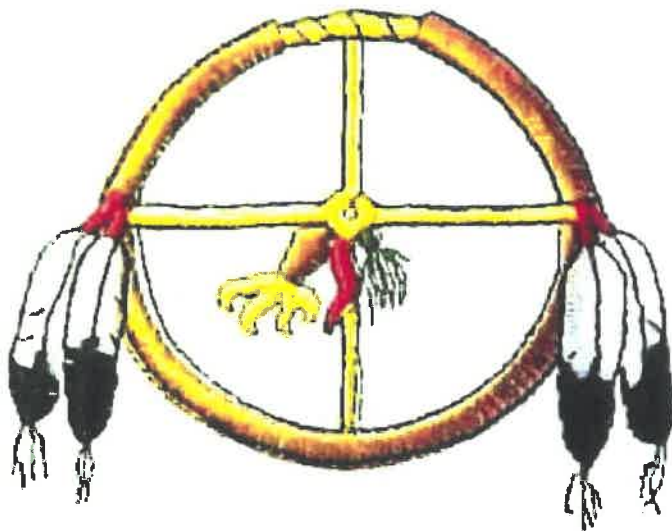


**PIERRE INDIAN LEARNING CENTER**

# **Exceptional Education Policies and Procedures 2022-2023 School Year**



3001 East Sully Avenue \* Pierre, South Dakota \* 57501 \* (605) 224-8661

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## EXCEPTIONAL EDUCATION POLICY AND PROCEDURES

### I. ENROLLMENT

All Indian children with disabilities, ages five (5) through sixteen (16), enrolled at PILC have the right to a free and appropriate public education (FAPE) in the least restrictive environment. As a 1-8 grade program, the special education program does not work with children from birth through four (4) years of age other than providing information about early childhood services available.

### II. DEFINITIONS

#### A. Individualized Education Program or IEP

An IEP is a written document for each child with a disability that qualifies for services and is in need of specially designed instruction that defines the special education, related services, accommodations, modifications, supplementary Para-Educators, and services that the school will provide.

#### B. Parent

A parent is a biological or adoptive parent, a legal guardian, foster parent, a surrogate parent appointed by PILC, or a person acting in the place of a parent. A person acting in the place of a parent includes grandparents, stepparent or other relative with whom the child lives, or who is legally responsible for the child's welfare. If the child is a ward of the State or Tribe, the term "acting as parent" does not apply to BIA/Tribal personnel.

In determining who has parental rights, the following individuals are considered in order of priority:

1. the biological parent who retains guardianship
2. a person who has legal documentation of being responsible for the child's welfare
3. a grandparent, stepparent, or foster parent with whom the child lives, and is acting as a parent
4. a surrogate parent appointed by PILC to represent the child's interests in educational decisions.

#### C. Student

A student is an individual between the ages of 5 and 21, who is enrolled and attending school at PILC, who has not earned a high school diploma or its equivalency. A student attending school at PILC is not considered enrolled until he/she begins attending school. An individual will be considered a PILC student if the last school of attendance for this or the previous school year was PILC and the student does not enroll in another school after transferring or dropping out of PILC.

#### D. Disabilities under IDEA:

NOTE: As required by BIE IDEA policy and procedure, PILC utilizes South Dakota State's IDEA disability criteria when determining if a PILC student is eligible for IDEA services.

1. Autism...a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental

change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance. (As defined under Emotional Disturbance)

**NOTE:** A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in the primary definition are satisfied.

2. Intellectual Disability (Mental Retardation) ...significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affect a child's educational performance.
3. Deaf/Blindness...concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for children with deafness or blindness.
4. Deafness...a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects educational performance.
5. Emotional Disturbance... means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
  - a. an inability to learn that cannot be explained by intellectual, sensory, or health factors;
  - b. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
  - c. inappropriate types of behavior or feelings under normal circumstances;
  - d. a general pervasive mood of unhappiness or depression; or
  - e. a tendency to develop physical symptoms or fears associated with personal or school problems.The term does not apply to a student who is socially maladjusted unless a multidisciplinary evaluation team determines that the student has an emotional disturbance as defined above.
6. Hearing Impairment... an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.
7. Multiple Disabilities... concomitant impairments (such as intellectual disability-blindness, intellectual disability-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.
8. Orthopedic Impairment... a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).
9. Other Health Impaired... having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and adversely affects a child's educational performance.
10. Specific Learning Disability... a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical

calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

11. Speech or Language Impairment ... a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance
12. Traumatic Brain Injury...an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.
13. Visual Impairment... an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.
14. Developmental Delay... a student three, four, or five years old may be identified as a student with a disability if the student has one of the major disabilities listed in IDEA or if the student experiences a severe delay in development (physical development, cognitive development, communication development, social or emotional development, or adaptive development) and reason thereof, needs special education and related services.

## **FACILITIES, PERSONNEL, AND SERVICES**

### **A. Facilities**

PILC has Resource Rooms for the program: elementary and middle school. The facilities are adequate and accessible. Space is provided for speech services, counseling, life skills programming and other IEP defined student needs.

Program accessibility will be assured in all existing facilities. In no event will architectural barriers prevent a child with a disability from being educated in the least restrictive environment. Program accessibility may be accomplished through the following methods:

1. redesign of equipment
2. reassignment of classes or other services to accessible buildings
3. assignment of Para-Educators to children
4. residential visits
5. alteration of existing facilities
6. other methods necessary for providing accessibility to children with a disability in the least restrictive environment.

### **B. Personnel**

The number of teachers and Para-Educators employed at PILC is dependent upon the number of students in the special education program and student defined on IEP needs. PILC works in good faith to hire special education staff that are licensed or certified and who meet the standard of "highly qualified" as defined in the state of South Dakota. The most appropriate and

adequately trained individual available will be hired and be required to pursue the highest entry-level standards for the profession or position for which the individual is hired. PILC administration will work with the South Dakota Department of Education if the school hires an individual who does not carry state certification because PILC is unable to locate and hire an individual with appropriate certification.

Special education Para-Educators currently employed at PILC have forty-eight or more hours of post-secondary education, an Associate Arts degree, have met the SD DOE requirements for para certification, or have taken the ParaPro Assessment. PILC will work in good faith to ensure that all new special education Para-Educators have forty-eight or more hours of post-secondary education. PILC will hire the most appropriate and adequately trained applicant as a "substitute" if there is no applicant fulfilling this requirement and continue to look for a qualified applicant until the "substitute" fulfills the 48-hour requirement of ESSA and IDEA, or a qualified applicant is found, or the services are no longer required.

PILC special education teachers and administration will be responsible for providing or assisting the Para-Educators in finding appropriate training if additional training is required to work with assigned student(s). PILC administration is responsible for the supervision of all certified and non-certified staff. The certified professional staff member whom works with a Para-Educator will be responsible for the immediate supervision of the Para-Educator. The certified staff member has the primary responsibility of:

1. ensuring that the Para-Educator appropriately implements his/her responsibilities defined on the IEP
2. weekly planning meeting with the Para-Educator, more frequently if needed, to review needs for students to whom the Para-Educator is assigned
3. daily review of Para-Educator's activity log, as required by ISEP.

NOTE: For a Para-Educator assigned to several teachers the main supervisor will be the special education teacher for the program. Other teachers to whom the Para-Educator is assigned are the Para-Educator's immediate supervisor during the times that the Para-Educator is assisting that teacher's students.

### **C. Services**

#### **1. Section 504:**

PILC will consider Section 504 of the Rehabilitation Act during the pre-referral, referral, evaluation and eligibility determination for services. A person is disabled under the definition of Section 504 when he/she:

1. has a mental or physical impairment that substantially limits one or more of the person's major life activities
2. has a record of such impairment or
3. is regarded as having such impairment.

PILC will develop a 504 Plan, which will be implemented by the general education program, for a student determined not to be eligible under IDEA, but is determined disabled under Section 504. PILC will make "reasonable accommodations" within this plan. A student's plan will be annually reviewed each school year and/or if the student's eligibility for 504 services changes.

2. **Individuals with Disabilities Education Improvement Act (IDEA)**  
PILC provides special education and related services to students in grades K-8 who meet the State criteria for a child with a disability. South Dakota criterion for Developmental Delay allows a child to maintain the Developmental Delay certification up to age 6. The student will be reevaluated and the IEP team will determine if the student meets the criteria for one of the other thirteen IDEA disabilities on or before a student's sixth birthday.

Speech and related services (such as counseling, occupational therapy, physical therapy, and transportation) are provided as determined by the IEP team and defined on a student's IEP.

## **IDENTIFICATION AND EVALUATION**

### **A. In-school Child Find Activities**

The responsibility for the Child Find process lies with PILC administration. The administration will receive assistance from PILC special education staff and the Education Line Officer (ELO) in the implementation of this process. PILC will conduct child find by utilizing the following methods:

1. publish PILC' notices in local media at least annually
2. mail notices to Tribal education offices/post on PILC website
3. provide an annual in-service to all staff about the special education process at PILC
4. utilize the Multi-Tiered System of Support Plan to efficiently collect information to determine if a student should be referred for specific intervention services, or referred directly for a special education evaluation. The screening process includes, but is not limited to:
  - a. AIMS-Web Curriculum-Based Measurement
  - b. hearing screenings
  - c. vision screenings
  - d. school wide standardized assessment reviews for student concerns & validation by the students' classroom teachers
  - e. screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation

NOTE: individual screening is not considered an evaluation for determining a child's eligibility for services under IDEA, so parental consent is not required.

### **B. PILC' Pre-referral Procedures/Student Assistance Team (SAT)**

PILC uses a problem-solving model of intervention for students identified as having academic or behavioral concerns. This team is called the Student Assistance Team (SAT). It is the building principal's responsibility to establish the SAT. Team Members include:

1. general education teachers
2. principal/administrative designee
3. counselor
4. referring teacher/person
5. Other staff members and/or school resources as appropriate.

## SAT Referral Procedures:

### 1. STEP 1:

- A. A referral is made to the SAT by the parent, student's teacher, or other concerned PILC staff member.
- B. A meeting is scheduled to review a student's:
  - a. primary language
  - b. student concerns
  - c. teacher data on concerns
  - d. school-wide benchmark data
  - e. Screening data already collected
  - f. completion of appropriate screening tools to assist in determining instructional strategies for area(s) of concern
- C. SAT team determines appropriate scientifically research-based interventions
- D. Teacher/Staff member(s) implements the interventions and collects data for the time period defined by SAT (refer to PILC RTI plan)

### 2. STEP2:

- A. Team meets to review intervention data and determines if:
  - 1) intervention(s) successful
    - 1. Yes
      - 1. collected information is placed in student's cumulative folder
      - 2. intervention(s) continues if appropriate
    - n. No-Continue to 2
  - 2) SAT determines if additional interventions should be attempted or if child should progress to STEP 3. If STEP 3 is recommended, the special education coordinator needs to be in attendance at the SAT meeting.

### 3. STEP 3:

- A. Team will determine if a referral is needed to a program or service outside of special education, i.e., 504, Social Services, etc.
- B. If a referral to the special education program is appropriate, a special education referral form is completed by the designated SAT member and given to the special education teacher/coordinator along with the pre-referral data

The pre-referral process is a requirement under IDEA, but it will not be used to delay a student's referral for consideration of a special education evaluation, if immediate action is warranted.

#### **D. Special Education Referral:**

Parent referrals will be given to SAT to determine if an immediate evaluation to determine if the child has a disability under IDEA, or if the child should continue in the pre-referral process. PILC will provide the parent(s) with written notice and Procedural Safeguards upon receipt of a referral.

Staff referrals will be given to the SAT to determine if the referral is appropriate or if pre-referral services should be implemented.



### E. Initial Evaluations and Reevaluations

Individual Evaluation is defined as a specific procedure used selectively with the student to determine whether he/she has a disability under IDEA, using the South Dakota criteria, the impact of the disability on the student's educational performance, to determine the need for specially designed instruction and related services and recommend appropriate interventions.

Parental Consent to Evaluate will be requested, in writing, for both initial and reevaluations, in the areas determined by the evaluation team. The date the school receives written consent will be documented and the evaluation process will begin as soon as possible. PILC will complete the evaluation process within 60 calendar days of receipt of written consent, or request written permission, from the parent(s), for an extension to complete the evaluation. Parents will be informed that consent is voluntary and can be revoked at any time, by notifying PILC in writing.

1. PILC evaluation team consists of:
  - a. parent of the child or adult student if rights have transferred
  - b. school principal or designee
  - c. special education teacher working with student
  - d. general education teacher that works with the student (as appropriate)
  - e. related service provider if appropriate
  - f. individual who can interpret evaluation results and implications

NOTE: A team member may play more than one of the above roles.

2. The evaluation team will review the student's current information and documents:
  - a. what additional data is needed to determine if the student has a disability under IDEA
  - b. what evaluation tools will be used to collect the additional data

NOTE: The evaluation team may conduct the review of existing data and complete the Parental Consent to Evaluate without holding a formal meeting. Input of all required members, based upon student needs, will be documented by participants' signatures.

3. Written Consent to Evaluate:
  - a. Initial Evaluation: **Required.** PILC will not proceed with an initial evaluation without written consent. School administration will review Procedural Safeguard options to determine appropriate procedures, if a parent refuses to provide consent.
  - b. Reevaluation: **Pursued.** PILC will pursue written consent based upon the review of existing data. PILC will not pursue a reevaluation if the parent(s) provide their refusal in writing. PILC will proceed with a reevaluation if PILC has documented 3 attempts via Certified Mail to acquire consent and the parent does not respond.
4. Reevaluation is the process of evaluating the student to see if he/she continues to meet the eligibility criteria for the disability for which he/she is currently receiving services. A reevaluation will be completed:
  - a. at least every three (3) years, unless the parent(s) and school agree that it is unnecessary

- b. if the student's parent or teacher request a reevaluation, but only once a calendar year unless the school and parent(s) agree otherwise
- c. if conditions warrant, such as a substantial change in the student's performance
- d. before exiting a student from the special education program unless the student is graduating or the parents have requested, in writing, that their child no longer receive services.

At the time of a reevaluation, PILC special education staff will work with the IEP team to review a student's existing data and determine what, if any, evaluations are needed to document continued eligibility for services under IDEA. This task will be accomplished through a formal meeting, or by having the special education teacher gather member input through individual meetings with members. Input will be gathered from the parent(s), or the school will document three attempts to acquire such input. The team can determine:

- e. No Additional Information Needed: The team may agree that no further evaluations are required to document the student's continued eligibility.
    - i. PILC will provide the parents written notice of the team's decision
    - ii. notify the parents' of their right to request a reevaluation.
  - f. Additional Assessments Needed: The team may determine that additional assessments are required to document the student's continued eligibility.
    - 111. The evaluation team will define the assessments to be completed
    - iv. PILC will provide the parents written notice of the team's decision
    - v. PILC will request written consent to complete the reevaluation
5. PILC ensures that all evaluations:
- a. will be administered in the student's native language or other mode of communication, unless it is clearly not feasible to do so
  - b. will be completed within 60 calendar days. PILC may extend the evaluation timeline if the parents provide written consent
  - c. will be used only for the specific purposes for which they have been validated
  - d. will be administered by qualified personnel in conformance with the instructions of the test procedures, or any change to this will be taken into account in the eligibility determination and be documented on the summary report
  - e. will assess specific areas of educational need using a variety of test and other evaluation materials
  - f. will accurately reflect a child's aptitude or achievement level or whatever factor the test is to measure
  - g. will be in all areas related to the suspected disability including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, adaptive behavior, communicative status, and motor abilities
  - h. will include parental input
6. Exceptions to the Evaluation Time Line: (60 calendar days)
- a. The student transfers into PILC after an evaluation was initiated at another school and prior to the student's eligibility determination for services under IDEA.
    - 1. PILC and the parent(s) will agree to a specific time that the evaluation will be completed
    - 2. PILC will discontinue the evaluation process if the parent withdraws consent in writing

7. Additional Procedure for a Suspected Specific Learning Disability (SLD):
  - a. PILC, through the use of the Student Assistance Team (SAT), will ensure that data exists demonstrating that the student received instruction and assessments in reading or math, as appropriate:
    1. in a scientifically based general education curriculum, in the general education classroom and by highly qualified instructors; and
    2. at least one scientific and research-based intervention to assist the student in meeting the school's approved grade level standards in:
  - b. PILC will use a student's intellectual ability to assist the team in determining the presence of a specific learning disability, but it will only be one of the tools utilized in the eligibility process
  - c. document that with the use of interventions and/or SAT the student does not adequately achieve the school's grade level standards in one or more of the areas included in the SLD definition
  - d. Classroom observations will be completed:
    1. during the SAT/Interventions stages of the referral process
    2. in the regular classroom setting by a team member, other than the student's classroom teacher, in the area of concern, after Parental Consent is acquired.
  - e. The observer will document how the perceived disability affects the student's performance in the classroom.

#### **F. Eligibility Determination**

The evaluation team, which includes the parents, will meet after all of the required evaluations have been completed. The team will review the previously existing data and any new information gathered during the evaluation to determine the student's eligibility for services under IDEA. A student cannot be identified as a child with a disability if the reason for such a decision is lack of instruction in reading or math, or limited English proficiency.

1. The Eligibility Determination is documented in an Eligibility Report, which upon completion will be given to the parent(s) and includes:
  - a. all the information related to the eligibility criteria for the disability in question
  - b. information about how the student's disability adversely affects his/her education
  - c. a description to the extent an assessment, if any, varied from standard conditions
  - d. the team's decision regarding whether the student requires special education services
  - e. the date of the eligibility determination
  - f. the names and titles of those who participated in the evaluation and eligibility determination
  - g. Each team member will document his/her support for the team's decision or attach a separate statement explaining his/her conclusions
2. Additional Procedure for a Suspected Specific Learning Disability (SLD):
  - a. The evaluation report must include a statement that the student has a specific learning disability and the basis for making the determination
  - b. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning
  - c. Educationally relevant medical findings

- d. The disability is not primarily the result of:
  - Visual, hearing or motor disability
  - Mental retardation
  - Emotional disturbance
  - Cultural factors
  - Environment
  - Limited English Proficiency
  - Lack of instruction in reading or math
- e. A statement that the child is not able to perform at the child's grade level standards after receiving scientific, research-based instruction by highly qualified instructors
- f. And in need of specially designed instruction

### **INDIVIDUAL EDUCATION PROGRAM (IEP) AND PLACEMENT REQUIREMENTS**

The IEP is a written and working document developed for a student with a disability, which outlines his/her total educational program.

- A. The IEP Must Be Effective:
  - 1. before special education and related services will be provided
  - 2. within 30 days of the multi-disciplinary team's decision that the child is eligible for special education services and upon receiving parental consent for services under IDEA
  - 3. at the beginning of each school year for those students already identified as requiring special education services and for whom the school has acquired parental consent
  - 4. upon notification and receipt of an IEP when a student transfers from another educational facility
- B. An IEP Meeting Must Occur:
  - 1. a maximum of 30 calendar days from the determination of a child's eligibility for special education services (PILC will work to develop the initial IEP in the same meeting that the student is determined eligible for services under IDEA.)
  - 2. at least annually from the IEP date
  - 3. when another agency fails to deliver transition services outlined in the IEP
  - 4. to consider and/or make changes in the IEP or placement, if requested by the parent
  - 5. at the reasonable request of any member of the IEP team
  - 6. to review behavior intervention strategies and/or develop a behavior plan as part of the IEP
  - 7. according to IDEA discipline requirements
- C. IEP Team Participants include:
  - 1. the parents
  - 2. the student, where appropriate
  - 3. school supervisor or designee who is qualified to provide or supervise the provision of special education to meet the unique needs of children with disabilities, knowledgeable about the general education curriculum and the availability of resources, able to commit resources to ensure that whatever services are set out in the IEP will be provided.
  - 4. the student's teacher(s)
  - 5. special education and/or related service providers
  - 6. someone that can interpret evaluation results and implications

7. representative of transition agencies if transition issues are being discussed
8. other individuals at the discretion of the parents or PILC

NOTE: PILC staff may play more than one of the above roles in an IEP meeting.

#### D. Parent(s) Participation

PILC shall take steps to encourage parental/ guardian attendance at each meeting by:

1. working with parent(s) to schedule the meeting at a mutually agreed upon time and place
2. provide parent(s) with purpose, time, location, participants invited, and the parents' right to bring other people who have knowledge about the student to the meeting
3. use other methods, such as individual or conference calls, to ensure the parents' participation if neither of the parents can attend and are documented in the student's file
4. providing an interpreter for parent(s) whose native language is other than English or deaf

A meeting will be conducted without the parents in attendance, if PILC is unable to convince the parents to attend, which will be documented by PILC. PILC will maintain records of its efforts to schedule a meeting at a mutually agreed upon time and place. A minimum of three (3) contacts, for the scheduled meeting, will be made and documented in the student's file before an IDEA related meeting will be held without a parent in attendance. If a parent is not in attendance and PILC does not have the required documentation, or the parent's request PILC to reschedule the meeting, PILC will reschedule the meeting unless the rescheduling of a meeting will result in an IDEA violation and if PILC has given the parent sufficient notice.

Efforts include:

1. records of telephone calls made or attempted and their results
2. copies of correspondence sent and any responses received
3. documentation of certified mail receipts
4. communication in person via student transportation chaperones

#### E. Student Participation

PILC students will be encouraged to participate in all of their IEP meetings. Students will be formally invited and input pursued by age 16, or if the purpose of the meeting is to consider transition activities. PILC will ensure that the child's performance and interests are presented and considered at the meeting.

#### F. General Education Teachers' Participation

If a child is participating in the general education environment, at least one of the child's teachers responsible for implementing any portion of the IEP will participate in developing the IEP. If a child has more than one general education teacher, PILC will designate which teacher or teachers will serve as IEP team members, based upon the student's schedule and disability's affect on educational performance. Input will be sought from all of the child's general education teachers who do not attend the IEP team meeting. Input will be required for any general education teacher that receives parental excusal as defined below. Depending on the child's needs and the purpose of the specific IEP team meeting, the general education teacher need not participate in all decisions, or be present throughout the entire meeting, or attend every meeting. The general education teacher will participate in the development, review and revision of the IEP, including:

1. determination of appropriate positive behavior interventions, supports and other strategies for the child
2. determination of supplementary aids and services, program modifications, and supports for school personnel.
3. discussion of the child's involvement and progress in the general education curriculum

The special education staff member assigned to manage the student's file will:

1. make the student's IEP accessible to any staff members who are responsible for implementation of the student's IEP
2. inform staff members of their responsibility for implementation of the student's IEP
3. inform the staff members, assigned to the student, of the student's accommodations, modifications and supports that will be provided for the student

#### G. IEP Team Member's Excusal from Meeting

Required IEP team member(s) will be excused from the scheduled IEP meeting if:

1. parent and school agree, in writing, that the member can be excused, and
2. member provides written input, prior to the meeting, for development of student's IEP

A member of the IEP team who is not required for the IEP meeting will be excused from the meeting if the parent and school agree and document their agreement in writing.

#### H. Contents of the IEP

PILC IEP includes the following:

1. general demographic information on the student
2. the projected date for initiation, anticipated frequency, location and duration of services and modifications
3. documentation of IEP participants
4. a statement of the student's present levels of academic achievement and functional performance, which includes:
  - a. the strengths of the child
  - b. the concerns of the parent(s) for enhancing the education of their child
  - c. the results of the initial or most recent evaluation of the child
  - d. how the child's disability affects his/her performance in the general education program
5. a statement of measurable annual goals, which are academic and functional
6. students who will participate in the Alternate Assessment will have at least two short term instructional objectives for each goal
7. a statement of how the child's progress toward meeting the annual goals will be measured
8. frequency and means that the parents will be informed of the student's progress toward the annual goals (Parents will be informed at least as often as the student's peer group.)
9. a statement addressing the student's need for extended school year services based upon discussion about the following circumstances:
  - a. emerging skill: a critical skill is in the process of emerging resulting in few, if any, gains made during the regular school year.
  - b. regression-recoupment: regression to such an extent and the amount of time required to relearn critical skills or behaviors become so significant that the student would be unable to benefit from his or her special education program.

- c. self-sufficiency: interruption of services would threaten the acquisition of critical life skills that aid the child's ability to function as independently as possible, thereby reducing the student's reliance on caretakers or other institutionalized care.
- 10. a statement of the special education and related services to be provided to the student
- 11. a statement of the accommodations/modifications and supplementary aids and services that will be provided for the student
- 12. a statement of the program modifications or supports that will be provided for school personnel to help the student advance appropriately toward attaining his/her annual goals and to progress in the general education curriculum
- 13. position(s) responsible for providing the specified services
- 14. the extent to which the student will participate in regular education programs, nonacademic, extracurricular and other activities, and those services necessary so the student can participate
- 15. a statement explaining the extent to which the student will not participate in general education with his/her peers
- 16. a description of the nature and duration of physical education services to be provided to the child
- 17. a statement explaining how the student will participate in school/statewide assessments and the required accommodations, or an explanation why the student cannot participate in the regular assessment and the assessment selected. PILC students with a Full-Scale IQ of 70 or below will be considered for the Alternate Assessment required by the Elementary, Secondary Education Act (ESSA)
- 18. transition planning will begin with the first IEP in effect the year the child turns sixteen (16), or younger if determined appropriate by the IEP team, and be updated at least annually. The IEP will include:
  - a. appropriate measurable postsecondary goals, which are based upon age appropriate transition assessments in the areas of:
    - 1. training
    - ii. education
    - m. employment
    - iv. independent living skills-if appropriate
  - b. a course of study
  - c. transition services necessary to assist the student in achieving his/her goals
  - d. documentation that the parent and child were notified, on or before, the student's 11<sup>th</sup> birthday that special education rights will transfer upon his/her 18<sup>th</sup> birthday
- 19. behavior interventions and supports if the team agrees that the student's behavior will interfere with his/her ability to learn or if the behavior is so disruptive that it will interfere with his/her classmates' ability to learn
- 20. the team will consider language needs if the student is Limited English Proficient
- 21. the team will consider, based upon an evaluation of the child's reading and writing skills, the need for instruction in and use of Braille if the student is blind or visually impaired
- 22. the team will consider the student's communication needs and for a child who is deaf or hard-of-hearing consider the child's:
  - a. language and communication needs
  - b. opportunities for direct communications with peers and professional personnel in the child's language and communication mode
  - c. academic level and

- d. full range of needs, including opportunities for direct instruction in the child's language and communication mode.
23. a statement of any assistive technology device(s) the student requires for his/her education, which is then provided at no cost to the parent. The student is allowed to use the assistive technology device(s) at home or in other settings, if the IEP team determines that the child needs access to the device in non-school settings to receive FAPE. PILC will hold the parents responsible for the repair or replacement of an assistive technology device if the damage is caused by student neglect or abuse; normal maintenance is the responsibility of PILC.

#### I. IEP Amendment

##### 1. Formal Meeting

- a. Special Education staff will work with the parent(s) to schedule a mutually agreed upon date, time and location
- b. Special Education staff send out a Meeting Invitation informing parent(s) of agreed upon date, time, location, purpose of meeting, and participants (including outside agencies).
- c. Meeting is held to review and make necessary amendments

##### 2. Informal Meeting-the parent and the school may agree to amend a child's IEP without a formal meeting.

- a. Special Education staff contact parents to request consent to amend the student's IEP
- b. Parent and PILC, during the initial contact, will discuss changes and come to an agreement on an amendment
- c. Special Education staff documents agreed changes and sends a copy of the changes and a Written Notice to the parents (a full copy of the amended IEP will be provided for the parent(s) upon request)
- d. Special Education staff notifies student's IEP team of the changes and their responsibilities.

#### J. Placement Decision

PILC's supervisor/designee will take whatever steps are necessary to ensure that the parent(s) understand the proposed IEP and educational placement before requesting consent for services under IDEA. Consent from the parent will be obtained prior to the **initial** provision of special education and related services. The placement decision is reviewed during the development or change of future IEPs. Removal from the general education environment will occur only when the student cannot be educated satisfactorily with the use of supplementary aids and services and/or if the student's behavior is so extreme that it interferes in the learning of his/her peer group. The IEP team will include an explanation of the extent the child will not participate with the student's classmates in all school activities and the team will document any potential harmful effects of the placement of the child.

The appropriate IEP placement will be selected from the following continuum:

- (0100) Regular education programs with modifications: The student remains in the general education classroom for 80% or more of the day. Instruction is provided in the regular education classroom. The general education teacher conducts the program. The special education teacher or therapist works with the general education teacher or paraprofessional (who is appropriately trained and under the direct supervision of a certified special educator)



to implement the IEP by providing specially designed instruction in the general education classroom to a child.

(0110) Resource Room: The student is in the general classroom 40% to 79% of the school day. The student receives as much of the general education classroom instruction as appropriate. Additional educational experiences are provided by a special education teacher, an itinerant specialist, or a therapist in a pull-out program designed to meet identified needs. The duration of time spent in the Learning Lab is determined by the degree of intervention necessary to meet the child's needs.

(0120) Self-contained programs. Students in this setting are inside the regular classroom less than 40% of the school day.

(0130) Separate Day school Programs (Special School)

(0140) Residential School Programs (Institutions) The child lives in a residential setting and receives all instruction in this setting. Involvement with nondisabled peers is provided when possible or appropriate.

(0150) Home and Hospital Programs (Home instruction/ Instruction in hospitals) Special education personnel provide special education and/or related services in the home, a convalescent home or a hospital.

#### K. Juvenile Justice / Correctional Facility

PILC will provide educational services to a student with a disability who is placed in a juvenile justice / correctional facility by judiciary entities if the student is enrolled at PILC at the time of the student's incarceration and if services are not provided by the facility.

#### L. IEP Implementation

1. IEP implementation will be defined on the student's IEP and will begin as soon as possible following the IEP development.

2. If the parent objects to the IEP team's decisions regarding initial placement in special education, or changes in subsequent IEP's, PILC will use the following procedures:

a. Parent Objection to the consent for initial services (Initial IEP).

1) PILC will honor the parent's refusal and not provide special education services or pursue such services through the Procedural Safeguards of IDEA

2) PILC will not be responsible for the provision of FAPE in future actions unless the parent chooses to give consent for services

b. Parent Objection to Changes in Subsequent IEP's.

1) Parent(s) may file a written objection to all or parts of the proposed change.

2) If the written objection is postmarked or hand delivered within 5 days of the date he or she received Written Notice of the proposed change

a) the change(s) to which the parent objects will not be implemented

b) If the change(s) have already been implemented, implementation of the change(s) will cease.

- 3) If the written objection is postmarked or hand delivered 5 days after the date the parent received Written Notice of the proposed change, the changes to which the parent objects will continue to be implemented unless PILC and the parent can come to an agreement
- 4) PILC and parent may use methods such as additional IEP team meetings or voluntary mediation to resolve the disagreement.

NOTE: A written objection cannot be used to prevent PILC from placing a child in an Interim Alternative Educational Setting (IAES) in accordance with IDEA procedures for discipline.

- c. If a "due process" situation develops, PILC will implement the IEP and placement as defined in the hearing officer's decision, unless an appeal has been filed by the parent(s) or PILC
- d. If PILC is unable to provide any or all of the services in the IEP, an PILC supervisor will consult the ELO regarding alternate means of providing the services.

#### M. IEP Reviews

Formal and informal IEP meetings may be held at any time throughout the IEP year. A Meeting Notice will be provided to the parent before an IEP meeting and a Written Notice will be provided within five (5) days after a formal meeting, an informal meeting, and/or a parent's formal request.

##### 1. When to review an IEP:

- a. a meeting will be held on or before the date of the previous IEP was developed. This is the Annual Review and requires a formal meeting.
- b. if a parent believes that the child is not progressing satisfactorily or that there is a problem with the current IEP
- c. if any other member of the IEP team thinks that the child's placement or IEP services are not appropriate or the student is not progressing satisfactorily
- d. following the completion of a reevaluation under IDEA
- e. additional information is provided by the parent that warrants review
- f. if a child's needs change
- g. when a student eligible for service under IDEA transfers to PILC
- h. the failure of an outside agency to meet the transition objectives
  1. to address the failure of an outside agency to meet its transition responsibilities as appropriate

##### 2. Purposes of the IEP review:

- a. to determine whether the child's annual goals have been achieved.
- b. to revise the IEP if there is a lack of expected progress toward annual goals.
- c. to address information about the child provided to, or by, the parent.
- d. to monitor continuing eligibility of the child based on an evaluation or review of a variety of data, which may include formal or informal assessment, and progress toward IEP goals
- e. to write a new IEP, with revised goals and objectives/benchmarks to meet the child's anticipated needs for the next year.
- f. to amend a student's IEP for any reason
- g. to consider a reevaluation to determine if a child is no longer eligible for special education services under IDEA.

- h. the development of alternative strategies if an outside agency fails to fulfill its transition responsibilities

#### N. Transfer IEPs

When a child who is eligible for special education services transfers into PILC, PILC will ensure that the child receives FAPE by requesting a student's records from the previous school. PILC may need to acquire parental consent for release of information before the previous school will send the student's records. The sending school will be requested to electronically transmit or overnight mail the IEP, eligibility determination and other supporting documentation. PILC will review, accept and implement the IEP developed by the sending school when the following conditions apply:

1. child meets PILC eligibility criteria for special education.
2. IEP is appropriate and can not be implemented as written.

If the IDEA Evaluation was not completed in South Dakota, the team meets to review the eligibility and evaluation results to determine if the student meets South Dakota's IDEA eligibility criteria. PILC needs parental consent or documentation of three attempts to obtain parental consent before completing this step.

Upon receipt of the eligibility documentation, PILC will determine if it will adopt the existing eligibility documentation for services under IDEA. If PILC disagrees with the existing eligibility documentation, or it is not made available within a reasonable period of time, consent for evaluation will be sought and the student will be evaluated. PILC will develop and implement an interim IEP while the evaluation is in process, if the parent agrees. If the parent does not agree to an interim IEP, the child will be placed in general education until the assessment and evaluations are completed to determine if the student is eligible for IDEA services at PILC.

PILC will convene an IEP team meeting to develop a new IEP if the child's current IEP is not available, or if PILC or the parent believes that the IEP is not appropriate. If a new IEP cannot be developed, the received IEP will be amended until a new IEP can be developed.

### **RESIDENTIAL SCHOOL OR FACILITY PLACEMENT**

PILC will make every attempt to work with a parent and the student so the student can be educated at PILC. However, a residential placement will be pursued if the IEP team determines that PILC cannot meet the needs of the student. PILC will assure that the selected facility fulfills the requirements of IDEA by participating in IEP and other appropriate meetings and reviewing the student's progress reports.

#### A. Children placed by PILC

PILC will facilitate the placement of a PILC student, who is eligible for IDEA services, when the student's IEP team determines that the student's educational services cannot be provided on PILC's campus and the student's least restrictive environment (LRE) is a residential facility. PILC will facilitate the placement and financial arrangements for students who are placed in a public or private placement for the provision of special education and related services. Case management will remain the responsibility of PILC's Special Education Program. This includes:

1. collaboration with outside agencies (Social Services, IHS, Medicaid, etc) to arrange funding for non-educational needs
2. assisting the parent(s) in completion of the facility application packet

3. assuring that parents/legal guardians are involved and agree with each step of the process
4. assist with transporting the child to the facility by PILC or an appropriate agency
5. maintain school and parental involvement in future IEP meetings scheduled in cooperation with the residential facility
6. completion and/or payment for PILC's IEP defined responsibilities
7. collaborating with the parent/legal guardian and residential school or facility staff to facilitate the child's transition back to PILC when determined appropriate by the IEP team

**B. Unilateral Placement by Parents**

Upon a parent's request for reimbursement of costs associated with the unilateral placement of their child, a PILC administrator will convene an IEP or evaluation team (including the parent) to discuss and act on the parent's request. The team will review if a Free Appropriate Public Education (FAPE) was made available to the child in a timely manner, if the parents informed the IEP team that they were rejecting the child's proposed placement and their intent to enroll the child in a private school at PILC expense, or if the parent provided written notification of the same to a PILC administrator at least 10 business days (including holidays that occur on a business day) prior to removing the student from PILC. PILC will provide the parents with a Written Notice explaining the team's decision and the parent's right to request a due process hearing if they disagree with PILC in regard to the provision of FAPE.

**PROCEDURAL SAFEGUARDS & CONFIDENTIALITY**

**A. The Special Education Procedural Safeguards Brochure**

PILC will provide and review with parents the Procedural Safeguards/Parents' Rights brochure developed by BIE. PILC will take steps to ensure that the notice is communicated to the parent in his/her native language or mode of communication and that the parent understands the content of the written communication. PILC will maintain written evidence that the Procedural Safeguards were provided and explained to the parents.

PILC will provide the Procedural Safeguards/Parents' Rights brochure once a school year and:

1. upon an initial referral
2. upon a parent's request for evaluation
3. upon a parent's request
4. the date on which the decision is made to make a change in placement because of a violation of a code of student conduct
5. upon receipt of the first IDEA complaint to BIE in a school year
6. upon receipt of the first due process complaint under IDEA in a school year

**B. Written Notice**

PILC will ensure that any Written Notice is communicated in the native language of the parents so that they understand the content of the notice and that there is written evidence that the notice requirements have been met.

1. PILC will provide written notice within 5 days of decision to:
  - a. Propose to initiate or change the identification of the child
  - b. Propose to initiate or change evaluation of the child
  - c. Propose to initiate or change the provision of FAPE to the child
  - d. Propose to initiate or change the educational placement of the child

- e. Refuse to initiate or change the identification of the child
  - f. Refuse to initiate or change evaluation of the child
  - g. Refuse to initiate or change the provision of FAPE to the child
  - h. Refuse to initiate or change the educational placement of the child
  - 1. Refuse to complete a reevaluation because the assessment team finds that no additional evaluations are necessary to determine if a student continues to meet the eligibility criteria for services under IDEA. PILC will inform the parents of their right to request a reevaluation and comply with that request, if it is made by the parents.
2. Content of Written Notice:
- a. a description of the action proposed or refused by PILC
  - b. an explanation why the school proposes or refuses to take action
  - c. a description of the data the school used to make its decision
  - d. a description of the other options the school considered and why those options were rejected
  - e. a description, if any, of other factors relevant to the school's decision
  - f. notice that the parents have protections under the Procedural Safeguards and how a copy of the Safeguards can be acquired, if it is not included with the Notice
  - g. sources for parents to contact for assistance in understanding the notice and/or Procedural Safeguards

### C. Confidentiality and Access to Records

PILC will collect, use and maintain information about a child to make decisions about special education and the provision of FAPE. PILC will follow IDEA, PPRA and FERPA provisions, which protect the confidentiality of personally identifiable information in student special education records. These provisions also provide for the right to review and inspect records.

Consent is required only when disclosing personally identifiable information to unauthorized persons, unless provided as an exception under the Family Educational Rights & Privacy Act (FERPA) or Protection of Pupil Rights Amendment (PPRA). Written consent specifies the records that will be disclosed, states the purpose of the disclosure, and identifies the party to whom the disclosure will be made. PILC will inform the parent that the approval is voluntary and may be revoked at any time prior to the action.

#### 1. Definition of a Record

- a. "record" is defined as personally identifiable information directly related to the child and maintained by PILC.
- b. PILC will provide a list and location of records for a student upon parental request.

#### 2. Protection of Records

PILC will prevent unauthorized disclosure of personally identifiable information pertaining to children with disabilities. To ensure protection of records, PILC will implement the procedures defined in this document to ensure the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

- a. obtain written and dated consent from the parent before disclosing personally identifiable information:
  - 1. to unauthorized individuals, or
  - 2. when the information is to be used for any purpose except as required for IDEA.
- b. designate and train a records manager to assure security of confidential records for children with disabilities.
- c. maintain a log of requests for and access to education records if the disclosure is not to:
  - 1. a parent.
  - 2. authorized employees of PILC
- d. include in a log, the name of individual accessing records, date of access, and purpose for accessing the records. Records of denials or partially fulfilled requests will also be maintained
- e. maintain a current listing of names and positions of employees who may have access to personally identifiable information
- f. ensure that, if any education record includes information on more than one child, a parent will only be allowed to inspect, review, or be informed about his/her child
- g. ensure that each person collecting or using personally identifiable information receives training or instruction regarding the policies and procedures governing confidentiality

All PILC staff members will be informed what is considered appropriate and inappropriate access to and use of information within the records. PILC will maintain a record of the training provided, including the name of the person(s) providing the training, dates of training, participants of the training, and specific subjects covered. Training will be provided to new staff as soon as possible after they have been hired.

### **3. Access to Records**

The parents or their representative may inspect and review any record relating to educational matters of their child that is collected, maintained, or used by PILC. PILC will assume that a custodial or non-custodial parent has authority to inspect and review a record relating to his/her child unless there are legal documents limiting access to those records under Tribal/State law. A minor child's address will be deleted from any record if requested in writing by a custodial parent to prohibit a non-custodial parent from learning the address simply by having access to PILC' records.

PILC will make records available to the parent for review:

- a. without delay, but no later than 45 days after the request.
- b. before any meeting regarding an IEP.
- c. at least 5 days before any due process hearing.

Upon request, PILC will provide the parent a list of the types of educational records PILC collects, maintains, or uses and where they are kept. PILC will respond to any reasonable request made by a parent for the explanation and interpretation of a record. PILC will provide a copy of requested educational records upon parental request.

**4. Destruction of Records**

PILC will maintain education records to demonstrate fiscal and program compliance with IDEA requirements. PILC will inform parents/adult students when personally identifiable information collected, maintained or used by PILC will be destroyed because it is no longer needed to provide educational services to the child. The parents/adult student will be informed of the intention to destroy the personally identifiable information no less than 45 days from the date of scheduled destruction. This notice informs parents of the procedure they are to follow if he/she wishes to formally object to the destruction of the information and wants the records sent to him/her. Parents are informed at this time that the records may be needed for Social Security benefits or other purposes in the future.

PILC will shred or burn the records, under supervision of the staff member responsible for the records, if not released to the parent. A log will be maintained that documents the date of destruction or release of records.

If a parent/adult student requests that personally identifiable information, no longer needed for educational decisions, be destroyed, PILC will comply with this request.

**5. Archival of Records**

PILC will follow BIE Policy and Procedure for the archiving of student data. Student files will not be archived prior to the student's graduation from PILC or the age of 22. PILC will maintain a list of archived files and how the files can be accessed if requested by the individual or his/her representative.

**6. Request for Amendment of Records**

If a parent requests PILC to amend the records he/she believes to be inaccurate, misleading or in violation of the privacy or other rights of the child, PILC will use the following procedure:

- a. within a reasonable amount of time (not to exceed 15 days), PILC decides whether to amend the record.
- b. if PILC refuses to amend the record, the parent will be informed of the refusal and be advised of the right to and the procedure for requesting a school hearing. If the parent requests a school hearing, and PILC decides the information in the records is inaccurate, misleading, or in violation of the child's rights, PILC will amend the record and inform the parent in writing.
- c. if the parent requests a school hearing, and PILC decides the information is accurate and does not violate the child's rights, PILC will inform the parent that he/she may place a statement in the record. The statement placed in the record by the parent accompanies the record as long as PILC maintains it.
- d. if the record is disclosed to any person, the parent's statement is also disclosed.

**7. PILC Hearings on Procedures for Records**

If a parent requests a school hearing on a proposed amendment of education records, PILC will follow these procedures:

- a. the hearing will be held within a reasonable amount of time after receiving the request

- b. provide the parent/adult student a notice of the date, time, and place reasonably in advance of the scheduled hearing
- c. the hearing will be conducted by an employee of PILC or other individual who does not have a direct interest in the outcome of the hearing
- d. will give the parent full and fair opportunity to present evidence relevant to the issues raised
- e. will allow the parent to include an attorney, if he/she chooses.
- f. make a decision in writing within a reasonable period of time after the hearing
- g. provide a decision based solely on the evidence presented at the hearing and including a summary of the evidence and reasons for the decision
- h. amend the record and inform the parent in writing if PILC decides that the information is inaccurate, misleading, or in violation of the child's rights
- i. inform the parent that he or she may place a statement in the record if PILC decides the information is accurate, not misleading and does not violate the privacy or rights of the child
- J. include a parent's statement commenting on the information in the record or that sets forth the parent's reasons for disagreeing with PILC. (Any statement placed with a record will accompany the record for as long as PILC maintains the record. If the record is disclosed by PILC to any person, this statement will also be disclosed.)

#### **8. Age of Majority**

When the special education rights transfer at the age of majority, age 18, PILC will inform the parent and adult student that IDEA and FERPA rights have transferred from the parent to the student unless legal action has been taken to acquire conservatorship. PILC will notify the student's parent(s) one year prior (at age 17) to the student reaching age of majority, so the parent(s) can pursue conservatorship if appropriate. PILC will assist the parent in pursuing conservatorship upon request.

#### **D. Educational Surrogate Parents**

PILC cannot appoint a surrogate parent when the biological parent is available but chooses not to participate. PILC makes a good faith effort and maintains records of attempts to locate parents.

- 1. PILC will appoint a surrogate parent when:
  - a. a parent cannot be identified
  - b. a parent cannot be found
  - c. the child is in the Tribe's/State's custody and no one who meets the definition of a parent can be identified or located
- 2. PILC will see that the Surrogate Parent:
  - a. has knowledge and skills that ensure effective representation
  - b. does not have an interest that conflicts with the interest of the child
  - c. is not an employee of the BIE, PILC, or any other agency that is involved in the education or care of the child

PILC will train surrogate parents in the special education process and Procedural Safeguards.

#### **E. Independent Educational Evaluation (IEE)**

An independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by PILC and is completed at no expense to the parent(s).



1. Right to an Independent Evaluation

A parent has the right to one IEE at PILC' expense each time PILC conducts an evaluation with which the parent disagrees.

2. Procedures for Requesting an IEE

PILC parents are requested to complete a written request for an IEE. PILC staff will provide assistance in completing this request upon parental request. PILC may ask why the parent objects to the school's evaluation, but will not use this to delay the parent's request for an IEE.

3. School Responsibilities Following an IEE Requests

Upon receipt of a request for an IEE, PILC will either provide the parent with the information necessary to complete an IEE or file a Due Process Complaint (Ref: JCE) to show that its evaluation is appropriate. If the final decision of a hearing officer, or a court decision on an appeal, is that the evaluation conducted by PILC was appropriate, the parent still has the right to an IEE, but at his/her own expense.

PILC will provide the parent with IEE requirements:

- a. the criteria under which the evaluation is obtained
- b. the location of the evaluation
- c. the qualifications of the examiner must be the same as the criteria that PILC uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent evaluation.
- d. the maximum allowable charges for specified assessments to eliminate unreasonably excessive fees, including travel costs for necessary services not available in the community.

NOTE: If, due to unusual circumstances, it is not possible to obtain an IEE within PILC' cost limitations, PILC will not deny the IEE because the cost will exceed their limitation. PILC will not impose other conditions or timelines if doing so would be inconsistent with the parent's right to an IEE.

4. If a parent asks PILC to pay for an IEE that has already been obtained, PILC will do one of the following:

- a. Pay for the IEE if it meets the criteria for a school funded IEE's.
- b. Request a due process hearing to demonstrate:
  1. the evaluation obtained by the parent did not meet the criteria for a school funded IEE's
  2. that PILC' evaluation is appropriate.

5. Consideration of the IEE Results

PILC will meet to review the IEE and determine if it meets the criteria for an IEE. If the IEE is appropriate, it will be reviewed to determine if a student's current eligibility for IDEA services or current IEP should be amended. The IEE will also be used in the development of future IEP services as appropriate.

6. If a Due Process Hearing Officer requests an IEE as part of a hearing, the evaluation will be completed at PILC' expense.

#### F. Mediation

PILC will encourage its parents to access the mediation system developed by the BIE to help resolve disagreements between parents and schools regarding identification, evaluation, the continued educational placement, and the provision of FAPE for a student. PILC will not request mediation if a parent refuses to provide initial consent for services. Parental participation in the mediation process is voluntary and will not be used to delay a request for Due Process.

Requests of mediation are made to the Bureau of Indian Education/Office of Indian Education Programs, which is responsible for ensuring that the Mediation process defined in IDEA is met. PILC will assist the parent in completing and submitting a Request for Mediation or contacting BIE to request mediation. BIE may be contacted at:

Bureau of Indian Education  
1011 Indian School Road, Suite 332  
P.O. Box 1088  
Albuquerque, New Mexico 87103-1088  
Phone: 505-563-5281  
Fax: 505-563-5282 [www.oiep.bie.edu](http://www.oiep.bie.edu)

PILC will work with the parents, BIE and the BIE assigned mediator to ensure that:

1. the mediator receives all necessary documentation
2. the mediation session is scheduled in a timely manner
3. the mediation session is scheduled in a location convenient for the parents and school
4. all discussions that occur during the mediation process remain confidential and cannot be used as evidence in any subsequent due process hearing or civil proceeding.

A written agreement will be drafted between PILC and the parents if the mediator can assist in the resolution of the dispute. This agreement will be signed by the parent and PILC, and is binding and enforceable.

#### G. Complaint Procedures

PILC will have the BIE Complaint Form available for a parent or organization that wishes to file a complaint. Upon request, PILC will assist the parent or organization in completing and filing a signed Complaint Form or contacting BIE for such assistance. BIE may be contacted and/or a Complaint form submitted to:

Bureau of Indian Education  
1011 Indian School Road, Suite 332  
P.O.Box 1088  
Albuquerque, New Mexico 87103-1088  
Phone: 505-563-5281  
Fax: 505-563-5282  
[www.oiep.bie.edu](http://www.oiep.bie.edu)

PILC will assist BIE, as requested, to provide for a timely resolution of the complaint. The school will implement corrective actions if required as a part of the complaint resolution.

#### H. Due Process Hearing

PILC will work with the parent, parent's representative (if appropriate), BIE and the BIE appointed Hearing Officer to assist in meeting the IDEA timelines for a Due Process Hearing. PILC will have the BIE Due Process Complaint form available for a parent, the parent's representative/attorney or the school to file a Due Process Complaint. The parent or their representative must forward a copy of the complaint to the school, or the school will forward a copy to the parent. The individual filing the complaint is responsible for forwarding the completed complaint to BIE:

Bureau of Indian Education  
1011 Indian School Road, Suite 332  
P.O. Box 1088  
Albuquerque, New Mexico 87103-1088  
Phone:505-563-5281  
Fax: 505-563-5282  
www.oiep.bia.edu

NOTE: BIE will not schedule a hearing for a due process complaint unless the complaint that it receives is complete.

PILC may initiate a due process hearing to:

1. override a parent's refusal of consent for an evaluation, or release of information
2. ask a hearing officer to maintain the placement of a child in an IAES for disciplinary reasons
3. determine whether an evaluation conducted by the school was appropriate
4. determine if an evaluation obtained by a parent meets the criteria for an IEE.

#### Timelines

1. a resolution meeting will occur:
  - a. within 30 days of receiving a due process complaint, or
  - b. PILC and the parents must agree, in writing, to wave the resolution process
2. a due process hearing will occur and a final decision rendered within 45 days from:
  - a. the date the resolution meeting was held
  - b. the end of the 30-day time period for a resolution meeting
  - c. PILC and the parents agree, in writing, to wave the resolution process

NOTE: PILC will request that BIE reject the complaint if the parent refuses to participate in a resolution meeting.

Upon filing or receipt of a Due Process complaint PILC will: (In order)

1. inform the parent(s) of any free or low-cost legal and other relevant services available
2. notify the School Indian Board of Education for the PILC of the complaint
3. review the complaint to determine if it meets IDEA requirements and contact the Hearing Officer within 15 days of receipt of the complaint, if PILC determines that the complaint is insufficient. A complaint must include:
  - a. name of child
  - b. address of the residence of the child or contact information if the child is homeless
  - c. name of school
  - d. reason why complaint is being filed and facts related to the reason

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- e. a proposed resolution to the complaint
- 4. provide the parent a Written Notice, addressing the complaint, within 10 days of receipt of the Due Process Complaint
- 5. Offer Mediation as a tool to address the concern(s) of the complaint (See Section F)
- 6. Take the necessary steps to implement the Resolution Process (See Section I, below)
- 7. If the complaint cannot be resolved through mediation or the resolution process, PILC will:
  - a. Disclose all evidence related to the complaint at least 5 business days before the hearing
  - b. Disclose all evaluations completed and recommendations based upon those evaluations at least 5 business days before the hearing
  - c. Arrange for an individual or equipment to provide a written verbatim record of the hearing, or at the option of the parent an electronic version
  - d. Provide a copy of the hearing
  - e. Ensure that the parents receive the hearing officers fact(s) and decision(s) or provide a copy to the parent at no expense to the parent
  - f. Honor the hearing officer's decision or appeal to BIE for an impartial review
  - g. Honor BIE's reviewing official's decision

#### I. Resolution Process

Resolution process is a new part of the Procedural Safeguards that is meant to encourage the parent and school to resolve a concern(s) without the use of a Due Process Hearing. The resolution period may be as long as 30 days from the school's receipt of a complaint and is not included in the 45-day timeline established for a Due Process Hearing. PILC will:

- 1. schedule a meeting with the parent and relevant members of the IEP team, within 15 days of the receipt of the complaint (PILC is not responsible for attorney fees if a parent brings an attorney)
- 2. work with the parent to resolve the concern(s) filed within the complaint
- 3. request that the complaint be dismissed if the school has documented reasonable efforts to hold the meeting and the parent has refused to participate

NOTE: The parent may request the hearing officer begin the due process hearing if PILC does not implement the resolution meeting within 15 days of receiving the complaint or if PILC fails to participate in the meeting.

Any agreement reached in a resolution meeting:

- 1. is legally binding
- 2. must be signed by both PILC and the parent
- 3. is enforceable in court

NOTE: The parent or PILC may void the agreement within three (3) business days of the agreement's execution.

The resolution process will be waived if:

- 1. the parent and PILC agree in writing
- 2. the parent and PILC agree to use the mediation process

## J. Stay Put

Stay Put refers to the educational placement of a child when a change in placement will occur and the parent is utilizing IDEA Procedural Safeguards to prevent the change in placement. A student will remain (stay put) in the student's current educational placement during a:

1. mediation process
2. resolution process
3. due process hearing
4. a civil action

Stay Put does not apply if:

1. PILC and the parent agree to a change in placement
2. the student is being placed in an Interim Alternative Educational Setting (IAES) for:
  - a. bringing or possessing a weapon at school, on school premises or at a school activity
  - b. knowingly possesses or uses illegal drugs or solicits the sale of a controlled substance at school, on school premises or at a school activity
  - c. inflicts serious bodily injury upon another person while at school, on school premises or at a school activity

## K. Expedited Due Process Hearings & Resolution Meetings

PILC's responsibilities for an expedited due process hearing and resolution meeting remain the same as for a traditional due process hearing and resolution meeting. The things that change are the timelines and the standard to determine if the complaint is sufficient. (See Due Process and Resolution above for guidance)

PILC will request an expedited hearing if:

1. Administration believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others
2. The IAES will expire, and the school maintains that returning the child to classes child is substantially likely to result in injury to the child or others

A parent may request an expedited hearing if:

1. He/She disagrees with the determination that the child's behavior was not a manifestation of the disability.
2. He/She disagrees with the school's discipline decision, which resulted in a change of placement.

Timelines

1. Due process hearing must occur and a final decision rendered within 20 school days of the date the complaint was filed unless the complaint is withdrawn
2. Resolution meeting must occur within 7 days of receiving the notice of the due process complaint and must be completed within 15 days or PILC and the parent must agree to waive the resolution meeting in writing

## L. Attorney's Fees

PILC will pay attorney fees as determined by the courts and the rules established in the Individuals with Disabilities Education Improvement Act (IDEA).

PILC retains the right to pursue its attorney fees from a parent or the parent's attorney if it is determined that their actions were frivolous, unreasonable or without foundation.

## M. Discipline of Children with Disabilities

Children with disabilities who are subject to disciplinary actions by PILC are entitled to the same due process rights afforded children without disabilities. All children with disabilities who have been suspended without services for more than 10 cumulative school days in a school year, or expelled without services for more than 10 cumulative school days in a school year, or experience multiple short-term suspensions with or without services that constitute a change in placement retain the right to FAPE. Whether the student experiences a change in placement will determine if the school or the IEP team decides where and what services the student will receive.

### 1. General Discipline Rules for Children with Disabilities

- a. PILC administration may suspend a special education student for up to 10 school days in a school year using the same procedures that are used for other children, without regard to FAPE
- b. IDEA discipline procedures and limitations only apply when PILC personnel and a parent are unable to reach an agreement on how to respond to a child's behavior.

### 2. Discipline Options

When a child engages in misbehavior that violates the school's disciplinary policy, the school may use the following options:

#### a. Short-term suspensions

1. PILC administration can order the removal of a child with a disability from his/her current setting for not more than 10 consecutive school days for any violation of any school rules or code of conduct.
2. Short-term suspensions can be applied only to the extent that they would be applied to children without disabilities.

#### b. Additional short-term suspensions

PILC administration can order additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct with these conditions:

1. They must not constitute a pattern of removals resulting in a change of placement.
2. After a child has been removed for more than 10 school days, the school provides appropriate services during any subsequent days of removal in that school year. School personnel determine the extent of services that are necessary to enable the child to participate in the general education curriculum and progress toward meeting the goals of the student's IEP.

### 3. Additional steps for any suspensions after reaching 10 school days (individual or cumulative) in a school year:

- a. PILC administration will determine whether the additional disciplinary action will result in a change in placement:

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1. Series of removals totaling more than 10 school days in a school year;
  2. Child's behavior is substantially similar to the child's behavior in previous incidents that resulted in a series of removal; and
  3. The length of the previous removals, the total amount of time the child has been removed and the proximity of the removals
- b. Provide the parent/adult student with Written Notice of the disciplinary action to be taken and the schools determination on whether a change of placement will occur.
  - c. Provide the parent with a copy of the Procedural Safeguards
  - d. Provide FAPE for removals that exceed 10 cumulative school days in a school year and for any additional removals in that same school year. School personnel will determine what FAPE is if the disciplinary action is not a manifestation of the child's disability.
4. Special Circumstances:  
A student will be placed in an Interim Alternative Educational Setting (IAES) for up to 45 school days, to the same extent that non-disabled children would be placed in an IAES or removed from school, if:
- a. The child possesses or carries a weapon to school, school premises or a school function.
  - b. The child knowingly possesses, carries, or uses illicit drugs, or sells or solicits the sale of a controlled substance while at school, on school premises or a school function.
  - c. The child inflicts serious bodily injury upon another person while at school, on school premises, or at a school function
- The IAES placement will not be affected by whether the incident was a manifestation of the student's disability in these special circumstances and the "Stay Put" option does not apply if a parent utilizes IDEA Procedural Safeguards. The IEP team will determine the IAES and services required to meet FAPE.
5. Hearing Officer Ordered IAES  
PILC administration may request an expedited due process hearing (page 27) to ask a hearing officer to place a child in an IAES for up to 45 school days if:
- a. the current placement is likely to cause injury to the student or others
  - b. prior to the conclusion of an IAES if PILC administration believe that returning the student to the general education program is likely to cause injury to the student or others
6. FAPE Requirements in an IAES  
The student's IEP team determines the IAES, which will:
- a. Be selected to enable the child to continue to participate in the general education curriculum, although in another setting.
  - b. Allow the child to progress toward meeting his or her goals
  - c. provide, as appropriate, a functional behavioral assessment and behavior interventions to address the behavior violation so it does not occur again.
7. Manifestation Determination  
PILC will not complete a Manifestation Determination, a Functional Behavioral Assessment or a Behavior Intervention Plan unless a student experiences a change in placement, as determined by PILC. PILC will notify the parent if a disciplinary action resulting in a change in placement occurs and provide the parent with the *Special Education Rights Brochure* not later than the date on which the decision to take the disciplinary action is made.

The manifestation determination includes a review of the relationship between the child's disability and the behavior subject to disciplinary action. Within 10 school days of the decision to make a change in placement, PILC will schedule an IEP meeting to determine:

- a. if the behavior was caused by, or had a direct and substantial relationship to, the child's disability; or
- b. if the incident was related to the school's lack of implementing the student's IEP. (PILC will take immediate actions to correct the concern(s) if the IEP team determines that the IEP was not being correctly implemented.)

In making the determination, the IEP team will:

- a. consider all relevant information in the student's IEP:
  1. evaluation and diagnostic results, data,
  2. teacher observations
  3. the child's IEP and placement
- c. and other relevant information supplied by the parent

If the IEP team determines that either of the standards listed above were met, the behavior will be considered a manifestation of the child's disability and PILC will take the following steps:

- a. Conduct a functional behavioral assessment and Develop a Behavior Intervention Plan, or
  - b. Review an existing Behavior Intervention Plan and modify it as appropriate
  - c. And return the student to the placement from which the student was removed unless PILC and the parent agree to a change in placement
    1. If the IEP team determines that the behavior was not a manifestation of the student's disability, PILC will:
      - a. the same disciplinary procedure applicable to children without disabilities, including long-term suspension or expulsion may be applied to the child with a disability
      - b. PILC will provide education services to enable the child to continue to participate in the general education curriculum, although in another setting, that will allow the child to progress toward meeting his or her goals
      - c. Receive, as appropriate, a functional behavioral assessment and behavior interventions to address the behavior violation so it does not occur again.
8. Parent Request for an Expedited Hearing (See Expedited Due Process Hearing)
- The parent may request an expedited due process hearing if/he or she:
- a. Disagrees with any decision of PILC or the IEP team regarding a change of placement during disciplinary proceeding.
  - b. Disagrees with a determination that the child's behavior was not a manifestation of the child's disability; or

A decision of a hearing officer in an expedited hearing may be appealed to federal or state district court.

9. Placement during an Expedited Hearing

If a parent or PILC request a due process hearing to challenge an IAES or the manifestation determination, the child remains in the IAES until the timeline for that placement expires or the hearing officer renders a decision, whichever occurs first.



#### 10. Protections for Children Not Yet Eligible for Special Education

A child who has not been determined eligible for special education services and who has engaged in behavior resulting in a disciplinary action, may assert any of the protections of IDEA if the school had knowledge that the child may have had a disability before the behavior that precipitated the disciplinary action.

- a. PILC will provide IDEA protections for a disciplined student if:
  1. The parent has expressed concern to PILC administration or a teacher of the student that the child is in need of special education and related services. The concern must be expressed in writing unless the parent is unable to write or has a disability, which prevents a written statement.
  2. The parent had requested an evaluation of the child.
  3. The teacher of the child, or other school personnel, have expressed concern about the behavior or performance of the child to the special education teacher, the Special Education Coordinator or PILC administration in accordance with the school's established Child Find or special education referral process.
- b. PILC will not provide IDEA protections for a disciplined student if:
  1. An evaluation was conducted and a determination was made that the child did not have a disability; or
  2. The evaluation team determined that an evaluation was not necessary and written notice of that decision was provided to the parent; or
  3. the parent of the child has not allowed an evaluation; or
  4. the parent has refused IDEA services

#### 11. Parent Request for Evaluation of Disciplined Child not currently IDEA eligible

If a parent requests that his/her child be evaluated while being disciplined, PILC will conduct the evaluation in an expedited manner. Pending the results of the evaluation, the child will remain in the educational placement determined by PILC. If a child is not determined to be eligible for special education, he or she is subject to the same disciplinary action that applies for all children.

If a child is subsequently determined eligible for special education, the school will:

- a. Conduct an IEP team meeting to develop an IEP.
- b. Conduct a manifestation determination review.
  1. If the behavior is determined to be related to the child's disability, the disciplinary action will be set aside and the child will be provided appropriate educational services in the LRE.
  2. If the behavior is not related to the child's disability, the child is subject to the disciplinary placement that had been determined and PILC will provide FAPE.

#### 12. Referrals to and Action by Law Enforcement and Judicial Authorities

The school may report a crime committed by a child with a disability to appropriate authorities. The IDEA '04 does not prevent State or Tribal law enforcement or judicial authorities from exercising their responsibilities with regard to crimes committed by a child with a disability. PILC will provide copies of the special education and disciplinary records of the child to the appropriate law enforcement authorities for their consideration, to the extent the release of records is permitted by FERPA

## **DISCONTINUATION OF SERVICES, GRADING AND TRANSCRIPTS**

### **A. Student who is no longer eligible for services**

PILC staff does on-going progress monitoring for all students receiving special education services. The special education teacher will work with students' teachers and parents to determine if a student continues to need services under IDEA. The special education teacher will complete an assessment plan through informal meetings with a student's:

1. teacher(s)
2. related service providers (if appropriate)
3. principal

PILC special education personnel will meet with the parent to review the recommended evaluations and request parental consent to evaluate. A meeting will be scheduled with PILC staff to review the assessment plan if the parent requests a formal meeting.

Upon completion of the evaluations, the special education teacher will work with the parent to schedule a meeting that is mutually agreeable to the parent, so the IEP team can review the evaluation data, the eligibility criteria for the disability in question, and make a determination on whether the student continues to be a student with a disability under IDEA. If the student is found to be no longer eligible, written notice is sent to the parents regarding discontinuation of special education services.

### **B. Student Receives HS Diploma**

PILC is a K-8 program and all students are expected to transfer to the local public, Off-Reservation Boarding School (ORBS) or Tribal school to complete their high school education.

### **C. Student Reaching Maximum Age**

PILC is a K-8 program and all students are expected to transfer to the local public, Off-Reservation Boarding School (ORBS) or Tribal school to complete their high school education.

### **D. Change in PILC' Obligation to Provide Services**

1. Student transfers to another school:  
Upon the receipt of a request for the records of a special education student, the special education teacher will send the documents formally requested, but no less than the student's most recent IEP, eligibility documentation, and parent consent for placement in overnight mail or by fax to the new school.
2. Student who drops out of PILC:  
The special education teacher places a signed and dated note in the student's special education confidential file regarding the student's dropping out of school. The student's file is placed in the inactive section of the filing cabinet in the Special Education Technician's office.

### **E. Parent/Adult Student Request for Withdrawal from Special Education**

A parent or student who reaches the age of majority has the right to withdraw the original consent for IDEA services. This action ends the student's right for IDEA services and its protections. The steps for a parent or student who has reached age of majority to withdrawal consent are:

1. Parent or student who has reached age of majority provides a written request to rescind consent for services. Upon request, PILC will provide assistance with writing the request to

withdrawal consent for services. A parent's signature (student's if he/she has reached age of majority) and date are required for the request to be considered formal.

2. PILC will provide the parents with a Written Notice within 5 days of receipt of the request to withdrawal consent. The Written Notice will clarify that the request will result in the student's loss of IDEA services and protections.
3. PILC will not utilize the IDEA Procedural Safeguard options if a request to withdrawal IDEA services is made by a parent or a student whom has reached the age of majority.

#### F. Grades, Class Ranking and Honor Roll

All students at PILC will be graded in the same manner unless a student's IEP team defines a separate grading system. Class ranking and honors are considered for all students.

#### G. Statement of Performance (SOP)

The SOP is a summary of the child's academic achievement and functional performance and includes recommendations on how the student may meet his/her postsecondary goals. PILC is not responsible for providing a SOP because students graduating from PILC will be transferring to a local public, Off-Reservation Boarding School (ORBS) or Tribal school to complete their high school education. The receiving school will be responsible for providing the student with a SOP upon his/her graduation.

#### H. Diploma & Transcripts

Students will receive an Eighth-grade diploma if:

1. student meets PILC' established Eighth grade standards
- OR
2. student meets the criteria established in his/her IEP

The IEP team will determine if any "extra supports" are to be provided in the general education curriculum.

There will be no indication on PILC' student transcript that a student was enrolled in the special education program. PILC counselor will ensure that all transcripts are appropriately recorded.

#### I. Eighth Grade Ceremonies

PILC is a K-8 program and all students are expected to transfer to the local public, Off-Reservation Boarding School (ORBS) or Tribal school to complete their high school education.

PILC special education staff and administration will work to ensure that all PILC Eighth grade graduates will be allowed to participate in honoring ceremonies. Any required accommodations will be made for the student.