

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 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 ISEF students with disabilities.

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

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- (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). ISEF adds special cost factors as shown in the following table.

Cost Factor	For more information see
Gifted and talented students	§§ 39.110 through 39.121
Students with language development needs.	§§ 39.130 through 39.137
Small school size	§§ 39.140 through 39.156
Geographic isolation of the school.	§ 39.160

GIFTED AND TALENTED PROGRAMS

§ 39.110 Can ISEF funds be distributed for the use of gifted and talented students?

Yes, ISEF funds can be distributed for the provision of services for gifted and talented students.

§ 39.111 What does the term gifted and talented mean?

The term gifted and talented means students, children, or youth who:

- (a) Give evidence of high achievement capability in areas such as intellectual, creative, artistic, or leadership capacity, or in specific academic fields; and

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- (b) Need services or activities not ordinarily provided by the school in order to fully develop those capabilities.

§ 39.112 What is the limit on the number of students who are gifted and talented?

There is no limit on the number of students that a school can classify as gifted and talented.

§ 39.113 What are the special accountability requirements for the gifted and talented program?

If a school identifies more than 13 percent of its student population as gifted and talented the Bureau will immediately audit the school's gifted and talented program to ensure that all identified students:

- (a) Meet the gifted and talented requirement in the regulations; and
- (b) Are receiving gifted and talented services.

§ 39.114 What characteristics may qualify a student as gifted and talented for purposes of supplemental funding?

To be funded as gifted and talented under this part, a student must be identified as gifted and talented in at least one of the following areas.

(a) *Intellectual Ability* means scoring in the top 5 percent on a statistically valid and reliable measurement tool of intellectual ability.

(b) *Creativity/Divergent Thinking* means scoring in the top 5 percent of performance on a statistically valid and reliable measurement tool of creativity/divergent thinking.

(c) *Academic Aptitude/Achievement* means scoring in the top 15 percent of academic performance in a total subject area score on a statistically valid and reliable measurement tool of academic achievement/aptitude, or a standardized assessment, such as an NRT or CRT.

(d) *Leadership* means the student is recognized as possessing the ability to lead, guide, or influence the actions of others as measured by objective standards that a reasonable person of the community would believe demonstrates that the student possess leadership skills. These standards include evidence from surveys, supportive documentation portfolios,