

operate such a vehicle under Tribal, State or Federal regulations governing the transportation of students.

School day means a day as defined by the submitted school calendar, as long as annual instructional hours are as they are reflected in § 39.213, excluding passing time, lunch, recess, and breaks.

Special education means:

(1) Specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including:

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) The term includes each of the following, if it meets the requirements of paragraph (1) of this definition:

(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

(1) Travel training; and

(2) Vocational education.

Specially designed instruction means adapting, as appropriate, to the needs of an eligible child under this part, the content, methodology, or delivery or instruction:

(1) To address the unique needs of the child that result from the child's disability; and

(2) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children

Three-year average means:

(1) For academic programs, the average daily membership of the 3 years before the current year of operation; and

(2) For the residential programs, the count period membership of the 3 years before the current year of operation.

Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to:

(1) Develop an awareness of the environment in which they live; and

(2) Learn the skills necessary to move efficiently and safely from place to place within that environment (*e.g.*,

in school, in the home, at work, and in the community).

Tribally operated school means an elementary school, secondary school, or dormitory that receives financial assistance for its operation under a contract, grant, or agreement with the Bureau under section 102, 103(a), or 208 of 25 U.S.C. 450 *et seq.*, or under the Tribally Controlled Schools Act of 1988.

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 requiring other than a baccalaureate or advanced degree.

Unimproved roads means unengineered earth roads that do not have adequate gravel or other aggregate surface materials applied and do not have drainage ditches or shoulders.

Weighted Student Unit means:

(1) The measure of student membership adjusted by the weights or ratios used as factors in the Indian School Equalization Formula; and

(2) The factor used to adjust the weighted student count at any school as the result of other adjustments made under this part.

§ 39.3 Information collection.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This part contains in §§ 39.410 and 39.502 collections of information subject to the PRA. These collections have been approved by OMB under control number 1076-0163.

Subpart B—Indian School Equalization Formula

SOURCE: 70 FR 22205, Apr. 28, 2005, unless otherwise noted.

§ 39.100

§ 39.100 What is the Indian School Equalization Formula?

The Indian School Equalization Formula (ISEF) was established to allocate Indian School Equalization Program (ISEP) funds. OIEP applies ISEF to determine funding allocation for Bureau-funded schools as described in §§ 39.204 through 39.206.

§ 39.101 Does ISEF assess the actual cost of school operations?

No. ISEF does not attempt to assess the actual cost of school operations either at the local level or in the aggregate at the national level. ISEF provides a method of distribution of funds appropriated by Congress for all schools.

BASE AND SUPPLEMENTAL FUNDING

§ 39.102 What is academic base funding?

Academic base funding is the ADM times the weighted student unit.

§ 39.103 What are the factors used to determine base funding?

To determine base funding, schools must use the factors shown in the following table. The school must apply the appropriate factor to each student for funding purposes.

| Grade level | Base academic funding factor | Base residential funding factor |
|--------------------|------------------------------|---------------------------------|
| Kindergarten | 1.15 | NA |
| Grades 1–3 | 1.38 | 1.75 |
| Grades 4–6 | 1.15 | 1.6 |
| Grades 7–8 | 1.38 | 1.6 |
| Grades 9–12 | 1.5 | 1.6 |

§ 39.104 How must a school's base funding provide for students with disabilities?

(a) Each school must provide for students with disabilities by:

(1) Reserving 15 percent of academic base funding to support special education programs; and

(2) Providing resources through residential base funding to meet the needs of students with disabilities under the National Criteria for Home-Living Situations.

(b) A school may spend all or part of the 15 percent academic base funding reserved under paragraph (a)(1) of this section on school-wide programs to benefit all students (including those without disabilities) only if the school can document that it has met all needs of students with disabilities with such funds, and after having done so, there are unspent funds remaining from such funds.

§ 39.105 Are additional funds available for special education?

(a) Schools may supplement the 15 percent base academic funding reserved under § 39.104 for special education with funds available under part B of the Individuals with Disabilities Education Act (IDEA). To obtain part B funds, the school must submit an application to OIEP. IDEA funds are available only if the school demonstrates that funds reserved under § 39.104(a) are inadequate to pay for services needed by all eligible ISEP students with disabilities.

(b) The Bureau will facilitate the delivery of IDEA part B funding by:

(1) Providing technical assistance to schools in completing the application for the funds; and

(2) Providing training to Bureau staff to improve the delivery of part B funds.

§ 39.106 Who is eligible for special education funding?

To receive ISEP special education funding, a student must be under 22 years old and must not have received a high school diploma or its equivalent on the first day of eligible attendance. The following minimum age requirements also apply:

(a) To be counted as a kindergarten student, a child must be at least 5 years old by December 31; and

(b) To be counted as a first grade student; a child must be at least 6 years old by December 31.

§ 39.107 Are schools allotted supplemental funds for special student and/or school costs?

Yes, schools are allotted supplemental funds for special student and/or school costs. ISEF provides additional funds to schools through add-on weights (called special cost factors).