Contract Routing Form

Initiation date: 12/6/12 SDE contact person: Kiley Crill

Division: Federal Programs - Special Education

Contractor name: Shoshone-Bannock Fort Hall Early Childhood

◉ New ○ Renewal ○ Addendum MOA/MOU# :

Explain need for contract: There has been confusion about who is responsible for providing special ed services for preschool children who reside on a Reservation within the LEA jurisdiction. This doc. is intended to provide guidance regarding this issue.

Was the contract bid? ○ Yes ○ No N/A

If no, explain: N/A

Funding source: ○ State ○ Federal N/A

Index Code: N/A Contract amount not to exceed: $ N/A

Documentation:

☐ W-9 (Check Contract Database or with Accounting to see if one is on file.)

☐ List of deliverables/scope of work

- ○ Incorporated in contract document
- ○ Incorporated as attachment (Attachment must be included)

☐ Workers comp certificate

- ○ Required
- ○ Exempt under IC 72-212

☐ Resume (Required for individual contractors)

☐ Verified contractor name does not appear on the Idaho Sex Offender Registry.

Signature _____ Date _____

Please complete this form in its entirety and attach to the front of all contracts.
Contracts sent to Supt. Luna with incomplete forms will not be signed and will be returned to the SDE contact person listed above for completion.

Routing Steps

1) Reviewed by Director/Coordinator	**Date** 12-6-12	**Initials** RAU
2) Reviewed by Deputy	**Date** 12/6/12	**Initials** AW
3) Date Signed by Contractor	**Date** _____	
4) Reviewed by Originator	**Date** _____	**Initials** _____
5) Reviewed by Superintendent Luna	**Date** _____	**Initials** _____
6) Routed to Accounting	**Date** _____	**Initials** _____

LEA AND SEA RESPONSIBILITIES

Regarding Child Find for Preschool Students who reside on a Reservation within LEA Jurisdiction

GUIDANCE DOCUMENT

LEA and SEA Responsibilities Regarding Child Find for Preschool Students who reside on a Reservation within LEA Jurisdiction

Q & A Guidance Document

This document is intended to be used by LEAs, SEAs, (part B-619 and C), BIE (Tribal, Grant Schools, Family and Child Education (FACE) program, and BIE schools), Head Start Programs, and other agencies working with 3-5 children on reservations.

Purpose

There has been confusion about who is responsible for providing special education services for preschool children (age 3–5) who reside on a Reservation within the Local Education Agency's (LEA's)jurisdiction. This document is intended to provide guidance regarding this issue.

Framing the Issue

There are many children in States (age 3–5) who reside on a Reservation within an LEA's Jurisdiction. Sometimes it is unclear as to who is responsible for providing special education services, reporting to OSEP, and ensuring that Child Find is carried out for those children.

- How are Child Find responsibilities carried out?
- How do the Bureau of Indian Education (BIE) 3–5 population and Family and Child Education (FACE) programs interface with LEAs?
- How should Memorandums of Understanding (MOUs) be used to ensure services are provided for children (3–5) residing on Reservations and LEAs that have Jurisdiction for those children?

"This document is result of collaborative efforts from New Mexico Local Education Agencies, Bureau of Indian Education (FACE Program), New Mexico Public Education Department, the Office of Special Education Programs (OSEP) and Technical Assistance for Excellence in Special Education (TAESE)"

Questions and Responses

The following are commonly asked questions and responses

1. Are public schools that have BIE schools in their geographic area obligated to provide preschool services for Indian children with disabilities?

Response: The bottom line is that the responsibility for FAPE for students 3-5 living on reservations lies with the State, not with BIE, or the tribes. Under IDEA, BIE receives 611 funds to provide special Education and related Services to children with disabilities on reservations aged 5 through 21 enrolled in elementary and secondary schools operated or funded by BIE. BIE does not receive any 619 funds. 20% of the 611 funds are distributed to tribes for the "coordination of assistance for special education and related services for children with disabilities aged three to five on reservations. [300.712(a)]. These funds must be used to assist in child find, screening and other procedures for the early identification of children aged three through five, parent training and the provision of direct services. [300.712(d)]. Although these funds, as you see, can be used for direct services, they do not have to be. Most importantly, 300.707 outlines the responsibility for BIE to ensure FAPE for children 5-21 living on reservations attending elementary or secondary schools operated or funded by BIE. It goes on to state that "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 Part B of the Act are implemented." [300.707(c)]. Therefore the responsibility for providing FAPE for children 3–5 attending preschools rests with the State. This remains true if the children are attending BIE (FACE programs) or tribally funded preschools.

2. If an BIE Indian child who is 3-5 years old needs direct special education and related services. Does the LEA pay the costs for services or does money flow from the tribe to the LEA to pay the costs?

Response: The SEA is ultimately responsible for ensuring FAPE. If the tribe chooses to use their funds to provide the services, the State does not have to duplicate the services. If the tribe wants to pay that is fine, but they are not obligated to do so. If the tribe is not paying then the State, and by extension, the LEA, must do so. In any case, it is the State's responsibility to ensure FAPE is being provided; that IEP teams are meeting, appropriate IEPs are being developed, services provided etc. This is true, regardless of who is providing the service, or who is paying for it.

3. Tribes receive Funds for Child Find; under 618 who counts the children when reporting to OSEP?

Response: 300.644 Child Count

Tribes receive Part B funds to assist States in conducting child find for children aged three through five suspected of having a disability on reservations. However, BIE is not responsible for conducting child find or providing special education and related services to children with disabilities aged three through five on reservations (with the exception of five-year-old children enrolled in an elementary school operated or funded by the Secretary of the Interior).

Therefore, BIE should not be counting them. An LEA is responsible for conducting child find and providing special education and related services to children with disabilities aged three through five who reside on a reservation within the LEA's jurisdiction. Therefore, the LEAs are responsible for including those children in their child count, reporting data under section 618 of IDEA, completing evaluations, and determining eligibility.

4. How is a placement for a 3- to 5-year-old child decided; in other words, in what environment should the special education services be provided?

Response: Placement is an IEP decision: the team determines the appropriateness of the setting and where services will be provided. If the parent questions whether their child's placement is providing FAPE in LRE, they have a right to use dispute resolution processes to resolve the dispute.

Note: Under 34 CFR 300.116(a), the placement decision must be 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 IEP team serves as the group making the placement decision. This does not violate the IDEA so long as the required members of the group that determines the educational placement meet the requirements of the IDEA as set forth in §300.116(a)(1).

34 CFR 300.114 to 300.116

Sec. 300.114 LRE requirements

(a) General.

1) Except as provided in Sec. 300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and Sec. Sec. 300.115 through 300.120.

2) Each public agency must ensure that—
   - i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
   - ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(b) Additional requirement--State funding mechanism—

1) General.
   - i) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section; and
   - ii) A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child

is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.

2) Assurance. If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.

(Approved by the Office of Management and Budget under control number 1820-0030)(Authority: 20 U.S.C. 1412(a)(5))

Sec. 300.115 Continuum of alternative placements

(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum required in paragraph (a) of this section must—
1) Include the alternative placements listed in the definition of special education under Sec. 300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and
2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(Approved by the Office of Management and Budget under control number 1820-0030)(Authority: 20 U.S.C. 1412(a)(5))

Sec. 300.116 Placements

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—

(a) The placement decision—
1) 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; and
2) Is made in conformity with the LRE provisions of this subpart, including Sec. Sec. 300.114 through 300.118;

(b) The child's placement—
1) Is determined at least annually;

2) Is based on the child's IEP; and
3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

(Approved by the Office of Management and Budget under control number 1820-0030)(Authority: 20 U.S.C. 1412(a)(5))

5. If the IEP team determines that the FACE program is the appropriate placement, how is that data collected?

Response: The FACE program is considered for all students (with or without disabilities) and may be considered an integrated setting in which the student is with typically developing peers. However, this should be considered on a case-by-case basis.

6. Indicator #7 in the State Performance Plan requires reporting to OSEP. Who is responsible for the data collection and reporting?

Indicator 7: Percent of preschool children with IEPs who demonstrate improved

- Positive social-emotional skills (including social relationships),
- Acquisition and use of knowledge and skills (including early language/ communication and early literacy), and
- Use of appropriate behaviors to meet their needs

20 U.S.C. 1416 (a)(3)(A))

Response: The LEA is responsible for data collection and reporting results to the SEA for submission to OSEP

7. Does the FACE program provide Special Education and Related Services under Part B for the 3–5 population?

- The FACE program may help with Child Find and Screening.
- It does not receive funding to provide direct services under Part B
- FACE, is a Bureau-funded program but does not receive funding for the Pre-School program to provide Part B special education and related services for children aged three to five
- The FACE program is a setting. It is not a provider of Part B special education and related services.

8. What are the Federal Requirements for SEAs, LEAs, and BIE for child find and services for children aged 3–5 in special education?

Response: SEA: 300.111 Child Find Responsibility, all children to be identified, located, and evaluated.

Sec. 300.111 Child find

(a) General.

1) The State must have in effect policies and procedures to ensure that—
   i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and
   ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(b) Use of term developmental delay. The following provisions apply with respect to implementing the child find requirements of this section:

1) A State that adopts a definition of developmental delay under Sec. 300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five).
2) A State may not require an LEA to adopt and use the term developmental delay for any children within its jurisdiction.

3) If an LEA uses the term developmental delay for children described in Sec. 300.8(b), the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State.
4) If a State does not adopt the term developmental delay, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part.

(c) Other children in child find. Child find also must include—
1) Children who are suspected of being a child with a disability under Sec. 300.8 and in need of special education, even though they are advancing from grade to grade; and
2) Highly mobile children, including migrant children.

(d) Construction. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in Sec. 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

(Approved by the Office of Management and Budget under control number 1820-0030)(Authority: 20 U.S.C. 1401(3)); 1412(a)(3))

Note: SEAs often assign LEAs the responsibility for conducting child find for children suspected of having a disability within the jurisdiction of the LEA.

Sec. 34 CFR 300.712 Payments for education and services for Indian children with disabilities aged three through five

(a) General. With funds appropriated under section 611(i) of the Act, the Secretary makes payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged three through five on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of the payments under paragraph (b) of this section for any fiscal year is equal to 20 percent of the amount allotted under Sec. 300.701(b).

(b) Distribution of funds. The Secretary of the Interior must distribute the total amount of the payment under paragraph (a) of this section by allocating to each tribe, tribal organization, or consortium an amount based on the number of children with disabilities aged three through five residing on reservations

as reported annually, divided by the total of those children served by all tribes or tribal organizations.

(c) Submission of information. To receive a payment under this section, the tribe or tribal organization must submit the figures to the Secretary of the Interior as required to determine the amounts to be allocated under paragraph (b) of this section. This information must be compiled and submitted to the Secretary.

(d) Use of funds.
1) The funds received by a tribe or tribal organization must be used to assist in child find, screening, and other procedures for the early identification of children aged three through five, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, LEAs, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities.
2) The tribe or tribal organization, as appropriate, must make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(e) Biennial report. To be eligible to receive a grant pursuant to paragraph (a) of this section, the tribe or tribal organization must provide to the Secretary of the Interior a biennial report of activities undertaken under this section, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the two years following the year in which the report is made. The Secretary of the Interior must include a summary of this information on a biennial basis in the report to the Secretary required under section 611(h) of the Act. The Secretary may require any additional information from the Secretary of the Interior.

(f) Prohibitions. None of the funds allocated under this section may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

(Authority: 20 U.S.C. 1411(h)(4))

Note: While tribes receive Part B funds to assist in child find, screening, and other procedures for the early identification of children aged three through five, it is the SEA that is responsible for conducting child find for all children aged three through five on reservations, with the exception of five-year-olds enrolled in an elementary school operated or funded by the Secretary of the Interior.

Bureau of Indian Education (BIE)

The U.S. Department of Education provides Part B funds to the Secretary of Interior for providing Special Education and Related Services to children with disabilities on reservations aged five through 21enrolled in elementary and secondary schools operated or funded by BIE.

SEAs and LEAs may provide Part B funds, through MOUs, to the tribes to assist them in coordinating child find and providing direct services to preschool children with disabilities aged three through five living on reservations. However, as noted above, the SEA and LEA remain responsible for conducting child find and making a free appropriate public education available to those children.

Note: It's still the LEA's responsibility to report on 618 data.

Sec. 300.707 Use of amounts by Secretary of the Interior.

(a) Definitions. For purposes of Sec. Sec. 300.707 through 300.716, the following definitions apply:
   1) Reservation means Indian Country as defined in 18 U.S.C. 1151.
   2) Tribal governing body has the definition given that term in 25 U.S.C. 2021(19).

(b) Provision of amounts for assistance. The Secretary provides amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of the payment for any fiscal year is equal to 80 percent of the amount allotted under section 611(b)(2) of the Act for that fiscal year. Of the amount described in the preceding sentence, after the Secretary of the Interior reserves funds for administration under Sec. 300.710, 80 percent must be allocated to such schools by July 1 of that fiscal year and 20 percent must be allocated to such schools by September 30 of that fiscal year.

(c) **Additional requirement. 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 Part B of the Act are implemented.**

(Authority: 20 U.S.C. 1411(h)(1))

9. What should be included in the MOU between the LEAs and the BIE to ensure special education and related services and child find are appropriately provided for children residing on reservations within the jurisdiction of the LEA?

Response

- Define which service will be provided by each party.
- 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).
- 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.
- Ensure that cooperative arrangements between LEAs and FACE are developed, implemented, and preserved.

MEMORANDUM OF UNDERSTANDING BETWEEN THE IDAHO STATE EDUCATION AGENCY AND THE SHOSHONE-BANNOCK TRIBES

This Memorandum of Understanding, hereinafter referred to as "Agreement", is between Idaho State Department of Education, hereinafter referred to as "ISDE" and Shoshone-Bannock Tribes, hereinafter referred to as "Tribe", and is in effect from July 1, 2012 to June 30, 2013.

I. PURPOSE

The purpose of this Agreement is to establish a cooperative relationship and working procedures between ISDE and Tribe in the provision of special education and related services to eligible children in compliance with applicable federal, Tribal and state laws and regulations. Eligible children are those children, ages 3 to 5, with disabilities who reside within the State of Idaho.

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 to ensure available resources are used in the most effective manner; and
4. ensure that cooperative arrangements between ISDE and Tribe are developed, implemented, and preserved.

II. PROGRAM MANDATES

ISDE will be responsible for:

1. providing services to eligible children, ages 3–5, on a mandatory basis as defined by Public Law 108-446, Individuals with Disabilities Education Act (IDEA 2004; IDEIA);
2. providing eligible children a free appropriate public education (FAPE), including the development and implementation of an Individual Education Program (IEP), which contains all of the required components, as well as parental participation, procedural safeguards, and the provision of related services; and

3. determining and placing eligible children in the most appropriate setting, which shall be the least restrictive environment (LRE) with multiple opportunities to learn, develop, and form positive relationships with peers who do not have disabilities.

The Tribe will be responsible for:

1. supporting Child Find activities;
2. providing parent training, assist in childfind, screening and other procedures for the early identification of children; and
3. referring children who are suspected of having a disability to the LEA for diagnostic evaluation within established time frames.

ISDE and Tribe 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

A. For ISDE:	**B.** For Tribe:
Richard A. Henderson State Director of Special Education Division of Special Education Division of Federal Programs Idaho State Department of Education 650 West State Street Boise, Idaho 83720 (208) 332-6800	Willow Abrahamson-Fox MSW Director, Early Childhood Programs Shoshone Bannock Tribes PO Box 306 Fort Hall, Idaho 83203 (208) 239-4500

IV. SPECIAL EDUCATION SERVICES

A. Child Find/Screening.

ISDE and the Tribe will:

1. participate jointly on Child Find teams to plan and assist with Child Find screening events for children, ages 3–5, who reside in the State of Idaho;
2. coordinate the screening process and procedures, as well as the selection and use of screening instruments and assessment materials;
3. coordinate Child Find screenings at designated community-based sites, both on and off the Fort Hall Reservation;
4. provide screening results to parents/guardian(s) and inform parents/guardians(s) of program options that may be available to them and their child; and
5. provide a native language interpreter for families and children who need such assistance throughout the Child Find screening process.

B. Referral for Evaluation to an LEA.

ISDE will ensure that the following are implemented:

1. follow all ISDE guidelines for referral;
2. provide ISDE referral forms and referral to the appropriate LEA to avoid duplication;
3. provide technical assistance to Tribal staff on the delivery of special education services and the timely completion of referral forms.

When a referral is from the Tribe, the Tribe will:

1. obtain information documenting the need for referral;
2. provide a referral for each child by completing designated ISDE referral forms;
3. submit completed referral forms to the appropriate LEA for action as per IDEA timelines;
4. provide, when appropriate, initial developmental, hearing, and vision screening and report results, with parental consent, to the appropriate LEA when there are identifiable concerns;
5. compile background information for all children with identified concerns; and
6. obtain signatures from parents/guardian(s) for permission to share information that may result in an evaluation.

C. Comprehensive Evaluation.

ISDE will:

1. ensure a formal evaluation is conducted of children who may require special education and related services;
2. conduct appropriate assessments in accordance with the IDEA;
3. provide written evaluation reports according to IDEA requirements;
4. ensure the LEA will schedule and facilitate eligibility meetings, at a mutually agreed time and place, either on or off the Fort Hall Reservation.

D. Individual Education Program (IEP) Development.

ISDE and the Tribe will:

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

ISDE will ensure that the LEA:

1. initiates the MDT/IEP process by notifying appropriate staff that all evaluations are completed;
2. develops IEP goals and objectives cooperatively with parents/guardian(s) to meet each child's educational needs and in accordance with IDEA requirements; and
3. provides copies of each child's IEP to parents/guardian(s) and to appropriate staff and teachers, with the signed parent consent form.

E. Placement.

ISDE will ensure that the LEA:

1. follows federal and state guidelines and requirements for placement;
2. conducts MDT meetings with parents/guardian(s) to determine the least restrictive environment (LRE) for each child and inform them of procedural safeguards and due process; and
3. provides a native language interpreter for families, when needed.

F. Specific Program Service Delivery.

ISDE will ensure:

1. the provision of special education and related services to meet each child's IEP goals; and
2. technical assistance is available through the ISDE's Statewide System of Supports for issues related to the provision of services to all eligible children under IDEA.

V. 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 will meet to find a solution.

VI. SOVEREIGN IMMUNITY

Neither the execution of this Agreement, nor any provision contained herein, shall act or be interpreted to act as a waiver of the Tribe's sovereign immunity. The Tribe hereby specifically reserves and retains its sovereign immunity and all rights appurtenant thereto.

VII. TERMINATION/REVIEW

This Agreement shall be reviewed annually and may be revised by ISDE and the Tribe on an as-needed basis, in order to remain in effect. This Agreement may be terminated by either party upon thirty (30) days' written notice.

VIII. SIGNATURES

12-10-12

Date

Honorable Tom Luna
State Superintendent of Public Instruction
Idaho State Department of Education
650 West State Street
Boise, Idaho 83720
(208) 332-6800

ATS

11/28/12

_____ _____

Honorable Nathan Small
Chairman Fort Hall Business Council
Shoshone-Bannock Tribes
P.O. Box 306
Fort Hall, Idaho 83203
(208) 478-3805

Date