates the completion of all LSPP activities and evaluates their effectiveness.

### **Annual Report of Children Served – Information Required in the Report (§300.641)**

The information included in the annual report of children served is collected annually from all BIE funded schools.

For purposes of the annual report required by IDEA, the Bureau of Indian Education:

- Counts and reports the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year.
- For the purpose of this reporting provision, the child's age is the child's actual age on the date of the child count.
- Counts each child under only one (1) disability category. The BIE may not report a child under more than one (1) disability category.
- If a child with a disability has more than one (1) disability, The BIE must report that child in accordance with the following procedures:

- If a child has only two (2) disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category “deaf-blindness”; and
- If a child has more than one (1) disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category “multiple disabilities”.

### **Data Reporting (§300.642)**

CTS collects the child count data described above. This data is reported to the BIE in a manner that does not result in disclosure of data identifiable to individual children. This data is shared on the BIE website and is shared with all BIE funded schools and education line offices.

### **PROCEDURES FOR COLLECTING AND SUBMITTING THIS DATA INCLUDE:**

Choctaw Tribal Schools has assigned one special educator to facilitate the collection and submission of 618 tables.

The tables are submitted to the BIE on or before the due dates established by the BIE. The special education supervisor and the tribal council’s education committee certify the accuracy of the data/tables.

### **Coordination of Services §300.708(f)**

The BIE has established a coordinated services plan which describes how the BIE will coordinate the provision of services under Part B of IDEA with BIE funded schools, Tribes, Tribal organizations, State, Federal (including BIA operated) and Tribal juvenile and adult correctional facilities, and other Federal and private service providers and appropriate Bureau of Indian Affairs agencies (§300.708(f)). This coordinated services plan (CSP) is provided to all BIE funded schools and education line offices.

### **CTS Procedures for Local Level Coordinated Services Plan (LSPP) Development and Implementation**

Choctaw Tribal Schools has developed a plan for coordinating services to meet the needs of its students with disabilities.
The plan is developed within the context of an interagency committee with input coming from all potential service providers.
The plan is reviewed on an annual basis and updated as needed.
The plan consists of cross training, shared resources, and a seamless delivery system.
Choctaw Tribal Schools conducts a self-assessment on a regular basis of their coordination of services efforts based on the BIE – coordinated services plan.
Choctaw Tribal Schools reports on coordination activities as a part of the SEIMP as required by the BIE.

## **Obligation of Non-educational Public Agencies (§300.154(b))**

If any public agency other than Choctaw Tribal Schools is obligated under Federal, State, Tribal law, or assigned responsibility to provide or pay for services that are also considered special education or related services as defined in these Policies and Procedures that are necessary for ensuring FAPE to students with disabilities, the Choctaw Tribal Schools must fulfill that obligation or responsibility, either directly or through contract or other arrangements with other public agencies.

A non-educational public agency described in this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in the school context.

If a public agency other than an educational agency fails to provide or pay for the special education and related services described in this section, the Choctaw Tribal Schools must provide or pay for these services in a timely manner.

Choctaw Tribal Schools is authorized to claim reimbursement for the services from the non-educational public agency that failed to provide or pay for these services and that agency must reimburse the BIE funded school in accordance with the terms of the interagency agreement or other mechanism described in this section.

## **Students with Disabilities Who are Covered by Public Benefits or Insurance. (§300.154(d))**

Choctaw Tribal Schools may use Medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under this section, as permitted under the public insurance program, except as provided in the following paragraph.

With regard to services required to provide FAPE to an eligible student, Choctaw Tribal Schools:

- May not require parents to sign up for or enroll in public insurance programs in order for their child to receive a FAPE under Part B of IDEA.
- May not require parents to incur an out-of-pocket expense, such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided as described in this section, but may pay the cost that the parent otherwise would be required to pay.
- May not use a student's benefits under a public insurance/ benefits program(s) if that use would:
  - Decrease available lifetime coverage or any other insured benefit.
  - Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school.
  - Increase premiums or lead to the discontinuation of benefits or insurance.
  - Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

Choctaw Tribal Schools must obtain parental consent each time access to public benefits or insurance is sought.

Choctaw Tribal Schools must notify parents that their refusal to allow access to their public benefits or insurance does not relieve the school or other public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

## **Students with Disabilities Who are Covered by Private Insurance. (§300.154(e))**

With regard to services required to provide FAPE to an eligible student, Choctaw Tribal Schools may access a parent's private insurance proceeds only if the parent provides consent. Each time the school proposes to access the parent's private insurance, it must:

- Obtain parental consent.
- Inform the parents that their refusal to permit the school to access their private insurance does not relieve the school of its responsibility to ensure that all required services are provided at no cost to the parents.

## **Use of Part B Funds.**

If Choctaw Tribal Schools is unable to obtain parental consent to use the parent's private insurance, or public benefits, or insurance to ensure FAPE, Choctaw Tribal Schools may use its Part B funds to pay for the service. CTS may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's benefits or insurance (e.g., the deductible or co-pay amounts).

Nothing in this section should be construed to alter the requirements imposed on a State Medicaid Agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations, or policy under Title XIX or Title XX of the Social Security Act, or any other public benefits or insurance program.

## **Guidance on Medical Services and Reimbursement. (§303.13, §303.16, §300.34, §300.712)**

### Medical Expenses

IDEA regulations restrict the use of special education funds (Part C – birth to age 3) and Part B (3 – 21) for medical services (as defined in IDEA) to the following:

- For diagnostic and evaluation purposes only as may be required to assist a child with a disability to benefit from special education.
- To gather early identification and assessment information to determine eligibility for special education services (initial evaluation and reevaluation).
- Provide training to CTS staff and/or parents to support any health services documented as a related service in the IFSP or IEP. Example: teacher learning about seizure disorders, parent learning about positioning a child in a wheelchair.
- To provide related services such as OT, PT, health services (RN or LPN), included in the IFSP or IEP.
- To cover transportation costs only when medical appointments are needed as determined by the Choctaw Tribal School multi-disciplinary evaluation team for diagnostic and evaluation purposes.

Special education funds cannot be used to cover any transportation costs, or fees for all other medical appointments except as noted above.

Reimbursement for travel costs related to the provision of special education services (mileage, meals, lodging) is based on tribal policy or standard federal government rates.

In general, transportation for special education students to and from school, school sponsored field trips and extra-curricular activities are not the responsibility of special education funding.

# Definitions

1. **Adult student** – a student with a disability, usually 18 (18) or older to whom rights have transferred under the Individuals with Disabilities Education Act (IDEA), the Family Educational Rights Privacy Act (FERPA), and State law and/or Tribal code.
2. **Age of majority** – the age, at which, by law, a child assumes the responsibilities of an adult. The age of majority in the state of Mississippi is eighteen (18) years of age.
3. **Assistive technology device** (§300.5) – any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability. The term does not include a medical device that is surgically implanted or the replacement of such device.
4. **Assistive technology services** (§300.6) – any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:
  - The evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student’s customary environment.
  - Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities.
  - Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices.
  - Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs.
  - Training or technical assistance for a student with a disability or, if appropriate, that student’s family.
  - Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that student.
5. **Behavior intervention plan** – an individualized plan, including positive interventions, designed to assist a student to decrease inappropriate behaviors and increase or teach an alternative appropriate behavior.
6. **Bureau of Indian Education** (BIE) funded school – an elementary or secondary school that is BIE operated, contract (P.L.100-638) or grant (P.L.100-297). All of the BIE funded schools receive funding and are provided oversight from the BIE. Choctaw Tribal Schools are considered BIE funded schools.
7. **Complaint** – a formal written statement submitted to the Bureau of Indian Education by an individual or organization that contains one or more allegations that a BIE funded school or agency has violated a requirement of Part B of IDEA.
8. **Consent** (§300.9) means that:
  - The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication.
  - The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom.
  - The parent understands that the granting of consent is voluntary on their part, and may be revoked at anytime. If a parent revokes consent, the revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).
  - If the parent revokes consent in writing for their child’s receipt of special education services after the child is initially provided special education and related services, the BIE funded school is not required to

amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

9. **Coordinated Services Plan** (CSP) – is a written plan developed by the BIE for the coordination of services for all Indian children with disabilities residing on reservations served by a BIE funded school. This plan provides for the coordination of services benefiting those children from whatever source including tribes, IHS, other BIE divisions, Federal agencies, state education agencies, and state, local and tribal juvenile and adult correctional facilities.
10. **Day, business day, school day** (§300.11)
  - Day means calendar day unless otherwise indicated as business day or school day.
  - Business day means Monday through Friday, except for Federal and State holidays.
  - School day means any day, including a partial day that children are in attendance at school for instructional purposes. School day has the same meaning for all students in school, including students with and without disabilities.
11. **Disciplinary removal** – suspension, expulsion, or other removal from school for disciplinary reasons. It does not include:
  - Removals by other agencies.
  - Removals for public health reasons (e.g., head lice, immunizations, communicable diseases, etc.).
  - In-school suspensions – if the student continues to have access to the general curriculum and to special education and related services as described in the student's IEP, and continues to participate with nondisabled students to the extent they would in their current placement.
12. **Early Assistance Program** – a program offered by the BIE to parents or organizations through which they can request mediation or help. The program provides an opportunity to solve the problem before a written complaint is filed.
13. **Education Line Office** (ELO) – the BIE unit within the Bureau of Indian Education in charge of education functions at an Agency/Area to whom the BIE funded school supervisor and educators report. The Education Line Office for Choctaw Tribal Schools is the South and Eastern States Agency in Nashville, TN.
14. **Education records** – the type of records covered under the definition of “education records” in the Family Education Rights Privacy Act (FERPA).
15. **Elementary and Secondary Education Act** (ESEA) is a United States Federal statute enacted in 1965. The Act is an extensive statute, which funds elementary and secondary education. The funds provided via ESEA are authorized for professional development, instructional materials, and resources to support educational programs, and parental involvement promotion. The reauthorized ESEA is known as the No Child Left Behind Act.
16. **Elementary school** (§300.13) – a nonprofit institutional day or residential school, including a public charter school that provides elementary education, as determined under State law.
17. **Equipment** (§300.14) means:
  - Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment.
  - All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.
18. **Evaluation** (§300.15) – a term referring to procedures used in accordance with IDEA in order to determine whether a student has a disability and the nature and extent of the special education and related services that the student needs.
19. **Excess costs** – the costs a school incurs as a result of providing special education services but which are not covered by BIE or Federal special education funding sources.
20. **Expulsion** – the removal of the right and obligation of a student to attend a school, and for a period of time generally set by a school board. Expulsions may be imposed with or without continuing educational



services.

21. **Family Educational Rights Privacy Act** (FERPA) (CFR 34, Part 99) – a Federal law designed to protect the privacy of a student’s records.
22. **Free appropriate public education** (FAPE) (§300.17) – special education and related services that:
  - Are provided at public expense, under public supervision and direction, and without charge.
  - Meet the standards of the BIE and the requirements of IDEA.
  - Include an appropriate elementary or secondary school funded by the BIE.
  - Are provided in conformity with an individualized education program (IEP) that meets IDEA requirements.
23. **Functional behavior assessment** (FBA) – an individualized assessment of the student that results in a team hypothesis about the function of a student’s behavior and, as appropriate recommendations for a behavior intervention plan.
24. **Grant school** – a BIA funded school that is operated by a tribe/tribal organization under a P.L.100-297 grant.
25. **Highly qualified special education teachers** (§300.18) – Requirements for special education teachers teaching core academic subjects:
  - For any BIE funded elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified is that definition that is approved by the specific State in which the special education teacher is teaching.
26. **Homeless children** (§300.19) (McKinney-Vento Homeless Assistance Act, Section 725 (42 U.S.C. 1143a) – Homeless children and youth mean individuals who lack a fixed, regular and adequate nighttime residence. Including children and youth who:
  - Are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement.
  - Children and youth who have a primary nighttime residence that is a public or private place not designated for or ordinarily used as a regular sleeping accommodation for human beings.
  - Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings.
  - Migratory children who qualify because they living in circumstances described in the 3 conditions noted above.
27. **IDEA** – The Individuals with Disabilities Education Improvement Act (20 U.S.C. 1400, P.L.108-446) and its implementing regulations (34 CFR 300 and 303). Part B of IDEA pertains to children ages three (3) through twenty-one (21).
28. **Include** (§300.20) – means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.
29. **Indian and Indian Tribe** (§300.21):
  - Indian means an individual who is a member of an Indian tribe.
  - Indian tribe means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native Village Corporation.
  - The Secretary of the Interior is not required to provide services or funding to a State Indian tribe that is not listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1194, 25 U.S.C. 479a-1.
30. **Indian Student Equalization Program** (ISEP) (P.L.95-561) is a federal regulation that provides for uniform direct funding of bureau operated and tribally operated day schools, boarding schools and dormitories.

31. **Individualized education program** (IEP) (§300.22) – a written statement for a student with a disability that is developed, reviewed, and revised in accordance with IDEA.
32. **Individualized education program team** (IEP Team) (§300.23) – a group of individuals that is responsible for developing, reviewing, or revising an IEP for a student with a disability. The required team members are the parent of the student, a LEA representative, a general education teacher, a special education teacher, and a person who can interpret the instructional implications of evaluation results, who may be a member of the team listed above (§300.321).
33. **Institution of Higher Education** (IHE) (§300.26) – an educational institution in any state that:
- Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate.
  - Is legally authorized within such State to provide a program of education beyond secondary education.
  - Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree.
  - Is a public or other nonprofit institution; and
  - Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.
  - Also includes any community college receiving funds from the Secretary of Interior under the Tribally Controlled Community College or University Assistance Act.
34. **Juvenile Detention Center Education Program** – a BIE program that provides technical assistance, training, and funding to BIE funded tribal juvenile detention centers in support of educational services for students with disabilities incarcerated within their facilities.
35. **Letter of Acknowledgement** – a letter from the BIE to the parties involved in a formal complaint under IDEA. Once the complaint is received by the BIE, the parties involved receive the letter of acknowledgement.
36. **Limited English proficient** (LEP): (§300.27) – a student who has limited skills in speaking, reading, and/or writing English as measured by the BIE's LEP assessment.
37. **Local educational agency** (LEA) (§300.28) – all BIE funded schools are considered a local educational agency (LEA). BIE funded schools include elementary or secondary schools funded by the Bureau of Indian Education, and not subject to the jurisdiction of any state education agency (SEA) other than the BIE, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under IDEA with the smallest student population.
38. **Multidisciplinary Evaluation Team** (MDET) – Choctaw Tribal School's central office level team is made up of psychometrists, transition specialists, behavior intervention specialist, speech language pathologist, occupational therapist, special education coordinator, and physical therapist. This team reviews referral requests from the schools; determines the appropriateness of the referral, and either initiates the referral for special education evaluation or informs the school's TST of missing information or activities at the school level.
39. **Native American Student Information System** (NASIS) is a computerized, web-based system utilized by the BIE and BIE funded schools for the purposes of managing student information, streamlining educational processes, and sharing data such as enrollment, scheduling, attendance, grading and IEPs.
40. **Native language** (§300.29) – when used with respect to an individual who is limited English proficient means the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child:
- In all direct contact with the child (including evaluation of the child), the language normally used by the

child in the home or learning environment.

- For an individual with deafness or blindness, or an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

41. **No Child Left Behind** (NCLB) is a law also known as the Elementary and Secondary Education Act (ESEA). It is a United States Federal statute enacted in 1965. The Act is an extensive statute, which funds elementary and secondary education. The funds provided are authorized for professional development, instructional materials, and resources to support educational programs, and parental involvement.
42. **Parent** (§300.30) means:
- A biological or adoptive parent of a child.
  - A foster parent.
  - A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State or Tribe if the child is a ward of the State or Tribe).
  - 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.
  - A surrogate parent who has been appointed in accordance with the process described in the procedural safeguards section of these Policies and Procedures.
  - The biological or adoptive parent, when attempting to act as the parent and when more than one party is qualified to act as a parent, must be presumed to be the parent unless said parent does not have legal authority to make educational decisions for the student. If a judicial decree or order identifies a specific person or persons to act as the "parent" of a student or to make educational decisions on behalf of the student, then such person or persons shall be determined to be the parent for purposes of these Policies and Procedures.
43. **Parent training and information center** (§300.31) – a center assisted by IDEA funds from the Department of Education. The system of parent training and information centers consists of one national and 6 regional centers. In addition to these centers, the Department of Education has also funded one nationwide center (National Indian Parent Information Center, Grants Pass, OR) to serve as a resource for Indian nations, tribes, clans, parent centers and others. Overall, the purpose of these parent training and information centers is to provide training and information to parents of infants, toddlers, children and youth with disabilities and to professionals who work with students with disabilities.
44. **Personally identifiable** (§300. 32) – information that includes:
- The name of the student, the student's parent, or other family member.
  - The address of the student.
  - A personal identifier, such as the student's social security number or student number.
  - A list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.
45. **Public agency** (§300.33) includes the SEA, LEA, educational service agencies (ESAs), nonprofit public charter schools that are not otherwise included in LEAs or ESAs and are not a school of a LEA or ESA, any other political subdivisions of the State that are responsible for providing education to children with disabilities.
46. **Related services** (§300.34):
- Means transportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes.

- Related services also include school health services and school nurse services, social work services in schools and parent counseling and training.
- Exception: Services that apply to children with surgically implanted devices, including cochlear implants.
- Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.
- Nothing in IDEA or these Policies and Procedures:
  - Limits the right of a student with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in the definition of related services in this section) that are determined by the IEP Team to be necessary for the student to receive FAPE.
  - Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school.

47. The **related services** are defined as follows:

- **Audiology** includes:
  - Identification of children with hearing loss.
  - Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing.
  - Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation.
  - Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- **Counseling services** means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
- **Early identification and assessment** of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a student's life.
- **Interpreting services** includes, with respect to students who are deaf and hard of hearing, oral transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and special interpreting services for students who are deaf-blind.
- **Medical services** means services provided by a licensed physician to determine a student's medically related disability that results in the student's need for special education and related services.
- **Occupational therapy** means services provided by a qualified occupational therapist; and includes:
  - Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation.
  - Improving ability to perform tasks for independent functioning if functions are impaired or lost.
  - Preventing, through early intervention, initial or further impairment or loss of function.

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

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

- Other concepts, techniques, and tools.
49. **Parent counseling and training** means assisting parents in understanding the special needs of their child, providing parents with information about child development, and helping parents or acquire the necessary skills that will allow them to support the implementation of their child's IEP.
50. **Physical therapy** means services provided by a qualified physical therapist.
51. **Psychological services** includes:
- Administering psychological and educational tests, and other assessment procedures.
  - Interpreting assessment results.
  - Obtaining, integrating, and interpreting information about student behavior and conditions relating to learning.
  - Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation and behavioral evaluations.
  - Planning and managing a program of psychological services including psychological counseling for children and parents.
  - Assisting in developing positive behavioral intervention strategies.
52. **Psychometrist** – This person is responsible for the administration and scoring psychological and neuropsychological tests under the supervision of a clinical psychologist or clinical neuropsychologist. Additionally, a psychometrist will also make note of behavioral observations during the course of the assessment that may be used by the psychologist to aid in test interpretation.
53. **Recreation** includes:
- Assessment of leisure function.
  - Therapeutic recreation services.
  - Recreation programs in schools and community agencies.
  - Leisure education.
54. **Rehabilitative counseling services** – services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes Vocational Rehabilitation programs funded under the Rehabilitation Act of 1973, 20 U.S.C. 701.
55. **School health services** and school nurse services –health services that are designed to enable a student with a disability to receive FAPE as described in the student's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified nurse or other qualified person.
56. **Social work services** in schools includes:
- Preparing a social or developmental history of a student with a disability.
  - Group and individual counseling with the child and family.
  - Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school.
  - Mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program.
  - Assisting in developing positive behavioral intervention strategies.
57. **Speech-language pathology** services include:
- Identification of students with speech or language impairments.
  - Diagnosis and appraisal of specific speech or language impairments.
  - Referral for medical or other professional attention necessary for the habilitation of speech or language impairments.
  - Provision of speech and language services for the habilitation or prevention of communicative impairments.

- Counseling and guidance of parents, children, and teachers regarding speech and language impairments.
58. **Transportation** includes:
- Travel to and from school and between schools.
  - Travel in and around school buildings.
  - Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student with a disability.
59. **Residential Educational Placement Program (REPP)** – a Bureau of Indian Education program, which was cut from the BIE budget in October of 2013. The purpose of the program was to facilitate the placement, and funding of students with disabilities whose IEP Teams had determined that they were in need of residential educational placement and services. The REPP roles and responsibilities regarding residential placement are now that of the local schools.
60. **Response to Intervention (RTI)** – This is a process where schools document a child's response to scientific, research-based intervention using a tiered approach. In contrast to the discrepancy criterion model, RTI provides early intervention for students experiencing difficulty learning to read. RTI was authorized for use in December 2004 as part of the Individuals with Disabilities Education Act (IDEA).
61. **Scientifically based research** (§300.35) (Section 910(37) of the Elementary and Secondary Education Act (ESEA)) – research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs, including:
- Employs systematic, empirical methods that draw on observation or experiment.
  - Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn.
  - Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators.
  - Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls.
  - Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings.
  - Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.
62. **Secondary school** (§300.36) – a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.
63. **Special education** (§300.39) – specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. Special education includes the following if the services meet the requirements noted in §300.39.
64. **Speech- language pathology services**, or any other related service, if the service is considered special education rather than a related service under the standards of the State in which the BIE funded school is located.
65. **Special Education** means specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.
66. **Special Education Integrated Monitoring Process** (SEIMP) is a continuous monitoring and special education improvement process utilized by the BIE and BIE funded schools.
67. **Special education terms** are defined as follows:
- **At no cost** means that all specially-designed instruction is provided without charge, but does not

preclude incidental fees that are normally charged to non disabled students or their parents as a part of the regular education program.

- **Physical education** means:
  - The development of physical and motor fitness.
  - Fundamental motor skills and patterns.
  - Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).
  - Includes special physical education, adapted physical education, movement education, and motor development.
- **Specially designed instruction** means adapting, as appropriate, to the needs of an eligible student under IDEA, the content, methodology, or delivery of instruction in order to:
  - Address the unique needs of the student that result from the student's disability.
  - Ensure access of the student to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the BIE funded school that applies to all students.
- **Travel training** means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to:
  - Develop an awareness of the environment in which they live.
  - Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).
- **Vocational education** means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.
- **State** (§300.40) means each of the 50 States.
- **State Education Agency** (SEA) (§300.41) – a State board of education or other agency or officer primarily responsible for the state supervision of public elementary and secondary schools. If there is no such officer or agency, an officer or agency designated by the Governor or State law. For the purpose of IDEA, the Bureau of Indian Education is considered the SEA. The Mississippi state education agency is entitled Mississippi Department of Education. Within this department is the Office of Special Education.
- **Student with disability** (§300.8) means a child evaluated in accordance with the requirements noted in Chapter 2 – Evaluation and Eligibility of these Policies and Procedures, as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. If a student has one of the above disabilities, but only needs a related service and not special education, then the child is not a child with a disability.
- **Supplementary aids and services** (§300.42) – aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with IDEA.
- **Evaluation team** means a group of qualified professionals (special and general educators, related services personnel and administration) and the parent of the student.
- **IEP Team** means a group made up of the following:
  - The parents of the child.
  - Not less than one (1) regular education teacher (if the student is, or may be, participating in the regular education environment.)
  - Not less than one special education teacher of the student, or where appropriate, not less than

- one special education provider of the student.
  - A representative of the BIE or BIE funded school who:
    - Is qualified to provide, or supervise the provision of specially designed instruction to meet unique needs of students with disabilities.
    - Is knowledgeable about the general education curriculum.
    - Is knowledgeable about the availability of resources of the BIE or BIE funded school.
  - An individual who can interpret instructional implications of evaluation results.
  - Other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate.
  - Whenever appropriate, the student with a disability. The student must be invited if the purpose of the meeting will be transition services and post secondary goals.
- **Problem-solving team** – often called teacher support team (TST) is a group of education professionals who regularly convene at a school level for the purposes of supporting classroom teachers on a day to day basis, problem solving, and developing student-based interventions. This team activity is a general education process. The TST team may be composed of the referring teacher, counselor, general educators, special education representative and other professionals. This team is not a special education team although it may refer a student for evaluation after multiple unsuccessful interventions.
- **Transition services** (§300.43) means a coordinated set of activities for a student with a disability that:
  - Are designed to be within a results-oriented process, is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.
  - Are based on the individual student's needs, taking into account the student's strengths, preferences, and interests, and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.
- **Transition** for students with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist the student with a disability to benefit from special education.
- **Ward of the State** (§300.45) is a child who, as determined by the State where the student resides, is a foster child, a ward of the State, or in the custody of a public child welfare agency. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent as defined in the definitions in this section
- **Ward of the tribe** means a child who, as determined by the tribe where the student resides, is a foster child, or ward of the Tribe.



# **Special Education Eligibility Determination Guidelines**

## **From Mississippi State Board Policy 7219**

### **Effective September 15, 2013**

It is necessary to adhere to federal regulations and corresponding State Policies when evaluating children suspected of having disabilities and when making eligibility determinations for special education.

LEAs, State Board governed schools, and special State agency schools are allowed to make special education eligibility determinations for children. University based programs, local and regional juvenile detention centers and private school programs are required to work with the LEA responsible for CHILD FIND to determine special education eligibility for children.

#### **GENERAL INFORMATION**

The information outlined in this section applies to all eligibility determinations.

A comprehensive evaluation to determine special education eligibility must:

- Assure that lack of appropriate instruction in math or reading, including the essential components of reading instruction as defined in section 1208(3) of ESEA, is not the determinant factor; and
- Assure that limited English proficiency or social or cultural differences are not the determinant factors; and
- Indicate the child needs special education and related services; and
- Identify all educational needs to be addressed in development of the IEP, regardless of whether those needs are typically linked to the disability category; and
- Consistently support the presence of a disability.

**NOTE:** If data appear to represent inconsistencies but the team agrees the preponderance of the data supports the presence of a disability and need for special education and related services, the perceived inconsistencies must be documented and explained.

To gather information about the student, personnel must consider a variety of assessment tools and strategies, which must include, but not be limited to:

- The Teacher Narrative and/or Developmental History;
- Documentation about the student's functioning in the home, classroom and/or in an early childhood setting through interview, observation, assessment, or other means;
- Information contained in the student's cumulative record, including results of statewide assessments;
- Information about the child's physical condition, including fine and gross motor skills, general physical condition, hearing, vision, and orofacial examination, if necessary;
- Information about the child's social, behavioral, emotional, and adaptive functioning;
- Information about pre-academic and/or academic performance;

- Information about how the student communicates;
- Indicators of cognitive abilities;
- Evaluations and other information provided by the parent;
- Evidence that the child has received appropriate instruction in reading and math (for kindergarten and preschool children, information regarding development and preschool experiences);
- Information about the impact of social and cultural background and limited English proficiency on educational performance; and
- For children age fourteen (14) and above, appropriate and ongoing assessment of the student's needs, preferences, and interests related to the demands of current and future working, educational, living, personal and social environments;
- For reevaluations, information from IEPs.

**NOTE:** A professional who meets the qualifications found on page 305 (of Mississippi State Board Policy 7219) must be a member of the multidisciplinary team making the eligibility determination when significant emotional and/or behavioral issues adversely impacting the educational process have been identified and evaluated, regardless of the eligibility category being considered.

Unless otherwise indicated, the MDE does not dictate which test instruments to use or which areas to test. It is the responsibility of the multidisciplinary evaluation team to determine appropriate ways to measure each area and which instruments are necessary to obtain information sufficient to determine the presence of a disability, eligibility for special education, and programming needs. Teams are directed to carefully consider whether administration of a test is necessary to determine existence of a disability, need for special education or related services, and/or all educational needs of the student.

Data required for determining the presence of a disability, eligibility for special education, and IEP development must be current according to the definitions below. The team may determine more recent information is needed. Historical data must be considered along with current required information. On or after the date the parent signs consent for evaluation or reevaluation, the following information, if required by MDE policy or determined necessary by the team for making the eligibility determination, may not be more than:

- One (1) year old:
  - Intelligence measures
  - Hearing screening and follow-up evaluations
  - Vision screening and follow-up evaluations
  - Physical examinations

- Three (3) months old:
  - Updated Developmental History
  - Developmental Instruments
- Six (6) months old:
  - Teacher Narrative
  - Achievement measures
  - Social, behavioral, adaptive, and emotional measures
  - Language/Speech assessments
  - Motor Assessments
  - Curriculum-based assessments.

The multidisciplinary evaluation team has the discretion to allow evaluation team members to submit individual reports or to compile all evaluation information in a single comprehensive report. A separate eligibility determination report must be used to document decisions made in the eligibility meeting. A copy of the evaluation report(s) and the eligibility determination report must be provided to the parents.

The eligibility determination report must indicate the conclusion of the team regarding the eligibility category for which the criteria are met, or a statement of that the student does not meet the eligibility criteria. Each member of the multidisciplinary evaluation team must certify in writing whether the eligibility determination report reflects the member's conclusions. If it does not reflect the member's conclusions, the multidisciplinary evaluation team member must submit a separate statement presenting the member's conclusions.

The evaluation report(s) must include the following information:

- Date(s) of assessment(s);
- Name, title, and qualifications of examiner(s), informants, and/or observers;
- Testing conditions;
- Behaviors noted during testing and observations;
- Results of assessments;
- Interpretations of assessments;
- Explanations of any deviations from standardized testing procedures; and

- Justifications for use of instruments that are not age appropriate.

Generally, a diagnosis from a psychologist, psychiatrist, nurse practitioner, physician or other health care professional using criteria from the Diagnostic and Statistical Manual of Mental Disorders (DSM) and/or International Statistical Classification of Diseases and Related Health Problems (ICD-9 Codes) is not required to determine special education eligibility, nor is such diagnosis alone sufficient to determine eligibility for special education. When a diagnosis, evaluation, or statement by qualified professionals is required for a particular special education disability category, the requirement is listed as part of the eligibility criteria. When diagnostic or prescriptive information from a health care professional or psychologist is available to the public agency, the team must consider the information when making an eligibility determination for special education.

Because language needs are inherent for the following primary disability categories, a secondary ruling for language is not required. The IEP Committee may decide a Speech/Language therapist is an appropriate provider of language as a related service for children who have been identified in any of these categories:

- Hearing Impairment,
- Autism,
- Traumatic Brain Injury,
- Specific Learning Disability (Oral Expression and Listening Comprehension), or
- Developmentally Delayed, when Communication is one of the areas of delay.

Adverse educational impact applies to academic, social, behavioral, and vocational performance. Each evaluation must be sufficient to substantiate adverse educational impact. The report(s) must clearly document adverse educational impact for all eligibility determinations, including language/speech.

# Disability Categories

## **EMOTIONAL DISABILITY (EmD)**

### **DEFINITION**

Emotional Disability (EmD) exists when a student exhibits one (1) or more of the following characteristics over a long period of time and/or to a marked degree, adversely affecting educational performance:

- A. An inability to learn that cannot be explained by intellectual, sensory or health factors;
- B. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- C. Inappropriate types of behavior or feelings under normal circumstances;
- D. A general pervasive mood of unhappiness or depression; and/or
- E. A tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional Disability includes schizophrenia. The term does not refer to children who are socially maladjusted, unless it is determined that they have an Emotional Disability.

### **EVALUATION REQUIREMENTS**

When the evaluation team is considering eligibility under the Emotional Disability category, the multidisciplinary team evaluation report and/or eligibility determination report must include:

A. Narrative descriptions of:

1. the student's behaviors, and
2. situations in which the behaviors occur and situations in which the behaviors do not occur, and
3. antecedents leading to the behaviors, and
4. consequences immediately following the behaviors;

B. Functional assessments of the student's behavior, if conducted;

C. Attempts to address the behaviors and the results, including:

1. Behavior Intervention Plans, if developed and implemented during the pre-referral process; and
2. office discipline referrals; and
3. disciplinary actions;

D. Documentation to support the behaviors have been exhibited for a long period of time and/or to a marked degree;

E. A description of how the behaviors adversely affect educational performance;

F. A statement as to whether the behaviors are typical for the student's age, setting, circumstances, and peer group, and if not, how the behaviors are different;

- G. The association between documented patterns of behavior and results of emotional and behavioral assessments;
- H. A statement by a qualified professional supporting the team's conclusion that the student meets the eligibility criteria for EmD. Prior to eligibility determination, the qualified professional making the statement must:
1. observe the child;
  2. review all information gathered during the comprehensive evaluation;
  3. be qualified to interpret the test instruments administered according to the user qualifications for each measure; and
  4. review the eligibility criteria for EmD.

Qualified personnel for this purpose include at least one of the following:

1. School psychologist currently licensed by MDE;
  2. Board-licensed psychologist; or
  3. Psychiatrist.
- I. If the team concludes the child does not meet the criteria for EmD because all behavior patterns appear to be the result of social maladjustment, the eligibility determination report must indicate this conclusion. Documentation must be included to support the team's conclusion that the behaviors are indicative of social maladjustment.



## **HEARING IMPAIRMENT (HI)**

Hearing Impairment (HI) means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance. Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing with or without amplification that adversely affects a child's educational performance.

### **EVALUATION REQUIREMENTS**

When the evaluation team is considering eligibility under the Hearing Impairment category, which includes Deafness, the multidisciplinary team evaluation report and/or eligibility determination report must include:

- A. An audiometric evaluation explaining each of the following items:
  - 1. type of loss;
  - 2. age of onset, if known;
  - 3. severity of loss;
  - 4. speech reception or speech awareness thresholds, if obtainable;
  - 5. speech discrimination scores, if applicable;
  - 6. recommendations regarding amplification; and
  - 7. other recommended interventions, if any, including the need for assistive technology.

- B. A description of the follow-up examination and results, including:
  - 1. how the conditions noted during the examination might interfere with educational testing and performance; and
  - 2. recommendations for accommodations, modifications, and educational programming.
- C. Acoustic Immitance measures;
- D. An audiogram and /or measures of auditory evoked potential, such as Auditory Brainstem Response (ABR), Auditory Steady State Response (ASSR), and Otoacoustic Emissions (OAE) that would define the hearing loss;
- E. How the hearing loss impacts educational performance; and
- F. Communication abilities and needs, including the need for assisted communication.

**NOTE:** The audiological examination must be conducted by one of the following:

- i. an audiologist who holds MDE licensure in audiology,
- ii. an audiologist who holds ASHA--CCC certification,
- iii. a physician with expertise in conducting audiological evaluations using appropriate audiological equipment,
- iv. a qualified audiologist who holds certification from the American Academy of Audiology (AAA), or
- v. a qualified audiologist who is appropriately licensed through the designated licensure authority for the State of Mississippi.

## **INTELLECTUAL DISABILITY (ID)**

### **DEFINITION**

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

Significantly subaverage general intellectual functioning is defined as two (2) standard deviations or more below the mean, including a standard score of 70, on a measure of cognitive ability.

A child with an eligibility ruling of Intellectual Disability exhibits learning problems, which vary in degree from mild to severe. Delays in cognitive abilities, adaptive behavior, and developmental milestones must have been evidenced during a child's developmental period and, upon entering school, such delays must have adversely affected a child's educational performance.

### **EVALUATION REQUIREMENTS**

When the evaluation team is considering eligibility under the Intellectual Disability category, the multidisciplinary team evaluation report and/or eligibility determination report must include results of:

- A. An individual standardized achievement test;
- B. An individual standardized measure of cognitive abilities;

- C. A norm-referenced measure of adaptive behavior, which must include the home version of the measure; completed by the primary caregiver(s). If the adaptive behavior measure allows for an informant other than the primary caregiver, the informant must be knowledgeable of how the child functions outside the school environment.

## LANGUAGE OR SPEECH IMPAIRMENT (LS)

### DEFINITION

Language or Speech Impairment (LS) means a communication disorder, such as fluency, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance. Speech disorders include impairments in articulation, fluency and/or voice. Language disorders include developmental or acquired impairments in the ability to receive, send, process, and comprehend concepts or verbal, nonverbal, and graphic symbol systems. A communication disorder may range in severity from mild to profound and may appear in combination with other communication disorders. A communication disorder may be the primary disability or secondary to other disabilities.

The American Speech Language and Hearing Association recognizes four (4) communication disorders described in A-D below:

- A. An articulation/phonological processing disorder is the atypical production of speech sounds characterized by substitutions, omissions, additions or distortions that may interfere with intelligibility. Phonological processing includes the rules governing the addition or substitution of a phoneme, including but not limited to:
1. voicing processes;
  2. deletion processes;

3. fronting processes;
4. syllable processes; and
5. phoneme processes.

B. A fluency disorder is an interruption in the flow of speaking characterized by:

1. atypical rate;
2. atypical rhythm; and
3. repetitions in sounds, syllables, words, and phrases.
4. These characteristics might also be accompanied by excessive tension, struggle behavior, and secondary mannerisms.

C. A voice disorder is characterized by the abnormal production and/or absences of:

1. vocal quality;
2. pitch;
3. loudness;
4. resonance; and/or
5. duration, which are inappropriate for an individual's age and/or sex.

D. A language disorder is impaired comprehension and/or use of spoken, written and/or other symbol systems including:

1. the form of language (phonology, morphology, syntax);
2. the content of language (semantics); and/or
3. the function of language in communication (pragmatics).

## **EVALUATION REQUIREMENTS**

When the evaluation team is considering eligibility under the Language or Speech Impairment category, the multidisciplinary team evaluation report and/or eligibility determination report must include:

- A. Results of hearing screening;
- B. Results of an orofacial examination, which is required for suspected articulation disorders, and, if necessary, a statement from a medical specialist noting physical problems which would interfere with speech production;
- C. A physician's statement of release and recommendation(s) for services when a voice evaluation has been conducted;
- D. The number, types, and severity of disruptions, and a description of secondary characteristics in various settings (e.g., reading, monologue, conversation) when a fluency evaluation has been conducted;
- E. Results of a standardized measure(s) of language, when a language evaluation has been conducted;

**NOTE:** The score(s) must be at least 1.5 standard deviations below the mean of the test in the areas of expressive language and/or receptive language, including morphology, syntax, semantics and/or pragmatics for an eligibility ruling in Language.

- F. When an articulation evaluation has been completed for children ages 30 months and older, evidence that the child's articulation skills are below age-appropriate peers based on normative data, including a measure of stimulability;
- G. Documentation that the child's communication impairment adversely affects educational performance including the child's ability to communicate in academic, social and vocational settings; and
- H. Documentation of the child's speech/language skills in conversational speech.



## **MULTIPLE DISABILITIES (MD)**

### **DEFINITION**

Multiple Disabilities (MD) means concomitant impairments (such as intellectual disability-blindness or intellectual disability-orthopedic impairment ), the combination of which causes such severe educational needs that children cannot be accommodated in special education programs solely for one of the impairments. Although disabilities in two (2) or more areas may exist in the following categories, Deaf-Blindness, Specific Learning Disability, Developmental Delay or Language or Speech Impairment, these categories do not constitute Multiple Disabilities, in and of themselves.

Language/speech, along with another disability, is generally viewed as a secondary condition, not MD.

### **EVALUATION REQUIREMENTS**

When the multidisciplinary evaluation team is considering eligibility under the Multiple Disabilities category, the categories that are evidenced by the data and a statement that the child cannot be appropriately served in a special education program designed solely for one of the disabilities must be included in the eligibility determination report.

## **ORTHOPEDIC IMPAIRMENT (OI)**

### **DEFINITION**

Orthopedic Impairment (OI) means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly (e.g., clubfoot or absence of one or more members), impairments caused by disease (e.g., poliomyelitis or bone tuberculosis), and impairments resulting from other causes (e.g., cerebral palsy, amputations, and fractures or burns causing contractures).

### **EVALUATION REQUIREMENTS**

When the multidisciplinary evaluation team is considering eligibility under the Orthopedic Impairment category, the evaluation report and/or the eligibility determination report must include a diagnostic report from a physician or a nurse practitioner that provides information regarding:

- A. The nature of the student's congenital or acquired Orthopedic Impairment; and
- B. Limitations and precautions to be considered; and
- C. Recommendations for educational programming.

## **OTHER HEALTH IMPAIRMENT (OHI)**

### **DEFINITION**

Other Health Impairment (OHI) means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

- A. Is due to chronic or acute health problems such as asthma, attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD), diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, or Tourette Syndrome; and
- B. Adversely affects a child's educational performance.

### **EVALUATION REQUIREMENTS**

When the evaluation team is considering eligibility under the Other Health Impairment category, the evaluation report and/or the eligibility determination report must include a diagnostic report from a physician or a nurse practitioner that provides information regarding:

- A. The nature of the student's health impairment; and
- B. Limitations and precautions to be considered; and

C. Recommendations for educational programming.

When the evaluation team is considering eligibility under the Other Health Impairment (OHI) category due to an attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD), the comprehensive evaluation report and/or eligibility determination report must include all of the following:

- A. A description of the student's behaviors, settings in which the behaviors occur, antecedents leading to the behaviors, and consequences immediately following the behaviors;
- B. Attempts to address the behaviors and the results, including office discipline referrals and disciplinary actions;
- C. A description of how the behaviors adversely affect educational performance;
- D. A statement as to whether the behaviors are typical for the student's age, setting, circumstances, and peer group, and if not, how the behaviors are different; and
- E. The correlation between documented behaviors and results of ADHD assessments.

**NOTE:** For ADD and ADHD, a diagnostic report from a physician or a nurse practitioner is not required.

## **SPECIFIC LEARNING DISABILITY (SLD)**

### **DEFINITION**

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

### **PRE-REFERRAL REQUIREMENTS**

To ensure that underachievement in a child suspected of having a specific learning disability is not due to a lack of appropriate instruction in reading or math, the multidisciplinary evaluation team must consider, as part of the evaluation:

- A. 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

- B. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the evaluation and reevaluation timeframes, unless extended by mutual written agreement of the child's parents and a group of qualified professionals:

- A. If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction; and
- B. Whenever a child is referred for an evaluation.

### **EVALUATION REQUIREMENTS**

When determining whether a child has a Specific Learning Disability, public agencies:

- A. May consider whether a process based on the child's response to scientific, research-based intervention(s) is sufficient to determine eligibility (i.e., Response to Intervention—RtI); and, in addition
- B. May use other alternative research-based procedures; and/or

- C. May use a severe discrepancy between intellectual ability and achievement.

NOTE: Severe discrepancy is defined as 1.5 standard deviations below the measure of intellectual ability.

### **TEAM COMPOSITION**

The multidisciplinary evaluation team must include the child's parents and a team of qualified professionals, including:

- A. The child's general education teacher; or
- B. If the child does not have a general education teacher, a general education classroom teacher qualified to teach a child of his or her age; or
- C. For a child of less than school age, an individual licensed by the SBE to teach a child of his or her age; and
- D. A special education teacher; and
- E. At least one person qualified to conduct and interpret individual diagnostic examinations of children, such as a school psychologist, psychometrist, speech-language pathologist, or remedial reading teacher.

## **REPORT REQUIREMENTS**

When the evaluation team is considering eligibility under the Specific Learning Disability category, the eligibility determination report must include:

A. Documentation of an observation using the following guidelines:

1. The public agency must ensure that the child is observed in the child's learning environment (including the general education classroom setting) to document the child's academic performance and behavior in the areas of difficulty.
2. The multidisciplinary evaluation team must:
  - 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 multidisciplinary evaluation team conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent is obtained.
3. In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

B. Statements indicating:

1. Whether the child has a specific learning disability; and
2. The basis for making the determination; and
3. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning; and



4. The educationally relevant medical findings, if any; and
5. Whether:
  - i.* The child does not achieve adequately for the child's age or fails to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards in the following areas:
    - 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;
  - ii.* The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in the paragraph (5.i.) above when using a process based on the child's response to scientific, research-based intervention; or
  - iii.* The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved 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.
6. The determination of the group concerning the effects of a visual, hearing, or motor disability, intellectual disability; emotional disturbance; environmental or economic

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

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

*i.* The instructional strategies used and the student-centered data collected; and

*ii.* The documentation that the child's parents were notified about:

a) MDE's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; and

b) Strategies for increasing the child's rate of learning; and

c) The parents' right to request an evaluation.

C. Each group member, including parent(s), must certify in writing whether the report reflects the member's conclusions. If it does not reflect the member's conclusions, the group member must submit a separate statement presenting his or her conclusions.

## **TRAUMATIC BRAIN INJURY (TBI)**

### **DEFINITION**

Traumatic Brain Injury (TBI) means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one (1) or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and/or speech. The term does not apply to brain injuries that are congenital or degenerative or to brain injuries induced by birth trauma.

### **EVALUATION REQUIREMENTS**

When the evaluation team is considering eligibility under the Traumatic Brain Injury category, the comprehensive evaluation report(s) and/or eligibility determination report must include the information included in A, B, and C below:

- A. Information from a variety of sources (e.g., assessments, evaluations, the student's teacher(s), parents and/or caregivers) who are familiar with the student's educational differences in functioning prior to and following the injury, if relevant, in the following areas:
1. cognition;
  2. language;

3. memory;
4. attention;
5. reasoning;
6. abstract thinking;
7. judgment;
8. problem-solving;
9. sensory, perceptual and motor abilities;
10. psychosocial behavior;
11. physical functions;
12. information processing; and/or
13. speech.

B. A description of the acquired brain injury and cause of the injury; and

C. Reports from physicians, providers of rehabilitation services, and/or other healthcare providers describing precautions, limitations, and recommendations to consider when planning educational services, if available.

## **VISUALLYIMPAIRED (VI)**

### **DEFINITION**

Visual Impairment (VI) including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

### **EVALUATION REQUIREMENTS**

When the evaluation team is considering eligibility under the Visually Impaired category, the comprehensive evaluation report(s) and/or eligibility determination report must include a report from an ophthalmologist or optometrist that includes all of the following:

- A. visual acuity,
- B. diagnosed visual problems,
- C. a statement of how the child's visual problem might affect educational performance, and
- D. recommendations for educational programming.