United States Department of the Interior

BUREAU OF INDIAN EDUCATION
Washington, D.C. 20240

National Policy Memorandum

Office of the Director

Number: NPM-EDUC-35 A2

Effective: 3/04/2025
Expires: 3/04/2026

Title: Missed Individualized Education Program (IEP) Services – Amendment 2

1. Purpose

The purpose of this memorandum is to extend NPM-EDUC-35 A1: Missed Individualized Education Program (IEP) Services – Amendment 1, issued on February 6, 2024, for one additional year. The Bureau of Indian Education (BIE) is responsible for ensuring that its implementation of Part B of the Individuals with Disabilities Education Act (IDEA) meets the requirements under 20 U.S.C. §§ 1411(h)(2)(A) and 1412(a) and 34 CFR § 300.708(a). The IDEA requires BIE to ensure a Free Appropriate Public Education (FAPE) to all children with disabilities attending BIE-funded schools. In order to make FAPE available, each student's IEP must be developed and implemented in accordance with the requirements of IDEA, including 20 U.S.C. § 1414(d), 20 U.S.C. § 1401(9), and 34 CFR § 300.324. BIE is drafting special education policies and procedures that apply to BIE-funded schools, which include Tribally controlled schools (TCS) and BIE-operated elementary and secondary schools.

BIE originally developed this memorandum to provide interim guidance pending Tribal consultation on BIE's special education policies and procedures. While Tribal consultation was held in 2023, the policy is still in development. In the meantime, the intent of this memorandum is to continue to provide guidance on the decision making process for missed IEP services. The information provided herein must be followed by Bureau-operated schools (BOS) and is guidance for TCS, which are operated pursuant to grants under the Tribally Controlled Schools Act of 1988 (25 U.S.C. § 2501 *et seq*.), and contracts under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 5301 *et seq*.).

2. Scope

This policy applies to all BIE personnel who are involved in providing IEP services.

3. Policy

All IEPs must include, among other components, a statement of the specific special education and related services to be provided to the student, the projected dates for initiation of services, and the anticipated frequency, location, and duration of the services. BIE-funded schools are required to provide services as they are indicated on an IEP (34 CFR § 320(a)(4)).

The IDEA regulations do not specifically address the issue of missed special education and related services. Therefore, BIE-funded schools must consider the impact of a missed service, irrespective of the reason for missing the service, on the student's progress and performance. They must also determine how to ensure the continued provision of FAPE in order for the student to continue making progress and ultimately meet the annual goals of the IEP.

Below are scenarios related to missed services that are often arise at BIE-funded schools. This is not an exhaustive list of possible scenarios. The answers are generalities and are supported by guidance provided by the U.S. Department of Education's Office of Special Education Programs (OSEP). BIE is available to provide technical assistance if there are additional *missed services* questions.

Sample Scenarios

1. What happens if a student misses special education or related services due to student illness or family-initiated absence from school?

   In these situations, the general rule is that if the school makes IEP services available to the student at a normally scheduled time, the school is not obligated to make other arrangements to provide services if the student with a disability is absent from school at that time for reasons other than his or her participation in school sponsored activities. However, if a student is absent from school for a prolonged period of time, or there is a pattern of repeated short-term absences from school, for reasons associated with the student's disability, it is appropriate for school officials to conduct an IEP meeting to review the current IEP to determine if it is necessary to modify the current program or placement.

2. What happens if a student misses special education or related services due to a field trip or other related school activity (e.g., assembly)?

   In those instances where a student with a disability does not attend school in order to participate in school-related activities such as field trips, the BIE-funded school generally will be responsible for making alternative arrangements for providing IEP services. If participation in the school activity is required, the school must arrange to provide the services specified in the student's IEP so that the student can receive the IEP services and participate in other required school activities. Similarly, the provision of special education services should not operate to preclude the student with a disability from participating in optional, school-related programs or activities in which nondisabled students regularly take part.

3. What happens if a student misses special education or related services due to school staff attending professional development or other school-related activities?

   If the unavailability of school personnel means that IEP services are not made available at the student's regularly scheduled time, the school must make other arrangements to provide the services at that time or reschedule the required IEP services.

4. What happens if a student misses special education or related services due to participation in required scheduled assessments?

   All children with disabilities must be included in all general BIE assessment programs, including assessments, with appropriate accommodations, and alternate assessments where necessary and as indicated on students' IEPs. Participation in assessments is addressed in the IEP, including whether any individual appropriate accommodations are necessary to measure the academic achievement and functional performance of the child and whether the child must take an alternate assessment. Generally, a BIE-funded school is not required to make up a special education or related service missed due to the student's participation in required scheduled assessments. For a student who is absent from school on testing days due to a "parent's choice," the BIE-funded school would not be obligated to make other arrangements to make up the missed services.

   That said, IEP teams must consider the missed services resulting from assessments in the greater context of all missed services. More specifically, teams must consider the impact of all missed services on the student's progress and performance.

5. What happens if a provider is not available for a scheduled service session (e.g., short term sick leave, short term annual leave, attending an IEP meeting, professional development)?

   The providers will schedule a make-up service session for the missed service session(s) during the quarter in which the missed service session(s) occurred. If the missed service session(s) occurred during the last week of the quarter, it must be made up within the first week of the following quarter. This policy ensures that all relevant information will be provided in the quarterly progress report. In most cases, this is the option that should be utilized.

   Alternatively, if the provider cannot make up the session(s) by the following quarter, they must notify the school's identified special education coordinator. When the provider cannot make up the session(s) and notifies the school's special education coordinator, the special education coordinator must assign a substitute provider to make up the missed service session(s) during the quarter in which the missed service session(s) occurred, or develop an alternative option. If the missed service session(s) occurred during the last week of the quarter, it must be made up within the first week of the following quarter.

6. What happens if scheduled service sessions cannot be provided for an extended period of time due to school closure, or extended teacher absence?

   BIE-funded schools have an obligation to provide timely special education and related services as prescribed by a student's IEP. Schools should not rely on compensatory education as the mechanism for providing FAPE or as an excuse not to provide FAPE. However, in the rare circumstance that a session cannot be provided for an extended period of time, a child's IEP team may determine that compensatory services are necessary to mitigate the impact of disruptions and delays in providing appropriate services to the child.

   If a student does not receive services for an extended period of time (generally more than 10 consecutive school days), the student's IEP team must make a subsequent individualized determination to decide whether the student with a disability requires compensatory services to make up for any skills that may have been lost because the student did not receive educational benefit. This could result from extended school closure, one or more of the student's IEP services that could not be provided remotely, or a delay in provision of services during the transition to a distance learning model.

   BIE-funded schools will need to convene the IEP team to make an individualized determination whether compensatory services are needed when school resumes. BIE-funded schools have broad flexibility through the IEP Team process to discuss and make an individualized determination with regard to what compensatory services are needed and how they should be provided.

4. Roles and Responsibilities

A. **Office of the Director, BIE** is responsible for the oversight and administration of the Special Education Program for BIE-funded schools.

B. **Division of Performance and Accountability, BIE** is responsible for the oversight of the Special Education Program to monitor the implementation of IDEA.

C. **Special Education Program, BIE** is responsible for implementing this policy and for providing technical assistance to BIE-funded schools in accordance with this policy.

5. Approval

TONY DEARMAN Digitally signed by TONY DEARMAN Date: 2025.03.04 09:02:26 -05'00'

Tony L. Dearman Date
Director, Bureau of Indian Education