

## §39.116

- (1) A teacher or other school staff;
  - (2) Another student;
  - (3) A community member;
  - (4) A parent or legal guardian; or
  - (5) The student himself or herself.
- (b) Students can be nominated based on information regarding the student's abilities from any of the following sources:
- (1) Collections of work;
  - (2) Audio/visual tapes;
  - (3) School grades;
  - (4) Judgment of work by qualified individuals knowledgeable about the student's performances (*e.g.*, artists, musicians, poets, historians, etc.);
  - (5) Interviews or observations; or
  - (6) Information from other sources.
- (c) The school must have written parental consent to collect documentation of gifts and talents under paragraph (b) of this section.

### §39.116 How does a school determine who receives gifted and talented services?

- (a) To determine who receives gifted and talented funding, the school must use qualified professionals to perform a multi-disciplinary assessment. The assessment may include the examination of work samples or performance appropriate to the area under consideration. The school must have the parent or guardian's written permission to conduct individual assessments or evaluations. Assessments under this section must meet the following standards:
- (1) The assessment must use assessment instruments specified in §39.114 for each of the five criteria for which the student is nominated;
  - (2) If the assessment uses a multi-criteria evaluation, that evaluation must be an unbiased evaluation based on student needs and abilities;
  - (3) Indicators for visual and performing arts and leadership may be determined based on national, regional, or local criteria; and
  - (4) The assessment may use student portfolios.
- (b) A multi-disciplinary team will review the assessment results to determine eligibility for gifted and talented services. The purpose of the team is to determine eligibility and placement to receive gifted and talented services.

## 25 CFR Ch. I (4-1-07 Edition)

- (1) Team members may include nominator, classroom teacher, qualified professional who conducted the assessment, local experts as needed, and other appropriate personnel such as the principal and/or a counselor.
- (2) A minimum of three team members is required to determine eligibility.
- (3) The team will design a specific education plan to provide gifted and talented services related in the areas identified.

### §39.117 How does a school provide gifted and talented services for a student?

- Gifted and talented services are provided through or under the supervision of highly qualified professional teachers. To provide gifted and talented services for a student, a school must take the steps in this section.
- (a) The multi-disciplinary team formed under §39.116(b) will sign a statement of agreement for placement of services based on documentation reviewed.
  - (b) The student's parent or guardian must give written permission for the student to participate.
  - (c) The school must develop a specific education plan that contains:
    - (1) The date of placement;
    - (2) The date services will begin;
    - (3) The criterion from §39.114 for which the student is receiving services and the student's performance level;
    - (4) Measurable goals and objectives; and
    - (5) A list of staff responsible for each service that the school is providing.

### §39.118 How does a student receive gifted and talented services in subsequent years?

- For each student receiving gifted and talented services, the school must conduct a yearly evaluation of progress, file timely progress reports, and update the specific education plan.
- (a) If a school identifies a student as gifted and talented based on §39.114 (a), (b), or (c), then the student does not need to reapply for the gifted and talented program. However, the student must be reevaluated at least every 3 years through the 10th grade to verify eligibility for funding.

**Bureau of Indian Affairs, Interior**

**§ 39.135**

(b) If a school identifies a student as gifted and talented based on § 39.114 (d) or (e), the student must be reevaluated annually for the gifted and talented program.

**§ 39.119 When must a student leave a gifted and talented program?**

A student must leave the gifted and talented program when either:

- (a) The student has received all of the available services that can meet the student's needs;
- (b) The student no longer meets the criteria that have qualified him or her for the program; or
- (c) The parent or guardian removes the student from the program.

**§ 39.120 How are gifted and talented services provided?**

In providing services under this section, the school must:

- (a) Provide a variety of programming services to meet the needs of the students;
- (b) Provide the type and duration of services identified in the Individual Education Plan established for each student; and
- (c) Maintain individual student files to provide documentation of process and services; and
- (d) Maintain confidentiality of student records under the Family Educational Rights and Privacy Act (FERPA).

**§ 39.121 What is the WSU for gifted and talented students?**

The WSU for a gifted and talented student is the base academic weight (see § 39.103) subtracted from 2.0. The following table shows the gifted and talented weights obtained using this procedure.

Grade level	Gifted and talented WSU
Kindergarten .....	0.85
Grades 1 to 3 .....	0.62
Grades 4 to 6 .....	0.85
Grades 7 to 8 .....	0.62
Grades 9 to 12 .....	0.50

LANGUAGE DEVELOPMENT PROGRAMS

**§ 39.130 Can ISEF funds be used for Language Development Programs?**

Yes, schools can use ISEF funds to implement Language Development programs that demonstrate the positive effects of Native language programs on students' academic success and English proficiency. Funds can be distributed to a total aggregate instructional weight of 0.13 for each eligible student.

**§ 39.131 What is a Language Development Program?**

A Language Development program is one that serves students who either:

- (a) Are not proficient in spoken or written English;
- (b) Are not proficient in any language;
- (c) Are learning their Native language for the purpose of maintenance or language restoration and enhancement;
- (d) Are being instructed in their Native language; or
- (e) Are learning non-language subjects in their Native language.

**§ 39.132 Can a school integrate Language Development programs into its regular instructional program?**

A school may offer Language Development programs to students as part of its regular academic program. Language Development does not have to be offered as a stand-alone program.

**§ 39.133 Who decides how Language Development funds can be used?**

Tribal governing bodies or local school boards decide how their funds for Language Development programs will be used in the instructional program to meet the needs of their students.

**§ 39.134 How does a school identify a Limited English Proficient student?**

A student is identified as limited English proficient (LEP) by using a nationally recognized scientifically research-based test.

**§ 39.135 What services must be provided to an LEP student?**

A school must provide services that assist each LEP student to: