

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 1. – CHILD FIND / INTERVENTIONS

Date Chapter 1. Adopted by Governing Body: 06/12/14

Date Chapter 1. Reviewed by Governing Body: 09/13/18

Date Chapter 1. First Revision: 07/15/14

Chapter 1. – CHILD FIND / INTERVENTIONS

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Chapter 1. – CHILD FIND / INTERVENTIONS

I. CHILD FIND RESPONSIBILITIES

A. Authority: 34 CFR §300.111 Child find.

(a) General.

(1) The NMPED ensures that--

- (i) All children with disabilities residing in New Mexico, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and**
- (ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.**

(b) Other children in child find. Child find also will include--

- (1) Children who are suspected of being a “child with a disability” under §300.8 and in need of special education, even though they are advancing from grade to grade; and**
- (2) Highly mobile children, including migrant children.**

Authority: 34 CFR §300.19 Homeless children.

Homeless children has the meaning given the term homeless children and youths in section 725 (42 U.S.C. §11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. §11431 *et. seq.* The ASK Academy will comply with Child Find requirements for these students.

The ASK Academy will refer an (*Chapter 2.-Procedural Safeguards*) unaccompanied homeless child to the appropriate state agency. A homeless child includes an individual who lacks a fixed, regular, and adequate nighttime residence 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 U.S.C. §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.

B. Child Find - Gifted Students

The ASK Academy is responsible for finding gifted children who meet the criteria for services and have a demonstrated need and providing appropriate services with the exceptions listed below.

Authority: NMAC 6.31.2.12 GIFTED CHILDREN EDUCATIONAL SERVICES

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.

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

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.

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 Section 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) The ASK Academy must establish a child find procedure that includes a screening and referral process for students in public school who may be gifted.
 - (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)*

CHILD FIND - STUDENT ASSISTANCE TEAM (SAT) – GIFTED STUDENTS

Immediately after a student is referred to the student assistance team (SAT), it is important to begin collecting information regarding the student's cultural, linguistic, and socioeconomic background. When the student is referred to the SAT, suggestions should be made for intervention strategies that will address the area of potential giftedness. These may include, but are not limited to the following:

- ability grouping
- accelerating the curriculum
- multi-age grouping
- subject acceleration
- independent study
- peer teaching
- mentoring by older students or adults
- enrichment within the regular general educational setting

The SAT should monitor and document the interventions tried and the outcomes. It should be recognized that even when interventions are successful, it may be necessary for the identification process to continue in order for individual student needs to be fully met. The goal of the support team is to ensure that the individual needs of the student are met and not to restrict access to gifted programming. If a need for further service is indicated, a referral should be made with all data collected to this point passed on to the evaluation team.

The SAT committee may use a characteristics checklist provided by the NMPED. This checklist exists in order to discover factors that may influence classroom performance or test scores of gifted students. It does not weigh for or against qualification, but aids the Student Assistance Team (SAT) in making good judgments about how to proceed with the evaluation process. The checklist, instructions, scoring and interpretations may be found at the NMPED website: <http://www.ped.state.nm.us/seo/gifted/Gifted.Students.With.Factors.pdf>

Quantitative data from this checklist should be combined with qualitative data for consideration by the SAT in determining whether or not a student referred for gifted services would be considered to have "factors." If there are "factors" that are determined to be significant through the use of this instrument and other qualitative data, the student would be referred by the SAT to the team administering the alternative protocol that has been approved by the Public Education Department/Special Education Bureau and adopted by the district/charter school for screening and evaluation.

In addition, the SAT may refer to the following resource: Gifted: Technical Assistance & Training Resource Document through the NMPED web site, <http://www.ped.state.nm.us/seo/gifted/gifted.pdf>

CHILD FIND - GIFTED IN SPECIAL POPULATIONS:

Gifted children can be found in all populations. The SAT must be aware of the criteria for all populations. In some instances, a child's true abilities are not recognized and that child may not be receiving appropriate educational services. The New Mexico State Department of Education's criteria for gifted students attempt to address the underrepresentation in gifted programs for four populations. These populations included those students with: Cultural differences, linguistic differences, lower socioeconomic status, and disabling conditions. Other special populations also need consideration. Listed below are some groups of gifted children who have unique educational needs.

Gifted Underachiever

Students who are gifted may be underachievers. These students, although scoring high on standardized measures, often fail to achieve in much of their everyday course work. The causes and manifestations of underachievement are varied. These students should not be precluded from identification and/or participation in gifted programming as a result of their underachievement in the regular classroom. Recent research demonstrates the importance of two factors in the reversal of underachievement:

- teacher concern for participation in the student's success
- student involvement in a project in some area of interest

Gifted Girls

As gifted girls progress through their school years, they tend to become less confident and less willing to believe in their abilities. Research indicates that girls start out equal or superior to boys on tests of ability and

achievement in the elementary grades but gradually begin to fall behind, especially in science and math at the junior high and high school levels and in all areas at the college and post college levels. Special programs may need to be developed to support this population.

Highly Gifted

Students identified as highly gifted have needs that may require programs and services beyond the general gifted programs. These students need to be comfortable with themselves and their unique abilities. The discrepancy between their cognitive ability and chronological age may contribute to significant social-emotional difficulties. Additionally, the differences between these students and their age peers frequently cause isolation. Schools have a responsibility to design services that address both academic and social-emotional needs of this population.

(For more information see also Chapter 3 Evaluation, Chapter 4 Gifted, and Chapter 5 - IEP)

II. CHILD FIND - AGES

§300.101 Free appropriate public education (FAPE). *(See also Chapter 8 General Administration)*

(b) FAPE for children beginning at age 3.

(1) The NMPED ensures that—

(i) FAPE is available to each eligible child residing in New Mexico beginning 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 will determine the date when services under the IEP or IFSP will begin.

Authority: NMSA 1978 Sec. 22-13-5 Special education.

Services for students age three through twenty-one may include, but are not limited to, evaluating particular needs, providing learning experiences that develop cognitive and social skills, arranging for or providing related services as defined by the state board and providing parent education. The services may be provided by certified school personnel or contracted for with other community agencies and shall be provided in age-appropriate, integrated settings, including home, daycare centers, headstart programs, schools or community-based settings.

Authority: NMAC 6.31.2.7 DEFINITIONS:

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

(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

III. MEMBERSHIP OF THE STUDENT ASSISTANCE TEAM (SAT)

The SAT is made up of a core group of regular education staff that anchors the team. Core members must have good communication skills and a solid working knowledge about a variety of supports (types of interventions, educational and community resources, programs, etc.). The SAT members should also be aware of the schools Educational Plan for Student Success (EPSS) action plan. For the Technical Assistance Manual for SAT please see the NMPED website: <http://www.ped.state.nm.us/sat3tier/sat3tierModelComplete.pdf#pagemode=bookmarks>

Core team members may vary by school, but should include at minimum:

- administration,
- regular education, and
- specialists and/or resource areas.
- the person who referred the student (whether educator or parent) or brought up a concern joins the team.

- every effort should be made to include the parent (or the family member serving as the “parent”) and, if appropriate, the student on the team.

In addition, specialists, such as speech therapists, special education teachers, bilingual education teachers, reading teachers, nurses, or social workers can bring valuable needed perspectives and ideas to the team. A varying number of other individuals may serve on the team, depending on the types of concerns and expertise needed. Principals may want to appoint individuals yearly to the SAT on a rotating basis so that the responsibilities are shared among the staff. For example, the core group of regular education staff may be the school principal, one or two classroom teachers, and a school counselor. Those who serve on the core team must be willing to commit the time and effort needed to produce the desired results.

TRAINING

All staff will be trained in the basic operations of the SAT, but the core members must have a good understanding of the purpose and process. Annual training in SAT procedures will be provided. Core members will also receive skill training in:

- selection of instructional and behavioral interventions,
- social services,
- the EPSS, community resources, and
- disproportionality of students in special education based on race/ethnicity (*See Chapter 8. General Administration*)

Authority: NMSA 1978 22-2C-6. Remediation programs; promotion policies; restriction

- A. Remediation programs, academic improvement programs and promotion policies shall be aligned with alternative school-district-determined assessment results and requirements of the assessment and accountability program
- B. Local school boards shall approve school district-developed remediation programs and academic improvement programs to provide special instructional assistance to students in grades one through eight who fail to attain adequate yearly progress. The cost of remediation programs and academic improvement programs shall be borne by the school district. Remediation programs and academic improvement programs shall be incorporated into the school district's educational plan for student success and filed with the department
- J. For the purposes of this section:
 - (4) "student assistance team" means a group consisting of a student's:
 - (a) teacher;
 - (b) school counselor;
 - (c) school administrator; and
 - (d) parent.

IV. STUDENT ASSISTANCE TEAM (SAT) / INTERVENTIONS

Authority: 34 CFR §300.302 Screening for instructional purposes is not evaluation.

The schools SAT may determine a screening is appropriate for a particular student. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not be considered to be an evaluation for eligibility for special education and related services.

A. SAT – Purpose And Mission *See also: [Student Assistance Team Manual at the NMPED web site: http://www.ped.state.nm.us/qab/downloads/sat/file2.pdf](http://www.ped.state.nm.us/qab/downloads/sat/file2.pdf)*

The Student Assistance Team (SAT) is a school-based group of people whose purpose is to provide additional Tier II support to students who are experiencing difficulties that are preventing them from benefiting from general education, because they are either performing below or above expectations. By “catching” these students in the child study phase, the SAT may not only help the student be able to remain and succeed in the general education program, but also reduce unnecessary referrals to special education. The SAT’s mission is to approach and arrive at appropriate solutions to problems in the school environment through a cooperative team effort.

Although the team may make referrals to special education and other special programs, the SAT is not part of the special education process, but rather a general education responsibility. The SAT addresses problems found

through general screening or those brought up as concerns by parents, teachers, or other staff. The SAT designs interventions for those students who show need for individual consideration. Further, the SAT suggests interventions and focuses on student strengths that may alleviate or resolve the situation prior to referral for a multidisciplinary evaluation. In many cases, the SAT is able to assist students who need interventions in order to succeed, but who are not necessarily disabled and therefore do not qualify for special education or Section 504 accommodations. Simply put, the SAT is a “support group” for the regular education teachers and students who need it.

Authority: NMSA 1978 Section 22-1-1.2 Legislative findings and purpose – diverse multicultural population

New Mexico has a diverse, multicultural population and “no education system can be sufficient for the education of all children unless it is founded on the sound principle that every child can learn and succeed...” Further, “...the key to student success in New Mexico is to have a multicultural education system that...holds teachers, students, schools, school districts and the state accountable...” The legislation requires that “...students who do not meet or exceed expectations will be given individual attention and assistance through extended learning programs and individualized tutoring...[and that] public schools make adequate progress toward educational excellence.”

Authority: NMSA 1978 Section 22-2C-6 Remediation programs.

The ASK Academy is responsible to develop remediation and academic improvement programs to provide special instructional assistance to students who fail to make adequate progress within the curriculum.

- For students completing grades one through seven, an academic improvement plan is to be developed by the SAT and is to include time lines and monitoring methods designed to ensure progress toward overcoming academic deficiencies.
- At the end of grade eight, the SAT must develop an academic improvement plan that delineates the specific deficiencies and prescribes specific remediation designed to enable the student to succeed in high school.
- In addition to remediation, the SAT is responsible for ensuring that promotion and retention policies are followed and placement in an alternative program for those students who fail to make adequate progress.

Some possible local programs the SAT may discuss include, but are not limited to:

- *Title I, Part A School Wide Program;*
- *Title I, Part A Targeted Assistance Program;*
- *Title I, Part B Even Start Family Literacy Program;*
- *Title I, Part B reading First program;*
- *Title I, Part B Early Reading First program;*
- *Title I, Part C Education of Migratory Children program;*
- *Title I, Part D Neglected, Delinquent or At-Risk Youth programs;*
- *Title I, Part F comprehensive School Reform programs;*
- *Title IV, Part A Safe and Drug-Free Schools and Communities programs;*
- *Indian Education;*
- *Bilingual Education;*
- *504 Accommodation;*
- *Community Agencies and Local Supports;*
- *Achieving Success*

B. Three-Tiered Model: Response to Intervention (RtI)

Authority: NMAC 6.29.1.9 IDENTIFICATION

- D. Student intervention system (e.g., SAT, RtI, PBS). The school and district shall follow a three-tier model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning or behavior.
- (1) In Tier I, the school and district shall ensure that adequate universal screening in the areas of general health and well-being, language proficiency status and academic levels of proficiency has been completed for each student enrolled. If through universal screening, a referral from a parent, a school staff member or other information available to a school or district suggests that a particular student needs educational support for learning or behavior, then the student shall be referred to the SAT for consideration of interventions at the Tier II level.

- (2) In Tier II, a properly-constituted SAT at each school, which includes the student's parents and the student (as appropriate), shall conduct the student study process and consider, implement and document the effectiveness of appropriate research-based interventions utilizing curriculum-based measures. In addition, the SAT shall address culture and acculturation, socioeconomic status, possible lack of appropriate instruction in reading or math, teaching and learning styles and instructional delivery mechanisms in order to rule out other possible causes of the student's educational difficulties. When it is determined that a student has an obvious disability or a serious and urgent problem, the SAT shall address the student's needs promptly on an individualized basis, which may include a referral for a multi-disciplinary evaluation to determine possible eligibility for special education and related services consistent with the requirements of Subsections D-F of 6.31.2.10 NMAC and federal regulations at 34 CFR Sec. 300.300.
- (3) In Tier III, a student has been identified as a student with disability and deemed eligible for special education and related services, and an IEP is developed by a properly-constituted team, pursuant to Subsection B of 6.31.2.11 NMAC and federal regulations at 34 CFR Sec. 300.321.

*The ASK Academy will follow the guidance provided in the NMPED document titled: The Student Assistance Team (SAT) and the Three Tier Model of Student Intervention – A Guidance and Resource Manual for New Mexico's Response to Intervention (RtI) Framework. The three-tiered response to intervention model is the process that Student Assistance Teams (SATs) in New Mexico must adhere to in order to successfully meet the needs of all students. This three-tiered model of student intervention is required in current state regulations at NMAC 6.29.1.9(D)(1,2,3). In addition, the EPSS will provide structured guidance to the district as we strive to serve **all** students. See: <http://www.ped.state.nm.us/sat3tier/sat3tierModelComplete.pdf>*

TIER I—General Screening and Quality Instruction

Tier I provides primary intervention in the form of general screening and quality classroom instruction to all students. The majority (80–90%) of school-aged students will respond successfully to quality instruction in the regular education classroom at this level. A teacher may recognize that a student is either struggling to learn the standard curriculum, working beyond the standard curriculum, or having difficulty maintaining appropriate behavior in the regular education classroom. At that point, the teacher tries classroom-based interventions. In some cases, a student will demonstrate little or no positive response to the teacher's informal interventions or, general screening procedures will indicate a need. At that point, the student is referred to Tier II.

TIER II—Child Study Process

Tier II is designed to provide secondary intervention through early identification and assistance for a small percentage (5–10%) of students who are performing above or below standards in academics and/or behavior. Interventions for these students either are provided as targeted individual interventions in one or more areas, such as through a SAT Intervention Plan designed by the Student Assistance Team (SAT) as described in the manual, or through a specialized school program that includes small group instruction. Tier II interventions are provided in addition to the quality instruction provided in Tier I. The interventions are designed to prevent or alleviate challenges a student may be facing. These interventions may be short-term or they may continue for an entire school year. The ultimate goal is to assist the student in succeeding within the regular education setting with the standard curriculum. In spite of a school's best efforts at delivering quality Tier I instruction and Tier II interventions, a few students may not demonstrate a significant and positive response to intervention. In those cases, those students may move to Tier III.

TIER III—Multidisciplinary Evaluation

Students referred to Tier III require a multidisciplinary evaluation to determine their need for services at this level. Tier III serves a very small percentage of students (1–5%) who demonstrate a need for an individualized program to accommodate their learning or behavioral needs. Special education teachers, related service providers, and regular education teachers provide Tier III interventions consisting of specially designed instruction and supplementary aids and services. Tier III interventions are provided to a student through an Individualized Education Program (IEP). The goal of Tier III is for the student to be successfully involved in and progress in the general education curriculum, and achieve the goals in his or her IEP.

*The ASK Academy will provide **annual training** to staff on the Policies and Procedures of this Chapter 1.*

Child Find/Interventions. In addition, the following is provided to school staff annually:

1. *Clear information on when the SAT meetings are conducted*
2. *Clear information on where the SAT meetings are conducted*
3. *Name of the person responsible for scheduling/conducting the SAT meetings*
4. *SAT members will have access to printed copies of the numerous technical assistance documents provided on the NMPED website including but not limited to:*
 - *SAT Manual*
 - *Gifted: Technical Assistance Manual*
 - *Response to Intervention (RtI)*
 - *Nondiscriminatory Assessment of Culturally and Linguistically Diverse Students*
 - *Facilitating Transitions for Children and Families*
5. *Clear information on where the staff may locate the printed copies of the technical assistance documents listed above.*
6. *Training on the SAT forms required for each student discussed at the SAT meeting:*
 - *Notice of and Invitation to SAT meeting*
 - *SAT Referral Packet (clear teacher documentation on monitoring of strategies)*
 - *Student Observation(s)*
 - *SAT Meeting Summary(ies)*
 - *SAT Intervention Plan*
 - *SAT Intervention Progress Report(s) and Follow-Up*
 - *Academic Improvement Plan (if appropriate)*
 - *Culturally and Linguistically Diverse assessment (if appropriate)*

Authority: NMAC 6.31.2.10 IDENTIFICATION

D. Evaluations and reevaluations

(1) Initial evaluations.

- (b) Request for initial evaluation. Consistent with the consent requirement in 34 CFR §300.300, either the parent of a child or the ASK Academy may initiate a request for an initial evaluation to determine if the child is a child with a disability.

C. Scientific, Research-Based Instruction

The SAT on each school campus will ensure access to the general curriculum as described below:

Authority: Public Law 108-446 IDEA Part A "General Provisions" — Sec. 601

(c) Findings – Congress finds the following:

- (5) Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by –
 - (A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible;
 - (E) supporting high quality, intensive pre-service preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices,;
 - (F) providing incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and early intervening services to reduce the need to label children as disabled in order to address the learning and behavioral needs of such children.

(For more information on early intervening services, see Chapter 8.- General Administration)

Prior to a referral to Special Education, the SAT must determine if the student has received instruction and interventions that are scientific and research based. In order for the SAT to determine this, the 6 components below from the Scientific, Research-based Instruction and Intervention Checklist can be used to evaluate research evidence. This evidence might be the information that is provided by a publisher or program developer, or, it might

be an article about an educational practice. The more questions that can be answered with “yes,” the more likely it is that the evidence is scientifically based.

1. **Relevance**
 - Does the evidence provided by the researchers or developers address a question that is important to your needs?
 - Do the developers provide evidence that the research they claim supports their product or program links to and flows from relevant theory and theory-based research?
 - Do the research procedures, analyses, and findings support the researchers’/“developers” claims?
2. **Rigor**
 - If the researchers or developers claim a causal relationship between the intervention (product, service, program) and an outcome measure such as student achievement, did they include a control or comparison group in the study, in addition to the experimental group?
 - Were the study participants (usually students or teachers or schools) randomly selected and/or randomly assigned to experimental versus control/comparison groups?
 - Is sufficient information provided to determine whether the research design, instruments, and procedures are appropriate for answering the research questions posed by the researchers/developers?
 - Were the research instruments and procedures applied with consistency, accuracy, and for the purpose intended by the developers of the instruments and procedures?
3. **Systematic Approach**
 - Was the research conducted using carefully planned, logical steps?
4. **Objectivity**
 - Did someone other than the publisher or developer conduct the research attesting to the products or programs effectiveness? If not, was the research conducted by the publisher/developer submitted to review by an independent, expert panel?
5. **Replicability**
 - With the information provided, could the same researchers likely repeat the study and obtain the same or highly similar results?
 - With the information provided, could other researchers likely replicate the study’s methodology and obtain the same or highly similar results?
6. **Data Analyses and Interpretation**
 - Does the research evidence provided include data or data summaries?
 - Are significance levels and effect sizes reported?
 - Are the conclusions drawn by the researchers/developers clearly supported by the data?

For more information and technical assistance see [The Student Assistance Team \(SAT\) and the Three Tier Model of Student Intervention – A Guidance and Resource Manual for New Mexico’s Response to Intervention \(RtI\) Framework](http://www.ped.state.nm.us/sat3tier/sat3tierModelComplete.pdf). <http://www.ped.state.nm.us/sat3tier/sat3tierModelComplete.pdf>

D. Educational Plan For Student Success (EPSS)

Authority: NMAC 6.29.1.8 Implementation: Educational Plan for Student Success (EPSS)

- A. District responsibilities for the EPSS. The EPSS is a strategic improvement plan that is written or revised based on trend data and the academic achievement of the school and district. Each district is required to develop, implement, monitor and evaluate the plan on an annual basis. Additionally, the district shall ensure that a site-level EPSS is developed by each school within the district and by each charter school for which the district is the chartering agency. State-chartered charter schools shall develop a site-level EPSS. Districts with fewer than 600 students may write only one EPSS for the entire district; however, a district with a school in or receiving a school improvement status classification is not eligible for this option. The EPSS shall be guided by the following four questions:
- (1) What is the current level of performance compared with the annual measurable objectives (AMOs)? This requires a review of student performance data using SBA trends, short-cycle assessments and other assessments used at local sites.
 - (2) Where does the district or charter school need to be, compared with the AMOs? This requires a review of overall goals/target areas (performance indicators).
 - (3) How will the district or charter school achieve its stated goals/target areas? This requires development of strategies and activities for improvement.
 - (4) How does the district or charter school know it is meeting short-term and annual goals? This

requires a review of short-cycle and SBA data.

Each school's SAT committee members will provide valuable information to the site-level EPSS action plan. Through data analysis of student needs as reviewed by the SAT for intervention and support, suggestions for strategies and activities to improve academic achievement can be provided to the EPSS committee.

V. REFERRALS FOR SPECIAL EDUCATION EVALUATION

Authority: 34 CFR §300.301 Initial evaluations.

- (b) **Request for initial evaluation.** Consistent with the consent requirements in §300.300, either a parent of a child, or a staff person with the ASK Academy, may initiate a request for an initial evaluation to determine if the child is a child with a disability.

Authority: 34 CFR §300.309 Determining the existence of a specific learning disability.

- (b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group will consider, as part of the evaluation described in §§300.304 through 300.306, data that demonstrates that—
- (1) Prior to, or as a part of the referral process, the child was provided appropriate instruction delivered by qualified personnel; and
 - (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

All referrals for evaluation to the special education department will go through the SAT process in order to document appropriate interventions and strategies. In the case of a Child Find student who is clearly a student with a disability and is in need of special education services, the SAT may refer to the Special Education Eligibility Determination Team (EDT) for evaluation. All procedural safeguards including Notice and Consent for Evaluation must be provided to the parent or adult student as described in Chapter 2. Procedural Safeguards.

VI. TIMELINE – REFERRAL TO EVALUATION

Authority: 34 CFR §300.301 Initial evaluations.

- (a) **General.** The local education agency will conduct a full and individual initial evaluation, in accordance with §§300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.
- (b) **Request for initial evaluation.** Consistent with the consent requirements in §300.300, either a parent of a child, or LEA, may initiate a request for an initial evaluation to determine if the child is a child with a disability.
- (c) **Procedures for initial evaluation.** The initial evaluation—
- (1) (i) Will be conducted within 60 days of receiving parental consent for the evaluation;
 - (2) Will consist of procedures—
 - (i) To determine if the child is a child with a disability under §300.8; and
 - (ii) To determine the educational needs of the child.
- (d) **Exception.** The timeframe described in paragraph I(1) of this section shall not apply to ASK Academy if—
- (1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
 - (2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph I(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under §300.8.
- (e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS

D. Evaluations and reevaluations

- (1) Initial evaluations

- (d) Exception to the 60-day time frame. The requirements of this subsection do not apply:
 - (i) if the parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
 - (ii) if the child enrolls in a school of another LEA after the 60-day time frame in this subsection has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under 34 CFR §300.8.
- (e) The exception to the 60 day time frame in Item (ii) of Subparagraph (d) of Paragraph (1) of Subsection D of 6.31.2.10 NMAC applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

VII. SPECIAL EDUCATION DEPARTMENT RESPONSIBILITIES

A. SAT Referral Packet – Data Collected

34 CFR §300.309 Determining the existence of a specific learning disability.

- (c) The ASK Academy must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in §300.306(1)(1)–

§300.301 Initial evaluations.

- (a) **General.**
- (b) **Request for initial evaluation.** Consistent with the consent requirements in §300.300, either a parent of a child, or ASK Academy, may initiate a request for an initial evaluation to determine if the child is a child with a disability.
- (c) **Procedures for initial evaluation.** The initial evaluation—
 - (1) (i) **Must be conducted within 60 days of receiving parental consent** for the evaluation; or

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS

D. Evaluations and reevaluations

- (1) Initial evaluations
 - (c) Procedures for initial evaluation.
 - (iii) The ASK Academy shall maintain a record of the receipt, processing and disposition of any referral for an individualized evaluation. All appropriate evaluation data, including complete SAT file documentation and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the eligibility determination team.
 - (iv) A parent may request an initial special education evaluation at any time during the SAT process. If the ASK Academy agrees with the parent that the child may be a child who is eligible for special education services, the ASK Academy must evaluate the child. If the ASK Academy declines the parent's request for an evaluation, the ASK Academy must issue prior written notice in accordance with 34CRF Sec. 300.503. The parent can challenge this decision by requesting a due process hearing.

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS - D. Notice requirements and F. Parental consent

You will find Notice and Consent for Evaluation in Chapter 2 Procedural Safeguards.

You will find the Invitation to the IEP meeting in Chapter 5 - IEP and Chapter 2 - Procedural Safeguards.

The ASK Academy diagnosticians will complete the required Procedural Safeguards notice Parent and Student Rights in Special Education, provide Notice of Evaluation and obtain parental Consent for Evaluation using necessary forms that incorporate all of the federal and state requirements.

B. Multidisciplinary Team or Eligibility Determination Team Evaluation Conducted

The professional group (including input from the parent) will review the evaluation as described in Chapter 3 - Evaluation and Chapter 4 – Disabilities/Gifted. When the ASK Academy evaluation team has determined the child is a child with a disability and an IEP Team meeting is needed, the parent will be invited to attend an IEP meeting using appropriate forms addressing required federal and state elements. Based on the evaluation, the child may have been determined to be a gifted student and need an IEP Team meeting to determine appropriate special education services.

C. IEP Meeting Scheduled

The ASK Academy will provide a written parent invitation to the IEP meeting when the group has determined the child is a child with a disability and an IEP meeting is needed. The meeting will be arranged at a mutually agreeable time. The school principal / special education director will designate the person responsible for scheduling the IEP meeting with the parent and other required members. The specific requirements for the invitation to the IEP meeting are found in Chapter 2 Procedural Safeguards. Required members are found in Chapter 5 – IEP.

D. Timeline from Evaluation to IEP Meeting:

Authority: 34CFR §300.323 When IEPs must be in effect.

(c) Initial IEPs; provision of services. The ASK Academy ensures 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 by the ASK Academy to be within 5 school days of the IEP meeting, the student will be receiving required services as determined by the IEP Team.

See also Chapter 5 – IEP

E. Transfers from Outside the District – already in Special Education

For students who are new to the ASK Academy and have received special education services in the student's previous school district, regular SAT referral procedures are bypassed. Procedures to be followed are included in Chapter 5. – IEP within the Transfer section.

VIII. REFERRALS FOR SPECIFIC AREAS:

Any evaluation of an existing special education student is NOT a referral and does not include the SAT committee. Any evaluation of an existing special education student is a reevaluation and should follow all requirements of §300.305 found in Chapter 3-Evaluations.

A. Adapted Physical Education

The SAT may include a request for a physical education evaluation upon initial referral. However, students already receiving special education services will have an IEP Team or the EDT make a request for an adapted / special PE evaluation to determine if specially designed physical education is required for the student.

Authority: 34 CFR §300.108 Physical education.

The NMPED ensures that the ASK Academy will comply with the following:

- (a) General. Physical education services, specially designed if necessary, will 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 grades.**
- (b) Regular physical education. Each child with a disability will 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 will provide the services directly or make arrangements for those services to be provided through other public or private programs.
- (d) **Education in separate facilities.** If the ASK Academy is responsible for the education of a child with a disability who is enrolled in a separate facility, the child will receive appropriate physical education services in compliance with this section.

[Authority: 20 U.S.C. §1412(a)(5)(A)]

B. Assistive Technology Team

The SAT is not necessary for the assistive technology consideration. The need for assistive technology will be considered in each full and individual evaluation conducted by the special education department.

(For more information see also FIE Chapter 3 and IEP Chapter 5)

Authority: 34 CFR §300.105 Assistive technology.

- (a) The ASK Academy must ensure 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. (Authority: 20 U.S.C. §§1412(a)(1), 1412(a)(12)(B)(i))

C. Behavioral Concerns

When a student is referred to the SAT for a problem behavior, the administrator will first determine the status of the student:

1. Is the student functioning in the regular education environment without any identified exceptionality and being referred for behavior issues only? If so, the SAT team will meet and addresses the problem(s).
2. Is the student being referred for possibly needing special education and related services? The SAT can use the FBA to help determine if the problem behavior is related to an exceptionality. If the student meets eligibility requirements to receive special education or related services, the FBA and BIP developed by the SAT will become part of the student's IEP. The Section 504 team or the Student Assistance Team (SAT) is responsible for conducting the FBA and developing the BIP for students who do not qualify as eligible for special education under the IDEA.
3. Is the student already identified as having an exceptionality and an IEP or is the student receiving services under Section 504? In these cases, if the behavior is related to the exceptionality, the planning for the FBA must be done within the framework of the IEP meeting for students who qualify for special education under the IDEA. The IEP team develops or revises a BIP to address the behavior.

For further information and sample forms use the NMPED technical assistance manual titled [Addressing Student Behavior: A Guide for Educators](#) found on the website:

<http://www.ped.state.nm.us/RtI/dl10/Addressing%20Student%20Behavior%20Guide%202010.pdf>

Most teachers recognize that many classroom discipline problems can be resolved by consistently applying standard management strategies. Strategies proven to be effective include but are not limited to:

- teaching students how to comply with well-defined classroom rules,
- providing students more structure in lessons,
- making strategic seating assignments, and
- posting a class schedule.

These proactive procedures can sometimes even alleviate the need for teachers to learn about other solutions to the problems they face through student assistance or intervention assistance teams. Regardless of the source of this information, school personnel generally should introduce one or more standard strategies before seeking to initiate the more complex, and often time-consuming, process of FBA. A formal assessment and SAT referral to special education is usually reserved for serious, recurring problems that do not readily respond to intervention strategies, or classroom management techniques and impede a student's learning, or are ongoing.

D. Limited English Proficient (LEP) Culturally and Linguistically Diverse (CLD)
(For more information see also Full and Individual Evaluation (FIE) Chapter 3)

Authority: 34 CFR §300.306 Determination of eligibility.

- (b) Special rule for eligibility determination.** A child must not be determined to be a child with a disability under this part-
- (1) If the determinant factor for that determination is--**
 - (i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);** *(for ESEA see Chapter 3.- Evaluation)*
 - (ii) Lack of instruction in math; or**
 - (iii) Limited English proficiency; and**
 - (2) If the child does not otherwise meet the eligibility criteria under §300.8(a).**

Authority: NMAC §6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS

- E.** Procedural requirements for the assessment and evaluation of culturally and linguistically diverse children
- (3) The ASK Academy must consider information about a child's language proficiency in determining how to conduct the evaluation of the child to prevent misidentification. A child may not be determined to be a child with a disability if the determinant factor for that eligibility determination is limited English proficiency. Comparing academic achievement results of grade level peers in the ASK Academy with similar cultural and linguistic backgrounds should guide this determination process and ensure that the child is exhibiting the characteristics of a disability and not merely language difference in accordance with 34 CFR §300.306(b)(1).**

SAT Procedures for Culturally and Linguistically Diverse (CLD) Students.

It is essential for the SAT to consider the following information before making a referral for an evaluation, unless the student has an obvious disability or a serious and urgent problem:

Compiled **socio-cultural information** should suggest that socio-cultural factors are not contributing significantly to the suspected learning/behavior problem. This information may include, but is not limited to the following factors:

- Family's socio-economic status
- Level of parental education
- Experiential background (e.g., customs/celebrations, religious background, etc.)
- Length of residency in the United States (this information should include generational level of residency in the U.S. for both student and parents)
- Time spent attending an American school
- Family and student's mobility
- Birthplace of student
- Extent of sustained involvement with society or family outside of the U.S.A.
- Family composition (e.g., single-parent families, blended families, etc.)
- Ethnic identity from the student's perspective

Parent involvement and input—refers to the gathering of educational, linguistic, and cultural background information from the parents. Modes of gathering pertinent and critical student history directly from parents may include, but are not limited to, these:

- Information gathered through both formal and informal interviews
- Face-to-face discussions with parents are critical in conducting highly informative interviews
- Rating scales (including acculturation, behavioral, adaptive behavior rating scales, etc.)
- Parent observational information
- Medical history, including prenatal, birth, postnatal, milestones, and developmental information. The medical history should also include details regarding medical diagnosis, high fevers, accidents, injuries, hospitalization, etc.

Targeted interventions determined appropriate by the SAT are implemented, including appropriate multilingual instructional supports, but have not resulted in sufficient student progress. The intervention process, which is part of the Three-Tier SAT requirements in New Mexico, may include, but is not limited to, these actions:

1. Confirming the length of time spent in a highly qualified multilingual instructional setting, which may include research of the type of multilingual program where the student has been receiving educational services
2. Substantiating continuity of appropriate educational program through an appropriate length of time
3. Obtaining information pertaining to the type(s) of interventions being used in the regular classroom setting, and considering the outcome(s) of these interventions and whether they have yielded a positive or negative educational impact
4. Ensuring that appropriate multilingual instruction, such as appropriate teaching methodologies, has been implemented over time (e.g., Sheltered English, ESL instruction, dual language and maintenance programming, etc.)
5. Ensuring that instructionally sound teaching strategies designed for multilingual learners have been implemented for an appropriate length of time
6. Conducting a review of educational records and history, which includes school attendance records, grades, type(s) of instructional modes, and, possibly, early exit from multilingual programs

All **intervention information** is accurately documented and organized by the SAT for evaluation reference including these components:

1. The review of records prior to evaluation should include preliminary or initial oral language acquisition screening
2. Home Language Survey and follow-up interview with educational stakeholders concerning language proficiency
3. Review of educational record
4. Vision and hearing screenings
5. Medical history
6. Academic/behavioral concerns in regards to educational, social, and linguistic development
7. Instructional interventions attempted
8. Documented parental contacts/conferences which should include shared information in regards to schools' concern about student's academic, social, and developmental history

The SAT, and subsequently the evaluation team, must consider and address the interactions between cultural and sociolinguistic factors and a suspected disability. Many learning and behavior problems that appear to be indicative of a disabling condition may actually be the manifestation of cultural, acculturation, or sociolinguistic differences. The factors below, initially proposed by Catherine Collier, should be considered prior to referral to Tier Three of the SAT model. The foundation of appropriate assessment of students who are CLD is built upon the analysis of these key socio-cultural factors:

- Cultural and linguistic background
- Experiential background
- The stage and pattern of acculturation
- Patterns of sociolinguistic development
- Cognitive learning styles (1998)

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

The SAT will not make referrals to the NMSBVI.

Students with visual impairments that impact their education may be eligible for NMSVI Outreach or other services. A student can be referred by an agency or by the ASK Academy, or by a physician, parent or guardian. When the referral is by a physician, parent or guardian, the ASK Academy will be notified and asked to become part of the referral process. A joint powers agreement is reached between the local district/agency and NMSBVI, and an itinerant teacher is assigned to the student and does an assessment. If it is determined the student has a visual impairment that impacts his/her education, the ASK Academy will organize a team to make an individualized education plan for the student. That plan determines what kind of and how much service, if any, the student should receive from NMSBVI.

F. New Mexico School for the Deaf (NMSD)

The SAT will not make referrals to the NMSD.

Children and youth who are enrolled in public school programs, their families and their educational teams are eligible for the New Mexico School for the Deaf outreach and other services. The ASK Academy will make recommendations based on the IEP committee and current evaluations. When the referral is by a physician, parent or guardian, the ASK Academy will be notified and asked to become part of the referral process. Some services from the NMSD include certified teachers of the Deaf and Hard of Hearing providing assistance to schools, comprehensive student evaluations conducted by staff fluent in the student's mode of communication, certified in their areas of expertise and experienced in evaluating students who are Deaf or Hard of Hearing. The ASK Academy will make recommendations based on the IEP committee and current evaluations.

G. Occupational Therapy and / or Physical Therapy

The SAT may include a request for an OT/PT evaluation upon initial referral to special education. However, students already receiving special education services will receive a request for an OT/PT evaluation from the EDT or the IEP Team.

H. Related Services

Authority: 34 CFR § 300.8 Child with a disability.

(a) General.

- (1) Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.
- (2) (i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.
- (ii) If, consistent with §300.38(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(See also Chapter 5 Related Services)

I. Residential Services

The IEP committee will determine what if any services cannot be provided by The ASK Academy. All requirements for placement in the least restrictive environment will be followed by the IEP team.

Authority: 6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

B. Public agency funding and staffing.

- (3) Placement of students in private residential treatment centers, or other out of home treatment or habilitation programs, by the IEP team or by a due process decision. In no event shall a child with an IEP be allowed to remain in an out of home treatment or habilitation program for more than 10 days without receiving special education and related services. The school district in which the qualified student or school-age person lives, whether in-state or out-of-state, is responsible for the educational, nonmedical care and room and board costs of that placement.
- (a) Agreements between the resident school district of the qualified student or school-age person and a private residential treatment center must be on the form posted on the department's website or on a form otherwise approved by the department and must be reviewed and approved by the secretary of public education.
- (b) Agreements must provide for:
 - (i) student evaluations and eligibility;

- (ii) an educational program for each qualified student or school-age person that meets state standards for such programs, except that teachers employed by private schools are not required to be highly qualified;
 - (iii) the provision of special education and related services in conformance with an IEP that meets the requirements of federal and state law and applicable regulations and rules;
 - (iv) adequate classroom or other physical space that allows the school district to provide an appropriate education;
 - (v) a detailed description of the costs for the placement; and
 - (vi) an acknowledgement of the authority of the local school board and the department to conduct on-site evaluations of programs and student progress to ensure that state standards are met.
- (4) Placement of students in public residential treatment centers, or other out of home treatment or habilitation programs, by the IEP team or by a due process decision. The sending school shall be responsible for the provision of special education and related services. In no event shall a child with an IEP be allowed to remain in an out of home treatment or habilitation program for more than 10 days without receiving special education and related services.

(For more information on Public Agency Responsibility, see also Chapter 6 and 8)

J. Speech and Language Services

34 CFR § 300.8 Child with a disability.

(a) General.

(1) **Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.**

(2) (i) **Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.**

(b) See Chapter 4. – Disabilities / Exceptionalities

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(11) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, language impairment, or a voice impairment, that adversely affects a child's educational performance.

In New Mexico, speech and/or language impairments are those disorders that adversely affect a student's educational performance by interfering with or limiting the student's "ability to receive, send, process, and comprehend concepts or verbal, nonverbal, and graphic symbol systems." Speech and language impairments may be exhibited as disorders ranging from mild to severe and may be developmental or acquired. A speech-language impairment is to be differentiated from a speech-language difference which may be due to bilingualism, dialectical or cultural differences in language use, or being non-English dominant. A communication difference/dialect is a variation of a communication system used by a group of individuals that reflects and is determined by shared regional, social, or cultural/ethnic factors and should not be considered a disorder of speech or language.

Careful consideration must be given by the SAT committee that the student's speech or language is not a communication difference. Those students will not be eligible for special education in the area of speech or language.

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 2. - PROCEDURAL SAFEGUARDS

Date Chapter 2. Adopted by Governing Body: 6/12/14
Date Chapter 2. Reviewed by Governing Body: 09/13/18
Date Chapter 2. First Revision: 07/15/14

Chapter 2. - PROCEDURAL SAFEGUARDS

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Chapter 2 - PROCEDURAL SAFEGUARDS

I. PROCEDURAL SAFEGUARDS NOTICE

Authority: 34 CFR §300.504 Procedural safeguards notice.

- (a) **General.** A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only 1 time a school year, except that a copy also must be given to the parents--
- (1) Upon initial referral or parent request for evaluation;
 - (2) Upon receipt of the first State complaint under §§300.151 through 300.153 or a due process complaint under §300.507 in a school year; and
 - (3) In accordance with the discipline procedures in §300.530(h); and
 - (4) Upon request by a parent.

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

D. Notice requirements

- (3) Notice of procedural safeguards. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, only one time a school year, except that a copy must be given to the parents,
- (a) upon initial referral for evaluation;
 - (b) upon receipt of the first state complaint under 34 CFR §§300.151-300.153;
 - (c) upon receipt of the first due process complaint under 34 CFR Sec. 300.507 of the school year;
 - (d) in accordance with the discipline procedures in 34 CFR §§300.530(h); and
 - (e) upon request of the parents. The notice must meet all requirements of 34 CFR §300.504, including the requirement to inform the parents of their obligation under 34 CFR §300.148 to notify the public agency if they intend to enroll the child in a private school or facility and seek reimbursement from the public agency. The public agency may place a current copy of the procedural safeguards notice on its internet website if a website exists.

The public agency will provide the procedural safeguards to each parent of a child with a disability 1 time per year at the annual IEP Team meeting. A copy will also be given as described above.

- (b) **Internet Website.** The public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.
- (c) **Contents.** The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under 34 CFR §300.148, §§300.151 through 300.153, §300.300, §§300.502 through 300.503, §§300.505 through 300.518, §300.520, §§300.530 through 300.536, and §§300.610 through 300.625 relating to-
- (1) Independent educational evaluations;
 - (2) Prior written notice;
 - (3) Parental consent;
 - (4) Access to education records;
 - (5) Opportunity to present and resolve complaints through the due process complaint or State complaint procedures, including--
 - (i) The time period in which to file a complaint;
 - (ii) The opportunity for the agency to resolve the complaint; and
 - (iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
 - (6) The availability of mediation;
 - (7) The child's placement during the pendency of any due process complaint;
 - (8) Procedures for students who are subject to placement in an interim alternative educational setting;
 - (9) Requirements for unilateral placement by parents of children in private schools at public expense;
 - (10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;

- (11) State-level appeals (if applicable in that State);
- (12) Civil actions, including the time period in which to file those actions; and
- (13) Attorneys' fees.

- (d) **Notice in understandable language.** The notice required under paragraph (a) of this section must meet the requirements of §300.503(c). *(found in Section II below)*

Authority: 34 CFR §300.29 Native language.

- (a) **Native language**, when used with respect to an individual who is limited English proficient, means the following:
 - (1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.
 - (2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.
- (b) **For an individual with deafness or blindness**, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

The native language information may be found in the student's cumulative folder which includes the public agency enrollment information. Upon enrollment, parents complete the home language portion which states the language most frequently spoken by the parents in the student's home.

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

D. Notice requirements

- (3) Notice of procedural safeguards. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, only one time a school year, except that a copy must be given to the parents,
 - (a) upon initial referral for evaluation;
 - (b) upon receipt of the first state complaint under 34 CFR §§300.151-300.153;
 - (c) upon receipt of the first due process complaint under 34 CFR Sec. §300.507 of the school year;
 - (d) in accordance with the discipline procedures in 34 CFR §300.530(h); and
 - (e) upon request of the parents. The notice must meet all requirements of 34 CFR §300.504, including the requirement to inform the parents of their obligation under 34 CFR Sec. 300.148 to notify the public agency if they intend to enroll the child in a private school or facility and seek reimbursement from the public agency. The public agency may place a current copy of the procedural safeguards notice on its internet website if a website exists.

E. Communications in understandable language.

Pursuant to 34 CFR §§300.9(a), 300.322(e), 300.503(c) and 300.504(d), the public agency must communicate with parents in understandable language, including the parent's native language or other mode of communication, unless it is clearly not feasible to do so, if necessary for understanding, in IEP meetings, in written notices and in obtaining consent where consent is required.

II. PRIOR WRITTEN NOTICE

Authority: 34 CFR §300.503 Prior notice by The ASK Academy; content of notice.

- (a) **Notice.** Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a **reasonable time** before the public agency--
 - (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
 - (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(Written notice within a "Reasonable Time" is defined on the next page.)

- (b) **Content of notice.** The notice required under paragraph (a) of this section must include--
- (1) A description of the action proposed or refused by the agency;
 - (2) An explanation of why the agency proposes or refuses to take the action;
 - (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
 - (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
 - (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;
 - (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
 - (7) A description of other factors that is relevant to the agency's proposal or refusal.

The regulation §300.503 is required for all Notices including:

- *Notice of Evaluation and*
- *Notice of Proposal or Notice of Refusal.*

Prior Written Notice forms will contain the required information listed above. All required areas will be addressed by staff when completing the appropriate Prior Written Notice form.

The Invitation to the IEP meeting requirements are described in IV. Parent Participation.

(c) **Notice in understandable language.**

- (1) The notice required under paragraph (a) of this section must be--
 - (i) Written in language understandable to the general public; and
 - (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- (2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure--
 - (i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
 - (ii) That the parent understands the content of the notice; and
 - (iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

E. Communications in understandable language. Pursuant to 34 CFR §§300.9(a), 300.322(e), 300.503(c) and 300.504(d), the public agency must communicate with parents in understandable language, including the parent's native language or other mode of communication, unless it is clearly not feasible to do so, if necessary for understanding, in IEP meetings, in written notices and in obtaining consent where consent is required.

The native language information may be found in the student's cumulative folder which includes the public agency enrollment information. Upon enrollment, parents complete the home language portion which states the language most frequently spoken by the parents in the student's home.

Authority: 34 CFR §300.505 Electronic mail.

A parent of a child with a disability may elect to receive notices required by §§300.503 (*Prior Written Notice*), 300.504 (*Proc. Safeguards/Notice*), and 300.508 (*Due Process complaints*) by electronic mail communication option available.

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS

D. Evaluations and reevaluations

- (2) (d) Procedures for conducting evaluations and reevaluations:
 - (i) the public agency must provide notice to the parents of a child with a disability that describes any evaluation procedures the agency proposes to conduct in compliance with 34 CFR §300.503.

Timeline for Notice (Reasonable Time)

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

D. Notice requirements.

- (1) Notice of meetings. The public agency shall provide the parents of a child with a disability with advance written notice that complies with 34 CFR §300.322 for IEP meetings and any other meetings in which the parent has a right to participate pursuant to 34 CFR §300.501.
- (2) Notice of agency actions proposed or refused. The ASK Academy must give written notice that meets the requirements of 34 CFR §300.503 to the parents of a child with a disability a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child. If the notice relates to a proposed action that also requires parental consent under 34 CFR §300.300, the agency may give notice at the same time it requests parental consent.
"Reasonable time" required for the written notice to parents under 34 CFR §300.503(a) is defined as at least five school days, unless the parents agree otherwise.
- (3) Notice of procedural safeguards. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, only one time a school year, except that a copy must be given to the parents,
 - (a) upon initial referral for evaluation;
 - (b) upon receipt of the first state complaint under 34 CFR §§300.151-300.153;
 - (c) upon receipt of the first due process complaint under 34 CFR §300.507 of the school year;
 - (d) in accordance with the discipline procedures in 34 CFR §300.530(h); and
 - (e) upon request of the parents. The notice must meet all requirements of 34 CFR §300.504, including the requirement to inform the parents of their obligation under 34 CFR §300.148 to notify the public agency if they intend to enroll the child in a private school or facility and seek reimbursement from the public agency. The public agency may place a current copy of the procedural safeguards notice on its internet website if a website exists.

III. CONSENT

Authority: 34 CFR §300.9 Consent. **Consent** means that--

- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
- (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- (c)
 - (1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.
 - (2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

The native language information may be found in the student's cumulative folder which includes the public agency enrollment information. Upon enrollment, parents complete the home language portion which states the language most frequently spoken by the parents in the student's home.

Authority: 34 CFR §300.300 Parental consent.

(a) Parental consent for initial evaluation.

- (1)
 - (i) If the public agency is proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8 must after providing notice consistent with §§300.503 and 300.504, obtain informed consent from the parent of the child before conducting the evaluation.
 - (ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

- (iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.
- (2) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if--
 - (i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;
 - (ii) The rights of the parents of the child have been terminated in accordance with New Mexico law; or
 - (iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with New Mexico law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.
- (3) (i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.
- (ii) The public agency does not violate its obligation under §§300.111 and 300.301 through §§300.311 if it declines to pursue the evaluation.

Reasonable Efforts Initial Evaluation: Minimum 3 Attempts Providing the Notice of Evaluation to Obtain Consent for Evaluation and the Consent for Evaluation forms.

In accordance with State and Federal requirements, the public agency will notify parents and make reasonable efforts to obtain Consent. After the first written Notice of Evaluation and Consent for Evaluation is provided, if the parent does not respond, the public agency will document and send a second written Notice of Evaluation and Consent for Evaluation. Again, if the parent still does not respond, a third Notice of Evaluation and Consent for Evaluation will be sent in an attempt to get parental informed Consent. After three attempts the public agency may, but is not required to pursue due process described above. Contact the Special Education Administrator to discuss options and documentation. The first attempt MUST be in written form, the second should also be in writing and the third may be a documented follow-up phone call. Detailed records of phone calls made or attempted and the results must be documented on the written Invitation form, including 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.

(b) Parental consent for services.

- (1) A public agency (public agency) that is responsible for making FAPE available to a child with a disability must seek to obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.
 - (2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.
 - (3) If the parent of a child fails to respond or refuses to consent to services under paragraph (b)(1) of this section, the public agency may not use the procedures in Subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child.
 - (4) If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency--
 - (i) Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the public agency requests consent; and
 - (ii) Is not required to convene an IEP Team meeting or develop an IEP for the child under §300.300 for the special education and related services for which the public agency requests such consent.
- If the public agency campus staff is aware that the parent does not intend on giving consent for services, contact the Special Education Department administrator to assure appropriate documentation of FAPE is planned and offered in the IEP meeting. If campus staff is aware and the parent refuses in the IEP*

meeting, contact the Special Education Department administrator after the IEP meeting to assure all efforts are exhausted.

Reasonable Efforts – Consent for Initial Services: Minimum 3 Attempts Providing the Notice of Proposal to Provide Services and the Consent for Services forms.

In accordance with State and Federal requirements, the public agency will notify parents and make reasonable efforts to obtain Consent. After the first written Notice of Proposal to Provide Services and Consent for Services is provided, if the parent does not respond, the public agency will document and send a second written Notice of Proposal to Provide Services and Consent for Services. Again, if the parent still does not respond, a third Notice of Proposal to Provide Services and Consent for Services will be sent in an attempt to get parental informed Consent. After three attempts the public agency may NOT use due process procedures to obtain Consent for Services. Contact the Special Education Administrator to discuss options and documentation of FAPE. The first attempt MUST be in written form, the second should also be in writing and the third may be a documented follow-up phone call. Detailed records of phone calls made or attempted and the results must be documented on the written Invitation form, including 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.

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

F. Parental consent.

- (1) Informed parental consent as defined in 34 CFR §300.9 must be obtained in compliance with 34 CFR §300.300 before
 - (a) conducting an initial evaluation or reevaluation; and
 - (b) initial provision of special education and related services to a child with a disability. Consent for initial evaluation must not be construed as consent for initial provision of special education and related services. If parental consent is not provided for the initial evaluation or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the due process and mediation procedures in Subsection I of 6.31.2.13 NMAC.
- (2) Pursuant to 34 CFR §300.300(d)(1), parental consent is not required before (a) reviewing existing data as part of an evaluation or a reevaluation; or (b) administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.
- (3) Pursuant to 34 CFR §300.300(b), if the parents of a child with a disability refuse consent for the initial provision of special education and related services, the public agency may not use the due process and mediation procedures in Subsection I of 6.31.2.13 NMAC in order to obtain agreement or a ruling that the services may be provided to the child. If the parent refuses consent or fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency will not be considered to be in violation of the requirement to make FAPE available to the child and is not required to convene an IEP team meeting or develop an IEP under 34 CFR §§300.320 and 300.324. All provisions of 34 CFR §300.300 must be followed with respect to parental consent.
- (4) Pursuant to 34 CFR §300.300(c)(2), informed parental consent need not be obtained for reevaluation if the public agency can demonstrate that it has taken reasonable measures to obtain that consent by using procedures consistent with those in 34 CFR §300.322(d) and the child's parent has failed to respond.
- (5) Pursuant to 34 CFR §300.300(d)(3), the public agency may not use a parent's refusal to consent to one service or activity for which consent is required to deny the parent or child any other service, benefit or activity of the public agency, except as required by 34 CFR Part 300.

(c) Parental consent for reevaluations. and NMAC 6.31.2.13 F. (4)

- (1) Subject to paragraph (c)(2) of this section, the public agency
 - (i) Must obtain informed parental consent, in accordance with §300.300(a)(1), prior to conducting any reevaluation of a child with a disability.
 - (ii) If the parent refuses to consent to the reevaluation the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.
 - (iii) The public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.

- (2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that--
- (i) It made reasonable efforts to obtain such consent; and
 - (ii) The child's parent has failed to respond.

Reasonable Efforts: Minimum 3 Attempts Providing the Notice of Evaluation to Obtain Consent for Reevaluation and the Consent for Evaluation forms.

In accordance with State and Federal requirements, the public agency will notify parents and make reasonable efforts to obtain Consent. After the first written Notice of Reevaluation and Consent for Evaluation is provided, if the parent does not respond, the public agency will document and send a second written Notice of Reevaluation and Consent for Evaluation. Again, if the parent still does not respond, a third Notice of Reevaluation and Consent for Evaluation will be sent in an attempt to get parental informed Consent. After three attempts and no response, the public agency may go forward with the reevaluation. The first attempt MUST be in written form, the second should also be in writing and the third may be a documented 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 results. All dates and personnel initials must be documented in writing.

(d) Other consent requirements, and NMAC 6.31.2.13 F. (2) (5)

- (1) Parental consent is not required before -
 - (i) Reviewing existing data as part of an evaluation or a reevaluation; or
 - (ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.
- (2) In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.
- (3) The public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a) and (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.
- (4) (i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of the section); and
 - (ii) The public agency is not required to consider the child as eligible for services under §§300.132 through 300.144.
- (5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in §300.322(d) – (Parent Participation section).

Release of Records

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

L. (3) Transfer of student records

- (a) Pursuant to 34 CFR Sec. 99.31(a)(2), an educational agency may transfer child records without parental consent when requested by another educational agency in which a child seeks or intends to enroll as long as the sending agency has included the proper notification that it will do so in its required annual FERPA notice to children and parents. In view of the importance of uninterrupted educational services to children with disabilities, each New Mexico public agency is hereby directed to include such language in its **annual FERPA notice** and to ensure that it promptly honors each proper request for records from an educational agency that has become responsible for serving a child with a disability.
- (b) State-supported educational programs and the educational programs of juvenile or adult detention or correctional facilities are educational agencies for purposes of the Family Educational Rights and Privacy Act (FERPA) and are entitled to request and receive educational records on children with disabilities on the same basis as local school districts. Public agencies shall promptly honor requests

for records to assist such programs in providing appropriate services to children within their educational jurisdiction.

- (c) Pursuant to 34 CFR §99.34(b), an educational agency that is authorized to transfer student records to another educational agency without parental consent under §99.31(a)(2) may properly transfer to the receiving agency all educational records the sending agency maintains on a child, including medical, psychological and other types of diagnostic and service information which the agency obtained from outside sources and used in making or implementing educational programming decisions for the child.
- (d) Pursuant to Paragraph (3) of Subsection E of 6.29.1.9 NMAC, 34 CFR §300.229 and the federal No Child Left Behind Act at 20 USC 7165, any transfer of educational records to a private or public elementary or secondary school in which a child with disabilities seeks, intends, or is instructed to enroll must include the following:
 - (i) transcripts and copies of all pertinent records as normally transferred for all students;
 - (ii) the child's current individualized education program with all supporting documentation, including the most recent multidisciplinary evaluations and any related medical, psychological or other diagnostic or service information that was consulted in developing the IEP; and
 - (iii) disciplinary records with respect to current or previous suspensions or expulsions of the child.
- (4) Parental refusals of consent for release of information. If parental consent is required for a particular release of information regarding a child with a disability and the parent refuses consent, the sending or receiving public agency may use the impartial due process hearing procedures specified in Subsection I of 6.31.2.13 NMAC to determine if the information may be released without parental consent. If the hearing officer determines that the proposed release of information is reasonably necessary to enable one or more public agencies to fulfill their educational responsibilities toward the child, the information may be released without the parent's consent. The hearing officer's decision in such a case shall be final and not subject to further administrative review.

34 CFR §99.31 FERPA – Family Educational Rights and Privacy Act

Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without parental consent, to the following parties or under the following conditions:

34 CFR § 99.31 FERPA:

- School officials with legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific State law.

Parental Consent to Release records will be obtained in all other instances not described above.

See also section V. Confidentiality and Consent for Disclosure of Records §300.622 on page 18.

Authority: 34 CFR §300.154. Methods of ensuring services.

(d) Children with disabilities who are covered by public benefits or insurance.

- (1) The public agency 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 public agency--
 - (i), (ii), and (iii) are found in Chapter 8 - General Administration
 - (iv) (A) Must obtain parental consent consistent with §300.9 each time that access to public benefits or insurance is sought; and

- (B) Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

Medicaid Services

The public agency will meet the parental consent requirement in section 300.154 by obtaining one parent's signed consent that:

- 1) specifies the number of times the school will access Medicaid benefits over a definite period of time, such as a semester or school year, and
 - 2) meets requirements for informed parental consent in section §300.9 on previous pages.
- Parents should be fully informed regarding the purpose of the consent consistent with federal regulations. In this case, fully informing parents should include an explanation that the school may not:
- 1) require parents to incur out-of-pocket expenses or sign up for public benefits in order for their child to receive services,
 - 2) use benefits that would decrease a child's lifetime coverage or result in the family paying for services that would otherwise be covered, or
 - 3) use benefits if that use would increase premiums, lead to the discontinuation of benefits or risk loss of eligibility for home and community-based waivers as described in section 300.154. A new consent should be sought at least every school year and may occur at the student's annual IEP meeting.

IV. PARENT PARTICIPATION IN MEETINGS *(also in Chapter 5.1-IEP)*

Authority: 34 CFR §300.30 Parent.

(a) Parent means--

- (1) A biological or adoptive parent of a child;
 - (2) A foster parent, unless State law, regulations or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
 - (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
 - (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
 - (5) A surrogate parent who has been appointed in accordance with §300.519 or §639(a)(5) of the Act.
- (b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.
- (2) If a judicial decree or order identifies a specific person or persons under paragraph (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section, except that a public agency that provides education or care for the child may not act as the parent. (Authority: 20 USC 1401(23))

Authority: NMAC 6.31.2.7

B. Terms.

- (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.)

Authority: 34 CFR §300.45 Ward of the State.

- (a) **General.** Subject to paragraph (b) of this section, **ward of the State** means a child who, as determined by the State where the child resides, is--
- (1) A foster child;
 - (2) A ward of the State; or§
 - (3) In the custody of a public child welfare agency.
- (b) **Exception.** Ward of the State does not include a foster child who has a foster parent who meets the definition of a **parent** in §300.30.

Authority: 34 CFR §300.322 Parent Participation.

- (a) **The public agency 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**.

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

In accordance with State and Federal requirements, the public agency 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 public agency 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 public agency 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, including 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.

- (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 public agency 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).
 - (d) **Conducting an IEP meeting without a parent in attendance.** A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency 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.
- (e) Use of interpreters or other action, as appropriate. The public agency 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 with deafness or whose native language is other than English.
- (f) Parent copy of child's IEP. The public agency must give the parent a copy of the child's IEP at no cost to the parent.

Authority: 34 CFR §300.321 IEP Team Attendance.

- (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: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

- C. Parent and student participation in meetings. The public agency shall afford the parents of a child with a disability and, as appropriate, the child, an opportunity to participate in meetings with respect to the identification, evaluation and educational placement or the provision of FAPE to the child, in compliance with 34 CFR §§300.322, 300.501(b) and (c), and any other applicable requirements of these or other department rules and standards.

Authority: 34 CFR §300.501 Parent participation in meetings.

- (a) **Opportunity to examine records.** The parents of a child with a disability must be afforded, in accordance with the procedures of §§300.613 through 300.621, an opportunity to inspect and review all education records with respect to--
 - (1) The identification, evaluation, and educational placement of the child; and
 - (2) The provision of FAPE to the child.
- (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 public agency 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 public agency 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 public agency 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 public agency 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 public agency must use procedures consistent with the procedures described in §300.322(a) through (b)(1).
 - (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 public agency 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 public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

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

In accordance with State and Federal requirements, the public agency 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 public agency 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 public agency 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; 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.

Written Notice of Proposal will be provided to the parent who was not in attendance or not participating via conference telephone calls, or video conferencing explaining the placement decision and providing person's name and phone number to contact at the school and an opportunity to schedule an IEP meeting.

Mandatory Medications

Authority: 34 CFR §300.174 Prohibition on mandatory medication.

- (a) **General.** The NMPED must prohibit State and the public agency personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 USC 812(c)) for a child as a condition of attending school, receiving an evaluation under §§300.300 through 300.311, or receiving services under this part.
- (b) **Rule of construction.** Nothing in paragraph (a) of this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under §300.111 (related to child find).

Authority: NMAC 6.31.2.9 Public Agency Responsibilities

- J. Prohibition on mandatory medication. Each LEA and other public agencies serving students with disabilities are prohibited from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 USC 812(c)) for a student as a condition of attending school, receiving an evaluation under 34 CFR §§300.300 through 300.311, or receiving services under Part B of the IDEA. This prohibition shall be construed as provided in 34 CFR §300.174(b).
[6.31.2.9 NMAC - Rp, 6.31.2.9 NMAC, 6/29/07; A, 12/31/09; A, 7/29/11]

1. At no time, and in no way, will the public agency personnel state or suggest that a student with a disability or a suspected disability must obtain a prescribed medication that is covered by the *Controlled Substances Act* before that student may attend school, return to school, receive an evaluation for a suspected disability or receive special education and related services.
2. The public agency personnel may consult with parents or guardians about school-based observations involving a student's academic, functional, and behavioral performance in the classroom or school, or regarding the need for an evaluation for special education and related services under the agency's child find obligations. *Observations* must be concrete and fact-based, and may not include *opinions* about how a particular medication may or could affect a student.
3. Nothing in the IDEA 2004 prohibits the public agency from administering medications at school to a student with a disability or a suspected disability, upon parental consent, provided the medication is maintained and dispensed according to applicable federal and state laws, rules, and guidelines for the administration of medication of the schools.

Transfer of Rights at Age 18

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 Sections 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 public agency 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 public agency 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 16 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.

V. CONFIDENTIALITY OF STUDENT INFORMATION

Authority: 34 CFR §300.610 Confidentiality.

The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by the NMPED and the public agency pursuant to Part B of the Act, and consistent with §§300.611 through 300.627.

Authority: 34 CFR §300.611 Definitions and NMAC 6.31.2.13 L (6)(a)

As used in §§300.611 through 300.625--

- (a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- (b) Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g (FERPA)).
- (c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.

34 CFR §300.32 Personally identifiable. Personally identifiable means information that contains--

- (a) The name of the child, the child's parent, or other family member;
- (b) The address of the child;
- (c) A personal identifier, such as the child's social security number or student number; or
- (d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

34 CFR §300.612 Notice to parents.

- (a) The NMPED must give notice that is adequate to fully inform parents about the requirements of §300.123, including--
 - (1) A description of the extent that the notice is given in the native languages of the various population groups in the State;
 - (2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
 - (3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

- (4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR Part 99.
- (b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

34 CFR §300.613 Access rights and NMAC 6.31.2 B. Examination of Records

- (a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §300.507 or §§300.530 through 300.532, or resolution session pursuant to §300.510, and in no case more than 45 days after the request has been made.
- (b) The right to inspect and review education records under this section includes--
 - (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
 - (2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
 - (3) The right to have a representative of the parent inspect and review the records.
- (c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

Authority: 34 CFR §300.614 Record of access.

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

1. *The public agency will maintain a record, kept with the eligibility file of each student, that indicates all individuals, agencies or organizations that have requested or obtained access to a student's educational records collected, maintained or used under IDEA Part B (except access by parents and authorized employees of the public agency).*

The records shall include:

- a. *at least the name of the person or agency that made the request,*
- b. *the date access was given, and*
- c. *the purpose for which the person or agency is authorized to use the records.*
 - *If parts of the student eligibility folder are maintained in classrooms, access records are required if the folder contains information such as an IEP report, modification sheet(s), or any assessment reports.*
2. *The record of access will be maintained as long as the public agency maintains the student's education record. The record of access shall be available only to parents, school officials responsible for custody of the records, and those state and federal officials authorized to audit the operation of the system.*
3. *Access Procedures: The cumulative record and special education legal folder shall be made available to the parent. Records may be reviewed during regular school hours upon request to the appropriate record custodian. The record custodian or designee shall be present to explain the record and to answer questions. The confidential nature of the student's records shall be maintained at all times, and the records shall be restricted to use only in the offices of the Superintendent, a principal, a counselor, or Special Education as designated by the appropriate record custodian. The original copy of the record or any document contained in the cumulative record shall not be removed from the school or the Special Education office.*

Authority: 34 CFR §300.615 Records on more than one child.

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

Authority: 34 CFR §300.616 List of types and locations of information.

The public agency will provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency. *This information may be provided by the campus principal.*

Authority: 34 CFR §300.617 Fees.

- (a) The public agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.
- (b) A participating agency may not charge a fee to search for or to retrieve information under this part. *No fee may be charged to search for or to retrieve the education record of a student. A fee of \$0.10 (10¢) per page may be charged for copies of education records that are made for the parents or students under this procedure, provided that the fee does not effectively prevent them from exercising their right to inspect and review those records. A waiver of fee should be requested in writing. No fee will be charged to search for, or to retrieve, information.*

Authority: 34 CFR §300.618 Amendment of records at parent's request.

- (a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.
- (b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
- (c) If the public agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §300.619.

Authority: 34 CFR §300.619 Opportunity for a hearing.

The public agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

Authority: 34 CFR §300.620 Result of hearing.

- (a) If, as a result of the hearing, the public agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.
- (b) If, as a result of the hearing, the public agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the public agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.
- (c) Any explanation placed in the records of the child under this section must—
 - (1) Be maintained by the public agency as part of the records of the child as long as the record or contested portion is maintained by the public agency; and
 - (2) If the child's records, or the contested portion, are disclosed by the public agency to any party, the explanation must also be disclosed to the party.

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

L. Confidentiality of information

- (2) Parental rights to inspect, review and request amendment of education records. The public agency shall permit parents or their authorized representatives to inspect and review any education records relating to their children that are collected, maintained or used by the agency under Part B of the IDEA pursuant to 34 CFR §300.613. A parent who believes that information in the education records is inaccurate or misleading or violates the privacy or other rights of the child may request the agency that maintains the information to amend the information pursuant to 34 CFR §300.618 and shall have the opportunity for a hearing on that request pursuant to 34 CFR §300.619-300.621 and 34 CFR §99.22.

Authority: 34 CFR §300.621 Hearing procedures.

A hearing held under §300.619 must be conducted according to the procedures under 34 CFR §99.22. (FERPA)

Authority: 34 CFR §300.622 Consent.

- (a) Parental consent must be obtained before **personally identifiable information** is disclosed to parties other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b)(1) of this section unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99 (*FERPA*).
- (b)
 - (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.
 - (2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying the transition services in accordance with §300.321(b)(3).
 - (3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

Authority: 34 CFR §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.

Authority: 34 CFR §300.623 Safeguards.

- (a) The public agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
- (b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.
Custodian of Records: Unless otherwise specified in board policy, the principal is custodian of all records for currently enrolled students at the assigned school. The superintendent is the custodian of records for students who have withdrawn or graduated. The special education director is custodian of all special education records.
- (c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.123 and 34 CFR Part 99.
Campus principal will annually train all new and returning campus staff on personally identifiable information. As new staff is employed throughout the school year, the training will be provided. The special education director is responsible for training all central office special education staff. Documentation of the date and persons attending training will be maintained by the campus principal and the special education director.
- (d) The public agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.
Each local campus will have a listing of all personnel trained in confidentiality of student records and those who have access to the student records.

Authority: 34 CFR §300.624 Destruction of information.

- (a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.
- (b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

The public agency will provide notice when records are going to be destroyed and provide an opportunity for the records to be acquired prior to destruction by the adult student or parent/guardian.

Authority: NMAC §6.31.2.13 Additional Rights of Parents, Students and Public Agencies

L. Confidentiality of information

(5) Destruction of information.

- (a) Pursuant to 34 CFR §300.624, the public agency shall inform parents when personally identifiable information collected, maintained, or used under 34 CFR Part 300 is no longer needed to provide educational services to the child. As at other times, the parents shall have the right to inspect and review all educational records pertaining to their child pursuant to 34 CFR §300.613. The information must be destroyed at the request of the parents or, at their option the records must be given to the parents. When informing parents about their rights to destruction of personally identifiable records under these rules, the public agency should advise them that the records may be needed by the child or the parents for social security benefits and other purposes.
- (b) If the parents do not request the destruction of personally identifiable information about their children, the public agency may retain that information permanently. In either event, a permanent record of a student's name, address and phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. Additional information that is not related to the student's IDEA services may be maintained if allowed under 34 CFR Part 99.

(6) Educational records retention and disposition schedules.

- (a) Definitions as used in this paragraph:
 - (i) "Destruction" means physical destruction or removal of personal identifiers from educational records so that the information is no longer personally identifiable; and
 - (ii) "Educational records" means the type of records covered under the definition of "educational records" in 34 CFR Part 99 of the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g (FERPA).
- (b) Pursuant to 1.20.2.102 NMAC, the public agency must notify the parents that the public agency must retain specific information for five years to include:
 - (i) most recent IEP;
 - (ii) most recent 2-year child progress reports or referral form;
 - (iii) related services reports;
 - (iv) summary of academic achievement and functional performance;
 - (v) parent communication;
 - (vi) agency community action;
 - (vii) writing sample; and
 - (viii) staff reports on behavior.
- (c) Federal regulation and department rules require public agencies to inform parents of proposed destruction of special education records (34 CFR §300.624).
- (d) Pursuant to 34 CFR §300.624, the information must be destroyed at the request of the parents. However, a permanent record of a child's name, address and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limit. Notice of destruction of child records must include:
 - (i) informing parents at the last IEP meeting of personally identifiable information that is no longer needed to provide special education and related service and information that must be retained according to the state for five years under 1.20.1.102 NMAC;
 - (ii) documentation at the last IEP meeting and prior written notice of the information that is required to be maintained indefinitely;
 - (iii) documentation at the last IEP meeting and the prior written notice that the parent accepted or rejected the proposed action to maintain records;
 - (iv) if the parent requests that the agency destroy information not required indefinitely, the public agency must maintain the last IEP and prior written notice that states the parent required the public agency to destroy allowable information that must be maintained for 5 years; and
 - (v) the public agency must inform the parents of the proposed date of destruction of records at the last IEP meeting and document on the prior written notice of action the proposed date of destruction of records.

VI. SURROGATE / FOSTER PARENT

Authority: 34 CFR §300.30 Parent. – *As defined under IV. Parent Participation.*

Authority: NMAC 6.31.2.7 B(15) Parent. – *As defined under IV. Parent Participation.*

Authority: 34 CFR §300.45 Ward of the State.

- (a) **General.** Subject to paragraph (b) of this section, **ward of the State** means a child who, as determined by the State where the child resides, is--
- (1) A foster child;
 - (2) A ward of the State; or
 - (3) In the custody of a public child welfare agency.
- (b) **Exception.** Ward of the State does not include a foster child who has a foster parent who meets the definition of a **parent** in §300.30.

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

- J. Surrogate parents and foster parents
- (1) The public agency shall ensure that a qualified surrogate parent is appointed in compliance with 34 CFR §300.519 when needed to protect the rights of a child with a disability who is within the agency's educational jurisdiction. A surrogate parent need not be appointed if a person who qualifies as a parent under 34 CFR §300.30(b) and Paragraph (14) of Subsection B of 6.31.2.7 NMAC can be identified.
 - (2) A foster parent who meets all requirements of 34 CFR §300.30 may be treated as the child's parent pursuant to that regulation. A foster parent who does not meet those requirements, but meets all requirements of 34 CFR §300.519, may be appointed as a surrogate parent if public agency who that is responsible for the appointment deems such action appropriate.
 - (3) Pursuant to 34 CFR §300.519, a surrogate parent may represent the child in all matters relating to the identification, evaluation and educational placement of the child and the provision of FAPE to the child.

Authority: 34 CFR §300.519 Surrogate parents – criteria.

- (a) **General.** The ASK Academy must ensure that the rights of a child are protected when--
- (1) No parent (as defined in §300.30) can be identified;
 - (2) The public agency, after reasonable efforts, cannot locate a parent;
 - (3) The child is a ward of the State under the laws of New Mexico; or
 - (4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 USC 11434a(6)). (*see Chapter 8. General Administration*)
- (b) **Wards of the State.** In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.
- (c) **Unaccompanied homeless youth.** In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates without regard to paragraph (d)(2)(i) of this section, until a surrogate can be appointed that meets all of the requirements of paragraph (d) of this section.
- (d) **Surrogate parent responsibilities.** The surrogate parent may represent the child in all matters relating to-
- (1) the identification, evaluation, and educational placement of the child; and
 - (2) the provision of FAPE to the child.

VII. INDEPENDENT EDUCATIONAL EVALUATION (IEE)

34 CFR §300.502 Independent educational evaluation.

- (a) **General.**
- (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

- (2) The public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.

Information on where an IEE may be obtained will be provided to parents on request. A list of individuals who can provide an IEE is available from the Special Education Office. The district criteria (State/Federal requirements) applicable for all evaluations (Chapter 3-Evaluation and Chapter 4 of this document) must also be followed for the IEE. See Evaluator Requirements found below.

- (3) For the purposes of this subpart--

- (i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and
- (ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §300.103.

- (b) Parent right to evaluation at public expense.

- (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.
- (2) If a parent requests an independent educational evaluation at public expense, The ASK Academy must, without unnecessary delay, either--
 - (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or
 - (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

If the parent requests an IEE from any staff member or campus principal, the parent will be provided the name and phone number of the Special Education Director and asked to notify that administrator immediately so that proper steps may be taken to address their request for an IEE. The Special Education Director, in consultation with appropriate public agency staff, will determine whether to pay for the IEE or file for a due process hearing.

- (3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the public agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.
- (4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.
- (5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

If the parent requests an IEE during an IEP meeting, the minutes will document that the parent was asked to provide reasons why they objected to the public agency evaluation. If the parent does not provide any specific reason, that also will be documented in the minutes.

- (c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at private expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation--
 - (1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and
 - (2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.
- (d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.
- (e) Agency criteria.
 - (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be

the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

- (2) Except for the criteria described in paragraph (e)(1) of this section, the public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. (Authority: 20 USC 1415(b)(1) and (d)(2)(A))

EVALUATOR REQUIREMENTS

- *The independent examiner will have the same qualifications as the public agency assessment personnel (e.g., psychologist, associate psychologist, or educational diagnostician), as required by New Mexico law and also described in Chapter 8- General Administration)*
- *The evaluation will be conducted in the school building to which the student is assigned, unless clearly not feasible.*
- *The independent examiner will have access to the student's cumulative folder and special education folders in gathering information about the student.*
- *The independent examiner may meet with the school IEP Team to gather information about a student prior to the assessment and to share information following the assessment.*
- *The independent examiner will follow federal and state assessment regulations and rules, reporting requirements and established eligibility criteria for the diagnosis of students with disabilities.*
- *The independent evaluation may be restricted to one assessment area upon mutual agreement by the public agency and parent.*
- *The evaluator must be located within a 200 mile radius of the public agency. This will allow the evaluator access to the public school for observation of the student and access to the IEP meetings.*
- *The evaluator must provide information in the same timely manner as required by public agency personnel, including an original typed report to the public agency within 30 calendar days from the date that an IEE is approved by the public agency and 5 days prior to the IEP meeting. The report must address the public agency format (which will be provided to the evaluator) for assessment and eligibility. Protocols must be available for review and the report must include an original signature and title of all assessment personnel involved in the evaluation. The report must comply with all requirements of state and federal regulations.*

Steps to Follow for Parent to Request an IEE at Public Expense:

1. *Parent should request an IEP Team meeting to discuss evaluation concerns and allow for possible resolution during the IEP meeting.*
2. *Make request to the IEP Team for action.*
3. *Request IEE as soon as possible but no later than six months following the public agency evaluation in question.*
4. *Specify areas of disagreement with the public agency's evaluation and list assessment questions to be addressed by IEE.*
5. *Provide name of evaluator to allow the public agency to:*
 - a. *check certification/license of evaluator and*
 - b. *contract directly with the evaluator.*
6. *Review all Evaluator Requirements listed above.*
7. *If the parent requests an IEE from any staff member or campus principal outside of an IEP Team meeting, the parent will be provided the name and phone number of the Special Education Director and asked to notify that administrator immediately so that proper steps may be taken to address their request for an IEE. The Special Education Director, in consultation with appropriate public agency staff, will determine whether to pay for the IEE or file for a due process hearing.*

Reimbursement or Payment

Reimbursement/payment will be made directly to evaluator upon receipt of IEE which meets all of the public agency's assessment criteria. Parents obtaining an IEE without following these procedures will risk non-payment. Whenever an IEE is at public expense, the criteria under which the IEE is obtained, must be the same as the criteria which the school uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's rights to an IEE.

Criteria For Fee Setting

- *The ASK Academy will pay a fee for the IEE which allows a parent to choose from among the qualified professionals in the area.*
- *The public agency will not pay unreasonably excessive fees. An unreasonably excessive fee is one which is 10% above the prevailing fees in the area (or 20% above the Medicaid rate) for the specific test being considered.*
- *Upon receipt of a request for payment of an unreasonably excessive fee, the public agency may request a hearing to challenge the right of parents to be reimbursed.*
- *Parents will be allowed the opportunity to demonstrate to an IEP Team that unique circumstances justify an IEE that does not fall within the public agency's criteria.*
- *When service providers have a sliding scale fee based on parent income, the public agency will pay the amount charged to the parent.*
- *In the event that a parent pursues an IEE independently, an original billing form must be submitted to the public agency prior to payment. Before reimbursement or direct payment is authorized, criteria must be met and the written report received.*
- *Travel costs for examiner and/or parents will not exceed public agency rates for travel as established by New Mexico State guidelines.*

Parents Seeking Reimbursement For A Unilaterally Obtained IEE

- *The public agency will not consider a parent request for payment for a unilaterally parent-initiated IEE unless the request is made within a reasonable time after receipt of the results of the evaluation. A reasonable time is defined as 90 calendar days.*
- *The request will be presented to the IEP Team for action.*
- *The public agency can request a due process hearing to prove its own evaluation is appropriate. This can occur before an IEE is conducted or, after the parent has obtained one and is seeking reimbursement.*
- *The public agency will deny payment of an IEE conducted by an evaluator who does not meet minimum qualifications.*
- *The public agency will deny payment of an IEE which does not meet minimum NMPED criteria for the specific disability identified.*
- *The public agency will deny payment of an IEE which does not meet all state and federal requirements.*

Consideration of Parent Initiated IEE

The results of a parent-initiated IEE obtained at private expense will be considered by the IEP Team in any decision made with respect to the provision of a free appropriate public education to the student (if the IEE meets NMPED criteria). Such consideration does not make the public agency liable for payment of the evaluation.

VIII. CONFLICT RESOLUTION / COMPLAINT PROCEDURES

If there is a dispute relating to the identification, evaluation, or educational placement, or the provision of a free appropriate public education (FAPE); to a student with a disability, it is the intent of the public agency to encourage and support the resolution of any dispute at the lowest level possible and in a prompt, efficient, and effective manner.

If there is disagreement expressed by the parent, the public agency should always be sure the parents have a current Procedural Safeguards document: Parent and Child Rights in Special Education, a copy of which may be found on the NMPED website at: <http://www.ped.state.nm.us/seo/parents/index.htm>

If the parents say they do not have the document, provide them with the document; and an explanation of the information, and keep a record that parents have received the document. Documentation of receipt of the Procedural Safeguards is kept in the special education student's eligibility file.

VIII. Conflict Resolution / Complaint Procedures		IX. - X. - XI. Due Process sections	
Conflict Resolution		Complaint filed with NMPED	Due Process Complaint filed with NMPED
Lowest Level of Conflict Resolution		Violation occurred not more than 1 year to date complaint received <i>34 CFR §300.153</i> and Impartial Review by NMPED in 60 days	Violation occurred not more than 2 years before date parent/LEA knew or should have known about alleged action <i>34 CFR §300.507</i> and Impartial Review by NMPED in 60 days <i>34 CFR §300.510(a)</i>
Informal Dispute Resolution NMAC 6.31.2.13 G. (2)(a)	3 rd Party Assisted Intervention NMAC 6.31.2.13 G. (2)(b)	Offer CAIEP (Complaint Assisted IEP meeting) NMAC 6.31.2.13 G (2)(c)(i) or	Convene Resolution Session unless both agree to waive or both agree to mediation
↓	↓	↓	↓
Offer IEP Team Meeting	Both parties agree to FIEP– (Facilitated IEP) or Mediation	Both parties agree to FIEP or Mediation	Both parties agree to FIEP or Mediation, Summary Due Process Hearing
	Mediation Procedures <i>34 CFR §300.506</i> and NMAC 6.31.2.13 G. (2)(b) H. (3)(c)	Complaint Procedures NMAC 6.31.2.13 H. (1 – 8)	Due Process Procedures Resolution session, etc., <i>34 CFR §300.511 - 34 CFR §300.515</i> and NMAC 6.31.2.13 I.

In order to discuss the ADR (Alternative Dispute Resolution) options available, schools should contact the Special Education Administrator as soon as there is reason to believe any type of complaint will be made.

A. Conflict Management and ADR (Alternative Dispute Resolutions)

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

G. Conflict management and resolution

- (1) The ASK Academy seeks to establish and maintain productive working relationships with the parents of each child the agency serves and to deal constructively with disagreements. Toward that end, the public agency is strongly encouraged to provide appropriate training for staff and parents in skills and techniques of conflict prevention and management and dispute resolution, and to utilize an informal dispute resolution method as set forth under Subparagraph (a) of Paragraph (2) of Subsection G of 6.31.2.13 NMAC to resolve disagreements at the local level whenever practicable.
- (2) Spectrum of dispute resolution options. To facilitate dispute prevention as well as swift, early conflict resolution whenever possible, the department and the public agency shall ensure that the following range of dispute resolution options is available to parents and public agency personnel.
 - (a) Informal dispute resolution option. If a disagreement arises between parents and the public agency over a student's IEP or educational program, either the parents or the public agency may convene a new IEP meeting at any time to attempt to resolve their differences at the local level, without state-level intervention.

- (b) Third-party assisted intervention. The special education bureau (SEB) of the department will ensure that mediation is available to parents and public agencies who request such third-party assisted intervention before filing a state-level complaint or a request for a due process hearing. The SEB will honor a request for mediation that:
 - (i) is in writing;
 - (ii) is submitted to the SEB;
 - (iii) is a mutual request signed by both parties or their designated representatives;
 - (iv) includes a statement of the matter(s) in dispute and a description of any previous attempts to resolve these matters at the local level; and
 - (v) any request that does not contain all of these elements will be declined, with an explanation for the SEB's decision and further guidance, as appropriate.
- (c) Formal dispute resolution.
 - (i) A state-level complaint may be filed with the SEB of the department by the parents of a child, or by another individual or organization on behalf of a child, as described under Subparagraph (a) of Paragraph (2) of Subsection H of 6.31.2.13 NMAC. Once a complaint has been filed, the parties may agree to convene a FIEP meeting or mediation instead, as described under Paragraph (3) of Subsection H of 6.31.2.13 NMAC.
 - (ii) A request for a due process hearing may be filed by parents or their authorized representative, or by the public agency, as described under Paragraph (5) of Subsection I of 6.31.2.13 NMAC. A resolution session between the parties must be convened by the public agency following a request for a due process hearing, unless the parties agree in writing to waive that option or to convene a FIEP meeting or mediation instead, as described under Paragraph (8) of Subsection I of 6.31.2.13 NMAC.
- (d) The Mediation Procedures Act does not apply to mediations conducted under 6.31.2 NMAC.

The public agency may offer a new IEP meeting, a CAIEP, a FIEP or mediation prior to a parent filing a state level complaint. For further information on each of the IEP meetings, see C., D., and E. in this section VIII.

B. NMPED Complaint Procedures (violation that occurred not more than 1 year prior to the date that the complaint is received in accordance with §300.151).

34 CFR §300.151 Adoption of NMPED complaint procedures.

- (a) General. The NMPED adopted written procedures for--
 - (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of §300.153 by--
 - (i) Providing for the filing of a complaint with the NMPED; and
 - (ii) At the NMPED's discretion, providing for the filing of a complaint with a public agency and the right to have the NMPED review the public agency's decision on the complaint; and
 - (2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§300.151 through 300.153.

The NMPED provides "Parent and Child Rights in Special Education" for dissemination to parents as well as on the website, which provides technical assistance fact sheets explaining the FIEP, the CIEP, and due process hearings. The fact sheets can be found at the NMPED website:

<http://www.ped.state.nm.us/SEB/community/index.html>

In addition, the NMPED provides complaint procedure information and training to parents and other interested individuals, including, but not limited to:

- *Parents Reaching Out (PRO),*
- *ABRAZOS Family Support System for Native American Families, and*
- *Protection and Advocacy (PA).*

- (b) Remedies for denial of appropriate services. In resolving a complaint in which the NMPED has found a failure to provide appropriate services, the NMPED, pursuant to its general supervisory authority under Part B of the Act, must address--
 - (1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and
 - (2) Appropriate future provision of services for all children with disabilities.

34 CFR §300.152 Minimum State complaint procedures.

- (a) Time limit; minimum procedures. The NMPED included in its complaint procedures a time limit of 60 days after a complaint is filed under §300.153 to--
 - (1) Carry out an independent on-site investigation, if the NMPED determines that an investigation is necessary;
 - (2) Allow the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
 - (3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum--
 - (i) At the discretion of the public agency, a proposal to resolve the complaint; and
 - (ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with §300.506;
 - (4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and
 - (5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains--
 - (i) Findings of fact and conclusions; and
 - (ii) The reasons for the NMPED's final decision.
- (b) Time extension; final decision; implementation. The NMPED's procedures described in paragraph (a) of this section also must--
 - (1) Permit an extension of the time limit under paragraph (a) of this section only if--
 - (i) Exceptional circumstances exist with respect to a particular complaint; or
 - (ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section; or to engage in other alternative means of dispute resolution, if available in the State; and
 - (2) Include procedures for effective implementation of the NMPED's final decision, if needed, including--
 - (i) Technical assistance activities;
 - (ii) Negotiations; and
 - (iii) Corrective actions to achieve compliance.
- (c) Complaints filed under this section and due process hearings under 34 CFR §300.507 and §§300.530 through 300.532.
 - (1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, or the NMPED must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.
 - (2) If an issue is raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties--
 - (i) The due process hearing decision is binding on that issue; and
 - (ii) The NMPED must inform the complainant to that effect.
 - (3) A complaint alleging the public agency's failure to implement a due process hearing decision must be resolved by the NMPED.

34 CFR § 300.153 Filing a complaint.

- (a) An organization or individual may file a signed written complaint under the procedures described in §§300.151 through 300.152.
- (b) The complaint must include--

- (1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;
- (2) The facts on which the statement is based;
- (3) The signature and contact information for the complainant; and
- (4) If alleging violations with respect to a specific child--
 - (i) The name and address of the residence of the child;
 - (ii) The name of the school the child is attending;
 - (iii) In the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Assistance Act (42 USC 11434a(2)), available contact information for the child, and the name of the school the child is attending;
 - (iv) A description of the nature of the problem of the child, including facts relating to the problem; and
 - (v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- (c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.151.
- (d) The party filing the complaint must forward a copy of the complaint to the public agency or public agency serving the child at the same time the party files the complaint with the NMPED.

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

G. Conflict management and resolution

- (2) Spectrum of dispute resolution options.
- (c) Formal dispute resolution.
 - (i) A state-level complaint may be filed with the SEB of the department by the parents of a child, or by another individual or organization on behalf of a child, as described under Subparagraph (a) of Paragraph (2) of Subsection H of 6.31.2.13 NMAC. Once a complaint has been filed, the parties may agree to convene a FIEP meeting or mediation instead, as described under Paragraph (3) of Subsection H of 6.31.2.13 NMAC.
 - (ii) A request for a due process hearing may be filed by parents or their authorized representative, or by the public agency, as described under Paragraph (5) of Subsection I of 6.31.2.13 NMAC. A resolution session between the parties must be convened by the public agency following a request for a due process hearing, unless the parties agree in writing to waive that option or to convene a FIEP meeting or mediation instead, as described under Paragraph (8) of Subsection I of 6.31.2.13 NMAC.

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

H. State complaint procedures

- (1) Scope. This Subsection H of 6.31.2.13 NMAC prescribes procedures to be used in filing and processing complaints alleging the failure of the department or the public agency to comply with state or federal laws or regulations governing programs for children with disabilities under the IDEA or with state statutes or regulations governing educational services for gifted children.
- (2) Requirements for complaints.
 - (a) The SEB of the department shall accept and investigate complaints from organizations or individuals that raise issues within the scope of this procedure as defined in the preceding Paragraph (1) of Subsection H of 6.31.2.13 NMAC. The complaint must:
 - (i) be in writing;
 - (ii) be submitted to the SEB (or to the Secretary of Education, in the case of a complaint against the department);
 - (iii) be signed by the complainant or a designated representative and have the complainant's contact information;
 - (iv) if alleging violations with respect to a specific child, include the name, and address of the child and the school the child is attending;
 - (v) include a statement that the department or the public agency has violated a requirement of an applicable state or federal law or regulation;
 - (vi) contain a statement of the facts on which the allegation of violation is based; and
 - (vii) include a description of a proposed resolution of the problem to the extent known.

- Any complaint that does not contain each of these elements will be declined, with an explanation for the SEB's decision and further guidance, as appropriate
- (b) If the complaint alleges violations with respect to a specific child, the complaint must include the information required by 34 CFR §300.153(b)(4).
 - (c) The party filing the complaint must forward a copy of the complaint to the public agency serving the child at the same time the party files the complaint with the SEB of the department.
 - (d) Pursuant to 34 CFR §300.153(c), the complaint must allege a violation that occurred not more than **one year** before the date the complaint is received by the SEB, in accordance with Subparagraph (a) of Paragraph (2) of Subsection H of 6.31.2.13, NMAC.
- (3) Preliminary meeting.
- (a) **FIEP meeting: mediation.** Parties to a state-level complaint may choose to convene a FIEP meeting or mediation. To do so, the public agency must (and the parent may) notify the SEB of the department in writing within one (1) business day of reaching their decision to jointly request one of these ADR options. A FIEP meeting or mediation shall be completed no later than 14 days after the assignment of the IEP facilitator or mediator by the SEB, unless a brief extension is granted by the SEB based on exceptional circumstances. Each session in the FIEP or mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the complaint.
 - (b) **Mediation requirements.** If the parties choose to use mediation, the following requirements apply.
 - (i) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.
 - (ii) Any mediated agreement must state that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. Any such agreement must also be signed by both the parent and a representative of the agency who has the authority to bind such agency, and shall be enforceable in any state court of competent jurisdiction or in a district court of the United States.
 - (iii) If a mediated agreement involves IEP-related issues, the agreement must state that the public agency will subsequently convene an IEP meeting to inform the student's service providers of their responsibilities under that agreement, and revise the student's IEP accordingly.
 - (iv) The mediator shall transmit a copy of the written mediation agreement to each party within seven days of the meeting at which the agreement was concluded. A mediation agreement involving a claim or issue that later goes to a due process hearing may be received in evidence if the hearing officer rules that part or all of the agreement is relevant to one or more IDEA issues that are properly before the hearing officer for decision.
 - (v) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
 - (vi) Any other requirement provided in 34 CFR §300.506(b) that is not otherwise provided herein.
- (4) Complaints and due process hearings on the same issues pursuant to 34 CFR §300.152(c).
- (a) The SEB of the department shall set aside any part of a written complaint that is also the subject of a due process hearing under Subsection I of 6.31.2.13 NMAC until the conclusion of the hearing and any civil action. Any issue in the complaint that is not a part of the due process hearing or civil action will be resolved by the SEB as provided in Subsection H of 6.31.2.13 NMAC.
 - (b) If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the SEB must inform the complainant to that effect.
 - (c) A complaint alleging the public agency's failure to implement a due process decision will be resolved by the SEB as provided in this Subsection H of 6.31.2.13 NMAC.
- (5) Complaints against public agencies.
- (a) Impartial review. Upon receipt of a complaint that meets the requirements of Paragraph (2) of Subsection H of 6.31.2.13 NMAC above, the SEB of the department shall:
 - (i) undertake an impartial investigation which shall include complete review of all documentation presented and may include an independent on-site investigation, if determined necessary by the SEB;
 - (ii) allow the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
 - (iii) provide the public agency with the opportunity to respond to the allegations in the complaint; and

- (iv) review all relevant information and make an independent determination as to whether the public agency is violating a requirement of an applicable state or federal statute or regulation.
- (b) **Decision.** A written decision, which includes findings of fact, conclusions, and the reasons for the decision and addresses each allegation in the complaint, shall be issued by the SEB and mailed to the parties within sixty (60) days of receipt of the written complaint, regardless of whether or not the parties agree to convene a CAIEP meeting, a FIEP meeting, or mediation. Such decision shall further include procedures for effective implementation of the final decision, if needed, including technical assistance, negotiations, and if corrective action is required, such action shall be designated and shall include the timeline for correction and the possible consequences for continued noncompliance.
- (c) **Failure or refusal to comply.** If the public agency fails or refuses to comply with the applicable law or regulations, and if the noncompliance or refusal to comply cannot be corrected or avoided by informal means, compliance may be effected by the department by any means authorized by state or federal laws or regulations. The department shall retain jurisdiction over the issue of noncompliance with the law or regulations and shall retain jurisdiction over the implementation of any corrective action required.
- (6) **Complaints against the department.** If the complaint concerns a violation by the department and: is submitted in writing to the secretary of education; is signed by the complainant or a designated representative; includes a statement that the department has violated a requirement of an applicable state or federal law or regulation; contains a statement of facts on which the allegation of violation is based, and otherwise meets the requirements of Paragraph (2) of Subsection H of 6.31.2.13 NMAC, the secretary of education or designee shall appoint an impartial person or impartial persons to conduct an investigation.
 - (a) **Investigation.** The person or persons appointed shall: acknowledge receipt of the complaint in writing; undertake an impartial investigation which shall include a complete review of all documentation presented and may include an independent onsite investigation, if necessary; give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; provide the department with the opportunity to respond to the complaint; and review all relevant information and make an independent determination as to whether the department is violating a requirement of an applicable state or federal statute or regulation.
 - (b) **Decision.** A written decision, including findings of fact, conclusions, recommendations for corrective action, and the reasons for the decision and addressing each allegation in the complaint, shall be issued by the person or persons appointed pursuant to this paragraph and mailed to the parties within sixty (60) days of receipt of the written complaint. The person appointed pursuant to this paragraph has no authority to order rulemaking by the department.
- (7) **Extension of time limit.** An extension of the time limit under Subparagraph (b) of Paragraph (5) or Subparagraph (b) of Paragraph (6) of this Subsection H of 6.31.2.13 NMAC shall be permitted by the SEB of the department only if exceptional circumstances exist with respect to a particular complaint or if the parent or any other party filing a complaint and the public agency involved agree to extend the time to engage in mediation or a CAIEP or FIEP meeting.
- (8) **Conflicts with federal laws or regulations.** If any federal law or regulation governing any federal program subject to this regulation affords procedural rights to a complainant which exceed those set forth in Subsection H of 6.31.2.13 NMAC for complaints within the scope of these rules, such statutory or regulatory right(s) shall be afforded to the complainant. In acknowledging receipt of such a complaint, the SEB shall set forth the procedures applicable to that complaint.

C. CAIEP - Complaint Assisted Individualized Education Program Meeting

Authority: NMAC 6.31.2.7 Definitions

- 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.

Authority: NMAC 6.31.2.13

(H) Additional Rights of Parents, Students and Public Agencies

H. State complaint procedures

(3) Preliminary meeting

(a) FIEP meeting: mediation. Parties to a state-level complaint may choose to convene a FIEP meeting or mediation. To do so, the public agency must (and the parent may) notify the SEB of the department in writing within one (1) business day of reaching their decision to jointly request one of these ADR options. A FIEP meeting or mediation shall be completed no later than 14 days after the assignment of the IEP facilitator or mediator by the SEB, unless a brief extension is granted by the SEB based on exceptional circumstances. Each session in the FIEP or mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the complaint.

You may also see the fact sheet at the NMPED website:

<http://ped.state.nm.us/SEB/community/2012/FIEP%20Fact%20Sheet%20May%202012%20Final.doc>

D. FIEP - Facilitated Individualized Education Program Meeting

Authority: NMAC 6.31.2.7 Definitions

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.

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

H. State complaint procedures

(3) Preliminary meeting

(a) FIEP meeting: mediation. Parties to a state-level complaint may choose to convene a FIEP meeting or mediation. To do so, the public agency must (and the parent may) notify the SEB of the department in writing within 1 business day of reaching their decision to jointly request one of these ADR options. A FIEP meeting or mediation shall be completed no later than 14 days after the assignment of the IEP facilitator or mediator by the SEB, unless a brief extension is granted by the SEB based on exceptional circumstances. Each session in the FIEP or mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the complaint.

If the parent agrees to a FIEP, the role of an IEP Facilitator is to ensure that the IEP Team does their best thinking, interacts respectfully, the perspectives of all participants are heard, and the IEP team focuses on future action. Thus, an IEP Facilitator serves the *whole group* rather than an individual, and assists the group with the *process* of the IEP meeting rather than the *content* of the IEP. The agenda for a facilitated IEP meeting is the IEP process, and the focus of the meeting is the student and his or her needs. An IEP Facilitator also has the opportunity to gather issues from, and then exchange issues between, the key participants *prior* to the IEP meeting. This process provides the participants some private time to consider possible resolutions and options for discussion before the day of the IEP meeting. The IEP Facilitator then supports the group in collaboratively creating solutions for the student. As a result, all members equally share responsibility for the IEP meeting process and the results. Keep in mind that the IEP Facilitator is not the IEP chair, nor is he or she a decision maker. Rather, the IEP Facilitator supports the *collaborative process* of the meeting and assists the parties to reach consensus where possible.

You may also see the fact sheet at the NMPED website:

<http://www.ped.state.nm.us/SEB/community/dl10/FIEP%20HANDOUT.pdf>

E. Mediation

34 CFR § 300.506 Mediation.

(a) **General.** The public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

(b) Requirements. The procedures must meet the following requirements:

- (1) The procedures must ensure that the mediation process--**
 - (i) Is voluntary on the part of the parties;**
 - (ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and**
 - (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.**
- (2) The public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party--**
 - (i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and**
 - (ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.**
- (3) (i) The New Mexico PED maintains a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.**
 - (ii) The NMPED must select mediators on a random, rotational, or other impartial basis.**
- (4) The New Mexico PED bears the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.**
- (5) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.**
- (6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that--**
 - (i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding arising from that dispute; and**
 - (ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.**
- (7) A written, signed mediation agreement under this paragraph is enforceable in any New Mexico court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceedings arising from that dispute of any Federal court or State court of a State receiving assistance under this part.**

(c) Impartiality of mediator.

- (1) An individual who serves as a mediator under this part--**
 - (i) May not be an employee of the NMPED or the public agency that is involved in the education or care of the child; and**
 - (ii) Must not have a personal or professional interest that conflicts with the person's objectivity.**
- (2) A person who otherwise qualifies as a mediator is not an employee of the public agency or NMPED described under §300.228 solely because he or she is paid by the agency to serve as a mediator.**

Authority: NMAC 6.31.2.7 Definitions

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.**

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

H. State complaint procedures

- (3) Preliminary meeting**

- (a) FIEP meeting: mediation. Parties to a state-level complaint may choose to convene a FIEP meeting or mediation. To do so, the public agency must (and the parent may) notify the SEB of the department in writing within one (1) business day of reaching their decision to jointly request one of these ADR options. A FIEP meeting or mediation shall be completed no later than 14 days after the assignment of the IEP facilitator or mediator by the SEB, unless a brief extension is granted by the SEB based on exceptional circumstances. Each session in the FIEP or mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the complaint.
- (b) Mediation requirements. If the parties choose to use mediation, the following requirements apply.
 - (i) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.
 - (ii) Any mediated agreement must state that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. Any such agreement must also be signed by both the parent and a representative of the agency who has the authority to bind such agency, and shall be enforceable in any state court of competent jurisdiction or in a district court of the United States.
 - (iii) If a mediated agreement involves IEP-related issues, the agreement must state that the public agency will subsequently convene an IEP meeting to inform the student's service providers of their responsibilities under that agreement, and revise the student's IEP accordingly.
 - (iv) The mediator shall transmit a copy of the written mediation agreement to each party within 7 days of the meeting at which the agreement was concluded. A mediation agreement involving a claim or issue that later goes to a due process hearing may be received in evidence if the hearing officer rules that part or all of the agreement is relevant to one or more IDEA issues that are properly before the hearing officer for decision.
 - (v) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
 - (vi) Any other requirement provided in 34 CFR 300.506(b) that is not otherwise provided herein.
- (4) Complaints and due process hearings on the same issues, pursuant to 34 CFR §300.152(c).
 - (a) The SEB of the department shall set aside any part of a written complaint that is also the subject of a due process hearing under Subsection I of 6.31.2.13 NMAC until the conclusion of the hearing and any civil action. Any issue in the complaint that is not a part of the due process hearing or civil action will be resolved by the SEB as provided in Subsection H of 6.31.2.13 NMAC.
 - (b) If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the SEB must inform the complainant to that effect.
 - (c) A complaint alleging the public agency's failure to implement a due process decision will be resolved by the SEB as provided in this Subsection H of 6.31.2.13 NMAC.

IX. DUE PROCESS COMPLAINT (within 2 years of alleged violation)

34 CFR § 300.507 Filing a due process complaint.

(a) General.

- (1) A parent or the public agency may file a due process complaint on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).
- (2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or the public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §300.511(f) apply to the timeline in this section.

- (b) Information for parents. The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if--
 - (1) The parent requests the information; or
 - (2) The parent or the agency files a hearing under this section.
 (Authority: 20 USC 1415(b)(6))

34 CFR § 300.508 Due process complaint.

- (a) General.
 - (1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).
 - (2) The party filing a due process complaint must forward a copy of the due process complaint to the New Mexico PED Special Education Bureau.
- (b) Content of complaint. The due process complaint required in paragraph (a)(1) of this section must include--
 - (1) The name of the child;
 - (2) The address of the residence of the child;
 - (3) The name of the school the child is attending;
 - (4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 USC 11434a(2)), available contact information for the child, and the name of the school the child is attending;
 - (5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
 - (6) A proposed resolution of the problem to the extent known and available to the party at the time.
- (c) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.
- (d) Sufficiency of complaint.
 - (1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.
 - (2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.
 - (3) A party may amend its due process complaint only if--
 - (i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §300.510; or
 - (ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.
 - (4) If a party files an amended due process complaint, the timelines for the resolution meeting in §300.510(a) and the time period to resolve in §300.510(b) begin again with the filing of the amended due process complaint.
- (e) Public agency response to a due process complaint.
 - (1) If the public agency has not sent a prior written notice under §300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the public agency must, within 10 days of receiving the due process complaint, send to the parent a response that includes--
 - (i) An explanation of why the public agency proposed or refused to take the action raised in the due process complaint;
 - (ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;
 - (iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
 - (iv) A description of the other factors that are relevant to the agency's proposed or refused action.

- (2) A response by the public agency under paragraph (e) (1) of this section shall not be construed to preclude the public agency from asserting that the parent's due process complaint was insufficient, where appropriate.
- (f) Other party response to a due process complaint. Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint. (Authority: 20 USC 1415(b)(7), 1415(c)(2))

34 CFR § 300.509 Model forms.

- (a) The NMPED has developed model forms to assist parents in filing a due process complaint in accordance with §§300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing a State complaint under §§300.151 through 300.153. However the NMPED or the public agency may not require the use of the model forms.

Due Process Complaint form: http://ped.state.nm.us/SEB/2013/Complaint_Form_08_20_2013.doc

Due Process Hearing form: http://ped.state.nm.us/SEB/2012/Due_Process_Hearing_Form_08_22_2013.doc

- (b) Parents, public agencies, and other parties may use the appropriate model form described in paragraph (a) of the section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in §300.508(b) for filing a due process complaint, or the requirements in §300.153(b) for filing a State complaint. (Authority: 20 USC 1415(b)(8))

The list specified in §§300.151 through 300.153 includes the information needed to file the due process complaint and may be found on page 29 or the NMPED model forms can be requested from the SEB.

The list specified in NMAC 6.31.2.13 I. (5) on page 44 includes the information needed to file for a due process hearing.

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

I. Due Process Hearings.

- (15) Summary due process hearing. (*see page 45*)

X. DUE PROCESS RESOLUTION SESSION REQUIRED

Authority: 34 CFR § 300.510 Resolution process.

(a) Resolution meeting.

- (1) Within **15 days** of receiving notice of the parents' due process complaint, and prior to the initiation of a due process hearing under §300.511, the public agency must convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that--

- (i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and
- (ii) May not include an attorney of the public agency unless the parent is accompanied by an attorney.

- (2) The purpose of the meeting is for the parents of the child to discuss their due process complaint, and the facts that form the basis of the due process complaint, so that the public agency has the opportunity to resolve the dispute that is the basis for the due process complaint.

- (3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if--

- (i) The parents and the public agency agree in writing to waive the meeting; or
- (ii) The parents and the public agency agree to use the mediation process described in §300.506.

- (4) The parents and the public agency determine the relevant members of the IEP Team to attend the meeting.

(b) Resolution period.

- (1) If the public agency has not resolved the due process complaint to the satisfaction of the parents **within 30 days** of the receipt of the due process complaint, the due process hearing must occur.
- (2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period.
- (3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of a parent filing a due process

complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

- (4) If the public agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in §300.322(d)), the public agency may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.
- (5) If the public agency fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

I. Due Process Hearing.

(8) Preliminary meeting

- (a) Resolution session. Before the opportunity for an impartial due process hearing under Paragraphs (3) or (4) of Subsection I of 6.31.2.13 NMAC above, the public agency shall convene a resolution session with the parents and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process request, unless the parents and the public agency agree in writing to waive such a meeting, or agree to use the FIEP or mediation process instead. The resolution session:
 - (i) shall occur within 15 days of the respondent's receipt of a request for due process;
 - (ii) shall include a representative of the public agency who has decision-making authority on behalf of that agency;
 - (iii) may not include an attorney of the public agency unless the parent is accompanied by an attorney; and
 - (iv) shall provide an opportunity for the parents of the child and the public agency to discuss the disputed issue(s) and the facts that form the basis of the dispute, in order to attempt to resolve the dispute;
 - (v) if the parties desire to have their discussions in the resolution session remain confidential, they may agree in writing to maintain the confidentiality of all discussions and that such discussions cannot later be used as evidence in the due process hearing or any other proceeding; and
 - (vi) if an agreement is reached following a resolution session, the parties shall execute a legally binding agreement that is signed by both the parent and a representative of the agency who has the authority to bind that agency, and which is enforceable in any state court of competent jurisdiction or in a district court of the United States; if the parties execute an agreement pursuant to a resolution session, a party may void this agreement within three business days of the agreement's execution; further, if the resolution session participants reach agreement on any IEP-related matters, the binding agreement must state that the public agency will subsequently convene an IEP meeting to inform the student's service providers of their responsibilities under that agreement, and revise the student's IEP accordingly.
- (b) FIEP meeting; mediation. Parties to a due process hearing may choose to convene a FIEP meeting or mediation instead of a resolution session. To do so, the party filing the request for the hearing must (and the responding party may) notify the hearing officer in writing within one business day of the parties' decision to jointly request one of these options. A FIEP meeting or mediation shall be completed no later than 14 days after the assignment of the IEP facilitator or mediator by the SEB, unless, upon joint request by the parties, an extension is granted by the hearing officer. Each session in the FIEP or mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the hearing. The requirements for mediation, as set forth at Subparagraph (c) of Paragraph (3) of Subsection H of 6.31.2.13 NMAC, apply to mediation in this context, as well.
- (c) Applicable timelines.
 - (i) If the parties agree to convene a resolution session, the applicable timelines for the due process hearing shall be suspended for up to 30 days from the date the due process request was received by the SEB (except in the case of an expedited hearing), and the meeting shall proceed according to the requirements set forth under Subparagraph (a) of Paragraph (8) of Subsection I of 6.31.2.13 NMAC above.

- (ii) If the parties agree to convene a FIEP meeting or mediation, the public agency shall contact the person or entity identified by the SEB to arrange for mediation or a FIEP meeting, as appropriate. Except for expedited hearings, the parties to the FIEP meeting or mediation process may jointly request that the hearing officer grant a specific extension of time for the prehearing conference and for completion of the hearing beyond the 20 school day period for issuance of the hearing decision. The hearing officer may grant such extensions in a regular case but may not exceed the 45 day deadline in an expedited case.
- (iii) If the parties agree to waive all preliminary meeting options and proceed with the due process hearing, the hearing officer shall send written notification to the parties that the applicable timelines for the due process hearing procedure shall commence as of the date of that notice. The hearing officer shall thereafter proceed with the prehearing procedures, as set forth under Paragraph (12) of Subsection I of 6.31.2.13 NMAC.
- (d) Resolution. Upon resolution of the dispute, the party who requested the due process hearing shall transmit a written notice informing the hearing officer and the SEB that the matter has been resolved and withdrawing the request for hearing. The hearing officer shall transmit an appropriate order of dismissal to the parties and the SEB.
- (e) Hearing. If the parties convene a resolution session and they have not resolved the disputed issue(s) within 30 days of the receipt of the due process request by the SEB in a non-expedited case, the public agency shall (and the parents may) notify the hearing officer in writing within one business day of reaching this outcome. The hearing officer shall then promptly notify the parties in writing that the due process hearing will proceed and all applicable timelines for a hearing under this part shall commence as of the date of such notice.
- (f) Further adjustments to the timelines may be made as provided in 34 CFR §300.510(b) and (c).
- (g) The resolution of disputes by mutual agreement is strongly encouraged and nothing in these rules shall be interpreted as prohibiting the parties from engaging in settlement discussions at any time before, during or after an ADR meeting, a due process hearing or a civil action.

Authority: 34 CFR §300.510 Resolution process (continued).

- (c) **Adjustments to 30-day resolution period.** The 45-day timeline for the due process hearing in §300.515(a) starts the day after one of the following events:
 - (1) Both parties agree in writing to waive the resolution meeting;
 - (2) After either the mediation or resolution meeting starts but before the end of the 30-day resolution period, the parties agree in writing that no agreement is possible;
 - (3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or the public agency withdraws from the mediation process.
- (d) **Written settlement agreement.** If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is--
 - (1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and
 - (2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or by the NMPED, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to §300.537.
- (e) **Agreement review period.** If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution.

This process allows an opportunity for the school to resolve the parent's complaint. This can take up to 30 days, and the timelines for a due process hearing begin to run only after the first 30 days. Also, there is an "expedited hearing" in the case of a disciplinary appeal.

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

H. State complaint procedures.

- (4) Complaints and due process hearings on the same issues. Pursuant to 34 CFR §300.152(c):
 - (a) The SEB of the department shall set aside any part of a written complaint that is also the subject of a due process hearing under Subsection I of 6.31.2.13 NMAC until the conclusion of the hearing and any civil action. Any issue in the complaint that is not a part of the due process hearing or civil action will be resolved by the SEB as provided in Subsection H of 6.31.2.13 NMAC.

- (b) If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the SEB must inform the complainant to that effect.
- (c) A complaint alleging the public agency's failure to implement a due process decision will be resolved by the SEB as provided in this Subsection H of 6.31.2.13 NMAC.

XI. DUE PROCESS HEARING

After the due process complaint is filed and the resolution process followed as described in section IX. and X., above, the due process procedures below are implemented.

34 CFR § 300.511 Impartial due process hearing.

- (a) **General.** Whenever a due process complaint is filed under §300.507, the parents or the public agency involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§300.507 through 300.508, and §300.510.
- (b) **Agency responsible for conducting the due process hearing.** The hearing described in paragraph (a) of this section must be conducted by the NMPED or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the NMPED.
- (c) **Impartial hearing officer.**
 - (1) At a minimum, a hearing officer—
 - (i) Must not be—
 - (A) An employee of the NMPED or the public agency that is involved in the education or care of the child; or
 - (B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;
 - (ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;
 - (iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
 - (iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.
 - (2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.
 - (3) The public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

The NMPED maintains a list of hearing officers and their qualifications. The list may be requested by calling the NMPE or at the following link on the SEB website: <http://ped.state.nm.us/SEB/community/2013/2103-14%20-%20Mediator%20and%20Facilitator%20Contact%20List.pdf>

- (d) **Subject matter of due process hearings.** The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §300.508(b), unless the other party agrees otherwise.
- (e) **Timeline for requesting a hearing.** A parent or public agency must request an impartial hearing on their due process complaint within two years of the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the NMPED has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by the State law.
- (f) **Exceptions to the timeline.** The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to--
 - (1) Specific misrepresentations by the public agency that it had resolved the problem forming the basis of the due process complaint; or
 - (2) The public agency's withholding of information from the parent that was required under this part to be provided to the parent.

Hearing Rights

34 CFR §300.512 Hearing rights.

- (a) **General.** Any party to a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534, or an appeal conducted pursuant to §300.514, has the right to--
 - (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
 - (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
 - (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
 - (4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
 - (5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.
- (b) **Additional disclosure of information.**
 - (1) At least five business days prior to a hearing conducted pursuant to §300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.
 - (2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.
- (c) **Parental rights at hearings.** Parents involved in hearings must be given the right to--
 - (1) Have the child who is the subject of the hearing present;
 - (2) Open the hearing to the public; and
 - (3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.(Authority: 20 USC 1415(f)(2), 1415(h))

Authority: 34 CFR § 300.513 Hearing decisions and NMAC 6.31.2.13 - I. (21)

- (a) **Decision of hearing officer.**
 - (1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.
 - (2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies--
 - (i) Impeded the child's right to a FAPE;
 - (ii) Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or
 - (iii) Caused a deprivation of educational benefit.
 - (3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering the public agency to comply with procedural requirements under §§300.500 through 300.536.
- (b) **Construction clause and NMAC 6.31.2.13 (I). (22)**

Nothing in §§300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the NMPED under §300.514(b), if a State level appeal is available.
- (c) **Separate request for a due process hearing.** Nothing in §§300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.
- (d) **Findings and decision to advisory panel and general public.** The public agency, after deleting any personally identifiable information, must--
 - (1) Transmit the findings and decisions referred to in §300.512(a)(5) to the NMPED advisory panel established under §300.167; and
 - (2) Make those findings and decisions available to the public.

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

- I. **Due process hearings**
 - (1) **Scope.** This Subsection I of 6.31.2.13 NMAC establishes procedures governing impartial due process hearings for the following types of cases:
 - (a) requests for due process in IDEA cases governed by 34 CFR §300.506-300.518 and 300.530-300.532; and
 - (b) claims for gifted services.

- (2) Definitions. In addition to terms defined in 34 CFR Part 300 and 6.31.2.7 NMAC, the following definitions apply to this Subsection I of 6.31.2.13 NMAC.
- (a) "Expedited hearing" means a hearing that is available on request by a parent or a public agency under 34 CFR §§300.532(c) and is subject to the requirements of 34 CFR §300.532(c).
 - (b) "Gifted services" means special education services to gifted children as defined in Subsection A of 6.31.2.12 NMAC.
 - (c) "Transmit" means to mail, transmit by electronic mail or facsimile machine, or hand deliver a written notice or other document and obtain written proof of delivery by one of the following means:
 - (i) an electronic mail system's confirmation of a completed transmission to an e-mail address that is shown to be valid for the individual to whom the transmission was sent;
 - (ii) a facsimile machine's confirmation of a completed transmission to a number which is shown to be valid for the individual to whom the transmission was sent;
 - (iii) a receipt from a commercial or government carrier showing to whom the article was delivered and the date of delivery;
 - (iv) a written receipt signed by the secretary of education or designee showing to whom the article was hand-delivered and the date delivered; or
 - (v) a **due process** final decision to any party not represented by counsel in a due process hearing by the U.S. postal service, certified mail, return receipt requested, showing to whom the article was delivered and the date of delivery. *(The term "due process" is omitted from 6.31.2.7(E)(3)(e))*

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

I. Due Process Hearings.

- (22) Modification of final decision. Clerical mistakes in final decisions, orders or parts of the record and errors therein arising from oversight or omission may be corrected by the hearing officer at any time on the hearing officer's own initiative or on the request of any party and after such notice, if any, as the hearing officer orders. Such mistakes may be corrected after a civil action has been brought pursuant to Paragraph (25) of Subsection I of 6.31.2.13 NMAC below only with leave of the state or federal district court presiding over the civil action.

34 CFR § 300.514 Finality of decision; appeal; impartial review.

- (a) **Finality of hearing decision.** A decision made in a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §300.516.
- (b) **Appeal of decisions; impartial review.**
 - (1) If the hearing required by §300.511 is conducted by a public agency other than the NMPED, any party aggrieved by the findings and decision in the hearing may appeal to the NMPED.
 - (2) If there is an appeal, the NMPED must conduct an impartial review of the findings and decision appealed. The official conducting the review must--
 - (i) Examine the entire hearing record;
 - (ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;
 - (iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §300.512 apply;
 - (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
 - (v) Make an independent decision on completion of the review; and
 - (vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.
- (c) **Findings and decision to advisory panel and general public.** The NMPED, after deleting any personally identifiable information, must--
 - (1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the New Mexico advisory panel established under §300.167; and
 - (2) Make those findings and decisions available to the public.
- (d) **Finality of review decision.** The decision made by the reviewing official is final unless a party brings a civil action under §300.516.

34 CFR § 300.515 Timelines and convenience of hearings and reviews.

- (a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under §300.510(b) (resolution session), or the adjusted time periods described in 300.510(c)--
 - (1) A final decision is reached in the hearing; and
 - (2) A copy of the decision is mailed to each of the parties.
- (b) The NMPED must ensure that not later than 30 days after the receipt of a request for a review--
 - (1) A final decision is reached in the review; and
 - (2) A copy of the decision is mailed to each of the parties.
- (c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.
- (d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

I. Due Process Hearings.

34 CFR § 300.516 Civil action. *(see following pages)*

You may also see the due process hearing fact sheet at NMPED website:

<http://www.ped.state.nm.us/sco/dl09/Resolution%20Session%20Fact%20Sheet.pdf>

Authority: NMAC 6.31.2.13(I) Additional Rights of Parents, Students and Public Agencies

I. Due Process Hearings.

- (3) Bases for requesting hearing. A parent or public agency may initiate an impartial due process hearing on the following matters:
 - (a) the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child;
 - (b) the public agency refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child;
 - (c) the public agency proposes or refuses to initiate or change the identification, evaluation or educational placement of, or services to, a child who needs or may need gifted services;
- (4) Bases for requesting expedited hearing.
 - (a) Pursuant to 34 CFR §300.532 and 20 USC §1415(k)(3), a parent may request an expedited hearing to review any decision regarding placement or a manifestation determination under 34 CFR §§ 300.530-300.531.
 - (b) Pursuant to 34 CFR §300.532(c) and 20 USC §1415(k)(3), the public agency may request an expedited hearing if it believes that maintaining the current placement of a child is substantially likely to result in injury to the child or others.
- (5) Request for hearing. A parent requesting a due process hearing shall transmit written notice of the request to the public agency whose actions are in question and to the SEB of the department. A public agency requesting a due process hearing shall transmit written notice of the request to the parent(s) and to the SEB of the department. Sample form:
http://ped.state.nm.us/SEB/2012/Due_Process_Hearing_Form_08_22_2013.doc
The written request shall state with specificity the nature of the dispute and shall include:
 - (a) the name of the child;
 - (b) the address of the residence of the child (or available contact information in the case of a homeless child);
 - (c) the name of the school the child is attending;
 - (d) the name of the public agency, if known;
 - (e) the name and address of the party making the request (or available contact information in the case of a homeless party);
 - (f) a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem;
 - (g) a proposed resolution of the problem to the extent known and available to the party requesting the hearing at the time;

- (h) a request for an expedited hearing must also include a statement of facts sufficient to show that a requesting parent or the public agency is entitled to an expedited hearing under 34 CFR §300.532(c) or 20 USC §1415(k)(3);
 - (i) a request for a hearing must be in writing and signed and dated by the parent or the authorized public agency representative; an oral request made by a parent who is unable to communicate by writing shall be reduced to writing by the public agency and signed by the parent;
 - (j) a request for hearing filed by or on behalf of a party who is represented by an attorney shall include a sufficient statement authorizing the representation; a written statement on a client's behalf that is signed by an attorney who is subject to discipline by the New Mexico supreme court for a misrepresentation shall constitute a sufficient authorization; and
 - (k) a party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of this paragraph.
- (6) Response to request for hearing.
- (a) A request for a hearing shall be deemed to be sufficient unless the party receiving the notice of request notifies the hearing officer and the other party in writing that the receiving party believes the request has not met the requirements of Paragraph (5) of Subsection I of 6.31.2.13 NMAC.
 - (b) Public agency response.
 - (i) In general. If the public agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process hearing request, such public agency shall, within 10 days of its receipt of the request, send to the parent a response that meets the requirements of 34 CFR Sec. 300.508(e) and 20 USC §1415(c)(2)(B)(i). This requirement presents an additional opportunity for parties to clarify and potentially resolve their dispute(s).
 - (ii) Sufficiency. A response filed by the public agency pursuant to (i) of Subparagraph (b) of Paragraph (6) shall not be construed to preclude the public agency from asserting that the parent's due process hearing request was insufficient where appropriate.
 - (c) Other party response. Except as provided in Subparagraph (b) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC above, the non-complaining party shall, within 10 days of its receipt of the request for due process, send to the requesting party a response that specifically addresses the issues raised in the hearing request. This requirement also presents an opportunity to clarify and potentially resolve disputed issues between the parties.
 - (d) A party against whom a due process hearing request is filed shall have a maximum of 15 days after receiving the request to provide written notification to the hearing officer of insufficiency under Subparagraph (a) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC. The 15-day timeline for the public agency to convene a resolution session under Paragraph (8) of Subsection I of 6.31.2.13 NMAC below runs at the same time as the 15-day timeline for filing notice of insufficiency.
 - (e) Determination. Within five days of receipt of a notice of insufficiency under Subparagraph (d) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC above, the hearing officer shall make a determination on the face of the due process request of whether it meets the requirements of Paragraph (5) of Subsection I of 6.31.2.13 NMAC, and shall immediately notify the parties in writing of such determination.
 - (f) Amended due process request. A party may amend its due process request only if:
 - (i) the other party consents in writing to such amendment and is given the opportunity to resolve the
 - (ii) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than five days before a due process hearing occurs.
 - (g) Applicable timeline. The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under Paragraph (8) of Subsection I of 6.31.2.13 NMAC.
- (7) Duties of the SEB of the department. Upon receipt of a written request for due process, the SEB shall:
- (a) appoint a qualified and impartial hearing officer who meets the requirements of 34 CFR Sec. 300.511(c) and 20 USC Sec. 1415(f)(3)(A);
 - (b) arrange for the appointment of a qualified and impartial mediator or IEP facilitator pursuant to 34 CFR Sec. 300.506 to offer ADR services to the parties;
 - (c) inform the parent in writing of any free or low-cost legal and other relevant services available in the area; the SEB shall also make this information available whenever requested by a parent; and

- (d) inform the parent that in any action or proceeding brought under 20 USC Sec. 1415, a state or federal court, in its discretion and subject to the further provisions of 20 USC Sec. 1415(g)(3)(b) and 34 CFR Sec. 300.517, may award reasonable attorneys' fees as part of the costs to a prevailing party;
 - (e) the SEB shall also:
 - (i) keep a list of the persons who serve as hearing officers and a statement of their qualifications;
 - (ii) appoint another hearing officer if the initially appointed hearing officer excuses himself or herself from service;
 - (iii) ensure that mediation and FIEP meetings are considered as voluntary and are not used to deny or delay a parent's right to a hearing; and
 - (iv) ensure that within forty-five (45) days of commencement of the timeline for a due process hearing, a final written decision is reached and a copy transmitted to the parties, unless one or more specific extensions of time have been granted by the hearing officer at the request of either party (or at the joint request of the parties, where the reason for the request is to allow the parties to pursue an ADR option);
 - (f) following the decision, the SEB shall, after deleting any personally identifiable information, transmit the findings and decision to the state IDEA advisory panel and make them available to the public upon request.
- (8) Preliminary meeting – *found in X. Due Process Resolution Session - page 37 of this Chapter*
- (9) Hearing officer responsibility and authority. Hearing officers shall conduct proceedings under these rules with due regard for the costs and other burdens of due process proceedings for public agencies, parents and students. In that regard, hearing officers shall strive to maintain a reasonable balance between affording parties a fair opportunity to vindicate their IDEA rights and the financial and human costs of the proceedings to all concerned. Accordingly, each hearing officer shall exercise such control over the parties, proceedings and the hearing officer's own practices as he deems appropriate to further those ends under the circumstances of each case. In particular, and without limiting the generality of the foregoing, the hearing officer, at the request of a party or upon the hearing officer's own initiative and after the parties have had a reasonable opportunity to express their views on disputed issues:
- (a) shall ensure by appropriate orders that parents and their duly authorized representatives have timely access to records and information under the public agency's control which are reasonably necessary for a fair assessment of the IDEA issues raised by the requesting party;
 - (b) shall limit the issues for hearing to those permitted by the IDEA which the hearing officer deems necessary for the protection of the rights that have been asserted by the requesting party in each case;
 - (c) may issue orders directing the timely production of relevant witnesses, documents or other information within a party's control, protective orders or administrative orders to appear for hearings, and may address a party's unjustified failure or refusal to comply by appropriate limitations on the claims, defenses or evidence to be considered;
 - (d) shall exclude evidence that is irrelevant, immaterial, unduly repetitious or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in federal courts or the courts of New Mexico; and
 - (e) may issue such other orders and make such other rulings, not inconsistent with express provisions of these rules or the IDEA, as the hearing officer deems appropriate to control the course, scope and length of the proceedings while ensuring that the parties have a fair opportunity to present and support all allowable claims and defenses that have been asserted.
- (10) Duties of the hearing officer. The hearing officer shall excuse himself or herself from serving in a hearing in which he or she believes a personal or professional bias or interest exists which conflicts with his or her objectivity. The hearing officer shall:
- (a) make a determination regarding the sufficiency of a request for due process within five days of receipt of any notice of insufficiency, and notify the parties of this determination in writing;
 - (b) schedule an initial prehearing conference within 14 days of commencement of the timeline for a due process hearing, or as soon as reasonably practicable in an expedited case pursuant to Paragraph (12) of Subsection I of 6.31.2.13 NMAC below;
 - (c) reach a decision, which shall include written findings of fact, conclusions of law, and reasons for these findings and conclusions and shall be based solely on evidence presented at the hearing;
 - (d) transmit the decision to the parties and to the SEB within 45 days of the commencement of the timeline for the hearing, unless a specific extension of time has been granted by the hearing officer at the request of a party to the hearing, or at the joint request of the parties where the reason for the request is

- to permit the parties to pursue an ADR option; for an expedited hearing, no extensions or exceptions are permitted beyond the timeframe provided in Subparagraph (a) of Paragraph 19 of Subsection I of 6.31.2.13 NMAC;
- (i) if the due date of a decision referenced in Subsection I of 6.31.2.13 NMAC falls on a Saturday, a Sunday or a legal holiday, the decision must be mailed no later than the actual due date. A decision is considered "mailed" when addressed, stamped and placed in a United States postal service mailbox. If a parent exercises the option of receiving the decision electronically, the decision is "mailed" when transmitted electronically.
 - (e) the hearing officer may reopen the record for further proceedings at any time before reaching a final decision after transmitting appropriate notice to the parties; the hearing is considered closed and final when the written decision is transmitted to the parties and to the SEB; and
 - (f) the decision of the hearing officer is final, unless a party brings a civil action as set forth in Paragraph (24) of Subsection I of 6.31.2.13 NMAC below.
- (11) Withdrawal of request for hearing. A party may unilaterally withdraw a request for due process at any time before a decision is issued. A written withdrawal that is transmitted to the hearing officer, and the other party at least two business days before a scheduled hearing, shall be without prejudice to the party's right to file a later request on the same claims, which shall ordinarily be assigned to the same hearing officer. A withdrawal that is transmitted or communicated within two business days of the scheduled hearing shall ordinarily be with prejudice to the party's right to file a later request on the same claims unless the hearing officer orders otherwise for good cause shown. A withdrawal that is entered during or after the hearing but before a decision is issued shall be with prejudice. In any event, the hearing officer shall enter an appropriate order of dismissal.
- (12) Prehearing procedures. Unless extended by the hearing officer at the request of a party, within 14 days of the commencement of the timeline for a due process hearing and as soon as is reasonably practicable in an expedited case, the hearing officer shall conduct an initial prehearing conference with the parent and the public agency to:
- (a) identify the issues (disputed claims and defenses) to be decided at the hearing and the relief sought;
 - (b) establish the hearing officer's jurisdiction over IDEA and gifted issues;
 - (c) determine the status of the resolution session, FIEP meeting or mediation between the parties, and determine whether an additional prehearing conference will be necessary as a result;
 - (d) review the hearing rights of both parties, as set forth in Paragraphs (15) and (16) of Subsection I of 6.31.2.13 NMAC below, including reasonable accommodations to address an individual's need for an interpreter at public expense;
 - (e) review the procedures for conducting the hearing;
 - (f) set a date, time and place for the hearing that is reasonably convenient to the parents and child involved; the hearing officer shall have discretion to determine the length of the hearing, taking into consideration the issues presented;
 - (g) determine whether the child who is the subject of the hearing will be present and whether the hearing will be open to the public;
 - (h) set the date by which any documentary evidence intended to be used at the hearing by the parties must be exchanged; the hearing officer shall further inform the parties that, not less than 5 business days before a regular hearing or, if the hearing officer so directs, not less than two business days before an expedited hearing, each party shall disclose to the other party all evaluations completed by that date and recommendations based on the evaluations that the party intends to use at the hearing; the hearing officer may bar any party that fails to disclose such documentary evidence, evaluation(s) or recommendation(s) by the deadline from introducing the evidence at the hearing without the consent of the other party;
 - (i) as appropriate, determine the current educational placement of the child pursuant to Paragraph (26) of Subsection I of 6.31.2.13 NMAC below;
 - (j) exchange lists of witnesses and, as appropriate, entertain a request from a party to issue an administrative order compelling the attendance of a witness or witnesses at the hearing;
 - (k) address other relevant issues and motions; and
 - (l) determine the method for having a written, or at the option of the parent, electronic verbatim record of the hearing; the public agency shall be responsible for arranging for the verbatim record of the hearing; and

- (m) the hearing officer shall transmit to the parties and the SEB of the department a written summary of the prehearing conference; the summary shall include, but not be limited to, the date, time and place of the hearing, any prehearing decisions, and any orders from the hearing officer.
- (13) Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.
- (14) In order to limit testimony at the hearing to only those factual matters which remain in dispute between the parties, on or before 10 days before the date of the hearing, each party shall submit a statement of proposed stipulated facts to the opposing party. On or before five days before the date of the hearing, the parties shall submit a joint statement of stipulated facts to the hearing officer. All agreed-upon stipulated facts shall be deemed admitted, and evidence shall not be permitted for the purpose of establishing these facts.
- (15) Any party to a hearing has the right to:
 - (a) be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
 - (b) present evidence and confront, cross-examine and compel the attendance of witnesses;
 - (c) prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before a regular hearing or, if the hearing officer so directs in the prehearing summary, at least two business days before an expedited hearing;
 - (d) obtain a written, or, at the option of the parents, electronic verbatim record of the hearing; and
 - (e) obtain written, or, at the option of the parents, electronic findings of fact and decisions.
- (16) Parents involved in hearings also have the right to:
 - (a) have the child who is the subject of the hearing present; and
 - (b) open the hearing to the public.
- (17) The record of the hearing and the findings of fact and decisions described above must be provided at no cost to the parents.
- (18) Limitations on the hearing.
 - (a) The party requesting the due process hearing shall not be allowed to raise issues at the hearing that were not raised in the request for a due process hearing (including an amended request, if such amendment was previously permitted) filed under Paragraph (5) of Subsection I of 6.31.2.13 NMAC, unless the other party agrees otherwise.
 - (b) Timeline for requesting hearing. A parent or agency shall request an impartial due process hearing within two years of the date that the parent or agency knew or should have known about the alleged action that forms the basis of the due process request.
 - (c) Exceptions to the timeline. The timeline described in Subparagraph (b) of Paragraph (19) of Subsection I of 6.31.2.13 NMAC above shall not apply to a parent if the parent was prevented from requesting the hearing due to:
 - (i) specific misrepresentations by the public agency that it had resolved the problem that forms the basis of the due process request; or
 - (ii) the public agency's withholding of information from the parent that was required under this part to be provided to the parent.
- (19) Rules for expedited hearings. The rules in Paragraphs (4) through (19) of Subsection I of 6.31.2.13 NMAC shall apply to expedited due process hearings with the following exceptions.
 - (a) The SEB of the department and the hearing officer shall ensure that a hearing is held within 20 school days of the date the request for hearing is received by the SEB, and a written decision is reached within 10 school days of the completion of the hearing, without exceptions or extensions, and thereafter mailed to the parties.
 - (b) The hearing officer shall seek to hold the hearing and issue a decision as soon as is reasonably practicable within the time limit described in Subparagraph (a) of Paragraph (20) of Subsection I of 6.31.2.13 NMAC above, and shall expedite the proceedings with due regard for any progress in a resolution session, FIEP meeting or mediation, the parties' need for adequate time to prepare and the hearing officer's need for time to review the evidence and prepare a decision after the hearing.
 - (c) The parties shall decide whether to convene a resolution session, FIEP meeting, or mediation before the commencement of an expedited hearing in accordance with Paragraph (8) of Subsection I of 6.31.2.13 NMAC, and are encouraged to utilize one of these preliminary meeting options. However, in the case of an expedited hearing, agreement by the parties to convene a resolution session, FIEP meeting or mediation shall not result in the suspension or extension of the timeline for the hearing.

- stated under Subparagraph (a) of Paragraph (20) of Subsection I of 6.31.2.13 NMAC above. The timeline for resolution sessions provided in 34 CFR §300.532(c)(3) shall be observed.
- (d) The hearing officer may shorten the five business-day rule for exchanging evidence before the hearing to not less than two business days and shall set the deadline and indicate the consequences of the parties' failure to meet that deadline in the written summary of the prehearing conference.
 - (e) The hearing officer may shorten the 15-day timeline for providing notice of insufficiency of a request for an expedited due process hearing to 10 school days.
 - (f) The hearing officer may shorten the timeline for the exchange of proposed stipulated facts between the parties as he deems necessary and appropriate given the circumstances of a particular case. The hearing officer may also shorten the timeline for providing agreed-upon stipulated facts to the hearing officer to two school days before the hearing.
 - (g) Decisions in expedited due process hearings are final, unless a party brings a civil action as provided in Paragraph (25) of Subsection I of 6.31.2.13 NMAC below.
- (20) Decision of the hearing officer.
- (a) In general. Subject to Subparagraph (b) of Paragraph (21) of Subsection I of 6.31.2.13 NMAC below, a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (FAPE).
 - (b) Procedural issues. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies:
 - (i) impeded the child's right to a FAPE;
 - (ii) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student; or
 - (iii) caused a deprivation of educational benefits.
 - (c) Rule of construction. Nothing in this paragraph shall be construed to preclude a hearing officer from ordering the public agency to comply with procedural requirements under this section.
- (21) Rule of construction. Nothing in this Subsection I shall be construed to affect the right of a parent to file a complaint with the SEB of the department, as described under Subsection H of 6.31.2.13 NMAC.

XII. EXPENSES OF THE DUE PROCESS HEARING

34 CFR § 300.517 Attorneys' fees.

- (a) In general.
- (1) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to—
 - (i) The prevailing party who is the parent of a child with a disability;
 - (ii) To a prevailing party who is an SEA or the public agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
 - (iii) To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.
 - (2) Nothing in this subsection shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.
- (b) Prohibition on use of funds.
- (1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the Act and subpart E of this part.
 - (2) Paragraph (b)(1) of this section does not preclude the public agency from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.
- (c) Award of fees. A court awards reasonable attorneys' fees under section 615(i)(3) of the Act consistent with the following:
- (1) Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

- (2) (i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if--
 - (A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
 - (B) The offer is not accepted within 10 days; and
 - (C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.
 - (ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in §300.506.
 - (iii) A meeting conducted pursuant to §300.510 shall not be considered--
 - (A) A meeting convened as a result of an administrative hearing or judicial action; or
 - (B) An administrative hearing or judicial action for purposes of this section.
 - (3) Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.
 - (4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that--
 - (i) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
 - (ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
 - (iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
 - (iv) The attorney representing the parent did not provide to the public agency the appropriate information in the due process request notice in accordance with §300.508.
 - (5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.
- (Authority: 20 USC 1415(i)(3)(B)–(G))

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

I. Due Process Hearings.

- (23) Expenses of the hearing. The public agency shall be responsible for paying administrative costs associated with a hearing, including the hearing officer's fees and expenses and expenses related to the preparation and copying of the verbatim record, its transmission to the SEB, and any further expenses for preparing the complete record of the proceedings for filing with a reviewing federal or state court in a civil action. Each party to a hearing shall be responsible for its own legal fees or other costs, subject to Paragraph (25) of Subsection I of 6.31.2.13 NMAC below.
- (24) Civil action (below)
- (25) Attorneys' fees.
 - (a) In any action or proceeding brought under 20 USC §1415, the court, in its discretion and subject to the further provisions of 20 USC §1415(i) and 34 CFR §300.517, may award reasonable attorney fees as part of the costs to:
 - (i) the parent of a child with a disability who is a prevailing party;
 - (ii) a prevailing public agency against the attorney of a parent who files a request for due process or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
 - (iii) a prevailing public agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

- (b) Any action for attorneys' fees must be filed within 30 days of the receipt of the last administrative decision.
- (c) Opportunity to resolve due process complaints. A meeting conducted pursuant to Subparagraph (a) of Paragraph (8) of Subsection I of 6.31.2.13 NMAC shall not be considered:
 - (i) a meeting convened as a result of an administrative hearing or judicial action; or
 - (ii) an administrative hearing or judicial action for purposes of this paragraph.
- (d) Hearing officers are not authorized to award attorneys' fees.
- (e) Attorneys' fees are not recoverable for actions or proceedings involving services to gifted children or other claims based solely on state law.

XIII. CIVIL ACTION

34 CFR § 300.516 Civil action.

- (a) **General.** Any party aggrieved by the findings and decision made under §§300.507 through 300.513 or §§300.530 through 300.534 who does not have the right to an appeal under §300.514(b), and any party aggrieved by the findings and decision under §300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under §300.507 or §§300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.
- (b) **Time limitation.** The party bringing the action shall have 90 days from the date of the decision of the hearing officer or if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.
- (c) **Additional requirements.** In any action brought under paragraph (a) of this section, the court—
 - (1) Receives the records of the administrative proceedings;
 - (2) Hears additional evidence at the request of a party; and
 - (3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.
- (d) **Jurisdiction of district courts.** The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.
- (e) **Rule of construction.** Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.
(Authority: 20 USC 1415(i)(2) and (3)(A), 1415(l))

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

I. Due Process Hearings.

(24) Civil action.

- (a) Any party aggrieved by the decision of a hearing officer in an IDEA matter has the right to bring a civil action in a state or federal district court pursuant to 20 USC Sec. 1415(i) and 34 CFR Sec. 300.516. Any civil action must be filed within 30 days of the receipt of the hearing officer's decision by the appealing party.
- (b) A party aggrieved by the decision of a hearing officer in a matter relating solely to the identification, evaluation, or educational placement of or services to a child who needs or may need gifted services may bring a civil action in a state court of appropriate jurisdiction within 30 days of receipt of the hearing officer's decision by the appealing party.

XIV. STUDENT STATUS DURING PROCEEDINGS

34 CFR § 300.518 Child's status during proceedings.

- (a) Except as provided in §300.533, during the pendency of any administrative or judicial proceeding regarding a request for a due process complaint notice requesting a due process hearing under §300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.
- (b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.
- (c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under §300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.
- (d) If the hearing officer in a due process hearing conducted by the NMPED or a New Mexico review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents for purposes of paragraph (a) of this section. (Authority: 20 USC 1415(j))

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

I. Due Process Hearings.

(26) Child's status during proceedings.

- (a) Except as provided in 34 CFR §300.533 and Paragraph (4) of Subsection I of 6.31.2.13 NMAC, and unless the public agency and the parents of the child agree otherwise, during the pendency of any administrative or judicial proceeding regarding an IDEA due process request, the child involved must remain in his or her current educational placement. Disagreements over the identification of the current educational placement which the parties cannot resolve by agreement shall be resolved by the hearing officer as necessary.
- (b) If the case involves an application for initial admission to public agency, the child, with the consent of the parents, must be placed in the public agency until the completion of all the proceedings.
- (c) If a hearing officer agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the public agency and the parents for purposes of Subparagraph (a) of Paragraph (26) of Subsection I of 6.31.2.13 NMAC.

XV. APPEAL - EXPEDITED DUE PROCESS HEARING

34 CFR § 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 public agency 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 public agency 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 public agency 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 public agency 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 State must ensure 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.

Placement During Appeals

34 CFR §300.533 Placement during appeals.

When an appeal under §300.532 has been requested by either the parent or the public agency, 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 public agency agree otherwise.

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. *(found in this chapter)*
- (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] *(see also Chapter 7 Discipline)*

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

I. Due Process Hearings.

- (4) Bases for requesting expedited hearing.
 - (a) Pursuant to 34 CFR §300.532 and 20 USC §1415(k)(3), a parent may request an expedited hearing to review any decision regarding placement or a manifestation determination under 34 CFR §§300.530-300.531.
 - (b) Pursuant to 34 CFR §300.532(c) and 20 USC §1415(k)(3), the public agency may request an expedited hearing if it believes that maintaining the current placement of a child is substantially likely to result in injury to the child or others.
- (20) Rules for expedited hearings. The rules in Paragraphs (4) through (18) of Subsection I of 6.31.2.13 NMAC shall apply to expedited due process hearings with the following exceptions.
 - (a) The SEB of the department and the hearing officer shall ensure that a hearing is held within 20 school days of the date the request for hearing is received by the SEB, and a written

decision is reached within 10 school days of the completion of the hearing, without exceptions or extensions, and thereafter mailed to the parties.

- (b) The hearing officer shall seek to hold the hearing and issue a decision as soon as is reasonably practicable within the time limit described in Subparagraph (a) of Paragraph (19) of Subsection I of 6.31.2.13 NMAC above, and shall expedite the proceedings with due regard for any progress in a resolution session, FIEP meeting or mediation, the parties' need for adequate time to prepare and the hearing officer's need for time to review the evidence and prepare a decision after the hearing.
- (c) The parties shall decide whether to convene a resolution session, FIEP meeting, or mediation before the commencement of an expedited hearing in accordance with Paragraph (8) of Subsection I of 6.31.2.13 NMAC, and are encouraged to utilize one of these preliminary meeting options. However, in the case of an expedited hearing, agreement by the parties to convene a resolution session, FIEP meeting or mediation shall not result in the suspension or extension of the timeline for the hearing stated under Subparagraph (a) of Paragraph (19) of Subsection I of 6.31.2.13 NMAC above. The timeline for resolution sessions provided in 34 CFR §300.532(c)(3) shall be observed.
- (d) Subparagraph (a) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC relating to sufficiency of the request for the expedited due process hearing does not apply to expedited hearings.
- (e) The hearing officer may shorten the timeline for the exchange of proposed stipulated facts between the parties as he deems necessary and appropriate given the circumstances of a particular case. The hearing officer may also shorten the timeline for providing agreed-upon stipulated facts to the hearing officer to two school days before the hearing.
- (f) Decisions in expedited due process hearings are final, unless a party brings a civil action as provided in Paragraph (24) of Subsection I of 6.31.2.13 NMAC below.

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 3. – FULL AND INDIVIDUAL EVALUATION

Date Chapter 3. Adopted by Governing Body: 6/12/14

Date Chapter 3. Reviewed by Governing Body: 09/13/18

Date Chapter 3. First Revision: 7/15/14

Chapter 3. - FULL AND INDIVIDUAL EVALUATION

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Chapter 3. - FULL AND INDIVIDUAL EVALUATION

I. TIMELINES

A. Timeline for Initial Evaluations

Authority: 34 CFR §300.301 Initial evaluations.

(c) Procedures for initial evaluation. The initial evaluation--

- (1) (i) **Must be conducted within 60 days of receiving parental consent for the evaluation; or**
(ii) **If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and**
- (2) **Must consist of procedures--**
 - (i) **To determine if the child is a child with a disability under §300.8; and**
 - (ii) **To determine the educational needs of the child.**

(d) Exception. The timeframe described in paragraph (c)(1) of this section shall not apply to the ASK Academy if-

- (1) **The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or**
- (2) **A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under §300.8.**

(e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS

D. Evaluations and reevaluations

(1) Initial evaluations

(c) Procedures for initial evaluation.

- (i) **The initial evaluation must be conducted within 60 calendar days of receiving parental consent for evaluation.**
- (ii) **The ASK Academy must follow evaluation procedures in compliance with applicable requirements of 34 CFR Sec. 300.304 and other department rules and standards to determine: (1) if the child is a child with a disability under 34 CFR §300.8; and (2) if the child requires special education and related services to benefit from their education program.**
- (iii) **The ASK Academy shall maintain a record of the receipt, processing and disposition of any referral for an individualized evaluation. All appropriate evaluation data, including complete SAT file documentation and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the Eligibility Determination Team (EDT).**
- (iv) **A parent may request an initial special education evaluation at any time during the SAT process. If the ASK Academy agrees with the parent that the child may be a child who is eligible for special education services, the ASK Academy must evaluate the child. If the ASK Academy declines the parent's request for an evaluation, the ASK Academy must issue prior written notice in accordance with 34 CFR §300.503. The parent can challenge this decision by requesting a due process hearing.**

(d) Exception to the 60 day time frame. The requirements of this subsection do not apply:

- (i) **if the parent of a child repeatedly fails or refuses to produce the child for the evaluation; or**
- (ii) **if the child enrolls in a school of another LEA after the 60 day time frame in this subsection has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under 34 CFR §300.8.**

(e) The exception to the 60 day time frame in Item (ii) of Subparagraph (d) of Paragraph (1) of Subsection D of 6.31.2.10 NMAC applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

- (f) The Eligibility Determination Team (EDT) including the parent and child, if appropriate, must meet to determine if the child is a child with a disability and requires an IEP upon completion of the initial evaluation.

B. Timeline for Re-evaluations

§300.303 Reevaluations.

- (a) **General.** The ASK Academy must ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311 (*located in Chapter 3.- Evaluation*)
 - (1) If the ASK Academy determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
 - (2) If the child's parent or teacher requests a reevaluation.
- (b) **Limitation.** A reevaluation conducted under paragraph (a) of this section--
 - (1) May occur not more than once a year, unless the parent and the ASK Academy agree otherwise; and
 - (2) Must occur at least once every 3 years, unless the parent and the ASK Academy agree that a reevaluation is unnecessary.

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS

D. (2) Reevaluations

- (a) The ASK Academy must ensure that a reevaluation of each child is conducted at least once every three years, unless the parent and the ASK Academy agree that a reevaluation is unnecessary, and is in compliance with the requirements of 34 CFR §§300.303-300.311, and any other applicable department rules and standards.
- (b) Reevaluations may be conducted more often if:
 - (i) the LEA determines the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
 - (ii) the child's parent or teacher requests a reevaluation.
- (c) Reevaluations may not occur more than once a year, unless the parent and the ASK Academy agree otherwise.

II. EVALUATION PROCEDURES

§300.122 Evaluation.

Children with disabilities must be evaluated in accordance with §§300.300 through 300.311 of subpart D of this part. (*All requirements are found in this Chapter 3. of the Policies and Procedures.*)

§300.304 Evaluation procedures.

- (a) **Notice.** The ASK Academy will provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the ASK Academy proposes to conduct. (*see Chapter 2 for Notice and Consent, including consent for certain psychological evaluations.*)
- (b) **Conduct of evaluation.** In conducting the evaluation, the ASK Academy will --
 - (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining--
 - (i) Whether the child is a child with a disability under §300.8; and
 - (ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
 - (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
 - (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- (c) **Other evaluation procedures.** The ASK Academy must ensure that--

- (1) Assessments and other evaluation materials used to assess a child under this part--
 - (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
 - (ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
The native language information may be found in the student's cumulative folder which includes the ASK Academy's enrollment information. Upon enrollment, parents complete the home language portion which states the language most frequently spoken by the parents in the student's home. If a language other than English is spoken in the home, careful consideration must be given to the environmental and cultural impact. Also, language evaluations determining the student's dominant language both expressively and receptively is considered.
 - (iii) Are used for the purposes for which the assessments or measures are valid and reliable;
 - (iv) Are administered by trained and knowledgeable personnel; and
 - (v) Are administered in accordance with any instructions provided by the producer of the assessments.
- (2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- (3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
- (4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
- (5) Assessments of children with disabilities who transfer from one public agency to another public agency 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.
- (6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
- (7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

For additional information see the New Mexico Technical Evaluation and Assessment Manual (NMTEAM) revised July 2011 located at: <http://www.ped.state.nm.us/SEB/technical/NMTeamManual.pdf>

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS

D. Evaluations and reevaluations

- (2) (d) Procedures for conducting evaluations and reevaluations:
 - (i) The ASK Academy must provide notice to the parents of a child with a disability that describes any evaluation procedures the ASK Academy proposes to conduct in compliance with 34 CFR §300.503;
 - (ii) The initial evaluation (if appropriate) and any reevaluations must begin with a review of existing information by a group that includes the parents, the other members of a child's IEP team and other qualified professionals, as appropriate, to determine what further evaluations and information are needed to address the question in 34 CFR §300.305(a)(2). Pursuant to 34 CFR §300.305(b), the group may conduct its review without a meeting.
 - (iii) If it is determined that a child requires an individualized evaluation or reevaluation the ASK Academy is required to follow the procedures established by the New Mexico PED.
 - (iv) The ASK Academy must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child, including information

provided by the child's family that may assist in determining if the child is a child with a disability, the content of the child's IEP including information related to assisting the child to be involved and progress in the general education curriculum or for a preschool child to participate in appropriate activities.

- (e) The ASK Academy shall maintain a record of the receipt, processing, and disposition of any referral for an individualized reevaluation. Reevaluation shall be completed on or before the three year anniversary date. All appropriate reevaluation data and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the EDT or IEP team.
- (f) The parents of a child with a disability who disagree with an evaluation obtained by the ASK Academy have the right to obtain an independent educational evaluation of the child at public expense pursuant to 34 CFR §300.502. (*See Chapter 2 Procedural Safeguards*)

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS

E. Procedural requirements for the assessment and evaluation of culturally and linguistically diverse children.

- (1) The ASK Academy must ensure that tests and other evaluation materials used to assess children are selected, provided and administered so as not to be discriminatory on a racial or cultural basis and are provided and administered in the child's native language or other mode of communication, such as American sign language, and in the form most likely to yield accurate information, on what the child knows and can do academically, developmentally and functionally, unless it is clearly not feasible to select, provide or administer pursuant to 34 CFR §300.304(c)(1).
- (2) The ASK Academy must ensure that selected assessments and measures are valid and reliable and are administered in accordance with instructions provided by the assessment producer and are administered by trained and knowledgeable personnel.
- (3) The ASK Academy must consider information about a child's language proficiency in determining how to conduct the evaluation of the child to prevent misidentification. A child may not be determined to be a child with a disability if the determinant factor for that eligibility determination is limited English proficiency. Comparing academic achievement results with grade level peers in the ASK Academy with similar cultural and linguistic backgrounds should guide this determination process and ensure that the child is exhibiting the characteristics of a disability and not merely language difference in accordance with 34 CFR §300.306(b)(1).
- (4) The ASK Academy must ensure that the child is assessed in all areas related to the suspected disability.
- (5) Policies for ASK Academy selection of assessment instruments include:
 - (a) assessment and evaluation materials that are tailored to assess specific areas of educational need; and
 - (b) assessments that are selected ensure that results accurately reflect the child's aptitude or achievement level.

The Special Education Director maintains a current list of appropriate standardized assessment instruments used by the ASK Academy.

- (6) The ASK Academy shall devote particular attention to the foregoing requirements in light of the state's cultural and linguistic diversity. Persons assessing culturally or linguistically diverse children shall consult appropriate professional standards to ensure that their evaluations are not discriminatory and should include appropriate references to such standards and concerns in their written reports.

For more specific procedures see also the Chapter 4 – Disabilities / Exceptionalities.

Also, for more guidelines and information, see the NMPED TEAM manual:

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

III. INITIAL EVALUATIONS

§300.15 Evaluation. Evaluation means procedures used in accordance with §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

§300.301 Initial evaluations.

- (a) **General.** The ASK Academy must conduct a full and individual initial evaluation, in accordance with

§§300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

- (b) **Request for initial evaluation.** Consistent with the consent requirements in §300.300, either a parent of a child, or The ASK Academy, may initiate a request for an initial evaluation to determine if the child is a child with a disability.

§300.305 Additional requirements for evaluations and reevaluations.

- (a) **Review of existing evaluation data.** As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must--
- (1) Review existing evaluation data on the child, including--
 - (i) Evaluations and information provided by the parents of the child;
 - (ii) Current classroom-based local or State assessments, and classroom-based observations; and
 - (iii) Observations by teachers and related services providers; and
 - (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--
 - (i) Whether the child is a child with a disability, as defined in §300.8, and the educational needs of the child; or
 - (ii) The present levels of academic achievement and related developmental needs of the child;
 - (iii) (A) Whether the child needs special education and related services; or
(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and
 - (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.
- (b) **Conduct of review.** The group described in paragraph (a) of this section may conduct its review without a meeting.
- (c) **Source of data.** The ASK Academy must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS

D. Evaluations and reevaluations

(1) Initial evaluations.

- (a) The ASK Academy must conduct a full and individual initial evaluation, at no cost to the parent, and in compliance with requirements of 34 CFR §§300.305 and 300.306 and other department rules and standards before the initial provision of special education and related services to a child with a disability.
- (f) The EDT including the parent and child, if appropriate, must meet to determine if the child is a child with a disability and requires an IEP upon completion of the initial evaluation.

§300.302 Screening for instructional purposes is not evaluation.

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. (Authority: 20 U.S.C. 1414(a)(1)(E))

IV. RE-EVALUATIONS

§300.305 Additional requirements for evaluations and reevaluations.

- (a) **Review of existing evaluation data.** As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must--
- (1) Review existing evaluation data on the child, including--
 - (i) Evaluations and information provided by the parents of the child;
 - (ii) Current classroom-based local or State assessments, and classroom-based observations; and
 - (iii) Observations by teachers and related services providers; and
 - (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--

- (i) (A) Whether the child is a child with a disability, as defined in §300.8, and the educational needs of the child; or
 - (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;
 - (ii) The present levels of academic achievement and related developmental needs of the child;
 - (iii) (A) Whether the child needs special education and related services; or
 - (B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and
 - (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.
- (b) **Conduct of review.** The group described in paragraph (a) of this section may conduct its review without a meeting.
- (c) **Source of data.** The ASK Academy must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.
- (d) **Requirements if additional data are not needed.**
- (1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the ASK Academy must notify the child's parents of—
 - (i) That determination and the reasons for the determination; and
 - (ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.
 - (2) The ASK Academy is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.

CHANGE OF PLACEMENT

§300.305 Additional requirements for evaluations and reevaluations.

- (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 State 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.

V. DETERMINATION OF ELIGIBILITY – Eligibility Determination Team (EDT)

§300.306 Determination of eligibility.

- (a) **General.** Upon completion of the administration of assessments and other evaluation measures—
- (1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and
 - (2) The ASK Academy provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.
- (b) **Special rule for eligibility determination.** A child must not be determined to be a child with a disability under this part—
- (1) If the determinant factor for that determination is—
 - (i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA); *See below.*
 - (ii) Lack of instruction in math; or

- (iii) Limited English proficiency; and
- (2) If the child does not otherwise meet the eligibility criteria under §300.8(a).

From above (section 1208 of ESEA – NCLB) are the Reading components meeting explicit and systematic instruction in:

- a. phonemic awareness;
- b. phonics;
- c. vocabulary development;
- d. reading fluency, including oral reading skills; and
- e. reading comprehension strategies.

(c) Procedures for determining eligibility and educational need.

- (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, the ASK Academy must--
 - (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, as well as recommendations about the child's physical condition, social or cultural background, and adaptive behavior; and
 - (ii) Ensure that information obtained from all of these sources is documented and carefully considered.
- (2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§300.320 through 300.324.

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS

F. Eligibility determinations

- (1) General rules regarding eligibility determinations
 - (a) Upon completing the administration of tests and other evaluation materials, a group of qualified professionals and the parent of the child must determine whether the child is a child with a disability, as defined in 34 CFR §300.8 and Paragraph (2) of Subsection B of 6.31.2.7 NMAC. The determination shall be made in compliance with all applicable requirements of 34 CFR §300.306 and these or other department rules and standards and, for a child suspected of having a specific learning disability, in compliance with the additional procedures of 34 CFR §§300.307-300.311 and these or other department rules, policies and standards.
 - (b) The ASK Academy must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

Authority: NMAC 6.31.2.10 IDENTIFICATION AND ELIGIBILITY DETERMINATIONS

F. Eligibility determinations

- (2) ~~Optional use of developmentally delayed classification for children aged 3 through 9~~
 - (a) ~~The developmentally delayed classification may be used at the option of individual local education agencies but may only be used for children who do not qualify for special education under any other disability category.~~
 - (b) ~~Children who are classified as developmentally delayed must be reevaluated during the school year in which they turn 9 and will no longer be eligible in this category when they become 10. A student who does not qualify under any other available category at age 10 will no longer be eligible for special education and related services. (More information on disabilities may be found in Chapter 4.)~~

VI. ADDITIONAL PROCEDURES FOR IDENTIFYING CHILDREN WITH SPECIFIC LEARNING DISABILITIES

A. Specific Learning Disabilities - General / Criteria

§300.307 Specific learning disabilities.

- (a) **General.** The NMPED adopted, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8 (c)(10). In addition, the criteria adopted by the NMPED-

- (1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability as defined in §300.8 (c)(10);
(See Chapter 4. – Disabilities / Exceptionalities)
 - (2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and
 - (3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability as defined in §300.8 (c)(10).
- (b) **Consistency with New Mexico PED criteria.** The ASK Academy must use the NMPED criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.
(For details please see below and Chapter 4. – Disabilities / Exceptionalities)

Authority: NMAC 6.31.2.10(C)

C. Criteria for identifying children with perceived specific learning disabilities.

- (1) Each public agency must use the three tiered model of student intervention for students suspected of having a perceived specific learning disability, consistent with the department rules, policies and standards for children who are being referred for evaluation due to a suspected disability under the specific learning disability category in compliance with 34 CFR §300.307.
 - (a) The public agency must, subject to Subparagraph (d) of this paragraph, require that the group established under 34 CFR §§300.306(a)(1) and 300.308 for the purpose of determining eligibility of students suspected of having a specific learning disability, consider data obtained during implementation of Tiers I and II in making an eligibility determination.
 - (b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation required in 34 CFR §§300.304 through 300.306:
 - (i) data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
 - (ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.
 - (c) The documentation of the determination of eligibility, as required by 34 CFR §300.306(c)(1), must meet the requirements of 34 CFR §300.311, including:
 - (i) a statement of the basis for making the determination and an assurance that the determination has been made in accordance with 34 CFR §300.306(c)(1); and
 - (ii) a statement whether the child does not achieve adequately for the child's age or to meet state approved grade-level standards consistent with 34 CFR §300.309(a)(1); and
 - (iii) a statement whether the child does not make sufficient progress to meet age or grade-level standards consistent with 34 CFR §300.309(a)(2)(i), or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards or intellectual development consistent with 34 CFR §300.309(a)(2)(ii); and
 - (iv) if the child has participated in a process that assesses the child's response to scientific, research-based intervention: a statement of the instructional strategies used and the student-centered data collected; documentation that the child's parents were notified about the state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; strategies for increasing the child's rate of learning; and the parents' right to request an evaluation.
 - (d) A parent may request an initial special education evaluation at any time during the public agency's implementation of Tiers I and II of the three-tier model of student intervention. If the public agency agrees with the parent that the child may be a child who is eligible for special education services, the public agency must evaluate the child. If the public agency declines the parent's request for an evaluation, the public agency must issue prior written notice in accordance with 34 CFR §300.503. The parent can challenge this decision by requesting a due process hearing.
- (2) ~~Preschool children suspected of having a specific learning disability must be evaluated in accordance with Subparagraph (f) of Paragraph (5) of Subsection A of 6.31.2.11 NMAC and 34 CFR §§300.300 through 300.305, which may include the severe discrepancy model.~~
- (3) ~~Public agencies must implement the dual discrepancy model in kindergarten through third grade utilizing the student assistance team and the three tier model of student intervention as defined and described in the~~

~~New Mexico Technical Evaluation and Assessment Manual (New Mexico T.E.A.M.). Data on initial evaluations for perceived learning disabilities in grades K-3 must be submitted to the department through the student teacher accountability reporting system (STARS).~~

- (4) In identifying children with specific learning disabilities in grades 4 through 12, the public agency may use the dual discrepancy model as defined and described in the New Mexico Technical Evaluation and Assessment Manual (New Mexico T.E.A.M.) or the severe discrepancy model as defined and described in New Mexico T.E.A.M.

B. Eligibility Determination Team (EDT) Required for SLD

§300.308 Additional group members.

The determination of whether a child suspected of having a specific learning disability is a child with a disability, as defined in §300.8, must be made by the child's parents and a team of qualified professionals, which must include--

- (a) (1) The child's regular teacher; or
- (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or
- (3) For a child of less than school age, an individual qualified by the New Mexico PED to teach a child of his or her age; and
- (b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

The qualified group of individuals (including the parent) will meet to review the Full and Individual Evaluation (FIE) and determine if the child is a child with a specific learning disability and if there is an educational need for the student to be eligible for special education services.

C. Determining Existence of SLD

§300.309 Determining the existence of a specific learning disability.

- (a) The group described in §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if-

- (1) The child does not achieve adequately for the child's age or to meet New Mexico approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:
 - (i) Oral expression.
 - (ii) Listening comprehension.
 - (iii) Written expression.
 - (iv) Basic reading skill.
 - (v) Reading fluency skills.
 - (vi) Reading comprehension.
 - (vii) Mathematics calculation.
 - (viii) Mathematics problem solving.
- (2) (i) The child does not make sufficient progress to meet age or New Mexico approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or
- (ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with §§300.304 and 300.305; and
- (3) The group determines that its findings under paragraph (a)(1) and (2) of this section are not primarily the result of--
 - (i) A visual, hearing, or motor disability;
 - (ii) Mental retardation;
 - (iii) Emotional disturbance;
 - (iv) Cultural factors; or
 - (v) Environmental or economic disadvantage.
 - (vi) Limited English proficiency.

- (b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§300.304 through 300.306—
 - (1) Data that demonstrate that prior to, or as a part of the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
 - (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.
 - (c) The ASK Academy must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in 300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in 300.306(1)(1)—
 - (1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and
 - (2) Whenever a child is referred for an evaluation.
- Referenced above: section 1111(b)(8)(D) and (E) of the ESEA (No Child Left Behind) refers to the Academic Standards, Academic Assessments and Accountability Requirements.*

D. Observation

§300.310 Observation.

- (a) The ASK Academy must ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty.
- (b) The group described in §300.306(a)(1), in determining whether a child has a specific learning disability, must decide to—
 - (1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
 - (2) Have at least one member of the group described in §300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with §300.300(a), is obtained.
- (c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

E. Written Report for SLD

§300.311 Specific documentation for the eligibility determination.

- (a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required by §300.306(a)(2), must include a statement of—
 - (1) Whether the child has a specific learning disability;
 - (2) The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c)(1);
 - (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
 - (4) The educationally relevant medical findings, if any;
 - (5) Whether --
 - (i) The child does not achieve adequately for the child's age or to meet New Mexico approved grade-level standards consistent with §300.309(a)(1); and
 - (ii) (A) The child does not make sufficient progress to meet age or New Mexico approved grade-level standards consistent with §300.309(a)(2)(i); or
 - (B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, New Mexico approved grade-level standards or intellectual development consistent with §300.309(a)(2)(ii).
 - (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation, emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

- (7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention--
 - (i) The instructional strategies used and the student-centered data collected;
 - (ii) The documentation that the child's parents were notified about--
 - (A) The New Mexico's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
 - (B) Strategies for increasing the child's rate of learning; and
 - (C) The parents' right to request an evaluation.
- (b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

VII. EVALUATION REPORTS

A written evaluation report for any disability or eligibility for related services will include all of the requirements listed above in §300.311 Written Report (a – b). In addition, specific requirements for each specific disability category found in Chapter 4-Disability Criteria will also be documented in the written evaluation report.

§300.306 Determination of eligibility. *(For more information see Chapter 4 – Disabilities/Exceptionalities)*

- (a) **General.** Upon completion of the administration of assessments and other evaluation measures --
 - (1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and
 - (2) The ASK Academy provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

The parent is provided a completed copy of the written evaluation report at the time of the Eligibility Determination Team Meeting.

Disclosures:

New Mexico regulations governing the educational assessment of culturally and linguistically diverse children stipulate, "Persons assessing culturally or linguistically diverse children shall consult appropriate professional standards to ensure that their evaluations are not impermissibly discriminatory and should include appropriate references to such standards and concerns in their written reports" [6.31.2 NMAC].

New Mexico regulations governing comprehensive developmental evaluations of infants and toddlers stipulate what should be contained within a report's results and recommendations (developmental functioning, participation in family/community life, eligibility recommendations, recommendations for approaches and strategies) but do not specify required disclosures regarding procedures and tools [7.30.8.10E(6) NMAC].

IDEA Part B regulations governing evaluation procedures stipulate "If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report" [§300.532, (c)(2)]. Part B regulations governing evaluation of children suspected of having a learning disability stipulate that the team's documentation must include the basis for making the determination [§300.543 (a),(b)].

~~Authority: NMSA 1978 28-16A-18 Developmental Disabilities Early Childhood Evaluation System~~

~~The NMPED shall have a timely, comprehensive, multidisciplinary system for evaluating infants, toddlers and preschool-age children suspected of having developmental delays. Diagnostic evaluations for infants and toddlers shall address family service needs and shall include training capabilities to educate community providers and parents in the understanding and application of the evaluations. This diagnostic evaluation system shall be jointly provided through a coordinated system by the children's medical services bureau of the public health division or the developmental disabilities division of the department, the University of New Mexico's developmental disabilities team and the New Mexico department of public education.--~~

A. Culturally and Linguistically Diverse Report Writing

Cultural and linguistic information should be present throughout the report. This serves as a reminder for the evaluator, as well as assist in the assessment schemata through which individuals will base the measures used and their diagnostic impressions. Thus, current diagnostic and school psychology students are trained to place the information in three places within the report.

1. The **first** place it is identified is in the background information, and/or behavior observations or interview portions. Their impressions based on the information regarding acculturation and linguistic abilities are reported for the first time. Specific examples should be shared to further validate one's impressions. It is also mentioned in these portions of the report in such a manner so the reader will realize where the impressions came from.
2. The **second place** it is recommended to place the information is before the assessment results and interpretation is presented. This involves a report of the validity of the results of the measures utilized based on cultural and linguistic information.
3. The **third** place there should be mention of cultural and linguistic factors is in the summary and recommendations portions. In this way, a reader can read almost any portion of the report and the cultural and linguistic information is present.

Recommendations

Too many times, evaluators do not include functional types of recommendations that were obtained from the assessment for school staff and the family. Provide several recommendations on language, language instruction, culture, and interventions regarding cultural issues. This entails an understanding of second language acquisition models, appropriate language instruction models, and cultural issues that may need to be addressed in counseling.

B. Related Services Written Reports

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

§300.8 Child with a disability.

(a) General.

- (1) **Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.**
- (2) (i) **Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.**
(ii) **If, consistent with §300.38(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.**

§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.** The terms used in this definition are defined as follows:

(1) **Audiology includes--**

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) **Counseling services means** services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

Counseling services are provided to assist a child with a disability to benefit from special education.

Parent counseling and training includes assisting parents in understanding the special needs of their child; providing information about child development; and helping parents acquire the skills necessary to allow them to support the implementation of their child's IEP or IFSP.

(3) **Early identification and assessment of disabilities in children means** the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) **Interpreting services includes--**

(i) The following when used with respect to children who are deaf or hard of hearing: oral transliteration services, cued language transliteration services, and sign language transliteration and interpreting services and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and

(ii) Special interpreting services for children who are deaf-blind.

(5) **Medical services means** services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(6) **Occupational therapy means--**

(i) Services provided by a qualified occupational therapist; and

(ii) Includes--

(A) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(C) Preventing, through early intervention, initial or further impairment or loss of function.
The primary function of occupational and physical therapy is to directly assist the student to benefit from instruction. Occupational and physical therapy services will be provided when a disability adversely affects the educational performance. The therapist will aid the student to develop, increase, improve, and maintain skills that are prerequisites for the student to function within his/her educational environment.
Medical Requirement: In the case of physical and occupational therapy, services for students shall be prescribed by a physician for consideration by the IEP committee.

Discontinuation Of Occupational and/or Physical Therapy Services Will Occur:

- *Upon IEP Team discussion of current evaluation and recommendation that OT/PT services are not required due to one of the following:*
 - *The student has accomplished the goals targeted in the IEP (Individual Educational Program);*
 - *The student has achieved the maximum benefit from occupational and/or physical therapy;*
 - *The student's physical dysfunction does not negatively affect his/her educational program;*
 - *The student maintains progress and no evidence of change is seen;*
 - *There is no current OT/PT MEDICAL REFERRAL FORM; or*
 - *The intervention will not impact the educational success of the student.*
- (7) Orientation and mobility services—**
- (i) Means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and**
 - (ii) Includes teaching students the following, as appropriate:**
 - (A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);**
 - (B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;**
 - (C) To understand and use remaining vision and distance low vision aids; and**
 - (D) Other concepts, techniques, and tools.**
- (8) (i) Parent counseling and training means assisting parents in understanding the special needs of their child;**
- (ii) Providing parents with information about child development; and**
 - (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.**
- (9) Physical therapy means services provided by a qualified physical therapist. *(See also Occupational Therapy(6) for Discontinuation.)***
- (10) Psychological services includes--**
- (i) Administering psychological and educational tests, and other assessment procedures;**
 - (ii) Interpreting assessment results;**
 - (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;**
 - (iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;**
 - (v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and**
 - (vi) Assisting in developing positive behavioral intervention strategies.**

Prior to requesting a psychological evaluation, school personnel should be able to document previous educational efforts and strategies and the results of those efforts through the SAT. The SAT documented

discussion should include participation in, or consideration for, other programs within the ASK Academy. Further, an intellectual and academic evaluation must be completed.

Psychological services may be requested through the SAT meetings or a Multidisciplinary evaluation planning committee. If a psychological evaluation is requested in an IEP meeting, the diagnostician will report the request if the psychological staff is not present at the IEP meeting.

(11) Recreation includes--

- (i) Assessment of leisure function;**
- (ii) Therapeutic recreation services;**
- (iii) Recreation programs in schools and community agencies; and**
- (iv) Leisure education.**

(12) Rehabilitation counseling services 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. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

(13) School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

Services are provided to eligible students with disabilities based on IEP Committee decision. These services are in addition to those routinely available to all students and may include the following:

- a. screening and referral for health needs;*
- b. monitoring medication needed by students during school hours;*
- c. consultation with physicians, parents, and staff regarding effects of medication, and emergency care training for staff and parents;*
- d. counseling students with disabilities and their families concerning health care practices and services; and*
- e. assistance with catheter, tube feeding and other school health service procedures.*

(14) Social work services in schools includes--

- (i) Preparing a social or developmental history on a child with a disability;**
- (ii) Group and individual counseling with the child and family;**
- (iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;**
- (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and**
- (v) Assisting in developing positive behavioral intervention strategies.**

(15) Speech-language pathology services includes--

- (i) Identification of children with speech or language impairments;**
- (ii) Diagnosis and appraisal of specific speech or language impairments;**
- (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;**
- (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and**
- (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.**

See also Chapter 4. Disabilities / Exceptionalities

VIII. EVALUATION OF LANGUAGE, PHYSICAL, SOCIOLOGICAL, AND OTHER CONDITIONS.

Areas reviewed in the written evaluation report include, but are not limited to, the following:

A. Language Dominance

The evaluation team will first determine the student's dominant language - most proficient method of communication (expressively and receptively). The student's dominant language is the language in which the student is most proficient. This determination may be made by formal or informal evaluation. Evaluation instruments must be administered in the student's dominant language (native language or other mode of communication unless it is clearly not feasible to do so). If the primary language of the home is not English, the student will be evaluated in his/her dominant language. Documentation will be Oral Language Proficiency scores or a description of procedures used to ensure the student was evaluated in his/her dominant language when the examiner is not proficient in that language. Where no bilingual examiner is available, an interpreter may be used as long as this is allowed in the test protocol. Interpreters must be adequately trained.

B. Language Proficiency

The evaluation team must determine the student's most proficient method of communication. The language proficiency information must indicate the student's skill in understanding and using both receptive and expressive domains, such as oral and written language, reading comprehension, and listening comprehension, when appropriate. Proficiency in both English and the other language(s) must be addressed for Limited English Proficient (LEP) students. See also the section on culturally and linguistically diverse children.

C. Physical

The evaluation of an individual's physical factors (including health, vision, hearing, and psycho-motor abilities) must consist of an examination of physical conditions that directly affect the student's ability to profit from the educational process. A general medical examination will be required only when specified by eligibility criteria or when abnormal physical factors have been identified as part of the evaluation of physical factors. The health information collected during the SAT process will be sufficient if a complete medical examination is not required by specific eligibility criteria and if there are no indications of need for further physical evaluation.

D. Emotional/Behavioral

The evaluation of an individual's emotional and behavioral factors will consist of formally or informally identifying those characteristics manifested in in-school or out-of-school behavior, or both, which may influence learning. The evaluation will include behaviors relative to the disability that may affect educational placement, programming, or discipline. Adaptive behavior of all students must be considered to some degree. Formal measures are required only when establishing a diagnosis of mental retardation.

E. Sociological

The evaluation of an individual's sociological variables must consist of identifying the child's family and community environmental situation influencing learning and behavioral patterns. Students will not be eligible for special education if the only deficiencies identified are directly attributable to a different cultural lifestyle or to the student not having had educational opportunities.

F. Intellectual

The evaluation of an individual's intellectual functioning must include an evaluation of verbal ability and performance. Intellectual functioning should be the last factor assessed, since the student's performance in this area should be analyzed and interpreted in light of all the other data. While the adaptive behavior of all students must be considered to some degree, formal measures of adaptive behavior will be required only when a student is being assessed for mental retardation. Intelligence must always be addressed. An informal evaluation of intelligence may be used to determine intellectual functioning as a part of eligibility for:

- 1. visual impairment, deaf-blindness,*
- 2. orthopedic impairment, other health impairment*
- 3. speech impairment (if speech impaired is the only exceptionality).*

Some examples of informal evaluation include: group administered tests, achievement test results, teacher observations, adaptive behavior, grades, etc.

IX. EVALUATION OF LEARNING COMPETENCIES

(Present Levels of Academic Achievement and Functional Performance)

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--
- (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;

Under the IDEA and New Mexico regulations, the IEP of a student with an exceptionality 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 assessment is the blueprint for the whole IEP document. The present levels of academic achievement and functional performance was formerly referred to as PLEP (Present Levels of Educational Performance).

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

- Current -- based on recent data, observation, and evaluation such as district-wide and New Mexico State Standards testing
- 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 evaluation will include:

- A. *criterion-referenced or curriculum-referenced assessments designed to aid in the development of the student's goals and objectives; (include information from any district-wide and New Mexico State Standards testing, benchmarks, etc.)*
- B. *information about the student's strengths and weaknesses; and*
- C. *the specific accommodations, methods and/or materials required by the student to achieve and maintain satisfactory progress in the general curriculum, including those that can only be provided through special education services, and those adaptations necessary for the student's progress in general classes and other special and compensatory education programs.*

At the IEP Team annual review meetings, the teacher(s) will provide this current information as they develop new goals for the student, and if appropriate, goals and objectives.

X. ASSISTIVE TECHNOLOGY DEVICES AND SERVICES

Each student assessed for determination of a disability will be considered for assistive technology needs.

§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 such device.

Examples of low and high assistive technology: Pencil grips/splints; Manual/power wheelchair, wheelchair lifts, cane; Eyeglasses, large print, Braille software; Voice-recognition/voice synthesis, computer software; Van modifications; Hearing aids, assistive listening devices; Telephone communication devices; Large oversized

computer displays; Information technology accessibility; etc.

§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 must ensure 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.

For more information see the New Mexico Technology Assistance Program (NMTAP) website at: <http://www.nmtap.com>

Assistive Bank of Loan Equipment Device Loan Program (ABLE)

ABLE offers people with disabilities and their assisting special education personnel, DVR Counselors, One Stop Navigators, and case managers the opportunity to try out an assistive device prior to purchase. If the IEP Team in the ASK Academy determines a student may be in need of a specific type of technology, the IEP Team may determine it is appropriate to contact the New Mexico Technology Assistance Program (NMTAP) to discuss a loan of the device.

Procedures

In order to evaluate/assess assistive technology (AT) before purchasing it, the New Mexico Public School students are required to have a teacher(s) and or therapist(s) involved. The NMTAP requires:

- Signed Application / Parent Consent to Release Information Form
- Current IEP that mentions A.T. needs

For more information on Assistive Technology Programs see the website: <http://www.nmtap.com>

XI. SPECIAL PROVISIONS

Any area assessed below requires pre-planning and review of existing evaluation data by the student's IEP Team or the request may have come from the initial referral.

A. Adapted Physical Education

§300.108 Physical education.

The NMPED ensures that public agencies in New Mexico 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 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 committee 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. 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*

Adapted physical education evaluations will be administered by appropriately trained physical education or special education personnel. A written report should be completed to address the student's physical strengths and weaknesses and recommendations for specific services to be considered by the IEP Team.

B. Functional Behavioral Assessment

A Functional Behavioral Assessment (FBA) may be completed outside of the initial evaluation or the 3-year reevaluation. During an IEP meeting, if behavior is identified as a special factor that needs to be addressed, the FBA may be completed and a BIP developed which becomes a component of the student's IEP. If the IEP Team decides to gather more information than already exists in the student's records, prior parental consent is needed (as for any initial evaluation or reevaluation). An FBA is completed when a student's behavior interferes with the student's learning or that of other students in the classroom. Include the student's general education teacher(s) in gathering the information below in order to develop the BIP. For further information, use the NMPED document titled Addressing Student Behavior: A Guide for Educators found on the website: <http://www.ped.state.nm.us/seo/discipline/guide.htm>

Conducting an FBA

Below is a summary of the stages involved in a method of conducting an FBA. They are discussed in detail in the NMPED Guide:

- Describe and define the target behavior in specific, concrete terms;
- Collect information on possible functions of the target behavior;
**Use direct and indirect measures of behavior and check accuracy of behavior measurement
- Categorize behavior—is it linked to a skill deficit or a performance deficit?
- Analyze information to form a hypothesis (conjecture or presumed function);
- Devise interventions and/or develop a BIP.

Keep in mind that a FBA is usually the first of a two-pronged approach to addressing student problem behavior. Conducting an FBA lays the foundation for developing a Behavioral Intervention Plan (BIP). In reviewing existing data, the team may determine that more information is needed before an effective plan can be designed. Note that, if the team decides to gather more information than already exists in the records, prior written Notice of Evaluation and parental consent is needed (as for any initial evaluation or reevaluation).

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.

A Recommended "Best Practice"

Though not required until a student has been suspended for 10 school days, conducting a FBA for any persistent or problematic behavior is strongly recommended by the ASK Academy.

Functional Behavior Assessment (FBA) — Conducting a 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. 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).

C. Gifted Children

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

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.

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 Sec. 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) The district must establish a child find procedure that includes a screening and referral process for students in public school who may be gifted. *(See Chapter 1. – Child Find)*
 - (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 6.31.2.1 NMAC.
- D. Standard method for identification. Under the standard method for identification, students will be evaluated in the areas of intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking. A student who meets the criteria established in Subsection B of 6.31.2.12 for intellectual ability and also meets the criteria in one or more of the other areas will qualify for consideration of service. A properly constituted IEP team, including someone who has knowledge of gifted education, will determine if special education services are required to meet the child’s educational needs.
- E. Alternative method for identification.
- (1) A district may apply to the public education department to utilize an alternative protocol for all students. Eligibility of a student will then be determined by a properly administered and collected, department approved alternative protocol designed to evaluate a student’s intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving /critical thinking.
 - (2) If an accurate assessment of a child’s ability may be affected by factors including cultural background, linguistic background, socioeconomic status or disability condition(s), an alternative protocol as described in Paragraph (1) of Subsection E of 6.31.2.12 NMAC will be used in all districts to determine the student’s eligibility. The impact of these factors shall be documented by the person(s) administering the alternative protocol.
 - (3) The student assistance team (SAT) process requirements will not apply to students who meet the criteria established by the alternative protocols. When a student’s overall demonstrated abilities are very superior (as defined by the alternative protocol author), a properly constituted IEP team, including someone who has knowledge of gifted education, will determine if special education services are required to meet the child’s educational needs.
- 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 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.

For more information, please refer to the [Gifted Education: Technical Assistance and Training Resource Document](http://www.ped.state.nm.us/seo/gifted/gifted.pdf) found at the NMPED website: <http://www.ped.state.nm.us/seo/gifted/gifted.pdf>

Special Education Diagnostic Evaluation

Students referred for evaluation as potentially gifted should be fully evaluated with an individual standardized IQ measure and other measures of achievement, critical thinking, and creativity. Best practices would indicate that a student be evaluated in all four areas to get a complete student profile. To accurately evaluate the impact that such factors as cultural background, linguistic background, socioeconomic status and disability conditions have upon a student's performance/assessment, it is essential to have a complete student profile.

The SAT committee may use a characteristics checklist provided by the NMPED. This checklist exists in order to discover factors that may influence classroom performance or test scores of gifted students. It does not weigh for or against qualification, but aids the Student Assistance Team (SAT) in making good judgments about how to proceed with the evaluation process. The checklist, instructions, scoring and interpretations may be found at the NMPED website: <http://www.ped.state.nm.us/seo/gifted/Gifted.Students.With.Factors.pdf>

Quantitative data from this checklist should be combined with qualitative data for consideration by the SAT in determining whether or not a student referred for gifted services would be considered to have "factors." If there are "factors" that are determined to be significant through the use of this instrument and other qualitative data, the student would be referred by the SAT to the team administering the alternative protocol that has been approved by the Public Education Department/Special Education Bureau and adopted by the district/charter school for screening and evaluation.

Eligibility Determination Team (EDT)

This team has the responsibility for determining whether students may be eligible to receive gifted services under the provisions of state regulations. To make this determination, the team considers all information about individual students on a 'case by case' basis. Full documentation must be maintained for every student, verifying very superior intelligence and at least outstanding performance in one other area of achievement, creativity, or critical thinking. When considering the question of eligibility, it is essential that the team consider the impact that "factors" may have had upon the formal assessment of cognitive ability. Factors may include:

- evidence of multiple indicators of cultural diversity
- evidence of multiple indicators of linguistic difference
- evidence of multiple indicators of socioeconomic disadvantage
- documentation of a disabling condition

D. Limited English Proficient - Culturally and Linguistically Diverse (CLD)

§300.27 Limited English proficient. Limited English proficient has the meaning given the term in section 9101 (25) of the ESEA – Elementary and Secondary Education Act – No Child Left Behind.

The Formal Evaluation Process

The next step is to develop rapport and conduct an interview. From the results of the interview and information gathered on language proficiency, the examiner can determine what language the assessment should be conducted, and along with the referral question, determine the assessment instruments to assist in the provision of the most useful information for the Individualized Education Plan (IEP) committee. In addition, the information on acculturation, which is gathered through the interview and the results from the language proficiency/dominance, will assist in an appropriate interpretation of the formal and informal test results.

*For assistance to assure that every step of a culturally competent assessment is followed, see the following: NMPED website for [preschool students](http://www.ped.state.nm.us/seo/assessment/preschool_cld.pdf): http://www.ped.state.nm.us/seo/assessment/preschool_cld.pdf
NMPED website for [school age students](http://www.ped.state.nm.us/seo/assessment/ta.pdf): <http://www.ped.state.nm.us/seo/assessment/ta.pdf>*

Understanding Language and Language Acquisition

For culturally and linguistically diverse (CLD) children who have been referred to special education programs for possible developmental delays, or academic/behavioral/speech concerns, the critical issue evaluators most often face is to distinguish a language difference from a language disorder (Roseberry-McKibbin, 1995).

To understand language acquisition, begin with a conceptualization of the process of language acquisition:

- It takes an individual 2-3 years to acquire what is referred to as social language. This is known as Basic Interpersonal Communication Skills (BICS). Cummins (1984)
- It takes 5-7 years for an individual to acquire language skills needed for academic success, known as Cognitive Academic Language Proficiency (CALP). Yansen & Shulman, 1996

Many times, BICS and CALP are not considered when a student is referred for special education evaluation by the SAT. The teacher may think that because the student is communicating with others on the playground (social language) but does not experience academic success, the student may have a learning disability and is then referred for testing. This is not always the case and careful evaluation is necessary.

The Use of Translators/Interpreters

Translators/interpreters should not only be trained and certified/licensed, they should have knowledge of special education terminology. If certified translators/interpreters are not available, bilingual school personnel should be trained specifically on how to translate during consultation activities, interviews, SAT meetings, evaluations, IEP meetings, etc. Evaluators should meet with the translator to discuss:

- * the process of the activity.
- * topics relevant to the roles of interpreters/translators, which include professional conduct (i.e., confidentiality, professional behavior, and dual roles).
- * the assessment procedures, such as the objective measures, interviews, and projectives that will be used.
- * terminology, so that the translators can become familiarized with the terms that will be used.
- * language and cultural differences that may surface during the activity, as well as the importance of complete translation during the session.

The translator should be given ample time to review and translate any written and/or test materials. In addition, each translation session should be followed up with a debriefing to discuss the activity and address any issues.

The Interview

Whether a school psychologist, diagnostician, or speech and language pathologist is involved, the interview is an essential part of the assessment process. In the analysis of evaluations for the pre-school study and review of other evaluations for three year evaluations, this essential tool is often underutilized. Sattler (1995) refers to the interview as one of the four pillars of assessment. The following goals of the interview are adapted from Takushi & Uomoto (2000, p. 51):

- * Establishing a rapport;
- * Clearly defining the referral question;
- * Assessing the student's strengths (academic, personal, family, school resources);
- * Gathering background, cultural and linguistic information; and
- * Developing a tentative hypothesis of concerns and determining assessment instruments and techniques would be most useful.

If accurate evaluations and diagnosis are to occur, there is a need for growth in awareness of CLD issues by school personnel who interview students and parents. Interviews are the place in which evaluators need to begin "hypothesis testing" of their impressions of what the issues are to assess. The hypotheses are then validated through formal and informal measures. Following are recommendations:

1. school personnel must consider the worldview of the student, and how this may interact with the worldview of the evaluator.
2. acknowledge the barriers the examinee may face as the interview proceeds. For example, questions may be misunderstood and/or answers to questions could be limited or misperceived, if the examinee, or family member, has limited proficiency in English.
3. examiner decreases the cultural and linguistic obstacles such that the information from the interview becomes useful. Suggestions for working with populations of a different culture and language include:
 - studying the culture, language, and traditions of other groups;
 - learning about your own stereotypes and prejudices;

- seeing the strengths and coping mechanisms of other groups;
- appreciating the interviewee's viewpoint and showing a willingness to accept a perspective other than your own;
- recognizing when group membership differences may be intruding on the communication process;
- finding ways to circumvent potential difficulties;
- monitoring verbal and nonverbal communications; and
- establishing trust by allowing the interviewee to perceive that you possess expert knowledge, are a person who can be relied on, and are a person who has good intentions toward him or her. (Sattler, 1988, p. 42)

The interview should then be seen as the backbone of the evaluation. In other words, the rest of the assessment should be a validation of the information gathered from the student, parent, and teacher. Use of multiple sources is not only an IDEA requirement, but multiple sources assist in determining whether the same strengths and weaknesses are seen at home and at school.

Assessment Instruments

A culturally competent assessment does not imply that a standard battery of assessment is appropriate for specific populations. There are differences within each group. By this we mean just because two students are Native American, does not mean that they have the same level of English proficiency or that they have had the same types of experiences and have acculturated to the same traits. Thus, individual instruments to assess cognition, academic achievement, language development, processing, etc., depend on the examiner's knowledge of what the various assessments measure, the norms of the measures, and the implications of the results. Again, we need to consider the referral question and the results of the interview.

Assessment Results and Report Writing

Cultural and linguistic information should be present throughout the report. This serves as a reminder for the evaluator, as well as assist in the assessment schemata through which individuals will base the measures used and their diagnostic impressions. Thus, current diagnostic and school psychology students are trained to place the information in three places within the report.

- The **first** place it is identified is in the background information, and/or behavior observations or interview portions. Their impressions based on the information regarding acculturation and linguistic abilities are reported for the first time. Specific examples should be shared to further validate one's impressions. It is also mentioned in these portions of the report in such a manner so the reader will realize where the impressions came from.
- The **second** place it is recommended to place the information is before the assessment results and interpretation is presented. This involves a report of the validity of the results of the measures utilized based on cultural and linguistic information.
- The **third** place there should be mention of cultural and linguistic factors is in the summary and recommendations portions. In this way, a reader can read almost any portion of the report and the cultural and linguistic information is present.

Recommendations

Too many times, evaluators do not include functional types of recommendations that were obtained from the assessment for school staff and the family. Provide several recommendations on language, language instruction, culture, and interventions regarding cultural issues. This entails an understanding of second language acquisition models, appropriate language instruction models, and cultural issues that may need to be addressed in counseling.

E. Vocational Evaluation

Special education staff will collect vocational evaluation data when appropriate. As the IEP Team begins discussion and planning for entry into the high school curriculum and discusses the graduation options of the student, vocational evaluation may be determined appropriate.

Functional Vocational Evaluation.

The IEP committee will consider any recommendations as a result of Transition Planning. Transition services are a coordinated set of activities for a student with a disability that include, if appropriate, a functional vocational evaluation. If the IEP Team recommends this, a qualified professional will conduct the evaluation.

1. *The evaluation will include, but not be limited to, observation in vocational settings, interview with teacher and parents, and other evaluations of student aptitude and interest, as appropriate.*
2. *Results of the evaluation, including strengths and weaknesses, will be addressed in a written report maintained in the eligibility file.*

XII. APPRAISAL PERSONNEL *(See also Personnel in Chapter 8- General Administration)*

§300.156 Personnel qualifications.

- (a) General.** The SEA must establish and maintain 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) For remaining portion, *see Administrative Chapter 8 of this document***

PERSONNEL RESPONSIBILITIES:

Educational Diagnostician:

1. *administers intellectual and academic/developmental evaluations;*
2. *administers evaluations of learning competencies for initial evaluations and re-evaluations;*
3. *participates in EDT evaluations for autistic, learning disabled, and multiple disability referrals;*
4. *assists in evaluation of vocational skills and needs;*
5. *may serve on the SAT or 504 Committee on assigned campus; and*
6. *interprets evaluation data orally and in a written report to the IEP Team.*

School Psychologist:

1. *administers psychological screenings and evaluations;*
2. *participates in EDT evaluations for autistic referrals;*
3. *develops behavior intervention plans and consults with staff as needed;*
4. *participates on IEP Team as needed; and*
5. *may serve on SAT or 504 Committee on assigned campus, as appropriate.*

Speech/Language Pathologist:

1. *administers evaluations for all speech-impaired referrals;*
2. *screens or evaluates SAT referrals for oral expression and listening comprehension, upon request;*
3. *screens referrals, as appropriate, upon request;*
4. *participates in the EDT evaluations for autistic referrals, when appropriate; and*
5. *may serve on the SAT or 504 Committee on assigned campus.*

Adapted P.E. teacher:

1. *administers screening/evaluation for possible adapted/ specialized physical education services, and*
2. *completes a written report with recommendations.*

Auditory Impairments (AI) – Deaf Educator:

Evaluation and services for students with auditory impairments will be provided by appropriately qualified personnel. Personnel from the New Mexico School for the Deaf or other appropriate personnel may be used as needed.

Visual Impairments (VI):

Evaluations and services for students with visual impairments will be conducted by appropriately qualified school personnel, or other appropriate agency personnel from the New Mexico School for the Blind and Visually Impaired.

Special Education Teachers:

Annually assess student competencies for updating the student's IEP. This will include the review of progress on the New Mexico State Assessment. Consideration of any benchmark tests will be used as well. This could also be an informal criterion/curriculum based evaluation, etc. Information for the three year re-evaluation will be provided to the diagnostician and / or EDT for inclusion in the written eligibility report.

Related Services Personnel

Occupational Therapist/Physical Therapist:

- 1. administers screening and evaluation for possible OT/PT services, and*
- 2. assures annual medical release is obtained for continuation of services.*

Interpreter / Translator

- 1. assists with parent/student translations in SAT meetings,*
- 2. assists with evaluations, and*
- 2. assists in IEP Team meetings.*

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 4. - DISABILITIES – EXCEPTIONALITIES

Date Chapter 4. Adopted by Governing Body: 6/12/14
Date Chapter 4. Reviewed by Governing Body: 9/13/18
Date Chapter 4. First Revision: 7/15/14

Chapter 4. - DISABILITIES – EXCEPTIONALITIES
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Chapter 4. - DISABILITIES – EXCEPTIONALITIES

DISABILITIES - Requirements

§300.8 Child with a disability.

(a) General.

- (1) **Child with a disability** means a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.
- (2) (i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.
(ii) If, consistent with §300.38(a)(2), the related service required by the child is considered special education rather than a related service under New Mexico standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(c) Definitions of disability terms *(found in this section)*

Authority: NMAC 6.31.2.7 DEFINITIONS:

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

- (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 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 age 3 through 9 who is evaluated as being developmentally delayed and who, because of that condition, needs special education and related services.

*The ASK Academy will follow additional guidance provided in the [New Mexico Technical Evaluation and Assessment Manual \(NM-TEAM\) Revised June 2007](http://www.ped.state.nm.us/SEB/technical/NMTeamManual.pdf) located at:
<http://www.ped.state.nm.us/SEB/technical/NMTeamManual.pdf>*

I. AUTISM SPECTRUM DISORDER

§300.8 Child with a disability.

- (c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

- (1) (i) **Autism** means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.
- (ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.
- (iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

In New Mexico, all disabilities within the three Autism Spectrum Disorder (ASD) categories listed below may be eligible for special education services under the autism category as long as the student also demonstrates a need for special education services.

A. Autistic Disorder

B. Asperger's Disorder

C. Pervasive Developmental Disorder Not Otherwise Specified

An operational definition of ASD has been quantified using the *Diagnostic Statistical Manual IV* (DSM-IV). The following three categories and criteria provide valuable descriptive information for evaluators as they attempt to address ASD in school settings. However, the evaluation team must be mindful of the fact that they are making an **educational**, not a medical, determination.

A. Autistic Disorder

To make an educational determination that a child has an Autistic Disorder, a total of six or more items from the three lists below must be present. At least two must be from the first list, and one each from the second and third lists.

1. Qualitative impairment in social interaction, as manifested by at least *two* of the following characteristics:
 - a. Marked impairment in the use of multiple nonverbal behaviors, such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction
 - b. Failure to develop peer relationships appropriate to developmental level
 - c. A lack of spontaneous pursuit of shared enjoyment, interests, or achievements with other people (e.g., demonstrating a lack of showing, bringing, or pointing out objects of interest to others)
 - d. A lack of social or emotional reciprocity
2. Qualitative impairment in communication as manifested by at least *one* of the following characteristics:
 - a. Delay in, or total lack of, development of spoken language (not accompanied by an attempt to compensate through alternative models of communication, such as gesture or mime)
 - b. In individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others
 - c. Stereotyped and repetitive use of language or idiosyncratic language
 - d. Lack of varied spontaneous make-believe play or social and imitative play appropriate to developmental level
3. Restrictive repetitive and stereotyped patterns of behavior, interests, and activities as manifested by at least *one* of the following characteristics:

- a. Encompassing reoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus
- b. Apparently inflexible adherence to specific, nonfunctional routines or rituals
- c. Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping, twisting, or complex whole-body movements)
- d. Persistent preoccupation with parts of objects

In addition to the traits described above, Autistic Disorder is also characterized by two other factors. Delays or abnormal functioning in at least **one** of the following areas, with onset prior to age 3:

- social interaction
- language as used in social communication
- symbolic or imaginative play

The disturbance is not better accounted for by Rett's Disorder or Childhood Disintegrative Disorder. *If Rett's Disorder or Childhood Disintegrative Disorder are suspected, parents should be encouraged to promptly consult a medical professional.*

Rett's Disorder (299.80)

In order to differentiate between Autistic Disorder and Rett's Disorder, the following conditions must be addressed. Rett's Disorder includes **all** of the following:

1. Apparently normal prenatal and perinatal development
2. Apparently normal psychomotor development through the first 5 months after birth
3. Normal head circumference at birth

Onset of all of the following **after** the period of normal development:

1. Deceleration of head growth between ages 5 and 48 months
2. Loss of previously acquired purposeful hand skills between 5 and 30 months with the subsequent development of stereotyped hand movements (e.g., hand wringing or hand washing)
3. Loss of social engagement early in the course (although often social interaction develops later)
4. Appearance of poorly coordinated gait or trunk movements
5. Severely impaired expressive and receptive language development with severe psychomotor retardation

Childhood Disintegrative Disorder (299.10)

In order to differentiate between Autistic Disorder and Childhood Disintegrative Disorder, the following conditions must be addressed. Childhood Disintegrative Disorder includes:

Apparently normal development for at least the first 2 years **after** birth as manifested by the presence of age-appropriate verbal and nonverbal communication, social relationships, play, and adaptive behavior.

Clinically significant loss of previously acquired skills before age 10 in at least **two** of the following areas:

1. Expressive or receptive language
2. Social skills or adaptive behavior
3. Bowel or bladder control
4. Play
5. Motor Skills

Abnormalities of functioning in at least **two** of the following areas:

1. Qualitative impairment in social interaction (e.g., impairment in nonverbal behaviors, failure to develop peer relationships, lack of social or emotional reciprocity).

2. Qualitative impairment in communication (e.g., delay or lack of spoken language, inability to initiate or sustain conversation, stereotyped and repetitive)
3. Restricted, repetitive, and stereotyped patterns of behavior, interest, and activities including motor stereotypes and mannerisms.

The disturbance is not better accounted for by another specific Pervasive Developmental Disorder or by Schizophrenia.

2. Asperger's Disorder

To make an educational determination that a child has Asperger's Disorder, consider these characteristics. Qualitative impairment in social interaction, as manifested by at least *two* of the following traits:

1. Marked impairment in the use of multiple nonverbal behaviors, such as eye-to-eye gaze, facial expression, body posture, and gestures to regulate social interaction
2. Failure to develop peer relationships that are appropriate to developmental level
3. Lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (e.g., lack of showing, bringing or pointing out objects of interest to other people)
4. Lack of social or emotional reciprocity

Restricted, repetitive, and stereotyped patterns of behaviors, interests and activities, as manifested by at least *one* of the following characteristics:

1. Encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal in either intensity or focus
2. Apparent inflexible adherence to specific nonfunctional routines or rituals
3. Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole body movements)
4. Persistent preoccupation with parts of objects

The disturbance causes clinically significant impairment in social, occupational or other important areas of functioning.

There is no clinically significant general delay in language (e.g., single words used by age 2 years, communicative phrases used by age 3).

There is no clinically significant delay in cognitive development or in the development of age-appropriate self help skills, adaptive behavior (other than in social interaction,) and curiosity about the environment in childhood.

Criteria are not met for another specific Pervasive Developmental Disorder or for Schizophrenia.

3. Pervasive Developmental Disorder Not Otherwise Specified (Including Atypical Autism)

This category should be used when there is a severe and pervasive impairment in the development of reciprocal social interaction associated with impairments in **either** verbal or nonverbal communication skills or with the presence of stereotyped behavior, interests, and activities—but the criteria are not met for a specific Pervasive Developmental Disorder, Schizophrenia, Schizotypal Personality Disorder, or Avoidant Personality Disorder. For example, this category includes “atypical autism” presentations that do not meet the criteria for Autistic Disorder because of late age of onset, atypical symptomatology, subthreshold symptomatology, or all of these.

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of autism:

- A. The team must review and/or complete the following evaluations and/or assessments:**
- complete SAT file documentation
 - direct observations

- language proficiency assessment
- assessment of cognitive/intellectual abilities
- academic achievement assessments
- adaptive behavior assessment
- speech/language/communication assessment
- occupational therapy evaluation
- social skills assessment
- autism spectrum disorder assessment
- parent interview

These assessments and evaluation data must demonstrate that the student is a student with a disability according to the requirements of the IDEA listed above.

B. The questions below should be answered to help the EDT with the determination of a student's eligibility for special education and related services.

1. Has the EDT eliminated the possibility that the student's educational performance is adversely affected primarily because the child has an emotional disturbance?
☐ YES ☐ NO
 On the written report, specify Rationale and Documentation.
 If answered NO, the student is not eligible under the autism category.
2. Significant speech-language impairments are a part of ASD. Has the EDT addressed the possibility that a speech-language impairment might best describe the student's disability?
☐ YES ☐ NO
 On the written report, specify Rationale and Documentation.
 If answered NO, the student is not eligible under the autism category.
3. Has the EDT eliminated the possibility that lack of appropriate instruction in reading or math, or limited English proficiency is a determinant factor?
☐ YES ☐ NO
 On the written report, specify Rationale and Documentation.
 If answered NO, the student is not eligible under the autism category.
4. Has the EDT determined that these assessments and evaluation data demonstrate that the student is a student with ASD according to the requirements listed above?
☐ YES ☐ NO
 On the written report, specify Rationale and Documentation.
 If answered NO, the student is not eligible under the autism category.

C. The student must also demonstrate a need for special education. Ask these questions:

Question 1. ☐ YES ☐ NO
 Can adaptations be made in the regular education program to support both the student's access to the general education curriculum and his/her ability to meet the standards that apply to all students?
 (Consider adaptation of content, methodology, and/or delivery of instruction)
 If answered *YES*, refer student back to the SAT.
 If answered *NO*, provide rationale and documentation and proceed to question two.
 On the written report, specify Rationale and Documentation.

Question 2. ☐ YES ☐ NO
 Are there additions or accommodations that the student needs that cannot be provided through general education?
 If answered *YES*, provide rationale and documentation and complete EDT eligibility determination process.

On the written report, specify Rationale and Documentation.

The team of professionals completing the evaluation process for autism will include a psychologist, a speech/language pathologist, a diagnostician, and any other professional, as appropriate. The parent is also a required member of the eligibility determination team.

II. DEAF - BLINDNESS

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

- (2) Deaf-blindness** means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

To receive special education or related services, a student must meet the eligibility criteria below:

1. The student meets the requirements of the deaf-blindness definition.
2. Lack of appropriate instruction in reading or math, or limited English proficiency is not a determinant factor.
3. The student demonstrates a need for special education services.

Since few formal assessments have been standardized with students who are deaf-blind, the evaluation team relies heavily on informal, individually planned assessment information for evaluation and program planning.

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of deaf-blind:

1. Review and consider the **complete SAT file** documentation
2. Conduct a current, comprehensive **audiological evaluation** to determine unaided and aided hearing levels and other audiological measures deemed necessary by a licensed audiologist to determine degree and type of hearing loss.
3. Obtain an **eye examination** conducted by a licensed eye specialist, such as an ophthalmologist or an optometrist, to determine the presence of an eye condition. A written report (see Appendix H) must be on file that includes the diagnosis of the eye condition, visual acuity, and recommendations in regard to using prescription lenses.
4. Do a **functional vision evaluation** to provide information regarding the amount and efficiency of the student's use of vision in an educational setting. This must include:
 - observation of visual responses; screening tests of visual abilities; observations by family and teachers; self-report of visual abilities (when appropriate)
 - observation of accommodations in classroom methods, materials, and environment (including lighting, time of day, location in the classroom, etc.).
 - assessment by teacher(s) of the visually impaired or those with specific training in this area.
5. Give a **speech/language/communication assessment** to acquire information regarding the student's communication. In order to choose appropriate tests and procedures, the evaluator must first

determine which language, or communication system(s) the child uses. The assessment should include a description of the intelligibility of all systems used.

The communication evaluation for deaf-blind should focus on three areas:

- Identifying the child's communicative strengths and weaknesses;
- Comparing the child's communication skills to those of other students the same age with normal hearing abilities;
- Assessment of receptive and expressive language content (semantics), form (morphology/syntax), and function (pragmatics) should include both standardized and non-standardized descriptive measures;
- Assessment of oral/peripheral structure and function, articulation/ phonology, voice and prosody, when appropriate, should be conducted. The communication/language evaluation may include an augmentative/alternative assessment.

6. A **learning media assessment** must be conducted by teacher(s) of the visually impaired or those with specific training in this area. "Learning media" are defined as the materials or methods that a student uses for reading and writing as well as the sensory channels utilized to access information.
7. The **assessment of cognitive/intellectual abilities** will provide meaningful information on the student's capacity to learn, level of concept development, and method of processing information.
 - The examiner will need to consider the results of the student's **functional vision evaluation, hearing evaluation, learning media assessment, and speech/language/communication assessment** and may wish to consult with a person(s) who is trained in the education of students who are deaf/hard of hearing and visually impaired regarding choice of test instruments and any modifications in the methods, materials, and environment that might enhance the assessment.
 - If formal evaluation is not feasible, an assessment of adaptive behaviors will be necessary in order to gather information regarding the student's cognitive abilities.
8. An **individual academic achievement assessment** must provide information as to how the student functions in the areas of reading, written language, mathematics and will provide a measure of the student's strengths, weaknesses, and mastery of skills.
 - The examiner will need to consider the results of the student's **functional vision evaluation, hearing evaluation, learning media assessment, and speech/ language/ communication assessment** and may wish to consult with a person who is trained in the education of students who are deaf/hard of hearing and visually impaired regarding choice of test instruments and any modifications in the methods, materials, and environment that might enhance the assessment.
 - If formal evaluation is not feasible, assessments of functional skills will be necessary in order to gather information about the student's present levels of performance.

Potential additional components of an initial evaluation, as determined by the evaluation team:

1. Assessment of motor skills
2. Adaptive behavior assessment
3. Assessment of the student's orientation and mobility skills
4. Assessment of student's social-emotional development
5. Assistive Technology evaluation
6. Functional Vocational evaluation

III. DEAF OR HARD OF HEARING

§300.8 Child with a disability.

- (c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

- (3) **Deafness** means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.
- (5) **Hearing impairment** means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

§300.113 Routine checking of hearing aids and external components of surgically implanted medical devices.

- (a) **Hearing aids.** Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.
- (b) **External components of surgically implanted medical devices.**
 - (1) Subject to paragraph (b)(2) of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.
 - (2) For a child with a surgically implanted medical device who is receiving special education and related services under this part, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

In New Mexico, the term "hard of hearing" is used instead of "hearing impaired." This distinction is made in order to indicate a developmental/linguistic, rather than a pathological, perspective.

Deaf or hard of hearing can mean:

- mild through profound,
- bilateral or unilateral,
- sensorineural or conductive,
- permanent or fluctuating hearing loss, with or without amplification, as documented in a comprehensive audiological evaluation administered by a licensed audiologist.

What educational impact does this disability typically have on students?

Students who are deaf or hard of hearing do not have full, or in some cases any, auditory access to expressive and receptive language through which the majority of information is presented and obtained in educational settings. Many families in New Mexico are bi-and even tri-lingual with Spanish or a Native American language being the predominant language at home, thus adding to the complexity of assessing and educating students who are deaf or hard of hearing.

The lack of development of early and appropriate communication skills may lead to academic achievement deficits, social communication deficits, and, potentially, vocational limitations. Supporting such development requires the earliest possible exposure to communication and language. Research validates the importance of early and meaningful "natural" communication as a crucial stepping-stone for the full development of language and English skills. Depending on the individual child, "natural" communication may include a variety of communication modes, systems and languages, including American Sign Language (ASL), various forms of manually coded English, and spoken language. In addition, a child who is exposed to appropriate early communication is more apt to reach important cognitive and developmental milestones in the first few years of life. (New Mexico Task Force, 2003)

Factors such as etiology, age of onset, amount of residual hearing, cultural and language background, multiplicity of disabilities, communication skills, language environment, and cognitive ability affect the language proficiency of a student, who is deaf or hard of hearing, has or may acquire. This may impact his or her ability to learn language visually through sign language or auditory through speech, utilize

amplification or assistive hearing technology, develop concepts, maximize his or her learning potential, and be an active participant in his/her educational environment.

How is an initial evaluation done?

The evaluation team makes use of an **interpreter** as needed. Formal assessments done using an interpreter require special consideration. Professionals conducting evaluations using an interpreter must take the following steps:

- Determine prior to the evaluation whether the child has sufficient language skills to use an interpreter and is at a developmental level that is adequate for understanding the role of the interpreter.
- Make a reasonable effort to use a Registry of Interpreters for the Deaf (RID) **certified interpreter** for any diagnostic assessment or evaluation that is done to determine eligibility for services.
- Meet with the interpreter prior to the testing to review the language of the test and determine how the interpreter will present the instructions and questions in a manner that is both consistent with the test standardization and comprehensible to the child.

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of deaf or hard of hearing:

1. Review and consideration of the **complete SAT file** documentation. Because hearing loss places an increased demand on visual functioning, give special attention to **vision screening records**.
2. Conduct a current, comprehensive **audiological evaluation** to assess unaided and aided hearing levels, and auditory skills developmental level and other audiological measures deemed necessary by a licensed audiologist to determine degree and type of hearing loss and functional use of hearing.
3. Give a **speech/language/communication assessment** to acquire information about the student in the following areas:
 - Identifying the student's language strengths and weaknesses
 - Comparing the student's language and communication level with his or her potential
 - Comparing the student's language skills with those of other students the same age who have a similar degree of hearing loss
 - Comparing the student's language skills to those of other students the same age who are hearingIn order to choose appropriate tests and procedures, the evaluator must first determine which language, or communication system(s) the student uses. The evaluator must be competent and trained in evaluating the student's language and/or communication system(s). The assessment should include a description of the intelligibility of all systems used.

Assessment of students who are deaf should include standardized measures that are normed for students with hearing loss. Measures whose norm group is composed of students who are hearing may also be used if they are appropriate for the student's level of communicative functioning. In the latter case, scores should be used with caution and primarily for descriptive purposes. Assessment of oral/peripheral structure and function, articulation/ phonology, voice and prosody, as appropriate, should be conducted.

4. The **assessment of cognitive/intellectual abilities** provides meaningful information on the student's capacity to learn, level of concept development, and method of processing information. The assessment must be composed of at least the core test battery, as defined by the test author.

The examiner will need to consider the results of the student's **audiological evaluation** and **speech/language/communication evaluation** and may wish to consult with a person who is trained

in the education of students who are deaf or hard of hearing regarding choice of test instruments and any modifications in the methods, materials, and environment that might enhance the assessment.

5. An **individual academic achievement assessment** provides information as to how the student functions in the areas of reading, written language, mathematics and offers a measure of the student's strengths, weaknesses, and mastery of skills.

The examiner will need to consider the results of the student's **audiological evaluation** and **speech/language/communication evaluation** and, as above, may wish to consult with a person trained in the education of deaf or hard of hearing students.

When considering students who are hard of hearing, a professional certified in the education of students with hearing impairments should be assigned to assist in:

1. *determining appropriate areas of evaluation;*
2. *developing or determining appropriate evaluation techniques;*
3. *conducting evaluations when appropriate; and*
4. *interpreting data to ensure consideration and understanding of the educational, psychological, and social implications of the disability.*

Birth – 2 years / Deaf-Blind:

When considering students from birth through age two who have hearing impairments, or students who are deaf-blind, a teacher of infants who have auditory impairments or a teacher of students who are deaf-blind, as appropriate, may perform the evaluation specified above.

To receive special education or related services, a student must meet the eligibility criteria below:

1. The student meets the requirements of the deaf-blindness definition.
2. Lack of appropriate instruction in reading or math, or limited English proficiency is not a determining factor.
3. The student demonstrates a need for special education services.

IV. EMOTIONAL DISTURBANCE

§300.8 Child with a disability.

- (c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

- (4) (i) **Emotional disturbance** means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
 - (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
 - (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
 - (C) Inappropriate types of behavior or feelings under normal circumstances.
 - (D) A general pervasive mood of unhappiness or depression.
 - (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
- (ii) **Emotional disturbance includes schizophrenia.** The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

The Office of Special Education Programs (OSEP) has clarified that a generally acceptable definition of “a long period of time” is a range of from two to nine months, assuming preliminary interventions have been implemented and proven ineffective during that period (*Letter to Anonymous*, 231 IDELR 247, OSEP 1989).

Neither the IDEA statute, nor its regulations at 34 CFR §300.7 (c)(4)(i), define the requirement that a student’s qualifying behavior manifest itself “to a marked degree.” OSEP takes the position that it generally refers to the frequency, duration, or intensity of a student’s emotionally disturbed behavior in comparison to the behavior of peers, and can be indicative of either degree or acuity or pervasiveness (*Letter to Anonymous*, 213 IDELR 247, OSEP 1989).

Attempts have been made to elicit clarification from federal agencies such as OSEP, regarding contentious points in the ED definition. For instance, when asked, “What constitutes educational performance?” OSEP replied in a policy letter dated September 14, 1990, that *educational performance must be determined on an individual basis and should include non-academic as well as academic standards as determined by standardized measures*. The letter concluded that the *measurement of ‘educational performance’ for children with IEPs will be different for each child and must be limited to each child’s unique educational needs. Therefore, this Office, as of this time, has not developed a single definition of the term ‘educational performance.’* (*Letter to Lybarger*, 17 IDELR 54, OSEP 1990)

In New Mexico, Emotional Disturbance is a condition exhibiting *one or more* of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

- an inability to learn which cannot be explained by intellectual, sensory, or other health factors
- an inability to build or maintain satisfactory interpersonal relationships with peers and teachers
- inappropriate types of behavior or feelings under normal circumstances
- a general pervasive mood of unhappiness or depression
- a tendency to develop physical symptoms or fears associated with personal or school problems

The term does not apply to children who are socially maladjusted unless it is determined that they (also) have an emotional disturbance. The term does not apply to students experiencing sociolinguistic stress, acculturational stress, or any other situational challenges, unless it is determined that they (also) have an emotional disturbance. “Socially maladjusted” remains a concept for which there is currently no universally accepted definition. If an evaluator recommends excluding a child from eligibility as not having an emotional disturbance and being socially maladjusted, the evaluator should assure that a scientifically-based conceptual framework for defining and assessing social maladjustment is used and documented.

What educational impact does this disability typically have on students?

Emotional disturbance affects both male and female students. Care should be taken to assure that all children with this disability receive appropriate referrals, evaluations, and services. Male students with emotional disturbance frequently demonstrate an adverse relationship with the educational environment and present externalizing behavior patterns that may include numerous discipline referrals for defiance of authority and disruptive behavior, low grades, and poor attendance. Female students with emotional disturbance frequently present more internalizing behavior patterns that may include withdrawal, depression, and irritability. Externalizing behaviors generally are more readily identified. Internalizing behaviors, however, may also indicate a need for special education and related services that is just as critical for the student. The disruptiveness of a behavior must neither dictate nor obscure a student’s diagnosis and needs.

The initial eligibility determination under the category of emotional disturbance at the EDT must include the participation of a New Mexico licensed psychologist. The following components are adapted from National Association of School Psychologists recommendations (McConaughy, et. al., 2003).

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of emotionally disturbed:

1. Review and consider the **complete SAT file** documentation. The team must consider a student's cultural/ experiential background plus level of acculturative stress and/or identity issues that may affect his or her ability to function appropriately within the school environment, but are not the result of emotional disturbance.
2. Conduct a **language proficiency assessment** to provide information regarding the student's level of Cognitive Academic Language Proficiency (CALP) and understanding, level of acculturation, and cultural considerations; and level of Basic Interpersonal and Social Communication Skills (BICS), which assists with the selection of appropriate assessment tools. This is critical for students with more than one language modality.
3. Conduct an **assessment of cognitive/intellectual abilities** to get meaningful information on the student's capacity to learn, level of concept development, and method of processing information.
4. Use **individual academic achievement assessments** to provide information about how the student functions in the areas of reading, written language, and mathematics and offer a measure of the student's strengths, weaknesses, and mastery of skills.
5. Give a **speech/language/communication assessment** to achieve a more accurate diagnosis, by gathering information that helps the team consider the complex interrelationships between communication disorders and emotional and behavioral disorders. Communication problems and emotional difficulties are not mutually exclusive; therefore, the EDT must be concerned with the degree of contribution of each on a student's functioning. Because many psychological assessment tools are language based, it is also important that the S/L evaluation provide information regarding the student's language development and communication skills. (JSHD, 1990)
6. Use a **psychological evaluation** to acquire insights into and information about a student's personal characteristics and psychological functioning related to the student's educational performance.
7. Employ the use of broad-band **behavior rating scales/checklists** to collect data about frequency and intensity of behaviors (internalizing or externalizing) considered deviant.
8. Use multiple **behavioral observations** in structured and unstructured school settings, supplemented by information from other settings if available, will be used to compare the type and frequency of the behaviors noted with those of the student's peer group.
9. **Interview** educational stakeholders to bring to light information about the student in the areas of learning styles, general health (etiologies), interpersonal relationships, social skills, and emotional functioning, and contributions of co-morbidity.

Potential additional components of an initial evaluation, as determined by the evaluation team:

1. A functional behavioral assessment to provide specific information about a student's targeted behavioral functioning in school in various settings and time frames
2. A physical examination

To receive special education or related services, a student must meet the eligibility criteria:

1. The student meets the requirements of the emotional disturbance definition.
2. Lack of appropriate instruction in reading or math, or limited English proficiency is not a determinant factor.
3. The student demonstrates a need for special education services.

V. INTELLECTUAL DISABILITY

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

- (6) Intellectual Disability means significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.**

In New Mexico, intellectual disability refers to a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. This disability originates before age 18. The following five assumptions, provided by the American Association on Intellectual disability (AAMR), are essential to the application of this definition:

1. Limitations in present functioning must be considered within the context of community environments typical of the individual's age peers and culture.
2. Valid assessment considers cultural and linguistic diversity as well as differences in communication, sensory, motor, and behavioral factors.
3. Within an individual, limitations often coexist with strengths.
4. An important purpose of describing limitations is to develop a profile of needed supports.
5. With appropriate personalized supports over a sustained period, the life functioning of the person with intellectual disability generally will improve. (AAMR, 2002)

What educational impact does this disability typically have on students?

Students with intellectual disability have the capacity to learn, to develop, and to grow. With supports, these citizens can become contributing and full participants in society. Appropriate educational services assist these students as they strive to accomplish this vision.

As with all education, differentiating instruction to meet individual needs is the starting point for successful learning. Throughout their child's education, parents are an integral part of the planning and teaching team. In teaching students with mental retardation, it is important to consider their valued membership in their learning communities and society and their goals for adult life. Pedagogical considerations may include the following:

- Students with intellectual disability should be included to the maximum extent appropriate with their school peers in the regular education classroom in order to ensure access to the general curriculum;
- Teach skills that students will use frequently in such a way that students can generalize the skills in multiple settings;
- Select interventions and strategies that are research-based, data driven, and systematically evaluated for effectiveness; and,
- Align instruction for students with intellectual disability to grade-level academic expectations. Nationwide data are showing that students with cognitive disabilities are learning more than ever before as they begin to be held to higher academic standards and have access to the general curriculum.

Students with intellectual disability need the same basic opportunities that all people need for development. These include education, career preparation, health services, recreational/leisure opportunities, and social opportunities. In addition, students with intellectual disability may need individualized supports. Such supports may include educational programs that differentiate instruction, support inclusion in the regular classroom, academics, develop and implement transition plans, and provide opportunities to prepare for independent living and competitive employment.

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of emotionally disturbed:

1. Review and consider the **complete SAT file** documentation.
2. Do an **investigation and analysis** of developmental/educational, medical, family, and social history.
3. Conduct formal and/or informal **observations** in multiple settings, both structured and unstructured.
4. Give a **language proficiency assessment** to provide information regarding the student's level of Cognitive Academic Language Proficiency (CALP) and understanding, level of acculturation, and cultural considerations; and a level of Basic Interpersonal and Social Communication Skills (BICS), which assists with the selection of appropriate assessment tools. This is critical for students with more than one language modality.
5. Give an individually administered **assessment of cognitive/ intellectual abilities** to provide meaningful information on the student's reasoning, planning, problem-solving skills, abstract thinking ability, comprehension of complex ideas, learning fluency, and ability to learn from experience. Intellectual functioning is best represented by IQ scores when obtained from appropriate assessment instruments, consistent with the five AAMR assumptions essential to the application of the definition.
6. Give an individually administered **assessment of adaptive behavior** to provide information regarding conceptual, social, and practical skills. The assessment must utilize a standardized instrument(s) that is normed on the general population, including persons with and without disabilities.
7. Provide **documentation** of manifestation of the disability before the age of 18.
8. Conduct an **individual academic achievement assessment** to provide information as to how the student functions in the areas of reading, written language, mathematics and offers a measure of the student's strengths, weaknesses, and mastery of skills.

Potential additional components of an initial evaluation, as determined by the evaluation team:

1. Speech/language/communication evaluation
2. Functional Behavioral Assessment
3. Motor assessment
4. Assistive technology evaluation
5. Transition assessment

To receive special education or related services, a student must meet the eligibility criteria:

1. The student has a valid overall IQ score that is a standard score of 70 or below, considering standard error of measurement.
2. The student has a valid adaptive behavior score that is at least two standard deviations below the mean in conceptual, social, or practical skills, or an overall score that includes those components.
3. The student's cognitive disability existed before the age of 18.
4. The disability must have an adverse affect on educational performance.
5. Lack of appropriate instruction in reading or math, or limited English proficiency is not a determinant factor.
6. Student demonstrates a need for special education services.

VI. MULTIPLE DISABILITIES

§300.8 Child with a disability.

(c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

- (7) **Multiple disabilities** means concomitant impairments (such as intellectual disability-blindness, intellectual disability orthopedic impairment, etc.), the combination of

which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities do not include deaf-blindness.

In New Mexico, this means that the category of multiple disabilities is an extremely low-incidence category that involves complex, inseparable interactions between two or more disabilities and is characterized by the need for extensive or pervasive intensities of educational supports. Therefore, it is neither generally possible nor appropriate to designate the disabilities within this category as primary and secondary.

What educational impact does this disability typically have on students?

Early intervention programs, preschool, and educational programs with the appropriate support services are important to students with multiple disabilities. Family members, educators, and related service providers are all members of the team that may provide supports and/or services, along with others, as needed for each individual. Assistive technology, such as computers and augmentative/ alternative communication devices and techniques may provide valuable instructional assistance in the educational programs for these students.

In discussing multiple disabilities, it is important to gain a perspective about the interacting factors in multiple impairments. Each disability does not act in isolation and should therefore not be managed in isolation. In order to effectively address the considerable needs of individuals with multiple disabilities, educational programs need to incorporate a variety of components, including academic instruction that is tied to the New Mexico Content Standards and Benchmarks and/or the Expanded Performance Standards, language and/or communication development, social/emotional development, functional skill development (i.e., self-help skills) and vocational skill development. Related services will typically be provided during the natural routine of the school and community, rather than having the student removed from class for isolated therapy. Goal development and service delivery will require systematic coordination among related service providers, educators, and parents, facilitated through regularly scheduled meetings.

The classroom environment must take into consideration the student's access to the general curriculum and participation with age-group peers. Adaptive aids and equipment may enable students to increase their range of functioning and accessibility. The use of computers, augmentative/alternative communication systems, head sticks, and adaptive switches are some examples of the technological devices that enable students with sensory and additional disabilities to participate more fully in integrated settings.

What comprises an initial evaluation?

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of multiple disabilities:

1. Review and consider the **complete SAT file** documentation.
2. Do an **investigation and analysis** of developmental/educational, medical, family, and social history.
3. Do an **analysis** of current standardized and non-standardized academic data and performance.
4. Have multiple educational stakeholders conduct **observations** in multiple settings, both structured and unstructured environments, to determine academic and social functioning.
5. Conduct **interviews** of parents, caregivers, and students to determine student preferences, individual strengths and needs, family assets and needs, and any potential additional concerns.

Potential additional components should be determined by the evaluation team based upon the concomitant disabilities and the guidance provided in this manual that is specific to those areas of suspected disability. Thus, no specific potential additional evaluation components are listed here.

To receive special education or related services, a student must meet the eligibility criteria. The evaluation team must do the following:

1. Establish to the greatest extent possible according to the relevant eligibility criteria, two or more complex, inseparably interacting disabilities that cannot be designated as primary or secondary.
2. Document the need for extensive and/or pervasive intensities of educational support.
3. Exclude eligibility based upon deaf-blindness alone.
4. Conclude that lack of appropriate instruction in reading or math, or limited English proficiency is not a determinant factor.
5. Determine that there is a need for special education and related services.

VII. ORTHOPEDIC IMPAIRMENT

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

- (8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).**

In New Mexico, this definition can be clarified by understanding that an orthopedic impairment involves a chronic physical or structural limitation of the skeleton, joints, muscles, and/or fascia. This may cause impaired ability to use, move, or control the arms, legs, hands, feet, head, neck and/or trunk resulting in difficulty in the performance of gross-motor and/or fine-motor activities. Disabilities may be congenital or acquired anomalies, excluding traumatic brain injury. A congenital anomaly refers to a condition which is present at birth. Examples include, but are not limited to, deformities, dislocation, abnormal position and/or rotation of the bones, or absence of limbs or bones. Club foot, hip dysplasia, and achondroplasia may be the result of congenital deformities. Scoliosis may be congenital or acquired. Polio, rheumatoid arthritis, muscular dystrophy, and osteogenesis imperfecta are examples of orthopedic impairments caused by disease. Other causes of orthopedic impairments might include those occurring as a result of severe burns or physical trauma. The determination of whether an orthopedic impairment is "severe" should be made in consultation with a neuromotor specialist (occupational therapist or physical therapist) and the school nurse. All available medical records and educational evaluation information should be reviewed. The severity of an orthopedic impairment should be analyzed according to the impact on educational performance. Educational performance is adversely affected when the student is unable to perform necessary skills as a result of the orthopedic impairment even when appropriate adaptations in the general education setting have been provided. Educational performance related to orthopedic impairments may include the student's ability to:

- access the general education curriculum
- participate in general education classrooms
- safely negotiate throughout the school campus
- utilize school resources (e.g., playground equipment, cafeteria, science labs, media centers, restrooms, etc.)
- participate in physical education activities

What educational impact does this disability typically have on students?

Orthopedic impairments can significantly impact a student's ability to function at school. These can be divided into five factors: neuromotor, language, individual, psychological, and learning environment.

NEUROMOTOR FACTORS: Limited functional use of extremities (arms, hands, legs, and feet) may result in such problems as the inability to use standard writing tools, turn pages of a book, explore the school environment, or participate in activities that require fine-tuned movements. Postural, mobility, and endurance issues may restrict participation in activities and movement from one location to another. They may also affect the student's ability to sit in a chair or at the lunch table.

LANGUAGE FACTORS: Students who have concomitant speech/language impairments may be affected academically by being unable to fully communicate their ideas, needs, and desires. These issues may also affect the student's ability to ask for clarification or fully participate in educational and social activities.

INDIVIDUAL FACTORS: Students may have other issues as part of their orthopedic impairments that affect educational performance. These issues may include pain and discomfort, fatigue and endurance limitations, and the effects of medications and absenteeism.

PSYCHOLOGICAL FACTORS: Students with orthopedic impairments may demonstrate psychological and/or social/emotional difficulties. Academic performance may be affected by lack of motivation, learned helplessness, and/or depression.

LEARNING ENVIRONMENT FACTORS: Students with orthopedic impairments are often stereotyped as having cognitive impairments. This perception may inappropriately limit educational expectations for the student and may also contribute negatively to the psychological factors described above.

What comprises an initial evaluation?

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of orthopedic impairment:

1. Review and consider the **complete SAT file** documentation.
2. Document **medical diagnosis** of a chronic orthopedic impairment.
3. Have a **functional neuromotor assessment** completed by OT/PT to provide information about the quality of the student's self-help skills, mobility, posture, range of motion, strength, endurance, fine and gross motor skills, sensorimotor, and balance. The report should also include information that addresses the student's potential need for adaptive equipment, environmental adaptations, and/or assistive technology.
4. Administer individually an **academic achievement assessment** to acquire information about how the student functions in the areas of reading/literacy, written language, mathematics, and listening skills (when appropriate), and to provide a measure of the student's strengths, weaknesses, and mastery of skills.

Potential additional components of an initial evaluation, as determined by the evaluation team:

1. Assessment of cognitive/intellectual abilities
2. Speech/language/communication evaluation
3. Functional Behavioral Assessment
4. Assistive technology evaluation

To receive special education or related services, a student must meet the eligibility criteria:

1. The student meets the requirements of the orthopedic impairment definition, as described above.

2. Lack of appropriate instruction in reading or math, or limited English proficiency is not a determinant factor.
3. The student demonstrates a need for special education services.

VIII. OTHER HEALTH IMPAIRMENT

§300.8 Child with a disability.

(c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

- (9) **Other health impairment** means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that--
 - (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia and Tourette syndrome; and
 - (ii) Adversely affects a child's educational performance.

In New Mexico, the other health impairment category includes impairments that are typically physical, physiological, and/or neurological in nature. Some students with isolated mental health issues may be eligible under the Emotional Disturbance category. **The mere presence of a DSM-IV diagnosis does not make a student automatically eligible under the IDEA.** Students with a medical diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) or Attention Deficit Disorder (ADD) may be considered as eligible under this category if the EDT also determines that their educational performance is adversely affected. A student with a medical Fetal Alcohol Syndrome (FAS) diagnosis may also be included under this category if the EDT also determines that his or her educational performance is adversely affected.

What comprises an initial evaluation?

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of other health impairment:

1. Review and consider the **complete SAT file** documentation.
2. Do an **analysis** of current standardized and non-standardized academic data and performance.
3. Document a **diagnosis** of a chronic or acute physical, physiological, or neurological impairment that results in limited strength, vitality, and/or alertness.
4. Give an individually administered **assessment of cognitive/intellectual abilities** to provide meaningful information on the student's capacity to learn and his or her level of concept development and method of processing information.
5. Conduct an **individual academic achievement assessment** to provide information about how the student functions in the areas of reading, written language, mathematics and offers a measure of the student's strengths, weaknesses, and mastery of skills.
6. If the referral concern being considered is attention, focus, and/or hyperactivity, use a **behavior rating scale/checklist** obtained from at least two different observers in different settings.

Potential additional components of an initial evaluation, as determined by the evaluation team:

1. Speech/language/communication evaluation
2. Motor assessment
3. Assistive technology evaluation

To receive special education or related services, a student must meet the eligibility criteria:

1. Lack of appropriate instruction in reading or math, or limited English proficiency is not a determinant factor.
2. The student has a documented chronic or acute physical, physiological, or neurological impairment that results in limited strength, vitality, and/or alertness.
3. The disability must have an adverse affect on the student's educational performance.
4. Student demonstrates a need for special education services.

IX. SPECIFIC LEARNING DISABILITY

§300.8 Child with a disability.

(c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

(10) **Specific learning disability.**

(i) **General.** Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) **Disorders not included.** Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

Authority: NMAC 6.29.1.9 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:

D. Student intervention system (e.g., SAT, RtI, PBS). The school and district shall follow a three-tier model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning or behavior.

(1) In Tier I, the school and district shall ensure that adequate universal screening in the areas of general health and well-being, language proficiency status and academic levels of proficiency has been completed for each student enrolled. If through universal screening, a referral from a parent, a school staff member or other information available to a school or district suggests that a particular student needs educational support for learning or behavior, then the student shall be referred to the SAT for consideration of interventions at the Tier II level.

(2) In Tier III, a properly-constituted SAT at each school, which includes the student's parents and the student (as appropriate), shall conduct the student study process and consider, implement and document the effectiveness of appropriate research-based interventions utilizing curriculum-based measures. In addition, the SAT shall address culture and acculturation, socioeconomic status, possible lack of appropriate instruction in reading or math, teaching and learning styles and instructional delivery mechanisms in order to rule out other possible causes of the student's educational difficulties. When it is determined that a student has an obvious disability or a serious and urgent problem, the SAT shall address the student's needs promptly on an individualized basis, which may include a referral for a multi-disciplinary evaluation to determine possible eligibility for special education and related services consistent with the requirements of Subsections D-F of 6.31.2.10 NMAC and federal regulations at 34 CFR §300.300.

(3) In Tier III, a student has been identified as a student with disability and deemed eligible for special education and related services, and an IEP is developed by a properly-constituted team, pursuant to Subsection B of 6.31.2.11 NMAC and federal regulations at 34 CFR §300.321.

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:

C. Criteria for identifying children with perceived specific learning disabilities.

(1) Each public agency must use the three tiered model of student intervention for students suspected of having a perceived specific learning disability, consistent with the department rules, policies and standards for children who are being referred for evaluation due to a suspected disability under the specific learning disability category in compliance with 34 CFR §300.307.

(a) The ASK Academy must, subject to Subparagraph (d) of this paragraph, require that the group established under 34 CFR §§300.306(a)(1) and 300.308 for the purpose of determining eligibility of students suspected of having a specific learning disability, consider data obtained during implementation of tiers 1 and 2 in making an eligibility determination.

(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation required in 34 CFR §§300.304 through 300.306:

- (i) data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
- (ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

(c) The documentation of the determination of eligibility, as required by 34 CFR 300.306(c)(1), must meet the requirements of 34 CFR §300.311, including:

- (i) a statement of the basis for making the determination and an assurance that the determination has been made in accordance with 34 CFR §300.306(c)(1); and
- (ii) a statement whether the child does not achieve adequately for the child's age or to meet state-approved grade-level standards consistent with 34 CFR §300.309(a)(1); and
- iii) a statement whether the child does not make sufficient progress to meet age or grade-level standards consistent with 34 CFR §300.309(a)(2)(i), or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards or intellectual development consistent with 34 CFR §300.309(a)(2)(ii); and
- (iv) if the child has participated in a process that assesses the child's response to scientific, research-based intervention: a statement of the instructional strategies used and the student-centered data collected; documentation that the child's parents were notified about the state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; strategies for increasing the child's rate of learning; and the parents' right to request an evaluation.

(d) A parent may request an initial special education evaluation at any time during the public agency's implementation of tiers 1 and 2 of the three-tier model of student intervention. If the public agency agrees with the parent that the child may be a child who is eligible for special education services, the public agency must evaluate the child. If the public agency declines the parent's request for an evaluation, the public agency must issue prior written notice in accordance with 34 CFR Sec. 300.503. The parent can challenge this decision by requesting a due process hearing.

(4) In identifying children with specific learning disabilities in grades 4-12, the ASK Academy may use the dual discrepancy model as defined and described in the New Mexico Technical Evaluation and Assessment Manual (New Mexico T.E.A.M.) or the severe discrepancy model as defined and described in New Mexico T.E.A.M.

In New Mexico, a specific learning disability is a disability rooted in a neurological processing deficit (e.g., auditory processing, memory, processing speed, phonological processing, visual/perceptual processing, etc.) and results in significant academic underachievement following sustained, high-quality,

scientific, research based instruction and intervention. A specific learning disability is unique to the individual and is not the result of exclusionary factors. In order to identify a specific learning disability, the following four elements must be supported:

1. The student demonstrates significant academic underachievement, qualified by a pattern of strengths and weaknesses in performance and/or achievement, despite sustained, high-quality, scientific, research-based instruction and intervention.
2. There is evidence of basic neurological processing deficit.
3. The nature of the disability is heterogeneous (inter/intra individual).
4. The student's challenges are not caused by exclusionary factors.

Student Assistance Teams (SATs), evaluation teams, and Eligibility Determination Teams (EDTs) must systematically document strong connections to the factors listed above through standards-based measurements, work samples, anecdotal information (particularly in the area of significant academic underachievement following sustained, high quality instruction and intervention), and relevant teaching-learning observational information. Specific learning disability identification and eligibility may be manifested in the following areas:

- oral expression
- listening comprehension
- written expression
- basic reading skill
- reading comprehension
- mathematics calculation
- mathematics reasoning

Specific learning disabilities are not the result of:

- lack of appropriate instruction in reading
- lack of appropriate instruction in math
- limited English proficiency
- visual, hearing, or motor disability
- mental retardation
- emotional disturbance
- cultural factors
- environmental or economic disadvantage

“Cultural factors” and “environmental or economic disadvantage” are interpreted in New Mexico as limited access to sustained resources that are necessary prerequisites for typical development and growth. The disadvantage may also be the result of systematic trauma to an entire cultural group (unified by ethnicity, religion, gender, socioeconomic background, beliefs, values, styles, and/or practices) that negatively impacts the learning of students in the group, possibly for several generations.

The NMPED recognizes that there may be an overlap between the specific learning disability category and the speech-language impairment category in the area of language. Oral expression and listening comprehension are academic areas and should be treated as such in the evaluation process. The information provided through a speech-language evaluation may support the presence of a learning disability.

In addition, eligibility determinations under the category of SLD may require the use of professional judgment in situations where assessment and evaluation information is not reliable. If the EDT employs

the use of professional judgment in the eligibility determination process, it must meet the following expectations (adapted from Luckasson, Schalock 2005):

Purpose of Professional Judgment

The overall purpose of professional judgment is to ensure best practices. The use of professional judgment in a particular case enhances the precision, accuracy, and integrity of the professionals' decision in that case.

Definition of Professional Judgment

Professional judgment is a special type of judgment rooted in a high level of professional expertise and experience; it emerges directly from extensive data. It is based on the professionals' explicit training, direct experience with those with whom the professionals are working, and specific knowledge of the person and the person's environment. Competent professional judgment is based upon the specific strategies highlighted in the box below. Professional judgment is characterized by being: *systematic* (i.e., organized, sequential, and logical), *formal* (i.e., explicit and reasoned), and *transparent* (i.e., apparent and communicated clearly).

Competent Professional Judgment: Six Strategies

1. Conducting a thorough social history
2. Aligning data and its collection to the critical question(s) at hand
3. Applying broad-based assessment strategies
4. Implementing intervention best practices
5. Planning, implementing, and evaluating supports
6. Reflecting cultural competence and diversity

The ASK Academy Eligibility Determination Teams have two options when making eligibility determinations at all grade levels. Described on the following pages are both [Option 1](#) and [Option 2](#) for identification of students with specific learning disabilities. The ASK Academy has chosen to follow [Option 1](#) for identification of students with specific learning disabilities.

Learning Disability Evaluation

In New Mexico, specific evaluation data systems and processes for the alternative learning disability identification model, called the *Dual Discrepancy* evaluation model, are in the process of being developed and refined at the State and local levels. As the severe discrepancy model has been shown to delay the implementation of appropriate pedagogical interventions in the early elementary years, being called the "wait to fail model," the NMPED requires, that the ASK Academy implement the dual discrepancy model in kindergarten through third grade.

This model is based upon the instructional response to intervention process that generates the student achievement data needed to make the calculations required.

The NMPED has appropriate legal ground on which to require the use of the dual discrepancy model, provided by §300.307 (b), "A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability." Additional guidance can be found in the Discussion section for §300.307(b) of the Final Regulations, page 46646.

OPTION 1: Dual Discrepancy and the Three-Tiered Model of Student Intervention

To successfully make an appropriate eligibility determination under the specific learning disability category, Eligibility Determination Teams must understand the criteria that serve as eligibility requirements under this model (listed below). The concept of dual discrepancy is addressed in the

Identification of Learning Disabilities: Research to Practice (Gresham, 2002). A dual discrepancy exists when the student both performs below the level evidenced by grade-level peers and also shows a learning rate substantially below that of grade-level peers.

In New Mexico, the dual discrepancy criteria are defined as:

1. A difference of 1.5 standard deviations between a student's mean standards based assessment scores and that of all grade-level classmates in the district.
2. A difference of 1.5 standard deviations between the student's standards-based assessment slope of improvement and that of grade-level classmates in the district. (Adapted from Gresham, 2002)

Eligibility Determination Teams must be careful to make a clear determination that the difficulties that a student is facing are not solely related to a *language difference* when making eligibility determinations. The dual discrepancy profile established above may indeed fit a student who is simply struggling to learn a second language. *Evaluation teams must carefully document that they have distinguished between a language difference and a language disability as a necessary step in this evaluation process.*

Eligibility Determination Teams that employ the RtI model must also carefully differentiate between skill (acquisition) deficits and performance (motivational) deficits. Skill deficits refer to the absence of an academic skill in a student's repertoire ("can't do" problems), whereas performance deficits describe a lack of motivation to perform a given academic skill ("won't do" problems). A reasonable mode in which to make this determination is to provide reinforcers during assessment conditions. If the student is able to complete the task with targeted reinforcement, then the problem is a performance deficit. RtI, in its application for eligibility determinations, is solely aimed at finding skill deficits.

Standards-Based Assessment (SBA) involves the assessment of how well a student is meeting New Mexico's Standards for Excellence, which includes content standards, performance standards, and benchmarks. Components of a cohesive SBA system must be aligned to New Mexico's Standards for Excellence and may include test results from the New Mexico Standards-Based Assessments (NMSBA), ongoing progress monitoring tools such as the short-cycle assessments required by the NMPED's Educational Plan for Student Success (EPSS) system, district-wide standards-based assessments, and curriculum-based measures. An SBA system, in its application to the SLD eligibility determination process, must look at academic skill areas, such as reading, writing, and mathematics. An SBA system is thus based on both formative and summative assessments that are administered frequently and on a yearly basis. Assembling the ongoing data on a chart and/or graph tracks student success and allows for direct comparison in a standardized manner to district-wide, grade level classmates.

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of specific learning disability:

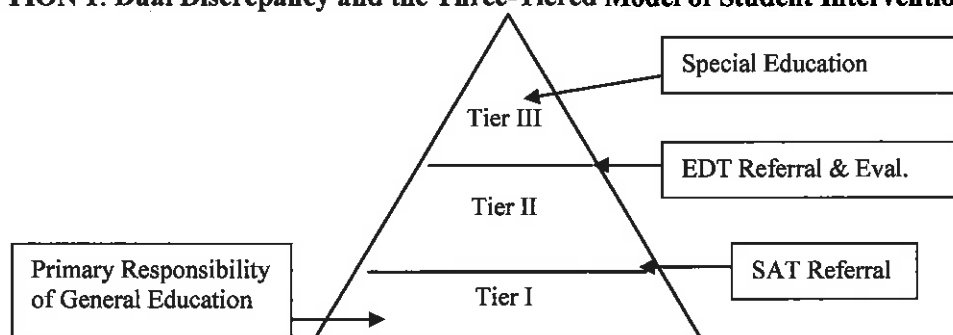
1. Review and consideration of the **complete SAT file** documentation
2. **Investigation and analysis** of academic, medical, family, and social history
3. **Interview(s)** of parents/caregivers and students (as appropriate) to determine student preferences, individual and family strengths and needs, and any potential additional concerns
4. **Additional observation** completed by a diagnostic evaluator or the evaluator's designee in a setting relevant to the area of suspected disability
5. A **language proficiency assessment** to provide information regarding the student's level of Cognitive Academic Language Proficiency (CALP) and understanding, level of acculturation, and cultural considerations, and level of Basic Interpersonal and Social Communication Skills (BICS), which will assist with the selection of appropriate assessment tools. This is critical for students with more than one language modality.

6. **Documentation that standards-based assessments** have been implemented reflecting the student's significant underachievement following documented, sustained, high quality, scientific, research-based intervention.
7. An individually administered **assessment of cognitive/intellectual abilities** to collect meaningful information on the student's capacity to learn, level of concept development, and method of processing information. The assessment must be composed of at least the core test battery, as defined by the test author. Under the RtI model, the results from the assessment of cognitive/intellectual abilities should be utilized solely to determine the level of the student's cognitive functioning. It is not to be used for making discrepancy determinations.
8. Individually administered **academic achievement assessment** in academic area(s) of suspected disability.
9. An **assessment of processing skills** to get information regarding potential processing deficits in the areas of auditory processing, memory, processing speed, phonological processing, visual/perceptual processing, etc.

Potential additional components of an initial evaluation, as determined by the evaluation team:

1. Mental health evaluation
2. Speech/language/communication evaluation
3. OT/PT evaluation

OPTION 1: Dual Discrepancy and the Three-Tiered Model of Student Intervention



Tier I—*Primary Intervention* is high-quality, whole-group, research-based general instruction delivered by qualified personnel, combined with general screening processes. For example, instruction must include those features that research has shown to be critical for early reading, literacy, and numeracy. The vast majority of students will respond to this intervention level. At Tier I, primary intervention is a function of general education (classroom teacher and paraprofessionals); therefore, general education staff would be responsible for leading and/or facilitating any discussions regarding student progress at the primary intervention level.

Tier II—*Secondary Intervention* is scientific, research-based intervention.

It is targeted, small-group, or individual instruction in specific deficit areas. The environment becomes more intensive and restrictive. At Tier II, secondary intervention remains a function of general education (classroom teacher, paraprofessionals, and established SAT); however, the SAT may include representatives from special education on an as-needed basis functioning solely as resources and not as evaluation specialists. General education staff members are responsible for implementing the scientific, research-based interventions and leading any discussion of the student's progress based on standards-based assessments at this level. It is entirely appropriate and possible that the SAT would choose to run through multiple cycles of secondary intervention in an effort to meet the needs of students in the general education classroom. This would particularly be appropriate if a student is making progress and the team continues to gather to fine tune instructional strategies to allow for greater success.

Multi-Disciplinary Evaluation is the fine line between Tier II and Tier III. The student is referred for a multi-disciplinary evaluation after the SAT has determined that the student has received sustained, high quality instruction in the regular education classroom with scientific, research-based interventions, which have been implemented with fidelity and are specific to the area(s) of deficit but that have not resulted in significant improvement. Parental Rights under the IDEA are in effect upon referral for evaluation. The Eligibility Determination Team's evaluation leads to one of two possible conclusions, based upon the eligibility determination requirements established in this manual:

1. Not eligible: Student is referred back to Tier II (Secondary Intervention) to consider new data and other possible interventions.
2. Eligible: Student moves into Tier III (Tertiary Intervention). The IEP process begins.

Tier III—*Tertiary Intervention* is individualized supports that are beyond the scope of general education, including, but not limited to, instruction and intervention through the delivery of special education and related services, as appropriate.

Response to Intervention (RtI) is a strand that runs through the Three-Tiered model. It is explained in detail in the NMPED's *Technical Assistance Manual: The Student Assistance Team and the Three-Tiered Model of Student Intervention*. RtI places supplemental requirements, such as scientific,

research-based instruction and intervention, on the Three-Tiered model that supports its use as an evaluation tool. The foundations that reinforce this model need further elaboration to provide for successful application of the model. The following eight features of RtI are adapted from the National Research Council on Learning Disabilities (NRCLD). They are the principles that form the foundation for RtI in New Mexico:

1. *High-quality classroom instruction.* Students receive high quality, research-based instruction in their general education setting. Before students are singled out for specific assistance, the typical classroom instruction must be of high quality. This quality can be assessed by comparing students' learning rates and achievement in different classrooms at the same grade level.
2. *Research-based instruction.* General education's classroom practices and curriculum vary in their efficacy. Thus, ensuring that the practices and curriculum have demonstrated their validity is important. Instruction must include those features that research has shown to be critical for early reading, literacy, and numeracy. If not, one cannot be confident that students' limited gains are independent of the classroom experiences.
3. *Classroom Performance.* General education instructors and staff assume an active role in student assessment in the general education curriculum. This feature emphasizes the important role of the classroom staff in designing and completing student assessments rather than relying solely on externally developed tests (e.g. NMSBA, etc.).
4. *General Screening.* School staff conducts general screening of academics and behavior. This feature focuses on specific criteria for judging the learning and achievement of all students, not only in academics, but also in related behaviors (e.g., class attendance, tardiness, truancy, suspensions, and disciplinary actions). Those criteria are applied in determining which students need closer monitoring and/or intervention.
5. *Continuous Progress Monitoring.* In RtI models, one expects students' classroom progress to be monitored and documented continuously. In this way, staff can readily identify those learners who are not meeting the benchmarks or other expected standards. Standards-based assessment is useful in this role. Progress monitoring tools should be evidence-based and predictive of end-of-year performance. The data-based results of these progress monitoring systems must be provided to parents. In New Mexico, the short-cycle assessments recommended as part of the Educational Plan for Student Success (EPSS) may be utilized to attend to this requirement in part, provided that the short-cycle assessments are ongoing, aligned with the New Mexico Content Standards, are scientific and research-based, and inform curricular decisions.
6. *Scientific, research-based interventions.* When students' general screening results or progress-monitoring results indicate a deficit, an appropriate instructional intervention is developed and implemented at Tier II of the SAT. School staff members are expected to implement specific scientific, research-based interventions to address the student's difficulties. These scientific, research-based interventions are implemented in a time period that can last up to 18 weeks in length and are designed to increase the intensity of the learner's instructional experience. The intervention cycle at Tier II can be repeated when the SAT chooses a different intervention or refines the implementation of an existing intervention.
7. *Progress monitoring during interventions.* School staff members use progress-monitoring data to determine the effectiveness of specific interventions and to make any changes as needed. Carefully defined data are collected, perhaps daily, to provide a cumulative record of the learner's response to intervention.
8. *Fidelity Measures.* While the interventions are designed, implemented, and assessed for their learner effectiveness, fidelity measures verify that the intervention was implemented as intended and with consistency.
In New Mexico, instructional leaders other than the classroom teacher (e.g., principals, education specialists, etc.) have a critical role in completing fidelity measures. This is a requirement that may be

met through the “Progressive Documentation” process that drives Professional Development Plans at the building level. (Adapted from Mellard, 2004)

LEAs that determine their SAT systems are not functioning in a manner that is consistent with the guidance established in the NMPED’s *Technical Assistance Manual: The Student Assistance Team and the Three-Tiered Model of Student Intervention*, should seek training assistance related to targeted area(s) of need in order to develop a model that can be successfully implemented.

To receive special education or related services, a student must meet the eligibility criteria:

1. The student demonstrates significant underachievement, based upon ability. Dual discrepancy is denoted by having a difference of 1.5 standard deviations between *both* the student’s mean standards based assessment *scores* and *slope of improvement* (growth) measured against those of grade-level students in the LEA’s area(s) of concern.
2. Standards-based achievement results are both below the average range and support the dual discrepancy in the area(s) of concern.
3. The student was provided with high-quality, scientific research-based instruction and intervention by qualified personnel in regular education settings.
4. Learning difficulties are not the result of lack of appropriate instruction in reading, lack of appropriate instruction in math, limited English proficiency, visual, hearing, or motor disability, mental retardation, emotional disturbance, cultural factors, or environmental or economic disadvantage.
5. Student demonstrates a need for special education services

OPTION 2: SEVERE DISCREPANCY

If the ASK Academy chooses to utilize a **severe discrepancy model** in evaluating a student for eligibility in the specific learning disability category, the ASK Academy will adhere to the following requirements.

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of specific learning disability:

1. Review and consideration of the **complete SAT file** documentation
2. **Investigation and analysis** of academic, medical, family, and social history
3. **Interview(s)** of parents/caregivers and students (as appropriate) to determine student preferences, individual and family strengths and needs, and any potential additional concerns
4. **Additional observation** completed by a diagnostic evaluator or the evaluator’s designee in a setting relevant to the area of suspected disability
5. A **language proficiency assessment** to provide information regarding the student’s level of Cognitive Academic Language Proficiency (CALP) and understanding, level of acculturation, and cultural considerations, and level of Basic Interpersonal and Social Communication Skills (BICS), which will assist with the selection of appropriate assessment tools. This is critical for students with more than one language modality.
6. An individually administered **assessment of cognitive/intellectual abilities** to collect meaningful information on the student’s capacity to learn, level of concept development, and method of processing information. The assessment must be composed of at least the core test battery, as defined by the test author.
7. An **individual academic achievement assessment** to provide information about how the student functions in the areas of oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning and to provide a measure of the student’s strengths, weaknesses, and mastery of skills.

8. An **assessment of processing skills** to get information regarding potential processing deficits in the areas of auditory processing, memory, processing speed, phonological processing, visual/perceptual processing, etc.

Potential additional components of an initial evaluation, as determined by the evaluation team:

1. Mental health evaluation
2. Speech/language/communication evaluation
3. OT/PT evaluation

To receive special education or related services, a student must meet these eligibility criteria:

1. The student demonstrates a severe discrepancy, of at least **1.5 standard deviations** when considering co-normed assessments, or, if the assessments are not co-normed, considering the regression table found in **Appendix G** of the NMTEAM Manual, and the standard error of measure of the difference between cognitive ability and achievement in the area(s) of concern.
2. The student's standards-based achievement results are both below the average range and support the discrepancy in the area(s) of concern.
3. The student was provided with high-quality, scientific, research-based instruction and intervention by qualified personnel in regular education settings.
4. Learning difficulties are not the result of lack of appropriate instruction in reading, lack of appropriate instruction in math, limited English proficiency, visual, hearing, or motor disability, mental retardation, emotional disturbance, cultural factors, or environmental or economic disadvantage.
5. Student demonstrates a need for special education services.

X. SPEECH - LANGUAGE IMPAIRMENT

§300.8 Child with a disability.

(c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

- (11) **Speech or language impairment** means a communication disorder, such as stuttering, impaired articulation, language impairment or voice impairment, that adversely affects a child's educational performance.

§300.34 Related services.

(15) **Speech-language pathology services** includes--

- (i) Identification of children with speech or language impairments;
- (ii) Diagnosis and appraisal of specific speech or language impairments;
- (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
- (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
- (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

In New Mexico, speech and/or language impairments are those disorders that adversely affect a student's educational performance by interfering with or limiting the student's "ability to receive, send, process, and comprehend concepts or verbal, nonverbal, and graphic symbol systems." Speech and language impairments may be exhibited as disorders ranging from mild to severe and may be developmental or acquired. A speech-language impairment is to be differentiated from a speech-language difference which may be due to bilingualism, dialectical or cultural differences in language use, or being non-English dominant. A communication difference/dialect is a variation of a communication system used by a group of individuals that reflects and is determined by shared regional, social, or cultural/ethnic factors and

should not be considered a disorder of speech or language. The following language is adapted from the American Speech-Language Hearing Association (ASHA).

SPEECH DISORDERS (adapted from ASHA 1993)

An Articulation Disorder is the atypical production of speech sounds characterized by substitutions, omissions, additions, or distortions that may interfere with intelligibility and which adversely affects communication between the student and the listener. It may include the inability to use the oral mechanism for speech, as well as the reception and processing of phonemes (speech sounds) at a level below average for the student's chronological age or developmental level.

A Fluency Disorder is an interruption in the flow of speaking characterized by atypical rate, rhythm, and repetitions of sounds, syllables, words, and phrases which adversely affects communication between the student and the listener. This may be accompanied by excessive tension, struggle, behavior, and/or secondary mannerisms.

A Voice Disorder is characterized by the abnormal production and/or absences of vocal quality, pitch, loudness, resonance, and/or duration which is inappropriate for a student's age and/or gender and which adversely affects communication between the student and the listener.

Language Disorders (adapted from ASHA 1993)

Language Impairment is impairment in the ability to comprehend, process, or produce language in the areas of form, content, or use. The disorder may involve:

- the **form** of language (*phonology*—the sound system of a language and the rules that govern the sound combinations; *morphology*—the rule system that governs the structure of words and the construction of word forms; *syntax*—the rule system governing the order and combination of words to form sentences, and the relationships among the elements within a sentence);
- the **content** of language (*semantics*—the system that governs the meaning of words and sentences; content also refers to the environment in which a communicative act is occurring, as well as the relationship of the communication partners); and,
- the **use** of language (*pragmatics*—the system that combines the above language components in functional and socially appropriate communication).

In addition to the complete SAT documentation file, the Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of language disorders:

1. Language

- Case history
- Functional communication, i.e., interviews, observations, checklists/scales
- Educational status
 - a. review of classroom performance
 - b. analysis of oral/written samples within the classroom
 - c. observation/anecdotal records
- Standardized and non-standardized assessments of receptive and expressive language in the areas of content (semantics), form (morphology and syntax), and use (pragmatics)
 - a. Standard scores yielded by standardized assessments must be statistically significant, i.e., below the average range, as defined by the test author.
 - b. Methods of non-standardized assessment may include, but are not limited to, reviewing classroom work samples, language samples, curriculum-based assessment, oral/written narratives, dynamic assessment, criterion-referenced measures.

Note: When the results of standardized and non-standardized measures are discrepant, a weight of evidence from multiple descriptive measures must support the existence of a speech-language impairment.

- Academic achievement assessment. Depending upon individual needs, this may consist of standardized individual achievement tests, curriculum based measures, criterion-referenced tests, dynamic assessment, and/or portfolio assessment.

Potential additional components of an initial evaluation for language disorders, as determined by the evaluation team:

1. Cognitive/intellectual abilities assessment
2. Assistive technology assessment
3. Motor skills assessment
4. Audiological evaluation
5. Psychological evaluation

Speech Disorders

In addition to the complete SAT documentation file, the Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of speech disorders:

1. Articulation Disorder
 - Case history
 - Functional communication, i.e., interviews, observations.
 - Educational status, i.e., review of classroom performance.
 - Stimulability assessment
 - Conversational intelligibility assessment
 - Oral mechanism/oral motor exam
 - Standardized and/or non-standardized inventory(ies) of speech sounds/phonological processes
2. Voice
 - Case history
 - Functional communication, i.e., interviews, observations.
 - Educational status, i.e., review of classroom performance.
 - Conversational intelligibility assessment
 - Oral mechanism/oral motor exam
 - Measures of and/or qualitative descriptions of quality, resonance, pitch, and volume

Note: A voice evaluation by an SLP may begin in the absence of diagnostic medical information regarding the complaint. However, further dispositions regarding therapy should be deferred until it is available (ASHA 2001). A referral to a medical specialist may be appropriate.
3. Fluency
 - Case history
 - Test of fluency or a clinical evaluation of stuttering severity
 - Functional communication, i.e., interviews, observations, checklists/scales
 - Educational status, i.e., review of classroom performance
 - A speech sample, noting:
 - a. extent of fluency/nonfluency
 - b. types and frequencies of primary and secondary stuttering behaviors
 - c. fluency/nonfluency across speaking situations
 - Speech rate
 - Observations of oral, laryngeal, and respiratory behaviors
 - Oral mechanism/oral motor exam

- Qualitative description of non-measurable aspects of fluency (i.e., coping behaviors, such as circumlocution, starter devices, postponement tactics, or attempts to disguise stuttering and emotional reactions)

Potential additional components of an initial evaluation for speech disorders, as determined by the evaluation team:

1. Assistive technology assessment
2. Motor skills assessment
3. Audiological evaluation
4. Psychological evaluation

Finally, for **BOTH speech and language disorders**, to receive special education services, a student must meet the eligibility criteria:

1. The student has a speech-language impairment and is not merely exhibiting a language difference.
2. Lack of appropriate instruction in reading or math, or limited English proficiency is not a determinant factor.
3. A different disability, such as autism, mental retardation, or a specific learning disability in the area of oral language/listening comprehension does not best describe the student's primary disability.
4. The student demonstrates a need for special education services.

XI. TRAUMATIC BRAIN INJURY

§300.8 Child with a disability.

(c) **Definitions of disability terms.** The terms used in this definition of a child with a disability are defined as follows:

- (12) **Traumatic brain injury** means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

What educational impact does this disability typically have on students?

While the majority of students with TBI are able to return to school, their educational and emotional needs are likely to be very different from how they were prior to the injury. Although students with TBI may seem to function much like children born with other handicapping conditions, it is important to recognize that the sudden onset of a severe disability resulting from trauma creates a very different context. Students with brain injuries can often remember how they were before the trauma, which can result in a constellation of emotional and psychosocial problems not usually present in children with congenital disabilities.

Complications related to malingering or motivation may also be factors worthy of consideration. Further, the trauma impacts family, friends, and professionals who recall what the child was like prior to injury and who have difficulty in shifting and adjusting goals and expectations.

Students who experience a traumatic brain injury may exhibit a wide variety of deficits, such as executive functioning, speech and language, visual-motor, and behavior. Decisions regarding evaluation, placement,

and educational programming must, for this reason, take individual differences into account. Therefore, careful planning for school re-entry (including establishing linkages between the trauma center/rehabilitation hospital and the special education team at the school) is extremely important in meeting the needs of the student. It will be important to determine if the child needs to relearn material previously known. Supervision may be needed (e.g., between the classroom and restroom) as the student may have difficulty with orientation. Teachers should also be aware that, because the student's short-term memory may be impaired, what appears to have been learned may be forgotten later in the day. To work constructively with students with TBI, educators may need to adjust instruction to provide for efficient classroom learning. The following list highlights a few key areas that could be addressed:

- Provide repetition and consistency.
- Demonstrate new tasks, state instructions, and provide examples to illustrate ideas and concepts.
- Avoid figurative language.
- Reinforce lengthening periods of attention to appropriate tasks.
- Probe skill acquisition frequently and provide repeated practice.
- Teach compensatory strategies for increasing memory.
- Be prepared for students' reduced stamina and increased fatigue and provide rest breaks as needed.
- Keep the environment as distraction-free as possible.

What comprises an initial evaluation?

The evaluation for TBI must address functioning in terms of cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem-solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing, and speech. In order to address these areas, the following documentation, assessments, and/or evaluations must be reviewed and/or conducted.

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of traumatic brain injury:

1. Review and consideration of the **complete SAT file** documentation
2. **Medical or historical documentation of a TBI**, including premorbid functioning, if available
3. **A speech/language/communication assessment**—
Assessment should be guided by (a) questions about the student's contextual and functional use of language, and (b) questions about the impact of verbal and cognitive deficits on communicative functioning. Rather than a fixed battery of tests, assessment needs to include observations of the student in a variety of settings and contexts that sample the type of environmental stimulation encountered under natural conditions. The highly organized nature of formal testing may minimize post-traumatic communication deficits by partially compensating for initiation deficits, sequencing difficulties, slow rate of information processing, or problems inhibiting behavior. (Russell, 1993)
4. **An assessment of cognitive/intellectual abilities** can offer meaningful information about the student's capacity to learn, level of concept development, and method of processing information. The evaluation process should be adapted based on knowledge gained from the medical or historical information provided, as well as information gathered from the speech/language/communication assessment.
5. **An individual academic achievement assessment** offers information about how the student functions in the areas of reading, written language, and mathematics, and will provide a measure of the student's strengths, weaknesses, and mastery of skills. As with a cognitive/intellectual ability assessment, the evaluation process should be adapted based on knowledge gained from the medical or historical information provided, as well as information gathered from the speech/language/communication assessment.
6. **A motor skills assessment** brings forth information regarding fine and gross motor abilities, range of movement, sensory and perceptual skills.
7. **An adaptive behavior assessment** offers information about functioning prior to the injury.

Potential additional components of an initial evaluation, as determined by the evaluation team:

1. Assistive technology assessment
2. A neuropsychological evaluation/consult may provide information regarding neurological/behavioral functioning, socio-emotional skills, educational impact, and potential instructional adaptations or accommodations.

To receive special education or related services, a student must meet the eligibility criteria:

1. The student has medical or historical documentation of a TBI.
2. Lack of appropriate instruction in reading or math, or limited English proficiency is not a determinant factor.
3. The student demonstrates a need for special education services.

XII. VISUAL IMPAIRMENT

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

- (13) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.**

(Authority: 20 U.S.C. §1401(3); 1401(30))

In New Mexico, the term “visual impairment” means a visual anomaly which has been diagnosed by an eye specialist, and which is so severe that, even after medical and conventional optical intervention, the student is unable to benefit fully from educational experiences within the regular education setting without special education services designed to meet the needs of the individual student.

What educational impact does this disability typically have on students?

Although students with visual impairments display a wide range of intellectual abilities and interests, there are some unique needs that are common to most students. A visual impairment will often interfere with the student's development of visual concepts, and the student may need to be explicitly taught the concepts which a sighted student may grasp through incidental learning. The development of listening skills and auditory comprehension is especially important because the student may rely on auditory and tactile input for learning. A visual impairment may affect the student's observation of behavior in social situations and participation in recreational activities, so the student may need explicit instruction and support to facilitate the development of age appropriate social-emotional skills. Because the visual input that both motivates a student to explore and provides environmental feedback may not be available, students may need support in developing motor skills. Instruction in orientation and mobility skills is essential to ensure that the student becomes independent and is able to move safely within the environment. A student with a visual impairment may need to learn special techniques to be able to function independently in the areas of self care and domestic skills, such as food preparation and taking care of clothing.

A visual impairment may also affect the student's ability to access instruction in the classroom visually and may necessitate either instruction in Braille and the provision of tactile materials, or the provision of modified materials which allow the student to access instruction, such as large print or books on tape. Instruction in other areas of the curriculum may also need to be modified by providing tactile materials and adapting the presentation of the lesson to maximize experiential learning and verbal descriptions. Access to specialized technology, such as screen reading software and electronic Braille note takers, may be required to allow the student to produce written work and to use a computer independently.

When provided with explicit instruction in the specialized techniques needed to be independent, modified materials, and accessible technology, most students with a visual impairment will be able to participate at the same level as a sighted student with similar abilities and aptitudes. Areas of specialized instruction could include Braille, orientation and mobility, and technology use.

Accommodations and modifications that may be effective are Braille or large print materials, tactile graphs or maps, manipulatives for math or science, talking calculators, magnifiers, abacuses, and verbal descriptions of activities or environmental information. For students who are partially sighted, lighting appropriate to the visual condition should be considered.

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of visual impairment:

1. Review and consideration of **complete SAT file** documentation.
2. Documentation of the presence of an eye condition based on an **eye examination** by a licensed eye specialist (i.e., ophthalmologist or optometrist). A written report must be on file that includes the diagnosis of the eye condition, visual acuity, and recommendations in regard to the wearing of prescription lenses. (A sample form is available in Appendix H.) Documentation must be provided that indicates that the visual impairment affects the student's ability to access the general education curriculum, or for preschoolers, affects their ability to participate in appropriate classroom activities.
3. A **functional visual examination** to determine the amount and efficiency of the student's functional use of vision in an educational setting. This must include observations of visual responses; screening tests of visual abilities; observation by family and teacher; self-report of visual abilities (when appropriate); and observation of accommodations in classroom methods, materials, and environment. This assessment must be conducted by teacher(s) of the visually impaired or those with specific training in this area.
4. A **learning media assessment** conducted by teacher(s) of the visually impaired or those with specific training in this area. "Learning media" are defined as the materials or methods that a student uses for reading and writing as well as the sensory channels utilized to access information.
5. An individually administered **assessment of cognitive/intellectual abilities** to provide meaningful information on the student's capacity to learn, level of concept development, and method of processing information. *The examiner will need to consider the results of the student's functional vision evaluation and learning media assessment and may wish to consult with a person who is trained in the education of students with visual impairments regarding choice of test instruments and any modifications in the methods, materials, and environment that might enhance the assessment.*
6. An **individual academic achievement assessment** to provide information about how the student functions in the areas of reading, written language, and mathematics, and to offer a measure of the student's strengths, weaknesses, and mastery of skills.

Note: For the assessments of cognitive/intellectual abilities and academic achievement above, the examiner will need to consider the results of the student's functional vision evaluation and learning media assessment and may wish to consult with a person who is trained in the education of students with visual impairments regarding choice of test instruments and any modifications in the methods, materials, and environment that might enhance the assessment.

Potential additional components of an initial evaluation, as determined by the evaluation team:

1. An orientation and mobility assessment conducted by a licensed orientation and mobility specialist determines the student's skills levels in moving purposefully, efficiently, and safely in the home, school, and community environment.
2. An assessment of social and emotional skills and behaviors may be needed if there are concerns in this area.

3. An assessment of fine and gross motor and functional skills may be necessary if there are concerns in this area.

To receive special education or related services, a student must meet the eligibility criteria:

1. There is a diagnosis of a visual impairment, including blindness.
2. Lack of appropriate instruction in reading or math, or limited English proficiency is not a determinant factor.
3. The student demonstrates a need for special education services.

XIII. DISCONTINUATION OF SERVICES

Discontinuation of services is based on the IEP committee's decisions that the student has mastered the goals and objectives, there is no longer an educational need, and the student no longer qualifies as a student with a disability based on current evaluation information. In rare cases, there may be a medical reason for the parent to request discontinuation of services temporarily or permanently. The ASK Academy will continue to offer a free appropriate public education (FAPE) to an eligible student with a disability as required by the IDEA regulations.

Autism Spectrum Disorder

Students with ASD should be considered for discontinuation of services when they demonstrate the ability to function independently, access and perform adequately in the general curriculum, and no longer demonstrate a need for special education services. Monitoring of social skills, behavior, communication, current levels of academic performance, and independence may continue to be necessary. Any student whose special education services are discontinued should promptly be referred to the SAT at his or her school to ensure that the student is supported in this important transition period.

Deaf-Blindness

Students with deaf-blindness should be considered for discontinuation of services when they demonstrate the ability to function independently, access and perform adequately in the general curriculum, and no longer demonstrate a need for special education services. Any student whose special education services are discontinued should promptly be referred to the SAT at his or her school to ensure that the student is supported in this important transition period.

Deaf or Hard of Hearing

Students who are deaf or hard of hearing can be considered for discontinuation of services when they demonstrate the ability to function independently and access direct and incidental communication needed for instruction. In addition, students should be able access and perform adequately in the general curriculum and no longer demonstrate a need for special education services. Any student whose special education services are discontinued must be referred to the SAT at his or her school to ensure that the student is supported in this important transition period.

Emotional Disturbance

Students with an emotional disturbance should be considered for discontinuation of services when they demonstrate the ability to function independently, access and perform adequately in the general curriculum, and no longer demonstrate a need for special education services. Monitoring of social skills, behavior, communication, current levels of academic performance, and independence may continue to be necessary. Any student whose special education services are discontinued should promptly be referred to the SAT at his or her school to ensure that the student is supported in this important transition period.

Intellectual Disability

Students with an intellectual disability will likely continue to need special education and/or related services throughout their school tenure. With appropriate special education supports, the student's functioning will generally improve. Avoid prematurely discontinuing special education supports and services. The intensity of the supports may simply need to be adapted. However, students should be considered for an exit plan if they demonstrate the ability to independently access the general curriculum and no longer demonstrate a need for special education services. Students whose special education services are discontinued should be referred to the SAT at the school in which he or she resides. This will ensure that necessary services and supports are not simply dropped or discontinued as the student makes this important transition.

Multiple Disabilities

Students with multiple disabilities will likely continue to need special education and/or related services throughout their school tenure. With appropriate special education supports, the student's functioning will generally improve. Avoid prematurely discontinuing special education supports and services. The intensity of the supports may simply need to be adapted. However, students should be considered for an exit plan if they demonstrate the ability to independently access the general curriculum and no longer demonstrate a need for special education services. Students may still require continued support in academic areas and in the form of adaptations to ensure continued access to the general curriculum. Students whose special education services are discontinued should be referred to the SAT at the school in which he or she resides. This will ensure that necessary services and supports are not simply dropped or discontinued as the student makes this important transition.

Orthopedic Impairment

Discontinuation of special education services for students with orthopedic impairments can be considered when a student demonstrates the ability to access the general education curriculum with adaptations that are available in the general education classroom and no longer demonstrates a need for specially designed instruction and related services. Students who have orthopedic impairments may make significant progress in terms of their medical program, technological support(s), and academic programs that help to alleviate their educational concerns.

Any student whose special education services are discontinued must be referred to the SAT at his or her school to ensure that the student is supported in this important transition period.

Other Health Impairment

Discontinuation of special education services for students with a health impairment can be considered when the student demonstrates the ability to access the general education curriculum with adaptations that are available in the general education classroom and no longer demonstrates a need for specially designed instruction and related services. Students who have a health impairment may make significant progress in terms of their medical program, technological support(s), and academic programs that help to alleviate their educational concerns. Any student whose special education services are discontinued must be referred to the SAT at his or her school to ensure that the student is supported in this important transition period.

Specific Learning Disability

Students with specific learning disabilities should be considered for discontinuation of services when they demonstrate the ability to function independently, access and perform adequately in the general curriculum, and no longer demonstrate a need for special education services. Monitoring of social skills, behavior, communication, current levels of academic performance, and independence may continue to be necessary. Any student whose special education services are discontinued should promptly be referred to the SAT at his or her school to ensure that the student is supported in this important transition period.

Speech - Language Impairment

Students with speech-language impairments can be considered for discontinuation of services only when they demonstrate the ability to function independently, access and perform adequately in the general curriculum, and no longer demonstrate a need for special education services. Any student whose special education services are discontinued must be referred to the SAT at his or her school to ensure that the student is supported in this important transition period.

Discontinuation criteria for speech-language services that may be addressed:

- 1) All speech and language objectives have been met and continued speech and/or language services are not warranted; or
- 2) Medical, dental, or social circumstances warrant discontinuation of services on a temporary or permanent basis.

Traumatic Brain Injury

Students with traumatic brain injuries should be considered for discontinuation of services only when they demonstrate the ability to function independently, access and perform adequately in the general curriculum, and no longer demonstrate a need for special education services. Monitoring of social skills, behavior, communication, current levels of academic performance, and independence may continue to be necessary. Any student whose special education services are discontinued should promptly be referred to the SAT at his or her school to ensure that the student is supported in this important transition period.

Visual Impairment, including Blindness

Students with visual impairments including blindness can be considered for discontinuation of services only when they demonstrate the ability to function independently, access and perform adequately in the general curriculum, and no longer demonstrate a need for special education services. Any student whose special education services are discontinued should promptly be referred to the SAT at his or her school to ensure that the student is supported in this important transition period.

Gifted Students - Exiting

Gifted students may exit the gifted program upon request by the parent.

XIV. GIFTED STUDENTS - REQUIREMENTS**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 Section 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, 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 §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.

For more information on areas below, please refer to the [Gifted Education: Technical Assistance and Training Resource Document](http://www.ped.state.nm.us/seogifted/gifted.pdf) found at the NMPED website:
<http://www.ped.state.nm.us/seogifted/gifted.pdf>

XV. ELIGIBILITY DETERMINATION TEAM (EDT)

This team has the responsibility for determining whether students may be eligible to receive gifted services under the provisions of state regulations. To make this determination, the team considers all information about individual students on a “case by case” basis. Full documentation must be maintained for every student, verifying very superior intelligence and at least outstanding performance in one other area of achievement, creativity, or critical thinking. When considering the question of eligibility, it is essential that the team consider the impact that “factors” may have had upon the formal assessment of cognitive ability. Factors may include:

- evidence of multiple indicators of cultural diversity
- evidence of multiple indicators of linguistic difference
- evidence of multiple indicators of socioeconomic disadvantage
- documentation of a disabling condition

STUDENT IDENTIFICATION: Recommendations from the National Association for Gifted Children (NAGC) Regarding Student Identification: Guiding Principles and Minimum Standards

Guiding Principles

1. A comprehensive and cohesive process for student information will be coordinated in order to determine eligibility for gifted education services.
 - 1.0 Information regarding the characteristics of gifted students in areas served by the ASK Academy will be annually disseminated to all appropriate staff members.
 - 1.1 All students comprise the initial screening pool of potential recipients of gifted education services.
 - 1.2 Nominations for services will be accepted by the SAT from any source (e.g., teachers, parents, community members, peers, etc.)
 - 1.3 Parents will be provided information regarding an understanding of giftedness and student characteristics.

More information on these Guiding Principles is located in Chapter 1. Child Find.
2. Instruments used for student assessment to determine eligibility for gifted education services will measure diverse abilities, talents, strengths, and needs in order to provide students an opportunity to demonstrate any strengths.
 - 2.0 Assessment instruments will measure the capabilities of students with provisions for the language in which the student is most fluent, when available.
 - 2.1 Assessment will be culturally fair.
 - 2.2 The purpose(s) of student assessments will be consistently articulated across all grade levels.
 - 2.3 Student assessments will be sensitive to the current stage of talent development.
3. A student assessment profile of individual strengths and needs will be developed to plan appropriate interventions.
 - 3.0 An assessment profile will be developed for each child to evaluate eligibility for gifted education programming services.
 - 3.1 An assessment profile will reflect the unique learning characteristics and potential and performance levels.
4. All student identification procedures and instruments are based on current theory and research.
 - 4.0 No single assessment instrument or its results will deny student eligibility for gifted programming services.
 - 4.1 All assessment instruments will provide evidence of reliability and validity for the intended purposes and target students.
5. Written procedures for student identification include provisions for notice of evaluation, informed consent, student retention, student reassessment, student exiting, and appeals procedures.

- 5.0 District gifted programming guidelines contain specific procedures for student assessment at least once during the elementary, middle, secondary levels.
- 5.1 District guidelines provide specific procedures for student retention and exiting as well as guidelines for parent appeals.

The ASK Academy will refer to the [Gifted Education: Technical Assistance and Training Resource Document](http://www.ped.state.nm.us/seogifted/gifted.pdf) located on the NMPED website: <http://www.ped.state.nm.us/seogifted/gifted.pdf>

This Technical Assistance document is updated and provides more information and support in the areas below:

1. Screening Instruments for:
 - Achievement,
 - Intellectual ability, and
 - Other abilities or strengths.
2. Distinguishing characteristics of gifted student's skill areas are divided into four categories and described in great detail:
Four categories:
 - Traditional Characteristics
 - Characteristics of Culturally/Linguistically Diverse Gifted Students
 - Characteristics of Low Socio-Economic Gifted Students
 - Characteristics of Gifted Students with a Disability

Skill areas include: basic skills, verbal skills, reading ability, observational skills, problem solving, persistence, curiosity, creativity, risk taking, humor, maturity, independence, emotionality, social skills, leadership, broad interests, and focused interests.
3. Checklist - characteristics of gifted students with factors
 - This checklist exists in order to discover factors that may influence classroom performance or test scores of gifted students. It does not weigh for or against qualification, but aids the team in making good judgments about how to proceed with the process.
 - The checklist is adapted from: E. Nielsen, APS Gifted Task Force (1999) in New Mexico State Department of Education – Special Education Office (2000) *Technical Assistance and Training Document for Gifted Education*.
4. Indicators of Giftedness
5. Characteristics and Concomitant Problems
6. Special Populations