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(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.

(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

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(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

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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:

- (a) Become proficient in English and, to the extent possible, proficient in their Native language; and
- (b) Meet the same challenging academic content and student academic achievement standards that all students are expected to meet under 20 U.S.C. 6311(b)(1).

§ 39.136 What is the WSU for Language Development programs?

Language Development programs are funded at 0.13 WSUs per student.

§ 39.137 May schools operate a language development program without a specific appropriation from Congress?

Yes, a school may operate a language development program without a specific appropriation from Congress, but any funds used for such a program must come from existing ISEP funds. When Congress specifically appropriates funds for Indian or Native languages, the factor to support the language development program will be no more than 0.25 WSU.

SMALL SCHOOL ADJUSTMENT

§ 39.140 How does a school qualify for a Small School Adjustment?

A school will receive a small school adjustment if either:

- (a) Its average daily membership (ADM) is less than 100 students; or
- (b) It serves lower grades and has a diploma-awarding high school component with an average instructional daily membership of less than 100 students.

§ 39.141 What is the amount of the Small School Adjustment?

(a) A school with a 3-year ADM of 50 or fewer students will receive an adjustment equivalent to an additional 12.5 base WSU; or

(b) A school with a 3-year ADM of 51 to 99 students will use the following formula to determine the number of WSU for its adjustment. With X being the ADM, the formula is as follows:

$$\text{WSU adjustment} = ((100 - X)/200) * X$$

§ 39.143 What is a small high school?

For purposes of this part, a small high school:

- (a) Is accredited under 25 U.S.C. 2001(b);
- (b) Is staffed with highly qualified teachers;
- (c) Operates any combination of grades 9 through 12;
- (d) Offers high school diplomas; and
- (e) Has an ADM of fewer than 100 students.

§ 39.144 What is the small high school adjustment?

(a) The small high school adjustment is a WSU adjustment given to a small high school that meets both of the following criteria:

- (1) It has a 3-year average daily membership (ADM) of less than 100 students; and
- (2) It operates as part of a school that during the 2003-04 school year also included lower grades.

(b) The following table shows the WSU adjustment given to small high schools. In the table, "X" stands for the ADM.