

§ 39.406 What documentation must the school maintain for additional services it provides?

Every school must maintain a file on each student receiving additional services. (Additional services include homebound services, institutional services, distance courses, Internet courses or college services.) The school must certify, and its records must show, that:

- (a) Each homebound or institutionalized student is receiving 5 contact hours each week by certified educational personnel;
- (b) Each student taking college, distance or internet courses is in physical attendance at the school for at least 3 certified contact hours per day.

§ 39.407 How long must a school maintain records?

The responsible administrative official for each school must maintain records relating to ISEP, supplemental services, and transportation-related expenditures. The official must maintain these records in appropriate retrievable storage for at least the four years prior to the current school year, unless Federal records retention schedules require a longer period.

§ 39.408 What are the responsibilities of administrative officials?

Administrative officials have the following responsibilities:

- (a) Applying the appropriate standards in this part for classifying and counting ISEP eligible Indian students at the school for formula funding purposes;
- (b) Accounting for and reporting student transportation expenditures;
- (c) Providing training and supervision to ensure that appropriate standards are adhered to in counting students and accounting for student transportation expenditures;
- (d) Submitting all reports and data on a timely basis; and
- (e) Taking appropriate disciplinary action for failure to comply with requirements of this part.

§ 39.409 How does the OIEP Director ensure accountability?

- (a) The Director of OIEP must ensure accountability in student counts and

student transportation by doing all of the following:

- (1) Conducting annual independent and random field audits of the processes and reports of at least one school per OIEP line office to ascertain the accuracy of Bureau line officers' reviews;
- (2) Hearing and making decisions on appeals from school officials;
- (3) Reviewing reports to ensure that standards and policies are applied consistently, education line officers treat schools fairly and equitably, and the Bureau takes appropriate administrative action for failure to follow this part; and
- (4) Reporting the results of the findings and determinations under this section to the appropriate tribal governing body.

(b) The purpose of the audit required by paragraph (a)(1) of this section is to ensure that the procedures outlined in these regulations are implemented. To conduct the audit required by paragraph (a)(1) of this section, OIEP will select an independent audit firm that will:

- (1) Select a statistically valid audit sample of recent student counts and student transportation reports; and
- (2) Analyze these reports to determine adherence to the requirements of this part and accuracy in reporting.

§ 39.410 What qualifications must an audit firm meet to be considered for auditing ISEP administration?

To be considered for auditing ISEP administration under this subpart, an independent audit firm must:

- (a) Be a licensed Certified Public Accountant Firm that meets all requirements for conducting audits under the Federal Single Audit Act;
- (b) Not be under investigation or sanction for violation of professional audit standards or ethics;
- (c) Certify that it has conducted a conflict of interests check and that no conflict exists; and
- (d) Be selected through a competitive bidding process.

§ 39.411 How will the auditor report its findings?

- (a) The auditor selected under § 39.410 must:

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(1) Provide an initial draft report of its findings to the governing board or responsible Federal official for the school(s) involved; and

(2) Solicit, consider, and incorporate a response to the findings, where submitted, in the final audit report.

(b) The auditor must submit a final report to the Assistant Secretary—Indian Affairs and all tribes served by each school involved. The report must include all documented exceptions to the requirements of this part, including those exceptions that:

(1) The auditor regards as negligible;

(2) The auditor regards as significant, or as evidence of incompetence on the part of responsible officials, and that must be resolved in a manner similar to significant audit exceptions in a fiscal audit; or

(3) Involve fraud and abuse.

(c) The auditor must immediately report exceptions involving fraud and abuse directly to the Department of the Interior Inspector General's office.

§ 39.412 What sanctions apply for failure to comply with this subpart?

(a) The employer of a responsible administrative official must take appropriate personnel action if the official:

(1) Submits false or fraudulent ISEP-related counts;

(2) Submits willfully inaccurate counts of student participation in weighted program areas; or

(3) Certifies or verifies submissions described in paragraphs (a)(1) or (a)(2) of this section.

(b) Unless prohibited by law, the employer must report:

(1) Notice of final Federal personnel action to the tribal governing body and tribal school board; and

(2) Notice of final tribal or school board personnel action to the Director of OIEP.

§ 39.413 Can a school appeal the verification of the count?

Yes, a school may appeal to the Director any administrative action disallowing any academic, transportation, supplemental program or residential count. In this appeal, the school may provide evidence to indicate the student's eligibility, membership or residency or adequacy of a program for all

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or a portion of school year. The school must follow the applicable appeals process in 25 CFR part 2 or 25 CFR part 900, subpart L.

Subpart E—Contingency Fund

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

§ 39.500 What emergency and contingency funds are available?

The Secretary:

(a) Must reserve 1 percent of funds from the allotment formula to meet emergencies and unforeseen contingencies affecting educational programs;

(b) Can carry over to the next fiscal year a maximum of 1 percent the current year funds; and

(c) May distribute all funds in excess of 1 percent equally to all schools or distribute excess as a part of ISEP.

§ 39.501 What is an emergency or unforeseen contingency?

An emergency or unforeseen contingency is an event that meets all of the following criteria:

(a) It could not be planned for;

(b) It is not the result of mismanagement, malfeasance, or willful neglect;

(c) It is not covered by an insurance policy in force at the time of the event;

(d) The Assistant Secretary determines that Bureau cannot reimburse the emergency from the facilities emergency repair fund; and

(e) It could not have been prevented by prudent action by officials responsible for the educational program.

§ 39.502 How does a school apply for contingency funds?

To apply for contingency funds, a school must send a request to the ELO. The ELO must send the request to the Director for consideration within 48 hours of receipt. The Director will consider the severity of the event and will attempt to respond to the request as soon as possible, but in any event within 30 days.

§ 39.503 How can a school use contingency funds?

Contingency funds can be used only for education services and programs,