

New Mexico Public Education Department
Special Education Bureau

The ASK Academy
POLICIES AND PROCEDURES
FOR THE
PROVISION OF
SPECIAL EDUCATION SERVICES
FOR
STUDENTS WITH DISABILITIES AND GIFTED STUDENTS

Chapter 5.1 - INDIVIDUAL EDUCATION PROGRAM (IEP)

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Chapter 5.1 - INDIVIDUALIZED EDUCATION PROGRAM (IEP)
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Chapter 5.1 INDIVIDUALIZED EDUCATION PROGRAM

I. IEP REQUIRED

§300.112 Individualized education programs (IEP).

The NMPED ensures that an IEP, or an IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with §§300.320 through 300.324, except as provided in §300.300(b)(3)(ii).

§300.320 is the Definition of IEP,

§300.321 covers the IEP Team,

§300.322 covers the Parent Participation,

§300.323 covers when the IEP must be in effect,

§300.324 covers Development of IEP, and

§300.300.300(b) covers Parent Consent.

All above are included in this Chapter 5.1.

II. TIMELINE

§300.323 When IEPs must be in effect.

(a) **General.** At the beginning of each school year, the The ASK Academy will have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.

(c) **Initial IEPs; provision of services.** The ASK Academy must ensure that--

(1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and

(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

"As soon as possible" is defined as a minimum of five school days, unless the parents agree otherwise.

III. MEMBERSHIP OF THE IEP TEAM

§300.321 IEP Team.

(a) **General.** The ASK Academy must ensure that the IEP Team for each child with a disability includes--

(1) The parents of the child;

(2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

(3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;

(4) A representative of the ASK Academy who -

(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(ii) Is knowledgeable about the general education curriculum; and

(iii) Is knowledgeable about the availability of resources of The ASK Academy.

The ASK Academy Special Education Director and The ASK Academy Administration will determine which specific staff member will serve as the agency representative in a particular IEP meeting. The ASK Academy representative will have the authority to commit The ASK Academy resources and ensure that whatever services are required in the IEP will be provided to the student.

(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;

(6) At the discretion of the parent or The ASK Academy, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(7) Whenever appropriate, the child with a disability.

(b) **Transition services participants.**

(1) In accordance with paragraph (a)(7) of this section, The ASK Academy must invite a child with a disability to attend the child's IEP meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching

- those goals under §300.320(b).
- (2) If the child does not attend the IEP Team meeting, The ASK Academy must take other steps to ensure that the child's preferences and interests are considered.
 - (3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, The ASK Academy must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.
- (c) **Determination of knowledge and special expertise.** The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or The ASK Academy) who invited the individual to be a member of the IEP Team.
- (d) **Designating an ASK Academy representative.** The ASK Academy may designate an ASK Academy member of the IEP Team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.
- (e) **IEP Team attendance. (Excusal)**
- (1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of §300.321, is not required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and The ASK Academy agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
 - (2) A member of the IEP Team described in (e)(1) may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if--
 - (i) The parent, in writing, and The ASK Academy consent to the excusal; and
 - (ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

Any excusal from the IEP meeting must follow exact guidelines in §300.321(e) (1-2) and be documented in writing on The ASK Academy form provided to you.
- (f) **Initial IEP meeting for child under Part C.** In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services. [Authority: 20 USC §§1414 (d)(1)(B) – (d)(1)(D)].

IV. CONTENT OF THE INDIVIDUALIZED EDUCATIONAL PROGRAM (IEP).

§300.320 Definition of individualized education program.

- (a) **General.** As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--
- (1) A statement of the child's present levels of academic achievement and functional performance, including--
 - (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
 - (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
 - (2) (i) A statement of measurable annual goals, including academic and functional goals designed to--
 - (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
 - (B) Meet each of the child's other educational needs that result from the child's disability;
 (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
 - (3) A description of--
 - (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
 - (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

- (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child--
 - (i) To advance appropriately toward attaining the annual goals;
 - (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
 - (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(Related services are also addressed in Chapter 3. – Evaluation)
 - (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;
 - (6) (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments consistent with section 612(a)(16) of the Act; and
 - (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or district wide assessment of student achievement, a statement of why--
 - (A) The child cannot participate in the regular assessment; and
 - (B) The particular alternate assessment selected is appropriate for the child; and

(For specific information see Chapter 5.1 – XI. State and District-wide Assessment)
 - (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.
- (b) Transition *See also Transition in Chapter 5.2.*
- (c) Transfer of rights at age of majority. *See VI. Parent Rights on following pages.*
- (d) Construction. Nothing in this section shall be construed to require--
- (1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or
 - (2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP. (Authority: 20 USC §§1414(d)(1)(A) and (d)(6))
- B. Individualized education programs (IEPs).
- (1) Except as provided in 34 CFR §§300.130-300.144 for children enrolled by their parents in private schools, The ASK Academy (1) shall develop, implement, review and revise an IEP in compliance with all applicable requirements of 34 CFR §§300.320-300.328 and these or other department rules and standards for each child with a disability (within its educational jurisdiction); and (2) shall ensure that an IEP is developed, implemented, reviewed and revised in compliance with all applicable requirements of 34 CFR §§300.320-300.328, and these or other department rules and standards for each child with a disability who is placed in or referred to a private school or facility by the The ASK Academy.
 - (2) Each IEP or amendment shall be developed at a properly convened IEP meeting for which The ASK Academy has provided the parent and, as appropriate, the child, with proper advance notice pursuant to 34 CFR §300.322 and Paragraph (1) of Subsection D of 6.31.2.13 NMAC and at which the parent and, as appropriate, the child have been afforded the opportunity to participate as members of the IEP team pursuant to 34 CFR §§300.321, 300.322 and 300.501(b) and (c) and Subsection C of 6.31.2.13 NMAC.
 - (3) Except as provided in 34 CFR §300.324(a)(4), each IEP shall include the signature and position of each member of the IEP team and other participants in the IEP meeting to document their attendance. Written notice of actions proposed or refused by The ASK Academy shall also be provided in compliance with 34 CFR §300.503 and Paragraph (2) of Subsection D of 6.31.2.13 NMAC and shall be provided at the close of the IEP meeting. Informed written parental consent must also be obtained for actions for which consent is required under 34 CFR §300.300 and Subsection F of 6.31.2.13 NMAC. An amended IEP does not take the place of the annual IEP conducted pursuant to CFR §300.324(a)(4) which requires that members of a child's IEP team must be informed of any changes made to the IEP without a meeting.
 - (4) Agreement to modify IEP meeting requirement.
 - (a) In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent of a child with a disability and The ASK Academy may agree not to convene an IEP team meeting for the

purposes of making those changes and instead may develop a written document to amend or modify the child's current IEP.

- (b) If changes are made to the child's IEP in accordance with subparagraph (4)(a) of this paragraph, The ASK Academy must ensure that the child's IEP team is informed of those changes.

(5) For students with autism spectrum disorders (ASD) eligible for special education services under 34 CFR §300.8(c)(1), the strategies described in Subparagraphs (a)-(k) of this paragraph shall be considered by the IEP team in developing the IEP for the student. The IEP team shall document consideration of the strategies. The strategies must be based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed to provide FAPE, addressed in the IEP:

- (a) extended educational programming, including, for example, extended day or extended school year services that consider the duration of programs or settings based on assessment of behavior, social skills, communication, academics, and self-help skills;
- (b) daily schedules reflecting minimal unstructured time and reflecting active engagement in learning activities, including, for example, lunch, snack, and recess periods that provide flexibility within routines, adapt to individual skill levels, and assist with schedule changes, such as changes involving substitute teachers and other in-school extracurricular activities;
- (c) in-home and community-based training or viable alternatives to such training that assist the student with acquisition of social or behavioral skills, including, for example, strategies that facilitate maintenance and generalization of such skills from home to school, school to home, home to community, and school to community;
- (d) positive behavior support strategies based on relevant information, including, for example:
 - (1) antecedent manipulation, replacement behaviors, reinforcement strategies, data-based decisions; and
 - (2) a behavioral intervention plan focusing on positive behavioral support and developed from a functional behavioral assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings.
- (e) futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments;
- (f) parent or family training and support provided by qualified personnel with experience in ASD, that, for example:
 - (1) provides a family with skills necessary for a child to succeed in the home or community setting;
 - (2) includes information regarding resources such as parent support groups, workshops, videos, conferences, and materials designed to increase parent knowledge of specific teaching and management techniques related to the child's curriculum; and
 - (3) facilitates parental carryover of in-home training, including, for example, strategies for behavior management and developing structured home environments or communication training so that parents are active participants in promoting the continuity of interventions across all settings.
- (g) provides suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social or behavioral progress based on the child's developmental and learning level and that encourages work towards individual independence as determined by, for example:
 - (1) adaptive behavior evaluation results;
 - (2) behavioral accommodation needs across settings; and
 - (3) transitions within the school day.
- (h) communication interventions, including communication modes and functions that enhance effective communication across settings such as augmentative, incidental, and naturalistic teaching;
- (i) social skills supports and strategies based on social skills assessment or curriculum and provided across settings, including, for example, trained peer facilitators, video modeling, social stories, and role playing;
- (j) professional educator and staff support, including, for example, training provided to personnel who work with the student to assure the correct implementation of techniques and strategies described in the IEP; and
- (k) teaching strategies based on peer reviewed, research-based practices for students with ASD, including, for example, those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, and social skills training.

V. CONSIDERATION OF SPECIAL FACTORS

§300.324 Development, review, and revision of IEP.

(a) Development of IEP.

(2) Consideration of special factors. The IEP Team must:

- (i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.**
- (ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;**
- (iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;**
- (iv) Consider whether the child needs assistive technology devices and services.**
- (v) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode;**

A. Assistive Technology

§300.324 Development, review, and revision of IEP

(a) (2) Consideration of special factors. The IEP Team must--

- (v) Consider whether the child needs assistive technology devices and services.**

§300.5 Assistive technology device. Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of that device.

§300.6 Assistive technology service. Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes--

- (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;**
- (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;**
- (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;**
- (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;**
- (e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and**
- (f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.**

§300.105 Assistive technology; proper functioning of hearing aids.

- (a) The ASK Academy ensures that assistive technology devices or assistive technology services, or both, as those terms are defined in §§300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's--**

- (1) Special education under §300.36;**
- (2) Related services under §300.34; or**
- (3) Supplementary aids and services under §§300.38 and 300.114(a)(2)(ii).**

- (b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE.

B. Behavior (positive interventions and supports)

§300.324 Development, review, and revision of IEP.

(a) Development of IEP.

(2) Consideration of special factors. The IEP Team must:

- (i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

Positive behavior techniques include solid teaching practices, clear rules and expectations, being physically close to students, as well as praising and encouraging positive behaviors. Either independently or with the support of colleagues, teachers are usually able to find a successful solution to any problem behavior. However, for some students—both with and without disabilities—these tactics fail to produce the desired outcome and may actually worsen an already difficult situation. Below are some examples of positive behavioral strategies, interventions and supports:

- *Always remain calm and controlled in order to achieve a calm, orderly, and controlled environment.*
- *Use a "get ready to listen" signal to alert students that you are about to give important information. Then speak in a normal voice. Do not speak over the students even if some are not ready to listen. When they miss the direction, they will be ready to listen next time. When you give the signal, students who are ready to listen will pressure those who are not.*
- *Tell students exactly what you expect and, whenever possible, also tell students the consequences (and make sure you carry them out). Then, do not repeat the directive. Example: "If you have a question, raise your hand. I will only call on students who quietly raise their hand and wait to be called on."*
- *Students will learn respect by being respected. Avoid sarcasm, ridicule, or labels.*
- *Use students' names to praise positive behavior as well as to discipline students.*

All behavior—positive and negative—is the manifestation of some underlying need, such as to seek something pleasant or to avoid something unpleasant. These motives are the causes, and the behaviors are the results. Rather than emphasizing controlling problem behavior, use of specific methods and strategies for replacing problem behavior is far more effective and permanent than any method based on negative consequences that merely suppress behavior, not change it. For many more successful strategies, The ASK Academy staff will refer to the NMPED document Addressing Student Behavior: A Guide for Educators that can be found at the NMPED website: <http://www.ped.state.nm.us/Rtl/dl10/Addressing%20Student%20Behavior%20Guide%202010.pdf>

FBA / BIP – See also Chapter 3 Evaluation and Chapter 5.2 IEP

If the student exhibits behavior that is interfering with student's learning or the learning of others, the IEP Team must consider completing a Functional Behavior Assessment (FBA) and developing a Behavioral Intervention Plan (BIP) for the student. In addition, Social/Emotional Goals/Objectives would be appropriate. For more information, see Chapter 3-Full and Individual Evaluation for development of the FBA and also Chapter 7 of this document for more information on Discipline.

C. Blindness or Visual Impairment

§300.324 Development, review, and revision of IEP.

(a) Development of IEP.

(2) Consideration of special factors. The IEP Team must:

- (iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child.

D. Communication

§300.324 Development, review, and revision of IEP.

(a) Development of IEP.

(2) Consideration of special factors. The IEP Team must:

- (i) in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavior interventions and supports, and other strategies, to address that behavior.

E. Deaf or Hard of Hearing

§300.324 Development, review, and revision of IEP.

(a) Development of IEP.

(2) Consideration of special factors. The IEP Team must:

- (iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode;

F. Limited English Proficient

§300.324 Development, review, and revision of IEP

(a) (2) Consideration of special factors. The IEP Team must:

- (ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

Limited English Proficient (LEP) Students with Disabilities

For all LEP (Limited English Proficient) Students:

- A. The ASK Academy's LEP student status report must have been completed within the past year for each annual IEP to be reviewed.
- B. The IEP Team will determine placement based on current assessments and needed goals and objectives.
- C. The IEP Team will include the LEP representative; and
- D. The IEP Team will ensure that placement in a bilingual education or English as a Second Language program, if appropriate, is not refused solely because the student has a disability.

G. Related Services

Any request for a related service must be made through the SAT upon initial referral or through the Eligibility Determination or IEP Team. If the related service provider is not present at the evaluation planning meeting in which the review of existing evaluation data is completed, every effort must be made by the evaluator to collaborate with the related service provider. The evaluator is responsible for notifying the appropriate related service provider that an assessment has been requested by the IEP Team.

§300.34 Related services.

- (a) **General.** Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also includes school health services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the IEP of the child, social work services in schools, and parent counseling and training.

- (b) **Exception;** services that apply to children with surgically implanted devices, including cochlear implants.
- (1) Related services do not include a medical device that is surgically implanted, the optimization of device functioning (e.g., mapping), maintenance of the device, or the replacement of that device.
 - (2) Nothing in paragraph (b)(1) of this section—
 - (i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.
 - (ii) Limits the responsibility of The ASK Academy to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or
 - (iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in §300.113(b).
- (c) **Individual related services terms defined.** *(found in Chapter 3. Evaluations)*

H. Shortened School Day

New Mexico Standards for Excellence establish the minimum length of school days for students in New Mexico's public schools and authorize local districts to exceed (but not go below) the minimums. The ASK Academy will follow federal nondiscrimination laws that require students with disabilities have school days of the same length as other students unless a shorter day is educationally justified to meet a particular student's special needs, as determined and documented by the individualized educational program (IEP) team.

In relatively rare instances, a shortened school day may be appropriate for an individual student served through special education. Legitimate factors that may indicate the need for a shortened school day include:

- student's stamina,
- medical needs, and
- behavioral and/or emotional needs.

Any decision to shorten a student's school day must be made by the student's IEP Team and be documented in the student's IEP. IEP Team documentation will include:

- accompanying physician/psychologist recommendations,
- information from medical records,
- other evaluation reports that were considered by the team in reaching its decision,
- clearly articulate the decision to shorten the school day is educationally justifiable,
- plan/timeline to gradually increase or return to a full instructional day,
- how the resulting plan offers the student a free and appropriate public education (FAPE) –
- the full array of special education services in the student's IEP
- how the opportunity to progress in the general curriculum are provided. (Keep in mind that FAPE requires a plan of instruction likely to result in educational progress, not marginal educational advancement or regression.)

The following are NOT counted as "instructional time" for students: lunch, passing periods, recess, and/or teacher preparation periods. While certain educational goals and objectives for certain students may be addressed during these times, this time cannot be used to shorten the student's school day. Some students with disabilities may need explicit assistance during these times and this should be reflected in the student's IEP. Lunch, recess, and passing periods may provide certain students unique opportunities to attain goals and objectives and may be used, as appropriately defined through the IEP, to attain educational outcomes. However, just because a student is learning during lunch, recess, or passing periods, does not mean that there exists an allowable justification for shortening the school day.

Students with disabilities **cannot** be dismissed from school early or made to start school late (other than for individual students as outlined above) in order to accommodate teacher planning time, transportation/bus schedules or other administrative convenience.

Authority: NMSA 1978 §22-2-8-1 Length of school day; minimum.

- A. Except as otherwise provided in this section, regular students shall be in school-directed programs, exclusive of lunch, for a minimum:
 - (1) grades six through twelve, six hours per day or one thousand eighty hours per year
- B. Nothing in this section precludes a local school board from setting length of school days in excess of the minimum requirements established by Subsection A of this section.
- C. The state superintendent [secretary] may waive the minimum length of school days in those districts where such minimums would create undue hardships as defined by the state board [department].

VI. PARENT RIGHTS / PARTICIPATION *(also in Chapter 2.-Procedural Safeguards)*

A. Participation

§300.322 Parent Participation.

- (a) **District responsibility—general.** The ASK Academy must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including--
 - (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
 - (2) Scheduling the meeting at a mutually agreed on time and place. *("early enough" is defined below)*
- (b) **Information provided to parents.**
 - (1) The notice required under paragraph (a)(1) of this section must--
 - (i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and
 - (ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).
 - (2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must--
 - (i) Indicate--
 - (A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and
 - (B) That the agency will invite the student; and
 - (ii) Identifies any other agency that will be invited to send a representative.
- (c) **Other methods to ensure parent participation.** If neither parent can attend an IEP Team meeting, The ASK Academy must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328 *(related to alternative means of meeting participation on next page).*
- (d) **Conducting an IEP meeting without a parent in attendance.** A meeting may be conducted without a parent in attendance if the ASK Academy is unable to convince the parents that they should attend. In this case, the ASK Academy must keep a record of its attempts to arrange a mutually agreed on time and place such as:
 - (1) Detailed records of telephone calls made or attempted and the results of those calls;
 - (2) Copies of correspondence sent to the parents and any responses received; and
 - (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

Minimum of 3 Attempts - Beginning 15 school days prior to the proposed IEP meeting date

In accordance with State and Federal requirements, The ASK Academy ASK Academy will notify parents early enough of the IEP meeting in order to arrange a mutually agreeable time and location. After the first written invitation to the IEP meeting is provided 15 school days prior, if the parent does not respond, The ASK Academy ASK Academy will document and send a second written invitation to parent 10 school days prior to the proposed meeting. Again, if the parent still does not respond, a third invitation to the IEP meeting will be sent in an attempt to get parental participation 5 school days prior to the scheduled IEP meeting. After three attempts and no response, The ASK Academy ASK Academy may go forward with the IEP Team meeting as scheduled. The first attempt MUST be in written form, the second attempt should also be in writing and the third may be a follow-up phone call. Detailed records of phone calls made, or attempted, and the results must be documented on the written

Invitation form. Copies of correspondence sent and any visits to the home or place of employment, and the results, must also be documented. All dates and personnel initials must be documented in writing.

- (e) Use of interpreters or other action, as appropriate. The ASK Academy must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.
- (f) Parent copy of child's IEP. The ASK Academy must give the parent a copy of the child's IEP at no cost to the parent.

§300.501 Parent Participation in Meetings.

- (b) Parent participation in meetings.
 - (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to--
 - (i) The identification, evaluation, and educational placement of the child; and
 - (ii) The provision of FAPE to the child.
 - (2) The ASK Academy must provide notice consistent with §§300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.
 - (3) A meeting does not include informal or unscheduled conversations involving The ASK Academy personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that the ASK Academy personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.
- (c) Parent involvement in placement decisions.
 - (1) The ASK Academy must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.
 - (2) In implementing the requirements of paragraph (c)(1) of this section, The ASK Academy must use procedures consistent with the procedures described in §§300.322(a) through (b)(1). *(found on previous pages)*
 - (3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, The ASK Academy must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.
 - (4) A placement decision may be made by a group without the involvement of a parent, if The ASK Academy is unable to obtain the parent's participation in the decision. In this case, The ASK Academy must have a record of its attempt to ensure their involvement.

(Authority: 20 USC §§1414(e), 1415(b)(1))

§300.327 Educational placements.

Consistent with §300.501(c), The ASK Academy must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child. *(For disagreements, see Conflict Management and Resolution in Chapter 2. Procedural Safeguards)*

§300.328 Alternative means of meeting participation.

When conducting IEP Team meetings and placement meetings pursuant to this subpart, and Subpart E of this part, and carrying out administrative matters under section 615 of the Act (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and The ASK Academy may agree to use alternative means of meeting participation, such as video conferences and conference calls.

(Authority: 20 USC §1414(f))

B. Age of Majority – Transfer of Rights

§300.320 Definition of individualized education program

- (c) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority under New Mexico law, the IEP must include a statement that the child has been informed of

the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under §300.520.

§300.520 Transfer of parental rights at age of majority.

- (a) **General.** NMPED provides that, when a child with a disability reaches the age of majority under New Mexico law that applies to all children (except for a child with a disability who has been determined to be incompetent under New Mexico law)--
- (1) (i) The ASK Academy must provide any notice required by this part to both the individual and the parents; and
 - (ii) All other rights accorded to parents under Part B of the Act transfer to the child;
 - (2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and
 - (3) Whenever a State transfers rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, The ASK Academy must notify the individual and the parents of the transfer of rights.
- (b) **Special rule.** New Mexico PED has established procedures for appointing the parent of a child with a disability, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under New Mexico law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program. (Authority: 20 USC 1415(m))

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:

K. Transfer of parental rights to students at age 18

- (1) Pursuant to §§12-2A-3 and 28-6-1 NMSA 1978, a person's age of majority begins on the first instant of his or her 18th birthday and a person who has reached the age of majority is an adult for all purposes not otherwise limited by state law. A guardianship proceeding under the probate code is the only way an adult in New Mexico can legally be determined to be incompetent and have the right to make his or her own decisions taken away. Public agencies and their IEP teams are not empowered to make such determinations under New Mexico law. Accordingly, pursuant to 34 CFR §300.520, when a child with a disability reaches age 18 and does not have a court-appointed general guardian, limited guardian or other person who has been authorized by a court to make educational decisions on the student's behalf or who has not signed a power of attorney as provided under New Mexico law:
 - (a) The ASK Academy shall provide any notices required by 34 CFR Part 300 to the child and the parents;
 - (b) all other rights accorded to parents under Part B of the IDEA, New Mexico law or department rules and standards transfer to the child; and
 - (c) The ASK Academy shall notify the individual and the parents of the transfer of rights.
- (2) Pursuant to 34 CFR §300.320(c), each annual IEP review for a child who is 14 or older must include a discussion of the rights that will transfer when the child turns 18 and, as appropriate, a discussion of the parents' plans for obtaining a guardian before that time. The IEP of a child who is 14 or older must include a statement that the child and the parent have been informed of the rights that will transfer to the child at age 18.

VII. DISAGREEMENT IN THE IEP MEETING

Contact the Special Education Coordinator or Director of Special Education for consultation when an IEP meeting results in parental disagreement. Appropriate Prior Written Notice must be completed and provided to the parent or adult student. For more information, see also Chapter 2. - Procedural Safeguards, contact the ADR (Alternative Dispute Resolution) coordinator at the NMPED, and go to the website: <http://www.ped.state.nm.us/SEB/community/index.html>

VIII. IEP MEETING CATEGORIES

A. Initial

The ASK Academy will follow all federal and state requirements in sections 5.1 and 5.2 of this document.

B. Annual Review

§300.324 Development, review, and revision of IEP

(b) Review and revision of IEPs.

- (1) **General.** The ASK Academy must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team--
 - (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
 - (ii) Revises the IEP, as appropriate, to address--
 - (A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;
 - (B) The results of any reevaluation conducted under §300.303;
 - (C) Information about the child provided to, or by, the parents, as described under §300.305(a)(2);
 - (D) The child's anticipated needs; or
 - (E) Other matters.
- (2) **Consideration of special factors.** The IEP Team must:
 - (i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.
 - (ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
 - (iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
 - (iv) Consider whether the child needs assistive technology devices and services.
 - (v) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode;
- (3) **Requirement with respect to regular education teacher.** A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.

§300.116 Placements.

In determining the educational placement of a child with a disability, including a preschool child with a disability, The ASK Academy must ensure that--

(b) The child's placement--

- (1) Is determined at least annually;
- (2) Is based on the child's IEP; and
- (3) Is as close as possible to the child's home, unless the parent agrees otherwise;
For placement in its entirety, please see Chapter 6.- LRE

C. Reevaluation – IEP Team Meeting

§300.324 Development, review, and revision of IEP

- (a) (5) **Consolidation of IEP Team meetings.** To the extent possible, The ASK Academy must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

The ASK Academy will conduct a Review of Existing Evaluation Data (described in the Chapter 3. - Evaluation) prior to additional evaluation taking place. The team will review performance-based assessments, benchmarks, and

other current data. If the student is a special education student and the three-year reevaluation is due within the next 12 months, the Annual IEP Committee may conduct the Review of Existing Evaluation Data and plan the evaluation during that Annual IEP Meeting. Otherwise, the Eligibility Determination Team (EDT) will meet to plan the evaluation prior to the 3-year due date.

The Case Manager or Diagnostician will contact all other service providers prior to the Annual IEP to gather input and to work toward consolidating all required evaluations into one comprehensive Full and Individual Evaluation for the student, including Speech, OT/PT, etc. . This information must be documented on the Prior Written Notice.

D. Amended IEP (New Provisions: Agreements, Amendments)

§300.324 Development, review, and revision of IEP

(a) (4) Agreement.

- (i) **In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and The ASK Academy may agree not to convene an IEP meeting for the purposes of making those changes and, instead, may develop a written document to amend or modify the child's current IEP.**
- (ii) **If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, The ASK Academy must ensure that the child's IEP Team is informed of those changes.**
- (5) **Consolidation of IEP Team meetings.** **To the extent possible, The ASK Academy must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child. *The ASK Academy's special education staff will collaborate annually or monthly, as necessary, to work toward consolidating a student's evaluations to incorporate all disciplines involved with the student into one evaluation report. While this may be challenging to the staff, the benefits to the student are the ultimate goal.***
- (6) **Amendments.** **Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting or, as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.**

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

B. Individualized education programs (IEPs)

- (2) **Each IEP or amendment shall be developed at a properly convened IEP meeting for which The ASK Academy has provided the parent and, as appropriate, the child, with proper advance notice pursuant to 34 CFR §300.322 and Paragraph (1) of Subsection D of 6.31.2.13 NMAC and at which the parent and, as appropriate, the child have been afforded the opportunity to participate as members of the IEP team pursuant to 34 CFR §§300.321, 300.322 and 300.501(b) and (c) and Subsection C of 6.31.2.13 NMAC.**
- (3) **Except as provided in 34 CFR §300.324(a)(4), each IEP shall include the signature and position of each member of the IEP Team and other participants in the IEP meeting to document their attendance. Written notice of actions proposed or refused by The ASK Academy shall also be provided in compliance with 34 CFR §300.503 and Paragraph (2) of Subsection D of 6.31.2.13 NMAC and shall be provided at the close of the IEP meeting. Informed written parental consent must also be obtained for actions for which consent is required under 34 CFR §300.300 and Subsection F of 6.31.2.13 NMAC. An amended IEP does not take the place of the annual IEP conducted pursuant to CFR §300.324(a)(4) which requires that members of a child's IEP team must be informed of any changes made to the IEP without a meeting.**
- (4) **Agreement to modify IEP meeting requirement.**
 - (a) **In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and The ASK Academy may agree not to convene an IEP Team meeting for the purposes of making those changes and instead may develop a written document to amend or modify the child's current IEP.**
 - (b) **If changes are made to the child's IEP in accordance with subparagraph (4)(a) of this paragraph, The ASK Academy must ensure that the child's IEP Team is informed of those changes.**

Recommendations for changes in the individual educational program (IEP), including changes in the student's placement, will be made at the IEP Team meeting. The amendment procedure MAY NOT be used

for certain actions that require an IEP Team meeting. NMPED strongly encourages The ASK Academy to require an IEP Team meeting for the following actions:

- *Change in placement decision;*
- *Change student's Graduation Option;*
- *Manifestation Determination (suspension/expulsion), FBA or development of BIP;*
- *Change services, time of services, add/drop services (excluding transportation);*
- *Assigning a student to a classroom to receive instruction in a different curriculum area (e.g., reading comprehension, math calculation, etc.) than designated by the last IEP Team;*
- *Any change in schedule that would change the instructional arrangement—or, for high school students, the graduation plan;*
- *Eligibility determination or change;*
- *Review lack of progress or when a student with disabilities receives a grade of F; and*
- *All disciplinary actions regarding student with disabilities will be in accordance with federal requirements and New Mexico regulations. The IEP Team will determine the instructional and related services to be provided during the time of expulsion. The student's IEP will include goals (and objectives, if taking an alternate state assessment) designed to assist in returning the student to school and preventing significant regression.*

Changes that DO NOT require an IEP Team meeting. The amendment procedure MAY be used for the following changes:

- *Transportation changes*
- *Accommodations or revision of existing modifications*

E. Exit / Change of Placement

§300.305 Additional requirements for evaluations and reevaluations.

For §300.305 in its entirety, see Chapter 2. FIE

(e) Evaluations before change in placement.

- (1) Except as provided in paragraph (e)(2) of this section, The ASK Academy must evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.
- (2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under New Mexico law.
- (3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, The ASK Academy must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

The Summary of Performance is separate documentation from the IEP meeting forms. For a sample form to assure required areas are addressed, please see the nationally ratified Summary of Performance sample form at this website: <http://www2.gsu.edu/~wwwrld/pdf/SummaryofPerformance.pdf>. This sample template form is not required by the NMPED; however, if The ASK Academy uses a different form, NMPED will ensure that it includes all the information required by law.

§300.102 Limitation--exception to FAPE for certain ages.

(a) General. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

- (3) (i) Children with disabilities who have graduated from high school with a regular high school diploma.
- (ii) The exception in paragraph (a)(3)(i) of this section does not apply to students who have graduated but have not been awarded a regular high school diploma.
- (iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503.

- (iv) As used in paragraphs (a)(3)(i) through (a)(3)(iii) for this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the New Mexico's academic standards, such as a certificate or a general educational development credential (GED).

NOTE: §300.102(a)(3)(iii) Graduation constitutes a change in placement and requires written prior notice in accordance with §300.503.

F. Graduation (see also letter E – 300.305(e.)3. above)

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

G. Graduation planning and post-secondary transitions

- (5) For a child whose eligibility terminates due to graduation from secondary school with a regular diploma or due to reaching his/her 22nd birthday, The ASK Academy must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's post-secondary goals pursuant to 34 CFR §300.305(e)(3).
- (6) Students eligible for special education services are entitled to a FAPE through age 21. If a student turns 22 during the school year, that student shall be allowed to complete the school year and shall continue to receive special education and related services during that school year. If the student turns 22 prior to the first day of the school year, the student is no longer eligible to receive special education and related services.

Authority: NMAC 6.29.1.9 Standards for Excellence Procedural Requirements

J. Graduation Requirements:

- (13) Graduation requirements for issuance of a conditional certificate of transition for students with an IEP. The development of a program of study and the granting of a diploma, or use of a conditional certificate of transition in the form of a continuing or transition individualized educational program (IEP) for students receiving special education services, includes the following governing principles:
 - (a) The IEP Team is responsible for determining whether the student has completed a planned program of study based on the student's strengths, interests, preferences, identified educational and functional needs and long-term educational or occupational goals, making the student eligible to receive either a diploma or a conditional certificate of transition. A conditional certificate of transition allows the student to participate in graduation activities. If a student receives a conditional certificate of transition, the student shall then return to the program specified in the IEP to complete the student's secondary program and meet the requirements for a diploma. In addition, all IEPs shall provide a description of how the student's progress toward meeting annual goals and graduation requirements will be measured, and at what intervals progress will be reported to parents or guardians. A student shall be awarded a diploma upon completion of a planned program of study that meets the requirements of paragraph (b).
 - (b) A student may be awarded a diploma (Section 22-13-1.1 NMSA 1978) using any of the following programs of study described in (i) through (iii). All IEP team discussion points and decisions identified herein, including the identification of the student's program of study and any student or parent proposals accepted or rejected by the IEP Team (if the student has not reached the age of majority), shall be documented on the student's IEP and in the prior written notice (PWN) of proposed action.
 - (i) A standard program of study is based upon meeting or exceeding all requirements for graduation based on the New Mexico standards for excellence (Subsection J of 6.29.1.9 NMAC) with or without reasonable accommodations of delivery and assessment methods. In addition, a student shall pass all sections of the current state graduation examination(s) administered pursuant to Section 22-13-1.1(I) NMSA 1978 under standard administration or with state-approved accommodations, and shall meet all other standard graduation requirements of the district.
 - (ii) A career readiness alternative program of study is developed to provide relevance and is based on a student's career interest as it relates to one of the career clusters,

with or without reasonable accommodations of delivery and assessment methods. In addition, a student shall take the current state graduation examination(s) administered pursuant to Section 22-13-1.1(K) NMSA 1978, under standard administration or with state-approved accommodations, and achieve a level of competency pre-determined by the student's IEP Team; the student shall earn at least the minimum number of credits required by the district or charter school for graduation through standard or alternative courses that address the employability and career development standards with benchmarks and performance standards, as determined by the IEP Team. Course work shall include a minimum of four units of career development opportunities and learning experiences that may include any of the following: career readiness and vocational course work, work experience, community-based instruction, student service learning, job shadowing, mentoring or entrepreneurship related to the student's occupational choices. Credits for work experience shall be related to the program of study that the school offers and specific to the district's ability to offer work experience or community-based instruction credits. The student shall achieve competency in all areas of the employability and career development standards with benchmarks and performance standards, as determined by the IEP Team and the student's interest as it relates to the career clusters. The program of study shall address the New Mexico content standards with benchmarks and performance standards in other subject areas as appropriate.

- (iii) An ability program of study was developed for students who have a significant cognitive disability or severe mental health issues. The IEP goals and functional curriculum course work shall be based on the New Mexico standards with benchmarks and performance standards and employability and career development standards with benchmarks and performance standards. Students in this program of study shall earn the minimum number of credits or be provided equivalent educational opportunities required by the district or charter school, with course work individualized to meet the unique needs of the student through support of the IEP. In addition, a student shall take either the current state graduation examination(s) administered pursuant to Section 22-13-1.1(K) NMSA 1978, under standard administration or with state-approved accommodations, or the state-approved alternate assessment. The student shall achieve a level of competency pre-determined by the student's IEP Team on the current graduation examination or the state-approved alternate assessment, and meet all other graduation requirements established by the IEP Team.
- (c) The new requirements for the career readiness and ability options become effective beginning with students graduating in 2009.
- (d) By the end of the eighth grade, each student's IEP shall contain a proposed individual program of study for grades nine through twelve. The program of study shall identify by name all course options the student may take and shall align with the student's long-range measurable post-secondary goals and transition services to facilitate a smooth transition to high school and beyond. This program of study shall be reviewed on an annual basis and adjusted to address the student's strengths, interests, preferences and areas of identified educational and functional needs. The IEP Team shall document on the IEP the student's progress toward earning required graduation credits and passing the current graduation examination.
- (e) A district or charter school shall provide each student, who has an IEP and who graduates or reaches the maximum age for special education services, a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting post-secondary goals.
- (f) Students graduating on the standard program of study shall meet the state's minimum requirements on all sections of the graduation examination. IEP teams shall document a plan of action on the IEP and the PWN to be carried out by both the student and the district or charter school, to ensure that the student will pass all sections of the graduation examination.

- (g) To establish a level of proficiency on the current graduation examination or the state-approved alternate assessment for students on a career readiness program of study or ability program of study, IEP teams shall review the student's performance on the first attempt, and establish a targeted proficiency on all sections that are below the state's minimum requirement. For those students who meet participation criteria for the New Mexico alternate assessment, IEP teams shall set targeted levels of proficiency based upon previous performance on the test. If the student has previously been administered the New Mexico alternate assessment and has achieved an advanced level of overall performance, the IEP Team shall arrange for the student to participate in the general graduation examination, and shall identify appropriate accommodations that the student may require. IEP teams shall document the targeted levels of proficiency on the IEP and the PWN, outlining the plan of action to be taken by both the student and the district or charter school to ensure that the student will meet the targeted levels of proficiency. Districts or charter schools may submit a written request for a waiver to the secretary in cases where a student has medical or mental health issues that may result in regression or that negatively influence the student's ability to achieve targeted levels of proficiency. The written request shall be signed by the superintendent or charter school administrator and shall include documentation of the medical or mental health issues.
- (h) Changes in programs of study.
- (i) Departures from the standard program of study for students receiving special education services and supports shall be considered in the order of the options listed in Subparagraph (b) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC. Any modified program of study may depart from a standard program of study only so far as is necessary to meet an individual student's educational needs as determined by the IEP Team. Districts and charter schools are obligated to meet the requirements IDEA to provide students with IEPs on any one of the three programs of study, and access to the general curriculum in the least restrictive environment. When an alternative program of study is developed, a building administrator or designee who has knowledge about the student shall be a member of the IEP team
 - (ii) Districts and charter schools shall document changes from the standard program of study on the PWN. IEP teams shall identify the reasons for changing the students' program of study, shall provide parents with clear concise explanations of the career readiness or ability programs of study, shall notify parents and students of the potential consequences that may limit the student's post-secondary options, and shall make required changes to the IEP and course of study, to ensure that the student meets the requirements of that program of study.
 - (iii) The IEP team shall not change the program of study for a student entering the final year of high school from the standard program of study to the career readiness program of study, nor from the career readiness program of study to the ability program of study, after the 20th school day of the final year of high school. IEP teams may change a student's program of study from the ability program of study to the career readiness program of study, or from the career readiness program of study to the standard program of study, if the student meets the graduation requirements of that program of study and if the change is made and documented appropriately in a revised IEP and PWN by a properly constituted IEP team in a properly convened meeting.
 - (iv) Beginning with students entering the 10th grade, districts and charter schools shall maintain an accurate accounting of graduation programs of study for students with IEPs. Districts and charter schools shall ensure that 80% or more of students with IEPs are in the standard program of study, no more than 10-15% of students with IEPs shall graduate in the career readiness program of study, and no more than 1-3% of students with IEPs shall graduate in the ability program of study. Districts or charter schools exceeding the above maximum percentages shall submit a request for a waiver regarding each student affected. The request for waiver shall include the district name, the high school name, a list of all students on the alternate program of study exceeding the maximum percentage (including student demographics, unique

- student identifiers and the justification for changing each student's program of study). The waiver request shall be signed and submitted by the superintendent or charter school administrator to the secretary.
- (i) A student who receives special education services may be granted a conditional certificate of transition in the form of a continuing or transition IEP when:
 - (i) the IEP Team provides sufficient documentation and justification that the issuance of a conditional certificate of transition for an individual student is warranted;
 - (ii) prior to the student's projected graduation date, the IEP Team provides a PWN stating that the student will receive a conditional certificate of transition;
 - (iii) the district or charter school ensures that a conditional certificate of transition is not a program of study and does not end the student's right to a FAPE;
 - (iv) the district or charter school ensures that a conditional certificate of transition entitles a student who has attended four years or more of high school to participate in graduation activities, and requires that the student continue receiving special education supports and services needed to obtain the high school diploma;
 - (v) the district or charter school ensures that, prior to receiving a conditional certificate of transition, the student has a continuing or transition IEP;
 - (vi) the student's continuing or transition IEP outlines measures, resources and specific responsibilities for both the student and the district or charter school to ensure that the student receives a diploma.
 - (j) A student who does not return to complete the program of study as outlined in the continuing or transition IEP will be considered as a dropout.
 - (k) A student who receives a conditional certificate of transition is eligible to continue receiving special education services until receipt of a diploma or until the end of the academic year in which the student turns 22 years of age.
 - (l) Graduation plans shall be a part of all IEPs:
 - (i) by the end of eighth grade, or by the time the student turns 14 years of age, and concurrent with the development of the student's transition plan in accordance with federal regulations at 34 CFR §300.320;
 - (ii) when a student returns to a school after an extended absence, and if an IEP program of study may have been developed but needs to be reviewed; or
 - (iii) when evaluations warrant the need for a modified program of study at any time after development of an initial graduation plan.
 - (m) Graduation plans shall be a part of all of all IEPs and annual reviews, and shall follow the student in all educational settings. Receiving institutions that fall under the department's jurisdiction will recognize these graduation plans, subject to revision by new IEP teams, if appropriate to meet a student's changing needs.
 - (n) At the exit IEP meeting, the team shall review the student's transition plan, and shall confirm and document that all state and district requirements for graduation under the final IEP have been satisfied. A building administrator who has knowledge about the student shall be a member of this team, and shall sign specifically to verify and accept completed graduation plans, goals and objectives pursuant to (i) - (iii) of Subparagraph (b) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC, or plans for a conditional certificate of transition with a continuing or transition IEP, pursuant to Subparagraph (i) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC. The IEP team shall ensure that the student has current and relevant evaluations, reports or other documentation necessary to support a smooth and effective transition to post-secondary services for a student who will graduate on one of the three programs of study. The school shall arrange for any necessary information to be provided at no cost to the students or parents. The school shall submit a list of students who will receive the diploma through a career readiness or ability program of study to the local superintendent or charter school administrator, using the students' numbers. This list shall be totaled and submitted to the local school board or governing body of a charter school. This information shall be treated as confidential in accordance with the FERPA.
 - (o) Students eligible for special education services are entitled to a FAPE through age 21. If a student turns 22 during the school year, the student shall be allowed to complete the school

year. If a student turns 22 prior to the first day of the school year, the student is no longer eligible to receive special education services.

- (p) The receipt of a diploma terminates the service eligibility of students with special education needs.
 - (q) All diplomas awarded by a school district or charter school shall be identical in appearance, content and effect, except that symbols or notations may be added to individual students' diplomas to reflect official school honors or awards earned by students.
- (14) Future changes in graduation requirements. Refer to 6.29.1.13 NMAC.

G. Transfers / New to the District

§300.304 Evaluation procedures.

(c) Other evaluation procedures.

- (5) Assessments of children with disabilities who transfer from one school district to the ASK Academy in the same academic year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §300.301 (d)(2) and (e), to ensure prompt completion of full evaluations. *See §300.301 (d)(2) and (e) found in Chapter 3. – Evaluation.*

§300.323 When IEPs must be in effect.

(e) IEPs for children who transfer public agencies in the same state.

If a child with a disability (who had an IEP that was in effect in a previous school district in the same State) transfers to The ASK Academy within the same school year, the ASK Academy (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous school district), until the ASK Academy either--

- (1) Adopts the child's IEP from the previous The ASK Academy; or
- (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324.

(f) IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous school district in another State) transfers to The ASK Academy, and enrolls in a new school within the same school year, the ASK Academy (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous school district), until the ASK Academy--

- (1) Conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by The ASK Academy); and
- (2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§300.320 through 300.324.

(g) Transmittal of records. To facilitate the transition for a child described in paragraphs (d) and (f) of this section --

- (1) The ASK Academy must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school district in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and
- (2) The previous school district in which the child was enrolled must take reasonable steps to promptly respond to the request from the ASK Academy.

If the conditions of subsection (f)(1-2) are met, The ASK Academy will conduct an IEP Team meeting in order to document in writing the services to be implemented by The ASK Academy during the interim placement until the evaluation is completed.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

H. Transfers and transmittals. When IEPs must be in effect.

- (1) IEPs for children who transfer public agencies in the same state. If a child with a disability (who had an IEP that was in effect in a previous school district in New Mexico) transfers to The ASK Academy in New Mexico, and enrolls in a new school within the same school year, The ASK Academy must provide FAPE to the child. The IEP must include services comparable to those described in the child's IEP from the previous school district, until The ASK Academy either:

- (a) adopts and implements the child's IEP from the previous The ASK Academy; or
 - (b) develops and implements a new IEP that meets the applicable requirements in 34 CFR §§300.320 through 300.324.
- (2) IEPs for children who transfer from another state. If a child with a disability (who had an IEP that was in effect in a previous school district in another state) transfers to The ASK Academy in New Mexico, and enrolls in a new school within the same school year, The ASK Academy must provide the child with FAPE. The IEP must include services comparable to those described in the child's IEP from the previous agency, until The ASK Academy:
- (a) conducts an evaluation pursuant to 34 CFR §§300.304 through 300.306 (if determined to be necessary by The ASK Academy); and
 - (b) develops and implements a new IEP, if appropriate, that meets the applicable requirements in 34 CFR §§300.320 through 300.324.
- (3) Transmittal records. To facilitate the transition for a child described in Paragraphs (1) and (2) of this section:
- (a) The ASK Academy in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school district in which the child was enrolled; and
 - (b) the previous school district in which the child was enrolled must take reasonable steps to promptly respond to the request from The ASK Academy.

The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, does not require the student's current and previous school districts to obtain parental consent before requesting or sending the student's special education records if the disclosure is conducted in accordance with 34 CFR §§99.31(a)(2) and 99.34. [*FERPA regulations*]

IX. TRANSITION PLANNING

§300.320 Definition of individualized education program

- (b) **Transition services.** Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include--
- (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
 - (2) The transition services (including courses of study) needed to assist the child in reaching those goals.

§300.43 Transition services.

- (a) **Transition services** means a coordinated set of activities for a child with a disability that--
- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
 - (2) Is based on the individual child's needs, taking into account the child's strengths, preferences and interests; and includes--
 - (i) Instruction;
 - (ii) Related services;
 - (iii) Community experiences;
 - (iv) The development of employment and other post-school adult living objectives; and
 - (v) If appropriate, acquisition of daily living skills and functional vocational evaluation.
- (b) **Transition services** for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

§300.321 IEP Team

(b) Transition services participants.

- (1) In accordance with paragraph (a)(7) of this section, The ASK Academy must invite a child with a disability to attend the child's IEP meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under §300.320(b).**
- (2) If the child does not attend the IEP meeting, The ASK Academy must take other steps to ensure that the child's preferences and interests are considered.**
- (3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, The ASK Academy must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.**

§300.322 Parent Participation

(b) Information provided to parents.

- (1) The notice required for the IEP meeting must--**
 - (i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and**
 - (ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child).**
- (2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must--**
 - (i) Indicate--**
 - (A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and**
 - (B) That The ASK Academy will invite the student; and**
 - (ii) Identifies any other agency that will be invited to send a representative.**

§300.324 (c) Failure to meet transition objectives.

- (1) Participating agency failure. If a participating agency, other than The ASK Academy, fails to provide the transition services described in the IEP in accordance with §300.320(b), The ASK Academy must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.**
- (2) Construction. Nothing in this part relieves any participating agency, including the New Mexico PED vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.**

Authority: NMAC 6.31.2.11. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

G. Graduation planning and post-secondary transitions

- (1) The IEP for each child with a disability in grades 8 through 12 is developed, implemented and monitored in compliance with all applicable requirements of the department's Standards for Excellence (Chapter 29 of Title 6 of the NMAC), and these or other department rules and standards. The graduation plan shall be integrated into the transition planning and services provided in compliance with 34 CFR §§300.320(b), 300.324(c).**
 - (a) Graduation plans must include the course of study, projected date of graduation and if the child is not on target for the graduation plan, the strategies and responsibilities of The ASK Academy, child and family must be identified in the IEP.**
 - (b) Graduation options for children with disabilities at Paragraph (13) of Subsection J of 6.29.1.9 NMAC must align with state standards with benchmarks when appropriate.**
 - (c) An alternative degree that does not fully align with the state's academic standards, such as a certificate or general educational development credential (GED), does not end a child's right to FAPE pursuant to 34 CFR §300.102(a)(3).**
- (2) Appropriate post-secondary transition planning for children with disabilities is essential. Public agencies shall integrate transition planning into the IEP process pursuant to 34 CFR §§300.320(b), 300.324(c) and shall establish and implement appropriate policies, procedures, programs and services to promote successful post-secondary transitions for children with disabilities. Transition services for students 14 to 21 include the following.**

- (a) Transition services are a coordinated set of activities for a child with a disability that emphasizes special education and related services designed to meet unique needs and prepare them for future education, employment and independent living.
 - (b) Transition services are designed to be within a results oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation.
 - (c) Transition services must be based on the individual child's needs, taking into account the child's strengths, preferences and interests and includes:
 - (i) instruction;
 - (ii) related services;
 - (iii) community experiences;
 - (iv) the development of employment and other post-school adult living objectives; and
 - (v) when appropriate, acquisition of daily living skills and the provision of a functional vocational evaluation.
 - (d) Transition services for children with disabilities may be considered special education, if provided as individually designed instruction, aligned with the state standards with benchmarks, or related service, if required to assist a child with a disability to benefit from special education as provided in 34 CFR §300.43.
- (3) State rules require the development of measurable post-school goals beginning not later than the first IEP to be in effect when the child turns 14, or younger, if determined appropriate by the IEP team, and updated annually thereafter. Pursuant to 34 CFR §300.320(b), the IEP must include:
- (a) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and where appropriate, independent living skills;
 - (b) the transition services (including courses of study) needed to assist the child in reaching those goals; and
 - (c) a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority.
- (4) Measurable post school goals refer to goals the child seeks to achieve after high school graduation. The goals themselves must be measurable while the child is still in high school. In addition, the nature of these goals will be different depending on the needs, abilities and wishes of each individual child.

X. GRADUATION OPTIONS

A. Guidelines for Graduation Options

The IEP is the overriding document of planning for a student receiving special education and related services to progress through the educational process. In accordance with 6.31.2.11 (G) NMAC, the IEP for each student receiving special education support and services in grades eight through twelve shall include graduation planning that is integrated into transition planning and services. The IEP should be coordinated and developed with a graduation/transition plan, which includes the multi-year program of study for each student who progresses through a high school program. By the end of the eighth grade, each student's IEP must contain a proposed individual program of study for the grades remaining until high school graduation. These multi-year plans are based on the student's post-school goals, thus personalizing learning and providing relevance. These programs of study must be reviewed and revised on an annual basis.

- 1) The multi-year plan must:
 - be a part of all IEPs for students receiving special education support and services in grades 8 through 12 or to age 22;
 - identify by name all course options the student may take in the remaining years of the students secondary program;
 - reflect the student's long-range measurable post-school goals; and
 - be reviewed on an annual basis and adjusted to address the student's strengths, interests, preferences, and needs.

- 2) The IEP Team is responsible for developing a multi-year plan that is most conducive to preparing a student to achieve his or her post-school goals.
 - The composition of the IEP Team must meet federal and state requirements.
 - When a graduation program of study is proposed, an individual knowledgeable about high school curriculum should be included on the team.
 - The parent(s) and student should be members of this team, and sign to verify and accept graduation/transition plans. (Parent participation is not mandatory if the student is 18 years of age unless the parent has legally retained guardianship.)
 - A building administrator or designee who has knowledge about the student should be a member of the team when an alternative program of study is developed and be able to verify and accept completed plans for students receiving special education services on the career and ability graduation options.
- 3) Program of study selection is an IEP Team decision. Parents and students must be a part of the decision-making process. The student's graduation needs and personal goals are the primary considerations for identifying and developing an alternative graduation plan. The IEP team must:
 - base all decisions on the student's strengths, needs, measurable post-school, transition service needs, goals, interest, and preferences; and
 - begin discussion on graduation/transition plans at the eighth grade IEP, including plans leading to earning a regular diploma.
 - Consider the graduation option in the order listed in regulation. If the IEP team chooses an alternative graduation option, the team must:
 - justify and document the reasons for doing so in the IEP;
 - provide sufficient documentation as a basis for its initial decision to place a student on an alternative graduation option other than the standard;
 - notify parents and students of potential consequences of this decision; and
 - base all decisions on the needs of the student and **not** on the student's ability to earn required credits or pass the current exit exam.
- 4) Assessing and documenting student progress toward graduation is crucial to the overall process. IEP teams must document the following information on the student's IEP:
 - Review and document progress toward graduation on an annual basis for all students in grades 8-12.
 - Document skill attainment and progress toward achieving competencies.
 - Document each student's progress toward earning required graduation credits and passing the current graduation examination(s).
 - Ensure and document that requirements of the student's program of study are met.
 - Revise the IEP to reflect any changes in the student's graduation needs and/or plans.
 - Identify supports and services that will help students achieve IEP goals and meet graduation requirements.
- 5) Transition planning is an important part of the IEP process beginning no later than the first IEP to be in effect when a student is in the eighth grade. The IEP team should address the following components of transition planning:
 - Coach every student to think about goals for life after high school and develop a long range plan.
 - Ensure the IEP contains appropriate measurable post-school goals based upon age-appropriate transition assessments, and that these are updated annually.
 - Develop a plan to ensure the high school experience relate to each student's post-school goals.
 - Ensure that each student gains the skills and competencies needed to achieve his or her desired post-school goals.
 - Identify and link students and families to needed post-school services, supports, or programs before the student exits the school system.
 - Ensure that the student has necessary evaluations, documents, or reports to facilitate a smooth transition to adult services and/or postsecondary institutions.
 - Ensure that all domain areas of transition (instruction, related services, community experiences, the development of employment and other post-school living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation) are considered and documented in the IEP, pursuant to federal regulations and state special education rules.

- 6) Students receiving special education services must participate in the Statewide College and Workplace Readiness Assessment System and take the current state graduation and/or exit exam or the state approved New Mexico Alternate Assessment. The IEP must specify:
 - which assessment will be administered,
 - are accommodations necessary, if so
 - what State approved accommodations are needed.
- 7) IEP teams must determine if the student is eligible for participation in an alternate assessment according to the following criteria:
 - The student's past and present levels of academic achievement and functional performance in multiple settings indicates that a significant cognitive disability is present;
 - The student needs intensive, pervasive, or extensive levels of support in school, home, and community settings; and
 - The student's current cognitive and adaptive skills and performance levels require direct instruction to accomplish acquisition, maintenance, and generalization of skills in multiple settings.
- 8) As a best practice, IEP teams should identify strategies that will help the student master skills required to pass the assessment for students on the Standard graduation option or to achieve the level of proficiency determined by the IEP Team for students graduating on the Career Readiness or Ability program of study. The team should also consider identifying who will be responsible for ensuring the completion of the above items.



Note: The NMPED strongly encourages IEP teams to review the most current New Mexico Statewide Assessment Program Procedures Manual for guidance on selecting appropriate accommodations. This guidance is updated annually. <http://www.ped.state.nm.us/AssessmentAccountability/AssessmentEvaluation/index.html>

- 9) Additional responsibilities for IEP teams include the following:
 - Monitor and report student progress toward meeting IEP goals to parents with at least the same frequency as the reporting schedule for non-disabled students.
 - Verify that each student achieved program goals and objectives leading to graduation and receipt of a high school diploma.
 - Protect the integrity of the diploma for all students by complying fully with the requirements of the graduation options for students receiving special education services.
 - Ensure that the IEP and Prior Written Notice of Actions Proposed (PWN), given to the parents at the end of each IEP meeting, reflects the students progress toward his or her graduation plans as he or she transitions into high school, and at all points in the process.



Note: See the Public Education Department's *Technical Assistance Manual: Developing Quality IEP's* for assistance and forms.

<http://www.ped.state.nm.us/SEB/technical/Developing%20Quality%20IEP%20Manual%20March%202011.pdf>

- 10) Pursuant to the IDEA 2004 and state rules, IEP teams must provide each eligible student with a summary of the student's academic achievement, functional performance, and additional recommendations on how to assist the student in meeting his or her post-school goals.
- 11) The Department strongly recommends that building administrators monitor progress of each student with a disability toward graduation plan requirements throughout high school.
- 12) When the exit IEP Team meets to review the student's program of study and progress to determine if the student has fulfilled graduation plan requirements, the building administrator must be included on the

team. The building administrator is responsible for ensuring the integrity of the graduation process. The LEA's Special Education Director is responsible for monitoring graduation data.

- 13) A student graduating under any option or receiving a certificate with a follow-up plan of transition must participate equitably in all graduation ceremonies.
- 14) The least restrictive environment (LRE) principles apply to all graduation options, and IEP teams must ensure that the student has appropriate access to the general education curriculum.

B. Standard Graduation Option

A Standard Graduation Option is a program of study based upon meeting or exceeding all requirements for graduation as identified in the New Mexico Standards for Excellence, with or without reasonable accommodations of delivery and assessment methods. In addition, a student must participate in the Statewide college and workplace readiness assessment system and pass all sections of the current state graduation examination(s) administered under standard administration or with state approved accommodations and meet all other standard graduation requirements established by the district. The IEP Team selects required courses and electives based on the student's post-school goals, strengths, interests, and needs. If the IEP Team chooses a graduation option other than the standard, the team must provide documentation for selecting an alternative graduation option.

Additional Guidelines for Standard Graduation Option

- 1) The student must:
 - meet or exceed the requirements for graduation based on the Standards for Excellence Section J of 6.29.1.9 NMAC and Section 22-13-1.1 NMSA 1978;
 - participate in the Statewide College and Workplace Readiness Assessment System
 - meet all other standard graduation requirements of the district; and
 - pass the current New Mexico graduation and/or exit exam—with or without accommodations by obtaining the minimum level of proficiency and/or performance established by the Public Education Department.
- 2) Credits may include courses in which curriculum or instructional accommodations are applied as long as the student achieves the same competencies listed on the graduation requirements.
- 3) The IEP Team should look closely at the student's results from grades nine and ten short-cycle diagnostic assessment and scores on the first attempt on the high school exit exam. The IEP Team should treat those scores as baseline of performance from which the IEP Team identifies strategies to improve a student's skills and enable him or her to pass the current state graduation and/or exit exam.

The steps for teams to follow are:

- Ensure progress in the general education curriculum so that a student can meet the same educational standards that apply to all students.
- Align goals to the state standards with benchmarks and assessment and focus on helping the student attain the skills needed to achieve standards reflected in assessment.
- Be sure the student takes practice assessments. A student may know the material but if not familiar with the test format, he or she may have difficulty passing the test.



The SEB strongly encourages the use of the *New Mexico High School Competency Examination Domain Specifications* to help prepare students for the exam question format. The Domain Specification document can be accessed on the NMPED website.

<http://www.ped.state.nm.us/AssessmentAccountability/AssessmentEvaluation/NMHSCE/index.html>

- 4) If the student passes the graduation exit exam on the first attempt, the IEP Team should work to ensure that the student meets all other requirements for graduation on the standard option.
- 5) If the student's transition plan includes accessing services such as special services at the post-secondary level or Division of Vocational Rehabilitation (DVR) Services, the IEP Team should determine whether the

student requires updated evaluations, reports, or documents to support a smooth and effective transition to the post-secondary setting.

C. Career Readiness Graduation Option

The Career Readiness Graduation Option provides the opportunity to pursue career interests within the career clusters. The student's program of study must address the New Mexico Public Education Department's (NMPED) content standards with benchmarks and performance standards. The student must achieve competency in all areas of the NMPED employability and career development standards with benchmarks and performance standards as defined in the IEP, with or without reasonable accommodations of delivery and assessment methods. In addition, a student must participate in the statewide college and workplace readiness assessment system and take the current state graduation examination(s) under standard administration or with state-approved accommodations and achieve a level proficiency determined by the IEP Team. The student must earn at least the minimum number of credits required by the district for graduation through standard or alternative courses. The IEP Team determines the course of study the student will complete. The course of study and the student's IEP goals must be designed to assist the student in achieving competency in all areas of the NMPED employability and career development standards with benchmarks and performance standards. The course work shall include a minimum of four units of career development opportunities and learning experiences. The experiences may include career readiness and vocational course work, work experience, community-based instruction, student service learning, job shadowing, mentoring or entrepreneurship related to the student's occupational choices. The career readiness graduation option takes into account the individual student's strengths, interest, career preference, and needs and allows for the substitution of classes as appropriate. The IEP Team uses the IEP to document mastery of those standards and benchmarks.

Additional Guidelines for Career Readiness Graduation Option

- 1) Completion of the career readiness program of study requires that a student achieve his or her IEP goals and objectives based on the Employability and Career Development Standards with Benchmarks and Performance Standards. These Standards, Benchmarks, and Performance Standards are included in the CONTENT STANDARDS WITH BENCHMARKS AND PERFORMANCE STANDARDS FOR CAREER AND TECHNICAL EDUCATION, GRADES 7-12 in Subsection 2.29.3.8 NMAC:
 - Students will know and understand the importance of employability skills:
 - BENCHMARK 1: Identify and demonstrate the use of positive work behaviors and personal qualities needed to be employable.
 - BENCHMARK 2: Develop a personal career plan to meet career goals and objectives.
 - BENCHMARK 3: Demonstrate skills related to seeking and applying for employment to find and obtain a desired job.
 - Students will explore, plan and effectively manage careers:
 - BENCHMARK 1: Maintain a career portfolio to document knowledge, skills and experience in a career field.
 - BENCHMARK 2: Demonstrate skills in evaluating and comparing employment opportunities in order to accept employment positions that match career goals.
 - BENCHMARK 3: Identify and exhibit traits for retaining employment to maintain employment once secured.
 - BENCHMARK 4: Identify and explore career opportunities in one or more career options to build an understanding of the opportunities available in the cluster.
 - BENCHMARK 5: Recognize and act upon requirements for career advancement to plan for continuing education and training.
 - BENCHMARK 6: Continue professional development to keep current on relevant trends and information within the industry.
 - BENCHMARK 7: Examine licensing, certification and credentialing requirements at the national, state and local levels to maintain compliance with industry requirements.
 - BENCHMARK 8: Examine employment opportunities in entrepreneurship to consider entrepreneurship as an option for career planning.
- 2) The IEP Team must consider the standard graduation option first. If the IEP Team changes the student's program of study from the standard to the career readiness, the team must:

- justify and document the reasons for rejecting the standard program of study on the IEP and PWN;
 - provide parents and students with a clear, concise definition of the career readiness program of study;
 - notify parents and students of potential consequences of the choice that may limit the student's post-school options;
 - demonstrate that sufficient documentation and evidence exists to support its decision to place the student on the career readiness program of study; and
 - base all decisions on the needs of the student and not solely on the student's ability to earn required credits or pass the current exit exam.
- 3) To earn a diploma on the career readiness graduation option a student must:
 - earn at least the district's required number of credits (the IEP Team determines the standard and alternate courses that will make up the student's program of study and ensure the student meets requirements identified in the Standards for Excellence);
 - participate in the Statewide College and Workplace Readiness Assessment System;
 - achieve competency in all areas of the Employability and Career Development Standards with Benchmarks and Performance Standards; and
 - take the current graduation exit exam and achieve a level of proficiency determined by the student's IEP Team.
 - 4) The IEP Team should document the classes, courses, and/or experiences which will be used to assure that the student achieves standards as identified in the Employability and Career Development Standards with Benchmarks and Performance Standards in the student's IEP.
 - 5) Districts are encouraged to devise ways to document on the transcript, or other permanent document, the fact that the student has achieved benchmarks and other requirements identified on his or her graduation plan.
 - 6) In the best interest of the student, a high school counselor should be included in the IEP meeting to assist students and other team members in developing the program of study

D. Ability Graduation Option

The Ability Graduation Option means a program of study based upon meeting or surpassing IEP goals and objectives, with or without reasonable modification of delivery and assessment methods, referencing skill attainment at a student's ability level, which may lead to meaningful employment. The IEP Team designs the ability program of study to meet the student's needs with IEP goals, objectives, and benchmarks developed to provide the most appropriate program for the student. The IEP goals and functional curriculum course work must be based on the State Standards with Benchmarks and Performance Standard or the State Expanded Grade Band Expectations. Typically, IEP teams develop the ability program of study for students with severe cognitive and/or physical disabilities or students with severe mental health challenges. The ability program of study varies from the standard high school graduation requirements. Students on the ability program of study must participate in the statewide college and workplace readiness assessment system and take the current state graduation examination(s) or the State's Alternate Assessment and must achieve a level of proficiency determined by the IEP Team. The IEP Team must individualize the ability program of study for each student's needs.

Once the IEP Team has identified a graduation option and developed an appropriate IEP, the team is required to assess and document student progress and to update goals, objectives, and benchmarks annually or as needed. The alternative graduation options may depart from the standard program of study only as far as necessary to meet the student's needs as determined by the IEP Team. IEP teams cannot change a senior's option after the 20th school day of the final year of high school, except in situations where seniors experience unusual medical emergencies. Waivers for special exceptions after the 20th school day must be sent to the NMPED for approval.

Additional Guidelines for Ability Graduation Option

- 1) Under the Ability graduation program of study, the majority of the goals and objectives relate to functional life and community skills. The ability program of study was developed for students who have a significant cognitive disability or severe mental health issues.
- 2) To graduate on this option, it must be the case that

- a student has been consistently working toward identified goals, objectives, and benchmarks, developed by the IEP Team; and,
 - has achieved a level of success that the IEP team agrees is commensurate with the student's abilities
- 3) The IEP Team must consider the standard option first. If the IEP team rejects the standard and career readiness options the team must:
 - justify and document the reasons for rejecting the standard and career readiness option on the PWN;
 - provide parents and students with a clear, concise definition of the ability graduation option;
 - notify parents and students of potential consequences of the choice that may limit the student's post-school options;
 - demonstrate that sufficient documentation and evidence exists to support its decision to place the student on the ability program of study; and
 - base all decisions on the needs of the student and **not** on the student's ability to earn required credits or pass the current exit exam.
 - 4) The student must successfully complete the requirements of the ability graduation option and his or her IEP by participating in specially designed programs that meet his or her educational and transition service needs through community-based instruction, transportation, work experience, community participation, recreation and leisure, accessing adult services, independent living skills, etc.
 - 5) The IEP Team must document student progress toward goals and objectives, referencing skill attainment.
 - 6) The student must take either the current state graduation examination(s) administered pursuant to NMSA 1978, §22-13-1.1(k) or (l) or the state-approved alternate assessment, achieving a level of proficiency to be determined by the student's IEP Team, and meet all other graduation requirements established by the IEP Team.

http://www.ped.state.nm.us/div/acc.assess/assess/Expanded_Grade_Band_Expectations/egbe.html

E. Establishing a Level of Proficiency - Career Readiness and Ability Option

- 1) "Target level of proficiency" is a score on the current graduation exam, determined by the IEP Team as the proficiency level the student must reach to graduate.
- 2) To establish the target level of proficiency, the IEP Team must review the student's results from grades nine and ten short-cycle diagnostic assessment and performance on the **first** attempt on the graduation exam, which currently occurs during the 2nd semester of the 10th grade.
- 3) The IEP Team must establish a targeted proficiency level on all sections of the graduation exam where the student's score falls below the state's minimum requirement.
- 4) For the purposes of accountability and reporting, if the score determined by the IEP Team falls short of the state's minimum requirement, the district must report the student as a **no pass** on the graduation examination.
- 5) If the student meets the IEP Team's determined level of proficiency and the determined level is less than the state's minimum requirement, the student will **not** have the option to move to the standard option.
- 6) The IEP must document the target levels of proficiency on the IEP and PWN and outline a plan of action to be taken by both the student and the district to assist the student in meeting the target level of proficiency.
- 7) The IEP Team should look closely at the results from grades nine and ten short-cycle diagnostic assessment and scores from the student's first attempt on the exit exam. and identify strategies to improve student's skills to achieve the level of competency determine by the team.

Steps for IEP teams to follow include:

- The level of competency must be reasonable and based on the student's present level of academic achievement and functional performance in a variety of settings.
- Ensure progress in the general education curriculum so that a student can meet the educational standards that apply to all students.
- Align goals and objectives to the state standards with benchmarks.
- Focus on helping the student attain the skills needed to achieve standards reflected in assessment.
- Be sure the student takes practice assessments. A student may know the material, but if he/she is not familiar with the test format, he/she may have difficulty passing the test.

- Ensure that the targeted proficiency score is higher than the score achieved by the student on the first attempt, in order to promote progress.

F. Guidelines for Issuing a Conditional Certificate of Transition

- 1) The IEP Team must:
 - review graduation plans on an annual basis for students in grades 8-12;
 - provide documentation and justification that the issuance of a conditional certificate of transition is warranted (See Case Studies on pages 39-42 and Frequently Ask Questions, pages 94-97);
 - evaluate and document on the PWN the student's progress toward meeting diploma requirements for his or her identified program of study; and
 - provide PWN that a student will receive a conditional certificate of transition in the form of a continuing or transition IEP.
- 2) The conditional certificate of transition in the form of a continuing or transition IEP:
 - indicates the student has attended four years (or more) of high school;
 - does not terminate the student's right to FAPE;
 - is not reported as an "exit" in the Student Teacher Accountability Reporting System (STARS);
 - allows the student to participate equally in all graduation activities;
 - does not end the student's right to FAPE; and
 - allows the student to return to school for additional educational and transition needs.
- 3) Before awarding a conditional certificate of transition in the form of a continuing or transition IEP, the IEP team must agree to the following:
 - The student's program and instruction have been appropriate and implemented as written.
 - The student has attended four or more years of high school.
 - The student may participate equally in all graduation activities.
 - The student has a follow-up plan of action in the form of a continuing or transition IEP.
- 4) Districts must ensure that the student has a continuing or transition IEP that outlines measures, resources, and specific responsibilities for the district, the student, and the family to ensure the student receives a high school diploma.
- 5) Upon satisfactory completion of a standard, career readiness, or ability program of study, the student will receive his or her diploma, and be reported as an exited student in STARS.
- 6) A student who does not return to complete the follow-up plan of action will be considered a dropout unless they are enrolled in another school district, private school, or State or district-approved education program (including a GED program), or temporary absence due to suspension or school-approved illness.

XI. STATE OR DISTRICT-WIDE ASSESSMENTS

§300.160 Participation in assessments.

- (a) **General.** The NMPED must ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.
- (b) **Accommodation guidelines.**
 - (1) The NMPED (or, in the case of a district-wide assessment, The ASK Academy) must develop guidelines for the provision of appropriate accommodations.
 - (2) The NMPED's (or, in the case of a district-wide assessment, The ASK Academy's) guidelines must—
 - (i) Identify only those accommodations for each assessment that do not invalidate the score; and
 - (ii) Instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.
- (c) **Alternate assessments.**
 - (1) The NMPED (or, in the case of a district-wide assessment, The ASK Academy) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in paragraph (a) of this section.

- (2) For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in paragraph (c)(1) of this section must provide for alternate assessments that—
 - (i) Are aligned with the State’s challenging academic content standards and challenging student academic achievement standards;
 - (ii) If the State has adopted modified academic achievement standards permitted in 34 CFR §200.1(e), measure the achievement of children with disabilities meeting the State’s criteria under §200.1(e)(2) against those standards; and
 - (iii) If the State has adopted alternate academic achievement standards permitted in 34 CFR §200.1(d), measure the achievement of children with the most significant cognitive disabilities against those standards.
- (d) **Explanation to IEP teams.** The NMPED (or in the case of a district-wide assessment, The ASK Academy) must provide IEP Teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of State or local policies on the student’s education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).
- (e) **Inform parents.** The NMPED (or in the case of a district-wide assessment, The ASK Academy) must ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards are informed that their child’s achievement will be measured based on alternate or modified academic achievement standards.
- (f) **Reports.** The NMPED (or, in the case of a district-wide assessment, The ASK Academy) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:
 - (1) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.
 - (2) The number of children with disabilities, if any, participating in alternate assessments based on grade level academic achievement standards.
 - (3) The number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards.
 - (4) The number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards.
 - (5) Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards, and alternate assessments based on alternate academic achievement standards if—
 - (i) The number of children participating in those assessments is sufficient to yield statistically reliable information; and
 - (ii) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.
- (g) **Universal design.** The NMPED (or, in the case of a district-wide assessment, **The ASK Academy**) must, to the extent possible, use universal design principles in developing and administering any assessments under this section.

§300.320 Definition of individualized education program.

- (a) **General.** As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--
 - (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments consistent with section 612(a)(16) of the Act; and
 - (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or district wide assessment of student achievement, a statement of why--

- (A) The child cannot participate in the regular assessment; and
- (B) The particular alternate assessment selected is appropriate for the child; and
- (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

- E. Participation in statewide and district-wide assessments. The ASK Academy and other public agencies when applicable shall include all children with disabilities in all statewide and district-wide assessment programs. The ASK Academy shall collect and report performance results in compliance with the requirements of 34 CFR §§300.157 and 300.160(f) and §1111(h) of the Elementary and Secondary Education Act, and any additional requirements established by the department. Students with disabilities may participate:
- (1) in the appropriate general assessment in the same manner as their nondisabled peers; this may include the use of adaptations that are deemed appropriate for all students by the department; or
 - (2) in the appropriate general assessment with appropriate accommodations in administration if necessary; The ASK Academy shall use the current guidance from the department about accommodations as specified in the student's IEP; or
 - (3) in alternate assessments for the small number of students for whom alternate assessments are appropriate under the department's established participation criteria; the IEP team must agree and document that the student is eligible for participation in an alternate assessment based on alternate achievement standards according to 34 CFR §300.320(a)(6).

To view manuals, sample test items and activities and tips that have proven to be successful in New Mexico in helping students prepare for the tests and for schools to reach AYP, go to the NMPED website at: www.ped.state.nm.us (look for the New Mexico Standards Based Assessment logo on the main page).

Students will be tested to determine how well they have mastered New Mexico Standards in reading, writing, mathematics and science. The IEP Team has the responsibility to determine not if they will participate, but how they will participate. If a student is not reasonably able to participate in the standard test administration with students without exceptionalities, the team selects the most appropriate alternate testing method. In making this decision, the IEP Team should begin by considering what accommodations the student receives for instruction. In most cases, accommodations regularly used for instruction will correlate with those needed for assessment. However, when determining testing accommodations for a student, the team should consider that the testing environment may differ from the instructional environment, and plan accordingly. The IEP Team must indicate which testing method will be used to allow the student to participate in district and state testing, as required by law.

The ASK Academy IEP teams will reference the New Mexico Technical and Evaluation Assessment Manual. The Manual is updated to reflect the most current guidance available. This version is available on the SEB website at: <http://www.ped.state.nm.us/SEB/technical/NMTeamManual.pdf>

The ASK Academy will follow the NMPED manual for allowable accommodations on state testing, and the IEP Team will specifically detail accommodations that the student needs throughout the school year to implement the IEP.

New Mexico Alternate Assessment (NMAA) Guide

For more information: <http://www.ped.state.nm.us/seo/assessment/Making.Asmnt.Decisions.0607.NMAPA.doc>

Both federal and state laws require that *all* students with disabilities are to be administered assessments intended to hold schools accountable for the academic performance of students. IEP Team members must actively engage in a planning process that addresses these issues:

- * assurance of the provision of accommodations to help facilitate student access to grade level instruction and state assessments. Accommodations Guide: <http://www.ped.state.nm.us/seo/assessment/200506.NM.Accomm.doc>
- * the use of alternate assessments to assess the achievement of students with the most significant cognitive disabilities. The New Mexico Online Alternate Assessment Course can be downloaded from: <http://www.ped.state.nm.us/ayp2007/press/Alternative%20Assessment-AYPMediaTraining7-25-07.pdf>. This

training takes test administrators through the administration of the New Mexico alternate assessments that are currently in place. It is updated every year to reflect any changes in the alternate assessment system. The participation criteria, located at the following link: <http://www.ped.state.nm.us/seo/guide/Making.Assessment.Decisions.NMALT.pdf>, for the New Mexico Alternate Assessments have become rule in the State of New Mexico. Sections 6.31.2.11(E)(3)(a)-(c) of the New Mexico Administrative Code now require that IEP teams “agree and document” that the student is eligible for participation in an alternate assessment according to the criteria listed above.

REQUIRED EXPLANATION OF STATE / DISTRICT-WIDE TESTING FOR THE IEP TEAM

§300.160 Participation in assessments. *(new – effective May 7, 2007)*

In order to meet all requirements listed above regarding state and district-wide testing, the following questions must be addressed in the IEP meeting. If the IEP Team determines, based on analysis of current data, that the student cannot take the State or district-wide assessments, the IEP Team must provide the following information:

- A. Specify why the child cannot participate in the regular assessment: _____
- B. List the particular alternate assessment that is appropriate for the child: NMAA area _____
- C. Sufficient documentation must be provided (multiple records and multiple sources of information) to answer ALL of the following questions in the affirmative.
 1. Does the student’s past and present performance in multiple settings (i.e., home, school, and community) indicate that a significant disability is present? Explain.
 2. Does the student need intensive, pervasive, or extensive levels of support in school, home, and community settings? Explain.
 3. Do the student’s current cognitive and adaptive skills and performance levels require direct instruction to accomplish the acquisition, maintenance, and generalization of skills in multiple settings (home, school, and community)? Explain.
 4. Has one of the following been ruled out as the primary reason why the student cannot be included in the state-mandated assessments?
 - excessive or extended absences
 - visual or auditory disabilities
 - specific learning disabilities
- D. Explain clearly the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards.
- E. Explain clearly the effects on the student’s education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

Definitions Below:

Accountability: *refers to an individual or group of individuals taking responsibility for the performance of students on achievement measures or other types of educational outcomes (e.g., dropout rates.)*

Alternate Assessment: *an assessment that is different from the one administered to most students. It is best viewed as the "process" for collecting information about what a student knows and can do. The majority of students participate in statewide assessments, some by using accommodations. Some students, however, are unable to take the test even with accommodations. For these students, the state must design an alternate method of determining their learning /learning progress. (Massanari, Carol B.,1999)*

Alternate or modified academic achievement standards: *a tailored/personalized measurement of a child’s attainment or accomplishment of the standards for academic areas of reading, writing and math. This alternate or modified measurement is not the same as the measurement used for the majority of regular education students, which is called the New Mexico Standards Based Assessment.*

Differences: *While the majority of regular education students will be administered an assessment based on New Mexico grade-level academic achievement standards, the alternate or modified academic achievement standards*

will be based on the student's functional performance data gathered by the IEP Team and will be individualized at the student's functioning level and not at the assigned grade level.

Effects on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards:

- Satisfactory performance on a regular assessment New Mexico Standards Based Assessment will qualify the student for a regular high school diploma.
- Student will not graduate through the New Mexico Standard Option but through one of the following Options: Career Readiness or Ability.

Accommodation that does not invalidate the test: an adjustment, change, or adaptation made to an assessment or the process of administering an assessment to students with special needs. This term generally refers to changes that do not significantly alter what the test measures. Such changes result from a student's needs and are not intended to give the student an unfair advantage. All accommodations must be identified in the student's IEP (CEC and the Learning Network 2000-2001).

Benchmarks: are statements of what all students should know and be able to do in a content area by the end of grade levels 4,8, and 12.

Content Standards: are broad descriptions of knowledge and skills students should acquire in a particular subject area.

Criterion-Referenced Test: a test that is designed to provide information on the specific knowledge or skills possessed by a student. Such tests are designed to measure the objectives of instruction, skill levels, or areas of knowledge. Their scores have meaning in terms of what the student knows and can do, rather than in their relation to the scores made by some comparison to a norm group (Tuckman, B, 1986).

Functional Tasks: skills used in everyday life or that prepare students for life after graduation. These skills include those required for personal maintenance and development, homemaking, and community life, work and career, recreational activities and travel within the community (Smith, D.D., 1998).

High Stakes Assessment: state and or district-wide tests that have important consequences for students, staff, or schools (CEC and the Learning Network 2000-2001).

Large Scale Assessments: these assessments show how students are performing against state standards or national norms, and hold school districts accountable for student performance (CEC and the Learning Network 2000-2001).

Norm-referenced Test: a test designed to provide information on the performance of test takers relative to one another. It measures basic concepts and skills commonly taught in schools throughout the country. These tests are not designed as precise measures of any given curriculum or single instructional program. Test results provide information that compares a student's achievement with that of a representative national sample. (Tuckman, B, 1986).

Performance-based Assessment: a task that enables a student to demonstrate abilities to meet objectives or standards (Campbell, Melenyzer, Nettles, and Wyman, 2000).

Rubric: a set of criteria and a scoring scale that is used to assess and evaluate students' work (Campbell, Melenyzer, Nettles, and Wyman, 2000).

Standardized Test: a type of test that is always administered and scored in the same way. These tests have norms reflecting a larger population (usually these are age or grade-based norms reflecting the performance of children throughout the country on the same tests).

New Mexico Public Education Department
Special Education Bureau

The ASK Academy
POLICIES AND PROCEDURES
FOR THE
PROVISION OF
SPECIAL EDUCATION SERVICES
FOR
STUDENTS WITH DISABILITIES AND GIFTED STUDENTS

Chapter 5.2 - ADDITIONAL IEP REQUIREMENTS

Date Chapter 5.2 Adopted by Governing Body: 6/12/14
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Chapter 5.2 - ADDITIONAL IEP REQUIREMENTS
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Chapter 5.2 ADDITIONAL IEP REQUIREMENTS

I. GIFTED STUDENTS

Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN:

- A. Gifted child defined. As used in 6.31.2.12 NMAC, “gifted child” means a school-age person, as defined in §22-13-6(D) NMSA 1978, whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking, meets the eligibility criteria in 6.31.2.12 NMAC, and for whom a properly constituted IEP Team determines that special education services are required to meet the child’s educational needs.
- B. Qualifying areas defined.
- (1) “Intellectual ability” means a score two standard deviations above the mean as defined by the test author on a properly administered intelligence measure. The test administrator must also consider the standard error of measure (SEM) in the determination of whether or not criteria have been met in this area.
 - (2) “Subject matter aptitude/achievement” means superior academic performance on a total subject area score on a standardized measure, or as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.
 - (3) “Creativity/divergent thinking” means outstanding performance on a test of creativity/ divergent thinking, or in creativity/divergent thinking as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.
 - (4) “Problem-solving/critical thinking” means outstanding performance on a test of problem solving/ critical thinking, or in problem-solving/critical thinking as documented by information from other sources as specified in Paragraph (2) of Subsection B of 6.31.2.12 NMAC.
 - (5) For students with “factors” as specified in Paragraph (2) of Subsection E of 6.31.2.12 NMAC, the impact of these factors shall be documented and alternative methods will be used to determine the student’s eligibility.
- C. Evaluation procedures for gifted children.
- (1) Child find (*located in Chapter 1. – Child Find/Interventions of the Policies and Procedures*)
 - (2) Analysis of data. The identification of a student as gifted shall include documentation and analysis of data from multiple sources for subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking including:
 - (a) standardized measures, as specified in Subsection B of 6.31.2.12 NMAC, and
 - (b) information regarding the child’s abilities from other sources, such as collections of work, audio/visual tapes, judgment of work by qualified individuals knowledgeable about the child’s performance (e.g., artists, musicians, poets and historians, etc.), interviews, or observations.
 - (3) The child’s ability shall be assessed in all four areas specified in Subsection B of 6.31.2.12 NMAC.
- D. Standard method for identification. (*See Chapter 3. Evaluation*)
- E. Alternative method for identification. (*See Chapter 3. Evaluation*)
- F. Applicability of rules to gifted children.
- (1) All definitions, policies, procedures, assurances, procedural safeguards and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the educational jurisdiction of each local school district, including children in charter schools within the district, **except:**
 - (a) the requirements of 6.31.2.8 NMAC through 6.31.2.10 NMAC;
 - (b) Subsections J, K and L of 6.31.2.11 NMAC regarding child find, evaluations and services for private school children with disabilities, children with disabilities in state-supported educational programs, children with disabilities in detention and correctional facilities and children with disabilities who are schooled at home;
 - (c) the requirements of 34 CFR §§300.530-300.536, Subsection I of 6.31.2.13 NMAC and 6.11.2.11 NMAC regarding disciplinary changes of placement for children with disabilities; and
 - (d) the requirements of 34 CFR §§300.43, 300.320(b) and 6.31.2.11(G)(2) regarding transition planning. Students identified as gifted must meet the requirements at Subsection B of 22-13-1.1 NMSA 1978, which is the next step plan for students without disabilities.

- (2) Assuming appropriate evaluations, a child may properly be determined to be both gifted and a child with a disability and be entitled to a free appropriate public education for both reasons. The rules in this section 6.31.2.12 NMAC apply only to gifted children.
- (3) Nothing in these rules shall preclude a school district or a charter school within a district from offering additional gifted programs for children who fail to meet the eligibility criteria. However, the state shall only provide funds under Section 22-8-21 NMSA 1978 for department-approved gifted programs for those students who meet the established criteria.

The ASK Academy does offer additional gifted programs for children who fail to meet the eligibility criteria.

G. Advisory committees (See Chapter 8).

Authority: NMAC 6.31.2.7 DEFINITIONS:

D. The definitions in Subsection D apply only to NMAC 6.31.2.12 (*educational services for gifted children*).

- (1) Gifted child defined. As used in 6.31.2.12 NMAC, "gifted child" means a school-age person as defined in §22-13-6(D) NMSA 1978 whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking meets the eligibility criteria in 6.31.2.12 NMAC and for whom a properly constituted IEP team determines that special education services are required to meet the child's educational needs.
- (2) Qualifying areas defined.
 - (a) "Intellectual ability" means a score two standard deviations above the mean as defined by the test author on a properly administered intelligence measure. The test administrator must also consider the standard error of measure (SEM) in the determination of whether or not criteria have been met in this area.
 - (b) "Subject matter aptitude/achievement" means superior academic performance on a total subject area score on a standardized measure, or as documented by information from other sources, as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.
 - (c) "Creativity/divergent thinking" means outstanding performance on a test of creativity/ divergent thinking, or in creativity/divergent thinking as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.
 - (d) "Problem-solving/critical thinking" means outstanding performance on a test of problem-solving/ critical thinking, or in problem-solving/critical thinking, as documented by information from other sources, as specified in Subparagraph (b) of Paragraph (2) of Subsection B of 6.31.2.12 NMAC.

Authority: NMSA 1978 §22-13-6.1. Gifted children; determination.

- A. The NMPED adopted standards pertaining to the determination of who is a gifted child and published those standards as part of the educational standards for New Mexico schools.
- B. In adopting standards to determine who is a gifted child, the department shall provide for the evaluation of selected school-age children by multidisciplinary teams from each child's school district. That team shall be vested with the authority to designate a child as gifted. The team shall consider information regarding a child's cultural and linguistic background and socioeconomic background in the identification, referral and evaluation process. The team also shall consider any disabling condition in the identification, referral and evaluation process.
- C. Each school district offering a gifted education program shall create one or more advisory committees of parents, community members, students and school staff members. The school district may create as many advisory committees as there are high schools in the district or may create a single district wide advisory committee. The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the school district or the schools the committee advises. The advisory committee shall regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery and shall demonstrate support for the gifted program.
- D. In determining whether a child is gifted, the multidisciplinary team shall consider diagnostic or other evidence of the child's:
 - (1) creativity or divergent-thinking ability;
 - (2) critical-thinking or problem-solving ability;
 - (3) intelligence; and
 - (4) achievement

For more information on Gifted Students, see the Technical Assistance and Training Document for Gifted Education at the NMPED website: <http://www.ped.state.nm.us/seo/gifted/gifted.pdf>
(See also Chapter 6. Least Restrictive Environment)

II. IEP Team Meeting– Step by Step (Before, During, After)

§300.320 Definition of individualized education program (IEP).

- (a) **General.** As used in this part, the term individualized education program, or IEP, means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--
(for all specific federal and state requirements, see previous Chapter 5.1 IEP)

A. Before the IEP Meeting

Setting Up the Meeting

Use the *Invitation to Individualized Educational Program Meeting* form to provide the essential written notification and purpose of an IEP meeting to parents (and students, when appropriate).

Minimum of 3 Attempts - Beginning 15 school days prior to the Proposed IEP Meeting Date

In accordance with State and Federal requirements, the ASK Academy will notify parents early enough of the IEP meeting in order to arrange a mutually agreeable time and location. After the first written invitation to IEP meeting is provided 15 school days prior, if the parent does not respond, the ASK Academy will document and send a second written invitation to the IEP meeting 10 school days prior. Again, if the parent still does not respond, a third invitation to IEP meeting will be sent in an attempt to get parental participation 5 school days prior to the scheduled IEP meeting. After three attempts and no response, the ASK Academy may go forward with the IEP Team meeting as scheduled. The first attempt **MUST** be in written form, the second should also be in writing and the third may be a follow-up phone call. Detailed records of phone calls made or attempted, and the results, must be documented on the written invitation form, along with copies of correspondence sent and any visits to the home or place of employment, and results. All dates and personnel initials must be documented in writing.

Help Parents Prepare

For parents to be able to participate comfortably as members of the IEP Team, they must first understand the IEP and its purpose. The Parents' Guide to an IEP is an optional letter designed specifically to familiarize parents with the IEP and what to expect. *The letter can be found at the NMPED website:*

<http://www.ped.state.nm.us/seo/iep/i9.appendix.a.doc>

Help Students Prepare

Below is a list of activities that can be done by educators and/or parents to help a student prepare for his/her IEP meeting, followed by some resources that may be useful in helping students learn self-advocacy and to just being comfortable expressing themselves around others.

- Spend time allowing the student to think about what he/she wants from education.
- Fully explain the purpose of the IEP meeting and who will be present.
- Review the parts of the IEP and what each one means.
- Share information that others will have, such as the past IEP, and be sure the student understands what it says.

Inviting All Participants

In addition to the parents and student (when applicable), other participants at an IEP meeting need to be invited and informed about their role in the meeting.

Participants to be invited to an IEP meeting:

- School system representative who meets federal requirements to represent the school
- Parents
- At least one regular education teacher (if the child is, or may be, participating in the general education environment)
- The child's special education teacher
- A professional who can interpret evaluation results
- Student, as appropriate

At an IEP meeting where transition is a component, include :

- The student (*must* be invited)
- Appropriate service agency and/or post-secondary representative(s)

Note: When a graduation program of study is proposed, an individual knowledgeable about high school curriculum must be included on the team. When the IEP Team meets to review the program of study and/or student progress to determine if he or she has fulfilled graduation plan requirements, a building administrator must be included on the team.

Other participants the school or the parents may want to invite, or at least inform about the meeting

- Related service providers
- All teachers who work with the student
- The principal, if other than the school representative
- Other individuals who have knowledge or pertinent information to contribute
- Parent advocate

Note: Related service providers have critical information about the student and should be invited to all annual IEP meetings as needed to support the written goals. When related service providers or others with information to share are unable to attend the full IEP meeting, alternate ways to include their input should be available. Some suggestions are to have the person:

- provide a written report
- send a representative (such as a paraprofessional) who works under his or her direction
- attend the meeting only for a short period during which time his or her input and information are discussed and documented
- participate by telephone for the entire meeting or the part of the meeting that is directly related to the related service.

Determine the IEP Meeting Facilitator

The facilitator or IEP chairperson holds the key to the success of the meeting. He or she must conduct the meeting so that everyone stays on task, yet has opportunities to contribute. Below are some tips on how to achieve this.

1. Have a prepared agenda. Either post it or give a copy to each participant.
2. Thank everyone for their time and interest.
3. Open with something light and upbeat that helps relax the participants (but not a joke!).
4. Remind participants that they are members of a team who all want the best for the student.
5. Set the tone by defining the objectives for the meeting and what is hoped to be accomplished.
6. Encourage participants to introduce themselves and share their perceived role in the meeting.
7. Pay attention to the time and keep the meeting moving.
8. If the discussion gets off-track, summarize what has been said, then redirect the topic.
9. If a topic or issue is brought up that is not relevant to the IEP, place it on a "sidebar" as something that needs to be revisited. (*Tip!* List it on the board or a posted sheet of chart paper for all to see. At the end of the meeting, indicate how the topic or issue will be dealt with.)
10. Use good listening skills to validate others' input and effective questioning techniques to encourage participation and stay on topic.

B. During the IEP Meeting

The NMPED has developed a recommended set of forms to assist you in ensuring that all of the IEP elements required by the regulations are covered. These forms and step-by-step guidelines may also be found on the website: <http://www.ped.state.nm.us/seoi/iep/index.htm> and <http://www.ped.state.nm.us/SEB/index.html>

The ASK Academy will use forms developed by the local district staff and assure all of the requirements are covered.

During the meeting, an IEP must be developed and must contain or address, in writing, all of the required elements in Chapter 5.1 – IEP, which includes the following areas:

1. Student Profile & Student/Family Vision
2. Transition Services
3. Present Levels of Academic Achievement and Functional Performance
4. Annual Goals

5. Consideration of Special Factors
6. Least Restrictive Environment
7. Extended School Year
8. Participation in Mandated Testing
9. Schedules & Levels of Services
10. Accommodations & Modifications
11. IEP Progress Documentation
12. Prior Written Notice of Proposed Actions

1. Student Profile & Student/Family Vision

The NMPED recommends beginning with general information about the student. Demographic information is very important in establishing a baseline about the student and is needed to track the student from year to year or from place to place. Include the:

- The strengths of the child;
- The concerns of the parents for enhancing the education of their child;
- The results of the initial or most recent evaluation of the child; and
- The academic, developmental, and functional needs of the child.

Though the Common Core Standards are the basis for developing educational goals, the views and feelings of the parents and student must be considered. One way to do this is to work with the parents (and family members, as appropriate) to develop a vision statement tailored to the student's preferences and interests. A family vision provides a common foundation for dialogue and allows the team to focus on developing a plan that will help the student be able to set and reach realistic goals and realize his or her aspirations.

A vision statement:

- Summarizes what the student and family want for the student
- Describes the student's expectations and hopes for the future
- Addresses the student's/family's situation and/or concerns
- Is developed through dialogue with the family and/or student
- Can, and should, be revised as circumstances or aspirations change

2. Transition Services – (See also [Life Span and Transition](#) - Chapter - IEP 5.1.)

One of the primary purposes of the IDEA is to ensure that children with exceptionalities are prepared for employment and independent living. Transition services must be a coordinated set of activities and/or strategies based on the student's needs, interests, and goals that includes instruction, related services, community experiences, the development of employment and other post-school objectives, and when appropriate, the acquisition of daily living skills and functional vocational evaluation.

Age 14: Beginning by age 14, the student's IEP must include a planned course of study designed to select high school courses based on the student's post-school goals and graduation requirements. Students in New Mexico may graduate using one of three graduation options. The IEP Team determines the most appropriate option based on the student's needs and impact of the exceptionality.

Age 16: In addition to planning a course of study, beginning at age 16 (or sooner, if appropriate), the student's IEP must address post-school plans and goals. The six areas of possible student needs must be addressed: instruction, related services, community experiences, employment or post-school options, independent living, and functional vocational assessment. The IEP Team then lists the activities and/or strategies to be implemented and who is responsible for providing those activities. The foundation of transition planning is to provide activities and experiences that will enable students to reach their post-school goals.

The IEP should address the student's course of study and the graduation option or certificate. Specific requirements and sample program plans can be found in the NMPED Technical Assistance and Training Resource Document "Graduation Options for Students with Disabilities". The document can be accessed from the NMPED's website at: <http://www.ped.state.nm.us/SEB/technical/GraduationOptionsStudentsWithDisabilities.pdf>

There are three graduation options for students receiving special education services:

Standard Graduation Option—a program of study based upon meeting or exceeding all requirements for graduation as identified in the New Mexico Standards for Excellence, with or without reasonable accommodations of delivery and assessment methods. In addition, a student must participate in the Statewide college and workplace readiness assessment system and pass all sections of the current state graduation examination(s) administered under standard administration or with state approved accommodations and meet all other standard graduation requirements established by the ASK Academy. The IEP Team selects required courses and electives based on the student's post-school goals, strengths, interests, and needs. If the IEP Team chooses a graduation option other than the standard, the team must provide documentation for selecting an alternative graduation option.

Career Readiness Alternative Graduation Option—a program of study developed to provide the opportunity to pursue career interests within the career clusters. The student's program of study must address the New Mexico Public Education Department's (NMPED) content standards with benchmarks and performance standards. The student must achieve competency in all areas of the NMPED employability and career development standards with benchmarks and performance standards as defined in the IEP, with or without reasonable accommodations of delivery and assessment methods. In addition, a student must participate in the statewide college and workplace readiness assessment system and take the current state graduation examination(s) under standard administration or with state-approved accommodations and achieve a level proficiency determined by the IEP Team. The student must earn at least the minimum number of credits required by the ASK Academy for graduation through standard or alternative courses. The IEP Team determines the course of study the student will complete. The course of study and the student's IEP goals must be designed to assist the student in achieving competency in all areas of the NMPED employability and career development standards, with benchmarks and performance standards. The course work shall include a minimum of four units of career development opportunities and learning experiences. The experiences may include career readiness and vocational course work, work experience, community-based instruction, student service learning, job shadowing, mentoring or entrepreneurship related to the student's occupational choices. The career readiness graduation option takes into account the individual student's strengths, interests, career preference, and needs and allows for the substitution of classes, as appropriate. The IEP Team uses the IEP to document mastery of those standards and benchmarks.

Ability Alternative Graduation Option— means a program of study based upon meeting or surpassing IEP goals and objectives, with or without reasonable modification of delivery and assessment methods, referencing skill attainment at a student's ability level, which may lead to meaningful employment. The IEP Team designs the ability program of study to meet the student's needs with IEP goals, objectives, and benchmarks developed to provide the most appropriate program for the student. The IEP goals and functional curriculum course work must be based on the State Standards with Benchmarks and Performance Standard or the State Expanded Grade Band Expectations. Typically, IEP teams develop the ability program of study for students with severe cognitive and/or physical disabilities or students with severe mental health challenges. The ability program of study varies from the standard high school graduation requirements. Students on the ability program of study must participate in the statewide college and workplace readiness assessment system and take the current state graduation examination(s), or the State's Alternate Assessment, and achieve a level of proficiency determined by the IEP Team. The IEP Team must individualize the ability program of study for each student's needs.

Once the IEP Team has identified a graduation option and developed an appropriate IEP, the team is required to assess and document student progress and to update goals, objectives, and benchmarks annually or as needed. The alternative graduation options may depart from the standard program of study only as far as necessary to meet the student's needs as determined by the IEP Team. IEP teams cannot change a senior's option after the 20th school day of the final year of high school except in situations where seniors experience unusual medical emergencies. Waivers for special exceptions after the 20th school day must be sent to the NMPED for approval.

3. Present Levels of Academic Achievement and Functional Performance (formerly PLEP)

Under the IDEA and New Mexico regulations, the IEP of a student with a disability must contain a statement of the student's present levels of academic achievement and functional performance, including how the exceptionality affects the student's involvement and progress in the general curriculum; or for preschool children, as appropriate, how the child's disability affects his or her participation in appropriate activities. This part of the IEP, addressing the student's present levels of performance, is the blueprint for the whole IEP document. The present levels of

academic achievement and functional performance were formerly referred to as PLEP (Present Levels of Educational Performance). This term is no longer appropriate, based on IDEA 2004 and the final regulations of August 2006.

The information on the present levels of academic achievement and functional performance should be:

- Current—based on recent data, observation, and evaluation
- Relevant—related to how the student's disability affects his or her education
- Specific—described as precisely as possible
- Objective—unbiased and from a variety of sources, such as formal observations, work samples, input from teachers, parents, service providers, formal and informal assessments and tests
- Measurable—conclusions from assessments, test scores, and other quantifiable data

The following is a summary of a few key points to keep in mind when writing present levels of academic achievement and functional performance statements.

- Consider the needs of the student identified by the evaluation. Write the statements for those areas only.
- Ensure that there is a direct relationship between the identified needs and the present levels of performance.
- Use information that is current, relevant, specific, objective, measurable, and obtained from a variety of sources.
- Use details about evaluation and test results, grade levels, and assessments—particularly data that can be quantified by degrees or comparison to standards.
- Consider the observations by teachers (regular and special education), parents, and input from the student (either directly or in the form of work samples or other evidence of performance levels).
- Take into account the effectiveness of any interventions, modifications, or supports that have previously been implemented.
- Write a separate present levels of academic achievement and functional performance statement for each specific problem and/or need for which an annual goal and objectives or benchmarks will be established. (Keep the number of goals to an amount that is attainable in 12 month.

4. Annual Goals (Benchmarks or short-term objectives)

Authority: 34 CFR §300.320 Definition of individualized education program (IEP).

- (a) **General.** As used in this part, the term individualized education program, or IEP, means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include—
- (2) (i) A statement of measurable annual goals, including academic and functional goals designed to—
 - (A) Meet the child's needs that result from the child's disability to enable the child to be involved in, and make progress in, the general education curriculum; and
 - (B) Meet each of the child's other educational needs that result from the child's disability;
 - (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

The next step in developing the IEP is to write one or more annual goals for the student, (supported by short-term objectives and/or benchmarks for those students who take an alternate assessment). These goals provide the purpose and direction for a student's IEP. They must address a direction of change, be measurable, and be directly related to the needs identified on the present levels of academic achievement and functional performance. Each goal must also be attainable within one year. Using the present levels of academic achievement and functional performance statements written, the IEP Team must first prioritize the student's needs. Then, it must decide which and how many goals the student can reasonably be expected to attain within one year. For students who are taking an alternate state assessment, for each goal, the team needs to construct short-term objectives (logical breakdown of the skill into distinct components) and/or benchmarks (progressive steps toward the goal).

Selecting and Writing Goals: Each goal must address a need identified on the student's present levels of academic achievement and functional performance statement, must be measurable, and be attainable within one year. In addition to the criteria above, when selecting goals, consider both formal and informal assessments. Also, keep in mind the student's interests and vision for the future. Write goals directed toward enabling the student to be involved in, and progress in the general curriculum and select goals based on New Mexico's Standards for Excellence Regulations: Content Standards and Benchmarks. When writing a goal, state what the student will do as a result of

the special education services being provided. The goal should be written in such a way that even someone unfamiliar with the student could implement it and assess its mastery. Include these components in each goal:

Conditions: under what conditions progress will be measured

Behavior: identifies measurable performance, actions by student

Criterion: quantifies how much, how often, to what extent

Timeframe: exactly when mastery is expected

Method of Measurement: how progress and/or mastery will be measured

For Students Taking an Alternate State Assessment: Writing Short-term Objectives and/or Benchmarks:

For those students taking an alternate assessment, once the goal is written, the IEP Team must determine how progress toward the goal will be measured. This is done by breaking down the goal into parts, then writing short-term objectives and/or benchmarks. The team may decide to use either or both, based on its judgment of how the student may be best able to tackle and realize the goal.

Short-term objectives are a logical breakdown of a task (or goal) into smaller, often progressive steps—each of which may be a prerequisite for the next. Each of these steps could be a short-term objective toward reaching the goal. There may be several intermediary steps but, obviously, there will be at least two or more short-term objectives needed for each annual goal. A related service provider would be helpful in developing objectives for a student whose evaluation results indicate deficits that may need to be addressed in order to achieve the student's goals.

Benchmarks, in contrast, describe the amount of progress a student is expected to make within a certain segment of time during the year in order to achieve the goal by the end of the year. Benchmarks are most appropriate for goals that involve increasing skill levels, rather than learning new ones. For example, benchmarks may be set in three-month intervals—by October 15, he/she will read orally at 2.2 grade level, by January 15 at 3.0 grade level, and so on. Since benchmarks represent skill levels along a time line, the year could be broken into two or more time segments with defined levels of increased skill along the way.

The IEP team may choose to use short-term objectives, benchmarks, or both, but must base them on the specific needs identified in the present levels of academic achievement and functional performance. Both objectives and benchmarks must be measurable and represent progress toward the goal.

To write goals, objectives, and benchmarks means having to focus on measurable data and observable behaviors, rather than on thoughts, feelings, or bias. This "objective" method of describing circumstances and expressing desired results is a learned skill. It takes practice and requires vigilance in word choice. In addition to identifying the student's annual goal, objectives, and/or benchmarks, pages 8-9 of the IEP form ask for additional information critical to the success of the student's IEP.

- 1) Mark the area of need (as identified on the present levels of academic achievement and functional performance statement).
- 2) Identify the reference from New Mexico's Standards for Excellence Regulations: Content Standards and Benchmarks*
- 3) Select and write one measurable goal that relates to the student's present level of educational performance.
- 4) Write the date it will be initiated.
- 5) Decide what objectives or benchmarks will be used.
- 6) Use one box for each objective or benchmark and check which it is. If the objective or benchmark is related to the student's transition plan or services, check the Transition Activity Box.
- 7) Write the objective or benchmark. Make sure it is specific, and measurable.
- 8) Fill in each category below the objective or benchmark:
 - *Criteria for Mastery* (Example: 90% accuracy on weekly spelling test)
 - *Anticipated Date of Mastery*
 - *Position/Agency Responsible* (Note: This line should not be filled in until after the LRE and Schedule of Services sections of the IEP are completed. At that point in the IEP meeting, the team will determine which service provider or combination of service providers will implement each goal.)
 - *Method of Measurement*
 - *Progress Documentation* (Each service provider, as specified in the IEP, must document progress on the objective or benchmark at least as often as progress is reported for the general student population or as spelled out in the IEP.)

- *Use this five-point list to check the validity of a written objective or benchmark:*

- Is it written in terms of what the student will do? (not what someone will do for the student)
- Does it state the condition under which the student will demonstrate the behavior? (in what setting? under what circumstances?)
- Does it define specific measurable behavior to be displayed by the student? (not general and subjective, such as “learn” or “understand”)
- Does it specify what criteria will be used to measure progress or mastery? (described by degree, such as 9 out of 10 times, not “accurately” or “successfully”)
- Is an evaluation procedure included with an expected time for the desired level of attainment to be reached? (Within 8 weeks, when orally given a pair of words with different short vowel sounds, the student will be able to correctly identify the vowel sounds with 80% or greater accuracy as measured/recorded by the service provider.)

5. Consideration of Special Factors

Federal regulations require that the IEP team consider the following six special factors when developing an IEP for a student with a disability:

1. visual impairment/blindness
2. hearing impairment/deafness - The IEP Team must consider how the communication needs of students who are deaf or hearing impaired will be addressed.
3. special oral/written communication needs
4. limited English proficiency
5. assistive technology needs
6. behavior that impedes learning

To complete this portion of the IEP, consider each question carefully. If a need is identified, the IEP Team must describe how the need is to be addressed. Because of their broad nature, the two areas of assistive technology and behavior can be particularly challenging for the IEP Team. They are discussed in more detail on the following pages.

Assistive Technology: Assistive Technology (AT) is a device or service provided to students who need specialized equipment to have access to the general curriculum and to improve the functional capabilities of the child. Any device or tool that helps the student learn—ranging from a simple pencil grip to a specially-designed desk—is considered assistive technology.

AT services may include both the provision of the technological devices and the consultant services for assessment, application, fabrication, or training in the use or maintenance of the devices. It is important to note that AT is not limited to students with severe disabilities. The IEP Team needs to consider assistive technology and services for all students with disabilities, regardless of the type or severity of the disability. If the IEP team does not feel it has enough information about AT to determine what may or may not be appropriate for the student, the team should determine if an AT assessment is needed. It is the IEP Team’s responsibility to craft an educational plan that will provide a FAPE (free appropriate public education) for the student; to do that the team must base decisions on the student’s needs and goals, and must consider all strategies and accommodations necessary to allow the student to make reasonable education progress, including assistive technology. The team may consider the following questions:

1. What task do we want this student to perform that he or she is unable to do at a level reflecting his or her skills and/or abilities (writing, reading, communicating, seeing, hearing...)?
2. Is the student currently able to complete tasks with the special strategies or accommodations already in place? If yes, then document.
3. Is there available assistive technology (either devices, tools, hardware, or software) that could be used to address this task? If so, then describe?
4. Is the use of an AT device, AT service, or both, necessary for the student to perform this skill more easily or efficiently, in the least restrictive environment? If yes, then document.

Assistive technology is just one type of related service or supplementary aid possible in designing an individualized education program for a student with a disability. To comply with state and federal regulations regarding consideration of special factors, the IEP Team must consider assistive technology for every student with an disability and, upon making an informed decision, provide the necessary devices, services, or both.

Behavior and Discipline: One of the special factors the IEP Team must consider is behavior—specifically, whether or not the student’s behavior impedes his or her learning or that of others. With regard to behavior that interferes with the student’s own learning or that of others, the IEP Team has the responsibility to address the behavior in a manner consistent with the severity of the problem. The three avenues for managing problematic behavior include the following:

1. Address the behavior concerns in the IEP through goals/objectives/benchmarks
2. Conduct a Functional Behavioral Assessment (FBA)
3. Develop and implement a Behavioral Intervention Plan (BIP)

Goals with objectives and/or benchmarks regarding behavior are developed the same way as those for academics, except instead of basing them on the present levels of academic achievement and functional performance, they are based on behavioral performance. It is strongly suggested that a Functional Behavior Assessment (FBA) be conducted to provide that baseline, or starting point, from which to set goals with objectives and/or benchmarks or to develop a Behavioral Intervention Plan (BIP).

An FBA is an assessment that examines the student’s behavior and addresses the relationship between a behavior and the relevant factors that may be interfering with the student’s or others’ learning. The purpose of an FBA is to identify problematic behaviors and the circumstances under which they occur, so an effective intervention plan can be designed. From the baseline information gathered in an FBA, the IEP Team develops and implements a Behavioral Intervention Plan, which describes positive interventions and/or accommodations designed to address the reasons the target behavior is happening and strategies for redirecting it.

Note: When behavior is identified as a special factor that needs to be addressed, the BIP becomes a component of the student’s IEP.

A Recommended “BEST PRACTICE”

Though not required until a student has been suspended for 10 school days, conducting an FBA for any persistent or problematic behavior is strongly recommended. The ASK Academy will implement this best practice procedure.

Functional Behavior Assessment (FBA)—Conducting an Functional Behavior Assessment is required after a student has been suspended for 10 school days in a school year. It is highly recommended that a FBA be conducted when behavior interferes with the student’s learning or that of others. This assessment is done to gather data, analyze behavior, and hypothesize why it is occurring. The form requires that information is collected from a variety of sources, using both prior and new data. Information about behavior may be gathered from school records, parents, interviews, classroom observations, and other sources. The FBA attempts to determine if there are specific circumstances or triggers that occur just prior to the problematic behavior and what reinforcement typically follows it. From this information, the IEP Team determines what strategies, positive supports, or interventions are needed—from setting annual goals with supporting short term objectives or benchmarks within the IEP, to developing a separate Behavior Intervention Plan (BIP). In reviewing existing data, the team may determine that more information is needed before an effective plan can be designed. If the team decides to gather more information than already exists in the records, prior parental consent is needed (as for any initial evaluation or reevaluation).

Behavior Intervention Plan (BIP)—Minor behavior modification may be addressed within the IEP through annual goals with supporting short-term objectives or benchmarks, but when problematic behavior is frequent, persistent, or severe, a Behavior Intervention Plan is formulated. The BIP specifies what interventions are needed to positively redirect the targeted behavior that is seriously interfering with the student’s learning or the learning of others. There are many ways to design a BIP and the IDEA purposely left this open for the IEP Team to tailor to the unique circumstances and needs of the individual student. No matter what form the final BIP takes, the IDEA requires documentation of the student’s BIP in the IEP, and it should be integrated into the IEP or attached to it. *See the NMPED for sample BIP form.*

Discipline

In order to function as a community, all schools have a general school-wide discipline plan or code of student conduct, including specific policies and procedures regarding expected and acceptable behavior. As part of the IEP for a student with exceptionalities, the IEP Team must decide if the student can follow the school-wide plan as is. If

modifications and/or instructional accommodations are needed, they must be described as goals/objectives in the student's IEP. If a BIP was developed to address the student's behavior, the BIP must be included in the IEP.

Note: Though the IDEA does not require that a FBA and/or BIP be incorporated into a student's IEP, unless and until the student has been first removed from his or her current placement for more than 10 school days in a year, the New Mexico Special Education regulations strongly encourage incorporation of these measures well before behaviors result in drastic disciplinary actions. (See Subsection F of 6.31.2.11 of NMAC.)

For a student with behavioral concerns, keeping accurate discipline records is important for the evaluation of the student's behavior and progress toward goals. The team should agree on what consequences are appropriate for certain behaviors, and make certain that the parents and the student are aware of the expectations and consequences. Each person who interacts with the student in circumstances in which the targeted behaviors occur should record his or her observations, what measures were taken to redirect the behavior, and their results. Consistency is a vital factor in the ability to reshape behavior, so all those who work with the student should coordinate their efforts and share their information.

Medical/Significant Health Information

On this section of the IEP form, note what medications (if any) the student takes, plus any significant medical/health information and/or the need for an individualized health plan or other school health services as a related service. Also note any related services such as catheterization or tube feeding that may be needed to enable the student to attend school. Identify what type of physical education program is appropriate for the student. If the student requires assistance to move around the school, note and describe his or her needs. Also carefully consider if accommodations or supports are required for the student to be transported with peers without exceptionalities in the Least Restrictive Environment (LRE). If he or she has special transportation needs, identify them on the IEP form. IDEA states that all persons who are providing services needed to implement a student's IEP, must be informed of their responsibility.

6. Least Restrictive Environment

The IDEA provides that, to the maximum extent possible, students with exceptionalities should be educated with age-appropriate peers who do not have exceptionalities. It also mandates that a student be given the opportunity to learn in the Least Restrictive Environment (LRE). The key concept is that placement within the home school among peers is desirable; but the IDEA recognizes that an "inclusive" environment is not always appropriate, nor does it always provide the LRE.

The extent to which an individual student with exceptionalities participates in the regular education setting must be decided on a case-by-case basis. A wide range of placement options, known as the **continuum of alternative placements**, must be available to insure that each student is educated in the LRE for that individual. To determine the placement that offers the LRE, an inquiry into the unique educational needs of the student is required. The IEP Team must determine what, if any, aids and supports could enable the student to be educated in his or her home school with age- and grade-level peers, or if an alternative placement would offer the student the least restrictive environment. These issues are to be addressed by the team and the team's determinations must be documented on the IEP.

Extended School Year

§300.106 Extended school year services.

(a) General.

- (1) The ASK Academy must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.**
- (2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with §§300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.**
- (3) In implementing the requirements of this section, the ASK Academy may not--**
 - (i) Limit extended school year services to particular categories of disability; or**
 - (ii) Unilaterally limit the type, amount, or duration of those services.**

(b) **Definition.** As used in this section, the term extended school year services means special education and related services that--

- (1) Are provided to a child with a disability--
 - (i) Beyond the normal school year of the ASK Academy;
 - (ii) In accordance with the child's IEP; and
 - (iii) At no cost to the parents of the child; and
- (2) Meet the standards of the NMPED.

Factors in Considering the Need for ESY

The purpose of ESY is not to enhance or maximize the present levels of academic achievement and functional performance exhibited by students with disabilities at the end of the regular school year. Instead, the IEP Team bases the need for ESY services on skill **regression** (loss) and a student's limited capacity for **recoupment** (regain) of existing IEP goals and objectives. ESY services may be provided when the IEP team determines that a student might regress to such an extent in a skill and/or behavior area that recoupment of such skill loss would require an unusually long period of time, or make it unlikely or impossible to recoup the present levels. A significant regression/recoupment factor is the first line of inquiry for establishing criteria and eligibility standards for ESY services. The regression/recoupment factor is relative to the student's current IEP goals and objectives and his or her present levels. It is not necessary to continue instruction on all of the previous year's IEP goals and objectives during the ESY period. The purpose of ESY instruction is to focus on those specific goals and objectives severely impacted by extended breaks in instruction. Regression/recoupment problems triggering the need for ESY services occur when:

- a student suffers an inordinate or disproportionate degree of regression during that portion of the year in which the customary 180-day school year is not in session; and
- it takes an inordinate or unacceptable length of time for the student to recoup lost skills. There is no precise measure of the amount of regression and limited recoupment that would indicate a student's need for ESY programming.

Regression/recoupment is just one of many factors that IEP teams need to consider when discussing the need for ESY services. In considering a recommendation for ESY services the IEP Team should also consider the following factors that might indicate a need for ESY:

- severity of the disability
- behavioral skills
- critical learning period
- learned material
- potential for generalization and maintenance
- emerging skills that are at risk for loss
- medical conditions
- family circumstances

In addition, in 1990, the 10th Circuit Court of Appeals *Johnson v. Independent School District No. 4*, 17 IDLER 170, whose decisions are binding on public education agencies in New Mexico, identified the following criteria for determining the need for ESY services:

- degree of regression suffered in the past
- ability of the parents to provide educational structure at home
- student's rate of progress
- student's behavioral and physical problems
- availability of alternative resources
- ability of the student to interact with non-disabled students
- areas of the student's curriculum that need continuous attention
- student's vocational needs
- whether the requested services are extraordinary for the student's disabling condition as opposed to an integral part of a program for populations of students with the same disability

It is important to note that the impact of previous ESY services on overall student performance is not the sole basis for determining a current need for ESY.

Moreover, the IEP Team needs to keep in mind that the length of interruption in instructional programming and/or related services, which causes a detrimental effect, may vary because the regression/recoupment cycle is an individual process. Thus, it is imperative that IEP teams consider each student's functioning level on an individual basis.

- IEP teams should consider additional standards identified from the court case mentioned above.
- IEP teams must not look solely at a student's previous experiences in making their ESY eligibility determination.
- IEP teams should consider if the student is at a critical point in his or her program and the impact of the interruption on possible future regression and/or recoupment problems.

Collecting ESY Data

An IEP team may consider a student's need for ESY services at any meeting called to discuss the IEP. A discussion on the need for ESY services should occur early in the school year so that the team can begin collecting supporting data to allow for planning on the part of the IEP Team, and if appropriate, any outside agencies providing special education and/or related services. Determination of the need for ESY services requires a thorough analysis of formal and informal assessment data collected by the IEP Team. In determining the need for ESY, the IEP Team should review the following sources of information:

- The current IEP, especially the present levels of academic achievement and functional performance and annual goals
- Pre-and post-testing using criterion-referenced assessment procedures
- Results of efforts on the part of educators and/or parents which specifically addressed the maintenance of learned skills while programming was interrupted
- Areas of learning which are identified as an integral part of a skill area required to reach the student's assessed potential, such as social, motor, behavioral, academic, self-help, and communicative abilities
- Pertinent medical, psychological, and educational data
- Data that reflects the regression/recoupment cycle experienced by the student following interruptions of instruction services must be documented periodically throughout the regular school year

Schedule to Collect ESY Data

A schedule for collecting data regarding a student's possible regression may be one or more of the following:

- At the beginning of the school year
- After extended breaks (winter, spring) and/or illness
- After regular shorter breaks such as weekends and/or extended weekends due to holidays or illness
- At the end of the regular school year
- At the end of the ESY program

Documenting the Need for ESY

The student's IEP team must use the prior written notice (PWN) to document its proposal and decision that a delay or break in the provision of special education and related services may result in a significant delay in the recoupment of academic and/or behavior skills. The need for ESY services should be based on documented evidence showing that substantial regression caused by interruption in educational programming, together with the student's limited recoupment capacity, may result in a significant delay in recoupment of critical skills. In order to provide a FAPE to a student who demonstrates a disability in one or more areas, answers to the following questions should alert the IEP Team to the possible need for ESY:

- Does the review of data show that the student experiences significant regression in adaptive behaviors or learned skills (social, motor, behavioral, academic, self-help, and communication) over regularly scheduled school breaks during the year?
- Does the review of data show that the student requires a significant amount of time and effort to recoup previously learned behaviors and skills?
- Does the review of data indicate that the student benefited from previous ESY services? It is important to note that the impact of previous ESY services on overall student performance is not the sole basis for determining a current need for ESY.
- Does the review of data indicate that the benefits to be derived from an extended educational program outweigh the positive benefits of a summer vacation?
- Did the IEP Team consider other program options that would meet the needs of the student? Identify the programs considered by the IEP Team.

- Did the IEP Team determine that ESY would best meet the needs of the student? Why or why not?
7. **Participation in Mandated State and District Testing** *(See also Chapter 5.1 IEP – XI. New State District wide Testing, effective May 7, 2007.)*

Authority: 34 CFR §300.320 Definition of individualized education program.

- (a) **General.** As used in this part, the term individualized education program, or IEP, means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--
- (6) (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments consistent with §300.160; and
 - (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or district wide assessment of student achievement, a statement of why--
 - (A) The child cannot participate in the regular assessment; and
 - (B) The particular alternate assessment selected is appropriate for the child.

Authority: 34 CFR §300.160 Participation in assessments. *(See Chapter 5.1 IEP)*

All students with IEPs must participate in the New Mexico Standards Based Assessment in one of three ways:

- A student with an IEP who does not require instructional and/or testing accommodations may participate in the standard administration of the general assessment (with or without adaptations).
- A student with an IEP who requires both instructional and testing accommodations may participate in the standard administration of the general assessment with allowable accommodations.
- A student with a significant cognitive disability who is unable to participate in the standard administration of the general assessment, even with allowable accommodations, may participate in the state's alternate assessments based on alternate achievement standards, provided that s/he meets the participation criteria established by the NMPED.

The Individualized Education Plan (IEP) Team is responsible for determining which option is most appropriate for each student. Keep in mind that the IEP Team determines **how** the student will participate; it does not determine whether the student will participate. This decision should be made after both careful consideration of the student's unique needs and of the specific test or tests that the student is required to take at his or her grade level. There must be a clear understanding among all IEP members of how the student will participate in the assessment program. The team members must also discuss potential consequences that may arise as a result of their decision(s), and ensure that parents are aware of these potential consequences. This team is also responsible for identifying specific accommodations that are required in the classroom for at least three months prior to test administration, if relevant.

To view manuals, sample test items and activities and tips that have proven to be successful in New Mexico in helping students prepare for the tests and for schools to reach academic excellence, go to the NMPED website at: www.ped.state.nm.us (look for the New Mexico Standards Based Assessment logo on the main page) or go to <http://www.ped.state.nm.us/AssessmentAccountability/AssessmentEvaluation/index.html>. Students will be tested to determine how well they have mastered New Mexico Standards in reading, writing, mathematics and science.

New Mexico Alternate Assessment Guide

For more information: <http://www.ped.state.nm.us/seo/assessment/Making.Asmnt.Decisions.0607.NMAPA.doc>

Both federal and state laws require that *all* students with disabilities are to be administered assessments intended to hold schools accountable for the academic performance of students. IEP Team members must actively engage in a planning process that addresses these issues:

- * assurance of the provision of accommodations to help facilitate student access to grade level instruction and state assessments. Accommodations Guide: <http://www.ped.state.nm.us/seo/assessment/200506.NM.Acomm.doc>
- * the use of alternate assessments to assess the achievement of students with the most significant cognitive disabilities. The New Mexico Online Alternate Assessment Course can be downloaded from:

<http://www.ped.state.nm.us/seo/training/nmalt.htm>. This training takes test administrators through the administration of the New Mexico alternate assessments that are currently in place. It is updated every year to reflect any changes in the alternate assessment system.

- * The participation criteria for the alternate assessment is located at the following link: <http://www.ped.state.nm.us/seo/guide/Making.Assessment.Decisions.NMALT.pdf>, for the New Mexico Alternate Assessments have become rule in the State of New Mexico. Sections 6.31.2.11(E)(1)-(3) of the New Mexico Administrative Code now require that IEP teams “agree and document” that the student is eligible for participation in an alternate assessment according to the following criteria:
 - (a) the student’s past and present levels of performance in multiple settings (i.e., home, school, community) indicate that a significant cognitive disability is present;
 - (b) the student needs intensive, pervasive, or extensive levels of support in school, home, and community settings; and,
 - (c) the student’s current cognitive and adaptive skills and performance levels require direct instruction to accomplish the acquisition, maintenance and generalization of skills in multiple settings (home, school, community). Official NMPED guidance regarding accommodations and modifications in the New Mexico Statewide Assessment Program (NMSAP) can be found in the *2005-06 Procedures Manual*.

8. Schedules & Levels of Services

This is the point where the IEP Team considers which service providers are necessary to deliver the regular and special education instruction and, related services for achieving stated goals. It is also the point where the LRE setting decisions made previously are summarized. Keep in mind that related services are the supporting services the student must have in order to benefit from special education. If the IEP bridges parts of two school years, the Schedule of Services must be completed twice, separating the services to be delivered in each school year. The schedule of services is the directive for implementing the student’s IEP. All service providers are accountable for fulfilling their responsibilities under the schedule. It is vital that it is completed carefully, accurately, and specifically:

- Identify the activities the student will participate in with the general student population.
- Define the subjects within the general education program and note if the student does or does not need accommodations or modifications to participate in each area.
- Provide the specific schedule of special education and related services needed based on the goals and objectives or benchmarks previously identified.
- The types, amounts and frequency of services, (example: 30 min/day, 5 days/wk). Note: This must be based on the student’s need, not on what is convenient or available.
- The start and ending dates must be indicated.
- Identify the service provider or team of providers by title (such as physical therapist and regular education teacher) rather than by name.
- Indicate the setting (regular or segregated) in which the service will be provided. Repeat for supplementary aids and services such as special transportation, school nurse, or non-school based provider. Note: At this point, go back and record decisions about service providers on the Annual Goals pages of the IEP.
- Indicate what supports for school personnel may be needed to carry out their responsibilities in implementing the IEP. For example, the regular education teacher may need training with an unfamiliar device or information about the student’s exceptionality. A monitored observation of students or a demonstration of the required accommodations or modifications may be necessary.
- If there is a service that is delivered other than weekly, identify the service and its frequency. It is suggested you have parents initial the information.
- Consider any possible adverse effects and/or safety issues related to the student’s placement. For example, a student may be physically much larger or smaller than the other students; he or she may have a medical condition that may impact the student, the teacher, the class, or the environment; there may be a behavioral pattern that service providers should be made aware of; the student may have a known reaction to something that would not normally be expected. If any issue exists, explain it briefly and how it should be treated.
- Examine the student’s placement and location of services with regard to safety concerns in the event of an emergency and/or evacuation. If for any reason the student would have difficulty with, or be unable to follow the emergency and/or evacuation procedures with the general school population without assistance, an individualized emergency and/or evacuation plan must be prepared for the student.

***Note:** The emergency plan should identify where the student will be at any time and how the student is to be evacuated from each location. A copy of the plan should be posted in each work area the student attends, as well as kept in the appropriate administrative office. NO PERSONALLY IDENTIFIABLE INFORMATION can be displayed based on FERPA and confidentiality of student records. The plan should be detailed enough to show emergency response, assisting personnel, routes of evacuation, and method of evacuation. Parents and guardians should be encouraged to discuss the plan with the child's doctor. There may be complications of which the staff is unaware. It may be necessary to administer medicine, respond to a medical emergency, or move the student to a second, safer location. If the student has any special needs regarding emergency and/or evacuation procedures, all staff who interact with the student should be informed and trained, if needed, to carry out the responsibility of ensuring the child's safety in the event of an emergency. The plan should be followed during drills, reviewed at least once a year, and modified as needed.*

Level of Service/Setting

A very important section of the IEP form is recording the level of service (hours the student is receiving special education services) and the setting (hours the student is not in the regular class). These numbers determine the funding of special education services. The IEP form should calculate the student's level of service and setting.

To get the most accurate result, follow this guideline:

- when calculating level of service, count hours the student receives special education and related services that are being implemented within the regular education setting, as well as those in a special education setting.
- Example: in a 6-hour day, the student receives a total of 3 hours of special education—2 hours delivered in a special education setting and 1 hour in the regular education setting; the other 3 hours he is in regular education setting and not receiving special education services.
- Reference the STARS – Student/Teacher Accountability Reporting System found at the NMPED website: <http://www.ped.state.nm.us/stars/index.html>

9. Accommodations & Modifications

If a student requires testing accommodations, they must be documented in the IEP. The NMPED expects accommodations to have been implemented for at least three months in the classroom. This enables the student, his or her teachers, and other staff, if necessary, time to adequately prepare for the test's administration and provide necessary accommodations in instructional settings. Students benefit not just from receiving necessary accommodations, but also by acclimating to the use of the accommodation so that the testing situation is not novel.

Determining Appropriate Accommodations—Some Important Considerations for IEP Teams

As mentioned previously, the student's IEP Team makes the decision as to the specific accommodations, if any; a student will receive during the administration of state-mandated assessments. It is not a unilateral decision made by one individual. It is important that those involved in the decision-making process during the IEP meeting have a clear understanding of the student's needs as well as the specific assessments that the student is required to take. Accommodations selected for assessment must have instructional relevance and be connected to a specific skill deficit.

The IEP Team should also be able to explain how the skill deficit impacts a student's ability to demonstrate his or her level of mastery of the content areas measured by the particular assessment. This prior knowledge of the student and the test will enable the IEP Team to make sound decisions as to what accommodations, if any, the student requires for participation in state and district wide assessments. This decision must be accurately documented in the student's IEP. The SEB recommends that the team address and document answers to the following questions when developing the IEP:

1. What is the student's grade?
2. What assessments are administered at that grade (school, district, state)?
3. What content areas are assessed on the respective assessments?
4. What skill deficit does the student exhibit that would require accommodation in each content area assessed?
5. What accommodations are necessary?
6. Do the accommodations have instructional relevance?
7. Will the student have at least three months to use the accommodation in the classroom prior to testing?

8. Is the accommodation selected allowable for the NMSAP (See the accommodations section of this manual)?
9. If the change is not allowable in the NMSAP and is considered a modification, has the team discussed the potential consequences?
10. Do the parents understand the potential consequences of the assessment option selected? IEP teams should be aware of the guidance provided by the NMPED on our website in order to assist them in making decisions regarding the selection and implementation of accommodations for students with IEPs. The ASK Academy's IEP teams will reference the New Mexico technical assistance manual *How to Choose and Use Accommodations for Students with Disabilities*. The manual is updated to reflect the most current guidance available. This version is available on the SEB website at:
<http://www.ped.state.nm.us/seb/assessment/200506.NM.Accomm.doc>

The ASK Academy will follow the NMPED manual for allowable accommodations on state testing, and the IEP Team will specifically detail accommodations that the student needs throughout the school year to implement the IEP.

Accommodations and modifications are provided to the student to assist him or her in participating and learning in the least restrictive environment. For many students, supplying supplementary aids or services in the regular education classroom will allow the student to be educated with his or her peers without exceptionalities. In other instances, modifying the educational program or setting enables the student to progress in the general education curriculum. Accommodations and modifications must be determined on an individual basis and reflect the true needs of the student without regard for ease of delivery or availability.

Based on the identified needs of the student and annual goals, the IEP Team determines what kind of adjustments would give this student better access to the general education program and help him or her achieve the goals in the Least Restrictive Environment (LRE). First, all areas of the program must be considered, such as physical environment, instructional presentation, in-class and mandated testing, specific subject areas, grading, homework and assignments, social and behavioral management, technology and media, transportation, in-school non-academic time, and extracurricular activities. Keep in mind that accommodations and modifications may be provided for any area that is directly affected by the student's disability. Though accommodations may be useful in other areas, the team must adhere to only those situations directly affected by the disability. A good gauge is to verbalize exactly how the accommodation will offset the disability, not just that it would be generally helpful.

Description of Accommodations Categories

Accommodations are commonly categorized in four ways: (1) *Presentation*, (2) *Response*, (3) *Timing/Scheduling*, and (4) *Setting*. Refer to NMPED website for assistance in choosing appropriate accommodations to assist the student to make progress in the general curriculum.

<http://www.ped.state.nm.us/seb/assessment/200506.NM.Accomm.doc>

Presentation Accommodations—Allow students to access information in ways that do not require them to visually read standard print. These alternate modes of access are auditory, multi-sensory, tactile, and visual.

Response Accommodations—Allow students to complete activities, assignments, and tests in different ways or to solve or organize problems using some type of assistive device or organizer.

Timing/Scheduling Accommodations—Increase the allowable length of time to complete a test or assignment and may also change the way the time is organized. (Note: considered adaptations in the NMSAP)

Setting Accommodations—Change the location in which a test or assignment is given or the conditions of the assessment setting. (Note: considered adaptations in the NMSAP)

Modifications or Alterations

Accommodations do not reduce learning expectations; they provide access. Changing, lowering, or reducing learning expectations is usually referred to as a modification or alteration. Modifications can increase the gap between the achievement of students with disabilities and expectations for proficiency at a particular grade level. Using modifications may result in implications that could adversely affect students throughout their educational career. These modifications include:

- requiring a student to learn less material (e.g., fewer objectives, shorter units or lessons, fewer pages or

- problems)
- reducing assignments and tests so that a student only needs to complete the easiest problems or items
- revising assignments or tests to make them easier (e.g., crossing out half of the response choices on a multiple choice test so that a student only has to pick from 2 options instead of 4)
- giving a student hints or clues to correct responses on assignments and tests

10. IEP Progress Documentation

§300.320 Definition of individualized education program.

(a) (3) A description of--

- How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and**
- When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;**

Federal law and New Mexico regulations state that the progress of students with exceptionalities must be reported to parents at least as often as their peers without exceptionalities (more often, if needed). Also, the IEP will list how the progress will be reported to parents and when. The following should be kept in mind regarding content and scope of progress reporting:

1. A progress report for a student with exceptionality must be based on the annual goal(s) as set forth in the student's IEP.
2. If the student has more than one annual goal, a separate progress report is required for each annual goal. If more than one service provider is implementing a single goal, those sharing the responsibility for the goal and service may combine their evaluation on a single report.
3. For each student taking an alternate state assessment, each objective or benchmark within the annual goal must be individually addressed. The objective or benchmark should be stated with the criteria being used to evaluate the progress.
4. For each reporting period, the service provider(s) must record the report date and give his or her assessment of the student's progress on the objective or benchmark and by what method(s) the student's progress was evaluated. The service provider(s) should elaborate on this with a narrative comment.

Note: Include in the progress report suggestions of what the student could do to accelerate or improve his or her progress. These "Next Steps for Success" build a bridge from the present to the future, and give the student and parents something concrete to focus on as they look ahead. Some examples of teacher comments for next steps might be:

- | | |
|---------------------------------|--|
| - Increase class participation | - Ask for help more often |
| - Organize materials | - Work more independently |
| - Have better attendance | - Maintain concentration |
| - Participate more with peers | - Follow class rules |
| - Show more effort | - Make up missed work |
| - Practice and memorize | - Complete homework |
| - Opportunity to mentor or lead | - Practice skill in the everyday world |

Signatures of Agreement

First, each member of the IEP team documents his or her participation by signing and dating the IEP Meeting Participants section. Second, parents acknowledge that they were given the opportunity to participate in the IEP development and the recommended placement and services, parents acknowledge the information was presented in an understandable manner, and that they have received a copy of their procedural safeguards. Parents initial the Parent Rights section.

Finally, it is suggested the IEP list the Case Manager/IEP Team Coordinator designated by signature the person who assumes responsibility for ensuring that everyone involved in the implementation of the IEP has access to it and is given the information necessary to carry out his/her responsibilities.

For any disagreements, see the procedures in Chapter 2. – Procedural Safeguards.

11. Prior Written Notice of Proposed Actions

Federal and state regulations require that parents of a child with an exceptionality be informed of, and consent to, any actions that would initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education for their child **before** implementing the proposed action.

First, a summary of the IEP meeting is documented. The date of the meeting is recorded, followed by a brief, but specific, indication of what data was reviewed during the discussion of possible special education and related services for the student. Next, **all** items that were proposed, or options that were considered, are noted, regardless of the source. Each is marked accepted or rejected, and why. (If additional room is needed to list or explain proposed actions, a separate sheet can be attached.) It is important to keep in mind that the items marked “accepted” are intended to become the actions implemented for the student under the IEP. Once accepted and consent given, if appropriate, the directives of the IEP become a legal obligation.

The final steps of the IEP fulfill the requirements under the law regarding parents:

- Secure written parent consent, if appropriate, before implementing the proposed actions.
- Ensure that parents have been informed of and understand their rights.
- Give parents the opportunity to ask for clarification, disagree with the proposed actions, or request another IEP meeting.
- Offer parents assistance in understanding procedural safeguards and due process rights by listing specific contacts at the local and state level and informing them of parent advocacy support.
- Document that the content of the notice was translated if needed in the parents’/student’s primary language, and if so, by what method and by whom.

C. After the IEP Meeting

Persons responsible for follow up after the IEP meeting should be designated at the end of the IEP meeting so the roles are clear. Typically, the special education teacher or evaluation specialist is appointed the tasks. Commitments made will be honored, communication continued, and new issues or topics that arose will be addressed. After the meeting, there are several preparation activities that must be performed in addition to the delivery of services:

- If the parents did not participate in the IEP meeting, complete the appropriate copies and mail to the parents.
- Provide the student’s general education teachers appropriate copies of the IEP, including accommodations.
- Provide appropriate teachers and administrators copies of the FBA/BIP if developed.
- If additional assessments are recommended, be sure appropriate staff is notified.
- Follow up on any other commitments discussed in the IEP meeting.
- Prior to the next IEP meeting the teacher will obtain input from the student’s general education teachers in order to make appropriate recommendations in the IEP meeting.

D. Special Education Teacher/Service Provider Responsibilities

Typically, the special education teacher or evaluation specialist is appointed several follow up tasks after an IEP meeting is completed. For necessary students, share the emergency evacuation plan with all appropriate staff. There are other responsibilities as well and a few are described in this section.

*The IEP team must notify any person expected to provide service, accommodations, or modifications of their specific responsibilities in implementing the IEP. It is the expectation that regular education teachers will be included among those who will provide special services to a child. However, regular education teachers may be either uncomfortable or unprepared to do so without help. The ASK Academy will use the NMPE’s two-part form designed to assist the IEP Team in ensuring that a regular education teacher is notified of his/her responsibilities and is given the opportunity to ask for support in carrying them out. Page 1 of the form, **Teacher Modification Notice**, lets the teacher know what is expected of him or her. At the bottom is a sign-and-return portion that will*

serve as documentation that the teacher was notified. The second page of the form, **Teacher Request for Assistance**, gives the teacher the opportunity to ask for help in carrying out his or her responsibilities under the IEP. The sign and return portion of the form also serves to document the teacher's response.

Process for Submitting Requests for Further Consideration of Student's IEP

If the special education staff has a concern that was not resolved during the IEP meeting, an appointment should be scheduled with the campus administrator to resolve the issue. The following steps should be followed::

- The special education staff should inform the administrator of the considerations regarding the IEP.
- The administrator will determine any further resources to involve in resolving the situation. The diagnostician, coordinator, or special education director may be included in problem solving.
- The administrator may call a meeting with the parties involved or may offer suggestions to the special education staff, or may determine an IEP meeting is necessary to address the issues.

Training: Request training support suggestions from the campus or special education administration in areas where improvements in instructional skills or other assigned duties are needed. Conduct a self analysis and begin improvement strategies for professional growth.

Lessons, Grading, and Reporting

Each student receiving special education instruction has an individual education program (IEP), which addresses the student's educational needs, educational goals and objectives.

1. The special education teacher will utilize a lesson plan which reflects the goals as stated on the IEP and follows the NMPED Standards of Excellence. Grades should evolve from the goals with supporting documentation of how the grade was determined.
2. Numerical grades will be recorded for each subject area in a grade book. Recommended minimum mastery level on an IEP objective should be 70%, as a grade of 70 is required for passing for nondisabled students. If 70% is too high for mastery, the appropriateness of the goal should be reconsidered.
3. Care should be taken to ensure that goals are written at a level which continues to challenge the student's abilities. This may necessitate accommodations in curriculum, methods, pacing, materials, criteria, etc.
4. If the student with disabilities fails to meet the expectations addressed in the IEP, the responsible teacher will review the IEP for appropriateness of goals/objectives, instructional levels, materials, and methods. The teacher must document on the IEP the efforts made to try to help the student achieve success.
5. If a student with disabilities should not be progressing toward mastery of the goal by the annual IEP meeting, the IEP Team will convene to discuss the student's needs and make recommendations to help the student achieve success.
6. An IEP Team will meet if the student is not attending school to discuss the appropriateness of the IEP, need for additional testing, and pursuit of compulsory attendance, if appropriate.
7. The grading of a special education student in a general education classroom is based upon the IEP Team recommendations for, if any, accommodations of NMPED Standards of Excellence and other accommodations of pacing, methods, and materials needed. When accommodations have been recommended by IEP Team, the special education teacher is responsible for:
 - a. informing the general education teacher of the recommended accommodations;
 - b. providing information concerning the student's achievement levels, learning style, and behavioral needs;
 - c. offering assistance to the general education teacher on a scheduled basis, as recommended by the IEP Team; and
 - d. documenting contacts with the general education teacher.
8. On occasion, the IEP Team will recommend that a specific subject be taught in a combination general education/special education instructional arrangement. The special education student's grade, in this situation, may be determined proportionately by the general and special education teachers who provide the instruction, as determined by the IEP Team.

1. Initial IEP Team Meeting:

The special education teacher responsibilities in the IEP process are to:

1. complete the draft IEP measurable annual goals, based on appropriate evaluation, selecting a minimum of one goal and two objectives for each subject or developmental area anticipated; (remember the general

- education teacher(s) to the extent appropriate, should participate in the development, review, and revision of the student's IEP), (objectives are required only if student is taking an off grade level state assessment)
2. complete the IEP by writing in any individualized items needed:
 - a. complete header information marking DRAFT IEP,
 - b. complete proposed evaluation procedures, and criteria.
 3. send draft IEP goals (and objectives, if appropriate) to the parent at least one week prior to IEP meeting;
 4. write the date the IEP is accepted by the IEP Team on the actual IEP during the meeting.
 5. make copies of the accepted IEP goals and objectives and other relevant pages,
 - a. One copy is to be filed in the student eligibility folder with the completed IEP forms, and
 - b. additional copies of the approved IEP will be distributed to the parent and as needed (i.e., general education teacher copy, etc.).
 - (1) ensure that each teacher who provides instruction to a student with disabilities receives relevant sections of the student's current IEP and that each teacher be informed of specific responsibilities related to implementing the IEP, such as goals and benchmarks, and of needed accommodations, modifications, and supports for the child;
 - (2) obtain signed documentation from the general education teachers that they have received relevant sections of the student's IEP, such as goals and benchmarks, and needed accommodations, and supports for the child for the list of special education students they instruct, and
 - c. assist general education teachers who are involved in the student's instruction to maintain documentation that they are modifying and/or accommodating educational programs of students as specified in the IEP.
 6. The special education teacher's copy is used to document progress in the same timely manner as students on your campus who are nondisabled (e.g., every 6 weeks).

2. Annual IEP Team Meeting

Each student's individual educational program (IEP) will be reviewed within 12 months to determine the student's progress, the student's continued need for special education and related services, and the need for modifying the plan. The IEP Team may schedule an earlier review date if needed for review, modification, failure, etc.

- a. in addition to presenting the new draft IEP goals and objectives,
 - b. submit the original IEP with progress documentation marked on the IEP, and
 - c. follow No. 1 through No. 6 in A., above.
1. At the annual review, the current IEP objectives will be reviewed and documented on the IEP prior to the development and acceptance of a new IEP.
 - a. There should be some objectives that have been added, deleted or revised in the new IEP.
 - b. If there are no changes in the IEP, the team should have written justifications for the lack of revisions and the lack of a new IEP.
 2. IEPs will also be reviewed and documented at the beginning of the year and after breaks in the program for regression/recoupment information necessary to discuss the need for ESY.
 3. Also, progress on the IEP is documented in the same timely manner as other non-disabled students and reported to parents.

3. Amendment to the IEP

The special education staff in the ASK Academy must be certain that all requirements are followed and documentation is completed for any amendment to the IEP. It is important to read the Policies and Procedures in Chapter 5.1 IEP for Amendments to the IEP.

4. Temporary / Transfer IEP Meeting

The special education teacher will be responsible for attending any temporary IEP meetings, as necessary, and working with the campus diagnostician/appraisal staff to plan the draft IEP for the temporary transfer student. The

special education teacher will also assist in obtaining records from the previous district and conducting any benchmark testing, as appropriate.

E. General Education Teacher Responsibilities

§300.323 When IEPs must be in effect.

(d) Accessibility of child's IEP to teachers and others. The ASK Academy ensures that-

- (1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service provider who is responsible for its implementation; and**
- (2) Each teacher and provider described in paragraph (d)(1) of this section is informed of –**
 - (i) His or her specific responsibilities related to implementing the child's IEP; and**
 - (ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.**

§300.324 Development, review, and revision of IEP

(a) (3) Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of--

- (i) Appropriate positive behavioral interventions and supports and other strategies for the child; and**
- (ii) Supplementary aids and services, program modifications, and support for school personnel consistent with §300.320(a)(4).**

(b) Review and revision of IEPs.

- (2) Requirement with respect to regular education teacher.** A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph §300.324(a)(3) of this section, participate in the review and revision of the child's IEP.

Opportunity for General Education Teachers to Provide Input or Request Assistance:

The immediate person for support to the general education teacher is the campus special education teacher. Special educators are in a collaborative role to problem solve any difficulties the special education student may be having in the general class. The IEP Team designates a person responsible for coordination of monitoring the student and this is typically assigned to the special education teacher. The special education teacher's responsibilities to ensure participation of the general education teacher may include:

- *sending a memo/form to inform the teachers of your planning period and request some time to discuss the special education students in their room,*
- *providing relevant sections of the student's current IEP, such as goals and objectives, accommodations, and adaptations to all teachers who provide instruction to a student with disabilities,*
- *offering conferences before or after school to discuss the current or proposed IEP of specific students--conferences may be used to discuss grading, homework, etc., clarify student abilities and needs based on evaluation, discuss test accommodations for the teacher to use, suggest a behavioral strategy that may work for the student, or review the behavioral intervention plan, if appropriate.*

Opportunity to Provide Input to the IEP Team:

*The general education teacher will have information regarding the special education teacher's conference time and should use this time or after school conferences as one means to provide input regarding the student's IEP. General education and special education teachers may collaborate, however, the special education teacher **MUST** send out the IEP Team teacher input form to all the student's teachers prior to:*

- *an initial IEP Team meeting,*
- *an IEP meeting to consider existing evaluation data/reevaluation,*
- *annual review IEP meeting, or*
- *an IEP meeting considering other areas such as behavior, failures, etc..*

Process for Submitting Requests for Further Consideration of Student's IEP

A. *There may be instances when the general educator does not agree with the decision of the IEP Team. There could be several reasons why this might occur, however, it is the responsibility of special educators first and*

foremost to support and assist the general education teacher in understanding the student's disability and IEP. When a general education teacher does not agree, the special education teacher should:

- 1. make an appointment with the general education teacher to discuss the general education teacher's concern;*
- 2. listen carefully to each issue raised by the general education teacher, be sure he/she has a clear understanding of the student's educational competencies and needs. Often the general education teacher with a concern is not present in the IEP Team meeting and has not seen the evaluation information and may not understand the student's strengths and weaknesses.*
- 3. collaboratively brainstorm possible solutions and alternatives which could be used, being careful to pay close attention to the IEP Team decisions on placement, accommodations, etc. Areas for support include pacing, methods, materials, etc.*
- 4. keep notes of the issues and solutions to be tried and the person responsible for trying each solution, and the timeline;*
- 5. set the next date and time to meet and discuss any progress toward the general education teacher's concerns after he/she has implemented the solutions from the meeting. The special education teacher should always follow-up. The possible ways in which special education could support the general education teacher are listed above. Don't hesitate to offer specific suggestions as ways to help the teacher. Progress should be noted and concerns resolved no more than two weeks from your first meeting date.*

B. Involvement of the Principal: If the steps above do not improve the situation, the Principal and/or Assistant Principal should be notified (if they have not already been involved).

III. ADDITIONAL AREAS CONSIDERED BY THE IEP TEAM

A. Adapted Physical Education

§300.108 Physical education (PE).

The NMPED must ensure that public agencies in the State comply with the following:

- (a) General.** Physical education services, specially-designed if necessary, must be made available to every child with a disability receiving FAPE, unless the ASK Academy enrolls children without disabilities and does not provide PE to children without disabilities in the same grade.
- (b) Regular physical education.** Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless—
 - (1)** The child is enrolled full time in a separate facility; or
 - (2)** The child needs specially-designed physical education, as prescribed in the child's IEP.
- (c) Special physical education.** If specially-designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.
- (d) Education in separate facilities.** The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.

(Authority: 20 U.S.C. §1412(a)(5)(A))

 - 1. Any student referred for specially-designed physical education evaluation must have an identified disability.*
 - A. The request for specially-designed physical education first requires an evaluation be conducted. The evaluation request may have come from the SAT upon initial referral or by the student's IEP Team.*
 - B. Specially-designed physical education is provided upon consideration of a current evaluation and written report.*
 - 2. If specially-designed PE is provided, the goals and objectives will be approved by the IEP Team.*
 - 3. Parents will receive progress reports toward the specially-designed PE goals/objectives in the same timeframe as students who do not have a disability.*

B. Extracurricular Activities

§300.107 Nonacademic services.

The State must ensure the following:

- (a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.
- (b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(Authority: 20 USC §1412(a)(1))

§300.117 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §300.107, each public agency must ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child. The ASK Academy must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

(Authority: 20 USC §1412(a)(5))

§300.320 Definition of individualized education program.

- (a) **General.** As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include—
 - (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child—
 - (i) To advance appropriately toward attaining the annual goals;
 - (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
 - (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

E. Related Services – Roles

For more information on various roles for related service personnel, please see the NMPED website link:

<http://www.ped.state.nm.us/seo/library/guidance.memor.pdf>

Related Service Providers as Contributors in the Development of IEP Goals and Objectives:

Traditionally, if a student received a certain score on one of a variety of related service assessments, the student was assumed to be in need of direct service from that related service provider. Then, under that traditional model, related service providers supplied draft annual goals and objectives to IEP teams that would be aimed at progress on therapy-related activities. In order to increase educational outcomes for students with disabilities, we are recommending a change in this traditional practice. After the IEP Team has discussed a student's present levels of performance, the family's (and student's, if appropriate) vision for the student, the team needs to develop goals. It is important to recognize that goals must (1) be tied to the New Mexico Content Standards and Benchmarks; (2) be individualized and appropriate for each student; and, (3) address each student's educational needs such that the student is provided access to, and progresses in, the general curriculum. We are recommending that once the present levels of academic achievement and functional performance have been determined, the vision for the student

articulated and the goals established, related service providers, as relevant, contribute to the development of appropriate objectives that lead to the attainment of the IEP goals. This would be true for all students receiving special education services and for whom an IEP is being developed. Even in the case of a student who is eligible under the definition of speech or language impairment, the goals need to be related to the NM Content Standards. Objectives under these goals may address certain articulation or fluency skills, but the goals must still be tied to Standards. Our intent in recommending this change in practice is to focus attention on improving outcomes for students in relation to the general curriculum, while recognizing that building skills that lead to improved outcomes may very well involve the specialized contributions from related service providers.

Related Service Providers as Experts on Access. Traditionally, related service providers have contributed information that assists the IEP Team to develop the health plan section and/or transportation plan of the IEP for students whose ability to access the general curriculum depends on services such as tube feeding or specialized transport. These types of services do not require goals since no instruction is taking place. However, these services do get included on the IEP service schedule and are considered part of a student's special education service.

F. Standards for Excellence

Authority: NMAC 6.29.1.8 IMPLEMENTATION:

This regulation shall assist in the implementation of standards for excellence through the use of the *educational plan for student success (EPSS)*, content standards with benchmarks and performance standards, and additional program and procedural requirements specified in this regulation. The primary mechanism for planning and implementation is the *educational plan for student success (EPSS)*.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES

D. Performance goals and indicators. Pursuant to the requirements of 34 CFR §300.157(a), the content standards and benchmarks from the department's Standards for Excellence (Chapter 29 of Title 6 of the NMAC) for all children attending public schools and state-supported educational programs in New Mexico shall provide the basic performance goals and indicators for children with disabilities in the general education curriculum. The IEP academic goals must align with the New Mexico content standards and benchmarks, including the expanded performance standards for students with significant cognitive disabilities, however, functional goals do not have to align with the standards and benchmarks. Unless waivers or modifications covering individual public agencies' programs have been allowed by the department or the secretary of education, the general education curriculum and the content standards and benchmarks shall only be adapted to the extent necessary to meet the needs of individual children with disabilities, as determined by IEP teams in individual cases.

New Mexico requires students to meet grade level academic content standards in mathematics, language arts, science, social studies, modern, classical, and native languages, arts, career readiness, health, and physical education. All content standards can be downloaded from: <http://www.ped.state.nm.us/standards>. In addition, the New Mexico expanded performance standards may be used to develop IEP goals and objectives for students with significant cognitive disabilities. The standards can be downloaded from:

<http://www.ped.state.nm.us/seo/guide/nm.expanded.performance.standards.pdf>.

G. Supplementary Aids and Services - Accommodations

§300.42 Supplementary aids and services. **Supplementary aids and services** means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.114 through 300.116. (Authority: 20 USC §1401(33))

§300.320 Definition of individualized education program.

(a) (4) A statement of **the special education and related services and supplementary aids and services**, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child--

(i) To advance appropriately toward attaining the annual goals;

- (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
- (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

H. Tape Recording

The ASK Academy, the parent, or the adult student may audio-record the IEP Team meeting. All participants in the meeting must be informed that such a recording is being made. If a parent or adult student notifies the IEP Team that they will record the meeting, the ASK Academy should also record the meeting and put a reference to the audio-tape in the student's special education eligibility folder. The audio tape will be kept confidential and located with the eligibility folder.

The ASK Academy may NOT record without parent's knowledge.

New Mexico Public Education Department
Special Education Bureau

The ASK Academy
POLICIES AND PROCEDURES
FOR THE
PROVISION OF
SPECIAL EDUCATION SERVICES
FOR
STUDENTS WITH DISABILITIES AND GIFTED STUDENTS

Chapter 6. - LEAST RESTRICTIVE ENVIRONMENT (LRE)

Date Chapter 6. Adopted by Governing Body: 6/12/14
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Chapter 6. - LEAST RESTRICTIVE ENVIRONMENT (LRE)

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Chapter 6. LEAST RESTRICTIVE ENVIRONMENT (LRE)

I. Least Restrictive Environment - Requirements

§300.114 LRE requirements.

(a) General.

- (1) Except as provided in §300.324(d)(2) (regarding children with disabilities in adult prisons), the NMPED has in effect policies and procedures to ensure that public agencies in New Mexico meet the LRE requirements of this section and §§300.115 through 300.120.**
- (2) The public agency ensures that --**
 - (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and**
 - (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.**

(b) Additional requirement - State funding mechanism.

(1) General.

- (i) The New Mexico funding mechanism does not result in placements that violate the requirements of paragraph (a) of this section; and**
- (ii) New Mexico does not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that would result in the failure to provide FAPE to a child with a disability according to the unique needs of the child, as described in the child's IEP.**

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

§300.117 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §300.107, the public agency ensures that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

*In addition to information contained in this section, please refer to the NMPED website at:
<http://www.ped.state.nm.us/seo/lre/index.htm>*

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES

C. Least restrictive environment

- (1) Except as provided in 34 CFR §300.324(d) and Subsection K of 6.31.2.11 NMAC for children with disabilities who are convicted as adults under state law and incarcerated in adult prisons, all educational placements and services for children with disabilities must be provided in the least restrictive environment that is appropriate to each child's needs in compliance with 34 CFR §§300.114-300.120.**
- (2) In determining the least restrictive environment for each child's needs, public agencies and their IEP teams shall ensure that the following requirements are met.**
 - (a) The requirements of 34 CFR §300.114(a)(2) for each public agency to ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled, and that special classes, separate schooling or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.**
 - (b) The required continuum of alternative placements as specified in 34 CFR §300.115.**

- (c) The requirement of 34 CFR §300.116(c) that each child with a disability be educated in the school that he or she would attend if nondisabled unless the child's IEP requires some other arrangement.
- (d) The requirement of 34 CFR §300.116(e) that a child with a disability not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.
- (e) The requirements of 34 CFR §300.320(a)(4) that the IEP for each child with a disability include a statement of the special education and related services and supplementary aids and services, based on peer reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities with nondisabled children.
- (f) The requirement of 34 CFR §300.324(a)(3) that the regular education teacher of a child with a disability, as a member of the IEP Team, must assist in determining the supplementary aids and services, program modifications or supports for school personnel that will be provided for the child in compliance with §300.320(a)(4).
- (g) The requirement of 34 CFR §300.320(a)(5) that the IEP include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and the activities described in §§300.320(a)(4) and 300.117.
- (h) The requirements of 34 CFR §300.503 that the public agency give the parents written notice a reasonable time before the agency proposes or refuses to initiate or change the educational placement of the child or the provision of FAPE to the child and that the notice include a description of any other options considered and the reasons why those options were rejected. (*"Reasonable time" is defined in Chapter 2. – Procedural Safeguards.*)
- (i) The requirement of 34 CFR §300.120 that the department carry out activities to ensure that § 300.114 is implemented by each agency and that, if there is evidence that the public agency makes placements that are inconsistent with §300.114, the department must review the public agency's justification for its actions and assist in planning and implementing any necessary corrective action.

A. Continuum of Alternative Placements

§300.115 Continuum of alternative placements.

- (a) The public agency ensures that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.
- (b) The continuum required in paragraph (a) of this section must--
 - (1) Include the alternative placements listed in the definition of special education under §300.39 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and
 - (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

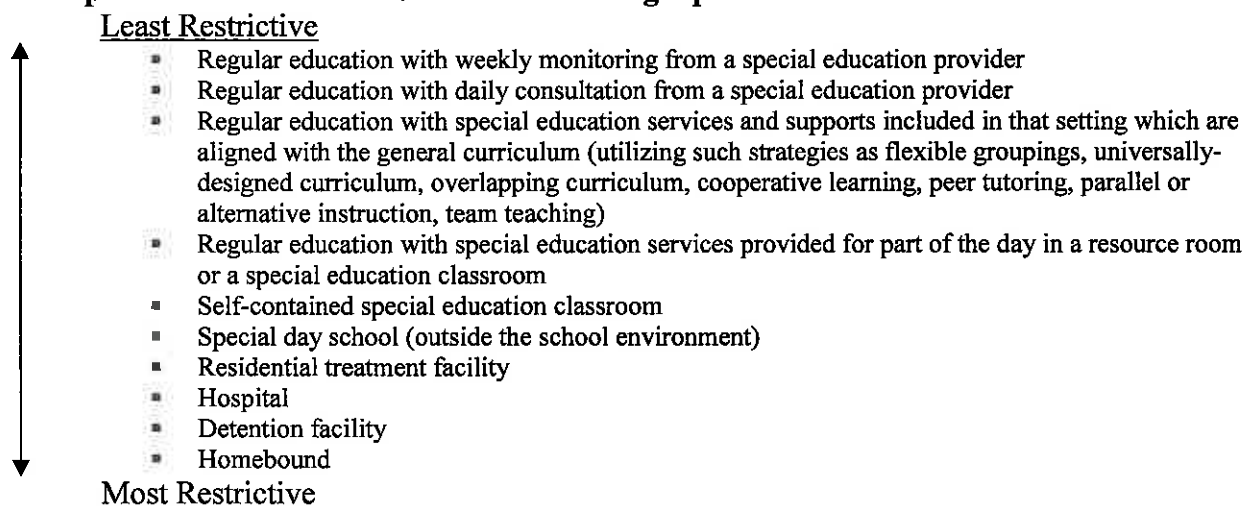
Authority: 34 CFR §300.39 Special education.

(a) General.

- (1) **Special education** means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including--
 - (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
 - (ii) Instruction in physical education.
- (2) **Special education** includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section--
 - (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards; (*Speech-language is a related service in New Mexico.*)
 - (ii) Travel training; and
 - (iii) Vocational education.

The continuum of alternative placements is a scale of service and setting options in which an IEP can be implemented. It ranges from less restrictive (all regular education with monitoring services) to more restrictive (homebound), as well as placements between those two points, as shown below. State and federal regulations require that the LEA make the continuum of alternative placements available, as needed, in order to meet the needs of the individual student with a disability.

Example of a Continuum of Service and Setting Options



“LRE” is not the same thing as “inclusion.” The U.S. Department of Education’s Office of Special Educations Programs (OSEP) has stated that inclusion is not the same thing as the IDEA’s mandate for educating students in the LRE. All placement decisions (i.e., the point on the continuum of alternative placements that describes the level of services and supports a student needs) must be determined on a case-by-case basis according to the individual needs of the student. LRE determinations require an individualized inquiry into the unique educational needs of each eligible student in determining the possible range of aids and supports that are needed to facilitate the student’s placement in the regular educational environment before a more restrictive placement is considered.

The terms “full inclusion” or “inclusion” are not included in the IDEA, but are understood in the field of special education to mean a philosophy that supports the creation of a system in which all children with disabilities attend their home school with their age and grade peers, while also recognizing that for some students a regular education setting may not be the best education option. Inclusive education programs are typically thought of as “including” students rather than merely “mainstreaming” them—a term used in the years before the regulations emphasized the creation of a system that strives to produce better outcomes for all students.

LRE Questions for the IEP Team – Students with more Severe Challenges:

The following are points for discussion and documentation as an IEP Team determines the appropriateness of the Least Restrictive Environment for a student with more severe disabilities.

1. *Can education in the general classroom, with the use of supplementary aids and services, be achieved satisfactorily for the student?*
 - a. *Has the public agency taken steps to accommodate the student with disabilities in the general classroom?*
 - (1) *Did the district provide supplementary aids and services?*
 - (2) *Did the district provide accommodations?*
 - b. *Are the services that were provided sufficient?*
 - (1) *The district does not have to provide every conceivable supplementary aid or service.*
 - (2) *IDEA (Individuals with Disabilities Education Act) does not require general education teachers to devote all or most of their time to one student with a disability.*

- (3) *IDEA does not require that general education teachers modify the general education program beyond recognition.*
- (4) *General education teachers are not required to modify the general education curriculum to the extent that the student with disabilities is not required to learn any of the skills normally taught in general education.*
- c. *Will the student receive an educational benefit from general education?*
 - (1) *Can the student grasp the New Mexico Standards for Excellence benchmarks of the general education curriculum?*
 - (2) *Consider and document the nature and severity of the student's disability in relation to receiving educational benefits from general education.*
- d. *Examine the student's overall educational experience in the mainstream environment, balancing the benefits of general and special education for each individual student.*
- e. *What effect does the presence of a student with disabilities have on the general classroom environment and, thus, on the education the other students are receiving?*
 - (1) *Discuss and document any disruptions in the classroom.*
 - (2) *Does the student require so much of the teacher's attention that the teacher will have to ignore the other students' needs in order to attend to the student with disabilities?*
- 2. *If education in a general classroom cannot be achieved satisfactorily, determine whether the student has been mainstreamed to the maximum extent appropriate for that student.*
 - a. *Determine if all academic and non-academic classes in general education with nondisabled peers have been considered or tried.*
 - b. *Determine if mainstreaming for lunch, recess, or other times has been considered.*

B. PLACEMENTS:

§300.116 Placements.

In determining the educational placement of a child with a disability, the public agency ensures that--

- (a) **The placement decision--**
 - (1) **Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and**
 - (2) **Is made in conformity with the LRE provisions of this subpart, including §§300.114 through 300.118;**
- (b) **The child's placement--**
 - (1) **Is determined at least annually;**
 - (2) **Is based on the child's IEP; and**
 - (3) **Is as close as possible to the child's home, unless the parent agrees otherwise;**
- (c) **Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;**
- (d) **In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and**
- (e) **A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (*Regular classrooms are public schools in K-12th*).**

§300.110 Program options.

The NMPED must ensure that the local educational agency makes available to its children with disabilities the variety of educational programs and services that it provides to nondisabled children in the areas served by the LEA, including art, music, industrial arts, consumer and homemaking education, and vocational education.

Placement in the Least Restrictive Environment (LRE) Understanding and Making the Placement Decision

What is Placement? It is not the physical location of the special education services. Rather, it is the set of services and the type of environment, or the point on the continuum of services and setting options, in which those services are delivered.

Who Makes the Placement Decision? The student's IEP Team makes the decision. This requires an individualized inquiry into the student's unique educational and related services needs.

When is the Placement Decision Made? It is the last of a series of decisions made at the IEP meeting. It is made after goals, objectives/benchmarks, and instructional modifications are developed. The placement decision is based on those IEP elements.

Summary of the LRE Mandate in IDEA with Respect to Making Placement Decisions.

- To the maximum extent possible, students with disabilities must be educated in the regular classroom.
- Special classes, separate schooling, or other removal from the regular classroom occurs only when the nature or the severity of the educational disability is such that education in the regular class cannot be satisfactorily achieved with appropriate aids and supports.
- Unless the student's IEP requires some other kind of arrangement, the student attends the same school he or she would attend if not eligible for special education services.
- Students with exceptionalities must be afforded the opportunity to participate in nonacademic and extracurricular services and activities along with their peers in regular education.
- Less restrictive placements must always be considered. However, where there is a reasonable likelihood that a student with a disability can be educated in the regular classroom with the use of supplementary aids and supports, then that placement should be tried.

The Decision.

When making the placement decision as an individualized inquiry, the IEP Team should follow these steps.

- First, determine through the IEP process the student's educational needs. Determine what constitutes an appropriate program for the student, not where it will be provided or what pre-existing "program" fits best.
- Next, review the continuum of placement options in sequence from least restrictive to most restrictive. Look at how each option currently exists, as well as how it might also be modified.

As the first option, start the decision-making process by examining regular classroom placement. Have a serious and thoughtful discussion about the three factors below.

1. Consider whether the student can be educated satisfactorily in the regular classroom with one or more of the following:
 - supplementary aids and supports
 - program and/or curriculum modifications
 - provision of an itinerant special education provider
 - assistance from a paraeducator
 - special education training for the regular education teacher
 - the use of assistive technology
 - the development and implementation of FBAs and BIPs designed to identify and meet the daily behavioral challenges presented by the student in the regular education classroom
2. Compare the benefits provided in the regular education classroom and those provided in a special education classroom or segregated setting.
 - Compare social and communication skills, as well as academic benefits.
 - Compare the relative benefits to the student.
 - Keep in mind that regular education classroom placement is not dependent on the student's ability to learn the same things in the same way.
3. Consider the potentially beneficial or harmful effects that a regular class placement may have on the student with an exceptionality or the other students in the class.
 - a. Positive benefits might include social interaction with nonexceptional peers, peer modeling, high expectations, and acceptance of others.
 - b. Harmful effects might include unduly disruptive behavior that impairs the student's learning or that of others even with the implementation of a BIP.
 - c. Consider each of the above three factors equally.
 - d. Keep in mind the placement decision cannot be *solely* based on
 - Category of the disability
 - Severity of the disability
 - Language and communication needs

- Needed modifications in the curriculum
 - Configuration of the public agency's delivery system
 - Availability of space or educational and related services
 - Administrative convenience
- e. Keep in mind that where there is a reasonable likelihood that a student with disabilities can be educated in the regular classroom with supplementary aids and supports, then that placement should be tried for as much as the school day as possible.
 - f. If the team agrees that the student should receive part or all of the special education services outside of the regular classroom, then the IEP must also provide opportunities for participation in regular education programs in academic, nonacademic, or extracurricular activities, as appropriate.
 - g. If the team agrees that the student's IEP cannot be satisfactorily implemented in the regular education classroom with the provision of supplementary services and supports, then the team can consider a more restrictive placement keeping in mind that the regular education classroom is not the LRE for that student at that time. That is, having the understanding that the ultimate plan and goal is to work towards a more fully inclusive placement when possible.
 - h. Finally, clearly articulate on the IEP document the placement decision and the justification for it based on the considerations in this booklet.

II. DETERMINING SERVICE LEVELS AND SETTINGS

For more information on the STARS (Student/Teacher Accountability Reporting System), please see the NMPED website with the STARS logo at: <http://www.ped.state.nm.us>; and the SEB Directors Guidance website at: <http://www.ped.state.nm.us/SEB/community/dl10/STARS%20PowerPoint.pdf>.

SERVICE LEVEL

The service level and setting determine the funding of special education services.

Service Level – (amount of time the student is receiving special education service regardless of location of service)

Level 1 – Less than 10% of the day

Level 2 – 11% - 50% of the day

Level 3 – More than 50% of the day but not a full day

Level 4 – Up to full day / 3Y, 4Y, 5Y

For students who attend school full-time:

- 1) Total the minutes of special education service scheduled on the student's IEP. Special education service should include the following:

- Service to a student from a licensed special education teacher or related service provider
- Service to a student from a one-on-one aide or job coach
- Service to a student from a general education teacher who is implementing curriculum modifications developed jointly with the special education teacher
- Service to a general education teacher from a special education teacher who is consulting on a weekly basis with the general education teacher about classroom modifications for a student

- 2) Refer to the following state-mandated school day minimums:

<u>Grade:</u>	<u>Hours per day:</u>
Kn =	2.5
1-6 =	5.5
7-12 =	6

- 3) Divide #1 by #2

- 1% - 10% = Level 1 / Minimum / A
- 11% - 49% = Level 2 / Moderate / B
- 50% or more = Level 3 / Extensive / C
- approaching a full day = Level 4 / Maximum / D

- for students on block scheduling, divide the total hours of special education service in the whole year by the total hours in the whole year (i.e., for high school, use 6 hrs/day X 5 days/week X 36 weeks/year = 1080 hours) and use the percents above for each count date to determine funding

For students who have reduced-day programs, including those in homebound or hospital settings, use the same method for calculating service level as for full-time students. Please note that the student's special education service time is divided by the time in a state-mandated school day, not by that student's reduced-hour day.

Note: To count service from a general education teacher as part of a student's special education service, that general education teacher must be involved in collaboration with the special education teacher at least twice a week, preferably including common planning time. If the general education teacher is only implementing directions from the special education teacher regarding simple modifications (i.e., sit in an area free from distractions, do half as many problems, allow extended time for tests, read with a partner, etc.), that service is NOT included in a calculation of special education service. Irrespective of the calculation of service level, IEP teams are required to plan and provide the supports and services necessary to ensure that a free appropriate public education is available to every student with a disability.

III. DETERMINING SETTING (amount of time the student is not in the regular class).

For more information see the STARS Templates and User Manual found on the NMPED website at: <http://www.ped.state.nm.us/SEB/community/index.html>.

Gifted Students: For students who are gifted, no settings are required because this data is not collected for the federal government, which does not recognize giftedness as a disability.

For students AGES 6-21 and over, choose from the following categories:

- **SA01 In Regular Class** more than 80% of the day
- **SA02 In Regular Class** between 40%-79% of the day
- **SA03 In Regular Class** less than 40% of the day
- **SA05 Public Separate School**

Authority: NMAC 6.29.1.9 Procedural Requirements

G. Class loads. Class loads shall be in compliance with the most current class load requirements in Section 22-10A-20 NMSA 1978 and Section 22-5-15 NMSA 1978.

- (5) Students receiving special education services integrated into a regular classroom for any part of the day shall be counted in the calculation of class load averages. Students receiving special education services not integrated into the regular classroom shall not be counted in the calculation of class load averages. Only classroom teachers charged with responsibility for the regular classroom instructional program shall be counted in determining average class loads. In elementary schools offering only one grade level, average class loads may be calculated by averaging appropriate grade levels between schools in the school district.

A. New Mexico School for the Blind and Visually Impaired (NMSBVI)

The New Mexico School for the Blind and Visually Impaired is a specialized school which provides residential, academic, support, early childhood programs, summer camps and outreach services to the blind and visually impaired students of New Mexico. NMSBVI is an entirely special education school. Today, the main campus is still located on the original site in Alamogordo with an Early Childhood Program and Outreach Program housed in Albuquerque, New Mexico. *For more information, see website: <http://www.nmsbvi.k12.nm.us/>*

B. New Mexico School for the Deaf (NMSD)

With a long history of serving children and youth who are deaf or hard of hearing, the New Mexico School for the Deaf offers the following programs to the state:

- Preschools and kindergartens - comprehensive and stimulating learning environments for young children

- Academics - grades 1 through 12, which encompass traditional and elective subjects with a special emphasis on language and literacy development
 - Student Life - a wide range of residential, educational and recreational after-school activities, such as athletics, clubs and life skills development
 - Step*Hi - statewide, family centered, early intervention services for babies, toddlers and young children
 - Outreach - statewide information and educational support to public schools serving children and youth who are Deaf or Hard of Hearing
 - Summer Program - a place where NMSD and non-NMSD students who are deaf or hard of hearing and in grades 3 - 12 come together in fun, adventurous, academic and non-academic ways.
- For more information, see website: <http://www.nmsd.k12.nm.us/>*

C. State-Supported Educational Programs

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

- J. Children in state-supported educational programs.
- (1) Children placed or referred by other public agencies.
 - (a) Applicability. The rules in this Paragraph (1) of Subsection J apply to children with disabilities who are being considered for placement in a state-supported educational program or facility by another public agency as a means of providing special education and related services.
 - (b) Responsibility. The public agency shall ensure that a child with a disability who is being considered for placement in a state-supported educational program by another public agency has all the rights of a child with a disability who is served by any other public agency, including being provided special education and related services:
 - (i) in conformance with an IEP;
 - (ii) at no cost to the child's parents; and
 - (iii) at a school or facility that is accredited by the department or licensed by the New Mexico department of health.
 - (c) Service delivery. With informed parent consent pursuant to 34 CFR §300.300 and Subsection F of 6.31.2.13 NMAC, and pursuant to the procedures in 34 CFR §300.304 and Subsection D of 6.31.2.10 NMAC, the state-supported program may conduct such additional evaluations and gather such additional information as it considers necessary to assist the IEP Team in making the placement decision. The referring public agency and the receiving state-supported educational program shall be jointly responsible for developing IEPs and ensuring that the child receives a free appropriate public education.
 - (d) Joint IEPs and interagency agreements. Responsibility for services for children placed in or referred to state-supported educational programs shall be defined by a jointly agreed upon IEP or other written agreement between the referring public agency and the state-supported program.
 - (e) Annual review. At least annually, the referring public agency, the state-supported educational program and the parent shall jointly review the child's IEP and revise it as the joint IEP Team deems appropriate.
 - (2) Children enrolled in state-supported educational programs by parents or other public authorities. A state-supported educational program that accepts a child with a disability at the request of a parent or upon the request or order of a noneducational public authority, and without appropriate participation by the public agency that has primary responsibility for serving the child, assumes all responsibility for ensuring the provision of FAPE. The child's LEA or another public agency with educational jurisdiction may agree to share the responsibility pursuant to a joint IEP or other written agreement between the state-supported program, the other agency and, if appropriate, the parent.

IV. GIFTED PROGRAMS

Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN

- F. Applicability of rules to gifted children.
- (1) All definitions, policies, procedures, assurances, procedural safeguards and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the

educational jurisdiction of each local school district, including children in charter schools within the district, except:

- (a) the requirements of 6.31.2.8 NMAC through 6.31.2.10 NMAC
 - (b) Subsections J, K and L of 6.31.2.11 NMAC regarding child find, evaluations and services for private school children with disabilities, children with disabilities in state-supported educational programs, children with disabilities in detention and correctional facilities and children with disabilities who are schooled at home;
 - (c) the requirements of 34 CFR §§300.530-300.536, Subsection I of 6.31.2.13 NMAC and 6.11.2.11 NMAC regarding disciplinary changes of placement for children with disabilities; and
 - (d) the requirements of 34 CFR §§300.43, 300.320(b) and 6.31.2.11(G)(2) regarding transition planning. Students identified as gifted must meet the requirements at Subsection B of 22-13-1.1 NMSA 1978, which is the next step for students without disabilities.
- (2) Assuming appropriate evaluations, a child may properly be determined to be both gifted and a child with a disability and be entitled to a free appropriate public education for both reasons. The rules in this section 6.31.2.12 NMAC apply only to gifted children.
 - (3) Nothing in these rules shall preclude a school district or a charter school within a district from offering additional gifted programs for children who fail to meet the eligibility criteria. However, the NMPED shall only provide funds under Section 22-8-21 NMSA 1978 for department-approved gifted programs for those students who meet the established criteria.

The The ASK Academy does offer additional gifted programs for children who fail to meet the eligibility criteria, as described in sections 3.-Evaluation and 4.-Gifted Students. The NMPED does not provide funds under Section 22-8-21 NMSA 1978 for gifted programs whose students do not meet the established criteria.

A. Recommendations from National Association of Gifted Children (NAGC) Regarding Program Design

Description: The development of appropriate gifted education programming requires comprehensive services based on sound philosophical, theoretical, and empirical support.

Guiding Principles from NAGC and Minimum Standards

- 1. Rather than any single gifted program, a continuum of programming services must exist for gifted learners.
 - 1.0M Gifted programming services must be accessible to all gifted learners.
- 2. Gifted education must be adequately funded.
 - 2.0M Gifted education funding should be equitable compared to the funding of other local programming.
- 3. Gifted education programming must evolve from a comprehensive and sound base.
 - 3.0M Gifted education programming must be submitted for outside review on a regular basis.
 - 3.1M Gifted programming must be guided by a clearly articulated philosophy statement and accompanying goals and objectives.
 - 3.2M A continuum of services must be provided across grades pre-K-12.
- 4. Gifted education programming services must be an integral part of the general education school day.
 - 4.0M Gifted education programming should be articulated with the general education program.
 - 4.1M Appropriate educational opportunities must be provided in the regular classroom, resource classroom, separate, or optional voluntary environments.
- 5. Flexible groupings of students must be developed in order to facilitate differentiated instruction and curriculum.
 - 5.0M The use of flexible grouping of gifted learners must be an integral part of gifted education programming.
- 6. Policies specific to adapting and adding to the nature and operations of the general education program are necessary for gifted education.
 - 6.0M Existing and future school policies must include provisions for the needs of gifted learners.

B. Recommendations from:

- Council for Exceptional Children (CEC) Regarding Design Standards For Gifted Programs

- National Association Of Gifted Children (NAGC) Regarding Program Evaluation
 - National Association Of Gifted Children (NAGC) Regarding Program Administration Or Management
- For more information see the Technical Assistance and Training Document for Gifted Education at the NMPED website: <http://www.ped.state.nm.us/seo/gifted/gifted.pdf>

C. Special Education Service Delivery Models Least Restrictive Environment

The concept of least restrictive environment comes from Federal Legislation under IDEA '97. This requirement mandates that children with disabilities, to the maximum extent appropriate, “be educated with children who are nondisabled” and that they be removed from the regular educational environment “only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”

In New Mexico, services for gifted students fall under the umbrella of Special Education. Because of this framework, the IEP process for disabilities is also required for gifted exceptionalities. When IEP teams address the LRE section for students who are gifted, a shift in perspective is necessary. There is a significant body of research that supports the view that gifted students should be provided the opportunity to interact with their intellectual peers and that lack of opportunity may well be a more restrictive placement. The opportunity to excel and be challenged should be addressed in the IEP.

SELF-CONTAINED

Self-contained classes enable gifted students to be challenged in every area throughout the day, to be stimulated by their intellectual peers, to have guidance from specially selected teachers, and to have an orderly, sequential, well-integrated curriculum. This model is most appropriate for addressing the needs of special populations of gifted students e.g., highly gifted and students with factors.

PULLOUT PROGRAMS-RESOURCE ROOM

Pullout programs combine the advantages of regular class integration and special class grouping by bringing gifted students together part-time on a regular basis. Pullout programs may provide specialized service for up to 49% of the day. Scheduling larger blocks of time permits uninterrupted, in-depth work on special projects. Pullout programs require careful coordination and communication between the special education and general classroom teachers. **Note:** Students receiving specialized instruction should not be penalized by undue teacher expectations. Make-up work should not be required; however, opportunities to obtain missed concepts should be provided. This concern might be appropriately addressed under “modifications to general education” in the IEP within the general education setting.

GIFTED EDUCATION SEMINARS

Special Education services can be implemented via a seminar class at middle and high school levels. This is most often scheduled as an elective class. This model provides an opportunity for similar age and intellectual peer grouping to address specific topics of interest.

RESOURCE CENTERS

A school or district can establish resource centers available to all students but reserved for gifted students at specific times. This model is especially beneficial to school/school districts that have low numbers of identified gifted students. This setting enables students to meet from a broader geographical area and interest and work with specialists who can guide them on in-depth projects. **Note:** Students receiving specialized instruction should not be penalized by undue teacher expectations. Make-up work should not be required, however, opportunities to obtain missed concepts should be provided. This concern might be appropriately addressed under “modifications to general education” in the IEP within the general education setting.

D. General Education and Other Service Delivery Models Ability Grouping

Ability grouping refers to placing students of like ability together in homogeneous arrangements, such as special classes. This allows for more appropriate, rapid and advanced instruction, matching the rapidly developing skills and capabilities of gifted students. Strong research evidence supports the effectiveness of ability grouping for gifted students in special class settings as a proven instructional strategy.

- Cluster Grouping In Regular Classroom
- Cluster Scheduling For Core Courses
- Honors, Advanced Placement And Enriched Classes
- Seminars
- Special Classes Outside The School Day
- Summer Institutes

E. Enrichment

The enrichment model is another way to meet the differentiated educational needs of gifted students. Enrichment is effective when teachers provide instruction for gifted students in terms of well articulated activities that require higher cognitive processing, in-depth investigations of content, wider ranges of content, and alternate modes of communication. The following methods for enriching the curriculum may be used successfully at both elementary and secondary levels.

- Independent Study
- Alternate Learning Activities/Units
- Advanced Thinking Process
- Guest Speakers
- Mentors/Internships
- Alternate Resources
- Exchange Programs

F. Acceleration

Acceleration involves changing the rate of presentation of the general curriculum to enable gifted students to complete the program in less time than usual. Acceleration can occur in any curriculum content area including music, drama, art, mathematics, language arts, science and social studies. When students are accelerated into a higher level course, they should receive the appropriate credit (e.g. middle school students taking high school courses receive high school credit: high school students taking college courses receive credit both at high school level and college level.) When implementing acceleration as a method for meeting gifted students' needs, careful articulation among programs is critical. If a student is permitted to complete course work in a shorter amount of time than usual, some provision must be made for continued academic challenge within the specific curriculum. Without some means for well planned continuation/articulation, efforts at acceleration are wasted.

- Early Entrance To School
- Grade Skipping
- Multi-Age Level Classes
- Telescoping/Compacting
- College Course Work
- Early Admission To College
- Advanced Placement Program (AP)
- Accelerated Classes Outside The School Day

G. Recommendations from National Association of Gifted Children (NAGC) Regarding Social and Emotional Development

Guiding Principles (social/emotional development) from NAGC:

1. Gifted Learners must be provided differentiated guidance efforts to meet their unique socio-emotional development.
2. Gifted Learners must be provided career guidance services especially designed for their unique needs.
3. Gifted at-risk students must be provided guidance and counseling to help them reach their potential.
4. Gifted Learners must be provided affective curriculum in addition to differentiated guidance and counseling services.
5. Underachieving gifted Learners must be served rather than omitted from differentiated services.

Minimum Standards relating to the Guiding Principles

- 1.0M Gifted Learners, because of their unique socio-emotional development, must be provided guidance and counseling services by a counselor who is familiar with the characteristics and socio-emotional needs of gifted learners.
- 2.0M Gifted learners must be provided career guidance consistent with their unique strengths.
- 3.0M Gifted learners who are placed at-risk must have special attention, counseling, and support to help them realize their full potential.
- 4.0M Gifted learners must be provided affective curriculum as part of differentiated curriculum and instructional services.
- 5.0M Gifted students who are underachieving must not be exited from gifted programs because of related problems.

V. OTHER INSTRUCTIONAL PROGRAMS/SERVICE DELIVERY

§300.110 Program options.

The NMPED must ensure that the public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

A. Adapted Physical Education

§300.108 Physical education.

The NMPED must ensure that public agencies in the state comply with the following:

- (a) **General.** Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide PE to children without disabilities in the same grades.
- (b) **Regular physical education.** Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless--
 - (1) The child is enrolled full time in a separate facility; or
 - (2) The child needs specially designed physical education, as prescribed in the child's IEP.
- (c) **Special physical education.** If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.
- (d) **Education in separate facilities.** The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.

Physical Education services, specially designed where necessary, will be provided as an integral part of the educational program of each student with disabilities. The IEP Team should consider three options when making decisions about the physical education needs of students with disabilities. These decisions must be based on a special physical education evaluation.

1. *The special PE evaluation will provide the IEP Team with the following information:*
 - a. *identification of student's problems,*
 - b. *identification of areas of competencies,*
 - c. *documentation of the student's need for a special physical education program.*
2. **Regular Physical Education with No Modifications or Accommodations**
NOTE: A special physical education evaluation is not necessary when the student with disabilities can participate in regular physical education with no modifications.
3. **Regular Education With Modifications or Accommodations**
Regular PE should be considered when modifications would make it possible for the student with disabilities to be successful in a regular physical education program. The specific modifications must be described in the student's IEP. It would be the responsibility of the special education teacher to assist the regular physical education teacher with modifications for the student and to monitor the progress of the student.
4. **Special Physical Education**
 - a. *A special physical education program with IEP objectives should be provided when the physical education evaluation determines that the student cannot be successful in a regular physical education*

class with modifications. When the IEP Team has made the recommendation and the arrangements are specified in the student's IEP, physical education for the students with disabilities may be provided by the following personnel:

- 1. special education instructional or related service personnel who have the necessary skills and knowledge;*
 - 2. physical education teacher;*
 - 3. occupational therapist;*
 - 4. physical therapist;*
 - 5. occupational therapy assistant or physical therapy assistant working under supervision in accordance with the standards of their profession.*
- b. When these services are provided by special education personnel, the public agency must document that they have the necessary skills and knowledge. Documentation may include, but not be limited to, in-service records, evidence of attendance at seminars or workshops, and/or transcripts of college courses.*
- c. If specially designed physical education is prescribed in a student's IEP, the public agency will provide the services directly or make arrangements for those services to be provided through other public or private programs.*
- d. If a public agency enrolls a student with a disability into a facility, the public agency ensures that the student receives appropriate physical education services.*

B. Behavior Improvement Classes

The public agency will provide specialized instructional strategies and incorporate positive behavioral strategies and/or a behavioral level system for those students whose IEP Team determines a more restrictive placement is appropriate due to behavioral needs.

H. Speech Therapy

The speech/language pathologist utilizes a service delivery system that has a range of services from least to most restrictive. An important component of this model is the option of providing service in the regular classroom through collaboration with the general education teacher. (Speech/language pathologist should be encouraged to implement this option when appropriate for students.)

*The type and amount of therapy stated in the IEP establishes the requirement that these services will be provided. Therefore, it is essential that therapy **not** be canceled. Careful planning is required to allow for IEP meetings and testing time. Missed therapy sessions must be made up on another day, unless the missed session is due to student absence.*

- 1. Relative to IEP Team meetings, the speech pathologist:*
 - a. should send home DRAFT IEP goals at least one week prior to the IEP meeting. A cover letter with name, conference time and phone number should accompany the draft IEP goals.*
 - b. must attend IEP meetings for students with "speech impairment only";*
 - (1. copy and distribute the modification checklist to all teachers of students who are SI only.*
 - (2. collaborate with special education teachers on the best means for distribution of students who are SI as a secondary disability.*
 - c. may attend IEP meetings for students who have a speech impairment in addition to another disability.*
- 2. Other responsibilities:*
 - a. Full-time pathologists traditionally schedule a set time per week to use for testing, IEP Team meetings and paperwork.*
 - b. NMPED's goal is for full-time therapists to serve approximately 60 to 65 students per week. There may be circumstances in which this caseload is not possible.*
 - c. Lesson plans should be used as a guide for the implementation of the IEP.*

New Mexico Public Education Department
Special Education Bureau

The ASK Academy
POLICIES AND PROCEDURES
FOR THE
PROVISION OF
SPECIAL EDUCATION SERVICES
FOR
STUDENTS WITH DISABILITIES AND GIFTED STUDENTS

Chapter 7. - DISCIPLINE / BEHAVIOR

Date Chapter 7. Adopted by Governing Body: 6/12/14
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Chapter 7. - DISCIPLINE/BEHAVIOR

I. DISCIPLINE/BEHAVIOR

A. Code of Conduct and General Provisions

Student Code of Conduct. *The ASK Academy will annually provide students and parents with a copy of the Student Code of Conduct. Parents or adult students will sign a receipt for this document, and that receipt will be kept on file in the student's cumulative folder in the school office.*

Authority: §300.530 Authority of school personnel.

- (a) **Case-by-case determination.** School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct. (for §300.530 in full, see V. FAPE)

Authority: NMAC §6.11.2.8 GENERAL PROVISIONS:

- A. Jurisdiction over students. All officials, employees and authorized agents of the ASK Academy whose responsibilities include supervision of students shall have comprehensive authority within constitutional bounds to maintain order and discipline in school. In exercising this authority, such officials, employees and authorized agents of the ASK Academy may exercise such powers of control, supervision, and correction over students as may be reasonably necessary to enable them to properly perform their duties and accomplish the purposes of education. This authority applies whenever students are lawfully subject to the schools' control, regardless of place. During such periods, ASK Academy authorities have the right to supervise and control the conduct of students, and students shall have the duty to submit to the schools' authority. The foregoing is intended to reflect the common law regarding the rights, duties and liabilities of public school authorities in supervising, controlling and disciplining students. Nothing herein shall be construed as enlarging the liability of public school authorities beyond that imposed by statute, common law or state board of education regulation.

Authority: NMAC §6.11.2.9 RULES OF CONDUCT FOR NEW MEXICO PUBLIC SCHOOLS:

- B. Regulated activities: Beyond those activities designated as prohibited, all other areas of student conduct may be regulated within legal limits by local school boards as they deem appropriate to local conditions. Activities subject to local board regulation within legal limits include, but are not limited to:
- (8) by statute, Section 22-5-4.7 NMSA 1978, each school district is required to adopt a policy providing for the expulsion from school, for a period of not less than one year, of any student who is determined to have knowingly brought a weapon to a school under the jurisdiction of the local board; the local school board or the superintendent of the school district may modify the expulsion requirement on a case-by-case basis; the special rule provisions of Subsection D. of 6.11.2.11 NMAC apply to students with disabilities;

Authority: NMAC §6.11.2.10 ENFORCING RULES OF CONDUCT:

- A. Enforcing attendance requirements
- B. Search and seizure
- C. Basis for disciplinary action
- D. Selection of disciplinary sanctions: Within legal limits as defined in Subsection L of 6.11.2.7 NMAC above, local school boards have discretion to determine the appropriate sanction(s) to be imposed for violations of rules of student conduct, or to authorize appropriate administrative authorities to make such determinations.
- (1) School discipline and criminal charges: Appropriate disciplinary actions may be taken against students regardless of whether criminal charges are also filed in connection with an incident.
- (2) Nondiscriminatory enforcement: Local school boards and administrative authorities shall not enforce school rules or impose disciplinary punishments in a manner which discriminates against any student on the basis of race, religion, color, national origin, ancestry, sex or disability, except to the extent otherwise permitted or required by law or regulation. This statement shall not be construed as requiring identical treatment of students for violation of the same rule; it shall be read as prohibiting differential treatment

which is based on race, religion, color, national origin, ancestry, sex or disability, rather than on other differences in individual cases or students.

Authority: NMAC §6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

- D. Determination that behavior is manifestation of disability. If the administrative authority, the parent and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must comply within 34 CFR §300.530(f). (*for §300.530 f, see III. B.2.*)

Authority: NMAC §6.31.2.11 POSITIVE BEHAVIOR SUPPORTS:

- F. Behavioral management and discipline.

- (1) Behavioral planning in the IEP. Pursuant to 34 CFR §300.324(a)(2)(i), the IEP Team for a child with a disability whose behavior impedes his or her learning or that of others shall consider, if appropriate, strategies to address that behavior, including the development of behavioral goals and objectives and the use of positive behavioral interventions, strategies and supports to be used in pursuit of those goals and objectives. Public agencies are strongly encouraged to conduct functional behavioral assessments (FBAs) and integrate behavioral intervention plans (BIPs) into the IEPs for students who exhibit problem behaviors well before the behaviors result in proposed disciplinary actions for which FBAs and BIPs are required under the federal regulations.

B. Corporal Punishment

22-5-4.3. SCHOOL DISCIPLINE POLICIES

B. Each school district discipline policy shall establish rules of conduct governing areas of student and school activity, detail specific prohibited acts and activities and enumerate possible disciplinary sanctions, which sanctions may include in-school suspension, school service, suspension or expulsion. Corporal punishment shall be prohibited by each local school board and each governing body of a charter school.

The ASK Academy's local school board policy does not allow corporal punishment.

II. DEFINITIONS

Authority: NMAC §6.11.2.7 DEFINITIONS:

- A. "Administrative authority" means the local school district superintendent, a principal or a person authorized by either to act officially in a matter involving school discipline or the maintenance of order. The term may include school security officers, but only to the extent of their authority as established under written local school board policies.
- B. "Criminal acts" are acts defined as criminal under federal and state law, and any applicable municipal or county criminal ordinances.
- C. "Delinquent acts" are acts so defined in Subsection A of Section 32A-2-3 NMSA 1978 of the Delinquency Act.
- D. "Detention" means requiring a student to remain inside or otherwise restricting his or her liberty at times when other students are free for recess or to leave school.
- E. "Disciplinarian" means a person or group authorized to impose punishment after the facts have been determined by a hearing authority.
- F. "Disruptive conduct" means willful conduct which:
- (1) materially and in fact disrupts or interferes with the operation of the public schools or the orderly conduct of any public school activity, including individual classes; or
 - (2) leads an administrative authority reasonably to forecast that such disruption or interference is likely to occur unless preventive action is taken.
- G. "Expulsion" means the removal of a student from school either permanently or for an indefinite time exceeding ten (10) school days or a locally established lesser period.
- H. "Gang related activity" is disruptive conduct.
- I. "Hearing authority" means a person or group designated to hear evidence and determine the facts of a case at the required formal hearing.

- J. "Immediate removal" means the removal of a student from school for one school day or less under emergency conditions and without a prior hearing.
- K. "In-school suspension" means suspending a student from one or more regular classes while requiring the student to spend the time in a designated area at the same school or elsewhere.
- L. "Legal limits" include the requirements of the federal and state constitutions and governing statutes, standards and regulations, and also include the fundamental common-law requirement that rules of student conduct be reasonable exercises of the schools' authority in pursuance of legitimate educational and related functions. There are special limitations arising from constitutional guarantees of protected free speech and expression which must be balanced against the schools need to foster an educational atmosphere free from undue disruptions to appropriate discipline.
- M. "Long-term suspension" means the removal of a student from school for a specified time exceeding either ten (10) school days or any lesser period a local school board may set as a limit on temporary suspension.
- N. "Parent" means the natural parent, a guardian or other person or entity having custody and control of a student who is subject to the Compulsory School Attendance Law, Section 22-12-1 et seq. NMSA 1978, or the student if (s)he is not subject to compulsory attendance.
- O. "Public school" means the campus of and any building, facility, vehicle or other item of property owned, operated, controlled by or in the possession of a local school district. For purposes of student discipline, the term also includes any non-school premises being used for school-sponsored activities.
- P. "Refusal to cooperate with school personnel" means a student's willful refusal to obey the lawful instructions or orders of school personnel whose responsibilities include supervision of students.
- Q. "Refusal to identify self" means a person's willful refusal, upon request from school personnel known or identified as such to the person, to identify himself or herself accurately.
- R. "Review authority" is a person or group authorized by the local board to review a disciplinarian's final decision to impose a long-term suspension or expulsion.
- S. "Sexual harassment", regarding students, means unwelcome or unwanted conduct of a sexual nature (verbal, non-verbal or physical) when:
 - (1) submission to such conduct is made either explicitly or implicitly a term or condition of the advancement of a student in school programs or activities;
 - (2) submission to or rejection of such conduct by a student is used as the basis for decisions/opportunities affecting the student;
 - (3) such conduct substantially interferes with a student's learning or creates an intimidating, hostile or offensive learning environment.
- T. "School personnel" means all members of the staff, faculty and administration employed by the local school board. The term includes school security officers, school bus drivers and their aides, and also authorized agents of the schools, such as volunteers or chaperons, whose responsibilities include supervision of students.
- U. "Student" means a person who is enrolled in one or more classes at a public school or a person who was a student during the previous school year and is participating in a school sponsored activity connected with his or her prior status as a student.
- V. "Temporary suspension" means the removal of a student from school for a specified period of 10 school days or less after a rudimentary hearing.
- W. "Weapon" as set forth in Section 22-5-4.7 NMSA 1978 means:
 - (1) any firearm that is designed to, may readily be converted to or will expel a projectile by the action of an explosion; and
 - (2) any destructive device that is an explosive or incendiary device, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter-ounce, mine or similar device.

[08-15-97; 6.11.2.7 NMAC - Rn, 6 NMAC 1.4.7, 11-30-00]

III. CHANGE OF PLACEMENT DECISIONS – Change of Placement Analysis

The local campus administrator is responsible for maintaining records on student discipline. Students with disabilities must be monitored by the local campus for the total number of removals in order to follow New Mexico and federal disciplinary requirements outlined in this chapter.

Change of Placement Analysis

When a principal or other appropriate administrator recommends disciplinary removal from the student's current IEP placement, conduct a Change of Placement Analysis in order to assure compliance with law.

- (a) Count the days of disciplinary removal from the student's current educational placement.*
 - 1. Portions of a school day from which a child had been suspended are included in determining whether the child has been removed for more than 10 cumulative school days or subjected to a change of placement.*
 - 2. An in-school suspension would not be considered a part of the days of suspension as long as the child is afforded the opportunity to:*
 - a. Appropriately progress in the general curriculum,*
 - b. Continue to receive the services specified on his or her IEP, and*
 - c. Continue to participate with nondisabled children to the extent he or she would have in their current placement*
- (b) Determine whether the disciplinary removal(s) constitute(s) a change of placement. A disciplinary change of placement occurs if:*
 - 1. The removal is for more than 10 consecutive school days, or*
 - 2. The student is subject to a series of removals that constitute a pattern because they accumulate to more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed and the proximity of the removals to one another.*

A. Less than 10 School Day Removals

- (a) The ASK Academy is not required to provide services for removal of a student with a disability who has been removed from the current placement for 10 school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed.*
- (b) The ASK Academy may choose to provide the IEP services to the student with disabilities during any short term removal to ISS in order to prevent counting those days of removal toward the 10 cumulative days.*
- (c) In the case of a student whose behavior impedes his or her learning or that of others, convene an IEP Team meeting, if appropriate, to consider completing an FBA/BIP, including positive behavior interventions, strategies, and supports to address that behavior.*

Authority: NMAC §6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

F. Behavioral management and discipline.

- (1) Behavioral planning in the IEP.** Pursuant to 34 CFR §300.324(a)(2)(i), the IEP team for a child with a disability whose behavior impedes his or her learning or that of others shall consider, if appropriate, strategies to address that behavior, including the development of behavioral goals and objectives and the use of positive behavioral interventions, strategies and supports to be used in pursuit of those goals and objectives. Public agencies are strongly encouraged to conduct functional behavioral assessments (FBAs) and integrate behavioral intervention plans (BIPs) into the IEPs for students who exhibit problem behaviors well before the behaviors result in proposed disciplinary actions for which FBAs and BIPs are required under the federal regulations.

B. More than 10 School Day Removals

1. Consecutive or Cumulative Days – “Pattern”

§300.536 Change of placement because of disciplinary removals.

- (a) For purposes of removals of a child with a disability from the child's current educational placement under §§300.530 through 300.535, a change of placement occurs if--**
 - (1) The removal is for more than 10 consecutive school days; or**
 - (2) The child has been subjected to a series of removals that constitute a pattern--**
 - (i) Because the series of removals total more than 10 school days in a school year;**
 - (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals, and**

- (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
- (b) (1) The LEA determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
- (2) This determination is subject to review through due process and judicial proceedings.

Beyond 10 cumulative days in a school year, additional short-term removals of 10 consecutive days or less, for separate incidents of misconduct, are permitted to the extent such removals would be applied to nondisabled students and as long as those additional removals do not constitute a Change of Placement pattern described in §300.536, above.

An IEP Team will:

- (a.) *consider special education and disciplinary records of the student with a disability prior to the final determination regarding the disciplinary action;*
- (b.) *review the student's BIP and its implementation to determine if accommodations / modifications are necessary;*
- (c.) *consult with one or more of the child's teachers to determine the extent to which services are needed and the location necessary to enable the student to progress in the general curriculum and advance toward achieving the goals set out in the student's IEP.*
- (d.) *If the ASK Academy initiates disciplinary procedures applicable to all students, the special education and disciplinary records of the student with a disability are transmitted for consideration to the person or persons making the final determination regarding disciplinary action.*

2. Manifestation Determination

If a disciplinary removal constitutes a change in placement, within 10 school days of any decision to change the placement because of a violation of a code of student conduct, the ASK Academy must convene an IEP meeting to conduct a manifestation determination and address the two questions in §300.530(e)(1) below.

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(e) Manifestation determination.

- (1) **Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--**
 - (i) **If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or**
 - (ii) **If the conduct in question was the direct result of the LEA's failure to implement the IEP.**
- (2) **The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.**
 - *Previously, any tangential or attenuated relationship between the discipline infraction and the child's disability was sufficient to determine that the infraction was a "manifestation" of the child's disability. In IDEA 2004, the House Committee FAQ stated that to be determined a manifestation, "it is the intention that the conduct in question [is] caused by, or has a direct and substantial relationship to the child's disability, and is not an attenuated association or mere correlation, such as low self-esteem, to the child's disability."*
 - *Relevant Members of the IEP Team: depending on the type of discipline infraction, when the infraction occurred and who was present, some members of the IEP Team may not be needed in the discussion of the discipline event. Nonetheless, in each instance, the relevant members should be determined in collaboration by the parents and the ASK Academy.*
- (3) **If the LEA, the parent and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the ASK Academy must take immediate steps to remedy those deficiencies.**

- (f) **Determination that behavior was a manifestation.** If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must--
- (1) **Either--**
- (i) **Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or**
 - (ii) **If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and**
- (2) **Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.**

Authority: NMAC §6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

Until this §6.11.2.11 NMAC is further revised, the provisions of the Individuals with Disabilities Education Improvement Act of 2004 at 20 USC Section 1415(k) and the federal regulations implementing those provisions shall govern disciplinary removals of students with disabilities from their current educational placements. All other federal and state laws and rules governing student discipline, including §6.11.2.12 NMAC governing detention, suspension or expulsion of any student, remain in effect.

- A. **General.** The following rules shall apply when a student with a disability under IDEA violates a rule of conduct as set forth in this rule which may result in:
- (1) long-term suspension or expulsion; or
 - (2) any other disciplinary change of the student's current educational placement as specified in the federal regulations implementing IDEA at 34 CFR §§300.530 through 300.536 and these or other department rules and standards.
- B. **When behavior is not a manifestation of disability.** For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to Subsection C of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in Subsection I of this section.
- C. **Manifestation determination.**
- (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a rule of student conduct, the administrative authority, the parent and relevant members of the child's IEP team (as determined by the parent and the administrative authority) must review all relevant information in the student's file, including the child's IEP, any teacher observations and any relevant information provided by the parents to determine:
 - (a) if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or
 - (b) if the conduct in question was the direct result of the administrative authority's failure to implement the IEP.
 - (2) The conduct must be determined to be a manifestation of the child's disability if the administrative authority, the parent and relevant members of the child's IEP team determine that a condition in either Subparagraph (a) or (b) of Paragraph (1) of Subsection C of 6.11.2.11 NMAC was met.
 - (3) If the administrative authority, the parent and relevant members of the child's IEP Team determine the condition described in Subparagraph (b) of Paragraph (1) of Subsection C of 6.11.2.11 NMAC was met, the administrative authority must take immediate steps to remedy those deficiencies.
- D. **Determination that behavior is a manifestation of disability.** If the administrative authority, the parent and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must comply within 34 CFR §300.530(f).
- G. **Change of placement because of disciplinary removals.** For purposes of removals of a student with a disability from the child's current educational placement under 6.11.2.11 and 6.11.2.12 NMAC, a change of placement occurs if the conditions provided in 34 CFR §300.536 are met. *(see page 7 of this Chapter)*

- H. Parental notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the administrative authority must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR §300.504.
- I. Services. A student with a disability who is removed from the student's current placement pursuant to this section must continue to receive special education and related services as provided in 34 CFR §300.530(d).
- J. see Appeals in this Chapter.

3. Functional Behavioral Assessment (FBA)/Behavior Intervention Plan (BIP)

§300.324 Development, review, and revision of IEP

- (a) (2) Consideration of special factors. The IEP Team must--
- (i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

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- (d) Services.
- (1) A child with a disability who is removed from the child's current placement pursuant to paragraph (c) or (g) of this section must--
- (i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
- (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.
- (2) [for all of (d) Services. - 2,3,4,5 - See V.- FAPE for Removed Students]

Authority: NMAC Sec. 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

- F. Behavioral management and discipline.
- (1) Behavioral planning in the IEP. Pursuant to 34 CFR §300.324(a)(2)(i), the IEP Team for a child with a disability whose behavior impedes his or her learning or that of others shall consider, if appropriate, strategies to address that behavior, including the development of behavioral goals and objectives and the use of positive behavioral interventions, strategies and supports to be used in pursuit of those goals and objectives. Public agencies are strongly encouraged to conduct functional behavioral assessments (FBAs) and integrate behavioral intervention plans (BIPs) into the IEPs for students who exhibit problem behaviors well before the behaviors result in proposed disciplinary actions for which FBAs and BIPs are required under the federal regulations.
- (2) See suspensions, expulsions page 12 of this Chapter.
- (3) FAPE for children removed from current placement for more than 10 school days in a school year. FAPE shall be provided in compliance with all applicable requirements of 34 CFR §300.530(d) and these or other department rules and standards for all children with disabilities who have been removed from their current educational placements for disciplinary reasons for more than 10 school days during a school year, as defined in 34 CFR §300.536.

The Functional Behavioral Assessment (FBA) must be completed when:

- *removal is more than 10 school days due to any other violation of code (FBA to prevent recurrence)*
- *removals due to drugs, weapons or serious bodily injury*
- *if behavior is a manifestation (unless FBA/BIP is already in place, then review and revise, as needed)*

Ensure that relevant members of the IEP Team, including the general education teacher, participate in providing information for the FBA and in developing the BIP:

1. *target the specific behavior that is impeding learning by clearly defining and describing the observable behavior(s).*
2. *obtain information from a variety of sources, including but not limited to: discussions, interviews, records, and direct observation. Also, use any standardized instruments, if available. Determine duration, frequency, and*

- intensity of any patterns of behavior.*
- 3. *identify and describe any antecedents - events that logically served as the stimulus for the behavior.*
- 4. *identify and describe any consequences - this is the action that is following and causes the student to maintain specific behavior - determine effectiveness of each.*
- 5. *determine the purpose of the student's behavior - usually to get something, avoid or escape something, or to control the antecedent event.*
- 6. *describe the relationship of the behavior to the event and provide possible variables that can be changed in the setting or the situation.*
- 7. *develop the behavioral intervention plan and accommodations (BIP). Teach alternatives to the behavior and include positive reinforcement along with consequences.*
- 8. *Implement consistently, allow enough time for the behavioral intervention plan and accommodations to work, and review as needed.*

C. Placement made by IEP Committee

Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

- F. Determination of setting. The student's IEP Team determines the interim alternative educational setting for services under Subsections B and E of this section. (*Subsections B and E are found in manifestation section*).

IV. REMOVALS OF STUDENTS WITH DISABILITIES

A. ISS – In School Suspension or Detention

Authority: NMAC §6.11.2.10 ENFORCING RULES OF CONDUCT:

- F. Detention, suspension and expulsion: Where detention, suspension and/or expulsion is determined to be the appropriate penalty, it may be imposed only in accordance with procedures that provide at least the minimum safeguards prescribed in Section 6.11.2.12 NMAC, below. Suspensions or expulsions of students with disabilities shall be subject to the further requirements of Subsection G of Section 6.11.2.10 NMAC and Section 6.11.2.11 NMAC.

Authority: NMAC §6.11.2.12 PROCEDURE FOR DETENTIONS, SUSPENSIONS AND EXPULSIONS:

- E. In-school suspension.
 - (1) In-school suspension may be imposed with or without further restriction of student privileges. Any student who is placed in an in-school suspension which exceeds ten (10) school days must be provided with an instructional program that meets both state and local educational requirements. Student privileges, however, may be restricted for longer than ten (10) school days.
 - (2) In-school suspensions of any length shall be accomplished according to the procedures for a temporary suspension as set forth above. A local school board may limit the length of in-school suspensions which may be accomplished under temporary suspension procedures. No in-school suspension student shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom.
- F. Detention.
 - (1) Detention may be imposed in connection with in-school suspension, but is distinct from in-school suspension in that it does not entail removing the student from any of his or her regular classes.
 - (2) The authority of the schools to supervise and control the conduct of students includes the authority to impose reasonable periods of detention during the day or outside normal school hours as a disciplinary measure. No detained student shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom. Reasonable periods of detention may be imposed in accordance with the procedures for temporary suspension.
 - *The local campus administrator is responsible for maintaining records on student discipline. Students with disabilities must be monitored by the local campus for total number of removals in order to follow state and federal disciplinary requirements outlined in this section.*
 - *Follow section III. Change of Placement requirements.*

Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

- H. **Parental notification.** On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the administrative authority must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR §300.504.
- I. **Services.** A student with a disability who is removed from the student's current placement pursuant to this section must continue to receive special education and related services, as provided in 34 CFR §300.530(d).

The principal or the principal's designee may order the immediate suspension of a student if he or she reasonably believes the student's behavior is so unruly, disruptive, or abusive that it seriously interferes with the ability of a teacher to communicate effectively with students in a classroom, with the ability of the student's classmates to learn, or with the operation of the school or a school-sponsored activity.

The principal or the principal's designee may order the immediate expulsion of a student if he or she reasonably believes that such action is necessary to protect persons or property from imminent harm. At the time of an emergency placement or expulsion, the principal or principal's designee will give the student verbal notice of the reason for the action and immediately contact the student's parent/guardian. The ASK Academy must also provide a copy of the procedural safeguards notice to parents.

Within a reasonable time after the emergency placement or expulsion, but not later than the 10th day after the date of the placement or expulsion, the student will be accorded the appropriate due process as required. The emergency placement or expulsion is subject to federal law and regulations and must be consistent with the consequences that would apply to a student without a disability.

B. Immediate Removal

Authority: NMAC 6.11.2.12 PROCEDURE FOR DETENTIONS, SUSPENSIONS AND EXPULSIONS:

- C. **Immediate removal:** Students whose presence poses a continuing danger to persons or property or an ongoing threat of interfering with the educational process may be immediately removed from school, subject to the following rules.
- (1) A rudimentary hearing, as required for temporary suspensions, shall follow as soon as possible.
 - (2) Students shall be reinstated after no more than one school day unless within that time a temporary suspension is also imposed after the required rudimentary hearing. In such circumstances, a single hearing will support both the immediate removal and a temporary suspension imposed in connection with the same incident(s).
 - (3) The school shall exert reasonable efforts to inform the student's parent of the charges against the student and the action taken as soon as practicable. If the school has not communicated with the parent by telephone or in person by the end of the school day following the immediate removal, the school shall on that day mail a written notice with the required information to the parent's address of record.
- D. **Temporary suspension.**
- (1) A local school board may limit temporary suspensions to periods shorter than ten (10) school days.
 - (2) A student facing temporary suspension shall first be informed of the charges against him or her and, if (s)he denies them, shall be told what evidence supports the charge(s) and be given an opportunity to present his or her version of the facts. The following rules apply.
 - (a) The hearing may be an informal discussion and may follow immediately after the notice of the charges is given.
 - (b) Unless the administrative authority decides a delay is essential to permit a fuller exploration of the facts, this discussion may take place and a temporary suspension may be imposed within minutes after the alleged misconduct has occurred.
 - (c) A student who denies a charge of misconduct shall be told what act(s) he or she is accused of committing, shall be given an explanation of the evidence supporting the accusation(s) and shall then be given the opportunity to explain his or her version of the facts. The administrative authority is not required to divulge the identity of informants, although the administrator should not withhold such information without good cause. The administrator is required to disclose the substance of all evidence on which he or she proposes to base a decision in the matter.

- (d) The administrative authority is not required to allow the student to secure counsel, to confront or cross-examine witnesses supporting the charge(s), or to call witnesses to verify the student's version of the incident, but none of these is prohibited.
- (e) The school shall exert reasonable efforts to inform the student's parent of the charges against the student and their possible or actual consequence as soon as practicable. If the school has not communicated with the parent by telephone or in person by the end of the first full day of suspension, the school shall on that day mail a written notice with the required information to the parent's address of record.

C. Suspension - Expulsion

§300.101 Free appropriate public education (FAPE).

- (a) **General.** A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in §300.530(d).

§300.170 Suspension and expulsion rates. (as compared to general education population)

- (a) **General.** The NMPED must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--
 - (1) Among LEAs in the State; or
 - (2) Compared to the rates for nondisabled children within those agencies.
- (b) **Review and revision of policies.** If the discrepancies described in paragraph (a) of this section are occurring, the NMPED must review and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

The ASK Academy will follow the IDEA and NMAC requirements for suspension and expulsion of students with disabilities.

Authority: NMAC §6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

F. Behavioral management and discipline

- (2) **Suspensions, expulsions and disciplinary changes of placement.** Suspensions, expulsions and other disciplinary changes of placement for children with disabilities shall be carried out in compliance with all applicable requirements of 34 CFR §§300.530-300.536, and these or other department rules and standards, including particularly §6.11.2.11 NMAC, governing interim disciplinary placements and long-term suspensions or expulsions of students with disabilities.
- (3) **FAPE for children removed from current placement for more than 10 school days in a school year.** FAPE shall be provided in compliance with all applicable requirements of 34 CFR §300.530(d) and these or other department rules and standards for all children with disabilities who have been removed from their current educational placements for disciplinary reasons for more than 10 school days during a school year, as defined in 34 CFR §300.536.
- (4) The ASK Academy must keep an accurate accounting of suspension and expulsion rates for children with disabilities as compared to children without disabilities to ensure that children with disabilities are not being expelled or suspended at a significantly higher rate than children without disabilities.
The ASK Academy campus principal is ultimately responsible for an accurate accounting. The principal may collaborate with the assigned special education lead teacher or diagnostician to keep records.

Authority: NMAC §6.11.2.10 ENFORCING RULES OF CONDUCT:

- F. **Detention, suspension and expulsion:** Where detention, suspension and/or expulsion is determined to be the appropriate penalty, it may be imposed only in accordance with procedures that provide at least the minimum safeguards prescribed in §6.11.2.12 NMAC, below. Suspensions or expulsions of students with disabilities

shall be subject to the further requirements of Subsection G of Section 6.11.2.10 NMAC and Section 6.11.2.11 NMAC, below.

- G. **Discipline of students with disabilities:** Students with disabilities are not immune from school disciplinary processes, nor are they entitled to remain in a particular educational program when their behavior substantially impairs the education of other children in the program. However, the ASK Academy is required by state law and regulations to meet the individual educational needs of students with disabilities to the extent that current educational expertise permits. The ASK Academy personnel may consider any unique circumstances on a case by case basis when determining whether a change of placement, consistent with the other requirements of §6.11.2.11 NMAC, is appropriate for a student with a disability who violates a code of conduct, as provided in 34 CFR §300.530.
- (1) **Long-term suspensions or expulsions** of students with disabilities shall be governed by the procedures set forth in §6.11.2.11 NMAC below.
 - (2) **Temporary suspensions** of students with disabilities may be imposed in accordance with the normal procedures prescribed in Subsection D of Section 6.11.2.12 NMAC, below, provided that the student is returned to the same educational placement after the temporary suspension and unless a temporary suspension is prohibited under the provisions of Subsection G, Paragraph (3) of 6.11.2.10 NMAC below.
 - (3) **Program prescriptions.** A student with a disability's individualized education program (IEP), under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), need not affirmatively authorize disciplinary actions which are not otherwise in conflict with [the regulation] this rule. However, the IEP [committee] team may prescribe or prohibit specified disciplinary measures for an individual student with a disability by including appropriate provisions in the student's IEP. Administrative authorities shall adhere to any such provisions contained in a student with a disability's IEP, except that an IEP [committee] team may not prohibit the initiation of proceedings for long-term suspension or expulsion which are conducted in accordance with this [regulation] rule.
 - (4) **Immediate removal.** Immediate removal of students with disabilities may be done in accordance with the procedures of Subsection C of Section 6.11.2.12 NMAC below.
 - (5) A student who has not been determined to be eligible for special education and related services under 6.31.2 NMAC and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in this subsection if the conditions set forth in 34 CFR §300.534 have been met.
 - (6) Referral to and action by law enforcement and judicial authorities.
 - (a) Nothing in these rules of conduct prohibits an administrative authority from reporting a crime committed by a student with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.
 - (b) Transmittal of records.
 - (i) An administrative authority reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted, for consideration by the appropriate authorities, to whom the administrative authority reports the crime.
 - (ii) An administrative authority reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

Authority: NMAC 6.11.2.11 - Change of Placement Decisions: more than 10 days; long term suspension or expulsion.

Authority: NMAC 6.11.2.12 PROCEDURE FOR DETENTIONS, SUSPENSIONS AND EXPULSIONS:

The authority of the state and the local school board to prescribe and enforce standards of conduct for ASK Academy students must be exercised consistently with constitutional safeguards of individual student rights. The right to a public education is not absolute; it may be taken away, temporarily or permanently, for violations of school rules. It is a property right which may only be denied where school authorities have adhered to the minimum procedural safeguards required to afford the student due process of law. This section prescribes minimum requirements for detention, in school suspension and temporary, long-term or permanent removal of students from the ASK Academy. The local school board may adopt procedures which afford students more protection than this [regulation] rule requires. The procedures in this section apply only to disciplinary detentions, suspensions and

expulsions. They do not apply to disenrollment of students who fail to meet immunization, age, residence or other requirements for valid enrollment, nor to the removal from school membership reports of students who have been absent from school for ten (10) consecutive school days in accordance with Subsection B of Section 22-8-2 NMSA 1978. Nothing in this section should be construed as prohibiting school boards or administrative authorities from involving other school staff, students and members of the community in the enforcement of rules of student conduct to the extent they believe is appropriate.

- A. Post-suspension placement of students. Any student suspended from school shall be delivered directly by a school official to the student's parent(s), legal guardian or an adult designated by the parent(s) or the legal guardian, or kept on school grounds until the usual end of the school day.
- B. Students with disabilities. This Section 6.11.2.12 **does not apply to long-term suspension or expulsion of students who are disabled pursuant to the IDEA or Section 504 [except as provided for in Subsection C, Paragraph (1) of Section 6.11.2.11 NMAC above]. The procedures for long-term suspension or expulsion of disabled students are set forth in §6.11.2.11 NMAC above.** School personnel under this section may remove a student with a disability, who violates a rule of student conduct, from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to students without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under Subsection G of 6.11.2.11 NMAC, above).

D. Detention and Correctional Facilities

Authority: NMAC §6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

K. Children in detention and correctional facilities.

- (1) If a child with a disability is placed in a juvenile or adult detention or correctional facility, the facility must provide the child with FAPE after the facility learns that the child had been eligible for special education and related services in the last educational placement prior to incarceration or otherwise determines that the child is eligible.
- (2) Juvenile or adult detention or correctional facilities must take reasonable steps to promptly obtain needed educational records from a child's last known school or educational facility. Record requests and transfers are subject to the regulations under the Family Educational Rights and Privacy Act (FERPA) at 34 CFR Part 99 and the provisions of Paragraph (3) of Subsection L of 6.31.2.13 NMAC. The educational program of a juvenile or adult detention or correctional facility is an educational agency for purposes of the FERPA.
 - (a) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the records request from the juvenile correctional facilities.
 - (b) To assist juvenile correctional facilities in providing FAPE for children entering the facility during the summer months, districts must provide summer emergency contact information of a person who has access to special education records, to the state's superintendent of juvenile justice services division of the children, youth and family department.
- (3) A detention or correctional facility that is unable to obtain adequate records from other agencies, the child or the parents within a reasonable time after the child arrives at the facility, shall evaluate the child who is known or suspected to be a child with a disability as provided in Subsection F of 6.31.2.10 NMAC and develop an IEP for an eligible child without undue delay.
- (4) FAPE for eligible students in juvenile or adult detention or correctional facilities shall be made available in programs that are suited to the security requirements of each facility and eligible student. The provisions of 34 CFR §300.324(d) apply to IEPs for students with disabilities who are convicted as adults under state law and incarcerated in adult prisons.
- (5) A state-supported educational program that serves a juvenile or adult detention or correctional facility shall be responsible for ensuring that FAPE is provided to eligible children in that facility.
- (6) The local school district in which a detention or correctional facility is located (that is not served by a state-supported educational program) shall be responsible for ensuring that FAPE is made available to eligible children in that facility. A child's LEA of residence or another public agency with educational jurisdiction may agree to share the responsibility pursuant to a written agreement between or among the agencies involved.

- (7) Children with disabilities who are detained or incarcerated in detention or correctional facilities are wards of the state and may have surrogate parents appointed pursuant to 34 CFR §300.519 and Subsection J of 6.31.2.13 NMAC to protect their IDEA rights while in state custody.
- (8) The public agency that administers the educational program in a juvenile or adult detention or correctional facility shall ensure that surrogate parents are appointed in cases where no parent as defined in 34 CFR §300.30(a) and Paragraph (14) of Subsection B of 6.31.2.7 NMAC is reasonably available or willing to make the educational decisions required for children with disabilities who are housed in that facility.
- (9) Children placed in juvenile or adult detention or correctional facilities must be provided learning opportunities and instruction that meet the state standards with benchmarks.
- (10) In accordance with The ASK Academy's attendance policies, children who are absent from a class for seven (7) or more days will lose academic credit. Loss of credit can be appealed by completing following the appeal process of completing the required request for review and providing acceptable documentation.
- (11) In accordance with The ASK Academy's attendance policies, children who are absent 10 or more consecutive days will be disenrolled.

V. SERVICES REQUIRED FOR REMOVED STUDENTS

§300.530 Authority of school personnel.

- (a) **Case-by-case determination.** School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.
- (b) **General.**
 - (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536).
 - (2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.
- (c) **Additional authority.** For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.
- (d) **Services.**
 - (1) A child with a disability who is removed from the child's current placement pursuant to paragraph (c) or (g) of this section must--
 - (i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
 - (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.
 - (2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5), of this section may be provided in an interim alternative educational setting.
 - (3) The ASK Academy is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who has been similarly removed.
 - (4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed as provided in §300.101(a), so as

to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

- (5) If the removal is a change of placement under §300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.

(e) **Manifestation determination.**

- (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

- (2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

- (3) If the LEA, the parent and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

- (f) **Determination that behavior was a manifestation.** If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must--

(1) **Either--**

(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

- (2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the public agency agree to a change of placement as part of the modification of the behavioral intervention plan.

- (g) **Special circumstances.** School personnel may remove a student from school without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--

- (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the NMPED or the LEA;

- (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the NMPED or the LEA; or

- (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the NMPED or the LEA.

- (h) **Notification.** On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.

- (i) **Definitions.** For purposes of this section, the following definitions apply:

- (1) **Controlled substance** means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 USC §812(c)).

- (2) **Illegal drug** means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

- (3) **Serious bodily injury** has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

- (4) **Weapon** has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (Authority: 20 USC §1415(k)(1) and (7))

VI. RESTRAINT/TIME-OUT

A. Use of Retraint

The ASK Academy does not restrain students unless that child is inflicting bodily harm upon another child or staff member, or injuring him or herself. If the child has inflicted bodily harm upon another student or staff, the police will be notified and a report filed. That student will receive consequences as per the discipline matrix. If a child is self-injurious, parents will be contacted immediately and the student will be removed from school until they have been cleared to return by medical personnel.

B. Use of Time-out Strategies (excluding Time-out Rooms)

In situations where a student with a disability demonstrates behavior that impedes his or her learning or that of others, the IDEA requires the IEP team to consider positive behavioral interventions, strategies, and supports to address that behavior.

IEP teams may consider the use of a time-out as a **positive intervention** and design time-out strategies to assist students in correcting the attitude and/or behaviors that interfere with their ability to remain in the classroom. **A time-out will not be used as a punishment for negative student behavior or as a means of removing the student indefinitely from the classroom setting, as it does not meet the intent of the IDEA.** The use of a time-out must have positive implications, including enabling the student to return to the classroom setting.

The Definition of Time-out

The New Mexico PED defines the term *time-out* as a continuum of behavior management techniques that are designed to address inappropriate or negative student behavior resulting from over-stimulating or challenging classroom situations. This continuum begins with minimally intrusive or restrictive strategies that can be implemented within the classroom setting. The continuum then progresses to more restrictive strategies that may involve the physical separation of a student from his or her classmates, for a brief amount of time, in order to enable the student to calm down and return to the classroom setting.

Time-out Continuum of Strategies – Non-exclusionary:

- **planned ignoring** of the behavior,
- **discussing** the behavior with the student immediately ,
- **in-class strategies** that require the student to cease classroom activity for a short period of time. However, the student is not removed from the classroom setting. May include placing the student in a time-out corner of the classroom for a specified period of time in order to enable him or her to regain composure and resume classroom activity. Classroom teachers may designate a specific location within the classroom to use for this purpose.

Time-out Continuum of Strategies – Exclusionary:

- **student's removal** from the classroom setting altogether for a brief amount of time in order for the student to regroup in private prior to returning to the classroom setting. May include relocating the student to another classroom or the office.

C. Time-out Procedures (excluding Time-Out Rooms)

The staff of the LEA will be trained, and all procedures will be followed. The IEP Team will complete the following activities to determine which non-exclusionary and/or exclusionary time-out is appropriate for the student.

1. **Evaluation.** Complete an evaluation and review existing data to determine if use of time-out is in direct conflict with the student's psychological or physical health status.
2. **Documentation.** Documentation of possible positive interventions will occur through the IEP process, which includes conducting a Functional Behavior Assessment (FBA) and developing a Behavior Intervention Plan (BIP).
3. **Adequate Notice.** The IEP Team will inform the parent/student how the time-out strategies will be utilized and

the projected outcome or purpose of the use of time-out as a positive intervention strategy.

4. **Written permission.** Parent participation in the IEP Team meeting and signing agreement with the use of time-out as a part of a student's BIP and IEP will provide authorization to the LEA to implement the IEP.
5. **Amount of time.** The duration of a time-out must be reasonable in light of factors such as student's age, sex, disability, cognitive functioning, and the nature of the student's misbehavior.
 - The IEP Team will consider the student's age, sex, disability, and the nature of his or her behavior in determining the maximum amount of time the student can spend in time-out.
 - Best practice dictates that in most cases, the number of minutes a student spends in time-out should typically equal the student's age, but will not exceed a maximum of 10-15 minutes. The maximum amount of time will be listed in the IEP. A time-out is an opportunity for a student to regain his or her composure.
 - Do not use timeout as a punishment for disruptive behavior.
6. **How time was spent during time-out.** The IEP will include a written plan that outlines what to do once a teacher places the student in the time-out situation?
7. **Criteria for returning to participation.** Identify and list the specific criteria for returning the student to the routine activities of the classroom. As a matter of best practice, a student will remain in a time-out only until he or she becomes sufficiently self-controlled to rejoin classmates, unless that time exceeds the maximum time allowed in such case the IEP Team will list other strategies.
8. **Staff must directly supervise or monitor the student while he or she is in time-out.** Some students are agitated in these circumstances. Do not discount the possibility of behavior escalating and have a plan.
9. **The LEA will keep accurate records on students placed in time-out.** The records will include the date, time, length of placement, the basis for the placement, and the teacher who made the placement determination. In addition, the records will also indicate the assistance provided to help the student regain composure.
10. **Location of the time-out.** Determine where the time-out will be located in relation to the student's seating area.

Time-Out is outlined as either Non-exclusionary, which is the least restrictive, or Exclusionary time-out, which results from more serious behaviors that are described in the BIP. Exclusionary time-out should be used when Non-exclusionary attempts are documented and have been unsuccessful.

1. **Non-exclusionary time-out:**

- **Planned Ignoring:** This is the simplest form of Non-exclusionary time-out. Planned ignoring involves the systematic removal of social reinforcement (attention) by the teacher for a specific amount of time. When the student misbehaves, the teacher breaks eye contact, turns away, and stops all social interaction with the student. Planned ignoring assumes that the teacher's social attention is reinforcing. If it is not, then this will not work to decrease the behavior. If planned ignoring is the appropriate response, the teacher should prepare initially for an increase in the behavior before the behavior will decrease.
 - **Head down on desk:** This has been used by teachers for a long time. The student is simply told to put his head down on his desk for a short period of time. (timer may be used)
 - **Observation time-out:** The student is removed from his/her desk for misbehaving and is usually placed in a desk away from the main classroom activities for a short period of time. The student is allowed/required to observe the classroom discussion/activities, but is not allowed to actively participate. (Use of timer recommended – 5 minutes and may reset once.)
 - **Non-observation time-out (instructional isolation):** This is basically the same as observation time-out, except the student is not allowed to observe the classroom activities. Usually, the student is placed in a particular part of the classroom that does not provide for viewing other students. (use of timer recommended – 10 minutes and may reset once)
2. **Exclusionary time-out:** The student is removed from the classroom and placed in a separate environment for cooling down and resumption of instructional activities. Clearly, this is more restrictive and other types of time-out should be attempted first.
- **Isolated instruction:** This is extended time-out from the classroom. The student is required to complete class work in an isolated area, another classroom, or the office. Caution using the hallway as this could result in a social reward depending on the individual student.
 - Time-out room described below.

VII. DUE PROCESS REQUIREMENTS

A. Procedural Safeguards

All procedural safeguards, including required notice and consents, will be followed throughout the process of disciplinary action for students with disabilities. Procedural Safeguards are located in Chapter 2. – Procedural Safeguards.

B. Appeal

§300.532 Appeal.

- (a) **General.** The parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §300.507 and §300.508(a) and (b).
- (b) **Authority of hearing officer.**
- (1) A hearing officer under §300.511 hears, and makes a determination regarding, an appeal requested under paragraph (a) of this section.
 - (2) In making the determination under paragraph (b)(1) of this section, the hearing officer may—
 - (i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child's behavior was a manifestation of the child's disability; or
 - (ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.
 - (3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.
- (c) **Expedited due process hearing.**
- (1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.
 - (2) The NMPED or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.
 - (3) Unless the parents and the LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in §300.506—
 - (i) A resolution meeting must occur within seven days of receiving notice, and
 - (ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the due process complaint.
 - (4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the NMPED ensures that the requirements in §§300.510 through 300.514 are met.
 - (5) The decisions on expedited due process hearings are appealable consistent with §300.514.

Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

J. Appeal.

- (1) The parent of a student with a disability who disagrees with any decision regarding the placement or the manifestation determination under this section, or an administrative authority that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may

appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to Subsection I of 6.31.2.13 NMAC.

- (2) A hearing officer, who hears a matter under Paragraph (1) of Subsection J of 6.11.2.11 NMAC, has the authority provided in 34 CFR §300.532(b).
- (3) When an appeal under this subsection has been made by either the parent or the administrative authority, the student must remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period specified in Subsections B or E of this section, whichever occurs first, unless the parent and the administrative authority agree otherwise. [08-15-97; 6.11.2.11 NMAC - Rn, 6 NMAC 1.4.11 & A, 11-30-00; A, 9-15-05; A, 6/29/07]

C. Placement During Appeals

§300.533 Placement during appeals.

When an appeal under §300.532 has been requested by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in §300.530 (c) or (g), whichever occurs first, unless the parent and the NMPED or LEA agree otherwise.

Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

J. Appeal.

- (3) When an appeal under this subsection has been made by either the parent or the administrative authority, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in Subsections B or E of this section, whichever occurs first, unless the parent and the administrative authority agree otherwise. [08-15-97; 6.11.2.11 NMAC - Rn, 6 NMAC 1.4.11 & A, 11-30-00; A, 9-15-05; A, 6/29/07]

D. Notice of Disciplinary Actions (Student Moves to another District)

If the LEA takes disciplinary action against a student and the student subsequently enrolls in another district or school before the expiration of the period of disciplinary action, the governing body of the LEA shall provide to the district or school in which the student enrolls, at the same time other records of the student are provided, a copy of the order of disciplinary action. It is the decision of the receiving district or school in which the student enrolls to continue the disciplinary action under the terms of the order or to allow the student to attend regular classes without completing the period of disciplinary action.

§300.229 Disciplinary information.

E. Protection for Students not yet Eligible for Special Education

§300.534 Protections for children not yet eligible for special education and related services.

- (a) **General.** A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
- (b) **Basis of knowledge.** The public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—
 - (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
 - (2) The parent of the child requested an evaluation of the child pursuant to §§300.300 through 300.311; or

- (3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.
- (c) **Exception.** The public agency would not be deemed to have knowledge under paragraph (b) of this section if—
 - (1) The parent of the child—
 - (i) Has not allowed an evaluation of the child pursuant to §§300.300 through 300.311; or
 - (ii) Has refused services under this part; or
 - (2) The child has been evaluated in accordance with §§300.300 through 300.311 and determined to not be a child with a disability under this part.
- (d) **Conditions that apply if no basis of knowledge.**
 - (1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.
 - (2) (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under §300.530, the evaluation must be conducted in an expedited manner.
 - (ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
 - (iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§300.530 through 300.536 and section 612(a)(1)(A) of the Act.

F. Noncustodial Parent

A noncustodial parent may request in writing that the LEA or school, for the remainder of the school year in which the request is received, provide that parent with a copy of any written notification relating to student misconduct that is generally provided by the ASK Academy to a student's custodial parent or guardian. The ASK Academy may not unreasonably deny this request. The ASK Academy will comply with any applicable court order of which the ASK Academy has knowledge.

VIII. LAW ENFORCEMENT

§300.535 Referral to and action by law enforcement and judicial authorities.

- (a) **Rule of construction.** Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.
- (b) **Transmittal of records.**
 - (1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.
 - (2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act (FERPA).

VIII. DISCIPLINARY RECORDS

§300.229 Disciplinary information.

- (a) The NMPED may require that the LEA include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.

- (b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.
- (c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

§300.535 Referral to and action by law enforcement and judicial authorities.

(b) Transmittal of records.

- (1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.
- (2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

DISCLAIMER

The ASK Academy will follow local district Board Policy regarding required laws for discipline of students with disabilities. These Special Education Policies and Procedures do not include all of the numerous regulations regarding New Mexico student discipline; however, they do include the specific requirements pertaining to special education students with disabilities.

For additional information regarding discipline for students with disabilities see:

New Mexico Public Education Department Technical Assistance Manual: Addressing Student Behavior

<http://www.ped.state.nm.us/SEB/technical/StudentDiscipline.pdf>

New Mexico Public Education Department
Special Education Bureau

The ASK Academy
POLICIES AND PROCEDURES
FOR THE
PROVISION OF
SPECIAL EDUCATION SERVICES
FOR
STUDENTS WITH DISABILITIES AND GIFTED STUDENTS

Chapter 8 – GENERAL ADMINISTRATION

Date Chapter 8. Adopted by Governing Body: 06/12/14

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Chapter 8 – GENERAL ADMINISTRATION

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Chapter 8. – GENERAL ADMINISTRATION

I. SCOPE AND APPLICABILITY

Authority: 34 CFR §300.212 Public information.

The LEA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the LEA under Part B of the Act.

Authority: NMAC §6.31.2.2 SCOPE: The requirements of these rules are binding on each New Mexico public agency that has direct or delegated authority to provide special education and related services, regardless of whether that agency is receiving funds under the Individuals with Disabilities Education Improvement Act of 2004 and regardless of whether it provides special education and related services directly, by contract or through other arrangements such as referrals by the public agency to private schools or facilities. The *cm is responsible for ensuring that all rights and protections under these rules are afforded to children referred to or placed in private schools or facilities including residential treatment centers, day treatment centers, hospitals, or mental health institutions by the public agency. [6.31.2.2 NMAC - Rp, 6.31.2.2 NMAC, 6/29/07]

Authority: 34 CFR §300.1 Purposes.

The purposes of this part are–

- (a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;**
- (b) To ensure that the rights of children with disabilities and their parents are protected;**
- (c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and**
- (d) To assess and ensure the effectiveness of efforts to educate children with disabilities.**

Authority: NMAC §6.31.2.6 OBJECTIVE: The following rule is promulgated to assist New Mexico public agencies in appropriately identifying and providing educational services for children with disabilities and gifted children. The purposes of this rule is (a) to ensure that all children with disabilities and gifted children have available a free appropriate public education which includes special education and related services to meet their unique needs; (b) to ensure that the rights of children with disabilities and gifted children and their parents are protected; (c) to assist public agencies to provide for the education of all children with disabilities and gifted children; and (d) to evaluate and ensure the effectiveness of efforts to educate those children. [6.31.2.6 NMAC - Rp, 6.31.2.6 NMAC, 6/29/07]

II. FAPE – FREE APPROPRIATE PUBLIC EDUCATION

Authority: 34 CFR §300.17 Free appropriate public education. Free appropriate public education or FAPE means special education and related services that–

- (a) Are provided at public expense, under public supervision and direction, and without charge;**
- (b) Meet the standards of the NMPED, including the requirements of this part;**
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and**
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.**

Authority: 34 CFR §300.101 Free appropriate public education (FAPE).

- (a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in §300.530(d).**
- (b) FAPE for children beginning at age 3.**
 - (1) The NMPED ensures that–**

- (i) The obligation to make FAPE available to each eligible child residing in New Mexico begins no later than the child's third birthday; and
- (ii) An IEP or an IFSP is in effect for the child by that date, in accordance with §300.323(b).
- (2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.
- (c) **Children advancing from grade to grade.**
 - (1) The NMPED ensures that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.
 - (2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.

Authority: NMAC §6.31.2.8 RIGHT TO A FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

- A. All children with disabilities aged 3 through 21 or who will turn 3 at any time during the school year and who reside in New Mexico, including children with disabilities who have been suspended or expelled from school, have the right to a free appropriate public education that is made available by one or more public agencies in compliance with all applicable requirements of 34 CFR §§300.101 and 300.120 and these or other department rules and standards. Children with disabilities who are enrolled in private schools have the rights provided by 34 CFR §§300.129-300.148 and Subsection L of 6.31.2.11 NMAC.
- B. Only children who meet the criteria in these rules may be included in calculating special education program units for state funding and counted as eligible children for federal flow-through funds under Part B of the IDEA. [6.31.2.8 NMAC].

Authority: 34 CFR §300.102 Limitation -- exception to FAPE for certain ages.

- (a) **General.** The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:
 - (1) Children aged 3, 4, 5, 18, 19, 20, or 21 in New Mexico to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children of those ages.
 - (2) (i) Children aged 18 through 21 to the extent that New Mexico law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility--
 - (A) Were not actually identified as being a child with a disability under §300.8; and
 - (B) Did not have an IEP under Part B of the Act.
 - (ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who--
 - (A) Had been identified as a child with a disability under §300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or
 - (B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under §300.8.
 - (3) (i) Children with disabilities who have graduated from high school with a regular high school diploma.
 - (ii) The exception in paragraph (a)(3)(i) of this section does not apply to students who have graduated but have not been awarded a regular high school diploma.
 - (iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503.
 - (iv) As used in paragraphs (a)(3)(i) through (a)(3)(iii) for this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED).
 - (4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.
- (b) **Documents relating to exceptions.** The NMPED assures that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by §300.700 (for purposes of making grants to States under this part), is current and accurate.

Authority: 34 CFR §300.103 FAPE – Methods and payments.

- (a) The NMPED may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, the NMPED could use joint agreements between the agencies involved for sharing the cost of that placement.
- (b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for service provided to a child with a disability.
- (c) Consistent with 300.323(c), the NMPED must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

Authority: 34 CFR §300.109 Full educational opportunity goal (FEOG).

The NMPED has in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal.

Authority: 34 CFR §300.110 Program options.

The NMPED ensures that the LEA takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

- A. Compliance with applicable laws and regulations. Each New Mexico public agency, within the scope of its authority, shall develop and implement appropriate policies, procedures, programs and services to ensure that all children with disabilities who reside within the agency's educational jurisdiction, including children who are enrolled in private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, or are schooled at home, are identified and evaluated and have access to a free appropriate public education (FAPE) in compliance with all applicable requirements of state and federal laws and regulations. This obligation applies to all New Mexico public agencies that are responsible under laws, rules, regulations or written agreements for providing educational services for children with disabilities, regardless of whether that agency receives funds under the IDEA and regardless of whether it provides special education and related services directly, by contract, by referrals to private schools or facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions or through other arrangements.

III. SPECIAL EDUCATION DEFINED

Authority: 34 CFR §300.39 Special education.

(a) General.

- (1) **Special education** means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including--
 - (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
 - (ii) Instruction in physical education.
- (2) **Special education** includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section--
 - (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;
 - (ii) Travel training; and
 - (iii) Vocational education.

(b) Individual special education terms defined. The terms in this definition are defined as follows:

- (1) **At no cost** means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

- (2) **Physical education** means--
- (i) The development of--
 - (A) Physical and motor fitness;
 - (B) Fundamental motor skills and patterns; and
 - (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and
 - (ii) Includes special physical education, adapted physical education, movement education, and motor development.
- (3) **Specially designed instruction** means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction--
- (i) To address the unique needs of the child that result from the child's disability; and
 - (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.
- (4) **Travel training** means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to--
- (i) Develop an awareness of the environment in which they live; and
 - (ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).
- (5) **Vocational education** means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.
- (6) **Vocational and technical education** means organized educational activities that--
- (i) Offer a sequence of courses that--
 - (A) Provides individuals with the rigorous and challenging academic and technical knowledge and skills the individuals need to prepare for further education and for careers (other than careers requiring a Master's or doctoral degree) in current or emerging employment sectors;
 - (B) May include the provision of skills or courses necessary to enroll in a sequence of courses that meet the requirements of this subparagraph; and
 - (C) Provides, at the postsecondary level, for a one-year certificate, an associate degree, or industry-recognized credential; and
 - (ii) Include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, or an individual.

Authority: 34 CFR §300.34 **Related Services** (Located in Chapter 5).

Authority: 34 CFR §300.42 **Supplementary aids and services.** Supplementary aids and services means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.112 through 300.116.

Authority: NMAC 6.31.2.7 **Definitions:**

B. The following terms shall have the following meanings for purposes of these rules.

- (19) **"Special education"** means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.
- (a) As authorized by 34 CFR §§300.8(a)(2)(ii) and 300.39(a)(2)(i), "special education" in New Mexico may include speech-language pathology services.
 - (b) Speech-language pathology services must meet the following standards to be considered special education:
 - (i) the service is provided to a child who has received appropriate tier I universal screening under Subsection D of 6.29.1.9 NMAC, as it may be amended from time to time, before being properly evaluated under 34 CFR Secs. 300.301-300.306 and Subsection D of 6.31.2.10 NMAC;

- (ii) the IEP team that makes the eligibility determination finds that the child has a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance; and
 - (iii) the speech language pathology service consists of specially designed instruction that is provided to enable the child to have access to the general curriculum and meet the educational standards of the public agency that apply to all children; and
 - (iv) the service is provided at no cost to the parents under a properly developed IEP that meets the requirements of Subsection B of 6.31.2.11 NMAC.
- (c) If all of the above standards are met, the service will be considered as special education rather than a related service.
 - (d) Student/staff caseloads shall meet the requirements of Paragraphs (1) and (2) of Subsection H of 6.29.1.9 NMAC.

Authority: 34 CFR §300.35 Scientifically-based research. Scientifically-based research has the meaning given the term in section 9101(37) of the ESEA.

ESEA section 9107 (37)

(37) SCIENTIFICALLY-BASED RESEARCH- The term scientifically-based research —

- (A) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and
- (B) includes research that —
 - (i) employs systematic, empirical methods that draw on observation or experiment;
 - (ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
 - (iii) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
 - (iv) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
 - (v) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
 - (vi) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

Authority: 34 CFR §300.10 Core academic subjects. Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

Authority: 34 CFR §300.24 Individualized family service plan (IFSP). Individualized family service plan, or IFSP, has the meaning given the term in section 636 of the Act.

Authority: 34 CFR §300.11 Day; business day; school day.

- (a) **Day** means calendar day unless otherwise indicated as business day or school day.
- (b) **Business day** means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in §300.148(c)(1)(ii)).
- (c) (1) **School day** means any day, including a partial day, that children are in attendance at school for instructional purposes.
- (2) **School day** has the same meaning for all children in school, including children with and without disabilities.

Authority: 34 CFR §300.14 Equipment. Equipment means--

- (a) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

- (b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

Authority: 34 CFR §300.22 Individualized education program (IEP). Individualized education program, or IEP, means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§300.320 through 300.324.

Authority: 34 CFR §300.23 Individualized education program team. Individualized education program team, or IEP Team, means a group of individuals described in §300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

Authority: 34 CFR §300.28 Local education agency (LEA). (a) Local education agency, or LEA, means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivisions of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools. (b) Education service agencies and other public institutions or agencies.

Authority: 34 CFR §300.31 Parent training and information center. Parent training and information center means a center assisted under section 671 or 672 of the Act.

Authority: 34 CFR §300.33 Public agency. Public agency includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

Authority: 34 CFR §300.38 Secretary. Secretary means the Secretary of Education.

Authority: 34 CFR §300.40 State. State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

Authority: 34 CFR §300.41 State educational agency. State educational agency or SEA means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor of by State law.

Authority: 34 CFR §300.44 Universal design. Universal design has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

Authority: 34 CFR §300.4 Act. Act means the Individuals with Disabilities Education Act, as amended.

Authority: NMAC §6.31.2.7 DEFINITIONS:

- A. Terms defined by federal laws and regulations. All terms defined in the following federal laws and regulations and any other federally defined terms that are incorporated there by reference are incorporated here for purposes of these rules.
- (1) The Individuals with Disabilities Education Improvement Act of 2004 (IDEA), 20 USC §§1401 and following.
 - (2) The IDEA regulations at 34 CFR Part 300 (governing Part B programs for school-aged children with disabilities), 34 CFR Part 301 (governing programs for preschool children with disabilities).
 - (3) Pursuant to the paperwork reduction provisions of IDEA 20 USC §1408, all definitions, with the exception of those found in Subsection B of 6.31.2.7 below, contained in the IDEA Parts 300 and 301 at 34 CFR §§ 300.1 through 300.45, will be adopted by reference.
- B. The following terms shall have the following meanings for purposes of these rules.
- (1) "CFR" means the code of federal regulations, including future amendments.

- (2) "Child with a disability" means a child who meets all requirements of 34 CFR §300.8 and who:
 - (a) is aged 3 through 21 or will turn 3 at any time during the school year;
 - (b) has been evaluated in accordance with 34 CFR §§300.304-300.311 and any additional requirements of these or other public education department rules and standards and as having one or more of the disabilities specified in 34 CFR §300.8 including intellectual disability, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, orthopedic impairment, autism, traumatic brain injury, and other health impairment, a specific learning disability, deaf blindness, or being developmentally delayed as defined in paragraph (4) below; and who has not received a high school diploma; and
 - (c) at the discretion of each local educational agency and subject to the additional requirements of Paragraph 2 of Subsection F of 6.31.2.10 NMAC, the term "child with a disability" may include a child aged 3 through 9 who is evaluated as being developmentally delayed and who, because of that condition, needs special education and related services.
- (3) "Department" means the public education department.
- (4) "Developmentally delayed" means a child aged 3 through 9 or who will turn 3 at any time during the school year: with documented delays in development which are at least two standard deviations below the mean on a standardized test instrument or 30 per cent below chronological age; and who in the professional judgment of the IEP team and one or more qualified evaluators needs special education and related services in at least one of the following five areas: communication development, cognitive development, physical development, social or emotional development or adaptive development. Use of the developmentally delayed option by individual local educational agencies is subject to the further requirements of Paragraph 2 of Subsection F of 6.31.2.10 NMAC. Local education agencies must use appropriate diagnostic instruments and procedures to ensure that the child qualifies as a child with a delay in accordance with the definition in this paragraph.
- (5) "Dual discrepancy" means the child does not achieve adequately for the child's age or to meet grade-level standards established in Standards for Excellence (Chapter 29 of Title 6 of the NMAC); and
 - (a) does not make sufficient progress to meet age or grade-level standards; or
 - (b) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards or intellectual development.
- (6) "Dyslexia" means a condition of neurological origin that is characterized by difficulty with accurate or fluent word recognition and by poor spelling and decoding abilities, which characteristics typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction and may result in problems in reading comprehension and reduced reading experience that may impede the growth of vocabulary and background knowledge.
- (7) The "educational jurisdiction" of a public agency includes the geographic area, age range and all facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions, juvenile justice facilities, state supported schools, or programs within which the agency is obligated under state laws, rules or regulations or by enforceable agreements, including a joint powers agreement (JPA) or memorandum of understanding (MOU) to provide educational services for children with disabilities. In situations such as transitions, transfers and special placements, the educational jurisdiction of two or more agencies may overlap and result in a shared obligation to ensure that a particular child receives all the services to which the child is entitled.
- (8) A "free appropriate public education" (FAPE) means special education and related services which meet all requirements of 34 CFR §300.17 and which, pursuant to §300.17(b), meet all applicable department rules and standards, including but not limited to these rules (6.31.2 NMAC), the Standards for Excellence (6.29.1 NMAC) and department rules governing school personnel preparation, licensure and performance (6.60 NMAC through 6.64 NMAC), student rights and responsibilities (6.11.2 NMAC) and student transportation (6.41.3 and 6.41.4 NMAC).
- (9) The "general education curriculum" pursuant to 34 CFR §300.320, means the same curriculum that The ASK Academy offers nondisabled children. For New Mexico public agencies whose non-special education programs are subject to department rules, the general curriculum includes the content standards, benchmarks and all other applicable requirements of the Standards for Excellence (Chapter 29 of Title 6 of the NMAC) and any other department rules defining curricular requirements.
- (10) "LEA" means a local educational agency as defined in 34 CFR §300.28.

- (11) "Individualized education program" or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR §§300.320 through 300.324;
- (12) The "IDEA" means the federal Individuals with Disabilities Education Improvement Act of 2004, 20 USC §§1401 and following, including future amendments.
- (13) "NMAC" means the New Mexico administrative code, including future amendments.
- (14) "NMSA 1978" means the 1978 Compilation of New Mexico Statutes Annotated, including future amendments.
- (15) "Parent" includes, in addition to the persons specified in 34 CFR §300.30, a child with a disability who has reached age 18 and for whom there is no court-appointed general guardian, limited guardian or other court-appointed person who has legal custody or has otherwise been authorized by a court to make educational decisions on the child's behalf, as provided in Subsection K of 6.31.2.13 NMAC. Pursuant to 34 CFR §300.519 and department policy, a foster parent of a child with a disability may act as a parent under Part B of the IDEA if: (i) the foster parent or the state children, youth and families department (CYFD) provides appropriate documentation to establish that CYFD has legal custody and has designated the person in question as the child's foster parent; and (ii) the foster parent is willing to make the educational decisions required of parents under the IDEA; and has no interest that would conflict with the interests of the child. A foster parent who does not qualify under the above requirements but who meets all requirements for a surrogate parent under 34 CFR §300.519 may be appointed as a surrogate if the public agency responsible for making the appointment deems such action appropriate. (See Subsection J of 6.31.2.13 NMAC.)
- (16) "Puente para los Niños" fund in New Mexico means a risk pool fund to support high cost students with disabilities identified by LEAs pursuant to 34 CFR §300.704(c)(3)(i).
- (17) "SAT" means the student assistance team, which is a school-based group of people whose purpose is to provide additional educational support to students who are experiencing difficulties that are preventing them from benefiting from general education.
- (18) "SEB" means the special education bureau of the public education department.
- (19) "Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.
 - (a) As authorized by 34 CFR §§300.8(a)(2)(ii) and 300.39(a)(2)(i), "special education" in New Mexico may include speech-language pathology services.
 - (b) Speech-language pathology services must meet the following standards to be considered special education:
 - (i) the service is provided to a child who has received appropriate tier I universal screening under Subsection D of 6.29.1.9 NMAC as it may be amended from time to time, before being properly evaluated under 34 CFR §§300.301-300.306 and Subsection D of 6.31.2.10 NMAC;
 - (ii) the IEP Team that makes the eligibility determination finds that the child has a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance; and
 - (iii) the speech language pathology service consists of specially-designed instruction that is provided to enable the child to have access to the general curriculum and meet the educational standards of the public agency that apply to all children; and
 - (iv) the service is provided at no cost to the parents under a properly developed IEP that meets the requirements of Subsection B of 6.31.2.11 NMAC.
 - (c) If all of the above standards are met, the service will be considered as special education rather than a related service.
 - (d) Student/staff caseloads shall meet the requirements of Paragraphs (1) and (2) of Subsection H of 6.29.1.9 NMAC.
- (20) A "state-supported educational program" means a publicly funded program that:
 - (a) provides special education and related services to children with disabilities who come within the program's educational jurisdiction;
 - (b) is operated by, or under contractual arrangements for, a state school, state educational institution or other state institution, state hospital or state agency; and
 - (c) is primarily funded through direct legislative appropriations or other direct state support to a public agency other than a local school district.
- (21) "USC" means the United States Code, including future amendments.

- C. Definitions related to dispute resolution. The following terms are listed in the order that reflects a continuum of dispute resolution options and shall have the following meanings for the purposes of these rules.
- (1) "Facilitated IEP (FIEP) meeting" means an IEP meeting that utilizes an independent, state approved, state-funded, trained facilitator as an IEP facilitator to assist the IEP team to communicate openly and effectively, in order to resolve conflicts related to a student's IEP.
 - (2) "Mediation" means a meeting or series of meetings that utilizes an independent, state-approved, state-funded, trained mediator to assist parties to reconcile disputed matters related to a student's IEP or other educational, non-IEP-related issues.

Definition of Homeless Children: The term 'homeless children' has the meaning given it by the *McKinney-Vento Homeless Assistance Act* (42 USC §11434a(2)), which includes an individual who lacks a fixed, regular, and adequate nighttime residence (within the meaning of 42 U.S.C. §11302(a)(1)); or includes:

- children and youth who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
- children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of 42 USC §11302(a)(2)(C));
- children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- migratory children (as such term is defined in 20 U.S.C. §6399) who qualify as homeless for the purposes of this part because the children are living in circumstances described above.

IV. PERSONNEL

Authority: 34 CFR §300.156 Personnel qualifications.

- (a) **General.** The NMPED established and maintains qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.
- (b) **Related services personnel and paraprofessionals.** The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--
 - (1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and
 - (2) Ensure that related services personnel who deliver services in their discipline or profession--
 - (i) Meet the requirements of paragraph (b)(1) of this section; and
 - (ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
 - (iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.
- (c) **Qualifications for special education teachers.** The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA.
- (d) **Policy.** In implementing this section, New Mexico must adopt a policy that includes a requirement that LEAs in New Mexico take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.
- (e) **Rule of construction.** Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular NMPED or LEA employee to be highly qualified; or to prevent a parent from filing a complaint about staff qualifications with the NMPED as provided for under this part.

Authority: 34 CFR §300.18 Highly qualified special education teacher.

- (a) **Requirements for special education teachers teaching core academic subjects.** For any public elementary or secondary school special education teacher teaching core academic subjects, the term **highly qualified** has the meaning given the term in section 9101 of the ESEA and 34 CFR §200.56, except that the requirements for highly qualified also--
- (1) Include the requirements described in paragraph (b) of this section; and
 - (2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.
- (b) **Requirements for special education teachers in general.**
- (1) When used with respect to any public elementary school or secondary school special education teacher teaching in New Mexico, highly qualified that--
 - (i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State's public charter school law;
 - (ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
 - (iii) The teacher holds at least a bachelor's degree.
 - (2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to certification program under which--
 - (i) The teacher--
 - (A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, prior to and while teaching;
 - (B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;
 - (C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and
 - (D) Demonstrates satisfactory progress toward full certification as prescribed by New Mexico; and
 - (ii) New Mexico ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.
 - (3) Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements of paragraph (b)(1) or the requirements in (b)(1)(iii) and (b)(2) of this section.
- (c) **Requirements for special education teachers teaching to alternate achievement standards.** Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR §200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either--
- (1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR §200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or
 - (2) Meet the requirements of subparagraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of subparagraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the State.
- (d) **Requirements for highly qualified special education teachers teaching multiple subjects.** When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either--
- (1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR §200.56(b) or (c);
 - (2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary,

middle, or secondary school teacher who is not new to the profession under 34 CFR §200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or

- (3) In the case of a new special education teacher who teaches multiple subjects, and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR §200.56(c), which may include a single, high objective State standard of evaluation (HOUSSE) covering multiple subjects.
- (e) **Separate HOUSSE standards for special education teachers.** Provided that any adaptations of the State's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers—
 - (1) A State may develop a separate HOUSSE for special education teachers; and
 - (2) The standards described in paragraph (e)(1) of this section may include single HOUSSE evaluations that cover multiple subjects.
- (f) **Rule of construction.** Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular NMPED or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under §§300.151 through 300.153 about staff qualifications with the NMPED as provided for under this part.
- (g) **Applicability of definition to ESEA; and clarification of new special education teacher.**
 - (1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.
 - (2) For purposes of 300.18(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a **new** special education teacher when first hired as a special education teacher.
- (h) **Private school teachers not covered.** The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by the public agency to provide equitable services to parentally-placed private school children with disabilities under §300.138.

Also reference NCLB Section 1119. Qualifications at <http://ed.gov/policy/elsec/leg/esea02/pg2.html>

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

B. Public agency funding and staffing

(8) Staff training and qualifications

- (a) The public agency is responsible for ensuring that personnel serving children with disabilities are qualified under state licensure requirements and are adequately prepared for their assigned responsibilities, pursuant to 34 CFR §300.156. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to children with disabilities under Part B of the IDEA.

Authority: NMAC §6.62.2 Licensure administrators.

Section 6.62.2.8 REQUIREMENTS: Persons seeking standard licensure in educational administration pursuant to the provisions of this rule shall meet the following requirements:

- A. hold a level 2 teaching license and have met all of the requirements for a level 3-A teaching license in Subsection B of 6.60.6.9 NMAC, or hold a level 2 teaching license and for at least four years have held a level 3 school counselor license while working as a teacher or school counselor; and
- B. hold a bachelor's degree and a post-baccalaureate degree from a regionally accredited college or university or hold current certification by the national board for professional teaching standards; and
- C. have completed a PED-approved administration apprenticeship program:
 - (1) at a college or university through an educational administration program consisting of a minimum of 180 clock hours for one calendar year to include time at the beginning and end of the school year; a passing grade on the apprenticeship will verify completion of this requirement; or

(2) under the supervision of a local school superintendent, private school official, charter school licensed administrator, or state agency educational administrator consisting of a minimum of 180 clock hours for one calendar year to include time at the beginning and end of the school year; the superintendent, school official or administrator will verify that the apprenticeship has met the PED's adopted competencies for educational administration; such verification will be considered completion of this requirement; and

D. a minimum of eighteen (18) semester hours of graduate credit in an educational administration program approved by the PED which addresses PED's approved functional areas and related competencies in educational administration; colleges and universities may offer these hours through their educational administration, educational leadership, public administration, business administration, or other appropriate departments; and

E. a candidate who applies for licensure in educational administration on or after the September, 2007 administration of the PED's specialty area licensure examinations shall take and pass the licensure test in administration as stated in §6.60.5 NMAC prior to the issuance of the license.
[6-15-98; 6.62.2.8 NMAC - Rn, 6 NMAC 4.2.3.18.8 & A, 8-15-03; A, 6-15-06; A, 10-31-07; A, 01-29-10]

Assistants – See Paraprofessionals.

Audiologist – See Speech/language/audiology.

Authority: NMAC §6.61.10.8 REQUIREMENTS: Teachers of Students with Blindness and VI.

A. Persons seeking licensure to teach students with blindness and visual impairment pursuant to the provisions of this rule shall meet the requirements of Subsection A of 6.61.10.8 NMAC.

- (1) bachelor's degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, the following:
 - (a) twelve (12) semester hours in English;
 - (b) twelve (12) semester hours in history including American history and western civilization;
 - (c) six (6) semester hours in mathematics;
 - (d) six (6) semester hours in government, economics or sociology;
 - (e) twelve (12) semester hours in science, including biology, chemistry, physics, geology, zoology, or botany;
 - (f) six (6) semester hours in fine arts; and
- (2) credits from a regionally accredited college or university which include twenty four to thirty-six (24-36) semester hours of professional education in a program of studies that prepares candidates to teach blind and visually impaired students, including completion of the public education department's (PED's) approved functional areas and related competencies in professional education; and
- (3) a mandatory student teaching or practicum component; and
- (4) twenty-four to thirty-six (24-36) semester hours in one teaching field such as mathematics, science(s), language arts, reading, or from among history, geography, economics, civics and government (or other social studies content related areas). Individuals must also complete the PED's approved functional areas and related competencies in the teaching field; and
- (5) in addition to the requirements specified in Subsection A, Paragraphs (1), (3), (4) and (6) of 6.61.10.8 NMAC, six (6) hours of reading for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and
- (6) passage of all required portions of the New Mexico teacher assessments (NMTA) or any successor teacher examination adopted by the PED.

B. [Reserved] [6.61.10.8 NMAC - N, 08-15-03; A, 06-15-06; A, 01-29-10]

Authority: NMAC §6.63.3.7 Diagnostician - DEFINITIONS:

A. "Instructional support providers" formerly referred to as related service or ancillary providers, shall mean anyone who provides services for a public school or state institution as an educational assistant, school counselor, school social worker, school nurse, speech-language pathologist, psychologist, physical therapist, physical therapy assistant, occupational therapist, occupational therapy assistant, recreational therapist, interpreter for the deaf, diagnostician and other service providers who are employed to support the instructional program of a school district or charter school.

Authority: NMAC §6.63.4.7 Diagnostician:

A. "Level one licensure" means a provisional license in educational diagnosis granted for five years. The license is nonrenewable unless the license holder verifies to the public education department (PED) that he/she has not

worked using the license during its effective dates and provides evidence of current employment as an educational diagnostician.

- B. "Level two licensure" means a renewable nine year license in educational diagnosis awarded after successful completion of at least three full school years at level one educational diagnostician licensure and including documentation of professional development requirements and verification by the superintendent or the governing authority of a private school or state institution that the individual is meeting level one competencies and is capable of demonstrating the competencies at level two.
- C. "Level three licensure" means a renewable nine year license in educational diagnosis awarded after successful completion of at least three full school years at level two educational diagnostician licensure and including documentation of completion of supervised experience requirements and verification by the superintendent or the governing authority of a private school or state institution that the individual is meeting level two competencies and is capable of demonstrating the competencies at level three.
- D. "Supervision for an entry-level educational diagnostician" means a level one educational diagnostician will be required to have a minimum of one-hour per week individual supervision with a level three licensed educational diagnostician.
- E. Satisfactory experience means the individual has:
 - (1) satisfactorily carried out the duties and responsibilities of the position as verified by the superintendent or the governing authority of a private school or state institution, and
 - (2) satisfactorily met the quality of the practice of educational diagnosis and professional responsibilities as reported by the supervising educational diagnostician.
- F. "New Mexico diagnostician examination" means a comprehensive examination that evaluates the knowledge and competencies which must be passed no later than the end of the first year of level one licensure.
- G. "Full school year" means a minimum of 160 days in a school year or 480 days over multiple school years or equivalent number of days in school districts on alternative schedules of full-time or part-time educational diagnostician work, including summer work in a variety of educational settings.

Authority: NMAC §6.61.8.7 Early Childhood Teacher B – grade 3 - DEFINITIONS:

- J. "A highly qualified beginning early childhood teacher", under this rule, means a teacher who is fully qualified for teaching children from birth through grade 3, who is new to the profession, who has pursued a standard route to licensure, and who:
 - (1) meets the requirements for early childhood B-3 licensure in Subsections A or B of 6.61.8.8 NMAC, and
 - (2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason, and
 - (3) has passed all applicable teacher testing requirements for licensure in 6.60.5.8 NMAC.

Authority: NMAC §6.61.8.8 REQUIREMENTS: All persons who perform instructional services in early childhood education (i.e., birth - grade 3) in public schools or in state-supported schools, must hold a valid standard license in early childhood development issued by the PED. A candidate who applies for licensure in early childhood education on or after July 1, 2014 must meet the requirements for either birth - pre-K as stated in 6.61.11 NMAC, or pre-K-grade 3 as stated in 6.61.12 NMAC.

Authority: NMAC §6.61.8.9 IMPLEMENTATION: All persons holding a current license in early childhood, birth - grade 3 prior to July 1, 2014 may advance or renew that license by meeting requirements stated in 6.60.6 NMAC. All persons whose license in early childhood, birth - grade 3 expired on or after June 30, 2014 must apply as an initial applicant and meet requirements stated in 6.61.11 NMAC, or 6.61.12 NMAC.
[11-14-98; 6.61.8.9 NMAC - Rn, 6 NMAC 4.2.3.17.9, 03-31-01; A, 06-15-06; A, 01-29-10]

Authority: NMSA 1978 §38-9-2. Definitions. Deaf Interpreter.

As used in the Deaf Interpreter Act [§§38-9-1 to 38-9-10 NMSA 1978]:

- A. "appointing authority" means the presiding judge or magistrate of any court and the hearing officer or other person authorized to administer oaths in any administrative proceeding before a board, commission, agency, institution, department or licensing authority of the state or any of its political subdivisions wherein an interpreter is required pursuant to the provisions of the Deaf Interpreter Act;
- B. "deaf person" means any person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit him from understanding voice communications;

- C. "principal party in interest" means a person in any judicial or administrative proceeding in which he is a named party or who will or may be bound by the decision or action or foreclosed from pursuing his rights by the decision or action which may be taken in the proceeding; and
- D. "interpreter" means a person who may through sign language, manual spelling or orally, through lip reading, as required, translate and communicate between a principal party in interest and other parties.

Authority: NMSA 1978 §38-9-3. Interpreter required.

If a deaf person who is a principal party in interest has provided notice and proof of disability, if required, pursuant to Section 6 [38-9-6 NMSA 1978] of the Deaf Interpreter Act, the appointing authority shall appoint an interpreter, after consultation with the deaf person, to interpret or to translate the proceedings to him and to interpret or translate his testimony. Interpreters may be selected from current lists of interpreters provided by the vocational rehabilitation division for:

- A. interpreters certified by the national registry of interpreters for the deaf; or
- B. other interpreters qualified through joint action and agreement of the vocational rehabilitation division, the New Mexico registry of interpreters for the deaf, incorporated, and the New Mexico association of the deaf; or by nomination of a person by the deaf person or the appointing authority who is acceptable to both.

Interpreter / Translator for Non-English Speaking - New Mexico Qualifications:

- High degree of oral and written proficiency in both L1 and L2. (The written requirement may not be appropriate for Native American populations).
- Ability to convey meaning from one language to the other without losing the essence of the message or request.
- Sensitivity to the speaker's style.
- Ability to adjust to linguistic variations within different communities (e.g., northern New Mexico vs. borderlands of New Mexico).
- Knowledge about the cultures of the people who speak the language.
- Familiarity with the specific terminology used in the assessment, evaluation, and IEP/IFSP setting).
- Understand their function and role within the evaluation team.

Authority: NMAC §16.27.9.8 Licensure as a Mental Health Counselor - LMHC SUPERVISION

- A. Supervision must be provided by a licensed professional clinical mental health counselor (LPCC), licensed marriage and family therapist (LMFT), licensed professional art therapist (LPAT), licensed psychologist, licensed psychiatrist, or licensed independent social worker (LISW).
- B. It is the responsibility of the individual seeking supervision to assure the supervision is acceptable for the level of licensure that will be requested at the completion of the required supervision. The relationship between the supervisor and the applicant must promote the development of skill and responsibility in the delivery of counseling or therapy services.
- C. Client contact and supervision hours prior to being licensed will not be acceptable for licensure.

Authority: NMAC §16.27.9.9 LICENSED MENTAL HEALTH COUNSELOR - LMHC (Mental Health Specialty or Art Therapy Specialty):

- A. LMHC is intended as a transition between the required degree and the completion of supervised training required for licensure as a professional mental health counselor, a professional clinical mental health counselor, or a professional art therapist. All work must be under appropriate clinical supervision. Applicants must assure that their education and experience are appropriate for the level of licensure they will seek upon completion of supervised training. There is no time limit as a licensed mental health counselor, but all work at this level must be done under clinical supervision.
- B. Qualifications for entry level licensure. An applicant for licensure as an entry-level mental health counselor (LMHC) must possess the following qualifications:
 - (1) be at least 21 years of age; and
 - (2) applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics;
 - (3) holds a masters or doctoral degree in a counseling or counseling related field with no less than 48 graduate hours and 9 practicum hours;
 - (4) have arranged for appropriate clinical supervision, including a postgraduate experience plan, which includes one hour of face-to-face supervision for every ten hours of client contact.

Authority: NMAC §16.27.9.8 Licensure as a Professional Mental Health Counselor - LPC APPROPRIATE SUPERVISION:

- A. Supervision must be provided by a licensed professional clinical mental health counselor (LPCC), licensed marriage and family therapist (LMFT), licensed professional art therapist (LPAT), licensed psychologist, licensed psychiatrist, or licensed independent social worker (LISW). The licensed mental health counselor (LMHC) or the licensed professional mental health counselor (LPC) must practice under supervision at all times. Once the licensed mental health counselor or the licensed professional mental health counselor acquired the official LPCC, LMFT or LPAT license then the licensee may practice independently without supervision.
- B. It is the responsibility of the individual seeking supervision to assure the supervision is acceptable for the level of licensure that will be requested at the completion of the required supervision. The relationship between the supervisor and the applicant must promote the development of skill and responsibility in the delivery of counseling or therapy services.
- C. Client contact and supervision hours prior to being licensed will not be acceptable for licensure.

Authority: NMAC §16.27.9.9 LICENSED MENTAL HEALTH COUNSELOR (MENTAL HEALTH SPECIALTY OR ART THERAPY SPECIALTY):

- A. LMHC is intended as a transition between the required degree and the completion of supervised training required for licensure as a professional mental health counselor, a professional clinical mental health counselor, or a professional art therapist. All work must be under appropriate clinical supervision. Applicants must assure that their education and experience are appropriate for the level of licensure they will seek upon completion of supervised training. There is no time limit as a licensed mental health counselor, but all work at this level must be done under clinical supervision.
 - B. Qualifications for entry level licensure. An applicant for licensure as an entry-level mental health counselor (LMHC) must possess the following qualifications:
 - (1) be at least 21 years of age; and
 - (2) applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics
 - (3) holds a masters or doctoral degree in a counseling or counseling related field with no less than 48 graduate hours and 9 practicum hours;
 - (4) have arranged for appropriate clinical supervision, including a postgraduate experience plan, which includes one hour of face-to-face supervision for every ten hours of client contact.
- [16.27.9.9 NMAC - Rp 16 NMAC 27.8.8, 6-15-01; A, 7-1-04; A, 2-10-06]

Authority: NMAC §16.27.9.11 EXAMINATION: Applicants must demonstrate professional competency by passing the national counselors exam (NCE) or (NCC) and art therapy specialty must demonstrate professional competency by passing the art therapy credentialing board (ATCB) exam.

Authority: NMAC §16.15.2.13 OT Licensing - ANNUAL RENEWAL:

- A. Annual renewal fees in the form of a check or money order must be remitted when due or license will expire automatically.
- B. Licenses may be renewed upon receipt of a renewal application submitted on the form provided by the board, or via on-line renewal application through the board's on-line professional licensing system, the applicable annual renewal fee, and proof of continuing education requirements pursuant to regulations of the board.
- C. The annual renewal date is October 1st of each year. All licenses issued by the board will expire on September 30th of each year.

Authority: NMAC §6.63.9.7 Paraprofessionals DEFINITIONS:

- A. "Paraprofessionals" means education assistants who assist a teacher in instruction and hold Level 3 education assistant licensure.
- B. [Reserved]

Authority: NMAC §6.63.9.8 LEVEL I AND LEVEL II REQUIREMENTS: All persons who perform services as educational assistants ("EAs") in public schools or in those special state-supported schools within state agencies must hold valid, educational assistants licensure issued by the public education department ("PED"). EAs shall be assigned, and serve as assistants, to school staff duly licensed by the PED. While there may be brief periods when EAs are alone with and in control of a classroom of students, their primary use shall be to work alongside or under the direct

supervision of duly licensed staff.

- A. Persons seeking licensure in Level I educational assistance pursuant to the provisions of this rule shall meet the following requirements:
- (1) high school diploma or equivalency; and
 - (2) eighteen years of age; and
 - (3) certification by the public school superintendent, state-supported school superintendent, charter school administrator or private school official that the educational assistant has satisfactorily completed an orientation session pertinent to his or her assignment.
- B. Persons seeking licensure in Level II educational assistance pursuant to the provisions of this rule shall meet the following requirements:
- (1) high school diploma or equivalency; and
 - (2) eighteen years of age; and
 - (3) certification by the public school superintendent, state-supported school superintendent, charter school administrator or private school official that the educational assistant has satisfactorily completed an orientation session pertinent to his or her assignment; and
 - (4) certification by the public school superintendent, state-supported school superintendent, charter school administrator or private school official that the educational assistant has satisfactorily demonstrated the PED's educational assistant competencies.

Authority: NMAC 6.63.9.10 Level III/Paraprofessional Requirements

Authority: NMAC 6.63.9.11 Local District Testing To Obtain Level III Licensure

Authority: NMAC 6.63.9.13 Implementation

Authority: NMAC 6.63.9.14 Continuing Licensure

Authority: NMAC §16.20.1.10 Physical Therapist – PT - USE OF TITLES:

- A. Only a person holding a license as a physical therapist may use the title “physical therapist,” “licensed physical therapist”, or the letters “P.T.”
- B. Only a person holding a license as a physical therapist assistant may use the title “physical therapist assistant”, “licensed physical therapist assistant”, or the letters “P.T.A.”
- C. Only a student in a college program accredited or actively pursuing accreditation by the American physical therapy association may use the title “student physical therapist”, or the letters “S.P.T.”
- D. Only a student in a college program accredited or actively pursuing accreditation by the American physical therapy association may use the title “student physical therapist assistant”, or the letters “S.P.T.A.”

Authority: §16.20.3.8 NMAC Physical Therapists

- A. The board may issue a license to an applicant, other than one applying for licensure by endorsement, who fulfills the following requirements:
- (1) completes the application;
 - (2) includes a passport-size photograph taken within the preceding twelve months and affixes it to the application;
 - (3) pays the non-refundable application fee in full as provided in Part 5;
 - (4) passes the jurisprudence exam (as specified in §16.20.2.10) and pays the non-refundable exam fee as provided in Part 5;
 - (5) official college or university transcripts from a program approved by the commission on accreditation in physical therapy education (CAPTE) verifying one of the following:
 - (a) post-baccalaureate degree in physical therapy;
 - (b) associate degree in physical therapy assistant.
 - (6) if official transcripts are not available because of school closure or destruction of the records, e.g., the applicant must provide satisfactory evidence of meeting the required physical therapy educational program by submitting documentation that will be considered on a case-by-case basis by the board and pursuant to the following:
 - (a) for applicants who graduated after January 1, 2002, documentation of graduation with a post-baccalaureate degree in physical therapy from an educational program accredited by CAPTE;

- (b) for applicants who graduated prior to January 1, 2002, documentation of graduation with a baccalaureate degree in physical therapy or a certificate in physical therapy from an educational program accredited by CAPTE;
 - (c) for physical therapist assistant applicants, documentation of graduation from an accredited physical therapist assistant program accredited by CAPTE and approved by the board;
 - (7) passes the national physical therapy licensure examination (NPTE) (as specified in §16.20.2.8 NMAC); if the applicant has previously taken the NPTE, the testing entity shall send the test scores directly to the board; test scores sent by individuals, organizations or other state boards will not be accepted.
- B. For applicants who have not practiced since graduating from a physical therapy education program, or who have not practiced as a physical therapist or physical therapist assistant for a period of more than three (3) consecutive years, full licensure requires fulfilling the following requirements:
- (1) satisfactory completion of all application requirements for licensure as provided in Subsection A of 16.20.3.8 NMAC;
 - (2) provides proof of having taken fifteen (15) continuing education contact hours for each year the applicant was not practicing as a physical therapist or physical therapist assistant (coursework to be pre-approved by the board);
 - (3) provides evidence of additional competency to practice as required by the board.
- C. Felony or misdemeanor convictions involving moral turpitude directly related to employment in the profession have to be satisfactorily resolved. The board may require proof that the person has been sufficiently rehabilitated to warrant the public trust if the prior conviction does not relate to employment in the profession. Proof of sufficient rehabilitation may include, but is not limited to: certified proof of completion of probation or parole supervision, payment of fees, community service or any other court ordered sanction.
- D. A licensee requesting a name change must submit proof of name change, the original license and a replacement license fee.
- E. Foreign educated applicants must meet all requirements for licensure as provided in Subsection A of §16.20.3.8 NMAC as well as those requirements listed in §16.20.9 NMAC.

Authority: NMAC §16.20.7.7 PT supervision DEFINITIONS:

- A. "On-site supervision" means a physical therapist shall be continuously on-site and present in the same building where the assistive personnel are performing services.
- B. "Maintaining continued involvement" means the supervising physical therapist or physical therapist assistant shall personally contact the patient each treatment day to assess and monitor the response to treatment. The licensed personnel shall sign all permanent records.

Authority: NMAC 16.20.7.8 Supervision of Licensed Personnel

Authority: NMAC 16.20.7.9 Supervision of Unlicensed Assistive Personnel

Authority: NMAC 16.22.4.8 Psychologists: Education requirements.

Authority: NMAC 6.63.5.7 DEFINITIONS – School Psychologist:

- A. "School psychologist" means a person who is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions which attempt to improve the learning, adjustment and behavior of students, including assessment and psychological pre-referral/intervention procedures in a school-related setting.

Authority: NMAC 6.63.5.8 Requirements For Persons Seeking Level 1, Entry Level School Psychologist Licensure

Authority: NMAC 6.63.5.9 Requirements For Persons Seeking Level 2, Independent School Psychologist Licensure

Authority: NMAC 6.63.5.10 Requirements For Persons Seeking Level 3, Independent School Psychologist Licensure

Authority: NMAC 6.63.5.11 Implementation

Authority: NMAC 6.63.5.12 Competencies For Entry Level School Psychologists Requiring Supervision by a Level 3 Supervising School Psychologist

Authority: NMAC 6.63.5.13 Competencies For Level II Independent School Psychologists

Authority: NMAC 6.63.5.14 Competencies For Level IIIa Clinical Supervising School Psychologists

Authority: NMAC §6.63.11.7 Rehabilitation counseling - DEFINITIONS:

- A. "Rehabilitation counseling" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability who receives services under the federal Individuals with Disabilities Education Act (IDEA). The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the federal Rehabilitation Act of 1973, as amended.
- B. "Related fields" means a degree in such areas as sociology, psychology, school counseling, guidance and counseling, education, special education, social work, and mental health.
- C. "Transition services" means a coordinated set of activities for a student with a disability, as defined in the Individuals with Disabilities Education Act, that:
 - (1) is designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
 - (2) is based on the individual student's needs, taking into account the student's preferences and interests; and
 - (3) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

Authority: NMAC §6.63.11.8 Rehabilitation Counseling REQUIREMENTS:

Persons seeking licensure in rehabilitation counseling pursuant to the provisions of this rule shall meet the requirements of Subsections A, B, C, D or E of 6.63.11.8 NMAC.

Authority: NMAC §6.63.6.8 School Counselor REQUIREMENTS:

Applicants may meet this requirement by meeting requirements of Subsections A or B or C of

- A. national certified school counselor credential issued by the national board for certified counselors;
- B. licensed professional mental health counselor (LPC) or licensed professional clinical mental health counselor (LPCC) credential issued by the New Mexico counseling and therapy practice board and a minimum of six semester hours of graduate credit in school counseling coursework;
- C. master's degree from a regionally accredited college or university; the master's degree requirement shall be satisfied by meeting the requirements of Paragraphs (1) or (2) of Subsection C of 6.63.6.8 NMAC:
 - (1) master's degree in school counseling from a regionally accredited college or university and meeting the applicable program requirements as follows:
 - (a) A master's degree awarded by a New Mexico college or university must incorporate the New Mexico public education department ("PED") approved competencies in the area of school counseling.
 - (b) A master's degree awarded by a college or university outside of New Mexico must be for a school counseling program approved by the PED.
 - (2) master's degree in a discipline other than school counseling and 36-42 graduate hours in school counseling, (which may be completed as a part of the master's degree program or in addition to the master's) meeting the applicable program requirements as follows:
 - (a) The 36-42 graduate hours awarded by a New Mexico college or university must incorporate the PED approved competencies in the area of school counseling and include a 300 hour practicum or internship in a school setting.
 - (b) The 36-42 graduate hours awarded by a college or university outside of New Mexico must be for a school counseling program approved by the PED and include a practicum in a school setting.

Authority: NMAC §16.63.1.7 Social Worker - DEFINITIONS:

- A. Appropriate supervision:
- B. Licensed clinical social worker: an independent social worker with a clinical specialty is equivalent to a licensed clinical social worker (LCSW).
- C. Qualified applicants:
 - (1) Means those programs having received accreditation by CSWE and those programs having candidacy status, conditional status, or under review status with CSWE.
 - (2) For those applicants who graduated from a institution of higher education before CSWE began to accredit programs (prior to 1974), the New Mexico board of social work examiners will require:

- (a) a letter from the university's registrar's office stating that the applicant's course of study culminated in a degree which was the equivalent of an emphasis or major in social work;
 - (b) demonstrated social work experience;
 - (c) documentation of social work licensure in a previous state; and
 - (d) concurrence among the majority of professional members of the board that the transcripts reflect sufficient coursework in social work.
- D. CSWE (council on social work education) accreditation: means those programs having received accreditation by CSWE and those programs having candidacy status or under review status with CSWE.

Authority: NMAC §6.61.6.7 Licensure Special Education Teacher Pre-K-12. DEFINITIONS:

- A. "Core academic subjects" means English, language arts, reading, mathematics, science, the arts, including music and visual arts, social studies, which includes civics, government, economics, history, and geography, and modern and classical languages, except the modern and classical Native American languages and cultures of New Mexico tribes and pueblos.
- B. "A highly qualified beginning pre k-12 special education teacher" under this rule means a teacher who is new to the profession, has pursued a standard route to licensure and is fully qualified to teach special education students by either providing access for those students to a regular education classroom where instruction in the core academic subjects is delivered by a highly qualified regular education teacher, or being fully qualified to teach each core academic subject the special education teacher teaches, or being fully qualified to teach either language arts, mathematics or science and becoming fully qualified to teach any other core academic subjects which the teacher teaches within two years after the date of initial employment, and who:
 - (1) meets the requirements for pre-k-12 special education licensure in Subsections A or B in 6.61.6.8 NMAC;
 - (2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason; and
 - (3) has passed all applicable teacher testing requirements for licensure in §§6.60.5.8 NMAC.
- C. "Pre-kindergarten" means a voluntary developmental readiness program for children who have attained their fourth birthday prior to September 1.

Authority: NMAC §6.61.6.8 REQUIREMENTS:

- A. Persons seeking licensure in special education pursuant to the provisions of this rule shall meet all the requirements enumerated in Subsections A or B of this section.

Authority: NMAC §6.61.6.9 IMPLEMENTATION:

All persons holding a valid endorsement in special education areas (excluding educational diagnosticians, speech pathologists, and related services personnel who do not currently hold special education licensure) on June 30, 1987, shall be entitled to licensure in special education. Such licensure may be further continued pursuant to regulation(s) as established by the department.

Authority: NMAC §16.26.1.2 Hearing – Speech and Audiology Practitioners - SCOPE:

All individuals wishing to practice as a speech-language pathologist, audiologist, hearing aid dispenser, paraprofessional apprentice, individuals working towards their clinical fellowship or university students who will be offering services in the speech-language pathology and/or audiology field and individuals under a training permit as hearing aid dispenser trainees.

Authority: NMAC §16.26.1.7 DEFINITIONS:

- E. "Audiologist" means a person holding at least a master's degree in audiology issued prior to January 1, 2007, or a doctoral degree in audiology who engages in the practice of audiology who may or may not dispense hearing aids and who meets the qualifications set forth in the act.
- G. "Direct supervision" means on-site, in-view observation and guidance by a licensed professional in the applicant's field present (other than a paraprofessional or clinical fellow) during a therapy session with clients while an assigned activity is performed by support personnel.
- H. "Indirect supervision" means those activities other than direct supervision conducted by a licensed professional (other than a paraprofessional or clinical fellow) that may include demonstration, record review, consultations, meetings and evaluation of audio or video-taped sessions.
- J. "License" means a document identifying a legal privilege and authorization to practice within one of the categories established by the act. A license under this act is not transferable.

- K. "Licensing year" means the period from January 31 of any year through January 30 of the next year; initial, renewed and reinstated licenses may be issued at any time set, herein, but shall expire on January 30 of the following year, except as otherwise provided in these rules.
- P. "Temporary paraprofessional license" means a license issued to a person working towards full licensure as a speech-language pathologist and who provides adjunct speech-language pathology services under the supervision of a speech-language pathologist who is licensed under this act.
- Q. "Temporary trainee permit" means a permit issued by the board to a person authorized to fit and dispense hearing aids only under the supervision of a sponsor as defined by these regulations. Temporary trainee permits will be issued for a one-year period and are non-renewable.

Authority: NMSA 1978 61-14B-12.1. Requirements for licensure; audiologist. (Repealed effective July 1, 2016.)
 A license to practice as an audiologist shall be issued to any person who completes A. and B.:

Authority: NMSA 1978 61-14B-12. Requirements for licensure; speech-language pathologist. (To be repealed effective July 1, 2016.)

A license to practice as a speech-language pathologist shall be issued to a person who files a completed application, accompanied by the required fees and documentation; certifies that the applicant is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978; and submits satisfactory evidence that the applicant:

- A. holds at least a master's degree in speech pathology, speech-language pathology or communication disorders or equivalent degree regardless of degree name and meets the academic requirements for certification by a nationally recognized speech-language association; and
- B. currently holds a certificate of clinical competence (CCC) from a nationally recognized speech-language association in the area for which the applicant is seeking licensure; or
- C. has completed the current academic, practicum and employment experience requirements for a certificate of clinical competence from a nationally recognized speech-language association in the area for which the applicant is applying for license and has passed a recognized standard national examination in speech-language pathology.

Authority: NMSA 1978 61-14B-15.1. Requirements for licensure; apprentice in speech and language. (To be repealed effective July 1, 2016.)

A license to practice as an apprentice in speech and language shall be issued by the board to a person who files a completed application accompanied by the required fees and documentation and provides satisfactory evidence that the applicant: A. – F.

Authority: NMAC §6.69.2.7 Unsatisfactory work performance. DEFINITIONS:

- A. "Administrative authority" means the superintendent, principal or a person acting under the authority of such superintendent or principal.
- B. "Insubordination" means actual or implied willful refusal to follow written policies, regulations, rules, or procedures established by the public education department (PED), the local school board, or administrative authorities, or the lawful written or oral orders, requests or instructions of administrative authorities.
- C. "Uncorrected unsatisfactory work performance" means unsatisfactory work performance which the licensed school personnel has failed to correct pursuant to the provisions in this regulation; provided, however, that if unsatisfactory work performance is uncorrectable through the evaluation and supervision process, as determined by the local school board policy, the provisions in this regulation shall not apply.
- D. "Unsatisfactory work performance" means the failure by licensed school personnel to satisfactorily perform those tasks which are evaluated by the employee's supervisors, pursuant to the school district's approved plans) for evaluation and supervision of its licensed employees. Furthermore, for the purpose of this regulation unsatisfactory work performance does not include insubordination or conduct deemed to be outside the normal scope of duties of licensed school personnel.

Authority: NMAC §6.69.2.8 UNCORRECTED UNSATISFACTORY WORK PERFORMANCE:

- A. Uncorrected unsatisfactory work performance is good cause for discharging licensed school personnel or for requesting the secretary of education to suspend a level three teaching license as provided in Subsection F of 6.69.4.10 NMAC so long as procedures established in Subsection B of Section 6.69.2.8 NMAC, herein, are followed.

- B. The following procedures shall be followed by local school boards or governing authorities of state agencies in supervising and correcting unsatisfactory work performance of licensed school personnel before serving them with notice of intent to discharge pursuant to Section 22-10A-27 NMSA 1978 or before requesting the secretary of education to suspend a level three teaching license under Subsection F of 6.69.4.10 NMAC.
- (1) Two or more conferences shall have been held with licensed school personnel charged with unsatisfactory work performance by a local school board or governing authorities of state agencies before notice of intent to discharge is served upon him or her. Such conferences shall be held with the individual's immediate supervisor and such other persons as the local board or governing authorities of state agencies may designate. For purposes of this regulation, the conference at which the supervisor first identifies unsatisfactory work performance shall be counted as one of the required conferences. Sufficient time shall have elapsed between the conferences to allow the licensed school personnel to correct the unsatisfactory work performance and to have been observed for an adequate time in the discharge of his or her duties.
 - (2) A written record of all conferences shall be made, specifying the areas of uncorrected unsatisfactory work performance, all action suggested by the school or agency administration which might improve such performance, and all improvements made. Each written record shall be signed by all parties to the conference. In the event of a refusal to sign, a notation shall be made of the refusal. A copy of each record shall be given to the person charged with unsatisfactory work performance. The local board or governing authority of a state agency shall retain a copy of the record to be introduced at any hearing for the person charged with unsatisfactory work performance.
 - (3) In addition to the requirements in Subsection B of 6.69.2.8 NMAC, before requesting the secretary of education to suspend a level three teaching license as provided in Subsection F of 6.69.4.10 NMAC a local school district or governing authorities of state agencies shall provide the teacher with professional development and peer intervention, including mentoring, for a period the school principal deems necessary.

New Mexico – Three-Tiered Licensure

The Professional Development Dossier (PDD) is the cornerstone of advancement for teachers in the Three-Tiered Licensure System. Teachers must complete the PDD in order to advance from Level I to Level II and to advance from Level II to Level III. <http://www.ped.state.nm.us/Licensure/index.html>

Professional Development Dossier (PDD) Background and Overview Assessment of Teacher Competency
Advancement to higher levels of teacher licensure in the State of New Mexico is based on the regulations in Title 6, Chapter 69, of the NM Administrative Code. These regulations outline the competencies for each level and set the parameters for the assessment system. Every teacher will submit a Professional Development Dossier (PDD) at the end of three years of successful teaching at Level I in order to advance to Level II. Teachers who seek Level III licensure may submit an additional PDD after their third year of successful teaching at Level II. The Public Education Department has established guidelines to assist teachers in demonstrating essential competencies for advancement to Level II and Level III, as specified in the regulations.

Level II Licensure

A teacher must apply for Level II licensure upon completion of at least three years of successful teaching at Level I, including successful completion of a formal mentoring program in his or her district. Teachers who have obtained a NM teacher license under interstate reciprocity must have at least two years experience teaching in New Mexico before advancing to Level II. A teacher seeking Level II Licensure must submit a PDD compiled according to the Guidelines.

Level III Licensure

A teacher is eligible to apply for Level III licensure upon completion of at least three years of successful teaching at Level II AND achievement of either an approved post-baccalaureate (master's) degree or advanced certification from the National Board for Professional Teaching Standards. Teachers who have obtained a NM teacher license under interstate reciprocity must have at least two years experience in New Mexico before advancing to Level III.

Application

A teacher applies for both Level II and Level III licensure by completing a Professional Development Dossier (PDD) and submitting it to the designated contractor of the New Mexico Public Education Department. Submission deadlines and instructions for submitting your completed PDD will be available at www.teachnm.org.

The PDD

The Professional Development Dossier (PDD) is a focused, compact collection of documentation compiled by the teacher seeking licensure advancement with support from her/his school district. The PDD documentation is a collection of classroom data (lesson descriptions, handouts, student work, video and audio recordings, photos) with explanations of that data written by the teacher, accompanied by verification and recommendation by the district superintendent. No one part of the PDD serves to fully represent a teacher's work, but the entire PDD is intended to provide evidence to determine when a teacher is qualified to advance to a higher level of licensure.

The PDD is organized into five strands. These five strands are aligned with the New Mexico Teacher Competencies and are designed to help teachers document their teaching for reviewers from outside their school and district.

Related Service Personnel – Roles (*See Chapter 3. - Evaluation*).

V. COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

Authority: 34 CFR §300.207 Personnel development.

The public agency must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of §300.156 (related to personnel qualifications) and section 2122 of the ESEA.

Authority: 34 CFR §300.226 Early intervening services. (For more information see - X. Funding).

- (a) **General.** The public agency may not use more than 15 percent of the amount the public agency receives under Part B of the Act for any fiscal year, less any amount reduced by the public agency pursuant to §300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who have not been identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.
- (b) **Activities.** In implementing coordinated, early intervening services under this section, the public agency may carry out activities that include--
 - (1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and
 - (2) Providing educational and behavioral evaluations, services, and supports, including scientifically-based literacy instruction.

Authority: NMAC 6.65.2.6 Professional Development-Objective:

The rule establishes criteria for all professional development programs delivered by the public education department, statewide professional development providers, charter schools, public school districts, and for all professional development providers that apply for professional development funds, or who are awarded funding by the public education department ("PED") or by the legislature. The criteria in this rule also establishes standards for an evaluation component that will be used by the PED in accessing charter school, and school district professional development plans. The rule creates standards for developing professional development activities for schools that improve teachers' knowledge of the subjects they teach and the ability to teach those subjects to all of their students; are an integral part of the public school and school district plans for improving student achievement; provide teachers, school administrators and instructional support providers with the strategies, support, knowledge and skills to help all students meet the New Mexico academic content standards; are high quality, sustained, intensive and focused on the classroom; are developed and evaluated regularly with extensive participation of school employees and parents.

Authority: NMAC 6.65.2.7 DEFINITIONS:

- A. "Alignment" means the degree to which program components match purposes and evaluation criteria.

- B. "Collaboration" means the act of working positively and productively with others to meet a common goal or purpose.
- C. "Data" means information from a variety of sources gathered for a purpose. For example, data related to student learning might include student work examples, scripted or videotaped observations, student achievement scores, and/or teacher-generated assessments. Data related to teacher performance might include observations; instructional artifacts; and /or student, peer or parent evaluations. The terms data and evidence are often used interchangeably.
- D. "Developmental levels" means descriptors of development for students and teachers.
 - (1) Developmental levels for students are descriptors of how they develop (cognitively, socially and in other ways) during their formative years in pre-k-12 education.
 - (2) Developmental levels for teachers are descriptors of how they develop across the continuum of their careers. In New Mexico, the career continuum for teachers include three levels of development: the level 1 "provisional teacher" (the initial five years of a teaching career where the teacher demonstrates initial mastery of effective teaching); the level 2 "professional teacher" (at least three years of classroom teaching experience during which a teacher demonstrates expert practice); and the level 3 "master teacher" (at least six years of experience where the teacher demonstrates exemplary practice).
- E. "Differentiated" means the intentional application of multiple modes of instruction or assessment in order to meet the needs of all members of a group. The New Mexico teacher competencies are differentiated across levels of years of experience and teacher development: level 1 (provisional teacher); level 2 (professional teacher); and level 3 (master teacher).
- F. "Diversity" means variety among individuals. Diversity includes, for example, variations in socio-economic status, race, developmental level, ethnicity, gender, language, learning styles, culture, abilities, age, interests, and/or personality.
- G. "Job-embedded" means activities that are included as part of the responsibilities of the teacher's work day.
- H. "Leadership" means the work of members of all levels of educational systems who engage in, collaborate in, and/or guide continuous instructional improvement for the benefit of the entire system.
- I. "Professional development " means a systemic process by which educators increase knowledge, skills, and abilities to meet professional and organizational goals that build capacity within the individual, organization, and education system for the purpose of ensuring success for all students.
- J. "Professional development plan" means a plan specifically designed to identify goals, activities and measurable objectives that will support continuous learning related to professional knowledge, skills and abilities.
 - (1) The district professional development plan is a component of the comprehensive educational plan for student success that supports academic learning for all students.
 - (2) The individual teacher's professional development plan (PDP) is part of the performance evaluation system requirements. The teacher's PDP is a collaborative enterprise involving the teacher and principal in establishing a yearly plan for professional learning goals, activities, and measurable objectives based on the nine New Mexico teacher competencies.
- K. "Professional development program" means an organized set of professional development experiences for an education system that will support instructional learning in an identified area of improvement.
- L. "Research based" means results from proven, rigorous educational research methodologies.
- M. "Staff development" means organized professional learning activities. The terms "professional development and staff development" are used interchangeably by the national staff development council as well as in this rule.
- N. "Student success" means attainment of knowledge, skills and attributes that will prepare and nurture individuals to become productive, engaged citizens in a democratic society.
- O. "Sustained" means an effort or activity maintained in a coherent, planned manner over time.
- P. "Systematic" means something that is characterized by order and planning.
- Q. "Systemic" means related to an entire system: in this case, an educational organization that is made up of individual but interdependent components united by a common purpose, action plan, and accountability.
- R. "Training" means a subset of professional development. Training includes specialized, often prescribed instruction and practice that help an individual become proficient in a skill or set of skills.
- S. "Standards for staff development" means criteria and expectations that provide direction for designing a professional development experience that ensures educators acquire the necessary knowledge and skills.
- T. "Framework for professional development " means a document that establishes the context, processes and content relative to professional development by way of a statewide definition and belief statements of professional development, guidelines for the effective designing, implementation, and evaluating of

professional development initiatives at the district and school building-level, establishing the criteria for school districts to apply for professional development funds, and to provide information regarding professional development providers and other resources.

Authority: NMAC §6.65.2.8 REQUIREMENTS FOR PROGRAM DESIGN AND IMPLEMENTATION:

School district and charter school professional development programs shall meet the highest standards for professional development. New Mexico has adopted the national staff development council standards for staff development as requirements for designing, implementing, and evaluating professional development programs. All statewide, PED, charter school and public school district professional development programs and activities shall address and align with the following standards and shall articulate:

- A. context standards which:
 - (1) improve the learning of all students by organizing adults into learning communities whose goals are aligned with those of the school district;
 - (2) require skillful school and district leaders who guide continuous instructional improvement;
 - (3) require resources to support adult learning and collaboration;
- B. process standards which:
 - (1) improve the learning of all students by using disaggregated student data to determine adult learning priorities, monitor progress, and help sustain continuous improvement;
 - (2) use multiple sources of information to guide improvement and demonstrate its impact;
 - (3) prepare educators to apply research to decision making;
 - (4) use learning strategies appropriate to the intended goal;
 - (5) apply knowledge about human learning and change;
 - (6) provide educators with the knowledge and skills to collaborate;
- C. content standards which:
 - (1) improve the learning of all students by preparing educators to understand and appreciate all students;
 - (2) create safe orderly and supportive environments, and hold high expectations for their academic achievement;
 - (3) deepen educators' content knowledge;
 - (4) provide them with research-based instructional strategies to assist students in meeting, rigorous academic standards and prepare them to use various types of classroom assessments appropriately;
 - (5) provide educators with knowledge and skills to involve families and other stakeholders appropriately.

Authority: NMAC §6.65.2.9 REQUIREMENTS FOR PROGRAM EVALUATION:

- A. All statewide, PED, charter school and public school district professional development programs shall be evaluated at least every three years to determine the effectiveness of the program based on evidence of improved educator practice and student learning.
- B. Levels of program evaluation shall include evidence of:
 - (1) participant response;
 - (2) participant learning;
 - (3) organizational change and support;
 - (4) participant use of knowledge and skills; and
 - (5) student learning.

Authority: NMAC §6.65.2.10 REQUIREMENTS FOR PROFESSIONAL DEVELOPMENT FUNDING:

Schools, school districts or independent programs or agencies that apply for or are awarded state or federal funding to support professional development programs or activities must demonstrate alignment between the proposed programs and the New Mexico professional development framework. Funding proposals shall explicitly address all of the following questions:

- A. context:
 - (1) how are the resources (time, leadership, personnel, and budget considerations) structured to support the plan?
 - (2) how are roles of leaders and participants defined and goals determined?
 - (3) how are data related to student learning to be used to determine goals and assess outcomes?
 - (4) how is collaboration among administrators and teachers embedded in the professional development process?
- B. content:

- (1) what should participants know and be able to do?
- (2) is the content clearly connected to workplace requirements and clearly articulated goals?
- (3) are appropriate adult learning strategies used that will support program effectiveness?
- (4) is there a range of learning opportunities that address areas of need, diversity, skill development and refinement?
- (5) how are data related to student learning to be used to determine goals and assessment outcomes?
- (6) how is collaboration among administrators and teachers embedded in the professional development process?

New Mexico's State Improvement Grant (SIG), Circle of Commitment, addresses four main focus areas:

- Build NMPED Capacity for system alignment thus improving student access, participation and progress in general education and the provision of FAPE;
 - Strengthen the statewide system of personnel development and address under-representation of targeted groups in the professional education workforce;
 - Improve student outcomes; and
 - Improve family and student participation and leadership in systemic reform.
- Focus areas were determined with input from a variety of stakeholder groups and individuals. This grant is congruent with the goals of the New Mexico IDEA Advisory Panel, the New Mexico Special Education State Improvement Plan, our Integrated Accountability System, as well as supporting the broader goals of the New Mexico State Department of Education.

Through this grant we will support and encourage partnerships among the New Mexico State Department of Education, the five universities which provide teacher education programs (University of New Mexico, New Mexico State University, Eastern New Mexico University, Highlands New Mexico University, and Western New Mexico University), nine regional cooperatives, local school districts and parent groups.

The public agency will carefully review the New Mexico State Performance Plan in order to remain focused on indicators for data-based decisions regarding staff development. Consideration is also given to the NMPED key indicators from focused monitoring. The focused monitoring process utilizes data from the STARS to rank school districts on the focused monitoring indicators and to make district selections for monitoring. There are five key indicator identified by a statewide group of stakeholders that covers the most important compliance issues as well as measurable aspects of educational benefit.

The key indicators are:

Indicator 1: Graduation of students with disabilities.

Indicator 3: Participation and performance of students with disabilities on statewide assessments of educational development.

Indicator 5: Least restrictive environment, emphasizing inclusion of students with disabilities in regular classes to the maximum extent appropriate with access to the general education curriculum.

Indicators 9 & 10: Identification and evaluation of students with disabilities, emphasizing possible over-identification of students as learning disabled.

VI. CURRICULUM FOR STUDENTS WITH DISABILITIES

The ASK Academy has the responsibility for providing educational and related services to eligible students in the least restrictive environment. Students with disabilities shall have the opportunity to participate in the general education classroom with instruction aligned with the New Mexico Standards of Excellence (§6.29.1 NMAC) to the maximum extent appropriate. The IEP Team for the student with disabilities will make appropriate decisions for each individual student.

VII. STARS— Student Teacher Accountability and Reporting System

Authority: 34 CFR §300.640 Annual report of children served—report requirement.

- (a) The NMPED must annually report to the Secretary on the information required by section 618 of the Act at the times specified by the Secretary.
- (b) The NMPED must submit the report on forms provided by the Secretary.

Authority: 34 CFR §300.641 Annual report of children served—information required in the report. *For all specific requirements, the public agency will remain diligent in following requirements specified by the STARS system provided by the New Mexico PED and will participate in required trainings.*

The Student Teacher Accountability Reporting System (STARS) is an upgrade to the Accountability Data System (ADS) which provides greater functionality to schools, districts, and NMPED. STARS is designed to:

- Meet the current PED and federal reporting requirements;
- Allow appropriate personnel secure access to student information;
- Improve education decision making through the use of high quality data and decision support tool;
- Provide longitudinal tracking of particular individual and subgroup education progress over time; and
- Report timely and accurate education data through standardized and ad hoc reporting capabilities.

Communications about STARS will be available on the STARS website: A self-service tool designed to provide information regarding the STARS project. www.ped.state.nm.us/stars

Authority: NMAC §6.29.1.9 (H) PROCEDURAL REQUIREMENTS

H. Student/staff caseloads in gifted and special education.

- (1) The student/staff caseload shall not exceed 35:1 for a special education teacher and 60:1 for a speech-language pathologist for special education services or speech-only services, in which properly licensed special education teachers or speech-language pathologists travel from class to class or school to school, providing services to students with disabilities whose individualized education programs (IEPs) require a minimal amount of special education. (A minimal amount of special education services shall not exceed 10 per cent of the school day/week.)
- (2) The student/staff caseload shall not exceed 24:1 for a special education teacher and 35:1 for a speech-language pathologist for special education services or speech-only services which properly-licensed special education teachers or speech-language pathologists provide to students with disabilities whose IEPs require a moderate amount of special education. (A moderate amount of special education services shall be less than 50 per cent of the school day.)
- (3) The student/staff caseload shall not exceed 15:1 for special education services in which properly licensed special education teachers provide services to students with disabilities whose IEPs require an extensive amount of special education for a portion of the school day as appropriate to implement the plan. (An extensive amount of special education services shall be provided 50 per cent or more of the school day.)
- (4) The student/staff caseload shall not exceed 8:1 for special education services in which a properly licensed professional provides services to students with disabilities whose IEPs require a maximum amount of special education. (A maximum amount of special education services shall be provided in an amount approaching a full school day.)
- (5) The student/adult caseload shall not exceed 4:1 for center-based special education services in which one of the adults in the program is a properly licensed professional providing three- and four-year old children with the amount of special education needed to implement each child's IEP. This includes a child who will turn three at any time during the school year, and who is determined to be eligible for Part B services. The child may be enrolled in a Part B preschool program at the beginning of the school year if the parent so chooses, whether or not the child has previously been receiving Part C services.
- (6) The student/adult caseload shall not exceed 2:1 for center-based special education services in which three- and four-year old children have profound educational needs. This includes children who will turn three at any time during the school year, and who are determined to be eligible. The

- child may be enrolled in a Part B preschool program at the beginning of the school year if the parent so chooses, whether or not the child has previously been receiving Part C services.
- (7) Adequate student/staff caseloads shall be provided to appropriately address needs identified in the IEPs. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to students with disabilities under Part B of IDEA.
 - (8) If the student/staff caseload ratio exceeds the standards provided above, a request for waiver shall be submitted to the department for review and approval by the secretary.

CASE LOADS

FULL TIME EQUIVALENTS (FTE): Teachers - How to Figure Caseload Maximums

For teachers with position codes:

- 94 regular education teacher of gifted
- 95 related service caseload teacher
- 96 preschool teacher
- 97 special education teacher

A Level Student - minimum

- each "A or minimum" level student 1/35 or .029 FTE (receives sp ed service 10% or less of the day = level 1 on STAR)
- each "A or minimum" related service student 1/60 or .017 FTE (must be under staff at code 95)

B Level Student - moderate

- each "B or moderate" level student 1/24 or .042 FTE (receives sp ed service less than half of the day = level 2 on STARS)
- each "B or moderate" related service student 1/35 or .029 FTE (must be under staff at code 95)

C Level Student – extensive - half day or more

- each "C or extensive" level student 1/15 or .067 FTE (receives sp ed service half a day or more = level 3 on STARS)

D Level Student – maximum – all day or approaching full day

- each "D or maximum" level student 1/8 or .125 FTE (receives sp ed service all day or approaching a full day = level 4 on STARS)

The FTE generated by the students cannot exceed the FTE for their caseload teacher unless a waiver is granted. These caseload waivers are granted by the PED on a case-by-case basis.

FULL TIME EQUIVALENTS (FTE): Related Service - How To Figure Caseload Maximums

- 1) FTE is rounded to two decimal places.
- 2) Figure out the total time you are hiring this person, using one of these methods.
 - **By hours per week:** If you are paying this person for preparation time and travel time per week, in addition to direct service time, include this in your total. Divide this total by the LEA workweek for teachers. This is the total FTE for this person.
 - **By total days:** Figure out the total number of days you are hiring this person for a year. Divide by the total number of days in a typical teacher contract. This is the total FTE for this person.
 - **By total hours:** Figure out the total numbers of hours you are hiring this person for a year. Divide by the total number of hours in a typical teacher contract. This is the total FTE for this person.
- 3) If this person is seeing any students as a caseload teacher (that is, if this person is the child's only special education teacher) this person will have a **caseload FTE**.

FTE for A-level service = $\frac{\# \text{ of students}}{60}$
(position code 95)

FTE for B-level service = $\frac{\# \text{ of students}}{35}$
(position code 95)

FTE for 3Y/4Y/5Y itinerant* service = $\frac{\text{\# of hours spent with these students}}{\text{LEA work week}}$
(position code 96)

*FTE for 3Y/4Y/5Y service for a teacher at a center-based program on the public school campus is not audited. Instead, we audit the adult-to-student ratio as required by state regulations. Add them together. This is the **caseload FTE** for this person.

4) Finally, figure related service FTE.

- If the remainder of this person's service is only students who are five or older prior to September 1, then do the following:

Total FTE minus caseload FTE = **related service FTE**

- If the remainder of this person's service includes some 3Y/4Y/5Y students, then do the following:

$$\frac{\text{time for 3Y/4Y/5Y related service}}{\text{LEA work week}} = 3Y/4Y/5Y \text{ related service FTE (unfunded)}$$

Total FTE minus caseload FTE minus 3Y/4Y/5Y rel serv FTE = **related service FTE**

Authority: NMSA 1978 22.2.8.1 Length of school day; minimum.

- A. Except as otherwise provided in this section, regular students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:
 - (1) kindergarten, for half-day programs, two and one-half hours per day or four hundred fifty hours per year or, for full-day programs, five and one-half hours per day or nine hundred ninety hours per year;
 - (2) grades one through six, five and one-half hours per day or nine hundred ninety hours per year; and
 - (3) grades seven through twelve, six hours per day or one thousand eighty hours per year.
- B. Thirty-three hours of the full-day kindergarten program may be used for home visits by the teacher or for parent-teacher conferences. Twenty-two hours of grades one through five programs may be used for home visits by the teacher or for parent-teacher conferences.
- C. Nothing in this section precludes a local school board from setting length of school days in excess of the minimum requirements established by Subsection A of this section.
- D. The state superintendent [secretary] may waive the minimum length of school days in those districts where such minimums would create undue hardships as defined by the state board [department].

VIII. SPECIAL EDUCATION ACCOUNTABILITY SYSTEM (SEAS)

The Federal Regulations are required and listed at the beginning of this section; the State requirements follow. For continuous updated information, see the NMPED website:

http://www.ped.state.nm.us/seo/district_data/SEAS%207.12%2007.pdf

Authority: 34 CFR §300.120 Monitoring activities.

- (a) The NMPED must carry out activities to ensure that §300.114 (LRE Chapter 6) is implemented by the LEA.
- (b) If there is evidence that the LEA makes placements that are inconsistent with §300.114, the NMPED must-
 - (1) Review the LEA's justification for its actions; and
 - (2) Assist in planning and implementing any necessary corrective action.

Authority: 34 CFR §300.211 Information for NMPED.

The LEA must provide the NMPED with information necessary to enable the NMPED to carry out its duties under Part B of the Act, including, with respect to §§300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.

Authority: 34 CFR §300.213 Records regarding migratory children with disabilities.

The LEA must cooperate in the Secretary's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among

the States, health and educational information regarding those children.

Authority: 34 CFR §300.157 Performance goals and indicators.

The NMPED must--

- (a) Have in effect established goals for the performance of children with disabilities in New Mexico that--**
 - (1) Promote the purposes of this part, as stated in §300.1;**
 - (2) Are the same as the State's objectives for progress by children in its definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the ESEA, 20 USC 6311;**
 - (3) Address graduation rates and dropout rates, as well as such other factors as the State may determine; and**
 - (4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the NMPED.**
 - (i) Beginning in the 2012-2013 school year, IEP academic goals in English language arts and mathematics for students in grades K through three must align with the English Language Arts Common Core Standards (6.29.13 NMAC) and the Mathematics Common Core Standards (6.29.14 NMAC); and**
 - (ii) Beginning in the 2013-2014 school year, IEP academic goals in English language arts and mathematics for students in grades four through 12 must align with the English Language Arts Common Core Standards (6.29.13 NMAC) and the Mathematics Common Core Standards (6.29.14 NMAC).**
- (b) Have in effect established performance indicators the NMPED will use to assess progress toward achieving the goals described in paragraph (a) of this section, including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 USC 6311; and**
- (c) Annually report to the Secretary and the public on the progress of the State, and of children with disabilities in New Mexico, toward meeting the goals established under paragraph (a) of this section, which may include elements of the reports required under section 1111(h) of the ESEA.**

Authority: 34 CFR §300.170 Suspension and expulsion rates. (See also Chapter 7 - Discipline)

- (a) General. The NMPED must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--**
 - (1) Among LEAs in New Mexico; or**
 - (2) Compared to the rates for nondisabled children within those agencies.**
- (b) Review and revision of policies. If the discrepancies described in paragraph (a) of this section are occurring, the NMPED must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.**

Authority: 34 CFR §300.229 Disciplinary information.

- (a) The State may require that LEA include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.**
- (b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.**
- (c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.**

Authority: 34 CFR §300.173 Over identification and disproportionality.

The NMPED has in effect, consistent with the purposes of this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate over-identification or disproportionate representation

of children, by race and ethnicity, as children with disabilities, including children with a particular impairment as described in §300.8. (See Chapter 3 -Impairments).

§300.646 Disproportionality.

- (a) **General.** Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in New Mexico and the LEAs of New Mexico with respect to--
- (1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act;
 - (2) The placement in particular educational settings of these children; and
 - (3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.
- (b) **Review and revision of policies, practices, and procedures.** In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the NMPED or the Secretary of the Interior must--
- (1) Provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the Act.
 - (2) Require the LEA, if identified under paragraph (a) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly over identified under paragraph (a) of this section; and
 - (3) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (b)(1) of this section.

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

E. Significant disproportionality.

- (1) Pursuant to CFR 34 §300.646, the public agency must provide for the collection and examination of data to determine if significant disproportionality, based on race and ethnicity, is occurring with respect to:
 - (a) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment as defined by 34 CFR §300.8;
 - (b) the placement in particular educational settings of these children; and
 - (c) the incidence, duration and type of disciplinary actions, including suspensions and expulsions.
- (2) The public agency must reserve the 15 percent early intervening funds if they are identified as having data that is significantly disproportionate in any one of the following categories:
 - (a) suspension of students with disabilities;
 - (b) over-identification of students with disabilities;
 - (c) over-identification of students with a particular impairment as defined by 34 CFR §300.8; and
 - (d) placement of students with disabilities in a particular setting.
- (3) Review and revision of policies, practices and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with Paragraph (1) of this subsection, the *cm must:
 - (a) provide for the review and, if appropriate, revision of the policies, procedures and practices used in the identification or placement to ensure that the policies, procedures and practices comply with the requirements of the IDEA; and
 - (b) require any LEA identified under Paragraph (1) of this subsection to reserve the maximum amount of funds under 34 CFR §300.226 to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly over identified under Paragraph (1) of this subsection; and
 - (c) require the LEA to publicly report on the revision of policies, practices and procedures described under Subparagraph (b) of this paragraph.

If disproportionality is identified consistently and not corrected, the PED may impose corrective actions on the LEA. Corrective actions range in severity from frequent monitoring visits up to the withholding of funds. If funds are

withheld, the NMPED may use the funds to provide services to students and staff members through alternative arrangements.

In addition to the requirements listed in §300.646 above, the LEA may convene a committee of professionals and interested local community members to develop an action plan to address the issue of disproportionality. The committee will be charged with the following:

- a. collection and analysis of local data by campus to identify possible patterns in types of SAT interventions tried, length of time interventions were tried before referrals, grade level of students, staff over-identification, special education evaluations, students new to the district, etc.*
- b. based on an analysis of the data, identify target area(s) for response through a detailed action plan with dates due, personnel responsible, evaluation timelines, etc.*
- c. in the action plan, list specific activities to address the targeted area(s): examples may include, but are not limited to:*
 - technical assistance from the regional education cooperatives;*
 - advice from experts to address the areas in need of assistance, including specific plans to address each subject area within a specified period of time;*
 - assistance in identifying and implementing professional development, instructional strategies, and methods of instruction based on scientifically-based research;*
 - designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support;*
 - devise additional approaches to providing technical assistance, such as collaborating with institutions of higher education, national centers of technical assistance, and private providers of scientifically-based technical assistance; and*
- d. set timelines for the action plan to reconvene and analyze progress and the implementation of the strategies chosen.*

The NMPED may impose the following sanctions if persistent disproportionality continues.

- (1) on-site review for failure to meet appropriate services, program or compliance requirements;*
- (2) required fiscal audit of specific program(s) and/or of the LEA, paid for by the LEA;*
- (3) required submission of corrective action(s), including compensatory services, paid for by the LEA;*
- (4) required technical assistance from the regional education cooperatives, paid for by the LEA; which may include:*
- (5) public release of program or compliance review findings;*
- (6) special investigation and/or follow-up verification visits;*
- (7) required public hearing conducted by the local school board of trustees;*
- (8) assignment by the NMPED of a special purpose monitor, conservator, or management team, paid for by the LEA;*
- (9) hearing before the commissioner of education or designee;*
- (10) reduction in payment or withholding of funds; and/or*
- (11) lowering of the special education compliance status and/or the accreditation rating of the LEA.*

Special Education Accountability System (SEAS)

Website: http://www.ped.state.nm.us/seo/district_data/SEAS%207.12%2007.pdf

In December 2005, New Mexico PED was required to submit a State Performance Plan (SPP) to the United States Department of Education Office of Special Education Programs (OSEP). The SPP included a combination of 20 Results and Compliance Indicators established by OSEP that spans six fiscal years (2005 – 2006 through 2010 – 2011). Since the IDEA is due to be reauthorized in the near future, the SPP has been extended for two additional years (2011-2012 and 2012-2013). The SPP evaluates New Mexico's efforts to implement the requirements and purposes of Part B of the IDEA and describes how the State will improve its implementation.

As part of the SPP, each state was required to set targets for each of the Indicators that did not have a target mandated by OSEP. Each year, every state must report its progress to OSEP and the public on the progress of

students with disabilities in the state. Specifically, New Mexico must report, in their Annual Performance Report (APR), their progress in meeting the measurable and rigorous targets established in the SPP. Based on the information in the State's APR and any other information available, OSEP applies the following Determinations to State's:

- (i) Meets Requirements of Part B of the Act,
- (ii) Needs Assistance in Implementing Part B of the Act,
- (iii) Needs Intervention in Implementing Part B of the Act; or
- (iv) Needs Substantial Intervention in Implementing Part B of the Act.

Included in the State's General Supervision, Monitoring, and Enforcement requirements under 34 CFR §§300.149 and 300.600, the State must review every district each year on the SPP performance. According to the IDEA, states are required to make "Determinations" annually on the performance of the LEAs. States must use the same four categories as OSEP, listed above, in making Determinations of the status of local programs.

The General Supervision and Accountability System is an evolving process. As a result of the reauthorization of IDEA, increased accountability at the state and local level, and changes in OSEP's Monitoring Priorities, New Mexico has **moved from a Focused Monitoring System to an Accountability System**. New Mexico's Special Education Accountability System (SEAS) monitors and reviews all LEA's compliance and performance data annually, is similar to the No Child Left Behind (NCLB) accountability system, and mirrors the LEA's Educational Plan for Student Success (EPSS) improvement plan process, and involves stakeholders (IDEA Panel) in the process.

The primary focus of the State's monitoring activities under 34 CFR §300.600(b) must be on:

- **Results**
 - o Improving educational results and functional outcomes for all students with disabilities; and
- **Compliance**
 - o Ensuring that public agencies meet the program requirements under Part B of the act, with particular emphasis on those requirements that are most closely related to improving the educational results for students with disabilities.

New Mexico's SEAS focuses on student performance outcomes and the compliance requirements of the IDEA.

This Accountability System Manual is the tool designed to provide the structure for the State, LEAs, RECs, and State Supported Educational Programs in the area of General Supervision. The SEAS is the system that provides the assurances to OSEP that the state is carrying out its responsibilities, using quantifiable indicators in each of the priority areas listed below, and using such qualitative indicators as are needed to adequately measure performance and compliance in those areas.

1. Provisions of Free and Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE).
2. State exercise of General Supervision including:
 - a. child find
 - b. effective monitoring
 - c. use of resolution meetings
 - d. mediation; and
 - e. a system of transition services.
3. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent that the representation is the result of inappropriate identification.

IX. COLLABORATION WITH AGENCIES REGARDING MOUs

The NMPED has worked collaboratively with several agencies to develop memoranda of understandings (MOU) or agreement memoranda (AM) to assist in the coordination of the state agencies in providing services to students with disabilities. The LEA will abide by the requirements of each memorandum, including:

Statewide Transition Coordinating Council: <http://www.ped.state.nm.us/seo/transition/stcc.fact.sheet.pdf>

Family Infant Toddler Program of the New Mexico Department of Health and the New Mexico State Department of Education: <http://www.ped.state.nm.us/seo/preschool/ta.parts.i.ii.suppl.pdf>

The New Mexico School for the Deaf (NMSD) and the New Mexico Public Education Department (PED) formed the New Mexico Task Force on the Education of the Deaf and Hard of Hearing:
<http://www.ped.state.nm.us/sec/library/deaf.ed.english.pdf>

X. FUNDING

A. Federal Funds

Authority: 34 CFR §300.226 Early intervening services.

- (a) **General.** The LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to §300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who have not been identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.
- (b) **Activities.** In implementing coordinated, early intervening services under this section, the LEA may carry out activities that include--
 - (1) Professional development (which may be provided by entities other than the LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and
 - (2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.
- (c) **Construction.** Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.
- (d) **Reporting.** If the LEA develops and maintains coordinated, early intervening services under this section must annually report to the NMPED on--
 - (1) The number of children served under this section who received early intervening services; and
 - (2) The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two year period.
- (e) **Coordination with ESEA.** Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

D. Early intervening services set aside funds. Fifteen percent (15%) set aside.

- (1) Pursuant to 34 CFR §§300.208(a)(2) and 300.226, LEAs may use up to fifteen percent of the amount the LEA receives under Part B of IDEA to implement early intervening services for children with or without disabilities in kindergarten through grade 12 with particular emphasis on children in kindergarten through grade three.
- (2) Prior to the implementation or use of these set aside funds, the LEA must have on record with the department an approved plan for use of these funds as described by 34 CFR §300.226(b) and how such activities will be coordinated with regional education cooperatives as described in 34 CFR §300.226(e), if applicable.
- (3) The LEA plan for use of set aside funds shall be submitted as an addendum to its annual application for Part B funding. If the LEA determines to implement a set aside plan after the initial application, a request for implementation of a set aside plan must be submitted for approval 60 days before the implementation of the plan.
- (4) Each LEA that develops and maintains coordinated, early intervening services (CEIS) must report annually to the department as provided in 34 CFR §300.226(d).

The LEA may use up to 15% of the entitlement received under IDEA to develop CEIS. Federal funds always retain their identity. The LEA will account for the receipt and expenditure of federal funds, and ensure that federal funds are used for allowable costs in accordance with federal fiscal requirements. The LEA will use a local option code that uniquely identifies the cost objective used to account for the expenditure of federal, state, and local funds on coordinated, early intervening services. The use of local and state funds for coordinated, early intervening services that were previously expended on special education services may result in an apparent decline in Maintenance of Effort (MOE). The LEA will maintain documentation (identification criteria, needs assessment, improvement plan, budget, etc.) that adequately describes the program implemented.

Authority: 34 CFR §300.162 Supplementation of State, local, and other Federal funds.

- (a) **Expenditures.** Funds paid to a State under this part must be expended in accordance with all the provisions of this part.
- (b) **Prohibition against commingling.**
 - (1) Funds paid to a State under this part must not be commingled with State funds.
 - (2) The requirement in paragraph (b)(1) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a State under this part. Separate bank accounts are not required. (See 34 CFR §76.702 (Fiscal control and fund accounting procedures)).
- (c) **State-level nonsupplanting.**
 - (1) Except as provided in §300.202, funds paid to a State under Part B of the Act must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the NMPED or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those Federal, State, and local funds.
 - (2) If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (c)(1) of this section if the Secretary concurs with the evidence provided by the State under §300.164.

Authority: 34 CFR §300.163 Maintenance of State financial support.

- (a) **General.** A State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.
- (b) **Reduction of funds for failure to maintain support.** The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.
- (c) **Waivers for exceptional or uncontrollable circumstances.** The Secretary may waive the requirement of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that—
 - (1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or
 - (2) The State meets the standard in §300.164 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.
- (d) **Subsequent years.** If, for any fiscal year, a state fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

Authority: 34 CFR §300.164 Waiver of requirement regarding supplementing and not supplanting with Part B funds.

- (a) Except as provided under §§300.202 through 300.205, funds paid to a state under Part B of the Act must be used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of NMPED or the LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act and, in no case, to supplant those Federal, State, and local funds. A state may use funds it retains under §300.704(a) and (b) without regard to the prohibition on supplanting other funds.

- (b) If a State provides clear and convincing evidence that all eligible children with disabilities throughout the State have FAPE available to them, the Secretary may waive, for a period of one year or less, the requirement under §300.162 (regarding state-level non-supplanting), if the Secretary concurs with the evidence provided by the State.
- (c) If a State wishes to request a waiver under this section, it must submit a written request to the Secretary containing—
 - (1) An assurance that FAPE is currently available to all eligible children with disabilities throughout the State and will remain available throughout the period that the waiver is in effect, regardless of the public agency responsible for providing FAPE to them. The assurance must be signed by an official who has the authority to provide that assurance, as it applies to all eligible children with disabilities in the State;
 - (2) All of the evidence that the State wishes the Secretary to consider in determining whether all eligible children with disabilities have FAPE available to them, setting forth in detail--
 - (i) The basis on which the State has concluded that FAPE is available to all eligible children in the State; and
 - (ii) The procedures that the State will implement to ensure that FAPE remains available to all eligible children in the State, which must include—
 - (A) The State's procedures under §300.111 for ensuring that all eligible children are identified, located and evaluated;
 - (B) The State's procedures for monitoring public agencies to ensure that they comply with all requirements of this Part;
 - (C) The State's complaint procedures under §§300.151 through 300.153; and
 - (D) The State's hearing procedures under §§300.511 through 300.516 and §§300.530 through 300.536;
 - (3) A summary of all State and Federal monitoring reports and State complaint decisions (see §§300.151 through 300.153) and due process hearing decisions (see §§300.511 through 300.516 and §§300.530 through 300.536), issued within three years prior to the date of the State's request for a waiver under this section, which includes any findings that FAPE has not been available to one or more eligible children, and evidence that FAPE is now available to all children addressed in those reports or decisions; and
 - (4) Evidence that the State, in determining that FAPE is currently available to all eligible children with disabilities in the State, has consulted with the State advisory panel under §300.167.
- (d) If the Secretary determines that the request and supporting evidence submitted by the State make a prima facie showing that FAPE is, and will remain, available to all eligible children with disabilities in the State, the Secretary, after notice to the public throughout the State, conducts a public hearing at which all interested persons and organizations may present evidence regarding the following issues:
 - (1) Whether FAPE is currently available to all eligible children with disabilities in the State.
 - (2) Whether the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.
- (e) Following the hearing, the Secretary, based on all submitted evidence, will approve a waiver, in whole or in part, for a period of one year, if the Secretary finds that the State has provided clear and convincing evidence that FAPE is currently available to all eligible children with disabilities in the State, and the State can ensure that FAPE remains available to all eligible children with disabilities, ~~in the State~~ if the Secretary grants the requested waiver.
- (f) A State may receive a waiver of the requirement of section 612(a)(18)(A) of the Act and §300.164, if it satisfies the requirements of paragraphs (b) through (e) of this section.
- (g) The Secretary may grant subsequent waivers for a period of one year each, if the Secretary determines that the State has provided clear and convincing evidence that all eligible children with disabilities throughout the State have, and will continue to have, FAPE available to them during the one-year period of the waiver.

Subpart C – The ASK Academy Eligibility

Authority: 34 CFR §300.202 Use of amounts.

- (a) **General.** Amounts provided to the LEA under Part B of the Act--

- (1) Must be expended in accordance with the applicable provisions of this Part;
- (2) Must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and
- (3) Must be used to supplement State, local, and other Federal funds and not to supplant those funds.

(b) Excess cost requirement.

(1) General.

- (i) The excess cost requirement prevents the LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b)(1)(ii) of this section.
- (ii) The excess cost requirement does not prevent the LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children of these ages. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.
- (2) (i) The LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.
- (ii) The amount described in paragraph (b)(2)(i) of this section is determined in accordance with the definition of excess costs in §300.16. That amount may not include capital outlay or debt service.
- (3) If two or more LEAs jointly establish eligibility in accordance with §300.223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in §300.16 in those agencies for elementary or secondary school students, as the case may be.

Authority: 34 CFR §300.16 Excess costs. Excess costs means those costs that are in excess of the average annual per-student expenditure in the LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting--

(a) Amounts received--

- (1) Under Part B of the Act;
 - (2) Under Part A of title I of the ESEA; and
 - (3) Under Parts A and B of title III of the ESEA; and
- (b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (see Appendix A to Part 300 for an example of how excess cost must be calculated)**

Authority: 34 CFR §300.221 Notification of LEA and State agency in case of ineligibility.

If the NMPED determines that the LEA or State agency is not eligible under Part B of the Act, then the NMPED must—

- (a) Notify the LEA or State agency of that determination; and**
- (b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing**

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

G. Notification of LEA in case of ineligibility. Pursuant to 34 CFR §300.221, if the department determines that the LEA is not eligible under Part B of the act, the department shall notify the LEA of that determination and provide the LEA with reasonable notice and an opportunity for a hearing under 34 CFR §76.401(d).

Authority: 34 CFR §300.222 LEA and State agency compliance.

- (a) General.** If the NMPED, after reasonable notice and an opportunity for a hearing, finds that the LEA or State agency that has been determined to be eligible under this subpart is failing to comply with any requirement described in §§300.201 through 300.213, the NMPED must reduce or must not provide any further payments to the LEA or State agency until the NMPED is satisfied that the LEA or State agency is complying with that requirement.
- (b) Notice requirement.** Any State agency or LEA in receipt of a notice described in paragraph (a) of this section must, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.

- (c) **Consideration.** In carrying out its responsibilities under this section, the NMPED must consider any decision resulting from a hearing held under §§300.511 through 300.533 that is adverse to the LEA or State agency involved in the decision.

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

- H. **Withholding of funds for noncompliance.** Pursuant to 34 CFR §300.222, if the department, after reasonable notice and an opportunity for a hearing under 34 CFR §76.401(d), finds that a public agency that has previously been determined to be eligible is failing to comply with any requirement described in 34 CFR §§300.201-300.213 and 34 CFR §300.608, the department must reduce or may not provide any further Part B payments to the public agency until the department is satisfied that the public agency is in compliance with that requirement.
- I. **Reallocation of funds.** If a new LEA is created, the base payment portion of the IDEA subgrant of the LEA that would have served children with disabilities now being served by the new LEA will be adjusted pursuant to 34 CFR §300.705(b)(2). IDEA funds to new charter schools that are LEAs will be allocated pursuant to 34 CFR §§76.785-76.799 and 34 CFR §300.705(b). Pursuant to 34 CFR §300.705(c), if the department determines that a public agency is adequately using state and local funds to provide FAPE to all children with disabilities residing in the area served, the department may reallocate any portion of the funds that is not needed by that public agency to assist other LEAs that are not providing adequate special education and related services to all children with disabilities residing in their service areas. The department may also retain those funds for use at the state level, as provided by 34 CFR §300.705(c).

Authority: 34 CFR §300.223 Joint establishment of eligibility.

- (a) **General.** The NMPED may require the LEA to establish its eligibility jointly with another LEA if the NMPED determines that the LEA will be ineligible under this subpart because the LEA will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.
- (b) **Charter school exception.** The NMPED may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless the charter school is explicitly permitted to do so under the State's charter school statute.
- (c) **Amount of payments.** If the NMPED requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under §300.705 if the agencies were eligible for those payments.

Authority: 34 CFR §300.203 Maintenance of effort.

- (a) **General.** Except as provided in §§300.204 and 300.205, funds provided to LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.
- (b) **Standard.**
- (1) Except as provided in paragraph (b)(2) of this section, the NMPED must determine that the LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per-capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:
 - (i) Local funds only.
 - (ii) The combination of State and local funds.
 - (2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.
 - (3) The NMPED may not consider any expenditures made from funds provided by the Federal Government for which the NMPED is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the NMPED in determining an LEA's compliance with the requirement in paragraph (a) of this section.

Authority: 34 CFR §300.204 Exception to maintenance of effort.

Notwithstanding the restriction in §300.203(a), the LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year, if the reduction is attributable to any of the following:

- (a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.
- (b) A decrease in the enrollment of children with disabilities.
- (c) The termination of the obligation of the agency, consistent with this Part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the NMPED, because the child--
 - (1) Has left the jurisdiction of the agency;
 - (2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
 - (3) No longer needs a program of special education.
- (d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.
- (e) The assumption of cost by the high cost fund operated by the NMPED under §300.704(c).

Authority: 34 CFR §300.205 Adjustment to local fiscal efforts in certain fiscal years.

- (a) **Amounts in excess.** Notwithstanding §300.202(a)(2) and (b) and §300.203(a), and except as provided in paragraph (d) of this section and §300.230(e)(2), for any fiscal year for which the allocation received by the LEA under section §300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by §300.203(a) by not more than 50 percent of the amount of that excess.
- (b) **Use of amounts to carry out activities under ESEA.** If the LEA exercises the authority under paragraph (a) of this section, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.
- (c) **State prohibition.** Notwithstanding paragraph (a) of this section, if the NMPED determines that the LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the NMPED has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the NMPED must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.
- (d) **Special rule.** The amount of funds expended by LEA for early intervening services under §300.226 shall count toward the maximum amount of expenditures that the LEA may reduce under paragraph (a) of this section.

Authority: 34 CFR §300.206 School wide programs under title I of the ESEA.

- (a) **General.** Notwithstanding the provisions of §§300.202 and 300.203 or any other provision of Part B of the Act, an LEA may use funds received under Part B of the Act for any fiscal year to carry out a school wide program under section 1114 of the ESEA, except that the amount used in any school wide program may not exceed--
 - (i) The amount received by the LEA under Part B of the Act for that fiscal year; divided by
 - (ii) The number of children with disabilities in the jurisdiction of the LEA; and multiplied by
 - (2) The number of children with disabilities participating in the school wide program.
- (b) **Funding conditions.** The funds described in paragraph (a) of this section are subject to the following conditions:
 - (1) The funds must be considered as Federal Part B funds for purposes of the calculations required by §300.202(a)(2) and (a)(3).
 - (2) The funds may be used without regard to the requirements of §300.202(a)(1).
- (c) **Meeting other Part B requirements.** Except as provided in paragraph (b) of this section, all other requirements of Part B of the Act must be met by the LEA using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in school wide program schools--
 - (1) Receive services in accordance with a properly developed IEP; and
 - (2) Are afforded all of the rights and services guaranteed to children with disabilities under the Act.

Authority: 34 CFR §300.208 Permissive use of funds.

- (a) **Uses.** Notwithstanding §§300.202, 300.203(a), and §300.162(b), funds provided to the LEA under Part B of the Act may be used for the following activities:
- (1) **Services and aids that also benefit nondisabled children.** For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefits from these services.
 - (2) **Early intervening services.** To develop and implement coordinated, early intervening educational services in accordance with §300.226.
 - (3) **High cost education and related services.** To establish and implement cost or risk-sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services.
- (b) **Administrative case management.** The LEA may use funds received under Part B of the Act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel who provide the services described in the IEPs.
(See Risk Pool Funds Procedures Below)

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

- B. The ASK Academy funding and staffing
- (1) The ASK Academy provides special education or related services to children with disabilities and shall allocate sufficient funds, staff, facilities and equipment to ensure that the requirements of the IDEA and all department rules and standards that apply to programs for children with disabilities are met.
 - (2) The public agency with primary responsibility for ensuring that FAPE is available to a child with a disability on the date set by the department for a child count or other report shall include that child in its report for that date. Public agencies with shared or successive responsibilities for serving a particular child during a single fiscal year are required to negotiate equitable arrangements through joint powers agreements or memorandums of understanding or interstate agreements for sharing the funding and other resources available for that child. Such agreements shall include provisions with regard to resolving disputes between the parties to the agreement.
 - (6) Risk pool fund. (Puente para los Niños fund.)
 - (a) Local educational agency high cost fund.
 - (i) In compliance with 34 CFR §300.704(c) the department shall maintain a risk pool fund to support high cost children with disabilities identified by LEAs.
 - (ii) Funds distributed under this program will be on a reimbursable basis.
 - (b) Application of funds. LEAs desiring to be reimbursed for the cost of children with disabilities with high needs shall file an application in accordance with the department's Puente para los Niños fund as described on the department's website. <http://www.ped.state.nm.us/SEB/fiscal/index.html>
(See Risk Pool Funds Procedures Below)
- C. IDEA applications and assurances. Each New Mexico public agency that desires to receive IDEA flow-through funds shall file an annual application with the department in the form prescribed by the department. Each application shall:
- (1) provide all information requested by the department;
 - (2) demonstrate to the department's satisfaction that the agency is in compliance with all applicable requirements of 34 CFR §§300.200-300.230 and these or other department rules and standards;
 - (3) include an agreement that the agency upon request will provide any further information the department requires to determine the agency's initial or continued compliance with all applicable requirements;
 - (4) include assurances satisfactory to the department that the public agency does and will continue to operate its programs in compliance with all applicable federal and state programmatic, fiscal and procedural requirements including the development of joint powers agreements, memoranda of understanding or other interagency agreements to address shared or successive responsibilities to meet the educational needs of a particular child during a single fiscal year; and
 - (5) pursuant to Subsection C of Section 22-8-11, NMSA 1978, the department shall not approve or certify an operating budget of any school district or state-chartered charter school that fails to demonstrate that it solicited parental involvement in the process.

Risk Pool Fund - High cost education and related services

Authority: 34 CFR §300.208 and NMAC 6.31.2.9 (B) (6).

Disbursements from the Puente para los Niños risk pool fund will be made to meet the requirements of students with high needs as defined below and pursuant to the criteria that follows the definition. Disbursements from the funds may only be used for the costs associated with currently providing direct special education and related services identified in the student with high need's properly constituted Individualized Education Program (IEP). Funds are to be used to assist a student with a disability to benefit from special education and related services. Funds cannot be used for services the LEA and/or Regional Education Cooperatives (REC) would like to provide, but is not currently providing, or expenses such as legal fees, court costs, or other litigation costs. Educational and related services must be provided by individuals who are properly licensed by the NMPED and/or the New Mexico Department of Regulation and Licensing. *See paragraph (B) (6) of 6.31.2.9 NMAC listed above.*

A. Assurances

LEAs or RECs accessing the Puente para los Niños fund must assure the following:

- The student must have been evaluated in accordance with Subsections D and E of 6.31.2.10 NMAC.
- The student qualified for special education and/or related services in accordance with Subsections D, E, and F of 6.31.2.10 NMAC.
- The student has a properly constituted and up-to-date IEP in accordance with §6.31.2.11 NMAC.
- The student's placement was decided by the student's IEP team. §6.31.2.11 NMAC
- The student's placement is in the Least Restrictive Environment (LRE) in accordance with Subsection C of 6.31.2.11 NMAC.
- The LEA or REC agrees to pay at least 25% of the cost per school year to educate a student with high needs, with the exception of small LEAs, as defined in Section (B).

B. Puente para los Niños Fund Application

LEAs or RECs applying for Puente para los Niños funds will need to complete the New Mexico Public Education Department's (NMPED) application form. LEAs or RECs must provide an original and four copies of the following information:

- Number of students meeting the high need definition in Section (A) above as well as the total special education student enrollment. Include the LEA's or REC's last two enrollment counts submitted to the NMPED for the current school year.
- A narrative describing how the cost of the student with high needs impacted the LEA's or REC's budget. The account must include how the student with high needs impacted the services of the other students entitled to special education and/or related services enrolled in the LEA.
- A description of the course of action taken to date by the LEA and/or REC regarding the student with high needs. Be sure to include the number and type of Full Time Equivalent staff (FTEs) affected for each such student.
- The most recent detailed expenditure report showing budgeted and actual year-to date expenditures for each student with high needs.
- Copies of all contracts and invoices that pertain to the student with high needs.
- The student's current redacted IEP. The student's name, parent(s)/guardian(s) name, and contact information such as address and phone number should be removed. Be sure the student's unique identifier number is included on the IEP.

The application along with the supporting documentation listed in Section (B) must be received by the NMPED Special Education Bureau (SEB) at least two weeks prior to the quarterly Puente para los Niños Committee meeting. See Section II for Puente para los Niños Committee information. Completed applications will be reviewed by the Puente para los Niños Committee. Incomplete applications will be returned to the LEA or REC. LEAs or RECs will be notified of the acceptance or rejection within 45 days of the Puente para los Niños Committee meeting. Funds will be distributed according to Section (E) below.

The Puente para los Niños Committee may grant awards for less than the amount of need requested. All Puente para los Niños applications are subject to audit by either the NMPED staff and/or federal auditors. The auditors may review and verify the data submitted in the Puente para los Niños applications including assurances made by the LEAs or RECs. The auditors will consider whether the IEPs are properly constituted and implemented and why

LEAs or RECs are exhibiting unusual growth rates or high costs. The results of the auditors' review may be considered by the Puente para los Niños Committee in determining, adjusting, or recovering Puente para los Niños funds.

C. Annual State Education Agency (NMPED) Distribution Schedule

After the LEA or REC receives approval to access Puente para los Niños funds, funds will be reimbursed to the LEA or REC two times per month in accordance with the NMPED reimbursement schedule. Funds will be allocated on a first-come-first served basis. Once funds for the current fiscal year have been exhausted, no further funds will be available until the next fiscal year, unless funds previously allocated to an LEA revert back to the NMPED. Re-application to the Puente para los Niños fund will be required annually for each student with high needs. Funding approval will be determined annually for the state fiscal year of July 1 through June 30. Puente para los Niños financial awards in prior years do not guarantee future eligibility.

D. Reporting Requirements

For auditing purposes, biannual or semester reports (June 30 and December 30) are required by each LEA and/or REC awarded Puente para los Niños funds. Reports must include the following information:

- Student's most current IEP, health plan, and transition plan for students fourteen years old or older.
- Student's proof of continued enrollment in the LEA or REC.
- Expenditure reports and receipts.
- LEA's or REC's proof of providing at least 25% of the cost to educate the student, unless the small LEA exception has been granted.

Notification in writing must be made to the NMPED SEB Data Fiscal Manager within fifteen days when a student with high needs disenrolls from the LEA and/or REC. Final submission of invoices for reimbursement for the student with high need's services must be received at the NMPED no later than 30 days from when the student disenrolled from the LEA or REC.

E. Additional Restrictions

Funds cannot be used to pay costs that otherwise would be reimbursed as medical assistance under Medicaid. Funds from the Puente para los Niños fund shall not be used to pay for legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure a FAPE for such a child. The student with high needs' private health insurance cannot be utilized without written consent from the student's parent(s) or guardian(s), as provided in 34 CFR §300.142(f).

(f) Children with disabilities who are covered by private insurance.

- (1) With regard to services required to provide FAPE to an eligible child under this part, the LEA may access a parent's private insurance proceeds only if the parent provides informed consent consistent with §300.500(b)(1).
- (2) Each time the LEA proposes to access the parent's private insurance proceeds, it must –
 - (i) Obtain parent consent in accordance with paragraph (f)(1) of this section; and
 - (ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

Puente para los Niños Committee

The Puente para los Niños Committee approves or disapproves all Puente para los Niños applications at the committee meetings or returns the incomplete applications to the LEA or REC for possible resubmission if additional or corrected information is needed. LEA and/or REC applicants may attend the Puente para los Niños Committee meetings. The Puente para los Niños Committee may request that a representative of the LEA or REC be available in person or via teleconferencing to answer questions when the LEA's or REC's application is being considered. Due to the discussion of personally identifiable information of individual students and the confidential nature of the Puente para los Niños Committee meetings, the meetings will not be open to the public.

Puente para los Niños Committee Membership

Membership of the State Puente para los Niños Committee shall consist of:

- SEB Data and Fiscal Manager
- SEB Business Operations Specialist
- NMPED Nurse Consultant

- LEA Superintendent
- LEA Special Education Director
- The State Director of Special Education or his/her designee

The State Director of Special Education or his/her designee shall serve as an ex officio nonvoting committee member and act as the state Puente para los Niños Committee manager.

1. The committee members will be appointed by the State Special Education Director.
2. Members of the committee from LEAs or RECs will be appointed based on their knowledge of special education program service delivery and funding, geographical representation, size of LEA, and other demographic considerations.
3. Alternate members shall be appointed. In the event a member is unable to attend a committee meeting, an alternate member shall attend.
4. Membership appointments shall be made for a period of three years.

Puente para los Niños Committee Procedures

1. The committee will review applications as deemed necessary by the State Director of Special Education.
2. All applications received by the committee will be reviewed for completeness by the committee manager or designee. Applications must include all necessary forms, narratives, and attachments as described in Section (D). If applications are not complete, they will not be considered by the committee.
3. The committee manager or designee will forward to the committee members copies of the applications in a timely manner.
4. The committee manager or designee will be responsible for presenting each application for consideration to the committee.
5. Committee members shall review and discuss the application content for completeness, accuracy, and understanding of the reason(s) for the applicant's need for Puente para los Niños funds.
6. The committee may request that a submitting school district provide clarifying information.
7. Committee members will individually indicate their agreement, disagreement or abstention with the actions of the committee.
8. A majority vote by the committee members will be sufficient to determine the committee action.
9. The committee manager or designee will ensure that notes are taken which summarize the questions and discussion related to each application. A decision summary for each application shall include the amount of the initial request, funding adjustments recommended by the committee, the amount of any award to be made, and the reasons for the action taken by the committee.
10. Committee members shall sign the decision summary.
11. The committee manager or designee, on behalf of the committee, will notify the applicant LEA and/or REC in writing of the determination of the committee. The LEA and/or REC will be provided a copy of the decision summary.
12. All applications received by the committee will be retained by the State Director of Special Education for use in the evaluation of Puente para los Niños funding.

Puente para los Niños Committee Actions

1. The committee must determine that:
 - a. there are no unresolved audit examination issues related to applicant that are material in nature;
 - b. there are no unresolved child count verification issues related to the applicant that are material in nature; and
 - c. all corrections to state enrollment reporting required for resolution of (a) and (b) of this subsection, have been completed.
2. An application reviewed during an application cycle may be:
 - a. Approved,
 - b. Disapproved, or
 - c. Returned to the submitting LEA and/or REC for possible resubmission at a later date during the school year, because information contained in the application is insufficient to establish a need for Puente para los Niños funds.
3. The amount of the approval may be equal to, or less than, ~~that~~ the amount requested.

4. The approval of the application may be contingent on additional requirements imposed by the committee, such as the development of an improvement plan to resolve a specific issue or concern.
5. The application approvals are subject to adjustment and recovery.

Puente para los Niños Committee Application Deadlines and meeting dates are posted on the NMPED website. Hard copy, walk-in, or electronic email applications must be received at the NMPED's Special Education Bureau by 5:00 p.m. on the application deadline day listed on the website. Fax submissions will not be accepted.

B. New Mexico School for the Deaf

Funding of the School for the Deaf

The New Mexico School for the Deaf (NMSD) and the New Mexico State Department of Education (SDE) formed the New Mexico Task Force on the Education of the Deaf and Hard of Hearing:

<http://www.ped.state.nm.us/seo/library/deaf.ed.english.pdf>

C. New Mexico School for the Blind and Visually Impaired

Authority: 34 CFR §300.210 Purchase of instructional materials.

- (a) **General.** An LEA that chose, by December 3, 2006, to coordinate with the National Instructional Materials Access Center when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions, as an SEA under §300.172.
- (b) **Rights of LEA.**
 - (1) Nothing in this section shall be construed to require the LEA to coordinate with the National Instructional Materials Access Center (NIMAC).
 - (2) If the LEA chooses not to coordinate with the National Instructional Materials Access Center, the LEA must provide an assurance to the NMPED that the LEA will provide instructional materials in a timely manner to blind persons or other persons with print disabilities.
 - (3) Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities, who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities under 300.172(e)(1)(i), or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

Authority: 34 CFR §300.172 Access to instructional materials.

- (a) **General.** The NMPED must—
 - (1) Adopt the National Instructional Materials Accessibility Standard (NIMAS), published as Appendix C to Part 300 after publication of the NIMAS in the Federal Register on July 19, 2006 (71 FR 41084), in order to provide instructional materials to blind persons or other persons with print disabilities in a timely manner; and
 - (2) Establish a State definition of “timely manner” for purposes of paragraphs (b)(2) and (b)(3) of this section if the State is *not* coordinating with the National Instructional Materials Access Center (NIMAC), or (b)(3) and (c)(2) of this section if the State is coordinating with the NIMAC. *The NMPED is coordinating with the NIMAC.*
- (b) **Rights and responsibilities of the NMPED.**
 - (1) Nothing in this section shall be construed to require any SEA to coordinate with the National Instructional Materials Access Center (NIMAC).
 - (2) If an SEA chooses not to coordinate with the NIMAC, the agency must provide an assurance to the Secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.
 - (3) Nothing in this section relieves an SEA of its responsibility to ensure that children with disabilities, who need instructional materials in accessible formats, but are not included under the definition of blind or other persons with print disabilities in 300.172(e)(1)(i), or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.
 - (4) In order to meet its responsibility under paragraphs (b)(2), (b)(3), and (c) of this section to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, the NMPED must ensure that public agencies take all reasonable

steps to provide instructional materials in accessible formats to children with disabilities at the same time as other children are provided their instructional materials.

- (c) **Preparation and delivery of files.** If the NMPED chooses to coordinate with the NIMAC, as of December 3, 2006, the NMPED must,
- (1) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to--
 - (i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or
 - (ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.
 - (2) Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.
- (d) **Assistive technology.** In carrying out this section, the NMPED, to the maximum extent possible, must work collaboratively with the State agency responsible for assistive technology programs.
- (e) **Definitions.**
- (1) In this section and §300.210--
 - (i) **Blind persons or other persons with print disabilities** means children served under this Part who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled "An Act to Provide Books for Adult Blind," approved March 3, 1931, 2 USC 135a;
 - (ii) **National Instructional Materials Access Center or NIMAC** means the center established pursuant to section 674(e) of the Act;
 - (iii) **National Instructional Materials Accessibility Standard or NIMAS** has the meaning given the term in section 674(e)(3)(B) of the Act; and
 - (iv) **Specialized formats** has the meaning given the term in section 674(e)(3)(D) of the Act.
 - (2) The definitions in paragraph (e)(1) of this section apply to each State and LEA, whether or not the State or LEA chooses to coordinate with the NIMAC.

New Mexico School for the Blind and Visually Impaired (formerly NMSVH) has for many years operated an Instructional Resource Center (IRC) on the school's main campus to help provide educational materials for students with visual impairments statewide. In addition, it also now houses the New Mexico Repository, consisting of textbooks in Braille and large print contributed by schools from throughout New Mexico.

Access to appropriate educational materials is essential in meeting the needs of students with visual impairments, and many of these materials can be loaned to schools for eligible students at no cost to the school or student. For ordering information please go to the website: <http://www.nmsbvi.k12.nm.us/content/irc.htm>

Authority: NMAC §6.75.4.8 GENERAL REQUIREMENTS

- A. The department adopts the NIMAS for the purpose of providing print instructional materials in alternate accessible or specialized formats to blind persons or other persons with print disabilities in a timely manner.
- B. In consultation with representatives from educational institutions and publishers, the department shall ensure to the qualified student the provision of instructional materials that:
- (1) are deemed essential or required for student success;
 - (2) meet requirements for nontextual mathematics or science instructional materials that use mathematical or scientific pictures, illustrations, graphs, charts, symbols or notations;
 - (3) maintain structural integrity and meet requirements for textual descriptions of pictures, illustrations, graphs and charts; and
 - (4) are available in an alternate accessible or specialized format.
- C. The department, through its instructional materials adoption process, shall require publishers to prepare and, on or before delivery of the printed instructional materials, provide to the NIMAC electronic files containing the content of the printed instructional materials using the NIMAS for all instructional material adopted by the department after July 19, 2006. [6.75.4.8 NMAC - N, 12-14-06]

Authority: NMAC §6.75.4.9 REQUIREMENTS: RESPONSIBILITIES OF EDUCATIONAL INSTITUTIONS

- A. An educational institution is not required to coordinate with the NIMAC. If the educational institution chooses to coordinate with the NIMAC, the educational institution shall acquire instructional materials in the same manner and subject to the same conditions as provided in §6.75.4.8 NMAC.
- B. If an educational institution becomes a coordinating agency with NIMAC, it shall place its orders for instruction materials in alternate accessible or specialized formats through the persons responsible for coordinating services to students with disabilities with the central repository authorized by the department. The central repository shall serve as the authorized user and agent of the educational institution with NIMAC and it will have access to the NIMAC database and it may download NIMAS files in accordance with established agreements so that printed instructional materials can be efficiently converted to alternate accessible or specialized formats. The central repository will perform the conversion of the NIMAS files into the alternate accessible or specialized format and deliver it in a timely manner to the educational institution that ordered it.
- C. If the educational institution chooses not to coordinate with the NIMAC, the educational institution shall provide a written assurance to the department in its annual local IDEA application that the educational institution shall provide instructional materials in an alternate accessible or specialized format to blind students or other students with print disabilities in a timely manner.
- D. Educational institutions, through the persons responsible for coordinating services to students with disabilities, must certify in writing to the central repository authorized by the department that:
 - (1) the materials are deemed essential or required for student success;
 - (2) an electronic copy of the materials will be used solely for the student's educational purposes.
- E. No educational institution, its employees or its students shall authorize any use of instructional materials that would be inconsistent with the provisions of 17 U.S.C. Section 121 as amended by Title III, Section 306 of the IDEA. [6.75.4.9 NMAC - N, 12-14-06]

D. Noneducational Funds

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

B. Public agency funding and staffing

- (5) Educational agencies may seek payment or reimbursement from noneducational agencies or public or private insurers for the services and/or devices necessary to ensure FAPE to children with disabilities. Claims for payment or reimbursement shall be subject to the procedures and limitations established in 34 CFR §§300.154(b) and 300.154(d) through (g), §22-13-8 NMSA 1978 and any laws, regulations, executive orders, contractual arrangements or other requirements governing the obligations of non-educational payors. (Note: 34 CFR §300.154(d)(2)(iv) and (v) were amended 3/18/13.)

E. Public Insurance

Authority: 34 CFR §300.154. Methods of ensuring services.

(d) Children with disabilities who are covered by public benefits or insurance.

- (1) The LEA may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this Part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.
- (2) With regard to services required to provide FAPE to an eligible child under this Part, the LEA—
 - (i) May not require parents to sign up for, or enroll in, public benefits or insurance programs so that their child may receive FAPE under Part B of the Act;
 - (ii) May not require parents to incur an out-of-pocket expense, such as the payment of a deductible or co-pay incurred in filing a claim for services provided under this Part but, pursuant to paragraph (g)(2) of this section, may pay the cost that the parent otherwise would be required to pay;
 - (iii) May not use a child's benefits under a public benefits or insurance program if that use would--
 - (A) Decrease available lifetime coverage or any other insured benefit;

- (B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;
 - (C) Increase premiums or lead to the discontinuation of benefits or insurance; or
 - (D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures;
- (3) Prior to obtaining parental consent and accessing the parent's or child's public benefits, the LEA must provide written notice to the child's parents consistent with 34 CFR Sec. 300.503(c). The written notice must be provided annually thereafter and must contain the following:
- (i) The notice must meet the parental consent provisions of 34 CFR §99.30 and 34 CFR §300.622 and must specify:
 - (A) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child);
 - (B) the purpose of the disclosure (e.g., billing for services under Part 300);
 - (C) the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program or Medicaid); and
 - (D) that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under 34 CFR Part 300.
 - (ii) The written notice must further include:
 - (A) a statement of the "no cost" provisions in 34 CFR Sec. 154 (d)(2)(i-iii);
 - (B) a statement that the parents have the right under 34 CFR Parts 99 and 300 to withdraw their consent to disclosure of their child's personally identifiable information to the New Mexico Medicaid program at any time; and
 - (C) a statement that the withdrawal of consent or refusal to provide consent under 34 CFR Parts 99 and 300 does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents.
- (4) Prior to accessing a child's or parent's public benefits or insurance for the first time and *after* providing notice to the child's parents as required in paragraph (3) of this section, the LEA must obtain written parental consent, as defined by 34 CFR Sec. 300.9, and consistent with the requirements of 34 CFR Sec. 300.154(d)(2)(iv).
- (i) The written consent must meet the requirements of 34 CFR 99.30 and 34 CFR Sec. 300.622 and specify (A) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to the child, (B) the purpose of the disclosure, e.g. (billing for services under 34 CFR Part 300, and (C) the agency to which disclosure may be made (e.g. New Mexico Medicaid program); and
 - (ii) The written consent must specify that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under 34 CFR Part 300.
- (5) The LEA is not required to obtain a new parental consent if the following conditions are present:
- (i) There is no change in any of the following: the type of services to be provided to the child; the amount of services to be provided to the child; or the cost of the services to be charged to the public benefits or insurance program; and
 - (ii) The public agency has on file a parental consent meeting the requirements of 34 CFR Sec. 300.9, 34 CFR Sec 99.30 and 34 CFR Sec. 300.622.
- (e) Children with disabilities who are covered by private insurance.
- (1) With regard to services required to provide FAPE to an eligible child under this Part, the LEA may access a parent's private insurance proceeds only if the parent provides consent consistent with §300.9.
 - (2) Each time the LEA proposes to access the parent's private insurance proceeds, the LEA must—
 - (i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and
 - (ii) Inform the parents that their refusal to permit the LEA to access their private insurance does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents.
- (f) Use of Part B funds.

- (1) If the LEA is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the LEA may use its Part B funds to pay for the service.
- (2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the LEA may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parent's benefits or insurance (e.g., the deductible or co-pay amounts).
- (g) Proceeds from public benefits or insurance or private insurance.
 - (1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25.
 - (2) If the LEA spends reimbursements from Federal funds (e.g., Medicaid) for services under this Part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in §§300.163 and 300.203.
- (h) Construction. Nothing in this Part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program. (Note: 34 CFR §300.154(d)(2)(iv) and (v) were amended 3/18/13.)

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

B. Public agency funding and staffing

- (7) Pursuant to 34 CFR §300.154(d), the LEA may use the Medicaid or other public benefits or insurance in which a child participates to provide or pay for services required under the IDEA Part B regulations, as permitted under the public insurance program, except as provided in (a) below.
 - (a) With regard to services required to provide FAPE to an eligible child, the LEA:
 - (i) may not require parents to sign up for, or enroll in, public insurance programs so that their child may receive FAPE under Part B of the IDEA;
 - (ii) may not require parents to incur an out-of-pocket expense, such as the payment of a deductible or co-pay incurred in filing a claim for services, as provided in IDEA Part B regulations. Pursuant to 34 CFR §300.154(f)(2), the public agency may pay the cost that the parent otherwise would be required to pay; and
 - (iii) may not use a child's benefits under a public benefits or insurance program if that use would: (a) decrease available lifetime coverage or any other insured benefit; (b) result in the family paying for services that would otherwise be covered by the public insurance program and are required for the child outside of school; (c) increase premiums or lead to the discontinuation of benefits or insurance coverage; or (d) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures. (Note: 34 CFR §300.154(d)(2)(iv) and (v) were amended 3/18/13)
 - (b) Pursuant to 34 CFR §300.154(e), an educational agency must obtain a parent's informed written consent for each proposed use of private insurance benefits and must inform parents that their refusal to permit the use of their private insurance will not relieve the educational agency of its responsibility to ensure that all required services are provided at no cost to the parents.
 - (c) Pursuant to 34 CFR §300.154(f):
 - (i) if the LEA is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service required under the IDEA Part B regulations, to ensure FAPE the LEA may use its Part B funds to pay for the service; and
 - (ii) to avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the LEA may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

F. State Funds

The state education funds for special education are weighted dollars based on service level of the student. These funds are distributed as part of the State Equalization Formula and go directly to the districts. Expenditure of these funds is generally used for teacher salaries and is at the discretion of the district.

XI. GIFTED STUDENTS

Technical Assistance and Training Document for Gifted Education at the NMPED website:
<http://www.ped.state.nm.us/seo/gifted/gifted.pdf>

Authority: NMSA 1978 22-13-6.1 Gifted children; determination.

- A. The NMPED has adopted standards pertaining to the determination of who is a gifted child and published those standards as part of the educational standards for New Mexico schools.
- B. In adopting standards to determine who is a gifted child, the NMPED has provided for the evaluation of selected school-age children by multidisciplinary teams from each child's school district. That team will be vested with the authority to designate a child as gifted. The team will consider information regarding a child's cultural and linguistic background and socioeconomic background in the identification, referral and evaluation process. The team also will consider any disabling condition in the identification, referral and evaluation process.
- C. Each school district offering a gifted education program will create one or more advisory committees of parents, community members, students and school staff members. The school district may create as many advisory committees as there are high schools in the district or may create a single district wide advisory committee. The membership of each advisory committee will reflect the cultural diversity of the enrollment of the school district or the schools the committee advises. The advisory committee will regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery and shall demonstrate support for the gifted program.
- D. In determining whether a child is gifted, the multidisciplinary team will consider diagnostic or other evidence of the child's:
 - (1) creativity or divergent-thinking ability;
 - (2) critical thinking or problem solving ability;
 - (3) intelligence; and
 - (4) achievement.

Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

F. Applicability of rules to gifted children.

- (1) All definitions, policies, procedures, assurances, procedural safeguards and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the educational jurisdiction of each local school district, including children in charter schools within the district, except:
 - (a) the requirements of 6.31.2.8 NMAC through 6.31.2.10 NMAC
 - (b) Subsections J, K and L of 6.31.2.11 NMAC regarding child find, evaluations and services for private school children with disabilities, children with disabilities in state-supported educational programs, children with disabilities in detention and correctional facilities and children with disabilities who are schooled at home;
 - (c) the requirements of 34 CFR Secs. 300.530-300.536, Subsection I of 6.31.2.13 NMAC and 6.11.2.11 NMAC regarding disciplinary changes of placement for children with disabilities; and
 - (d) the requirements of 34 CFR Secs. 300.43, 300.320(b) and 6.31.2.11(G)(2) regarding transition planning. Students identified as gifted must meet the requirements at Subsection B of 22-13-1.1 NMSA 1978, which is the next step plan for students without disabilities.
- (2) Assuming appropriate evaluations, a child may properly be determined to be both gifted and a child with a disability and be entitled to a free appropriate public education for both reasons. The rules in this section 6.31.2.12 NMAC apply only to gifted children.

- (3) Nothing in these rules shall preclude a school district or a charter school within a district from offering additional gifted programs for children who fail to meet the eligibility criteria. However, the NMPED shall only provide funds under Section 22-8-21 NMSA 1978 for department approved gifted programs for those students who meet the established criteria.

The ASK Academy does offer additional gifted programs for children who fail to meet the eligibility criteria as described in sections 2.-Evaluation and 3.-Gifted Students. The NMPED does not provide funds under Section 22-8-21 NMSA 1978 for gifted programs whose students do not meet the established criteria.

G. Advisory committees.

- (1) Each school district offering a gifted education program shall create one or more advisory committees of parents, community members, students and school staff members. The school district may create as many advisory committees as there are high schools in the district or may create a district-wide advisory committee.
- (2) The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the school district or the schools the committee advises. Representation from all schools the committee is advising is required.
- (3) Purposes. The advisory committee shall:
 - (a) regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery;
 - (b) demonstrate support for the gifted program;
 - (c) provide information regarding the impact that cultural background, linguistic background, socioeconomic status and disability conditions within the community may have on the child referral, identification, evaluation and service delivery processes;
 - (d) advocate for children who have been under-represented in gifted services due to cultural or linguistic background, socioeconomic status, or disability conditions, in order to ensure that these children have equal opportunities to benefit from services for gifted students; and
 - (e) meet three or more times per year at regular intervals.
- (4) Formal documentation of committee membership, activities and recommendations shall be maintained. If proposals are made by the committee to address any of the purposes as listed in Subsection G(3) of 6.31.2.12 NMAC, they shall be submitted in writing to the district administration. The administration shall respond in writing to any proposed actions before the next scheduled meeting of the advisory committee.

The advisory members should:

- *be knowledgeable and interested in gifted education*
- *reflect the cultural diversity of the school's enrollment*
- *be made up of parents, community members, school staff, and students*

The advisory committee does NOT:

- *conduct MDT/IEP meetings*
- *review confidential information on individual students*
- *monitor the teacher, school or district regarding gifted education*

Guidelines for Curriculum:

Students receiving gifted services must be provided a differentiated education from that regularly provided by New Mexico school districts. It is important that teachers of gifted students be aware of the following curricular issues and resources:

- techniques for differentiation of curriculum
- methods and materials specific to gifted students
- scope and sequence of their district's regular curriculum-standards/benchmarks of district
- academic needs of individual gifted students in relation to the district's regular curriculum
- state standards
- district gifted curriculum guides
- district/community philosophy toward gifted education.

Focused monitoring:

Gifted Education in New Mexico is under the umbrella of Special Education. A gifted child in this state is defined as a school-age person whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking is so outstanding that a properly constituted Individual Education Plan (IEP) team decides special education services are required to meet the child's educational needs.

Each district is responsible for finding children who meet the criteria for services and have a demonstrated need and providing appropriate service. All of the applicable rules for children with disabilities apply to gifted children with **two exceptions:**

- child find in private schools, home schooled children, those enrolled in state supported schools, or children in detention and correctional facilities; and
- the provisions afforded children with disabilities regarding disciplinary changes of placement.

XII. CHARTER SCHOOLS

Authority: 34 CFR §300.7 Charter school.

Charter school has the meaning given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 USC 6301 *et. seq.* (ESEA). (Authority: 20 U.S.C. 7221i(1))

Authority: 34 CFR §300.209 Treatment of charter schools and their students.

- (a) **Rights of children with disabilities.** Children with disabilities who attend public charter schools and their parents retain all rights under this part.
- (b) **Charter schools that are public schools of the LEA.**
 - (1) In carrying out Part B of the Act and these regulations with respect to charter schools that are public schools of the LEA, the LEA must--
 - (i) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and
 - (ii) Provides funds under Part B of the Act to those charter schools--
 - (A) On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and
 - (B) At the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the State's charter school law.
 - (2) If the public charter school is a school of the LEA that receives funding under §300.705 (Subgrants to LEAs) and includes other public schools--
 - (i) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and
 - (ii) The LEA must meet the requirements of paragraph (b)(1) of this section.
- (c) **Public charter schools that are LEAs.** If the public charter school is an LEA, consistent with §300.28, that receives funding under §300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity.
- (d) **Public charter schools that are not an LEA or a school that is part of an LEA.**
 - (1) If the public charter school is not an LEA receiving funding under §300.705, or a school that is part of an LEA receiving funding under §300.705, the NMPED is responsible for ensuring that the requirements of this part are met.
 - (2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However, the NMPED must maintain the ultimate responsibility for ensuring compliance with this part, consistent with §300.149.

Authority: NMAC §6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:**I. Children in charter schools.**

- (1) Pursuant to 34 CFR §300.209, children with disabilities who attend public charter schools and their parents retain all rights under Part B of IDEA.

- (2) Charter schools that are public schools:
- (a) the public agency must serve children with disabilities attending those charter schools in the same manner as the public agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and
 - (b) the public agency must provide funds under Part B of IDEA to those charter schools on the same basis as the public agency provides funds to the public agency's other public schools, including proportional distribution based on relative enrollment of children with disabilities, and at the same time as the public distributes other federal funds to the public agency's other public schools, consistent with the state's charter school law; and
 - (c) if the public charter school is a school of an LEA that receives funding under 34 CFR §300.705 and includes other public schools:
 - (i) the LEA is responsible for ensuring that the requirements of this part are met, unless state law assigns that responsibility to some other entity; and
 - (ii) the LEA must meet the requirements of Paragraph (2) of this subsection.
- (3) Public charter schools that are LEAs. If the public charter school is an LEA, consistent with 34 CFR §300.28, that receives funding under 34 CFR §300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless state law assigns that responsibility to some other entity. Charter schools who are LEAs authorized under the public education commission must satisfy child find requirements for children enrolled in the charter school.
- (4) Public charter schools that are not an LEA or a school that is part of an LEA.
- (a) If the public charter school is not an LEA receiving funding under 34 CFR §300.705, or a school that is part of an LEA receiving funding under 34 CFR §300.705, the department is responsible for ensuring that the requirements of this part are met.
 - (b) Subparagraph (a) of this paragraph does not preclude the governor from assigning initial responsibility for ensuring the requirements of this part are met to another entity, however, the department must maintain the ultimate responsibility for ensuring compliance with this part, consistent with 34 CFR §300.149.

For references to New Mexico Statutes on Charter Schools, please see:

<http://public.nmcompcomm.us/nmpublic/gateway.dll/?f=templates&fn=default.htm>

Authority: NMSA 1978 22-8B-2. Definitions.

As used in the Charter Schools Act [22-8B-1 NMSA 1978]

- A. "charter school" means a conversion school or start-up school authorized by the chartering authority to operate as a public school;
- B. "chartering authority" means either a local school board or the commission;
- C. "commission" means the public education commission;
- D. "conversion school" means an existing public school within a school district that was authorized by a local school board to become a charter school prior to July 1, 2007;
- E. "division" means the charter schools division of the department;
- F. "governing body" means the governing structure of a charter school as set forth in the school's charter; and
- G. "start-up school" means a public school developed by one or more parents, teachers or community members authorized by the chartering authority to become a charter school.

Authority: NMSA 1978 22-8B-4. Charter schools' rights and responsibilities; operation.

- A. A charter school shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry or need for special education services.
- B. A charter school shall be governed by a governing body in the manner set forth in the charter; provided that a governing body shall have at least five members; and provided further that no member of a governing body for a charter school that is initially approved on or after July 1, 2005 or whose charter is renewed on or after July 1, 2005 shall serve on the governing body of another charter school.
- C. A charter school shall be responsible for:

- (1) its own operation, including preparation of a budget, subject to audits pursuant to the Audit Act; and
- (2) contracting for services and personnel matters.
- D. A charter school may contract with a school district, a university or college, the state, another political subdivision of the state, the federal government or one of its agencies, a tribal government or any other third party for the use of a facility, its operation and maintenance and the provision of any service or activity that the charter school is required to perform in order to carry out the educational program described in its charter. Facilities used by a charter school shall meet the standards required pursuant to Section 22-8B-4.2 NMSA 1978.
- E. A conversion school chartered before July 1, 2007 may choose to continue using the school district facilities and equipment it had been using prior to conversion, subject to the provisions of Subsection F of this section.
- F. The school district in which a charter school is geographically located shall provide a charter school with available facilities for the school's operations unless the facilities are currently used for other educational purposes. A charter school shall not be required to pay rent for the school district facilities if the facilities can be provided at no cost to the school district. If facilities are available but cannot be provided at no cost to the school district, the school district shall not charge more than the actual direct cost of providing the facilities. The available facilities provided by a school district to a charter school shall meet all occupancy standards as specified by the public school capital outlay council. As used in this subsection, "other educational purposes" includes health clinics, daycare centers, teacher training centers, school district administration functions and other ancillary services related to a school district's functions and operations.
- G. A locally chartered charter school may pay the costs of operation and maintenance of its facilities or may contract with the school district to provide facility operation and maintenance services.
- H. Locally chartered charter school facilities are eligible for state and local capital outlay funds and shall be included in the school district's five-year facilities plan.
- I. A locally chartered charter school shall negotiate with a school district to provide transportation to students eligible for transportation under the provisions of the Public School Code [22-1-1 NMSA 1978]. The school district, in conjunction with the charter school, may establish a limit for student transportation to and from the charter school site not to extend beyond the school district boundary.
- J. A charter school shall be a nonsectarian, nonreligious and non-home-based public school.
- K. Except as otherwise provided in the Public School Code, a charter school shall not charge tuition or have admission requirements.
- L. With the approval of the chartering authority, a single charter school may maintain separate facilities at two or more locations within the same school district; but, for purposes of calculating program units pursuant to the Public School Finance Act [22-8-1 NMSA 1978], the separate facilities shall be treated together as one school.
- M. A charter school shall be subject to the provisions of Section 22-2-8 NMSA 1978 and the Assessment and Accountability Act [22-2C-1 NMSA 1978].
- N. Within constitutional and statutory limits, a charter school may acquire and dispose of property; provided that, upon termination of the charter, all assets of the locally chartered charter school shall revert to the local school board and all assets of the state-chartered charter school shall revert to the state.
- O. The governing body of a charter school may accept or reject any charitable gift, grant, devise or bequest; provided that no such gift, grant, devise or bequest shall be accepted if subject to any condition contrary to law or to the terms of the charter. The particular gift, grant, devise or bequest shall be considered an asset of the charter school to which it is given.
- P. The governing body may contract and sue and be sued. A local school board shall not be liable for any acts or omissions of the charter school.
- Q. A charter school shall comply with all state and federal health and safety requirements applicable to public schools, including those health and safety codes relating to educational building occupancy.
- R. A charter school is a public school that may contract with a school district or other party for provision of financial management, food services, transportation, facilities, education-related services or other services. The governing body shall not contract with a for-profit entity for the management of the charter school.
- S. To enable state-chartered charter schools to submit required data to the department, an accountability data system shall be maintained by the department.
- T. A charter school shall comply with all applicable state and federal laws and rules related to providing special education services. Charter school students with disabilities and their parents retain all rights under the federal Individuals with Disabilities Education Act and its implementing state and federal rules. Each charter school is responsible for identifying, evaluating and offering a free appropriate public education to all eligible children who are accepted for enrollment in that charter school. The state-chartered charter school, as a local

educational agency, shall assume responsibility for determining students' needs for special education and related services. The division may promulgate rules to implement the requirements of this subsection.

Authority: NMSA 1978 22-8B-5. Charter schools; status; local school board authority.

- A. The local school board may waive only locally imposed school district requirements for locally chartered charter schools.
- B. A state-chartered charter school is exempt from school district requirements. A state-chartered charter school is responsible for developing its own written policies and procedures in accordance with this section.
- C. The department shall waive requirements or rules and provisions of the Public School Code [22-1-1 NMSA 1978] pertaining to individual class load, teaching load, length of the school day, staffing patterns, subject areas, purchase of instructional material, evaluation standards for school personnel, school principal duties and driver education. The department may waive requirements or rules and provisions of the Public School Code pertaining to graduation requirements. Any waivers granted pursuant to this section shall be for the term of the charter granted but may be suspended or revoked earlier by the department.
- D. A charter school shall be a public school accredited by the department and shall be accountable to the chartering authority for purposes of ensuring compliance with applicable laws, rules and charter provisions
- E. A local school board shall not require any employee of the school district to be employed in a charter school.
- F. A local school board shall not require any student residing within the geographic boundary of its district to enroll in a charter school.
- G. A student who is suspended or expelled from a charter school shall be deemed to be suspended or expelled from the school district in which the student resides.

Authority: NMSA 1978 22-8B-10. Charter schools; employees.

- A. A charter school shall hire its own employees. The provisions of the School Personnel Act [22-10A-1 NMSA 1978] shall apply to such employees; provided, however, that a charter school may determine by indicating in its charter that either its governing body or head administrator shall make all employment decisions. The governing body shall be deemed to be responsible for making all employment decisions if the charter does not specify the decision maker.
- B. A charter school shall not initially employ or approve the initial employment of a head administrator who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter or daughter-in-law of a member of the governing body. A charter school shall not initially employ or approve the initial employment of a licensed school employee who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter or daughter-in-law of the head administrator. The governing body may waive the nepotism rule for family members of a head administrator.
- C. Nothing in this section shall prohibit the continued employment of a person employed on or before July 1, 2007.

Authority: NMSA 1978 22-8B-13. Charter school financing.

- A. The amount of funding allocated to a charter school shall be not less than ninety-eight percent (98%) of the school-generated program cost. The school district or division may withhold and use two percent of the school-generated program cost for its administrative support of a charter school.
- B. That portion of money from state or federal programs generated by students enrolled in a locally chartered charter school shall be allocated to that charter school serving students eligible for that aid. Any other public school program not offered by the locally chartered charter school shall not be entitled to the share of money generated by a charter school program.
- C. When a state-chartered charter school is designated as a board of finance pursuant to Section 22-8-38 NMSA 1978, it shall receive state and federal funds for which it is eligible.
- D. Charter schools may apply for all federal funds for which they are eligible.
- E. All services centrally or otherwise provided by a local school district, including custodial, maintenance and media services, libraries and warehousing shall be subject to negotiation between the charter school and the school district. Any services for which a charter school contracts with a school district shall be provided by the district at a reasonable cost.

Authority: NMSA 1978 22-2-8. School standards.

The state board [department] shall prescribe standards for all public schools in the state. A copy of these standards shall be furnished by the department to each local school board, local superintendent and school principal. The standards shall include standards for the following areas:

- A. curriculum, including academic content and performance standards;
- B. organization and administration of education;
- C. the keeping of records, including financial records prescribed by the department;
- D. membership accounting;
- E. teacher preparation;
- F. the physical condition of public school buildings and grounds; and
- G. educational facilities of public schools, including laboratories and libraries.

The LEA will follow NMPED's advice, to the extent it applies, as outlined in the following letters regarding Charter Schools.

Feb. 7, 2007, letter from Patricia Parkinson, EdD.

Is the LEA required to make existing behavioral supports that are available to all schools of the LEA also available to the charter schools that it has authorized?

20 USC §1413(a)(5)(A) of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) provides that the LEA "serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools." See also 34 C.F.R. §§300.209(b)(i) and 6.31.2.11(I)(1) NMAC. It is clear from these citations that the LEA must provide services to its charter schools on the same basis as it does to other schools within the District. Therefore, if it provides behavioral supports to its other schools within the District, it must provide those same behavioral supports to the charter school.

Must a charter school offer a continuum of services to students with IEPs enrolled in the charter school and must a representative of the LEA attend the student's IEP meeting?

Pursuant to §6.31.2.11(I)(2) NMAC, each charter school is responsible for serving children with disabilities in the same manner as in other schools within the LEA. Therefore, the charter would have to provide services to their special education students in the same manner as those services are provided at schools that are not Responsibilities to Charter Schools charters. However, based on the statute and regulations cited in the above paragraph, the LEA would have to provide the charter school with the same level of support that is provided in its other schools.

Does a representative of the LEA have to attend an IEP meeting for a student enrolled in a charter school?

The IEP team members are listed in 34 CFR §300.321(a). One of the team members is a representative of the public agency who is qualified to supervise the provision of special education services, and is knowledgeable about the general curriculum and the availability of resources of the public agency. 34 C.F.R. §300.321(a)(4). That description does not necessarily describe someone from the LEA administration, although it could. In comments to the IDEA regulations, the following was said about §300.321(a)(4):

Section 300.321(a)(4) incorporates the language in section 614(d)(1)(B)(iv) of the Act and requires the IEP Team to include a representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities; is knowledgeable about the general education curriculum; and is knowledgeable about the availability of LEA resources. A public agency may determine which specific staff member will serve as the agency representative in a particular IEP Team meeting, so long as the individual meets these requirements. It is important, however, that the agency representative have the authority to commit agency resources and be able to ensure that whatever services are described in the IEP will actually be provided.

71 Fed. Reg. 156, p. 46670 (2006). If no one within the charter school has the authority to commit agency resources, it may be assumed that someone from the LEA administration with that authority would have to attend the IEP meeting. The LEA could designate who they want as the agency representative, just so long as that person has authority to commit agency resources. Moreover, if the principal or special education coordinator of the charter school involved has the requisite authority to commit school resources to the services described in the IEP, no one from the LEA need attend.

The question of who has the authority to commit agency resources with respect to charters is answered by both IDEA and state law. IDEA requires an LEA to provide Part B funds to its charter schools on the same basis and at the same time it provides such funds to its other public schools, consistent with the State's charter school law. 20 USC §1413(a)(5)(B). Pursuant to 22-8-6.1 NMSA 1978, as amended, a state-chartered charter school is required to submit a school-based budget to the charter school division of the NMPED. The locally-chartered charter school will continue to submit its school-based budget to the local school board.

Once the budget is approved, a charter school representative has the authority to commit resources out of the charter school budget for services required by an IEP. If the required services are within the charter school budget, an LEA representative need not attend the student's IEP meeting. However, if the services required by the student's IEP exceed the budget of the charter school, a representative of the LEA would need to attend IEP meetings since a commitment of LEA resources would be required to comply with the student's IEP.

December 5, 2000, letter from Michael J. Davis

The SDE advises as follows:

- charter school budgets should be reviewed by the schools and the local district to ensure that enough funds are available from the state equalization guarantee and federal IDEA funds to meet each school's needs for special education and related services. All future charter school budgets will be required to allocate enough funds to meet each school's foreseeable special education responsibilities before the budgets will be approved by the SDE.
- Charter schools may provide special education and related services to eligible students with their own staffs or through contracts with their districts, regional cooperatives or other qualified service providers.
- A charter school should only ask the district to provide additional services for students with special needs if the school has exhausted its state and federal special education funds and budgeted emergency reserves. In every such case, the district must participate appropriately in the determination of eligibility and the development of the student's individualized education program (IEP).

XIII. STATE PERFORMANCE PLAN - SPP

The New Mexico PED submitted to the Submitted to the Office of Special Education Programs United States Department of Education, the State Performance Plan for Special Education FFY 2005-2010. The plan was effective December 2, 2005, and was revised: January 20, 2006. The State Performance Plan is available to the public on the website: <http://www.ped.state.nm.us/seo/data/SPP.1.20.06.final.pdf>

XIV. STATE-IMPOSED RULES (not required by IDEA or Federal regulations)

IDEA 2004 requires the listing of areas in which state rules, regulations and policies exceed the federal regulations. Areas listed below were submitted by the NMPED in the Part B Annual State Application: FFY 2010 OMB No. 1820-0030/Expiration Date – 06/30/2012.

State-imposed Rules (not required by IDEA or Federal Regulations)

6.31.2 NMAC—CHILDREN WITH DISABILITIES/GIFTED CHILDREN

6.31.2.7-Definitions

- 6.31.2.7(B)—State-specific definitions.
- 6.31.2.7(C)(1)-(2)—Definitions related to dispute resolution. “State-specific alternative dispute resolution (ADR) options.
- 6.31.2.7(D)—Definitions relating to Educational Services for Gifted Children.

6.31.2.9—Public Agency Responsibilities

- 6.31.2.9(B)(2)—Child Count reporting.
- 6.31.2.9(B)(3)—“Placement of students in private or public residential treatment centers, or other out of home treatment or habilitation programs, by the IEP team.”
- 6.31.2.9(C)(5)—*Requirement of §22.8.11(C) NMSA 1978*

6.31.2.10—Identification, Evaluations and Eligibility Determinations

- 6.31.2.10(D)(1)(c)(iii)—*Evaluation referral records.*
- 6.31.2.10(E)(6)—*Assessment of culturally and linguistically diverse students.*
- 6.31.2.10(F)(2)—*Optional use of developmentally delayed classification for children ages 3--9. Developmentally delayed classification option.*

6.31.2.11—Educational Services for Children with Disabilities

- 6.31.2.11(A)(4)(g)—*Timeline for IFSP, IEP or IFSP-IEP development.*
- 6.31.2.11(B)(3)—*IEP team member signatures.*
- 6.31.2.11(G)(1)—*Graduation planning.*
- 6.31.2.11(G)(3)—*Development of post-school goals beginning at age 14.*
- 6.31.2.11(G)(6)—*Allows students who turn 22 during school year to continue to receive services to end of school year.*
- 6.31.2.11(K)(2)(b)—*Provides LEA summer emergency contract for purposes of providing records for children entering juvenile correction facilities during summer months.*

6.31.2.12—Educational Services for Gifted Children

- *(entire section) Services for Gifted Children.*

6.31.2.13—Additional Rights of Parents, Students and Public Agencies

- 6.31.2.13(G)(2)(c)—*Complaint Assistance IEP (CAIEP) and Facilitated IEP (FIEP) meetings.*
- 6.31.2.13(H)(2)(a)—*State complaint requirements.*
- 6.31.2.13(H)(3)—*“Preliminary meeting”, CAIEP and FIEP meetings.*
- 6.31.2.13(H)(6)—*“Complaints against the department.” Appointment of and investigation by an impartial person.*
- 6.31.2.13(I)(1)(b)—*Gifted services.*
- 6.31.2.13(I)(2)(c)—*Summary due process hearing.*
- 6.31.2.13(I)(3)(d)—*Scope of due process hearings.*
- 6.31.2.13(I)(5)(g)—*Due process hearing request requirements.*
- 6.31.2.13(I)(7)(b)—*IEP facilitator.*
- 6.31.2.13(I)(8)(b)—*FIEP meeting.*
- 6.31.2.13(I)(8)(c)(ii)—*FIEP meetings.*
- 6.31.2.13(I)(10)(b)—*Initial prehearing conference.*
- 6.31.2.13(I)(11)—*“Withdrawal of request for hearing.” Withdrawal of due process hearing request.*
- 6.31.2.13(I)(12)—*“Prehearing procedures.” Prehearing conference.*
- 6.31.2.13(I)(14)—*Stipulated facts.*
- 6.31.2.13(I)(15)—*“Summary due process hearing.” Summary due process hearing.*
- 6.31.2.13(I)(20)(c),(d),(e) & (f)—*Expedited due process hearings (timeline, etc.).*
- 6.31.2.13(I)(24)—*“Expenses of the hearing.” Hearing expenses.*
- 6.31.2.13(I)(25)(b)—*Civil action (timeline, gifted services as basis for action).*
- 6.31.2.13(I)(26)(b),(d) & (e)—*Attorneys’ fees.*
- 6.31.2.13(I)(29)—*“Effective date and transitional provisions.” Effect of revised due process rules.*
- 6.31.2.13(L)(3)(a)—*Civil “Transfer of student records.” FERPA notice requirement.*
- 6.31.2.13(L)(5)(b)—*Personally identifiable information.*
- 6.31.2.13(L)(6)—*“Educational records retention and disposition schedules.”*

6.30.2 NMAC—STANDARDS FOR EXCELLENCE

6.29.1 9—Procedural requirements.

- 6.29.1.9(D)- Student Intervention System-- three-tier structure
- 6.29.1.9(H)—“Student/staff ratios in gifted and special education.” *Student/staff ratios.*
- 6.29.1.9(J)—*Graduation requirements.*
- 6.29.1.11—Program requirements.
- 6.29.1.11(F)—*Special education program requirements.*

6.11.2 NMAC—RIGHTS AND RESPONSIBILITIES OF THE PUBLIC SCHOOL AND PUBLIC SCHOOL STUDENTS

- 6.11.2.10—Discipline of students with disabilities.
- 6.11.2.10(G)(3)—“*Program prescriptions.*” *Specification of disciplinary measures in IEP.*
- 6.11.2.10(G)(4)—“*Immediate removal.*” *Immediate removal of students with disabilities.*

6.41.4 NMAC—STANDARDS FOR PROVIDING TRANSPORTATION FOR ELIGIBLE STUDENTS

- 6.41.4.8—Local board of Education Responsibilities.
- 6.41.4.8(A)(5)(b),(d),(g) &(h)—*IEP team responsibilities regarding discipline and transportation.*