Early Intervention and Preschool Special Education Services for Children Who Live on Reservations with BIE Funded Programs

April 2013
Purpose & Context

This document seeks to provide clarity and guidance related to provision of early intervention and special education services for infants, toddlers, and preschoolers aged birth through 5 who reside on reservations in accordance with the Individuals with Disabilities Education Act (IDEA). It is intended for Part C Lead Agencies (LAS), Early Intervention Service Providers (EISPs), Local Education Agencies (LEAs), State Education Agencies (SEAs), Tribes, schools operated or funded by the Bureau of Indian Education (BIE), Family and Child Education (FACE) programs, Head Start Programs, and other agencies that work with this population of children.

This document is based on a similar document developed through the collaborative efforts of New Mexico Local Education Agencies, the Bureau of Indian Education (FACE Program), the New Mexico Public Education Department, the Office of Special Education Programs (OSEP), and Mountain Plains Regional Resource Center (MPRRC). State or LEA specific information has been edited to ensure broader applicability. Additionally, information specific to the Individuals with Disabilities Education Act (IDEA) Part C services has been added. The document is the result of a combined effort of the Regional Resource Center Program (RRCP), the Early Childhood Technical Assistance Center (ECTA Center), and the Bureau of Indian Education (BIE). The information presented in this document is for general informational and educational purposes only. It is not intended as legal advice and should not be relied upon as, or substituted for, an informed opinion by an attorney based on a specific set of facts. This document does not offer formal policy guidance from the Office of Special Education Programs (OSEP) at the United Stated Department of Education. OSEP endorsement is neither intended nor implied.

Framing the Issue

Many infants, toddlers and children reside on reservations within the service delivery area of an EISP or LEA. Reservations often include schools that fall under the jurisdiction of the Secretary of the Interior and are administered by the BIE—either directly, or via grant or contract. Because of the complex nature these administrative relationships pose, confusion can arise as to who bears ultimate responsibility for early intervention and special education duties such as child find, service provision, and state and federal reporting. This document addresses key issues that arise in this context and offers guidelines for entities to develop memoranda of understanding to ensure that these children and families receive the critical services to which they are entitled.

Definitions

For the purposes of this document, the phrase “early intervention services” refers to identification and evaluation of, and service provision to, infants and toddlers aged birth to 3 and their families who are eligible for services under Part C of the IDEA. Where applicable, this includes infants and toddlers who receive services under the “at risk” category as allowed by the statute. “Special education services” (also referred to as the “FAPE obligation”) refers to identification and evaluation of, and service provision to children aged 3 through 5 who are eligible for services under IDEA, Part B, Section 619. The IDEA delegates certain responsibilities for Indian education to the Secretary of the Interior, which administers these duties via the BIE. For ease of reference, “BIE” is used throughout this document and should be read as synonymous with “Secretary of the Interior” in relation to the subject matter under discussion. “Tribes” refers to recognized Native American tribes and affiliated tribal organizations.

1 FACE programs include Baby FACE an in-the home program that generally is for infants and toddlers as well as Center Based programs for preschoolers (3-5), which is most often referred to as FACE.
2 Under the IDEA, states have discretion to expand services to infants and toddlers in this population if they so choose. See, 20 U.S.C. § 1431(b)(4); 34 C.F.R. §§303.1, 303.5, 303.21, and 303.204.
3 Free Appropriate Public Education as defined in the statute. See, 20 U.S.C. § 1401(9).
Questions and Answers

The following are commonly asked questions with responses to those questions.

1. Under the Individuals with Disabilities Education Act (IDEA), who bears ultimate responsibility for the provision of early intervention and special education services for infants, toddlers, and preschoolers aged birth through 5 residing on reservations?

   **Answer**

   The ultimate responsibility for service provision under IDEA Part C and Part B for infants, toddlers, and preschoolers birth through 5 living on reservations lies with the State in which that child resides, and not with BIE, or the tribes, with the exception of five-year old children with disabilities enrolled in elementary schools operated or funded by the BIE. Tribes receive IDEA funding to assist with the early identification of such children and with the coordination of the provision of a variety of early intervention and special education services for infants, toddlers, and preschoolers. The specific requirements for Part C and Part B are discussed in more detail below:

   **Part C-Payments and Use of Funds**

   With regard to children aged birth to 3, the IDEA requires the Secretary of Education to:

   Make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations . . . or consortia . . . for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. . . . The funds received . . . shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. Such activities may be carried out directly or through contracts or cooperative agreements with the Bureau of Indian Affairs, local educational agencies, and other public or private nonprofit organizations. . . . [Tribes] shall, as appropriate, make referrals to local, State or Federal entities for the provision of services or further diagnosis.


   Under Part C, tribes are provided funding to assist States in screening, identification, and coordination of early intervention services, and to refer children for services when appropriate. The ultimate responsibility for making appropriate Part C services available to infants and toddlers with disabilities aged birth to 3 and their families resides with the State lead agency.

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4 The BIE is responsible for the education of children with disabilities aged 5 through 21 who are enrolled in elementary schools and secondary schools operated or funded by the BIE. The IDEA statute and regulations require the Secretary of the Interior to “meet the need for assistance for the education of children with disabilities on reservations aged 5-21, inclusive, enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. . . . With respect to all other children aged 3 to 21, inclusive, on reservations, the SEA of the State in which the reservation is located must ensure that all of the requirements of this part [Part B of the Act] are implemented.” 20 U.S.C. § 1411(h)(1)(A-C); 34 C.F.R. § 300.707(b-c)(emphasis added).

5 See also implementing regulations at 34 C.F.R. § 303.731(d)(1-2).
Part B-Payments and Use of Funds

IDEA has similar requirements for children aged 3 through 5, requiring the Secretary of Education to:

Make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations . . . to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. . . . The funds received by a tribe . . . shall be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. . . . The tribe or tribal organization shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.


Under Part B, tribes are provided funding to assist with States with screening, identification, and coordination of special education services, and to refer children when appropriate. The ultimate responsibility for making FAPE available to children with disabilities aged 3 through 5 resides with the State education agency.

2. Who bears responsibility for child find for infants, toddlers, and preschoolers living on reservations?

**Answer**

States bear ultimate responsibility for conducting child find for these children. As mentioned above, tribes and tribal organizations receive funds to assist in child find, screening, and other procedures for the early identification of infants, toddlers, and preschoolers aged birth through five.

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6 See also implementing regulations at 34 C.F.R. § 300.712 (d)(1-2).
3. Under IDEA Section 618, who is responsible for reporting early intervention and special education data for infants, toddlers, and preschoolers living on reservations?

**Answer**

Under Part B, LEAs—not the tribes—are responsible for including these children in their child count and reporting data under IDEA section 618 to the state education agency, which in turn reports this data annually to the Secretary of the U.S. Department of Education. (The BIE is responsible for including five-year old children with disabilities enrolled in elementary schools operated or funded by the BIE in their child count and reporting data under IDEA section 618.) Under Part C, tribal entities must provide child find information to the State lead agency, which is responsible for reporting annually to the Secretary of the U.S. Department of Education on these children in its child count and reporting data under IDEA section 618.

4. In what environment should early intervention or special education services for infants, toddlers, and preschoolers who reside on reservations be provided?

**Answer**

Infants, toddlers, and preschoolers living on reservations are entitled to the same access to integrated settings as all other children. For children under age three, this means early intervention services are provided to the maximum extent appropriate in the natural environment (i.e., in the home or community settings in which typically developing children participate). 20 U.S.C. § 635(a)(16). For children aged 3 through 5, this means special education service are provided, to the maximum extent appropriate, in the least restrictive environment. 20 U.S.C. § 1412(a)(5).

5. What are the FACE/Baby FACE programs? Do these programs provide early intervention or special education under Part C or Part B for infants, toddlers, and preschoolers on reservations served by BIE?

**Answer**

Family and Child Education (FACE) is a BIE program that was initiated in 1990 with a focus on providing support to American Indian families in the areas of early childhood development. Baby FACE provides home-based services to children birth to 3. FACE provides center-based early childhood services to children aged 3 to 5. FACE programs currently operate in 46 BIE-funded schools. One of the goals of the program is to promote early identification and services to children with special needs. The FACE or Baby FACE programs may assist and support with child find, screening, and service provision, but they are not ultimately responsible for the provision of early intervention and special education services under the IDEA. Those responsibilities reside with the State.

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7 See implementing regulations at 34 CFR §§ 303.13, 303.26, 303.126, and 303.344(d).
9 For detailed information on the FACE program, see www.faceresources.org.
6. If a child receives services in a Baby FACE or FACE program, would these settings be considered natural environments or integrated settings for data reporting purposes?

**Answer**

The FACE or Baby FACE program is an option for all children (with or without disabilities) and thus may be considered an integrated setting in which a child is served alongside typically developing peers. Like all early intervention and special education decisions, service settings or educational placements must be determined on an individualized case-by-case basis according to the individual needs of the child. For Part C, the decision is made by the team (which includes the parent) that develops the child’s individualized family service plan (IFSP). For Part B, the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. In some States, the individualized education program (IEP) team makes the placement decision. Baby FACE is a home-based service and could therefore qualify as a home or community-based setting for IDEA section 618 data reporting purposes. FACE is a center-based program that meets the current definitions of a “regular early childhood program” used by OSEP in its annual data collection on educational environments for preschool children.10

7. The State Performance Plan requires federal reporting on a number of required indicators. Who is responsible for the data collection and reporting?

**Answer**

The early intervention service program or LEA is responsible for data collection regarding children under the State performance plan and annual performance report under IDEA section 616 and reporting these results respectively to the State lead agency or state education agency for annual submission to OSEP.

Tribal entities are responsible for submitting a report biennially (every two years) to BIE on the activities undertaken for American Indian children ages birth through 2, and ages 3 through 5. For these two respective populations, the biennial performance report must include: (1) the number of contracts and cooperative agreements entered into by tribes or tribal organizations, (2) the number of children: (a) contacted and (b) receiving services for each year, and (3) the estimated number of children needing services during the two years following the year in which the report is made. BIE in turn must report this information to OSEP. In addition, BIE within 90 days after the end of each fiscal year, must provide to the Secretary of Education an Annual Report on the tribal entities and dates and amounts of payments the BIE distributed to such entities under Part C of the IDEA and this report must include confirmation that each tribal entity has provided to BIE an assurance that it provided child find information to the State lead agencies in those States that the tribal entity serves.

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10 The current definition that OSEP uses in its annual data collection under section 618 specifies that at least 50% of children in the preschool class are children without IEPs in order for the program to be considered a regular early childhood program. See, OSEP Dear Colleague letter dated February 29, 2012, available at http://therightidea.tadnet.org/assets/2127.
8. How can States and the BIE work together to ensure infants, toddlers, and preschoolers receive the IDEA services to which they are entitled?

**Answer**

Memorandums of understanding (MOU) should be established to ensure that responsibilities are clearly defined and that coordination and communication protocols are established across early intervention providers, Part C lead agencies, local and state education agencies, and the BIE. MOUs should:

- define which services will be provided by each entity;
- identify what early identification and child find strategies will be used by each entity;
- identify the appropriate eligibility criteria under Part C and Part B, IDEA section 619;
- ensure that children eligible for special education or related services under Part B receive those services at no cost to the parent, as required by law, and to the maximum extent appropriate, in the least restrictive environment for those preschoolers;
- ensure that children eligible for Part C early intervention services receive those services either at no cost or according to the State system of payments and to the maximum extent appropriate in natural environments; and
- ensure that each party cooperatively maintains communication and shares leadership responsibilities at the local level to ensure available resources are used in the most effective manner; and
- ensure that cooperative arrangements between EIPs/LEAs and FACE/ Baby FACE are developed, implemented, and maintained specific to all applicable aspects of systems and services.

*This document is the result of a combined effort of the Regional Resource Center Program (RRCP), the Early Childhood Technical Assistance Center (ECTA Center), and the Bureau of Indian Education (BIE).*
Sample Memorandum of Understanding (MOU) Format

This is an example Memorandum of Understanding (MOU) template that was developed in one state based on specific context in that state. This is offered for illustrative purposes only. Parties should draft MOUs to meet the needs of their individual circumstances and in accordance with any state or local requirements. The sample herein happens to be for an LEA; but the MOU in some circumstances might be with the SEA, LA or EIP. However, names of entities and some of the specific language should be modified as appropriate based on individual circumstances.

Other examples of MOUs can be located at: http://ectacenter.org/topics/bie/mou.asp

PART B MEMORANDUM OF UNDERSTANDING
BETWEEN

Name of LEA

AND

Tribe or School Name

This Memorandum of Understanding, hereinafter referred to as “Agreement”, is between Name of County Schools, a Local Education Agency (LEA), hereinafter referred to as “Initials of County” and School Name, hereinafter referred to as “School Initials” and its Family and Child Education Program, hereinafter referred to as “FACE”, respectively, and is in effect from Enter Applicable Dates.

I. PURPOSE

The purpose of this Agreement is to establish a cooperative relationship and working procedures between Initials of County, LEA, and School Initials’ FACE program in the provision of special education and related services to eligible children in compliance with applicable federal, Tribal Name and state laws and regulations. Eligible children are preschoolers, ages 3 through 5, with disabilities who reside in LEA, Initials of County.

The intent of this Agreement is to:

1. define which services will be provided by each party;
2. ensure that children eligible for special education services receive a free appropriate public education (FAPE), as required by law, in the least restrictive environment (LRE);
3. ensure that each party cooperatively maintains communication and shares leadership responsibilities at the local level to ensure available resources are used in the most effective manner; and
4. ensure that cooperative arrangements between Initials of County and School’s FACE are developed, implemented, and preserved.

II. PROGRAM MANDATES

LEA will be responsible for:

1. Making a free appropriate public education (FAPE) available to eligible children, ages 3 through 5, in accordance with Part B of the Individuals with Disabilities Education Act (IDEA), including providing special education and related services in conformity with an individual education program (IEP) containing all of the required components;
2. Ensuring the requirements of Part B of the IDEA are met, including ensuring parental participation in the development, review and revision of the Individual Education Program (IEP) and providing children with disabilities and their parents all of the procedural safeguards guaranteed under Part B of the IDEA; and
3. Placing eligible children in the least restrictive environment (LRE), to the maximum extent appropriate, with multiple opportunities to learn, develop, and form positive relationships with peers who do not have disabilities and to participate in age-appropriate activities.

**FACE** will be responsible for

1. supporting child find activities;
2. assisting with screening of children for potential problems in health and early development.
3. referring children determined to have developmental delays to appropriate professionals, including LEA Initials of County providers, for diagnostic evaluation within established time frames.

**LEA Initials of County** and **FACE** will be responsible for

1. working closely with community and other agencies in order to provide effective services to eligible children;
2. working cooperatively with parents/legal guardians to develop and implement IEPs for eligible children; and
3. providing native language interpretation for families as needed.

### III. PROGRAM CONTACT INFORMATION

For **Initials of County**:
- First and Last name, Superintendent
- Name of County
- P.O. Box Address
- City, State, Zip Code
- (Area Code) Phone Number

For **School District**:
(Add FACE program contact information)

### IV. SPECIAL EDUCATION SERVICES

#### A. Child find

**LEA Initials of County** and **FACE** will

1. participate jointly on teams to plan and assist with child find, including screening events, for children, ages 3–5, who reside in LEA Initials of County;
2. coordinate the child find process and procedures as well as the selection and use of screening instruments and assessment materials; and
3. conduct child find activities, including screenings, together at designated community-based sites in LEA Initials of County, preferably at Name of School FACE located in Initials of County.

**LEA Initials of County** will

1. provide child find results to parents/guardian(s) and FACE and inform parents/guardians(s) of program options that may be available to them and their child; and
2. provide a native language interpreter for families and children who need such assistance throughout the child find process.

**FACE** will

1. provide transportation, when needed, to families and children, ages 3 to 5, residing in LEA Initials of County; and
2. provide a native language interpreter for families and children who need such assistance throughout the child find process.

B. Referral for Initial Evaluation

**LEA Initials of County** will

1. follow all *Initials of County* LEA and SEA _____ (*fill in blank*) guidelines for referral;
2. provide referral forms and a “single” point of contact or use appropriate FACE forms to avoid duplication;
3. provide training to FACE staff on the delivery of special education services and the timely completion of referral forms;
4. provide all appropriate written evaluation reports to FACE;
5. schedule and facilitate IEP team meetings, using a native language interpreter when needed, to share evaluation results with parents/guardian(s) and appropriate staff and to collaboratively develop IEP goals and activities that meet each child’s educational needs; and
6. collaboratively complete child outcomes information at entry by involving all appropriate parties (family, FACE personnel, EI, and LEA personnel)

**FACE** will

1. obtain information documenting the need for referral;
2. provide a referral for each child by completing designated referral forms; and
3. submit completed referral forms to LEA/Initials of County for action as per *Initials of County*/SEA and Name of School timelines.

C. Comprehensive Evaluation

**LEA Initials of County** will

1. formally evaluate children who may require special education and related services at FACE with agreed upon assessments for vision, hearing, speech/language (SLP), occupational therapy (OT), physical therapy (PT), and psycho-educational development;
2. whenever possible, conduct appropriate evaluations within familiar environments for the child and family;
3. provide evaluation assessments, materials and testing protocols;
4. provide a native language interpreter for families in need of such assistance for all formal evaluations;
5. provide written evaluation reports according to IDEA requirements; and
6. initiate multidisciplinary team (MDT) meetings when appropriate.

**FACE** will

1. provide initial developmental, hearing, and vision screening within 45 days after a child’s enrollment and report results to *Initials of County* when there are identifiable concerns;
2. compile background information for all children with identified concerns using the appropriate LEA *Initials of County* and FACE forms;
3. obtain signatures from parents/guardian(s) for permission to share information that may result in an evaluation;
4. notify LEA *Initials of County* that parental permission to share information has been obtained within twenty-four (24) hours of obtaining consent;
5. engage the parents/guardian(s) verbally and in writing to identify the date, time and place of evaluation;

6. arrange for meetings within the family’s home or a location that is convenient for them and/or provide families with transportation, when necessary, to appointments at designated Initials of County sites and/or Name of School sites;

7. provide a native language interpreter for families in need of such assistance for all evaluations; and

8. participate in MDT meetings when appropriate and notify parents/guardian(s) in a timely manner of such meetings.

D. Individual Education Program (IEP) Development

**LEA** and **FACE** will

1. set up IEP meetings cooperatively, including the provision of a native language interpreter when needed; and

2. develop IEP goals cooperatively with parents/guardian(s) to meet each child’s educational needs and in accordance with IDEA requirements.

**LEA** will

1. initiate the MDT/IEP process by notifying appropriate Name of School staff that all evaluations are completed;

2. use LEA’s IEP forms; and

3. provide copies of each child’s IEP to parents/guardian(s) and to appropriate Name of School staff and teachers, with the signed parent consent form.

**FACE** will confirm the date/time/place of IEP meetings with parents/guardian(s) verbally and in writing.

E. Placement

**LEA** will

1. follow federal and state guidelines and requirements for placement;

2. conduct meetings with required group of persons, including parents/guardian(s) to determine the child’s educational placement, ensure placement decision is made in conformity with the least restrictive environment (LRE) requirements, and inform them of available procedural safeguards and due process procedures; and

3. provide a native language interpreter for families when needed.

**FACE** will

1. provide community-based placement for identified children in the least restrictive environment (LRE);

2. follow eligibility criteria for enrollment in FACE; and

3. provide program information packets to parents/guardian(s) of children referred to any of Name of School’s family/early education programs.

F. Specific Program Service Delivery

**LEA** will

1. provide special education and related services to meet each child’s IEP goals in accordance with the child’s IEP;
2. plan and conduct continuous in-service training to FACE staff on culturally sensitive techniques for working with and supporting young children with disabilities; and

3. provide ongoing staff consultation and training to meet each child’s IEP goals.

FACE will
1. collaborate with LEA to implement IEP goals;
2. provide educational materials and equipment for classroom curriculum and IEP implementation;
3. provide appropriate services to children in accordance with IDEA guidelines as necessary; and
4. provide transportation for children, when determined by the IEP team, to designated community sites for service delivery.

G. Procedures for Review/Monitoring Child’s Progress

LEA will
1. provide ongoing consultation to appropriate FACE staff regarding each child’s progress;
2. prepare written progress reports for each child as requested by parents/guardian(s) to maintain consistent communication and submit them to the appropriate FACE staff; and
3. schedule IEP reviews with and notify parents/guardian(s) of the meeting(s) in a timely manner, verbally and in writing, and when needed, provide native language interpretation.

FACE will
1. keep daily attendance records for each child served and a current log LEA and other service provider visits;
2. consult with LEA staff regarding each child’s progress;
3. report the child’s progress to parents/guardian(s) at scheduled meetings;
4. meet with parents/guardian(s) when LEA progress reports are received to share and explain their child’s progress and LEA progress reports; and
5. participate in meetings with LEA staff and parents/guardian(s).

H. Procedures for Hiring and Supervising Staff Providing Special Services

FACE, LEA, Initials of County and Name of School will
1. each follow their own respective hiring procedures;
2. each hire and supervise their respective staff;
3. provide appropriate personnel for carrying out the terms of this Agreement;
4. notify each other of any concerns and needs of the staff on site at Name of School; and communicate with each other about any other pertinent information/situations that will affect children and/or the timely delivery of services

V. TECHNICAL ASSISTANCE

LEA, Initials of County and FACE will
1. inform each other of all pertinent training opportunities related to services for young children with disabilities and invite staff to participate;
2. coordinate LEA Initials of County training and technical assistance activities, as appropriate, with all program calendars to ensure full staff and, as applicable, family participation; and
3. network and collaborate with local/regional resource programs, such as Indian Children’s Program (ICP), Parent Training and Information Centers, and National Indian Parent Information Center (NIPIC), on staff training and family/parent education, advocacy and ongoing support.

VI. CHILD COUNT AND REPORTING

Initials of County, LEA, and FACE will maintain their own records according to regulatory guidelines and provide documentation and support to any of the other parties as requested.

VII. DISPUTE RESOLUTION

In the event that a misunderstanding or difference of opinion occurs with regard to the procedures necessary to accomplish the objectives of this Agreement, both parties agree to meet in good faith and pursue a successful resolution using facilitation and/or mediation strategies.

VIII. TERMINATION/REVIEW

This Agreement will be reviewed annually and be revised by LEA, Initials of County, FACE and Name of School on an as-needed basis, in order to remain in effect. Any party upon thirty (30) days may terminate this Agreement with written notice.
### IX. SIGNATURES

**ADD FACE FOR Initials of County – AUTHORIZED LEA REPRESENTATIVE**

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**FOR LEA/Name of School - AUTHORIZED REPRESENTATIVE**

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**FOR EDUCATION LINE OFFICER – AUTHORIZED REPRESENATIVE**

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