New Mexico Public Education Department

Special Education Bureau

South Valley Preparatory School
POLICIES AND PROCEDURES
FOR THE
PROVISION OF
SPECIAL EDUCATION SERVICES
FOR
STUDENTS WITH DISABILITIES AND GIFTED STUDENTS

Chapter 1. – CHILD FIND / INTERVENTIONS

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Chapter 1. – CHILD FIND / INTERVENTIONS

I. CHILD FIND RESPONSIBILITIES

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) Use of term developmental delay.

The following provisions apply with respect to implementing the child find requirements of this section:

(1) The NMPED has adopted a definition of developmental delay under §300.8(b).

(2) The NMPED will not require the South Valley Preparatory School to adopt and use the term developmental delay for any children within its jurisdiction.

(3) If the South Valley Preparatory School uses the term developmental delay for children described in §300.8(b), the South Valley Preparatory School will conform to both the State's definition of that term and to the age range that has been adopted by the NMPED. *(See I. B. for the [district's] decision on developmentally delayed)*

(c) 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 South Valley Preparatory School will comply with Child Find requirements for these students.

The South Valley Preparatory School will appoint a surrogate parent (*Chapter 2.-Procedural Safeguards)* for an unaccompanied homeless child. 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.

A. Child Find - General Requirements

Authority: NMAC 6.31.2.10 IDENTIFICATION

A. Child Find. The South Valley Preparatory School shall adopt and implement policies and procedures to ensure that all children with disabilities who reside within the agency's educational jurisdiction, including children with disabilities attending private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, detention and correctional facilities, children who are schooled at home, highly mobile children, children who reside on Indian reservations, and children who are advancing from grade to grade, regardless of the severity of their disability, and who are in need of

special education and related services, are located, evaluated and identified in compliance with all applicable requirements of 34 CFR §§300.111, 300.131, 300.301-306 and these or other department rules and standards. For preschool children, child find screenings shall serve as interventions under Subsection B of 6.31.2.10 NMAC.

The South Valley Preparatory School will disseminate information to the community (including private schools, residential treatment centers, day treatment centers, hospitals, mental health institutions, detention and correctional facilities) concerning services offered to all individuals with disabilities and maintain records of efforts that may include:

1. *Providing information regarding availability of screenings and other services through the local newspaper, the school tax office mailings, brochures, and other print media;*
2. *Participating in a network of public information dissemination to assist with locating highly mobile and migrant children, which includes contacting other agencies, day care facilities, community public locations such as doctor offices, hospitals, laundry facilities, and facilities providing services to students with disabilities;*
3. *Providing Child Find information to local private schools and discussing with private school officials regarding the SAT process;*
4. *Referring individuals ages 0-3 to a local Early Childhood Intervention (ECI) program for evaluation - which is the Department of Health's Family Infant Toddler (FIT) Program;*
5. *Identifying and referring individuals with disabilities who may or may not be in school and who may need Special Education and related services using a properly constituted student assistance team (SAT);*
6. *Continuing to document persons who are currently receiving needed Special Education and related services and who are not currently receiving needed Special Education and related services;*
7. *Reviewing this process on a yearly basis, updating staff about on-going "Child Find" activities implemented in the community;*
8. *Maintaining confidentiality of all personally identifiable information used and collected in this system in the same manner that Special Education records are maintained;*
9. *Maintaining documentation of all Child Find activities including the dates of each activity and the results of each activity; and*
10. *Training appropriate staff for maintaining the documentation of all Child Find activities including students in private schools, religious schools and home schools located in the [district].*
11. *Annual screening will be performed by qualified South Valley Preparatory School personnel and may include:*
    - *general health screening, including social/behavioral health*
    - *vision screening performed to verify indicators of loss of sight, acuity, or other possible vision related problems;*
    - *hearing screening to verify any hearing risk indicators;*
    - *speech and language screening to verify problems in the formulation or articulation of speech or any delay in the development of language;*
    - *preschool screening which typically includes vision, hearing, cognition, motor, speech-language, and health components to verify developmental delays;*
    - *screening for home language*
    - *academic screening for school age children to determine the significance of academic delays; and*
    - *screening for secondary level students who are at-risk of dropping out, or who have dropped out, to verify that the reasons for dropping out are not related to a previously unidentified disability.*

    All screenings and evaluations resulting from child find activities are free to parents, including parents of home-schooled students and parents of students who attend private school by parent choice.

B. Child Find - Developmentally Delayed

Authority: NMAC 6.31.2.7 DEFINITIONS B. (4.) *(See also Chapter 4)*

For the local schools' Policy and Procedure document, please choose one below:

Insert: *The South Valley Preparatory School does use the term developmental delay and more information is located in Chapters 3-4.*

(OR)

Insert: *The South Valley Preparatory School <u>does not</u> use the term developmental delay.*

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. §6.31.2.10 NMAC. *(More information on disabilities may be found in Chapter 4)*

C. Child Find - Parentally-Placed In Private Schools

Authority: 34 CFR §300.131 Child find for parentally-placed private school children with disabilities.

(a) General. The South Valley Preparatory School will locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§300.111 and 300.201.

(b) Child find design. The child find process is designed to ensure--

(1) The equitable participation of parentally-placed private school children; and

(2) An accurate count of those children.

(c) Activities. In carrying out the requirements of this section, the [district], or, if applicable, the NMPED, will undertake activities similar to the activities undertaken for the agency's public school children.

(d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if LEA has met its obligation under §300.133. *(Private school expenditures - Chapter 6 of this document)*

(e) Completion period. The child find process will be completed in a time period comparable to that for other students attending public schools in the South Valley Preparatory School consistent with §300.301. *(Initial Evaluations-Chapter 3 of this document)* (Authority: 20 U.S.C. §1412(a)(10)(A)(ii))

(f) Out-of-state children. Each LEA in which private, including religious, elementary schools and secondary schools are located will, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.

Authority: §300.134 Consultation regarding parentally-placed private school children with disabilities.

To ensure timely and meaningful consultation, the South Valley Preparatory School or, if appropriate, the NMPED, will consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

(a) Child Find. The child find process, including--

(1) How parentally-placed private school children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and private school officials will be informed of the process.

(For more information on students placed in private schools, see Chapter 6. LRE)

Authority: §300.140 Due process complaints and State complaints. ***(See Chapter 2.-Procedural Safeguards)***

(a) Due process not applicable, except for Child Find.

(b) Child Find complaints—to be filed with the LEA in which the private school is located.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES

L. Children in private schools

(1) Children enrolled by parents in private schools or facilities.

(c) Each LEA must locate, identify and evaluate all children with disabilities who are enrolled by their parents in private schools, including religious elementary schools and secondary schools located in the education jurisdiction of the LEA, in accordance with 34 CFR §§300.131 and 300.111.

(3) Children placed in or referred to private schools or facilities by New Mexico public non-educational agencies. For a qualified student or school-age person in need of special education placed in a private school or facility by a New Mexico public non-educational agency with custody or control of the qualified student or school-age person or by a New Mexico court of competent jurisdiction, the school district in which the facility is located shall be responsible for the planning and delivery of special education and related services, unless the qualified student's or school-age person's resident school district has an agreement with the facility to provide such services. The district must make reasonable efforts to involve the qualified student or school-age person's resident school district in the IEP process.

D. Child Find - Gifted Students

The South Valley Preparatory School 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 South Valley Preparatory School 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.

Young Gifted Children

Young children ages 3 through 8 have been recognized as one of several subpopulations of gifted children who are underserved. Early identification and appropriate education are particularly critical as a means of nurturing potential. Research supports special instruction for young children designed to address their capacity for learning and social/emotional vulnerability. A collaborative approach between families and school personnel should address identification, curriculum planning, and evaluation.

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.

The South Valley Preparatory School will provide special education and related services appropriate to meet the needs of all children requiring special education and related services. The South Valley Preparatory School will provide services for three-year-old and four-year-old preschool children with disabilities, unless the parent or guardian chooses not to enroll his child. If a child receiving services in the department of health's family, infant, toddler program has his third birthday during the school year, the child's parents shall have the option of having the child complete the school year in the family, infant, toddler program or enrolling the child in the public school's preschool program. A child with a disability who enrolls in the public school's preschool program and who has his third birthday during a school year may receive special education and related services from the beginning of that school year. 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
      (c) at the discretion of each local educational agency and subject to the additional requirements of Paragraph (2) of Subsection F of 6.31.2.10 NMAC, the term "child with a disability" may include a child aged 3 through 9 who is evaluated as being developmentally delayed and who, because of that condition, needs special education and related services. *(See section I. B. Developmentally Delayed in this Chapter: 1. Child Find / Interventions)*
   (4) "Developmentally delayed" means a child aged 3 through 9 or who will turn 3 at any time during the school year: with documented delays in development which are at least two standard deviations below the mean on a standardized test instrument or 30 per cent below chronological age; and who in the professional judgment of the IEP team and one or more qualified evaluators needs special education and related services in at least one of the following five areas: communication development, cognitive development, physical development, social or emotional development or adaptive development. Use of the developmentally delayed option by individual local educational agencies is subject to the further requirements of Paragraph (2) of Subsection F of 6.31.2.10 NMAC. Local education agencies must use appropriate diagnostic instruments and procedures to ensure that the child qualifies as a child with a developmental delay in accordance with the definition in this paragraph. *(See also Chapter 2 and 3)*

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

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 yearly progress (AYP) toward educational excellence."

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

The South Valley Preparatory School is responsible to develop remediation and academic improvement programs to provide special instructional assistance to students who fail to attain AYP.

- 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 AYP for two successive school years is recommended.

  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*

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 South Valley Preparatory School 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.

*Each campus in the South Valley Preparatory School 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 South Valley Preparatory School 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

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 South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School 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 the South Valley Preparatory School , 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 South Valley Preparatory School 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 South Valley Preparatory School agrees with the parent that the child may be a child who is eligible for special education services, the South Valley Preparatory School must evaluate the child. If the South Valley Preparatory School declines the parent's request for an evaluation, the South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School 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. Early Childhood

The SAT committee is not responsible for child find or referrals for this population of students.

1. Birth to 3 years – Family Infant Toddler (FIT) Program

Authority: 34 CFR §300.25 Infant or toddler with a disability.

Infant or toddler with a disability-

(a) Means an individual under three years of age who needs early intervention services because the individual—

(1) Is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

(2) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and

(b) May also include, at the NMPED's discretion—

(1) At-risk infants and toddlers; and

(2) Children with disabilities who are eligible for services under section 619 and who previously received services under Part C of the Act until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under Part C of the Act serving such children shall include--

(i) An educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and

(ii) A written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under Part C of the Act or participate in preschool programs under section 619. (Authority: 20 U.S.C. §§1401(16) and 1432(5))

Family Infant Toddler (FIT) Program

The South Valley Preparatory School will work with the Department of Health's Family Infant Toddler (FIT) Program early intervention services to refer families who have concerns about the development of their young child (birth to three). For more information see the website: http://www.health.state.nm.us/ddsd//fit/index.html

If there are concerns about how an infant or toddler is talking, feeding, walking, handling toys, seeing, hearing or anything else regarding their development, the first step will be to contact the Children's Medical Services (CMS) at your local Public Health Office. A service coordinator will share information about the Family Infant Toddler Program, and listen to family's concerns, hopes and needs related to your child's development. The service coordinator will arrange for an evaluation to see how the child is developing. The evaluation as well as a look at medical and other records will help determine if the child will be eligible for the Family Infant Toddler (FIT) Program.

In addition, refer to the NMPED and NMDH guidance document for transition from Early Intervention to other services and supports titled: Facilitating Transitions for Children and Families in New Mexico. http://www.ped.state.nm.us/seo/preschool/ta.parts.i.ii.suppl.pdf

Also: Preschool Programs for Children with Disabilities and the 90 Day Transition Conference: A Guidance Document located at the website: http://www.ped.state.nm.us/seo/preschool/90.day.transition.guidance.doc

How do you make a referral?

You can make a referral directly to the local early intervention provider serving your community or to Children's Medical Services (CMS) at the local County Health Department. To find the provider(s) serving your community view the Family Infant Toddler Program Provider List or call BABYNET at 1-800-552-8195

When making a referral you will be asked for basic information about the child, demographic information and the reason for the referral. Once the referral is received the family will be assigned a service coordinator (case manager) who will meet with them. The service coordinator will coordinate the evaluation and assessment activities in order to determine eligibility. The evaluation will look at the child's abilities in all developmental areas:

- physical/motor development (including vision and hearing);
- cognitive development;

- communication development;
- social/emotional development; and
- adaptive development

2. At 3 years of age – Preschool Program for Children with Disabilities

Authority: 34 CFR §300.124 Transition of children from the Part C program to preschool programs.
The NMPED ensures that--

(a) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act;

(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with §300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with §300.101(b); and

(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.

Authority: 34 CFR §300.323 When IEPs must be in effect. *(see Chapter 5. - IEP)*

(a) General. At the beginning of each school year, the South Valley Preparatory School will have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.

(b) IEP or IFSP for children aged three through five.

(1) In the case of a child with a disability aged three through five (or, at the discretion of the NMPED, a two-year-old child with a disability who will turn age three during the school year), the IEP Team will consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is--

(i) Consistent with NMPED policy; and

(ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (b)(1) of this section, the South Valley Preparatory School will--

(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; *(use the New Mexico FIT program IFSP documents as South Valley Preparatory School explains the difference to parents - http://www.health.state.nm.us/ddsd//fit/otherdoc.html) and*

(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

Authority: 34 CFR §300.24 Individualized family service plan.

Individualized family service plan or IFSP has the meaning given the term in section 636 of the Act.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

A. Preschool programs for children aged 2 through 5

(5) In particular:

(a) The South Valley Preparatory School surveys Part C programs within its educational jurisdiction in its child find efforts to identify children who will be eligible to enter the LEA's Part B preschool program in future years.

(b) The South Valley Preparatory School promotes parent and family involvement in transition planning with Part C programs, community programs and related services providers at least six months before the child is eligible to enter the [district's] Part B preschool program.

(c) The South Valley Preparatory School establishes and implements procedures to support successful transitions including parent training, professional development for special educators and general educators, and student and parent self-advocacy training and education.

(d) The South Valley Preparatory School assists parents in becoming their child's advocates as the child makes the transition through systems.

(e) The South Valley Preparatory School participates in transition planning conferences arranged by the designated Part C lead agency no less than 90 days prior to the anticipated transition or the child's third birthday, whichever occurs first, to facilitate informed choices for all families.

(f) The South Valley Preparatory School designates a team including parents and qualified professionals to review existing evaluation data for each child entering the [district's] preschool program in compliance with 34 CFR §300.305, and based on that review to identify what additional data, if any, are needed to determine the child's eligibility for Part B services or develop an appropriate program.

(g) The South Valley Preparatory School initiates a meeting to develop an eligible child's IFSP, IEP or IFSP-IEP, in accordance with 34 CFR §300.323, no later than 15 days prior to the first day of the school year of the LEA where the child is enrolled or no later than 15 days prior to the child's entry into Part B preschool services if the transition process is initiated after the start of the school year, whichever is later, to ensure uninterrupted services. This IFSP, IEP, or IFSP-IEP will be developed by a team constituted in compliance with 34 CFR §300.321 that includes parents and appropriate early intervention providers who are knowledgeable about the child.

(h) In compliance with 34 CFR §300.101(b)(2), if a child's birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin.

(i) The South Valley Preparatory School shall develop policies and procedures to ensure a successful transition from Part B preschool for children with disabilities who are eligible for continued services in pre-kindergarten and kindergarten.

Culturally and Linguistically Diverse: For Preschool Children who are Culturally and Linguistically Diverse see Limited English Proficient section G**.** *The South Valley Preparatory School diagnostician assigned to the Family Infant Toddler (FIT) Program is responsible for working closely with the Special Education Director to implement these procedures and keep documentation of the process.*

90 Day Conference

A Transition Conference must be convened at least 90 days prior to the anticipated date of transition from the FIT Program but no later than 90 days prior to the child's third birthday. The South Valley Preparatory School will participate in this conference. At the 90 day conference, the following activities will occur:

a) Review with parents the program options for their child (including preschool special education services; Head Start; NMSBVI; NMSD; child care and other community services).
b) With parental consent, transfer records (including evaluation and assessment information and current IFSP).
c) Decide what other activities need to be completed before the child moves into the new service setting (including enrollment; immunizations; transportation issues, medical needs etc.).
d) Review current evaluation and assessment information. Decide if any further evaluations are needed to determine eligibility prior to transition.
e) Schedule IEP meeting date (at least 15 days before first day services are to be provided) if the child will transition into preschool special education.
f) Help family to decide where their child will transition to and when.
g) Decide if there is a need for post transition follow-up (including service coordination, consultation with new staff).
h) Decide how to evaluate whether the transition process was smooth and effective.

If a child receiving services in the department of health's family, infant, toddler program has his/her third birthday during the school year, the child's parents will have the option of having the child complete the school year in the family, infant, toddler program or enrolling the child in the public school's preschool program.

Those two-year olds who are eligible under Part B criteria (regardless of service under Part C) may receive services from the beginning of the school year when they turn three. A child with a disability who enrolls in the public school's preschool program and who has his/her third birthday during a school year may receive special education and related services from the beginning of that school year. This responsibility to serve eligible two year olds during the year when they turn three, at the parent's discretion, is reinforced by NMSA 1978, Section 22-8-2 (as amended by Chapter 27, N.M. Laws 2004) that provides state funding for these students, defined as qualified students.

E. Homebound Instructional Services

The SAT may include a request for an evaluation upon initial referral for homebound services. However, students already receiving special education services will receive a request for homebound services from the IEP committee. (For more information see also Chapter 3. - Evaluation and Chapter 5. - IEP and Chapter 6. - LRE)

F. 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 South Valley Preparatory School 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 South Valley Preparatory School 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)

LEP – CLD Preschool Children - Decision Making "To Refer or Not to Refer"

Two basic rules of thumb shape decisions regarding the need to refer young children to special education. They are:

- If diversity or deficit is determined to be present, they should be addressed first, prior to formal referral for special education evaluation.
- If learning/developmental difficulties persist after diversity and deficit have been addressed, formal referral for special education evaluation should be initiated.

Note: The following considerations must be addressed by early childhood Student Assistance Team members to ensure that CLD preschool children are properly referred for special education evaluation.

Family

- Priorities, strengths, and concerns for their child have been identified.
- General cultural values, beliefs, and practices have been identified.
- Language use in the home and community has been identified.
- Exposure and use of first (L1) and second language (L2) has been described.

Child

- World view assessed (Is the child demonstrating cultural values, behaviors and language abilities different from that of his/her parents?)
- Language dominance identified.
- Exposure and use of first (L1) and second language (L2) has been described.
- Developmental strengths, emerging skills, and needs identified (screening, parent report, observation, etc.).

Considerations of Learning Difficulties (From Barrera, I., 1995)

- Loss of competence and self-confidence stemming from shaming and unfamiliarity with communicative strategies, behaviors and expectations within an early childhood setting.
- Limited English Proficiency.
- Diversity in funds of knowledge (Culturally Specific Learning).

Early Developmental Opportunities (Adapted from Barrera, I., 1995)

- There is consistent positive emotional support from one or more adults within the home/family setting.
- Regular opportunities to play however that is defined by a group.
- There are opportunities for safe exploration of the child's surrounding environment.
- Positive mentoring interactions with adults, siblings, and other individuals for the purpose of teaching about future roles and responsibilities are evident.
- Freedom form overwhelming trauma.

Poverty (From Barrera, I., 1995)

- Evidence of family income.
- Family size compared to income.
- Educational levels of parents.
- Occupation of parents.
- Participation in school lunch program.
- Evidence of need for outside assistance (e.g., welfare assistance)
- Stability of living conditions (e.g., mobility, change in caregivers)
- Degree of access to extended family and larger community.

Note: If it is determined by the early childhood referral team that one, or a combination of the previously mentioned variables and considerations, is the primary reason for concern, the Student Assistance Team members must look for other family/child supports in the community.

G. 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 [district], or by a physician, parent or guardian. When the referral is by a physician, parent or guardian, the South Valley Preparatory School 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 itinerate 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 South Valley Preparatory School 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.

H. 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 South Valley Preparatory School will make recommendations based on the IEP committee and current evaluations. When the referral is by a physician, parent or guardian, the South Valley Preparatory School 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 South Valley Preparatory School will make recommendations based on the IEP committee and current evaluations.

I. 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.

J. Private / Nonpublic Schools *(See also Chapter 6)*

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES

L. Children in private schools or facilities

(1) Children enrolled by parents in private schools or facilities.

(c) The South Valley Preparatory School will locate, identify and evaluate all children with disabilities who are enrolled by their parents in private schools, including religious elementary schools and secondary schools located in the education jurisdiction of the [district], in accordance with 34 CFR §§300.131 and 300.111.

(2) Children placed in or referred to private schools or facilities by New Mexico public agencies. Each public agency shall ensure that a child with a disability who is placed in or referred to a private school or facility by the agency as a means of providing special education and related services is provided services in compliance with the requirements of 34 CFR §§300.146 and 300.147. Such a child has all the rights of a child with a disability who is served by a public agency.

(3) Children placed in or referred to private schools or facilities by New Mexico public non-educational agencies. For a qualified student or school-age person in need of special education placed in a private school or facility by a New Mexico public non-educational agency with custody or control of the qualified student or school-age person or by a New Mexico court of competent jurisdiction, the school district in which the facility is located shall be responsible for the planning and delivery of special education and related services, unless the qualified student's or school-age person's resident school district has an agreement with the facility to provide such services. The district must make reasonable efforts to involve the qualified student or school-age person's resident school district in the IEP process.

(4) Children placed in or referred to private schools or facilities by public non-educational agencies other than New Mexico public agencies. A school district in which a private school or facility is located shall not be considered the resident school district of a school-age person if residency is based solely on the school-age person's enrollment at the facility and the school-age person would not otherwise be considered a resident of the state.

(5) Children placed in private schools or facilities by parents when FAPE is at issue. The responsibility of a local educational agency to pay for the cost of education for a child with a disability who is placed in a private school or facility such as residential treatment centers, day treatment centers, hospitals or mental health institutions, by parents who allege that the LEA failed to offer FAPE is governed by the requirements of 34 CFR §300.148. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of Subsection I of 6.31.2.13 NMAC.

(6) If not otherwise governed by this rule, the department will determine which school district is responsible for the cost of educating a qualified student in need of special education who has been placed in a private school or facility outside the qualified student's resident school district in accordance with the following procedures.

(a) The receiving school district must notify the SEB of the department in writing no later than thirty (30) days after the receiving school district receives notice of the placement. The notice, as described on the department's website, must include: name of student, date of birth of student, date of placement, information regarding the qualified student's resident school district, documentation of placement, including student's IEP, cost of placement, and any other information deemed relevant by the SEB. The receiving school district must provide a copy of the notice to the district identified as the student's resident district.

(b) The district identified as the student's resident district may provide any additional information it deems relevant. Such additional information must be provided no later than 15 days after the resident district receives its copy of the notice described in Subparagraph (a) of this paragraph.

(c) No later than 60 days after its receipt of the notice described in Subparagraph (a) of this paragraph, the SEB will issue its determination as to which school district is responsible for the cost of educating the student, together with the amount of any reasonable reimbursement owed to the receiving school district. The SEB may extend the 60- day timeline for good cause.

(7) The department will assign a unique student identifier for school-age persons who have service plans, including those who are not residents of the state but who are attending private residential treatment facilities in the state.

(8) Children schooled at home. Each LEA shall locate, evaluate and determine the eligibility of children with disabilities who are schooled at home pursuant to Section 22-2-2(H) NMSA 1978.

[§6.31.2.11 NMAC - Rp, §6.31.2.11 NMAC, 6/29/07; A, 12/31/09]

For students who have been placed by their parents in private/nonpublic schools, the following applies:

1. Child Find is a screening process of basic tests administered to or procedures used for all children in a school, grade, or class to identify those children who are potentially in need of special education and related services.
2. A student is not automatically eligible for services under the IDEA as a result of having been identified through the Child Find process. <u>The student will be a part of the SAT process and intervention strategies will be documented as a part of the referral process</u>. Students identified as warranting further consideration for special education or related services must then undergo (with parental consent) the initial evaluation described in Section 2.
3. The regulations do not require that educational agencies test all students for whom evaluations are requested. The LEA will conduct an evaluation when it suspects that the student has a disability and needs special education and related services as a result. Consequently, if the LEA has no reasonable basis for suspecting that the student has such a disability, it may refuse to conduct an evaluation. Nonetheless, the district will investigate thoroughly the possible existence of a disability before refusing to evaluate, particularly when the request comes from parents of a student who is not progressing well in school.
4. If the South Valley Preparatory School refuses the request for evaluation, then the parents must be so notified in writing. This notice must include an explanation of the basis for the refusal and the procedural safeguards available (that is, the right to request a due process hearing) to contest the refusal. An explanation of the procedural safeguards under the IDEA and of the due process hearing procedure can be found in the New Mexico *Parent and Student Rights in Special Education* document.
5. If a parentally-placed private school student is evaluated and found in need of special education or related services, then a meeting with the parent and the private school will occur so that the district can make a formal, written offer for placement and special education services within the district's public schools. If the parents reject the district's offer, then the district will explain its Private School Services Plan that it is required by federal law to provide to private school students with disabilities. However, the law provides that these students are not entitled to the same special education and related services they would receive if enrolled in the public school. 34 CFR § 300.137

When a student placed by his/her parents in private/nonpublic school~~,~~ has been referred for special education evaluation, all requirements concerning referral, evaluation, and determination of eligibility will be followed by the [district].

<u>K. Related Services</u>

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)

L. Residential Services

The IEP committee will determine what if any services cannot be provided by the South Valley Preparatory School . 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)

M. 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

South Valley Preparatory School
POLICIES AND PROCEDURES FOR THE PROVISION OF SPECIAL EDUCATION SERVICES FOR STUDENTS WITH DISABILITIES AND GIFTED STUDENTS

Chapter 2. - PROCEDURAL SAFEGUARDS

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 South Valley Preparatory School ; 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) <u>Notice in understandable language</u>.
(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.

<u>Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies</u>
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.

<u>Authority: 34 CFR §300.505 Electronic mail</u>.
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, if the public agency makes that option available.**

<u>Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS</u>
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.

<u>Timeline for Notice (Reasonable Time)</u>

<u>Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies</u>
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 South Valley Preparatory School 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 form 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.

Consent for Individual Family Service Plan (IFSP) – 34 CFR §300.323(b)(2)(ii)

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

(b) IEP or IFSP for children aged three through five.

(1) In the case of a child with a disability aged three through five (or, at the discretion of the NMPED, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is--

(i) Consistent with State policy; and

(ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must--

(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; *(use the New Mexico FIT program IFSP documents as public agency is required to explain the difference to parents - http://www.health.state.nm.us/ddsd//fit/otherdoc.html)* **and**

(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

(Written informed consent from the parents means consent as described at the beginning of this Consent section III.)

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 South Valley Preparatory School 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 South Valley Preparatory School 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) Duties of the public agency. The duties of the public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method--
- **(1) For determining whether a child needs a surrogate parent; and**
- **(2) For assigning a surrogate parent to the child.**

(c) 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.

(d) Criteria for selection of surrogate parents.
- **(1) The public agency may select a surrogate parent in any way permitted under State law.**
- **(2) The public agency must ensure that a person selected as a surrogate parent--**
  - **(i) Is not an employee of the NMPED, the public agency, or any other agency that is involved in the education or care of the child;**

(ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and

(iii) Has knowledge and skills that ensure adequate representation of the child.

(e) Non-employee requirement; compensation. A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

Whether any person acting as a surrogate parent should be paid is at the discretion of the Special Education Director.

(f) 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.

(g) 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.

(h) NMPED responsibility. The NMPED must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after public agency determines that the child needs a surrogate.

Requirements of Surrogate

Staff Training: Method of determining whether a child needs a surrogate parent.

Annually, the local campus principals, counselors and staff, along with the special education staff, are trained on the situations in §300.519 in which a student would need a surrogate parent appointed or would need the surrogate parent required training. Staff is asked to assist in identifying those students who need surrogates. The special education director or designee will maintain the list of trained surrogates and schedule training for new surrogates.

Surrogate Parent Assignment Guidelines:

The principal or other person makes the request for a surrogate parent for an eligible public agency child. Procedures for requesting a surrogate parent are as follows:

a. Principal or other assigned staff person notifies the special education director of need and of potential surrogate parents if they are aware of any potential volunteers.

b. The special education director or designee schedules and conducts the training using application form to document assurances below.

c. The special education director notifies campus administration of completed training and the names of new surrogate parents.

d. The special education director, principal or designee notifies/contacts the student's assigned surrogate parent when appropriate.

Assurances

Assurances must be made by the individual selected to serve as a surrogate or foster parent. These assurances are reviewed at the training and documented on the application form signed by the surrogate / foster parent.

- *The individual may not have any personal or professional interest that conflicts with the interest of the child the surrogate parent represents;*
- *The individual may not be an employee of the public agency or of any other public agency responsible for, or involved in, the education or care of the child the surrogate parent represents;*
- *The individual must have knowledge and skills that ensure adequate representation of the child;*
- *The individual must be a resident of the member school district which the student attends, and*
- *The public agency may select as a surrogate a person who is an employee of a nonpublic agency that only provides non-educational care for the child and who meets the standards above.*

A foster parent in a home verified by the New Mexico Department of Health or a child-placing agency shall not be deemed to have a financial conflict of interest by virtue of serving as the foster parent in that home. These homes include, but are not limited to, basic, habilitative, primary medical, or therapeutic foster or foster group homes. In

addition, issues concerning quality of care of the child do not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to the New Mexico Department of Health.

Documentation of Training for Volunteers to Serve as Surrogate Parent:

a. *The individual assigned to act as a surrogate parent must complete a training program within 90 calendar days after the effective date of initial assignment as a surrogate parent.*
b. *Once the individual has completed a training program conducted or provided by or through the New Mexico Department of Health, a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents, the individual shall not be required by any school to complete additional training in order to continue serving as the student's surrogate parent or to serve as the surrogate parent for other students with disabilities.*
c. *The public agency may provide additional training to surrogate parents and/or parents; however, the public agency cannot deny an individual who has received the training from serving as a surrogate parent on the grounds that the individual has not been trained.*
d. *Training should be provided prior to assigning an individual to act as a surrogate parent.*
e. *Individuals already serving as surrogate parents, who are identified as not having received previous training, will receive training within 90 calendar days of identification.*
f. *The public agency will keep records of those individuals who have received training and each person trained by the public agency will be given a certificate to use should they move to another school and need evidence of training.*

Documentation of Training for Assignment of Foster Parents as Surrogate Parents:

a. *A foster parent may act as parent of a child with a disability, in accordance with §300.20 relating to the definition of parent.*
b. *The foster parent must complete the training within 90 calendar days after the effective date of this rule or the date of initial assignment as foster parent, whichever comes later. The foster parent will be exempt if training has already been conducted by the New Mexico Department of Health and evidence is provided to the public agency.*
c. *Once the individual has completed a training program conducted or provided by or through the NM Department of Health, the public agency, or any entity that receives federal funds to provide IDEA training to parents, the individual will not be required by any school to complete additional training in order to continue serving as the student's surrogate parent or to serve as the surrogate parent for other students with disabilities.*
d. *The public agency may provide additional training to surrogate parents and/or parents; however, the public agency cannot deny an individual who has received the training from serving as a surrogate parent on the grounds that the individual has not been trained.*
e. *Individuals already serving as surrogate parents, who are identified as not having received previous training, will receive training within 90 calendar days of identification if there is no evidence training was previously provided by the New Mexico Department of Health*
f. *The public agency will keep records of those individuals who have received training and each person trained by the public agency will be given a certificate to use should they move to another school and need evidence of training.*
g. *If the foster parent does not meet the criteria to serve as parent, the public agency will appoint a surrogate parent. The public agency will give preferential consideration to the foster parent of a student with a disability when assigning a surrogate parent for the child.*

Surrogate Training Completed

When the applicant successfully completes the Surrogate Parent Training, a list of those individuals trained as Surrogate Parents will be filed in the office of the Special Education Director.

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 South Valley Preparatory School 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 required 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 South Valley Preparatory School 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**	**Due Process filed with NMPED**
Lowest Level of Conflict Resolution		Violation occurred not more than **1 year** to date complaint received *34 CFR §300.153* 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 *34 CFR §300.507* and Impartial Review by NMPED in 60 days *34 CFR §300.510(a)*	34 CFR §300.511 - .515
Informal Dispute Resolution NMAC 6.31.2.13 G. (2)(a) ↓	3rd 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 ↓	Convene Resolution Session unless waived by both NMAC 6.31.2.13 G. (2)(c)(ii) **or** ↓
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	Both parties agree to FIEP or Mediation
	Mediation Procedures *34 CFR §300.506* and NMAC 6.31.2.13 G. (2)(b) H. (3)(c)	Complaint Procedures NMAC 6.31.2.13 H. (1 – 8)	Complaint Procedures NMAC 6.31.2.13 H. (1 – 8)	Due Process Procedures Resolution session, etc., *34 CFR §300.511 - 34 CFR §300.515* 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 South Valley Preparatory School 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.

<u>34 CFR §300.152 Minimum State complaint procedures</u>.

(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.

<u>34 CFR § 300.153 Filing a complaint</u>.

(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 <u>one year prior to the date</u> 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.

<u>Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies</u>
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.

<u>Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies</u>
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) include a statement that the department or the public agency has violated a requirement of an applicable state or federal law or regulation; and (v) contain a statement of the facts on which the allegation of violation is based, and a description of any efforts the complainant has made to resolve the complaint issue(s) with the public agency (for a complaint against the public agency). 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 NMSAC.

(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.

(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.

(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 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.
You may also see the fact sheet at the NMPED website:
http://www.ped.state.nm.us/SEB/community/dl10/CAIEP.Fact.Sheet.pdf

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) <u>Impartiality of mediator</u>.

(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.

<u>Authority: NMAC 6.31.2.7 Definitions</u>

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.

<u>Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies</u>

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.

(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 5 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://www.ped.state.nm.us/SEB/forms/Complaint Form 033011.doc

Due Process Hearing form: http://www.ped.state.nm.us/seo/dispute/Due%20Proccess%20Hearing%20Form%202007%20lock.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.

Children with Disabilities Enrolled by their Parents in Private Schools
34 CFR § 300.140 Due process complaints and NMPED complaints. *(See also Chapter 6. of this manual which includes Parentally-Placed Students in Private Schools)*

(a) Due process not applicable, except for child find.
(1) Except as provided in paragraph (b) of this section, the procedures in §§300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of §§300.132 through 300.139, including the provision of services indicated on the child's services plan.

(b) Child find complaints—to be filed with the LEA in which the private school is located.
(1) The procedures in §§300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in §§300.131 including the requirements in §§300.300 through 300.311.
(2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of the section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the NMPED.

(c) State complaints.
(1) Any complaints that the NMPED or public agency has failed to meet the requirements of §§300.132 through 300.135 and §§300.137 through 300.134 must be filed under the procedures in §§300.151 through 300.153.
(2) A complaint filed by a private school official under §300.136(a) must be filed with the NMPED in accordance with the procedures in §300.136(b).

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 NMPED.

(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/seo/dl09/Resolution%20Session%20Fact%20Sheet.pdf

Authority: NMAC 6.31.2.13 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;
- (d) an IDEA due process hearing provides a forum for reviewing the appropriateness of decisions regarding the identification, evaluation, placement or provision of a free appropriate public education for a particular child with a disability by the public agency that is or may be responsible under state law for developing and implementing the child's IEP or ensuring that a FAPE is made available to the child; the IDEA does not authorize due process hearing officers to consider claims asserting that the department should be required to provide direct services to a child with a disability pursuant to 20 USC Sec. 1413(g)(1) and 34 CFR §300.227 because the responsible public agency is unable to establish and maintain appropriate programs of FAPE, or that the department has failed to adequately perform its duty of general supervision over educational programs for children with disabilities in New Mexico; accordingly, a due process hearing is not the proper forum for consideration of such claims and the department will decline to refer such claims against it to a hearing officer; such claims may be presented through the state-level complaint procedure under Subsection H of 6.31.2.13 NMAC above.

(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://www.ped.state.nm.us/seo/dispute/Due%20Proccess%20Hearing%20Form%202007%20lock.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 complaint through a meeting held pursuant to Paragraph (8) of Subsection I of 6.31.2.13 NMAC; or

(ii) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 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 39 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 5 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;

(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, which ever 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

South Valley Preparatory School
POLICIES AND PROCEDURES FOR THE PROVISION OF SPECIAL EDUCATION SERVICES FOR STUDENTS WITH DISABILITIES AND GIFTED STUDENTS

Chapter 3. – FULL AND INDIVIDUAL EVALUATION

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 South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School agrees with the parent that the child may be a child who is eligible for special education services, the South Valley Preparatory School must evaluate the child. If the South Valley Preparatory School declines the parent's request for an evaluation, the South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School agree otherwise; and

(2) Must occur at least once every 3 years, unless the parent and the South Valley Preparatory School agree that a reevaluation is unnecessary.

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS

D. (2) Reevaluations

(a) The South Valley Preparatory School must ensure that a reevaluation of each child is conducted at least once every three years, unless the parent and the South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School will provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the South Valley Preparatory School 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 South Valley Preparatory School 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) <u>Other evaluation procedures</u>. The South Valley Preparatory School 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 [district'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 <u>New Mexico Technical Evaluation and Assessment Manual (NMTEAM)</u> revised July 2011 located at: <u>http://www.ped.state.nm.us/SEB/technical/NMTeamManual.pdf</u>

<u>Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS</u>

D. Evaluations and reevaluations

(2) (d) Procedures for conducting evaluations and reevaluations:

(i) The South Valley Preparatory School must provide **notice** to the parents of a child with a disability that describes any **evaluation procedures** the South Valley Preparatory School 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 South Valley Preparatory School is required to follow the procedures established by the New Mexico PED.

(iv) Each South Valley Preparatory School 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) Each South Valley Preparatory School 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 South Valley Preparatory School 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) Each South Valley Preparatory School 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) Each South Valley Preparatory School 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) Each South Valley Preparatory School 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 South Valley Preparatory School 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) Each South Valley Preparatory School must ensure that the child is assessed in all areas related to the suspected disability.

(5) Policies for South Valley Preparatory School 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 [district].

(6) [Districts] in New Mexico 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 South Valley Preparatory School 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 South Valley Preparatory School , 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 South Valley Preparatory School 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) South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(b) <u>Special rule for eligibility determination</u>. 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) <u>Procedures for determining eligibility and educational need</u>.

(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 South Valley Preparatory School 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.

<u>Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS</u>

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 South Valley Preparatory School must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

<u>Authority: NMAC 6.31.2.10 IDENTIFICATION AND ELIGIBILITY DETERMINATIONS</u>

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

<u>A. Specific Learning Disabilities - General / Criteria</u>

§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 South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School 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. Written Assessment Report for Early Childhood (Birth – 3 and Preschool) *(See also p. 24)*

A report is a written and legal accounting of the assessment processes and procedures. It brings together all information and supplies interpretations of findings. The report functions as a reference for specific intervention and program decisions. It is through the report that assessment teams communicate their understanding of children's strengths, needs, and supports in a way that is useful to families and their service providers as they make intervention and program decisions.

The criteria for the written report are grouped by report sections and discussed in the following pages:
1. Background Information,
2. Procedures and Tools,
3. Findings
4. Conclusions and Next Steps.

1. Background Information

Who is the child?

- **Characteristics -** likes and dislikes, personality, self-regulation, social interaction, temperament, uniqueness.
- **Demographics -** age, sex, family composition (parents, guardians, siblings, etc.); birth order.
- **Developmental/learning history -** learning preference/style, milestone accomplishments, needs for specific structure or cues, play, summary of previous assessment results.
- **History of concerns -** how family's concern/question developed, duration of concern, situations in which concern is displayed.
- **Physical status -** appearance, birth history, growth, health status, hearing and vision, medical history, medicine, nutrition and eating.
- **Typical day -** activities and routines, coping with routines and change in routines, opportunities for interactions with age peers and learning activities.
- **Special circumstances -** extended hospital stays, medical diagnoses, impact of medical conditions on routines, current/previous program eligibility and participation.

Who is the child's family?

Family history - family routines, occupational information, significant medical history, length of time in the community, where the family lived previously.

Family resources - child care, community programs, early intervention participation, extended family, Head Start.

Special circumstances -

- Cultural/language differences: picture of language in the home, translation needs, language dominance, acculturation, values and beliefs important to the family.
- Economic issues: housing or other financial hardships that the family believes are important to include; current SSI or Medicaid status if appropriate.
- Environmental issues: custody, foster care, high mobility, social service monitoring that affects the family's participation or child's performance.

What prompted the assessment?

- **Family concerns -** concerns about the child, the progress of intervention, daily participation in activities.
- **Family questions -** questions about the child's skills or abilities, progress in therapy or intervention, the child's needs.
- **Family priorities -** goals and dreams the family has for the child, priorities about intervention or therapy, priorities concerning schedules.
- **Referral questions -** questions from teachers, daycare providers, or other program personnel; questions from other agencies (e.g., doctors, social workers, insurance personnel); questions resulting from additional assessment requests.

Special problems with this section:

This section of the report can become lengthy, especially when a child has an extensive medical or intervention history. This is also a section where jargon and technical language can be overwhelming in relation to medical or

diagnostic concerns. This is a section that can easily become judgmental or opinionated. Be mindful of duplications, speculation, determining causes, or opinions.

2. Procedures and Tools:

How was this information gathered?

- **Description of tools -** names of published tools, brief description of unpublished tools, identification of sources of information (family members, caregivers, early interventionists, teachers, bilingual educators, other assessment professionals), how assessment purposes related to choices of procedures and tools.
- **Procedures -** team members and their roles, including the family's chosen role; situational circumstances including where, when, how long, how often, and persons present; unusual circumstances that might affect findings and interpretations (e.g., noise, intrusions, novelty of evaluation setting, translation difficulties).
- **General accommodations -** descriptions of methods used to address child's unique characteristics and needs including adaptive strategies (alternative response mode, frequent breaks, large print, and texture enhanced materials), alterations to any standardized procedure, cultural considerations, interpreters or translations needed, language used in assessment, rapport-building procedures.

Disclosures:

New Mexico IDEA Part B regulations governing evaluation procedures stipulate certain disclosures are made. Include any required deviation as specified in this Chapter 2. Full and Individual Evaluation.

3. Findings

What are the child's abilities?

- **Concrete comparisons -** current to previous performance; specific examples of what is typical or what would be expected next; test scores reported as range with explanation of the meaning and examples of skills present.
- **Integrated developmental description -** all areas of concern (family questions, report purposes); progress in areas no longer of concern; specific examples illustrating skill or ability; focused on strengths and needs; difficulties in one developmental area and their influence on performance in another area.
- **Family and professional interpretations -** how child attends, plays with peers and toys, reacts in structured vs. unstructured situations; quality and representativeness of child's responses.
- **Limitations of evaluation/assessment -** problems the assessment team experienced in establishing and maintaining rapport, obtaining an adequate sample of abilities and behaviors (across domains, instruments, settings, time); accommodating the child's unique cultural, linguistic, or response capacities; problems encountered that affect the validity of the assessment information.

What factors affect performance?

- **Cultural/linguistic differences:** culturally-linked developmental expectations, exposure to learning activities, materials, and play experiences; family-child interaction styles; linguistic skills and proficiency in first and second language; language use and exposure across natural settings and conversational partners
- **Environmental factors:** adult expectations, environmental supports (instruction, routines, schedules, structure), physical layout
- **Family context (at family's discretion):** unique knowledge, resources, and experiences that enhance development; self-identified needs for information and support; beliefs, preferences, and values regarding child-rearing, development, learning
- **Health/sensory capacities:** interaction of health, medical conditions, or medicines with developmental performance
- **Personality:** interaction of coping style, learning style, likes and dislikes, state, temperament with developmental performance

Problems reporting:

This is also an area where technical language and jargon can be a problem. It is professional and acceptable to report scores, but be sure you state them in clear terms with an explanation of what they mean or do not mean. Problems that affect the quality of the assessment process also affect the findings. Young children are not accomplished test takers and often react to formal assessment situations in ways that do not reveal their capacities. Children who have not been exposed to the materials used in the assessment process may show more interest in the materials themselves than in accomplishing an assessment tasks. Children who are shy around adult strangers may

react with silence to a last minute change in interpreters. This reactivity can be a major contributor to contradictory data. When these or other challenges occur, you need to disclose them and show how they may have affected the results. Keep in mind that problems with the assessment process affect the validity of the assessment information, not the validity of the child's responses, capacities, or behaviors.

4. Conclusions and Next Steps

What do these findings mean?

- **Child performance -** comments addressing consistent patterns; the relationship of the patterns to unique characteristics and circumstances (e.g., cultural and linguistic background, experiences, learning style, personality); relationship of patterns to possible environmental demands; scaffolding approaches that support performance (e.g., types of assistance, material preferences, task accommodations); comments relating patterns to questions arising from previous IEPs, IFSPs, or service provider concerns.
- **Family priorities -** comments relating to family concerns, questions, and priorities; explanations of any diagnostic information; family's interpretations of the child's pattern of strengths and needs.
- **Other consumers' needs -** explanation to accompany health or medical conditions diagnosed as part of the assessment; eligibility recommendations accompanied by explanation of child's level of functioning in relation to meeting criteria for categories of eligibility; consider appendices to the report for reporting to agencies that require test scores or diagnostic labels (e.g., SSI, DD Waiver).

What are the next steps?

- **At home activities -** concrete suggestions that you tailor to the family (e.g., address family priorities, build on family suggestions and ideas, are sensitive to family routines, culture, and community); suggestions that fit within family's time, interests, and preferences.
- **Intervention suggestions -** recommendations with specific examples that provide a starting place for developing IEP goals and IFSP outcomes, creating domain-specific instructional activities, integrating intervention within natural environments and naturally occurring events, incorporating special considerations into instructional programs (e.g., accommodating activity level, using Spanish in instruction).
- **Services that might be helpful -** additional assessments that might clarify unresolved questions, follow-up with family pediatrician, programs that families might want to consider (e.g., early intervention, Head Start, Parents As Teachers, public preschool, WIC, etc.), specific services (e.g., assistive technology, occupational therapy); clear linkages between service recommendations and outcomes for the child and family.

Do not include with this section:

- **Conclusive determinations about eligibility:** unilateral statements about eligibility or declarations that child qualifies for early intervention or special education, statements about meeting eligibility criteria that are not based on data
- **Inappropriate conclusions:** interpretations that are not supported by information presented in the report, long-range theorizing or prognoses; opinions of others who are not part of the team unless clearly stated; scores or rankings (they are findings)
- **Insensitive suggestions:** recommendations that are impractical, expensive, or uncomfortable for families; suggestions that require large time commitments or are overwhelming in number; generic (canned) suggestions; suggestions that are so broad or vague that they cannot be translated to ordinary situations and activities
- **Labeling:** diagnosis (when that is part of the assessment) that labels a health, medical or physical condition without explanation of the underlying difficulties unique to the child or the relationship to child's learning and development
- **Overly-prescribed recommendations:** recommendations for a specific program, curriculum, or person; listing of services without reference to activities related to child needs; suggestions that are so narrow that they only apply to one situation

B. 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.

C. 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 South Valley Preparatory School 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) <u>Individual related services terms defined</u>. 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 [district]. 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

(16) Transportation includes--
(i) Travel to and from school and between schools;
(ii) Travel in and around school buildings; and
(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

Local Transportation Rules
The [district's] rules govern special education bus students unless designated otherwise by an IEP Committee. Violation of school bus rules and regulations may result in restrictions. The student will follow local guidelines unless the IEP committee recommendations are different. Special education transportation procedures include the following:

a. *It is the responsibility of the parent to have the student ready for the bus each day.*
b. *It is the responsibility of the parent to notify the Transportation Department of any change of address.*
c. *If the student is to be transported to or from a place other than home, parent submits to the Transportation Department the student's name and address, and the person's name and address who will assume responsibility for the child.*
d. *Card files are maintained on all students; therefore, if home or work numbers change, parents must notify the local campus, the Special Education Department, and the Transportation Department.*
e. *If the student will not be riding the bus for more than a day, parent contacts the Transportation Department in advance so that the driver can be notified.*

You may also refer to the NMPED website for transportation information for parents:
http://www.ped.state.nm.us/seo/library/transguide.pdf

§300.139 Location of services and transportation. (see also Chapter 5. Instructional Arrangements)

(a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.

(b) Transportation.

(1) General.

(i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation--

(A) From the child's school or the child's home to a site other than the private school; and

(B) From the service site to the private school, or to the child's home, depending on the timing of the services.

(ii) LEAs are not required to provide transportation from the child's home to the private school.

(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of §300.133.

(§300.133 Expenditures for parentally-placed students)

Authority: NMSA 1978 Sec. 22-16-6. Reimbursement of parents or guardians.
The [district's] local school board may, subject to regulations adopted by the state board [department], provide per capita or per mile reimbursement to a parent or guardian in cases where regular school bus transportation is impractical because of distance, road conditions or sparseness of population or in cases where the local school board has authorized a parent to receive reimbursement for travel costs incurred by having a child attend a school outside the child's attendance zone.

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 South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School 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. Early Childhood

1. Birth to 3 years – Family Infant Toddler (FIT) Program

Authority: 34 CFR §300.25 Infant or toddler with a disability.
Infant or toddler with a disability-

(a) Means an individual under three years of age who needs early intervention services because the individual—
- **(1) Is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or**
- **(2) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and**

(b) May also include, at NMPED's discretion—
- **(1) At-risk infants and toddlers; and**
- **(2) Children with disabilities who are eligible for services under section 619 and who previously received services under Part C of the Act until such children enter, or are eligible under New Mexico law to enter, kindergarten or elementary school, as appropriate, provided that any programs under Part C of the Act serving such children shall include--**
  - **(i) An educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and**
  - **(ii) A written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under Part C of the Act or participate in preschool programs under section 619. (Authority: 20 U.S.C. 1401(16) and 1432(5))**

If the evaluation team cannot test these students in accordance with the guidelines listed under the individual evaluation section of this procedure manual, the team must document the rationale for deviating from the standard procedure, as well as state modifications used, and present the results of the evaluation. The written report will specify the nature and extent of the disability. The educational evaluation of such a student may be limited to competency-based or criterion-referenced measures. Any outside evaluations conducted by other agencies will also be considered.

For more information, see the NMPED website document: Early Identification of Culturally and Linguistically Diverse Children (Aged 0-5) found at: http://www.ped.state.nm.us/seo/library/earlyidmini.pdf

2. Age 3 - 5 years – Preschool Program for Children with Disabilities

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

A. Preschool programs for children aged 3 through 5:
- (1) The South Valley Preparatory School shall ensure that a free appropriate public education is available for each preschool child with a disability within its educational jurisdiction no later than the child's third birthday and that an individualized education program (IEP) under Part B or an individual family services plan (IFSP) under Part C of the IDEA is in effect by that date in compliance with 34 CFR §§300.101, 300.124 and 300.323(b).
- (2) If a child turns three at any time during the school year and is determined to be eligible under Part B, the child may enroll in a Part B preschool program when the child turns three if the parent so chooses, whether or not the child has previously been receiving Part C services.
- (3) To ensure effective transitioning from IDEA Part C programs to IDEA Part B programs, each public agency must conduct a full and individual initial comprehensive evaluation, at no cost to the parent, and in compliance with requirements of 34 CFR §§300.300, 300.301, 300.302, 300.304 and 300.305 and other department rules and standards before the initial provision of Part B special education and related services to a child with a disability.
  - (a) The initial comprehensive evaluation process shall be conducted in all areas of suspected disability.

(b) The Part B eligibility determination team shall review current assessments and shall determine the additional data and assessments needed for the comprehensive evaluation. Current assessments are defined as assessments, other than medical assessments, conducted no more than six months prior to the date of the meeting of the Part B eligibility determination team.

(c) The Part B eligibility determination team must consider educationally relevant medical assessments as part of the review of existing evaluation data. The determination of eligibility may not be made solely on the basis of medical assessments. If the team considers medical assessments conducted more than six months prior to the date of the meeting, the team must document the appropriateness of considering such medical assessments.

(4) The South Valley Preparatory School shall develop and implement appropriate policies and procedures to ensure a smooth and effective transition from Part C to Part B programs for preschool children with disabilities within the agency's educational jurisdiction, in compliance with 34 CFR §300.124. Each LEA and other public agencies as appropriate shall make reasonable efforts to establish productive working relations with local Part C programs and when given reasonable notice shall participate in the ninety day transition planning conferences arranged by local Part C providers.

(5) In particular:

(a) Each LEA shall survey Part C programs within its educational jurisdiction in its child find efforts to identify children who will be eligible to enter the LEA's Part B preschool program in future years.

(b) Each LEA shall promote parent and family involvement in transition planning with Part C programs, community programs and related services providers at least six months before the child is eligible to enter the LEA's Part B preschool program.

(c) Each LEA shall establish and implement procedures to support successful transitions including parent training, professional development for special educators and general educators, and student and parent self-advocacy training and education.

(d) Each LEA shall assist parents in becoming their child's advocates as the child makes the transition through systems.

(e) Each LEA shall participate in transition planning conferences arranged by the designated Part C lead agency no less than 90 days prior to the anticipated transition or the child's third birthday, whichever occurs first, to facilitate informed choices for all families.

(f) Each LEA shall designate a team including parents and qualified professionals to review existing evaluation data for each child entering the LEA's preschool program in compliance with 34 CFR Sec. 300.305, and based on that review to identify what additional data, if any, are needed to determine the child's eligibility for Part B services or develop an appropriate program in a manner that is consistent with Paragraph (3) of Subsection A of this section. The notice of procedural safeguards shall be given to the parents as provided in Paragraph (3) of Subsection D of 6.31.2.13 NMAC.

(g) (i) The IFSP, IEP, or IFSP-IEP will be developed by a team constituted in compliance with 34 CFR §300.321 that includes parents. For children transitioning from Part C programs to Part B programs, the team must also include one or more early intervention providers who are knowledgeable about the child. "Early intervention providers" are defined as Part C service coordinators or other representatives of the Part C system. For each child transitioning from a Part C program to a Part B preschool program, the South Valley Preparatory School shall initiate a meeting to develop the eligible child's IFSP, IEP or IFSP-IEP, in accordance with 34 CFR §300.124. The IFSP, IEP or IFSP must be developed and implemented no later than the child's third birthday, consistent with 34 CFR §300.101(b).(h) In compliance with 34 CFR §300.101(b)(2), if a child's birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin. Each public agency must engage in appropriate planning with the Part C lead agency so that the eligible child will be prepared to receive Part B special education and related services when the IEP team determines that the services under the IEP or IFSP will begin.

(ii) Each district shall develop policies and procedures to ensure a successful transition from Part B preschool for children with disabilities who are eligible for continued services in pre-kindergarten and kindergarten.

The district diagnostician assigned to the Family Infant Toddler (FIT) Program is responsible for working closely with the Special Education Director to implement these procedures NMAC 6.31.2.11 A. and keep documentation of the process, timelines, annual parent training offerings, etc.
For information on the written report, see VII. Written Evaluation Reports in this Chapter.

C. 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 [district].

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).

D. 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:
   (5) creativity or divergent-thinking ability;
   (6) critical thinking or problem solving ability;
   (7) intelligence; and
   (8) 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 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

E. Homebound or Hospitalized

All students referred for consideration as homebound or hospital need evaluation information that describes the student's functioning in the following areas: health, vision, hearing, social emotional status, general intelligence, academic performance, communication, and motor abilities, so the IEP committee can determine eligibility for special education.

In making eligibility and placement decisions, the IEP Team must consider a physician's information. However, the physician's note/information is not the sole determining factor in the committee's decision making process. Students with emotional / behavioral concerns should not be considered for placement on homebound without a psychological evaluation current within one year. If placed on homebound, the IEP must determine a plan for return to the school, including a timeline with date to review progress by the IEP Team prior to the annual review date.

F. 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
NMPED website for school age students: 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.

G. 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

South Valley Preparatory School
POLICIES AND PROCEDURES FOR THE PROVISION OF SPECIAL EDUCATION SERVICES FOR STUDENTS WITH DISABILITIES AND GIFTED STUDENTS

Chapter 4. - DISABILITIES – EXCEPTIONALITIES

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.

(b) Children aged 3-9 *(found in this section Developmental Delay)*

(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.

(4) "Developmentally delayed" means a child aged 3 through 9 or who will turn 3 at any time during the school year: with documented delays in development which are at least two standard deviations below the mean on a standardized test instrument or 30 per cent below chronological age; and who in the professional judgment of the IEP team and one or more qualified evaluators needs special education and related services in at least one of the following five areas: communication development, cognitive development, physical development, social or emotional development or adaptive development. Use of the developmentally delayed option by individual local educational agencies is subject to the further requirements of Paragraph (2) of Subsection F of 6.31.2.10 NMAC. Local education agencies must use appropriate diagnostic instruments and

procedures to ensure that the child qualifies as a child with a developmental delay in accordance with the definition in this paragraph. *(The [district's] procedures for age 3-9 are specified on page 3 of Chapter 1 - Child Find and in this Chapter.)*

The South Valley Preparatory School will follow additional guidance provided in the New Mexico Technical Evaluation and Assessment Manual (NM-TEAM) Revised June 2007 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 hearing

   In 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. DEVELOPMENTAL DELAY

§300.8 Child with a disability.

(b) Children aged three through nine experiencing developmental delays. Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, at the discretion of the NMPED and the South Valley Preparatory School and in accordance with §300.111(b), include a child--

(1) Who is experiencing developmental delays, as defined by the NMPED and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(2) Who, by reason thereof, needs special education and related services.

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.

Authority: NMAC 6.31.2.7 DEFINITIONS B. (4.) *(see also Chapter 3)*

For the local school's Policy and Procedure document, we ask that the school choose one option below:

Insert: *The [school]* ***uses*** *the term developmental delay; more information is located in Chapter 2 and 3.*

(OR)

Insert: *The [school]* ***does not*** *use the term developmental delay.*

Authority: NMAC 6.31.2.7 DEFINITIONS:

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

(4) **"Developmentally delayed"** means a child aged 3 through 9 or who will turn 3 at any time during the school year:

- with documented delays in development which are at least two standard deviations below the mean on a standardized test instrument or 30 per cent below chronological age; and
- who in the professional judgment of the IEP team and one or more qualified evaluators needs special education and related services in at least one of the following five areas:

  * communication development,
  * cognitive development,
  * physical development,
  * social or emotional development or
  * adaptive development.

Use of the developmentally delayed option by individual local educational agencies is subject to the further requirements of Paragraph 2 of Subsection F of 6.31.2.10 NMAC. Local education agencies must use appropriate diagnostic instruments and procedures to ensure that the child qualifies as a child with a developmental delay in accordance with the definition in this paragraph.

A. Birth to 3 years: Family Infant Toddler (FIT) Program Eligibility Requirements:

http://www.health.state.nm.us/ddsd//fit/eligibil.html

In New Mexico children from birth to three may be eligible for early intervention services under one of the following eligibility categories:

1. **Developmental Delay:** a discrepancy of 25% or more between chronological age and developmental age, after correction for prematurity, in one or more of the following areas of development:

   Cognitive Skills - such as thinking, learning, reasoning and problem solving
   Communication Skills - such as understanding and using words and gestures
   Physical/Motor - (including vision and hearing) such as movement and health
   Social or Emotional - such as feelings, getting along with others and relationships
   Adaptive or Self Help Skills - such as bathing, feeding, dressing and toileting

2. **Established Condition:** a diagnosed physical, mental, or neurobiological condition which has a high probability of resulting in developmental delay. A delay in development may or may not be present at the time of diagnosis. There are a number of medical conditions that are considered to be established conditions and therefore make a child eligible under this category.

3. **Biological or Medical Risk for Developmental Delay:** means the presence of early medical conditions which are known to produce developmental delays in some children. The determination of the presence of a biological/medical risk condition(s) shall be diagnosed by a physician or primary health care provider. There are a number of medical conditions that are considered to place the child at risk for developmental delays and therefore make a child eligible under this category.

4. **Environmental Risk for Developmental Delay:** means the presence of physical, social and/or economic factors in the environment which pose a substantial threat to development. The determination of the presence of eligible environmental risk factors must be established by a multi-agency team. Eligibility is determined by a team with representation from two or more agencies who have knowledge of the child and family. Examples of environmental risk conditions include but are not limited to: substance abuse; domestic violence; abuse and neglect and caregiver with a developmental disability or serious mental illness.

B. Age 3 through 9 years:

What educational impact does this disability typically have on students?
Students with a developmental delay in one of the areas listed below have a disability that adversely affects their involvement and progress in the general curriculum or their participation in developmentally appropriate activities. The impact of the disability must be manifested in one or more of the following five domains:

- physical development--fine and gross motor, such as writing, cutting, coloring, running, jumping, moving, etc.
- cognitive development--conceptual development, creativity, thinking, reasoning, problem-solving
- communication development--expressive and receptive language use, articulation, voice, fluency, etc.
- social or emotional development--expressing feelings under normal circumstances, interaction, ability to establish interpersonal relationships, responses to social expectations, sharing, etc.
- adaptive development--conceptual, social, and practical skills, such as toileting, dressing, eating, self-care, etc.

Each of these children is an individual with a unique configuration of strengths, challenges, and temperament characteristics. Assessment is complicated by a myriad of unique development issues and typical fluctuations in terms of performance skills. Multiple transitions between and among

multiple settings affect the student's performance skills, as well. Collaboration in the development of educational programs is difficult, as there are many different professionals involved. Evaluation teams must keep in mind that "at risk" behaviors do not necessarily equate to a developmental delay.

What comprises an initial evaluation?

Evaluation considerations for students with developmental delays are particularly complex, and **unique evaluation issues** must be addressed. In part, *professional judgment* enters into the team's consideration of a child's qualifications for eligibility. Professional judgment is described further in this section.

Evaluation teams must keep in mind, as they make decisions in this evaluation process, that one of the intended functions of the developmental delay category is to provide children and students with access to appropriate service early enough to maximize development with early intervention. The category of developmental delay may be an appropriate determination when the evaluation team is unable to make an appropriate disability determination under any other category, as long as the evaluation is conducted within the expectations established by NMPED *Assessment Technical Assistance Document*.

To identify children/students with developmental delays, a holistic view of their development in all areas must be formulated and supported by observations, narratives, and assessment data supplied by evaluation team members. To obtain a holistic view, a range of data sources that compose a complete body of evidence must be collected. Families and various agencies will be involved in this process.

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

1. For pre-school children, consider the comprehensive **early childhood referral** package. For school-age students, review and consider the **complete SAT file** documentation.
2. Do an **investigation and analysis** of developmental/educational, medical, family, and social history.
3. 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.
4. 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 normalized on the general population, including persons with and without disabilities.
5. Do an **analysis** of current standardized and/or non-standardized developmental/educational data and performance.
6. **Review** existing evaluation data.
7. Conduct formal and/or informal **observations** by different members of the evaluation team (which includes parents/caregivers). To determine developmental/educational functioning, these observations must be performed in multiple settings, both structured and unstructured.
8. Conduct **interviews** of parents, caregivers, and students to determine student preferences, individual strengths and needs, family assets and needs, and any potential additional concerns.
9. 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.

Additional components of an initial evaluation should be determined based on evaluation teams' considerations related to eliminating other disability categories as potential options. The team may also make recommendations to establish which domain (or domains) of the disability is impacted—physical, cognitive, communication, social, emotional, and/or adaptive development.
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 child does not meet eligibility requirements for any other IDEA disability category.
3. The child has documented delays in development which are at least two standard deviations or 30 percent below chronological age.
4. One or more qualified evaluators may use *professional judgment* to determine that he or she needs special education services in at least one of the following five areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development.
5. The disability must have an adverse affect on the child's developmentally appropriate activities or educational performance respectively.

The South Valley Preparatory School will follow the NMPED **professional judgment requirements** clarified in the *Technical Assistance Document for the Category of Developmentally Delayed and Use of Professional Judgment* manual. The NMPED must emphasize that *the use of professional judgment for eligibility decisions is not an individual decision, it is a team decision*. The use of professional judgment alone to qualify a student for special education or related services will be insufficient since the other above listed eligibility criteria must also be met. These requirements are adapted from the American Association on Intellectual disability (AAMR).

Purpose of Professional Judgment
The overall purpose of professional judgment is to ensure that the team uses their professional expertise to interpret the array of evaluation data and determine eligibility on an individual basis. 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 (Schalock & Luckasson, 2005).

In the evaluation and eligibility determination process, professional judgment should be used for every decision from the formation of the eligibility determination team through the formal eligibility determination decision, including selection of assessment materials, identification of evaluators, interpretation of test results, etc. Professional judgment provides the foundation for the entire eligibility determination process. The use of professional judgment enhances the precision, accuracy, and integrity of the professionals' decision in that case (Schalock & Luckasson, 2005).

Even through professional judgment is inherent in all aspects of the evaluation process, there are times that professionals will need to rely more heavily on their professional judgment because of the individual child's characteristics and circumstances.

Models of Professional Judgment
Two models for professional judgment are offered below. The first model focuses specifically on the use of professional judgment in the eligibility determination process (Bagnato, Smith-Jones, Matesa, & McKeating-Esterle, 2006). This model "attempted to isolate what mattered most in terms of accurate decision making using clinical judgment as an assessment practice and procedure."

The second model examines professional judgment strategies across both assessment and intervention (Shalock & Luckasson, 2005). 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).

Cautions Regarding the Use of Professional Judgment
Professional judgment should not be thought of as a justification for abbreviated evaluations, a vehicle for stereotypes or prejudices, a substitute for insufficiently explored questions, an excuse for incomplete or missing data, or a way to solve political problems (Schalock & Luckasson, 2005). When making an eligibility determination decision, the team must follow the regulations in IDEA (2004) and professional judgment must be used within the context of the evaluation findings.

Key Components of Professional Judgment in the Eligibility Determination Process
(Adapted from Bagnato, Smith-Jones, Matesa, & McKeating-Esterle, 2006)

Preparation
• Define the behavior(s) or academic concerns constituting the focus of evaluation.
• Identify the methods and procedures needed to obtain assessment data.

Information Gathering
• Obtain the assessment data using multiple methods and procedures.
• Gather the assessment information across multiple settings and individuals (i.e., professionals, parent(s), and child).

Decision Making
• Analyze and aggregate all of the assessment data from the different tools, people, and settings, using a team-based approach.
• Reach consensus on eligibility determination based on evaluation information

Competent Professional Judgment: Six Strategies
(Adapted from Schalock & Luckasson, 2005)

1. Conduct a thorough social history that focuses on the individual's strengths and limitations, and provides a context for formulating hypotheses about the individual's present and future behaviors.
2. Align data and its collection to the critical question(s) by working with the eligibility determination team to clearly articulate the referral question(s) and to identify the most appropriate data collection methods to answer those questions.
3. Apply broad-based assessment strategies that include standardized and non-standardized measures from a variety of sources across settings.
4. Implement intervention best practices to provide appropriate instruction to children before, during, and after the evaluation and eligibility determination process.
5. Plan, implement, and evaluate supports throughout the evaluation and eligibility determination process to include supports to participate in academic and non-academic activities.
6. Reflect cultural competence and diversity by collecting information about the child's home environment and/or language, examining the relationship between the child's environment and possible disability, using evaluators who are knowledgeable about and sensitive to the child's cultural and linguistic background, and ensure that the evaluation and eligibility determination decision are implemented consistent with legal and ethical guidelines.

V. EMOTIONAL DISTURBANCE

§300.8 Child with a disability.

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

(4) (i) <u>Emotional disturbance</u> 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.

VI. 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.

VII. 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.

VIII. 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.

IX. 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.

X. 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 South Valley Preparatory School 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.

(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) Districts 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 4-12, the South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School has chosen to follow* ***Option _____*** *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 South Valley Preparatory School 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.

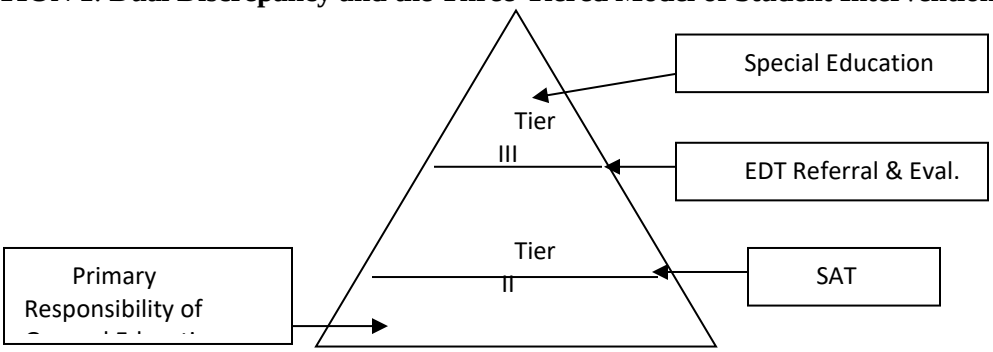
The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of specific learning disability:

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 South Valley Preparatory School chooses to utilize a **severe discrepancy model** in evaluating a student for eligibility in the specific learning disability category, the South Valley Preparatory School 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.

XI. 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.

XII. 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.

XIII. 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 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.

XIV. 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 South Valley Preparatory School 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.

Developmental Delay
In the school year in which the student turns age 9, he or she must be reevaluated in order to determine eligibility for any other IDEA disability category. Initial evaluation requirements must be met for the EDT to make this eligibility determination. If a student is not eligible, he or she must be referred to the SAT to ensure that appropriate supports are not simply dropped or discontinued. Students with a developmental delay should 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 to 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.

XV. 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 found at the NMPED website:
http://www.ped.state.nm.us/seo/gifted/gifted.pdf

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 South Valley Preparatory School 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 South Valley Preparatory School will refer to the Gifted Education: Technical Assistance and Training Resource Document located on the NMPED website:
http://www.ped.state.nm.us/seo/gifted/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

New Mexico Public Education Department
Special Education Bureau

South Valley Preparatory School
POLICIES AND PROCEDURES
FOR THE
PROVISION OF
SPECIAL EDUCATION SERVICES
FOR
STUDENTS WITH DISABILITIES AND GIFTED STUDENTS

Chapter 5.1 - INDIVIDUAL EDUCATION PROGRAM (IEP)

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

I. IEP REQUIRED

§300.112 Individualized education programs (IEP).

The NMPED ensures that an IEP, or an IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with §§300.320 through 300.324, except as provided in §300.300(b)(3)(ii).
§300.320 is the Definition of IEP,
§300.321 covers the IEP Team,
§300.322 covers the Parent Participation,
§300.323 covers when the IEP must be in effect,
§300.324 covers Development of IEP, and
§300.300.300(b) covers Parent Consent.
All above are included in this Chapter 5.1.

II. TIMELINE

§300.323 When IEPs must be in effect.

(a) General. At the beginning of each school year, the South Valley Preparatory School will have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.

(b) IEP or IFSP for children aged three through five.

(1) In the case of a child with a disability aged three through five (or, at the discretion of the NMPED, a two-year-old child with a disability who will turn age three during the school year), the IEP Team will consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is--
(i) Consistent with NMPED policy; and
(ii) Agreed to by the South Valley Preparatory School and the child's parents.

(2) In implementing the requirements of paragraph (b)(1) of this section, the South Valley Preparatory School will--
(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and
(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

(c) Initial IEPs; provision of services. The South Valley Preparatory School must ensure that--

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

(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.
"As soon as possible" is defined as a minimum of five school days, unless the parents agree otherwise.

III. MEMBERSHIP OF THE IEP TEAM

§300.321 IEP Team.

(a) General. The South Valley Preparatory School must ensure that the IEP Team for each child with a disability includes--

(1) The parents of the child;

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

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

(4) A representative of the South Valley Preparatory School who -
(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the

unique needs of children with disabilities;

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

(iii) Is knowledgeable about the availability of resources of the [district].

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

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

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

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

(b) Transition services participants.

(1) In accordance with paragraph (a)(7) of this section, the South Valley Preparatory School must invite a child with a disability to attend the child's IEP meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under §300.320(b).

(2) If the child does not attend the IEP Team meeting, the South Valley Preparatory School must take other steps to ensure that the child's preferences and interests are considered.

(3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the South Valley Preparatory School must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(c) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or [district]) who invited the individual to be a member of the IEP Team.

(d) Designating a South Valley Preparatory School representative. The South Valley Preparatory School may designate a South Valley Preparatory School member of the IEP Team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.

(e) IEP Team attendance. *(Excusal)*

(1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of §300.321, is not required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the South Valley Preparatory School agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(2) A member of the IEP Team described in (e)(1) may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if--

(i) The parent, in writing, and the South Valley Preparatory School consent to the excusal; and

(ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

Any excusal from the IEP meeting must follow exact guidelines in §300.321(e) (1-2) and be documented in writing on the South Valley Preparatory School form provided to you.

(f) Initial IEP meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services. [Authority: 20 USC §§1414 (d)(1)(B) – (d)(1)(D)].

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

§300.320 Definition of individualized education program.

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

(1) A statement of the child's present levels of academic achievement and functional performance, including--

(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(2) (i) A statement of measurable annual goals, including academic and functional goals designed to--

(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(B) Meet each of the child's other educational needs that result from the child's disability;

(ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(3) A description of--

(i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and

(ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

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

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

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

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(Related services are also addressed in Chapter 3. – Evaluation)

(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;

(6) (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments consistent with section 612(a)(16) of the Act; and

(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or district wide assessment of student achievement, a statement of why--

(A) The child cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the child; and

(For specific information see Chapter 5.1 – XI. State and District-wide Assessment)

(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

(b) Transition *See also Transition in Chapter 5.2.*

(c) Transfer of rights at age of majority. *See VI. Parent Rights on following pages.*

(d) Construction. Nothing in this section shall be construed to require--

(1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or

(2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.(Authority: 20 USC §§1414(d)(1)(A) and (d)(6))

Content of IEP or IFSP for Children aged Three through Five

§300.323 When IEPs must be in effect.

(b) IEP or IFSP for children aged three through five.

(1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team will consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy

skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is--

(i) Consistent with NMPED policy; and

(ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (b)(1) of this section, the South Valley Preparatory School will--

(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and

(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

A. Preschool programs for children aged 3 through 5

(1) The South Valley Preparatory School shall ensure that a free appropriate public education is available for each preschool child with a disability within its educational jurisdiction no later than the child's third birthday and that an individualized education program (IEP) under Part B or an individual family services plan (IFSP) under Part C of the IDEA is in effect by that date in compliance with 34 CFR §§300.101, 300.124 and 300.323(b).

(2) A child who will turn three at any time during the school year who is determined eligible may enroll in a Part B preschool program at the beginning of the school year if the parent so chooses, whether or not the child has previously been receiving Part C services.

(3) To ensure effective transitioning from IDEA Part C programs to IDEA Part B programs, each South Valley Preparatory School must conduct a full and individual evaluation, at no cost to the parent, and in compliance with requirements of 34 CFR §§300.300, 300.301, 300.302, 300.304 and 300.305 and other department rules and standards before the initial provision of Part B special education and related services to a child with a disability.

(4) The South Valley Preparatory School shall develop and implement appropriate policies and procedures to ensure a smooth and effective transition from Part C to Part B programs for preschool children with disabilities within the agency's educational jurisdiction, in compliance with 34 CFR §300.124. Each LEA and other public agencies as appropriate shall make reasonable efforts to establish productive working relations with local Part C programs and when given reasonable notice shall participate in the ninety day transition planning conferences arranged by local Part C providers.

(5) In particular:

(a) Each LEA shall survey Part C programs within its educational jurisdiction in its child find efforts to identify children who will be eligible to enter the LEA's Part B preschool program in future years.

(b) Each LEA shall promote parent and family involvement in transition planning with Part C programs, community programs and related services providers at least six months before the child is eligible to enter the LEA's Part B preschool program.

(c) Each LEA shall establish and implement procedures to support successful transitions including parent training, professional development for special educators and general educators, and student and parent self-advocacy training and education.

(d) Each LEA shall assist parents in becoming their child's advocates as the child makes the transition through systems.

(e) Each LEA shall participate in transition planning conferences arranged by the designated Part C lead agency no less than 90 days prior to the anticipated transition or the child's third birthday, whichever occurs first, to facilitate informed choices for all families.

(f) Each LEA shall designate a team including parents and qualified professionals to review existing evaluation data for each child entering the LEA's preschool program in compliance with 34 CFR §300.305, and based on that review to identify what additional data, if any, are needed to determine the child's eligibility for Part B services or develop an appropriate program.

(g) Each LEA shall initiate a meeting to develop an eligible child's IFSP, IEP or IFSP-IEP, in accordance with 34 CFR §300.323, no later than 15 days prior to the first day of the school year of the LEA where the child is enrolled or no later than 15 days prior to the child's entry into Part B preschool services if the transition process is initiated after the start of the school year, whichever is later, to ensure uninterrupted services. This IFSP, IEP, or IFSP-IEP will be developed by a team constituted in

compliance with 34 CFR §300.321 that includes parents and appropriate early intervention providers who are knowledgeable about the child.

(h) In compliance with 34 CFR §300.101(b)(2), if a child's birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin.

(i) The South Valley Preparatory School shall develop policies and procedures to ensure a successful transition from Part B preschool for children with disabilities who are eligible for continued services in pre-kindergarten and kindergarten.

B. Individualized education programs (IEPs).

(1) Except as provided in 34 CFR §§300.130-300.144 for children enrolled by their parents in private schools, the South Valley Preparatory School (1) shall develop, implement, review and revise an IEP in compliance with all applicable requirements of 34 CFR §§300.320-300.328 and these or other department rules and standards for each child with a disability (within its educational jurisdiction); and (2) shall ensure that an IEP is developed, implemented, reviewed and revised in compliance with all applicable requirements of 34 CFR §§300.320-300.328, and these or other department rules and standards for each child with a disability who is placed in or referred to a private school or facility by the [district].

(2) Each IEP or amendment shall be developed at a properly convened IEP meeting for which the South Valley Preparatory School has provided the parent and, as appropriate, the child, with proper advance notice pursuant to 34 CFR §300.322 and Paragraph (1) of Subsection D of 6.31.2.13 NMAC and at which the parent and, as appropriate, the child have been afforded the opportunity to participate as members of the IEP team pursuant to 34 CFR §§300.321, 300.322 and 300.501(b) and (c) and Subsection C of 6.31.2.13 NMAC.

(3) Except as provided in 34 CFR §300.324(a)(4), each IEP shall include the signature and position of each member of the IEP team and other participants in the IEP meeting to document their attendance. Written notice of actions proposed or refused by the South Valley Preparatory School shall also be provided in compliance with 34 CFR §300.503 and Paragraph (2) of Subsection D of 6.31.2.13 NMAC and shall be provided at the close of the IEP meeting. Informed written parental consent must also be obtained for actions for which consent is required under 34 CFR §300.300 and Subsection F of 6.31.2.13 NMAC. An amended IEP does not take the place of the annual IEP conducted pursuant to CFR §300.324(a)(4) which requires that members of a child's IEP team must be informed of any changes made to the IEP without a meeting.

(4) Agreement to modify IEP meeting requirement.

(a) In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent of a child with a disability and the South Valley Preparatory School may agree not to convene an IEP team meeting for the purposes of making those changes and instead may develop a written document to amend or modify the child's current IEP.

(b) If changes are made to the child's IEP in accordance with subparagraph (4)(a) of this paragraph, the South Valley Preparatory School must ensure that the child's IEP team is informed of those changes.

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

(a) extended educational programming, including, for example, extended day or extended school year services that consider the duration of programs or settings based on assessment of behavior, social skills, communication, academics, and self-help skills;

(b) daily schedules reflecting minimal unstructured time and reflecting active engagement in learning activities, including, for example, lunch, snack, and recess periods that provide flexibility within routines, adapt to individual skill levels, and assist with schedule changes, such as changes involving substitute teachers and other in-school extracurricular activities;

(c) in-home and community-based training or viable alternatives to such training that assist the student with acquisition of social or behavioral skills, including, for example, strategies that facilitate maintenance and generalization of such skills from home to school, school to home, home to community, and school to community;

(d) positive behavior support strategies based on relevant information, including, for example:

(1) antecedent manipulation, replacement behaviors, reinforcement strategies, data-based decisions; and

(2) a behavioral intervention plan focusing on positive behavioral support and developed from a functional behavioral assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings.
(e) futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments;
(f) parent or family training and support provided by qualified personnel with experience in ASD, that, for example:
(1) provides a family with skills necessary for a child to succeed in the home or community setting;
(2) includes information regarding resources such as parent support groups, workshops, videos, conferences, and materials designed to increase parent knowledge of specific teaching and management techniques related to the child's curriculum; and
(3) facilitates parental carryover of in-home training, including, for example, strategies for behavior management and developing structured home environments or communication training so that parents are active participants in promoting the continuity of interventions across all settings.
(g) provides suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social or behavioral progress based on the child's developmental and learning level and that encourages work towards individual independence as determined by, for example:
(1) adaptive behavior evaluation results;
(2) behavioral accommodation needs across settings; and
(3) transitions within the school day.
(h) communication interventions, including communication modes and functions that enhance effective communication across settings such as augmentative, incidental, and naturalistic teaching;
(i) social skills supports and strategies based on social skills assessment or curriculum and provided across settings, including, for example, trained peer facilitators, video modeling, social stories, and role playing;
(j) professional educator and staff support, including, for example, training provided to personnel who work with the student to assure the correct implementation of techniques and strategies described in the IEP; and
(k) teaching strategies based on peer reviewed, research-based practices for students with ASD, including, for example, those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, and social skills training.

V. CONSIDERATION OF SPECIAL FACTORS

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

A. Assistive Technology

§300.324 Development, review, and revision of IEP
(a) (2) Consideration of special factors. The IEP Team must--

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

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

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

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

§300.105 Assistive technology; proper functioning of hearing aids.

(a) The South Valley Preparatory School ensures that assistive technology devices or assistive technology services, or both, as those terms are defined in §§300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's--
  (1) Special education under §300.36;
  (2) Related services under §300.34; or
  (3) Supplementary aids and services under §§300.38 and 300.114(a)(2)(ii).
(b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE.

B. Behavior (positive interventions and supports)

§300.324 Development, review, and revision of IEP.

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

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

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

- *Use students' names to praise positive behavior as well as to discipline students.*

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

FBA / BIP – *See also Chapter 3 Evaluation and Chapter 5.2 IEP*
If the student exhibits behavior that is interfering with student's learning or the learning of others, the IEP Team must consider completing a Functional Behavior Assessment (FBA) and developing a Behavioral Intervention Plan (BIP) for the student. In addition, Social/Emotional Goals/Objectives would be appropriate. For more information, see Chapter 3-Full and Individual Evaluation for development of the FBA and also Chapter 7 of this document for more information on Discipline.

C. Blindness or Visual Impairment

§300.324 Development, review, and revision of IEP.
(a) Development of IEP.
(2) Consideration of special factors. The IEP Team must:
(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child.

D. Communication

§300.324 Development, review, and revision of IEP.
(a) Development of IEP.
(2) Consideration of special factors. The IEP Team must:
(i) in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavior interventions and supports, and other strategies, to address that behavior.

E. Deaf or Hard of Hearing

§300.324 Development, review, and revision of IEP.
(a) Development of IEP.
(2) Consideration of special factors. The IEP Team must:
(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode;

F. Limited English Proficient

§300.324 Development, review, and revision of IEP
(a) (2) Consideration of special factors. The IEP Team must:
(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

Limited English Proficient (LEP) Students with Disabilities

For all LEP (Limited English Proficient) Students:

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

G. Related Services

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

§300.34 Related services.

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

(b) Exception; services that apply to children with surgically implanted devices, including cochlear implants.

(1) Related services do not include a medical device that is surgically implanted, the optimization of device functioning (e.g., mapping), maintenance of the device, or the replacement of that device.

(2) Nothing in paragraph (b)(1) of this section—

(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.

(ii) Limits the responsibility of the South Valley Preparatory School to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in §300.113(b).

(c) Individual related services terms defined. *(found in Chapter 3. Evaluations)*

H. Shortened School Day

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

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

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

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

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

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

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

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

A. Except as otherwise provided in this section, regular students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:
   (1) kindergarten, for half-day programs, two and one-half hours per day or four hundred fifty hours per year or, for full-day programs, five and one-half hours per day or nine hundred ninety hours per year;
   (2) grades one through six, five and one-half hours per day or nine hundred ninety hours per year; and
   (3) grades seven through twelve, six hours per day or one thousand eighty hours per year
B. Thirty-three hours of the full-day kindergarten program may be used for home visits by the teacher or for parent-teacher conferences. Twenty-two hours of grades one through five programs may be used for home visits by the teacher or for parent-teacher conferences.
C. Nothing in this section precludes a local school board from setting length of school days in excess of the minimum requirements established by Subsection A of this section.
D. The state superintendent [secretary] may waive the minimum length of school days in those districts where such minimums would create undue hardships as defined by the state board [department].

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

A. Participation

§300.322 Parent Participation.

(a) District responsibility—general. The South Valley Preparatory School must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including--
   (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
   (2) Scheduling the meeting at a mutually agreed on time and place. *("early enough" is defined below)*

(b) Information provided to parents.
   (1) The notice required under paragraph (a)(1) of this section must--
      (i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and
      (ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and §300.321(f) (relating to the participation of the Part C service coordinator or other

representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must--

(i) Indicate--

(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and

(B) That the agency will invite the student; and

(ii) Identifies any other agency that will be invited to send a representative.

(c) <u>Other methods to ensure parent participation</u>. If neither parent can attend an IEP Team meeting, the South Valley Preparatory School must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328 *(related to alternative means of meeting participation on next page).*

(d) <u>Conducting an IEP meeting without a parent in attendance</u>. A meeting may be conducted without a parent in attendance if the South Valley Preparatory School is unable to convince the parents that they should attend. In this case, the South Valley Preparatory School 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.

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

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

(e) Use of interpreters or other action, as appropriate. The South Valley Preparatory School must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(f) <u>Parent copy of child's IEP</u>. The South Valley Preparatory School must give the parent a copy of the child's IEP at no cost to the parent.

<u>§300.501 Parent Participation in Meetings</u>.

(b) <u>Parent participation in meetings</u>.

(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 South Valley Preparatory School 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 South Valley Preparatory School personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that the South Valley Preparatory School personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(c) <u>Parent involvement in placement decisions</u>.

(1) The South Valley Preparatory School 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 South Valley Preparatory School must use procedures consistent with the procedures described in §§300.322(a) through (b)(1). *(found on previous pages)*

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the South Valley Preparatory School 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 South Valley Preparatory School is unable to obtain the parent's participation in the decision. In this case, the South Valley Preparatory School must have a record of its attempt to ensure their involvement. (Authority: 20 USC §§1414(e), 1415(b)(1))

§300.327 Educational placements.

Consistent with §300.501(c), the South Valley Preparatory School must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

(For disagreements, see Conflict Management and Resolution in Chapter 2. Procedural Safeguards)

§300.328 Alternative means of meeting participation.

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

(Authority: 20 USC §1414(f))

B. Age of Majority – Transfer of Rights

§300.320 Definition of individualized education program

(c) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority under New Mexico law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under §300.520.

§300.520 Transfer of parental rights at age of majority.

(a) General. NMPED provides that, when a child with a disability reaches the age of majority under New Mexico law that applies to all children (except for a child with a disability who has been determined to be incompetent under New Mexico law)--

(1) (i) The South Valley Preparatory School must provide any notice required by this part to both the individual and the parents; and

(ii) All other rights accorded to parents under Part B of the Act transfer to the child;

(2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and

(3) Whenever a State transfers rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the South Valley Preparatory School must notify the individual and the parents of the transfer of rights.

(b) Special rule. New Mexico PED has established procedures for appointing the parent of a child with a disability, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under New Mexico law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program. (Authority: 20 USC 1415(m))

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

K. Transfer of parental rights to students at age 18

(1) Pursuant to §§12-2A-3 and 28-6-1 NMSA 1978, a person's age of majority begins on the first instant of his or her 18th birthday and a person who has reached the age of majority is an adult for all purposes not

otherwise limited by state law. A guardianship proceeding under the probate code is the only way an adult in New Mexico can legally be determined to be incompetent and have the right to make his or her own decisions taken away. Public agencies and their IEP teams are not empowered to make such determinations under New Mexico law. Accordingly, pursuant to 34 CFR §300.520, when a child with a disability reaches age 18 and does not have a court-appointed general guardian, limited guardian or other person who has been authorized by a court to make educational decisions on the student's behalf or who has not signed a power of attorney as provided under New Mexico law:

(a) the South Valley Preparatory School 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 South Valley Preparatory School 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 is14 or older must include a discussion of the rights that will transfer when the child turns 18 and, as appropriate, a discussion of the parents' plans for obtaining a guardian before that time. The IEP of a child who is 14 or older must include a statement that the child and the parent have been informed of the rights that will transfer to the child at age 18.

VII. DISAGREEMENT IN THE IEP MEETING

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

VIII. IEP MEETING CATEGORIES

A. Initial

The South Valley Preparatory School will follow all federal and state requirements in sections 5.1 and 5.2 of this document.

B. Annual Review

§300.324 Development, review, and revision of IEP

(b) Review and revision of IEPs.

(1) General. The South Valley Preparatory School must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team--

(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(ii) Revises the IEP, as appropriate, to address--

(A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under §300.303;

(C) Information about the child provided to, or by, the parents, as described under §300.305(a)(2);

(D) The child's anticipated needs; or

(E) Other matters.

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

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

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

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

(iv) Consider whether the child needs assistive technology devices and services.

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

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

§300.116 Placements.

In determining the educational placement of a child with a disability, including a preschool child with a disability, the South Valley Preparatory School must ensure that--

(b) The child's placement--

(1) Is determined at least annually;

(2) Is based on the child's IEP; and

(3) Is as close as possible to the child's home, unless the parent agrees otherwise;

For placement in its entirety, please see Chapter 6.- LRE

C. Reevaluation – IEP Team Meeting

§300.324 Development, review, and revision of IEP

(a) (5) Consolidation of IEP Team meetings. To the extent possible, the South Valley Preparatory School must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

The South Valley Preparatory School will conduct a Review of Existing Evaluation Data (described in the Chapter 3. - Evaluation) prior to additional evaluation taking place. The team will review performance-based assessments, benchmarks, and other current data. If the student is a special education student and the 3-year reevaluation is due within the next 12 months, the Annual IEP Committee may conduct the Review of Existing Evaluation Data and plan the evaluation during that Annual IEP Meeting. Otherwise, the Eligibility Determination Team (EDT) will meet to plan the evaluation prior to the 3-year due date.

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

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

§300.324 Development, review, and revision of IEP

(a) (4) Agreement.

(i) In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the South Valley Preparatory School may agree not to convene an IEP meeting for the purposes of making those changes-and, instead, may develop a written document to amend or modify the child's current IEP.

(ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the South Valley Preparatory School must ensure that the child's IEP Team is informed of those changes.

(5) Consolidation of IEP Team meetings. To the extent possible, the South Valley Preparatory School must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

The [district's] special education staff will collaborate annually or monthly, as necessary, to work toward consolidating a student's evaluations to incorporate all disciplines involved with the student into one evaluation report. While this may be challenging to the staff, the benefits to the student are the ultimate goal.

(6) Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting or, as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

B. Individualized education programs (IEPs)

(2) Each IEP or amendment shall be developed at a properly convened IEP meeting for which the South Valley Preparatory School has provided the parent and, as appropriate, the child, with proper advance notice pursuant to 34 CFR §300.322 and Paragraph (1) of Subsection D of 6.31.2.13 NMAC and at which the parent and, as appropriate, the child have been afforded the opportunity to participate as members of the IEP team pursuant to 34 CFR §§300.321, 300.322 and 300.501(b) and (c) and Subsection C of 6.31.2.13 NMAC.

(3) Except as provided in 34 CFR §300.324(a)(4), each IEP shall include the signature and position of each member of the IEP Team and other participants in the IEP meeting to document their attendance. Written notice of actions proposed or refused by the South Valley Preparatory School shall also be provided in compliance with 34 CFR §300.503 and Paragraph (2) of Subsection D of 6.31.2.13 NMAC and shall be provided at the close of the IEP meeting. Informed written parental consent must also be obtained for actions for which consent is required under 34 CFR §300.300 and Subsection F of 6.31.2.13 NMAC. An amended IEP does not take the place of the annual IEP conducted pursuant to CFR §300.324(a)(4) which requires that members of a child's IEP team must be informed of any changes made to the IEP without a meeting.

(4) Agreement to modify IEP meeting requirement.

(a) In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the South Valley Preparatory School may agree not to convene an IEP Team meeting for the purposes of making those changes and instead may develop a written document to amend or modify the child's current IEP.

(b) If changes are made to the child's IEP in accordance with subparagraph (4)(a) of this paragraph, the South Valley Preparatory School must ensure that the child's IEP Team is informed of those changes.

Recommendations for changes in the individual educational program (IEP), including changes in the student's placement, will be made at the IEP Team meeting. The amendment procedure MAY NOT be used for certain actions that require an IEP Team meeting. ***NMPED strongly encourages*** *South Valley Preparatory School* ***to require an IEP Team meeting for the following actions:***

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

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

- *Transportation changes*

- *Accommodations or revision of existing modifications*

E. Exit / Change of Placement

§300.305 Additional requirements for evaluations and reevaluations.

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

(e) Evaluations before change in placement.

(1) Except as provided in paragraph (e)(2) of this section, the South Valley Preparatory School must evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under New Mexico law.

(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, the South Valley Preparatory School must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

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

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

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

(3) (i) Children with disabilities who have graduated from high school with a regular high school diploma.

(ii) The exception in paragraph (a)(3)(i) of this section does not apply to students who have graduated but have not been awarded a regular high school diploma.

(iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503.

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

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

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

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

G. Graduation planning and post-secondary transitions

(5) For a child whose eligibility terminates due to graduation from secondary school with a regular diploma or due to reaching his/her 22nd birthday, the South Valley Preparatory School must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's post-secondary goals pursuant to 34 CFR §300.305(e)(3).

(6) Students eligible for special education services are entitled to a FAPE through age 21. If a student turns 22 during the school year, that student shall be allowed to complete the school year and shall continue to receive special education and related services during that school year. If the student turns 22 prior to the first day of the school year, the student is no longer eligible to receive special education and related services.

Authority: NMAC 6.29.1.9 Standards for Excellence Procedural Requirements

J. Graduation Requirements:

(13) Graduation requirements for issuance of a conditional certificate of transition for students with an IEP. The development of a program of study and the granting of a diploma, or use of a conditional certificate of transition in the form of a continuing or transition individualized educational program (IEP) for students receiving special education services, includes the following governing principles:

(a) The IEP Team is responsible for determining whether the student has completed a planned program of study based on the student's strengths, interests, preferences, identified educational and functional needs and long-term educational or occupational goals, making the student eligible to receive either a diploma or a conditional certificate of transition. A conditional certificate of transition allows the student to participate in graduation activities. If a student receives a conditional certificate of transition, the student shall then return to the program specified in the IEP to complete the student's secondary program and meet the requirements for a diploma. In addition, all IEPs shall provide a description of how the student's progress toward meeting annual goals and graduation requirements will be measured, and at what intervals progress will be reported to parents or guardians. A student shall be awarded a diploma upon completion of a planned program of study that meets the requirements of paragraph (b).

(b) A student may be awarded a diploma (Section 22-13-1.1 NMSA 1978) using any of the following programs of study described in (i) through (iii). All IEP team discussion points and decisions identified herein, including the identification of the student's program of study and any student or parent proposals accepted or rejected by the IEP Team (if the student has not reached the age of majority), shall be documented on the student's IEP and in the prior written notice (PWN) of proposed action.

(i) A standard program of study is based upon meeting or exceeding all requirements for graduation based on the New Mexico standards for excellence (Subsection J of 6.29.1.9 NMAC) with or without reasonable accommodations of delivery and assessment methods. In addition, a student shall pass all sections of the current state graduation examination(s) administered pursuant to Section 22-13-1.1(I) NMSA 1978 under standard administration or with state-approved accommodations, and shall meet all other standard graduation requirements of the district.

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

(iii) An ability program of study was developed for students who have a significant cognitive disability or severe mental health issues. The IEP goals and functional curriculum course work shall be based on the New Mexico standards with benchmarks and performance standards and employability and career development

standards with benchmarks and performance standards. Students in this program of study shall earn the minimum number of credits or be provided equivalent educational opportunities required by the district or charter school, with course work individualized to meet the unique needs of the student through support of the IEP. In addition, a student shall take either the current state graduation examination(s) administered pursuant to Section 22-13-1.1(K) NMSA 1978, under standard administration or with state-approved accommodations, or the state-approved alternate assessment. The student shall achieve a level of competency pre-determined by the student's IEP Team on the current graduation examination or the state-approved alternate assessment, and meet all other graduation requirements established by the IEP Team.

(c) The new requirements for the career readiness and ability options become effective beginning with students graduating in 2009.

(d) By the end of the eighth grade, each student's IEP shall contain a proposed individual program of study for grades nine through twelve. The program of study shall identify by name all course options the student may take and shall align with the student's long-range measurable post-secondary goals and transition services to facilitate a smooth transition to high school and beyond. This program of study shall be reviewed on an annual basis and adjusted to address the student's strengths, interests, preferences and areas of identified educational and functional needs. The IEP Team shall document on the IEP the student's progress toward earning required graduation credits and passing the current graduation examination.

(e) A district or charter school shall provide each student, who has an IEP and who graduates or reaches the maximum age for special education services, a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting post-secondary goals.

(f) Students graduating on the standard program of study shall meet the state's minimum requirements on all sections of the graduation examination. IEP teams shall document a plan of action on the IEP and the PWN to be carried out by both the student and the district or charter school, to ensure that the student will pass all sections of the graduation examination.

(g) To establish a level of proficiency on the current graduation examination or the state-approved alternate assessment for students on a career readiness program of study or ability program of study, IEP teams shall review the student's performance on the first attempt, and establish a targeted proficiency on all sections that are below the state's minimum requirement. For those students who meet participation criteria for the New Mexico alternate assessment, IEP teams shall set targeted levels of proficiency based upon previous performance on the test. If the student has previously been administered the New Mexico alternate assessment and has achieved an advanced level of overall performance, the IEP Team shall arrange for the student to participate in the general graduation examination, and shall identify appropriate accommodations that the student may require. IEP teams shall document the targeted levels of proficiency on the IEP and the PWN, outlining the plan of action to be taken by both the student and the district or charter school to ensure that the student will meet the targeted levels of proficiency. Districts or charter schools may submit a written request for a waiver to the secretary in cases where a student has medical or mental health issues that may result in regression or that negatively influence the student's ability to achieve targeted levels of proficiency. The written request shall be signed by the superintendent or charter school administrator and shall include documentation of the medical or mental health issues.

(h) Changes in programs of study.

(i) Departures from the standard program of study for students receiving special education services and supports shall be considered in the order of the options listed in Subparagraph (b) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC. Any modified program of study may depart from a standard program of study only so far as is necessary to meet an individual student's educational needs as determined by the IEP Team. Districts and charter schools are obligated to meet the requirements IDEA to provide students with IEPs on any one of the three programs of study, and

access to the general curriculum in the least restrictive environment. When an alternative program of study is developed, a building administrator or designee who has knowledge about the student shall be a member of the IEP team

(ii) Districts and charter schools shall document changes from the standard program of study on the PWN. IEP teams shall identify the reasons for changing the students' program of study, shall provide parents with clear concise explanations of the career readiness or ability programs of study, shall notify parents and students of the potential consequences that may limit the student's post-secondary options, and shall make required changes to the IEP and course of study, to ensure that the student meets the requirements of that program of study.

(iii) The IEP team shall not change the program of study for a student entering the final year of high school from the standard program of study to the career readiness program of study, nor from the career readiness program of study to the ability program of study, after the 20th school day of the final year of high school. IEP teams may change a student's program of study from the ability program of study to the career readiness program of study, or from the career readiness program of study to the standard program of study, if the student meets the graduation requirements of that program of study and if the change is made and documented appropriately in a revised IEP and PWN by a properly constituted IEP team in a properly convened meeting.

(iv) Beginning with students entering the 10th grade, districts and charter schools shall maintain an accurate accounting of graduation programs of study for students with IEPs. Districts and charter schools shall ensure that 80% or more of students with IEPs are in the standard program of study, no more than 10-15% of students with IEPs shall graduate in the career readiness program of study, and no more than 1-3% of students with IEPs shall graduate in the ability program of study. Districts or charter schools exceeding the above maximum percentages shall submit a request for a waiver regarding each student affected. The request for waiver shall include the district name, the high school name, a list of all students on the alternate program of study exceeding the maximum percentage (including student demographics, unique student identifiers and the justification for changing each student's program of study). The waiver request shall be signed and submitted by the superintendent or charter school administrator to the secretary.

(i) A student who receives special education services may be granted a conditional certificate of transition in the form of a continuing or transition IEP when:

(i) the IEP Team provides sufficient documentation and justification that the issuance of a conditional certificate of transition for an individual student is warranted;

(ii) prior to the student's projected graduation date, the IEP Team provides a PWN stating that the student will receive a conditional certificate of transition;

(iii) the district or charter school ensures that a conditional certificate of transition is not a program of study and does not end the student's right to a FAPE;

(iv) the district or charter school ensures that a conditional certificate of transition entitles a student who has attended four years or more of high school to participate in graduation activities, and requires that the student continue receiving special education supports and services needed to obtain the high school diploma;

(v) the district or charter school ensures that, prior to receiving a conditional certificate of transition, the student has a continuing or transition IEP;

(vi) the student's continuing or transition IEP outlines measures, resources and specific responsibilities for both the student and the district or charter school to ensure that the student receives a diploma.

(j) A student who does not return to complete the program of study as outlined in the continuing or transition IEP will be considered as a dropout.

(k) A student who receives a conditional certificate of transition is eligible to continue receiving special education services until receipt of a diploma or until the end of the academic year in which the student turns 22 years of age.

(l) Graduation plans shall be a part of all IEPs:

(i) by the end of eighth grade, or by the time the student turns 14 years of age, and concurrent with the development of the student's transition plan in accordance with federal regulations at 34 CFR §300.320;

(ii) when a student returns to a school after an extended absence, and if an IEP program of study may have been developed but needs to be reviewed; or

(iii) when evaluations warrant the need for a modified program of study at any time after development of an initial graduation plan.

(m) Graduation plans shall be a part of all of all IEPs and annual reviews, and shall follow the student in all educational settings. Receiving institutions that fall under the department's jurisdiction will recognize these graduation plans, subject to revision by new IEP teams, if appropriate to meet a student's changing needs.

(n) At the exit IEP meeting, the team shall review the student's transition plan, and shall confirm and document that all state and district requirements for graduation under the final IEP have been satisfied. A building administrator who has knowledge about the student shall be a member of this team, and shall sign specifically to verify and accept completed graduation plans, goals and objectives pursuant to (i) - (iii) of Subparagraph (b) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC, or plans for a conditional certificate of transition with a continuing or transition IEP, pursuant to Subparagraph (i) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC. The IEP team shall ensure that the student has current and relevant evaluations, reports or other documentation necessary to support a smooth and effective transition to post-secondary services for a student who will graduate on one of the three programs of study. The school shall arrange for any necessary information to be provided at no cost to the students or parents. The school shall submit a list of students who will receive the diploma through a career readiness or ability program of study to the local superintendent or charter school administrator, using the students' numbers. This list shall be totaled and submitted to the local school board or governing body of a charter school. This information shall be treated as confidential in accordance with the FERPA.

(o) Students eligible for special education services are entitled to a FAPE through age 21. If a student turns 22 during the school year, the student shall be allowed to complete the school year. If a student turns 22 prior to the first day of the school year, the student is no longer eligible to receive special education services.

(p) The receipt of a diploma terminates the service eligibility of students with special education needs.

(q) All diplomas awarded by a school district or charter school shall be identical in appearance, content and effect, except that symbols or notations may be added to individual students' diplomas to reflect official school honors or awards earned by students.

(14) Future changes in graduation requirements. Refer to 6.29.1.13 NMAC.

G. Transfers / New to the District

§300.304 Evaluation procedures.

(c) Other evaluation procedures.

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

§300.323 When IEPs must be in effect.

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

If a child with a disability (who had an IEP that was in effect in a previous South Valley Preparatory School in the same State) transfers to a new South Valley Preparatory School in the same State, and enrolls in a new school within the same school year, the new South Valley Preparatory School (in consultation with the parents) must provide FAPE to the child (including services comparable to those

described in the child's IEP from the previous [district]), until the new South Valley Preparatory School either---

(1) Adopts the child's IEP from the previous [district]; or

(2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324.

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

(1) Conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new [district]); and

(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§300.320 through 300.324.

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

(1) The new South Valley Preparatory School in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous South Valley Preparatory School in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and

(2) The previous South Valley Preparatory School in which the child was enrolled must take reasonable steps to promptly respond to the request from the new [district].

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

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

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

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

(a) adopts and implements the child's IEP from the previous [district]; or

(b) develops and implements a new IEP that meets the applicable requirements in 34 CFR §§300.320 through 300.324.

(2) IEPs for children who transfer from another state. If a child with a disability (who had an IEP that was in effect in a previous South Valley Preparatory School in another state) transfers to a South Valley Preparatory School in New Mexico, and enrolls in a new school within the same school year, the new South Valley Preparatory School must provide the child with FAPE. The IEP must include services comparable to those described in the child's IEP from the previous agency, until the new [district]:

(a) conducts an evaluation pursuant to 34 CFR §§300.304 through 300.306 (if determined to be necessary by the new [district]); and

(b) develops and implements a new IEP, if appropriate, that meets the applicable requirements in 34 CFR §§300.320 through 300.324.

(3) Transmittal records. To facilitate the transition for a child described in Paragraphs (1) and (2) of this section:

(a) the new South Valley Preparatory School in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous South Valley Preparatory School in which the child was enrolled; and

(b) the previous South Valley Preparatory School in which the child was enrolled must take reasonable steps to promptly respond to the request from the new [district].

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

IX. TRANSITION PLANNING

§300.320 Definition of individualized education program

(b) Transition services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include--

(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) The transition services (including courses of study) needed to assist the child in reaching those goals.

§300.43 Transition services.

(a) Transition services means a coordinated set of activities for a child with a disability that--

(1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual child's needs, taking into account the child's strengths, preferences and interests; and includes--

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and functional vocational evaluation.

(b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

§300.321 IEP Team

(b) Transition services participants.

(1) In accordance with paragraph (a)(7) of this section, the South Valley Preparatory School must invite a child with a disability to attend the child's IEP meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under §300.320(b).

(2) If the child does not attend the IEP meeting, the South Valley Preparatory School must take other steps to ensure that the child's preferences and interests are considered.

(3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the South Valley Preparatory School must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

§300.322 Parent Participation

(b) Information provided to parents.

(1) The notice required for the IEP meeting must--

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child).

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must--

(i) Indicate--

(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and

(B) That the South Valley Preparatory School will invite the student; and

(ii) Identifies any other agency that will be invited to send a representative.

§300.324 (c) Failure to meet transition objectives.

(1) Participating agency failure. If a participating agency, other than the [district], fails to provide the transition services described in the IEP in accordance with §300.320(b), the South Valley Preparatory School must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(2) Construction. Nothing in this part relieves any participating agency, including the New Mexico PED vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

G. Graduation planning and post-secondary transitions

(1) The IEP for each child with a disability in grades 8 through 12 is developed, implemented and monitored in compliance with all applicable requirements of the department's Standards for Excellence (Chapter 29 of Title 6 of the NMAC), and these or other department rules and standards. The graduation plan shall be integrated into the transition planning and services provided in compliance with 34 CFR §§300.320(b), 300.324(c).

(a) Graduation plans must include the course of study, projected date of graduation and if the child is not on target for the graduation plan, the strategies and responsibilities of the [district], child and family must be identified in the IEP.

(b) Graduation options for children with disabilities at Paragraph (13) of Subsection J of 6.29.1.9 NMAC must align with state standards with benchmarks when appropriate.

(c) An alternative degree that does not fully align with the state's academic standards, such as a certificate or general educational development credential (GED), does not end a child's right to FAPE pursuant to 34 CFR §300.102(a)(3).

(2) Appropriate post-secondary transition planning for children with disabilities is essential. Public agencies shall integrate transition planning into the IEP process pursuant to 34 CFR §§300.320(b), 300.324(c) and shall establish and implement appropriate policies, procedures, programs and services to promote successful post-secondary transitions for children with disabilities. Transition services for students 14 to 21 include the following.

(a) Transition services are a coordinated set of activities for a child with a disability that emphasizes special education and related services designed to meet unique needs and prepare them for future education, employment and independent living.

(b) Transition services are designed to be within a results oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation.

(c) Transition services must be based on the individual child's needs, taking into account the child's strengths, preferences and interests and includes:

(i) instruction;

(ii) related services;

(iii) community experiences;

(iv) the development of employment and other post-school adult living objectives; and

(v) when appropriate, acquisition of daily living skills and the provision of a functional vocational evaluation.

(d) Transition services for children with disabilities may be considered special education, if provided as individually designed instruction, aligned with the state standards with benchmarks, or related service, if required to assist a child with a disability to benefit from special education as provided in 34 CFR §300.43.

(3) State rules require the development of measurable post-school goals beginning not later than the first IEP to be in effect when the child turns 14, or younger, if determined appropriate by the IEP team, and updated annually thereafter. Pursuant to 34 CFR §300.320(b), the IEP must include:
   (a) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and where appropriate, independent living skills;
   (b) the transition services (including courses of study) needed to assist the child in reaching those goals; and
   (c) a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority.

(4) Measurable post school goals refer to goals the child seeks to achieve after high school graduation. The goals themselves must be measurable while the child is still in high school. In addition, the nature of these goals will be different depending on the needs, abilities and wishes of each individual child.

X. GRADUATION OPTIONS

A. Guidelines for Graduation Options

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

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

2) The IEP Team is responsible for developing a multi-year plan that is most conducive to preparing a student to achieve his or her post-school goals.
   - The composition of the IEP Team must meet federal and state requirements.
   - When a graduation program of study is proposed, an individual knowledgeable about high school curriculum should be included on the team.
   - The parent(s) and student should be members of this team, and sign to verify and accept graduation/transition plans. (Parent participation is not mandatory if the student is 18 years of age unless the parent has legally retained guardianship.)
   - A building administrator or designee who has knowledge about the student should be a member of the team when an alternative program of study is developed and be able to verify and accept completed plans for students receiving special education services on the career and ability graduation options.

3) Program of study selection is an IEP Team decision. Parents and students must be a part of the decision-making process. The student's graduation needs and personal goals are the primary considerations for identifying and developing an alternative graduation plan. The IEP team must:
   - base all decisions on the student's strengths, needs, measurable post-school, transition service needs, goals, interest, and preferences; and
   - begin discussion on graduation/transition plans at the eighth grade IEP, including plans leading to earning a regular diploma.
   - Consider the graduation option in the order listed in regulation. If the IEP team chooses an alternative graduation option, the team must:

- justify and document the reasons for doing so in the IEP;
- provide sufficient documentation as a basis for its initial decision to place a student on an alternative graduation option other than the standard;
- notify parents and students of potential consequences of this decision; and
- base all decisions on the needs of the student and **not** on the student's ability to earn required credits or pass the current exit exam.

4) Assessing and documenting student progress toward graduation is crucial to the overall process. IEP teams must document the following information on the student's IEP:
   - Review and document progress toward graduation on an annual basis for all students in grades 8-12.
   - Document skill attainment and progress toward achieving competencies.
   - Document each student's progress toward earning required graduation credits and passing the current graduation examination(s).
   - Ensure and document that requirements of the student's program of study are met.
   - Revise the IEP to reflect any changes in the student's graduation needs and/or plans.
   - Identify supports and services that will help students achieve IEP goals and meet graduation requirements.
5) Transition planning is an important part of the IEP process beginning no later than the first IEP to be in effect when a student is in the eighth grade. The IEP team should address the following components of transition planning:
   - Coach every student to think about goals for life after high school and develop a long range plan.
   - Ensure the IEP contains appropriate measurable post-school goals based upon age-appropriate transition assessments, and that these are updated annually.
   - Develop a plan to ensure the high school experience relate to each student's post-school goals.
   - Ensure that each student gains the skills and competencies needed to achieve his or her desired post-school goals.
   - Identify and link students and families to needed post-school services, supports, or programs before the student exits the school system.
   - Ensure that the student has necessary evaluations, documents, or reports to facilitate a smooth transition to adult services and/or postsecondary institutions.
   - Ensure that all domain areas of transition (instruction, related services, community experiences, the development of employment and other post-school living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation) are considered and documented in the IEP, pursuant to federal regulations and state special education rules.
6) Students receiving special education services must participate in the Statewide College and Workplace Readiness Assessment System and take the current state graduation and/or exit exam or the state approved New Mexico Alternate Assessment. The IEP must specify:
   - which assessment will be administered,
   - are accommodations necessary, if so
   - what State approved accommodations are needed.
7) IEP teams must determine if the student is eligible for participation in an alternate assessment according to the following criteria:
   - The student's past and present levels of academic achievement and functional performance in multiple settings indicates that a significant cognitive disability is present;
   - The student needs intensive, pervasive, or extensive levels of support in school, home, and community settings; and
   - The student's current cognitive and adaptive skills and performance levels require direct instruction to accomplish acquisition, maintenance, and generalization of skills in multiple settings.
8) As a best practice, IEP teams should identify strategies that will help the student master skills required to pass the assessment for students on the Standard graduation option or to achieve the level of proficiency determined by the IEP Team for students graduating on the Career Readiness or Ability program of study. The team should also consider identifying who will be responsible for ensuring the completion of the above items.


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

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


Note: See the Public Education Department's *Technical Assistance Manual*: *Developing Quality IEP's* for assistance and forms.
http://www.ped.state.nm.us/SEB/technical/Developing%20Quality%20IEP%20Manual%20March%202011.pdf

10) Pursuant to the IDEA 2004 and state rules, IEP teams must provide each eligible student with a summary of the student's academic achievement, functional performance, and additional recommendations on how to assist the student in meeting his or her post-school goals.
11) The Department strongly recommends that building administrators monitor progress of each student with a disability toward graduation plan requirements throughout high school.
12) When the exit IEP Team meets to review the student's program of study and progress to determine if the student has fulfilled graduation plan requirements, the building administrator must be included on the team. The building administrator is responsible for ensuring the integrity of the graduation process. The LEA's Special Education Director is responsible for monitoring graduation data.
13) A student graduating under any option or receiving a certificate with a follow-up plan of transition must participate equitably in all graduation ceremonies.
14) The least restrictive environment (LRE) principles apply to all graduation options, and IEP teams must ensure that the student has appropriate access to the general education curriculum.

B. Standard Graduation Option

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

Additional Guidelines for Standard Graduation Option

1) The student must:

- meet or exceed the requirements for graduation based on the Standards for Excellence Section J of 6.29.1.9 NMAC and Section 22-13-1.1 NMSA 1978;
- participate in the Statewide College and Workplace Readiness Assessment System
- meet all other standard graduation requirements of the district; and
- pass the current New Mexico graduation and/or exit exam-with or without accommodations by obtaining the minimum level of proficiency and/or performance established by the Public Education Department.

2) Credits may include courses in which curriculum or instructional accommodations are applied as long as the student achieves the same competencies listed on the graduation requirements.

3) The IEP Team should look closely at the student's results from grades nine and ten short-cycle diagnostic assessment and scores on the first attempt on the high school exit exam. The IEP Team should treat those scores as baseline of performance from which the IEP Team identifies strategies to improve a student's skills and enable him or her to pass the current state graduation and/or exit exam. **The steps for teams to follow are:**
   - Ensure progress in the general education curriculum so that a student can meet the same educational standards that apply to all students.
   - Align goals to the state standards with benchmarks and assessment and focus on helping the student attain the skills needed to achieve standards reflected in assessment.
   - Be sure the student takes practice assessments. A student may know the material but if not familiar with the test format, he or she may have difficulty passing the test.



The SEB strongly encourages the use of the *New Mexico High School Competency Examination Domain Specifications* to help prepare students for the exam question format. The Domain Specification document can be accessed on the NMPED website.
http://www.ped.state.nm.us/AssessmentAccountability/AssessmentEvaluation/NMHSCE/index.html

4) If the student passes the graduation exit exam on the first attempt, the IEP Team should work to ensure that the student meets all other requirements for graduation on the standard option.

5) If the student's transition plan includes accessing services such as special services at the post-secondary level or Division of Vocational Rehabilitation (DVR) Services, the IEP Team should determine whether the student requires updated evaluations, reports, or documents to support a smooth and effective transition to the post-secondary setting.

C. Career Readiness Graduation Option

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

Additional Guidelines for Career Readiness Graduation Option

1) Completion of the career readiness program of study requires that a student **achieve** his or her IEP goals and objectives based on the Employability and Career Development Standards with Benchmarks and Performance Standards. These Standards, Benchmarks, and Performance Standards are included in the CONTENT STANDARDS WITH BENCHMARKS AND PERFORMANCE STANDARDS FOR CAREER AND TECHNICAL EDUCATION, GRADES 7-12 in Subsection 2.29.3.8 NMAC:
   - Students will know and understand the importance of employability skills:
     - BENCHMARK 1: Identify and demonstrate the use of positive work behaviors and personal qualities needed to be employable.
     - BENCHMARK 2: Develop a personal career plan to meet career goals and objectives.
     - BENCHMARK 3: Demonstrate skills related to seeking and applying for employment to find and obtain a desired job.

   - Students will explore, plan and effectively manage careers:
     - BENCHMARK 1: Maintain a career portfolio to document knowledge, skills and experience in a career field.
     - BENCHMARK 2: Demonstrate skills in evaluating and comparing employment opportunities in order to accept employment positions that match career goals.
     - BENCHMARK 3: Identify and exhibit traits for retaining employment to maintain employment once secured.
     - BENCHMARK 4: Identify and explore career opportunities in one or more career options to build an understanding of the opportunities available in the cluster.
     - BENCHMARK 5: Recognize and act upon requirements for career advancement to plan for continuing education and training.
     - BENCHMARK 6: Continue professional development to keep current on relevant trends and information within the industry.
     - BENCHMARK 7: Examine licensing, certification and credentialing requirements at the national, state and local levels to maintain compliance with industry requirements.
     - BENCHMARK 8: Examine employment opportunities in entrepreneurship to consider entrepreneurship as an option for career planning.

2) The IEP Team must consider the standard graduation option first. If the IEP Team changes the student's program of study from the standard to the career readiness, the team must:

- justify and document the reasons for rejecting the standard program of study on the IEP and PWN;
- provide parents and students with a clear, concise definition of the career readiness program of study;
- notify parents and students of potential consequences of the choice that may limit the student's post-school options;
- demonstrate that sufficient documentation and evidence exists to support its decision to place the student on the career readiness program of study; and
- base all decisions on the needs of the student and **not** solely on the student's ability to earn required credits or pass the current exit exam.

3) To earn a diploma on the career readiness graduation option a student must:
   - earn at least the district's required number of credits (the IEP Team determines the standard and alternate courses that will make up the student's program of study and ensure the student meets requirements identified in the Standards for Excellence);
   - participate in the Statewide College and Workplace Readiness Assessment System;
   - achieve competency in all areas of the Employability and Career Development Standards with Benchmarks and Performance Standards; and
   - take the current graduation exit exam and achieve a level of proficiency determined by the student's IEP Team.

4) The IEP Team should document the classes, courses, and/or experiences which will be used to assure that the student achieves standards as identified in the Employability and Career Development Standards with Benchmarks and Performance Standards in the student's IEP.

5) Districts are encouraged to devise ways to document on the transcript, or other permanent document, the fact that the student has achieved benchmarks and other requirements identified on his or her graduation plan.

6) In the best interest of the student, a high school counselor should be included in the IEP meeting to assist students and other team members in developing the program of study

D. Ability Graduation Option

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

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

Additional Guidelines for Ability Graduation Option

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

- a student has been consistently working toward identified goals, objectives, and benchmarks, developed by the IEP Team; and,
- has achieved a level of success that the IEP team agrees is commensurate with the student's abilities

3) The IEP Team must consider the standard option first. If the IEP team rejects the standard and career readiness options the team must:

- justify and document the reasons for rejecting the standard and career readiness option on the PWN;
- provide parents and students with a clear, concise definition of the ability graduation option;
- notify parents and students of potential consequences of the choice that may limit the student's post-school options;
- demonstrate that sufficient documentation and evidence exists to support its decision to place the student on the ability program of study; and
- base all decisions on the needs of the student and **not** on the student's ability to earn required credits or pass the current exit exam.

4) The student must successfully complete the requirements of the ability graduation option and his or her IEP by participating in specially designed programs that meet his or her educational and transition service needs through community-based instruction, transportation, work experience, community participation, recreation and leisure, accessing adult services, independent living skills, etc.
5) The IEP Team must document student progress toward goals and objectives, referencing skill attainment.
6) The student must take either the current state graduation examination(s) administered pursuant to NMSA 1978, §22-13-1.1(k) or (l) or the state-approved alternate assessment, achieving a level of proficiency to be

determined by the student's IEP Team, and meet all other graduation requirements established by the IEP Team.

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

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

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

Steps for IEP teams to follow include:

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

F. Guidelines for Issuing a Conditional Certificate of Transition

1) The IEP Team must:
   - review graduation plans on an annual basis for students in grades 8-12;
   - provide documentation and justification that the issuance of a conditional certificate of transition is warranted (See Case Studies on pages 39-42 and Frequently Ask Questions, pages 94-97);
   - evaluate and document on the PWN the student's progress toward meeting diploma requirements for his or her identified program of study; and
   - provide PWN that a student will receive a conditional certificate of transition in the form of a continuing or transition IEP.
2) The conditional certificate of transition in the form of a continuing or transition IEP:
   - indicates the student has attended four years (or more) of high school;
   - does not terminate the student's right to FAPE;
   - is not reported as an "exit" in the Student Teacher Accountability Reporting System (STARS);
   - allows the student to participate equally in all graduation activities;
   - does not end the students right to FAPE; and
   - allows the student to return to school for additional educational and transition needs.
3) Before awarding a conditional certificate of transition in the form of a continuing or transition IEP, the IEP team must agree to the following:

- The student's program and instruction have been appropriate and implemented as written.
- The student has attended four or more years of high school.
- The student may participate equally in all graduation activities.
- The student has a follow-up plan of action in the form of a continuing or transition IEP.

4) Districts must ensure that the student has a continuing or transition IEP that outlines measures, resources, and specific responsibilities for the district, the student, and the family to ensure the student receives a high school diploma.
5) Upon satisfactory completion of a standard, career readiness, or ability program of study, the student will receive his or her diploma, and be reported as an exited student in STARS.
6) A student who does not return to complete the follow-up plan of action will be considered a dropout unless they are enrolled in another school district, private school, or State or district-approved education program (including a GED program), or temporary absence due to suspension or school-approved illness.

XI. STATE OR DISTRICT-WIDE ASSESSMENTS

§300.160 Participation in assessments.

(a) General. The NMPED must ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.

(b) Accommodation guidelines.

(1) The NMPED (or, in the case of a district-wide assessment, the [district]) must develop guidelines for the provision of appropriate accommodations.

(2) The NMPED's (or, in the case of a district-wide assessment, the [district's]) guidelines must—

(i) Identify only those accommodations for each assessment that do not invalidate the score; and

(ii) Instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.

(c) Alternate assessments.

(1) The NMPED (or, in the case of a district-wide assessment, the [district]) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in paragraph (a) of this section.

(2) For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in paragraph (c)(1) of this section must provide for alternate assessments that—

(i) Are aligned with the State's challenging academic content standards and challenging student academic achievement standards;

(ii) If the State has adopted modified academic achievement standards permitted in 34 CFR §200.1(e), measure the achievement of children with disabilities meeting the State's criteria under §200.1(e)(2) against those standards; and

(iii) If the State has adopted alternate academic achievement standards permitted in 34 CFR §200.1(d), measure the achievement of children with the most significant cognitive disabilities against those standards.

(d) Explanation to IEP teams. The NMPED (or in the case of a district-wide assessment, the [district]) must provide IEP Teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of State or local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

(e) Inform parents. The NMPED (or in the case of a district-wide assessment, the [district]) must ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards are informed that their child's achievement will be measured based on alternate or modified academic achievement standards.

(f) Reports. The NMPED (or, in the case of a district-wide assessment, the [district]) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(1) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.

(2) The number of children with disabilities, if any, participating in alternate assessments based on grade level academic achievement standards.

(3) The number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards.

(4) The number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards.

(5) Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards, and alternate assessments based on alternate academic achievement standards if—

(i) The number of children participating in those assessments is sufficient to yield statistically reliable information; and

(ii) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.

(g) Universal design. The NMPED (or, in the case of a district-wide assessment, a [district]) must, to the extent possible, use universal design principles in developing and administering any assessments under this section.

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§300.320 Definition of individualized education program.

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

(6) (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments consistent with section 612(a)(16) of the Act; and

(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or district wide assessment of student achievement, a statement of why--

(A) The child cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the child; and

(7) The projected date for the beginning of the services and modifications described in paragraph (a(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

E. Participation in statewide and district-wide assessments. The South Valley Preparatory School and other public agencies when applicable shall include all children with disabilities in all statewide and district-wide assessment programs. The South Valley Preparatory School shall collect and report performance results in compliance with the requirements of 34 CFR §§300.157 and 300.160(f) and §1111(h) of the Elementary and Secondary Education Act, and any additional requirements established by the department. Students with disabilities may participate:

(1) in the appropriate general assessment in the same manner as their nondisabled peers; this may include the use of adaptations that are deemed appropriate for all students by the department; or

(2) in the appropriate general assessment with appropriate accommodations in administration if necessary; the South Valley Preparatory School shall use the current guidance from the department about accommodations as specified in the student's IEP; or

(3) in alternate assessments for the small number of students for whom alternate assessments are appropriate under the department's established participation criteria; the IEP team must agree and document that the student is eligible for participation in an alternate assessment based on alternate achievement standards according to 34 CFR §300.320(a)(6).

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

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

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

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

New Mexico Alternate Assessment (NMAA) Guide

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

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

* assurance of the provision of accommodations to help facilitate student access to grade level instruction and state assessments. Accommodations Guide: http://www.ped.state.nm.us/seo/assessment/200506.NM.Accomm.doc
* the use of alternate assessments to assess the achievement of students with the most significant cognitive disabilities. The New Mexico Online Alternate Assessment Course can be downloaded from: http://www.ped.state.nm.us/ayp2007/press/Alternative%20Assessment-AYPMediaTraining7-25-07.pdf. This training takes test administrators through the administration of the New Mexico alternate assessments that are currently in place. It is updated every year to reflect any changes in the alternate assessment system. The participation criteria, located at the following link: http://www.ped.state.nm.us/seo/guide/Making.Assessment.Decisions.NMALT.pdf., for the New Mexico Alternate Assessments have become rule in the State of New Mexico. Sections 6.31.2.11(E)(3)(a)-(c) of the New Mexico Administrative Code now require that IEP teams "agree and document" that the student is eligible for participation in an alternate assessment according to the criteria listed above.

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

§300.160 Participation in assessments. *(new – effective May 7, 2007)*
In order to meet all requirements listed above regarding state and district-wide testing, the following questions must be addressed in the IEP meeting. If the IEP Team determines, based on analysis of current data, that the student cannot take the State or district-wide assessments, the IEP Team must provide the following information:

A. Specify why the child cannot participate in the regular assessment: _____
B. List the particular alternate assessment that is appropriate for the child: NMAA area
C. Sufficient documentation must be provided (multiple records and multiple sources of information) to answer ALL of the following questions in the affirmative.
   1. Does the student's past and present performance in multiple settings (i.e., home, school, and community) indicate that a significant disability is present? Explain.

2. Does the student need intensive, pervasive, or extensive levels of support in school, home, and community settings? Explain.
3. Do the student's current cognitive and adaptive skills and performance levels require direct instruction to accomplish the acquisition, maintenance, and generalization of skills in multiple settings (home, school, and community)? Explain.
4. Has one of the following been ruled out as the primary reason why the student cannot be included in the state-mandated assessments?
    - excessive or extended absences
    - visual or auditory disabilities
    - specific learning disabilities

D. Explain clearly the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards.
E. Explain clearly the effects on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

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

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

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

Differences: While the majority of regular education students will be administered an assessment based on New Mexico grade-level academic achievement standards, the alternate or modified academic achievement standards will be based on the student's functional performance data gathered by the IEP Team and will be individualized at the student's functioning level and not at the assigned grade level.

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

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

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

Benchmarks: *are statements of what all students should know and be able to do in a content area by the end of grade levels 4,8, and 12.*
Content Standards: *are broad descriptions of knowledge and skills students should acquire in a particular subject area.*

Criterion-Referenced Test: *a test that is designed to provide information on the specific knowledge or skills possessed by a student. Such tests are designed to measure the objectives of instruction, skill levels, or areas of*

knowledge. Their scores have meaning in terms of what the student knows and can do, rather than in their relation to the scores made by some comparison to a norm group (Tuckman, B, 1986).

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

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

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

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

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

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

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

New Mexico Public Education Department
Special Education Bureau

South Valley Preparatory School
POLICIES AND PROCEDURES FOR THE PROVISION OF SPECIAL EDUCATION SERVICES FOR STUDENTS WITH DISABILITIES AND GIFTED STUDENTS

Chapter 5.2 - ADDITIONAL IEP REQUIREMENTS

Chapter 5.2 - ADDITIONAL IEP REQUIREMENTS
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Chapter 5.2 ADDITIONAL IEP REQUIREMENTS

I. GIFTED STUDENTS

Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN:

A. Gifted child defined. As used in 6.31.2.12 NMAC, "gifted child" means a school-age person, as defined in §22-13-6(D) NMSA 1978, whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking, meets the eligibility criteria in 6.31.2.12 NMAC, and for whom a properly constituted IEP Team determines that special education services are required to meet the child's educational needs.

B. Qualifying areas defined.
   (1) "Intellectual ability" means a score two standard deviations above the mean as defined by the test author on a properly administered intelligence measure. The test administrator must also consider the standard error of measure (SEM) in the determination of whether or not criteria have been met in this area.
   (2) "Subject matter aptitude/achievement" means superior academic performance on a total subject area score on a standardized measure, or as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.
   (3) "Creativity/divergent thinking" means outstanding performance on a test of creativity/ divergent thinking, or in creativity/divergent thinking as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.
   (4) "Problem-solving/critical thinking" means outstanding performance on a test of problem solving/ critical thinking, or in problem-solving/critical thinking as documented by information from other sources as specified in Paragraph (2) of Subsection B of 6.31.2.12 NMAC.
   (5) For students with "factors" as specified in Paragraph (2) of Subsection E of 6.31.2.12 NMAC, the impact of these factors shall be documented and alternative methods will be used to determine the student's eligibility.

C. Evaluation procedures for gifted children.
   (1) Child find (*located in Chapter 1. – Child Find/Interventions of the Policies and Procedures)*
   (2) Analysis of data. The identification of a student as gifted shall include documentation and analysis of data from multiple sources for subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking including:
      (a) standardized measures, as specified in Subsection B of 6.31.2.12 NMAC, and
      (b) information regarding the child's abilities from other sources, such as collections of work, audio/visual tapes, judgment of work by qualified individuals knowledgeable about the child's performance (e.g., artists, musicians, poets and historians, etc.), interviews, or observations.
   (3) The child's ability shall be assessed in all four areas specified in Subsection B of 6.31.2.12 NMAC.

D. Standard method for identification. *(See Chapter 3. Evaluation)*

E. Alternative method for identification. *(See Chapter 3. Evaluation)*

F. Applicability of rules to gifted children.
   (1) All definitions, policies, procedures, assurances, procedural safeguards and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the educational jurisdiction of each local school district, including children in charter schools within the district, **except:**
      (a) the requirements of 6.31.2.8 NMAC through 6.31.2.10 NMAC;
      (b) Subsections J, K and L of 6.31.2.11 NMAC regarding child find, evaluations and services for private school children with disabilities, children with disabilities in state-supported educational

programs, children with disabilities in detention and correctional facilities and children with disabilities who are schooled at home;

(c) the requirements of 34 CFR §§300.530-300.536, Subsection I of 6.31.2.13 NMAC and 6.11.2.11 NMAC regarding disciplinary changes of placement for children with disabilities; and

(d) the requirements of 34 CFR §§300.43, 300.320(b) and 6.31.2.11(G)(2) regarding transition planning. Students identified as gifted must meet the requirements at Subsection B of 22-13-1.1 NMSA 1978, which is the next step plan for students without disabilities.

(2) Assuming appropriate evaluations, a child may properly be determined to be both gifted and a child with a disability and be entitled to a free appropriate public education for both reasons. The rules in this section 6.31.2.12 NMAC apply only to gifted children.

(3) Nothing in these rules shall preclude a school district or a charter school within a district from offering additional gifted programs for children who fail to meet the eligibility criteria. However, the state shall only provide funds under Section 22-8-21 NMSA 1978 for department-approved gifted programs for those students who meet the established criteria.
*The South Valley Preparatory School **does** or **does not** offer additional gifted programs for children who fail to meet the eligibility criteria.*

G. Advisory committees (*See* Chapter 8).

Authority: NMAC 6.31.2.7 DEFINITIONS:

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

(1) Gifted child defined. As used in 6.31.2.12 NMAC, "gifted child" means a school-age person as defined in §22-13-6(D) NMSA 1978 whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking meets the eligibility criteria in 6.31.2.12 NMAC and for whom a properly constituted IEP team determines that special education services are required to meet the child's educational needs.

(2) Qualifying areas defined.

(a) "Intellectual ability" means a score two standard deviations above the mean as defined by the test author on a properly administered intelligence measure. The test administrator must also consider the standard error of measure (SEM) in the determination of whether or not criteria have been met in this area.

(b) "Subject matter aptitude/achievement" means superior academic performance on a total subject area score on a standardized measure, or as documented by information from other sources, as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.

(c) "Creativity/divergent thinking" means outstanding performance on a test of creativity/ divergent thinking, or in creativity/divergent thinking as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.

(d) "Problem-solving/critical thinking" means outstanding performance on a test of problem-solving/ critical thinking, or in problem-solving/critical thinking, as documented by information from other sources, as specified in Subparagraph (b) of Paragraph (2) of Subsection B of 6.31.2.12 NMAC.

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

A. The NMPED adopted standards pertaining to the determination of who is a gifted child and published those standards as part of the educational standards for New Mexico schools.

B. In adopting standards to determine who is a gifted child, the department shall provide for the evaluation of selected school-age children by multidisciplinary teams from each child's school district. That team shall be vested with the authority to designate a child as gifted. The team shall consider information regarding a child's cultural and linguistic background and socioeconomic background in the identification, referral and evaluation process. The team also shall consider any disabling condition in the identification, referral and evaluation process.

C. Each school district offering a gifted education program shall create one or more advisory committees of parents, community members, students and school staff members. The school district may create as many advisory committees as there are high schools in the district or may create a single district wide advisory committee. The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the school district or the schools the committee advises. The advisory committee shall regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery and shall demonstrate support for the gifted program.

D. In determining whether a child is gifted, the multidisciplinary team shall consider diagnostic or other evidence of the child's:
(1) creativity or divergent-thinking ability;
(2) critical-thinking or problem-solving ability;
(3) intelligence; and
(4) achievement

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

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

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

A. Before the IEP Meeting

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

Minimum of 3 Attempts - Beginning 15 school days prior to the Proposed IEP Meeting Date
In accordance with State and Federal requirements, the South Valley Preparatory School 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 South Valley Preparatory School 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 South Valley Preparatory School may go forward with the IEP Team meeting as scheduled. The first attempt MUST be in written form, the second should also be in writing and the third may be a follow-up phone call. Detailed records of phone calls made or attempted, and the results, must be documented on the written invitation form, along with copies of correspondence sent and any visits to the home or place of employment, and results. All dates and personnel initials must be documented in writing.

Help Parents Prepare
For parents to be able to participate comfortably as members of the IEP Team, they must first understand the IEP and its purpose. The Parents' Guide to an IEP is an optional letter designed specifically to familiarize parents with the IEP and what to expect. *The letter can be found at the NMPED website:*
http://www.ped.state.nm.us/seo/iep/i9.appendix.a.doc

Help Students Prepare
Below is a list of activities that can be done by educators and/or parents to help a student prepare for his/her IEP meeting, followed by some resources that may be useful in helping students learn self-advocacy and to just being comfortable expressing themselves around others.
- Spend time allowing the student to think about what he/she wants from education.
- Fully explain the purpose of the IEP meeting and who will be present.
- Review the parts of the IEP and what each one means.
- Share information that others will have, such as the past IEP, and be sure the student understands what it says.

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

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

At an IEP meeting where transition is a component, include

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

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

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

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

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

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

Determine the IEP Meeting Facilitator

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

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

B. During the IEP Meeting

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

The South Valley Preparatory School will use the set of forms developed by NMPED to document all of the requirements are met. OR

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

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

1. Student Profile & Student/Family Vision
2. Transition Services
3. Present Levels of Academic Achievement and Functional Performance
4. Annual Goals
5. Consideration of Special Factors
6. Least Restrictive Environment
7. Extended School Year
8. Participation in Mandated Testing
9. Schedules & Levels of Services
10. Accommodations & Modifications
11. IEP Progress Documentation
12. Prior Written Notice of Proposed Actions

1. Student Profile & Student/Family Vision

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

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

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

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

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

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

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

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

responsible for providing those activities. The foundation of transition planning is to provide activities and experiences that will enable students to reach their post-school goals.

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

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

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

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

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

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

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

Under the IDEA and New Mexico regulations, the IEP of a student with a disability must contain a statement of the student's present levels of academic achievement and functional performance, including how the exceptionality affects the student's involvement and progress in the general curriculum; or for preschool children, as appropriate, how the child's disability affects his or her participation in appropriate activities. This part of the IEP, addressing the student's present levels of performance, is the blueprint for the whole IEP document. The present levels of academic achievement and functional performance were formerly referred to as PLEP (Present Levels of Educational Performance). This term is no longer appropriate, based on IDEA 2004 and the final regulations of August 2006.

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

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

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

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

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

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

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

(2) (i) A statement of measurable annual goals, including academic and functional goals designed to--

(A) Meet the child's needs that result from the child's disability to enable the child to be involved in, and make progress in, the general education curriculum; and

(B) Meet each of the child's other educational needs that result from the child's disability;

(ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

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

Selecting and Writing Goals: Each goal must address a need identified on the student's present levels of academic achievement and functional performance statement, must be measurable, and be attainable within one year. In addition to the criteria above, when selecting goals, consider both formal and informal assessments. Also, keep in mind the student's interests and vision for the future. Write goals directed toward enabling the student to be involved in, and progress in the general curriculum and select goals based on New Mexico's Standards for Excellence Regulations: Content Standards and Benchmarks. When writing a goal, state what the student will do as a result of the special education services being provided. The goal should be written in such a way that even someone unfamiliar with the student could implement it and assess its mastery. Include these components in each goal:
Conditions: under what conditions progress will be measured
Behavior: identifies measurable performance, actions by student
Criterion: quantifies how much, how often, to what extent
Timeframe: exactly when mastery is expected
Method of Measurement: how progress and/or mastery will be measured

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

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

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

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

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

1) Mark the area of need (as identified on the present levels of academic achievement and functional performance statement).
2) Identify the reference from New Mexico's Standards for Excellence Regulations: Content Standards and Benchmarks*
3) Select and write one measurable goal that relates to the student's present level of educational performance.
4) Write the date it will be initiated.
5) Decide what objectives or benchmarks will be used.
6) Use one box for each objective or benchmark and check which it is. If the objective or benchmark is related to the student's transition plan or services, check the Transition Activity Box.
7) Write the objective or benchmark. Make sure it is specific, and measurable.
8) Fill in each category below the objective or benchmark:
   - *Criteria for Mastery* (Example: 90% accuracy on weekly spelling test)
   - *Anticipated Date of Mastery*

- *Position/Agency Responsible* (Note: This line should not be filled in until after the LRE and Schedule of Services sections of the IEP are completed. At that point in the IEP meeting, the team will determine which service provider or combination of service providers will implement each goal.)
- *Method of Measurement*
- *Progress Documentation* (Each service provider, as specified in the IEP, must document progress on the objective or benchmark at least as often as progress is reported for the general student population **or** as spelled out in the IEP.)
- *Use this five-point list to check the validity of a written objective or benchmark:*

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

5. <u>Consideration of Special Factors</u>

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

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

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

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

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

1. What task do we want this student to perform that he or she is unable to do at a level reflecting his or her skills and/or abilities (writing, reading, communicating, seeing, hearing…)?
2. Is the student currently able to complete tasks with the special strategies or accommodations already in place? If yes, then document.
3. Is there available assistive technology (either devices, tools, hardware, or software) that could be used to address this task? If so, then describe?

4. Is the use of an AT device, AT service, or both, necessary for the student to perform this skill more easily or efficiently, in the least restrictive environment? If yes, then document.

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

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

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

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

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

A Recommended "BEST PRACTICE"
Though not required until a student has been suspended for 10 school days, conducting an FBA for any persistent or problematic behavior is strongly recommended. The** South Valley Preparatory School **will/will not implement this best practice procedure.

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

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

documentation of the student's BIP in the IEP, and it should be integrated into the IEP or attached to it. *See the NMPED for sample BIP form.*

Discipline
In order to function as a community, all schools have a general school-wide discipline plan or code of student conduct, including specific policies and procedures regarding expected and acceptable behavior. As part of the IEP for a student with exceptionalities, the IEP Team must decide if the student can follow the school- wide plan as is. If modifications and/or instructional accommodations are needed, they must be described as goals/objectives in the student's IEP. If a BIP was developed to address the student's behavior, the BIP must be included in the IEP.

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

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

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

6. Least Restrictive Environment

The IDEA provides that, to the maximum extent possible, students with exceptionalities should be educated with age-appropriate peers who do not have exceptionalities. It also mandates that a student be given the opportunity to learn in the Least Restrictive Environment (LRE). The key concept is that placement within the home school among peers is desirable; but the IDEA recognizes that an "inclusive" environment is not always appropriate, nor does it always provide the LRE.
The extent to which an individual student with exceptionalities participates in the regular education setting must be decided on a case-by-case basis. A wide range of placement options, known as the **continuum of alternative placements,** must be available to insure that each student is educated in the LRE for that individual. To determine the placement that offers the LRE, an inquiry into the unique educational needs of the student is required. The IEP Team must determine what, if any, aids and supports could enable the student to be educated in his or her home school with age- and grade-level peers, or if an alternative placement would offer the student the least restrictive environment. These issues are to be addressed by the team and the team's determinations must be documented on the IEP.

Extended School Year

§300.106 Extended school year services.
(a) General.
(1) The South Valley Preparatory School must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with §§300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

(3) In implementing the requirements of this section, the South Valley Preparatory School may not--

(i) Limit extended school year services to particular categories of disability; or

(ii) Unilaterally limit the type, amount, or duration of those services.

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

(1) Are provided to a child with a disability--

(i) Beyond the normal school year of the [district];

(ii) In accordance with the child's IEP; and

(iii) At no cost to the parents of the child; and

(2) Meet the standards of the NMPED.

Factors in Considering the Need for ESY

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

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

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

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

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

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

part of a program for populations of students with the same disability

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

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

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

Collecting ESY Data

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

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

Schedule to Collect ESY Data

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

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

Documenting the Need for ESY

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

- Does the review of data show that the student experiences significant regression in adaptive behaviors or learned skills (social, motor, behavioral, academic, self-help, and communication) over regularly scheduled school breaks during the year?
- Does the review of data show that the student requires a significant amount of time and effort to recoup previously learned behaviors and skills?
- Does the review of data indicate that the student benefited from previous ESY services? It is important to note that the impact of previous ESY services on overall student performance is not the sole basis for determining a current need for ESY.

- Does the review of data indicate that the benefits to be derived from an extended educational program outweigh the positive benefits of a summer vacation?
- Did the IEP Team consider other program options that would meet the needs of the student? Identify the programs considered by the IEP Team.
- Did the IEP Team determine that ESY would best meet the needs of the student? Why or why not?

7. Participation in Mandated State and District Testing *(See also Chapter 5.1 IEP – XI. New State District wide Testing, effective May 7, 2007.)*

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

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

(6) (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments consistent with §300.160; and

(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or district wide assessment of student achievement, a statement of why--

(A) The child cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the child.

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

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

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

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

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

New Mexico Alternate Assessment Guide
For more information: http://www.ped.state.nm.us/seo/assessment/Making.Asmnt.Decisions.0607.NMAPA.doc

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

* assurance of the provision of accommodations to help facilitate student access to grade level instruction and state assessments. Accommodations Guide: http://www.ped.state.nm.us/seo/assessment/200506.NM.Accomm.doc

* the use of alternate assessments to assess the achievement of students with the most significant cognitive disabilities. The New Mexico Online Alternate Assessment Course can be downloaded from: http://www.ped.state.nm.us/seo/training/nmalt.htm. This training takes test administrators through the administration of the New Mexico alternate assessments that are currently in place. It is updated every year to reflect any changes in the alternate assessment system.

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

8. Schedules & Levels of Services

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

- Identify the activities the student will participate in with the general student population.
- Define the subjects within the general education program and note if the student does or does not need accommodations or modifications to participate in each area.
- Provide the specific schedule of special education and related services needed based on the goals and objectives or benchmarks previously identified.
- The types, amounts and frequency of services, (example: 30 min/day, 5 days/wk). Note: This must be based on the student's need, not on what is convenient or available.
- The start and ending dates must be indicated.
- Identify the service provider or team of providers by title (such as physical therapist and regular education teacher) rather than by name.
- Indicate the setting (regular or segregated) in which the service will be provided. Repeat for supplementary aids and services such as special transportation, school nurse, or non-school based provider. Note: At this point, go back and record decisions about service providers on the Annual Goals pages of the IEP.
- Indicate what supports for school personnel may be needed to carry out their responsibilities in implementing the IEP. For example, the regular education teacher may need training with an unfamiliar device or information about the student's exceptionality. A monitored observation of students or a demonstration of the required accommodations or modifications may be necessary.
- If there is a service that is delivered other than weekly, identify the service and its frequency. It is suggested you have parents initial the information.
- Consider any possible adverse effects and/or safety issues related to the student's placement. For example, a student may be physically much larger or smaller than the other students; he or she may have a medical condition that may impact the student, the teacher, the class, or the environment; there may be a behavioral pattern that service providers should be made aware of; the student may have a known reaction to something that would not normally be expected. If any issue exists, explain it briefly and how it should be treated.

- Examine the student's placement and location of services with regard to safety concerns in the event of an emergency and/or evacuation**.** If for any reason the student would have difficulty with, or be unable to follow the emergency and/or evacuation procedures with the general school population without assistance, an individualized emergency and/or evacuation plan must be prepared for the student.

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

Level of Service/Setting

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

To get the most accurate result, follow this guideline:

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

9. Accommodations & Modifications

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

Determining Appropriate Accommodations—Some Important Considerations for IEP Teams

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

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

1. What is the student's grade?
2. What assessments are administered at that grade (school, district, state)?
3. What content areas are assessed on the respective assessments?

4. What skill deficit does the student exhibit that would require accommodation in each content area assessed?
5. What accommodations are necessary?
6. Do the accommodations have instructional relevance?
7. Will the student have at least three months to use the accommodation in the classroom prior to testing?
8. Is the accommodation selected allowable for the NMSAP (*See* the accommodations section of this manual)?
9. If the change is not allowable in the NMSAP and is considered a modification, has the team discussed the potential consequences?
10. Do the parents understand the potential consequences of the assessment option selected? IEP teams should be aware of the guidance provided by the NMPED on our website in order to assist them in making decisions regarding the selection and implementation of accommodations for students with IEPs. The [district's] IEP teams will reference the New Mexico technical assistance manual *How to Choose and Use Accommodations for Students with Disabilities*. The manual is updated to reflect the most current guidance available. This version is available on the SEB website at: http://www.ped.state.nm.us/seo/assessment/200506.NM.Accomm.doc

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

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

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

Description of Accommodations Categories

Accommodations are commonly categorized in four ways: (1) *Presentation*, (2) *Response*, (3) *Timing/Scheduling*, and (4) *Setting*. Refer to NMPED website for assistance in choosing appropriate accommodations to assist the student to make progress in the general curriculum.
http://www.ped.state.nm.us/seo/assessment/200506.NM.Accomm.doc

Presentation Accommodations—Allow students to access information in ways that do not require them to visually read standard print. These alternate modes of access are auditory, multi-sensory, tactile, and visual.
Response Accommodations—Allow students to complete activities, assignments, and tests in different ways or to solve or organize problems using some type of assistive device or organizer.
Timing/Scheduling Accommodations—Increase the allowable length of time to complete a test or assignment and may also change the way the time is organized. (Note: considered adaptations in the NMSAP)
Setting Accommodations—Change the location in which a test or assignment is given or the conditions of the assessment setting. (Note: considered adaptations in the NMSAP)

Modifications or Alterations

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

career. These modifications include:
requiring a student to learn less material (e.g., fewer objectives, shorter units or lessons, fewer pages or problems)
reducing assignments and tests so that a student only needs to complete the easiest problems or items
revising assignments or tests to make them easier (e.g., crossing out half of the response choices on a multiple choice test so that a student only has to pick from 2 options instead of 4)
giving a student hints or clues to correct responses on assignments and tests

10. IEP Progress Documentation

§300.320 Definition of individualized education program.
(a) (3) A description of--
(i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
(ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

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

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

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

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

Assessing Progress for Early Childhood – Pilot Project:
http://www.ped.state.nm.us/seo/preschool/pilot.assmt.memo.doc

The South Valley Preparatory School will implement the NMPED pilot project. ***OR*** *The South Valley Preparatory School is currently implementing the NMPED pilot project.* ***OR*** *The South Valley Preparatory School will begin implementation of the South Valley Preparatory School pilot project beginning: _____.*

The NMPED has established a pilot project to collect information on a random sample of children. The form being used in the pilot schools is available for the person who knows the child best to rate the student's achievement in

three areas on the current IEP. The form is available on the NMPED Special Education website at http://www.ped.state.nm.us/seo/preschool/pilot.assmt.form.doc .

As part of the NMPED work of establishing a state system for assessing the progress of young children, they will be collecting information on how LEA's currently determine the progress each child is making and how you determine eligibility. Are the early language/communication, pre-reading and social-emotional skills of preschool children with disabilities receiving special education and related services, improving?" Examples from each area follow.

- Early language/communication: Child will use gestures, sounds, words, or sentences to convey wants and needs or to express meaning to others; child will respond to others' communication with appropriate actions or communicative reply.
- Pre-reading: Child will give and receive nonverbal and verbal messages to attach meaning to experiences, events, and interactions; child will experience written language functions by listening to nursery rhymes, songs and stories or selecting books they would like to have an adult read to them.
- Social-emotional: Child will interact with peers and adults and show increasing ability to maintain social relationships and demonstrate social participation in play; child will demonstrate appropriate assertion, affect/emotion and problem-solving skills in interactions with others.

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

Finally, it is suggested the IEP list the Case Manager/IEP Team Coordinator designated by signature the person who assumes responsibility for ensuring that everyone involved in the implementation of the IEP has access to it and is given the information necessary to carry out his/her responsibilities.
For any disagreements, see the procedures in Chapter 2. – Procedural Safeguards.

11. Prior Written Notice of Proposed Actions

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

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

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

C. After the IEP Meeting

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

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

D. Special Education Teacher/Service Provider Responsibilities

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

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

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

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

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

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

Lessons, Grading, and Reporting

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

1. *The special education teacher will utilize a lesson plan which reflects the goals as stated on the IEP and follows the NMPED Standards of Excellence. Grades should evolve from the goals with supporting documentation of how the grade was determined.*
2. *Numerical grades will be recorded for each subject area in a grade book. Recommended minimum mastery level on an IEP objective should be 70%, as a grade of 70 is required for passing for nondisabled students. If 70% is too high for mastery, the appropriateness of the goal should be reconsidered.*

3. *Care should be taken to ensure that goals are written at a level which continues to challenge the student's abilities. This may necessitate accommodations in curriculum, methods, pacing, materials, criteria, etc.*
4. *If the student with disabilities fails to meet the expectations addressed in the IEP, the responsible teacher will review the IEP for appropriateness of goals/objectives, instructional levels, materials, and methods. The teacher must document on the IEP the efforts made to try to help the student achieve success.*
5. *If a student with disabilities should not be progressing toward mastery of the goal by the annual IEP meeting, the IEP Team will convene to discuss the student's needs and make recommendations to help the student achieve success.*
6. *An IEP Team will meet if the student is not attending school to discuss the appropriateness of the IEP, need for additional testing, and pursuit of compulsory attendance, if appropriate.*
7. *The grading of a special education student in a general education classroom is based upon the IEP Team recommendations for, if any, accommodations of NMPED Standards of Excellence and other accommodations of pacing, methods, and materials needed. When accommodations have been recommended by IEP Team, the special education teacher is responsible for:*
   a. *informing the general education teacher of the recommended accommodations;*
   b. *providing information concerning the student's achievement levels, learning style, and behavioral needs;*
   c. *offering assistance to the general education teacher on a scheduled basis, as recommended by the IEP Team; and*
   d. *documenting contacts with the general education teacher.*
8. *On occasion, the IEP Team will recommend that a specific subject be taught in a combination general education/special education instructional arrangement. The special education student's grade, in this situation, may be determined proportionately by the general and special education teachers who provide the instruction, as determined by the IEP Team.*
9. *Unless the IEP Team designates otherwise,*
   a. *when a student is enrolled in the homebound program, the general classroom teacher will be responsible for grading all assignments and recording grades on the report card and permanent record for all subject areas.*
   b. *the progress of children enrolled in PPCD will be based upon advancement toward mastery of IEP goals and objectives. The NMPED is currently piloting progress reporting criteria. The South Valley Preparatory School will follow the NMPED recommendations. Report cards will be issued to PPCD children on the same schedule as non-disabled students on their campus.*

1. Initial IEP Team Meeting:

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

1. *complete the draft IEP measurable annual goals, based on appropriate evaluation, selecting a minimum of one goal and two objectives for each subject or developmental area anticipated; (remember the general education teacher(s) to the extent appropriate, should participate in the development, review, and revision of the student's IEP), (objectives are required only if student is taking an off grade level state assessment)*
2. *complete the IEP by writing in any individualized items needed:*
   a. *complete header information marking DRAFT IEP,*
   b. *complete proposed evaluation procedures, and criteria.*
3. *send draft IEP goals (and objectives, if appropriate) to the parent <u>at least one week</u> prior to IEP meeting;*
4. *write the date the IEP is accepted by the IEP Team on the actual IEP <u>during</u> the meeting.*
5. *make copies of the accepted IEP goals and objectives and other relevant pages,*
   a. *One copy is to be filed in the student eligibility folder with the completed IEP forms, and*
      b. *additional copies of the approved IEP will be distributed to the <u>parent</u> and as needed (i.e., general education teacher copy, etc.).*
   (1) *ensure that each teacher who provides instruction to a student with disabilities receives relevant sections of the student's current IEP and that each teacher be informed of specific responsibilities related to implementing the IEP, such as goals and benchmarks, and of needed accommodations, modifications, and supports for the child;*

   (2) *obtain signed documentation from the general education teachers that they have received relevant sections of the student's IEP, such as goals and benchmarks, and needed accommodations, and supports for the child for the list of special education students they instruct, and*

c. *assist general education teachers who are involved in the student's instruction to maintain documentation that they are modifying and/or accommodating educational programs of students as specified in the IEP.*

6. *The special education teacher's copy is used to document progress in the same timely manner as students on your campus who are nondisabled (e.g., every 6 weeks).*

2. Annual IEP Team Meeting

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

a. *in addition to presenting the new draft IEP goals and objectives,*
b. *submit the original IEP with progress documentation marked on the IEP, and*
c. *follow No. 1 through No. 6 in A., above.*

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

3. Amendment to the IEP

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

4. Temporary / Transfer IEP Meeting

The special education teacher will be responsible for attending any temporary IEP meetings, as necessary, and working with the campus diagnostician/appraisal staff to plan the draft IEP for the temporary transfer student. The special education teacher will also assist in obtaining records from the previous district and conducting any benchmark testing, as appropriate.

E. General Education Teacher Responsibilities

§300.323 When IEPs must be in effect.

(d) Accessibility of child's IEP to teachers and others. The South Valley Preparatory School ensures that-

(1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service provider who is responsible for its implementation; and

(2) Each teacher and provider described in paragraph (d)(1) of this section is informed of –

(i) His or her specific responsibilities related to implementing the child's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

§300.324 Development, review, and revision of IEP

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

(i) Appropriate positive behavioral interventions and supports and other strategies for the child; and

(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with §300.320(a)(4).

(b) <u>Review and revision of IEPs</u>.

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

<u>Opportunity for General Education Teachers to Provide Input or Request Assistance:</u>
The immediate person for support to the general education teacher is the campus special education teacher. Special educators are in a collaborative role to problem solve any difficulties the special education student may be having in the general class. The IEP Team designates a person responsible for coordination of monitoring the student and this is typically assigned to the special education teacher. The special education teacher's responsibilities to ensure participation of the general education teacher may include:

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

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

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

<u>Process for Submitting Requests for Further Consideration of Student's IEP</u>

A. There may be instances when the general educator does not agree with the decision of the IEP Team. There could be several reasons why this might occur, however, it is the responsibility of special educators first and foremost to support and assist the general education teacher in understanding the student's disability and IEP. When a general education teacher does not agree, the special education teacher should:

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

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

III. ADDITIONAL AREAS CONSIDERED BY THE IEP TEAM

A. Adapted Physical Education

§300.108 Physical education.
The NMPED must ensure that public agencies in the State comply with the following:

(a) General. Physical education services, specially-designed if necessary, must be made available to every child with a disability receiving FAPE, unless the South Valley Preparatory School enrolls children without disabilities and does not provide PE to children without disabilities in the same grade.

(b) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless—
- **(1) The child is enrolled full time in a separate facility; or**
- **(2) The child needs specially-designed physical education, as prescribed in the child's IEP.**

(c) Special physical education. If specially-designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

(d) Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.

(Authority: 20 U.S.C. §1412(a)(5)(A))

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

B. Extracurricular Activities

§300.107 Nonacademic services.
The State must ensure the following:

(a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(Authority: 20 USC §1412(a)(1))

§300.117 Nonacademic settings.
In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §300.107, each public agency must ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child. The South Valley Preparatory School must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.
(Authority: 20 USC §1412(a)(5))

§300.320 Definition of individualized education program.

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include—

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

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

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

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

C. Preschool Program for Children with Disabilities

§300.112 Individualized education programs (IEP).

The State must ensure that an IEP, or an IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with §§300.320 through 300.324, except as provided in §300.300(b)(3)(ii). (Authority: 20 USC §1412(a)(4)).

(§§300.320 Definition of IEP, .321 IEP Team, .322 Parent Participation, .323 when IEPs must be in effect, .324 Development of IEP)(300.300 b. Parental Consent)

§300.323 When IEPs must be in effect.

(b) IEP or IFSP for children aged three through five.

(1) In the case of a child with a disability aged three through five (or, at the discretion of the NMPED, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP, as the IEP is--

(i) Consistent with State policy; and

(ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must--

(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and

(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

For specific performance standards and benchmarks for three and four year old children, see the NMPED website at: http://www.ped.state.nm.us/seo/preschool/perf.standards.benchmarks_final.pdf

D. Prison: Juvenile or Adult Detention or Correctional Facilities

§300.324 Development, review, and revision of IEP

(d) Children with disabilities in adult prisons.

(1) Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

(i) The requirements contained in §§300.160 and 300.320(a)(6) (relating to participation of children with disabilities in general assessments).

(ii) The requirements in §300.320(b) (relating to transition planning and transition services), do not apply with respect to the children whose eligibility under Part B of the Act will end, because of

their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(2) Modifications of IEP or placement.

(i) Subject to paragraph (c)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) The requirements of §§300.320 (relating to IEPs), and 300.112 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.

(Authority: 20 USC §§1412(a)(1), 1412(a)(12)(A)(i), 1414(d)(3),(4)(B), and(7); and 1414(e))

Juvenile or Adult Detention or Correctional Facilities see Chapter 7 – Discipline/Behavior

E. Related Services – Roles

For more information on various roles for related service personnel, please see the NMPED website link: http://www.ped.state.nm.us/seo/library/guidance.memor.pdf

Related Service Providers as Contributors in the Development of IEP Goals and Objectives:
Traditionally, if a student received a certain score on one of a variety of related service assessments, the student was assumed to be in need of direct service from that related service provider. Then, under that traditional model, related service providers supplied draft annual goals and objectives to IEP teams that would be aimed at progress on therapy-related activities. In order to increase educational outcomes for students with disabilities, we are recommending a change in this traditional practice. After the IEP Team has discussed a student's present levels of performance, the family's (and student's, if appropriate) vision for the student, the team needs to develop goals. It is important to recognize that goals must (1) be tied to the New Mexico Content Standards and Benchmarks; (2) be individualized and appropriate for each student; and, (3) address each student's educational needs such that the student is provided access to, and progresses in, the general curriculum. We are recommending that once the present levels of academic achievement and functional performance have been determined, the vision for the student articulated and the goals established, related service providers, as relevant, contribute to the development of appropriate objectives that lead to the attainment of the IEP goals. This would be true for all students receiving special education services and for whom an IEP is being developed. Even in the case of a student who is eligible under the definition of speech or language impairment, the goals need to be related to the NM Content Standards. Objectives under these goals may address certain articulation or fluency skills, but the goals must still be tied to Standards. Our intent in recommending this change in practice is to focus attention on improving outcomes for students in relation to the general curriculum, while recognizing that building skills that lead to improved outcomes may very well involve the specialized contributions from related service providers.

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

F. Standards for Excellence

Authority: NMAC 6.29.1.8 IMPLEMENTATION**:**
This regulation shall assist in the implementation of standards for excellence through the use of the *educational plan for student success (EPSS)*, content standards with benchmarks and performance standards, and additional program and procedural requirements specified in this regulation. The primary mechanism for planning and implementation is the *educational plan for student success (EPSS)*.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES

D. Performance goals and indicators. Pursuant to the requirements of 34 CFR §300.157(a), the content standards and benchmarks from the department's Standards for Excellence (Chapter 29 of Title 6 of the NMAC) for all children attending public schools and state-supported educational programs in New Mexico shall provide the basic performance goals and indicators for children with disabilities in the general education curriculum. The

IEP academic goals must align with the New Mexico content standards and benchmarks, including the expanded performance standards for students with significant cognitive disabilities, however, functional goals do not have to align with the standards and benchmarks. Unless waivers or modifications covering individual public agencies' programs have been allowed by the department or the secretary of education, the general education curriculum and the content standards and benchmarks shall only be adapted to the extent necessary to meet the needs of individual children with disabilities, as determined by IEP teams in individual cases.

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

G. Supplementary Aids and Services - Accommodations

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

§300.320 Definition of individualized education program.

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

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

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

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

H. Tape Recording

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

The South Valley Preparatory School may NOT record without parent's knowledge.

IV. PRIVATE NONPUBLIC SCHOOL PROVISIONS *(See Chapter 6. - LRE)*

§300.2 Applicability of this part to State and local agencies.

(c) Private schools and facilities. Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities--

(1) Referred to or placed in private schools and facilities by the [district]; or

(2) Placed in private schools by their parents under the provisions of §300.148

§300.118 Children in public or private institutions.

Except as provided in §300.149(d) (regarding agency responsibility for general supervision for some individuals in adult prisons), the NMPED must ensure that §300.114 is effectively implemented, including, if

necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures). *(§300.114 is definition of LRE)*

A. Placed by the South Valley Preparatory School

§300.325 Private school placements by public agencies.

(a) Developing IEPs.

(1) Before the South Valley Preparatory School places a child with a disability in, or refers a child to, a private school or facility, the South Valley Preparatory School must initiate and conduct a meeting to develop an IEP for the child in accordance with §§300.320 and 300.324. *(§300.320 is Definition of IEP and §300.324 is Development of IEP)*

(2) The South Valley Preparatory School must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the South Valley Preparatory School must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(b) Reviewing and revising IEPs.

(1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the [district].

(2) If the private school or facility initiates and conducts these meetings, the South Valley Preparatory School must ensure that the parents and an agency representative--

(i) Are involved in any decision about the child's IEP; and

(ii) Agree to any proposed changes in the IEP before those changes are implemented.

(c) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the South Valley Preparatory School and the NMPED.

B. Placed by the Parent

§300.132 Provision of services for parentally-placed private school children with disabilities--basic requirement.

(a) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the [district], provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with §300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§300.190 through 300.198.

(b) Services plan for parentally-placed private school children with disabilities. In accordance with paragraph (a) of this section and §§300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the South Valley Preparatory School in which the private school is located to receive special education and related services under this part.

§300.37 Services plan. Services plan means a written statement that describes the special education and related services the [district]will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with §300.132, and is developed and implemented in accordance with §§300.137 through 300.139.

For a sample services plan see the NMPED website: http://www.ped.state.nm.us/seo/library/services.plan.pdf

§300.137 Equitable services determined.

(a) No individual right to special education and related services. No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

(b) Decisions.

(1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§300.130 through 300.144 must be made in accordance with paragraph (c) of this section and §300.134(c).

(2) The South Valley Preparatory School must make the final decisions with respect to the services provided to eligible parentally-placed private school children with disabilities.

As described in detail in Chapter 6. – LRE, through the consultation process and proportionate share decisions for service expenditures made by the [district], *the* South Valley Preparatory School *will provide the following services to parentally-placed private school students:* _____.

§300.137 Equitable services determined.

(c) Services plan for each child served under §§300.130 through 300.144. If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from [district], the South Valley Preparatory School must--

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with §300.138(b); and

(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the South Valley Preparatory School shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

§300.138 Equitable services provided.

(a) General.

(1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirement of §300.18.

(2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(b) Services provided in accordance with a services plan.

(1) Each parentally-placed private school child with a disability who has been designated to receive services under §300.132 must have a services plan that describes the specific special education and related services that the South Valley Preparatory School will provide to the child in light of the services that the South Valley Preparatory School has determined, through the process described in §§300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.

(2) The services plan must, to the extent appropriate--

(i) Meet the requirements of §300.320, or for a child ages three through five, meet the requirements of §300.323(b) with respect to the services provided; and *(found in Chapter 5.1-IEP)*

(ii) Be developed, reviewed, and revised consistent with §§300.321 through 300.324.

(c) Provision of equitable services.

(1) The provision of services pursuant to this section and §§300.139 through 300.143 must be provided:

(i) By employees of [district]; or

(ii) Through contract by the South Valley Preparatory School with an individual, association, agency, organization, or other entity.

(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

§300.139 Location of services and transportation.

(a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.

(b) Transportation.

(1) General.

(i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation--

(A) From the child's school or the child's home to a site other than the private school; and

(B) From the service site to the private school, or to the child's home, depending on the timing of the services.

(ii) LEAs are not required to provide transportation from the child's home to the private school.

(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the South Valley Preparatory School has met the requirement of §300.133.

V. HOSPITAL OR RESIDENTIAL TREATMENT CENTERS *(See Chapter 6. - LRE)*

Authority: §300.104 Residential placement.
If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child. (Authority: 20 USC §§1412(a)(1), 1412(a)(10)(B))

Any student with a disability meeting eligibility criteria and residing in a residential facility within the [district's] boundaries will be offered a free appropriate public education (FAPE).

In order that students in hospitals or residential treatment facilities are served appropriately, it is important that IEP records be transmitted immediately. When the South Valley Preparatory School in which the hospital or residential treatment facility is located receives the IEP, the South Valley Preparatory School will hold an IEP meeting to consider how the current services may be met at the hospital or residential treatment setting.

New Mexico Public Education Department
Special Education Bureau

South Valley Preparatory School
POLICIES AND PROCEDURES FOR THE PROVISION OF SPECIAL EDUCATION SERVICES FOR STUDENTS WITH DISABILITIES AND GIFTED STUDENTS

Chapter 6. - LEAST RESTRICTIVE ENVIRONMENT (LRE)

Chapter 6. - LEAST RESTRICTIVE ENVIRONMENT (LRE)
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Chapter 6. LEAST RESTRICTIVE ENVIRONMENT (LRE)

I. Least Restrictive Environment - Requirements

§300.114 LRE requirements.

(a) General.

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

(2) The public agency ensures that --

(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(b) Additional requirement - State funding mechanism.

(1) General.

(i) The New Mexico funding mechanism does not result in placements that violate the requirements of paragraph (a) of this section; and

(ii) New Mexico does not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that would result in the failure to provide FAPE to a child with a disability according to the unique needs of the child~~,~~ as described in the child's IEP.

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

§300.117 Nonacademic settings.

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

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

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES

C. Least restrictive environment

(1) Except as provided in 34 CFR §300.324(d) and Subsection K of 6.31.2.11 NMAC for children with disabilities who are convicted as adults under state law and incarcerated in adult prisons, all educational placements and services for children with disabilities must be provided in the least restrictive environment that is appropriate to each child's needs in compliance with 34 CFR §§300.114-300.120.

(2) In determining the least restrictive environment for each child's needs, public agencies and their IEP teams shall ensure that the following requirements are met.

(a) The requirements of 34 CFR §300.114(a)(2) for each public agency to ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled, and that special classes, separate schooling or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(b) The required continuum of alternative placements as specified in 34 CFR §300.115.

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

A. Continuum of Alternative Placements

§300.115 Continuum of alternative placements.

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

(b) The continuum required in paragraph (a) of this section must--

(1) Include the alternative placements listed in the definition of special education under §300.39 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

Authority: 34 CFR §300.39 Special education.

(a) General.

(1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including--

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section--

(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards; *(Speech-language is a related service in New Mexico.)*

(ii) Travel training; and

(iii) Vocational education.

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

Example of a Continuum of Service and Setting Options

Least Restrictive

- Regular education with weekly monitoring from a special education provider
- Regular education with daily consultation from a special education provider
- Regular education with special education services and supports included in that setting which are aligned with the general curriculum (utilizing such strategies as flexible groupings, universally-designed curriculum, overlapping curriculum, cooperative learning, peer tutoring, parallel or alternative instruction, team teaching)
- Regular education with special education services provided for part of the day in a resource room or a special education classroom
- Self-contained special education classroom
- Special day school (outside the school environment)
- Residential treatment facility
- Hospital
- Detention facility
- Homebound

Most Restrictive

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

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

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

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

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

(4) *General education teachers are not required to modify the general education curriculum to the extent that the student with disabilities is not required to learn any of the skills normally taught in general education.*

c. *Will the student receive an educational benefit from general education?*
   (1) *Can the student grasp the New Mexico Standards for Excellence benchmarks of the general education curriculum?*
   (2) *Consider and document the nature and severity of the student's disability in relation to receiving educational benefits from general education.*

d. *Examine the student's overall educational experience in the mainstream environment, balancing the benefits of general and special education for each individual student.*

e. *What effect does the presence of a student with disabilities have on the general classroom environment and, thus, on the education the other students are receiving?*
   (1) *Discuss and document any disruptions in the classroom.*
   (2) *Does the student require so much of the teacher's attention that the teacher will have to ignore the other students' needs in order to attend to the student with disabilities?*

2. *If education in a general classroom cannot be achieved satisfactorily, determine whether the student has been mainstreamed to the maximum extent appropriate for that student.*
   a. *Determine if all academic and non-academic classes in general education with nondisabled peers have been considered or tried.*
   b. *Determine if mainstreaming for lunch, recess, or other times has been considered.*

B. PLACEMENTS:

§300.116 Placements.
In determining the educational placement of a child with a disability, including a preschool child with a disability, the public agency ensures that--

(a) The placement decision--
   (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
   (2) Is made in conformity with the LRE provisions of this subpart, including §§300.114 through 300.118;

(b) The child's placement--
   (1) Is determined at least annually;
   (2) Is based on the child's IEP; and
   (3) Is as close as possible to the child's home, unless the parent agrees otherwise;

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

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

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. *(Regular classrooms are public schools in K-12th).*

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

Placement in the Least Restrictive Environment (LRE) Understanding and Making the Placement Decision
What is Placement? It is not the physical location of the special education services. Rather, it is the set of services and the type of environment, or the point on the continuum of services and setting options, in which those services are delivered.
Who Makes the Placement Decision? The student's IEP Team makes the decision. This requires an individualized inquiry into the student's unique educational and related services needs.

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

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

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

The Decision.

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

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

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

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

- Administrative convenience

e. Keep in mind that where there is a reasonable likelihood that a student with disabilities can educated in the regular classroom with supplementary aids and supports, then that placement should be tried for as much as the school day as possible.

f. If the team agrees that the student should receive part or all of the special education services outside of the regular classroom, then the IEP must also provide opportunities for participation in regular education programs in academic, nonacademic, or extracurricular activities, as appropriate.

g. If the team agrees that the student's IEP cannot be satisfactorily implemented in the regular education classroom with the provision of supplementary services and supports, then the team can consider a more restrictive placement keeping in mind that the regular education classroom is not the LRE for that student at that time. That is, having the understanding that the ultimate plan and goal is to work towards a more fully inclusive placement when possible.

h. Finally, clearly articulate on the IEP document the placement decision and the justification for it based on the considerations in this booklet.

II. DETERMINING SERVICE LEVELS AND SETTINGS

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

SERVICE LEVEL

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

Service Level – (amount of time the student is receiving special education service regardless of location of service)
Level 1 – Less than 10% of the day
Level 2 – 11% - 50% of the day
Level 3 – More than 50% of the day but not a full day
Level 4 – Up to full day / 3Y, 4Y, 5Y

For students who attend school full-time:

1) Total the minutes of special education service scheduled on the student's IEP. Special education service should include the following:
   - Service to a student from a licensed special education teacher or related service provider
   - Service to a student from a one-on-one aide or job coach
   - Service to a student from a general education teacher who is implementing curriculum modifications developed jointly with the special education teacher
   - Service to a general education teacher from a special education teacher who is consulting on a weekly basis with the general education teacher about classroom modifications for a student

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

Grade:	Hours per day:
Kn =	2.5
1-6 =	5.5
7-12=	6

3) Divide #1 by #2
   - 1% - 10% = Level 1 / Minimum / A
   - 11% - 49% = Level 2 / Moderate / B
   - 50% or more = Level 3 / Extensive / C
   - approaching a full day = Level 4 / Maximum / D
   - for students on block scheduling, divide the total hours of special education service in the whole year by the total hours in the whole year (i.e., for high school, use 6 hrs/day X 5 days/week X 36 weeks/year = 1080 hours) and use the percents above for each count date to determine funding

For students in grade 3Y/4Y/5Y, the service level is automatically Level 4/Maximum/D.
For students who have reduced-day programs, including those in homebound or hospital settings, use the same method for calculating service level as for full-time students. Please note that the student's special education service time is divided by the time in a state-mandated school day, not by that student's reduced-hour day.

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

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

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

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

For students AGES 3-5 choose from the following categories:

- **EC01 Early Childhood Setting** with typically developing peers [includes Head Start].
- **EC02 Part-Time Early Childhood / Part-Time Early Childhood Special Education Setting** – Multiple settings such that:
  (1) special education and related services are provided at home or in educational programs designed primarily for children without disabilities, and
  (2) special education and related services are provided in programs designed primarily for children with disabilities.
- **EC03 Early Childhood Special Education Setting** – Setting primarily designed for children with disabilities housed in regular school buildings or other community-based settings.
- **EC04 Homebound/Hospital -** Student receives all service in homebound setting or short-term hospital setting
- **EC06 Separate School -** Educational programs in public or private day schools designed specifically for children with disabilities.
- **EC07 Residential Facility -** A publicly or privately operated residential schools or residential medical facilities on an inpatient basis.
- **EC10 Private School – Parentally-Placed (**be sure to use **school code 997)**
- **EC11 Home –** home-based parental instruction (be sure to use **school code 998)**
- **EC14 Alternative Schools (includes Family School)**
  Alternative is a public school within a school district that has its own principal, school building, and budget and is established to serve the needs of a particular group of students, e.g. those considered to be at-risk of dropping out. A **Family School** provides more than half-time instruction in the public schools with the remaining time in home-based parental instruction.

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

- **SA01 In Regular Class** more than 80% of the day
- **SA02 In Regular Class** between 40%-79% of the day
- **SA03 In Regular Class** less than 40% of the day
- **SA04 Homebound/Hospital -** Student receives all service in homebound setting or short-term hospital setting
- **SA05 Public Separate School**
- **SA06 Private Separate School**
- **SA07 Public Residential Facility**
- **SA08 Private Residential Facility**
- **SA09 Juvenile Detention/Corrections** Student receives services in a juvenile detention or corrections facility

- **SA10 Private School – Parentally Placed** (be sure to use **school code 997**) - Student is parentally-placed in a private school but is receiving some special education service with South Valley Preparatory School teachers
- **SA11 Home Schoo**l (be sure to use **school code 998**) - Student is parentally-placed in a home school but is receiving some special education service with public agency teachers
- **SA12 Removed to IAES (Onsite) -** by School Personnel (not Hearing Officer)
- **SA13 Removed to IAES (Off-Site) -** by School Personnel (not Hearing Officer)
- **SA14 Alternative School** (Includes Family School)
- **SA15 Removed to IAES** – by Hearing Officer

Authority: NMAC 6.29.1.9 Procedural Requirements

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

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

III. PRIVATE SCHOOLS: ENROLLED BY THE PARENTS

§300.129 State responsibility regarding children in private schools.
The NMPED has in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in §§300.130 through 300.148.

§300.130 Definition of parentally-placed private school children with disabilities.
Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private schools, including religious, schools or facilities that meet the definition of elementary schools in §300.13, or secondary schools in §300.36, other than children with disabilities covered under §§300.145 through 300.147. (Authority: 20 U.S.C. §1412(a)(10)(A))

§300.13 Elementary school. Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law

§300.36 Secondary school. Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

§300.131 Child find for parentally-placed private school children with disabilities.

(a) General. The public agency must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private schools, including religious, elementary schools and secondary schools located in the school district served by the public agency, in accordance with paragraphs (b) through (e) of this section, and §§300.111 and 300.201.

(b) Child find design. The child find process must be designed to ensure--
(1) The equitable participation of parentally-placed private school children; and
(2) An accurate count of those children.

(c) Activities. In carrying out the requirements of this section, the public agency, or, if applicable, the NMPED, must undertake activities similar to the activities undertaken for the agency's public school children.

(d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if the public agency has met its obligation under §300.133. *(For private school expenditures see Chapter 6 – LRE).*

(e) Completion period. The child find process must be completed in a time period comparable to that for other students attending public schools in the [district], consistent with §300.301. *(See Chapter 3- Initial*

Evaluations).

(f) Out-of-state children. Each LEA in which private schools, including religious, elementary schools and secondary schools, are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a state other than the state in which the private schools they attend are located.

§300.132 Provision of services for parentally-placed private school children with disabilities--basic requirement.

(a) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private schools, including religious, elementary schools and secondary schools, located in the school district served by the public agency, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with §300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§300.190 through 300.198.

(b) Services plan parentally-placed private school children with disabilities. In accordance with paragraph (a) of this section and §§300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the public agency in which the private school is located to receive special education and related services under this part.

(c) Record keeping. The public agency must maintain in its records, and provide to the NMPED, the following information related to parentally-placed private school children covered under §§300.130 through 300.144:

(1) The number of children evaluated;

(2) The number of children determined to be children with disabilities; and

(3) The number of children served.

§300.133 Expenditures.

(a) Formula. To meet the requirement of §300.132(a), the LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

(1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total sub-grant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private schools, including religious, elementary and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.

(2) (i) For children aged three through five, an amount that is the same proportion of the LEA's total sub-grant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in private schools, including religious, elementary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.

(ii) As described in paragraph (a)(2)(i) of this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in §300.13.

(3) If the LEA has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2) of this section by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.

(b) Calculating proportionate amount. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under §300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA. *(See regulation Appendix B for a calculation of proportionate share).*

(c) Annual count of the number of parentally-placed private school children with disabilities .

(1) The South Valley Preparatory School must--

(i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with §300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and

(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

(2) The child count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.

(d) Supplement, not supplant. State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part.

§300.134 Consultation.

To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

(a) Child find. The child find process, including--

(1) How parentally-placed private school children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and private school officials will be informed of the process.

(b) Proportionate share of funds. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under §300.133(b); including a determination of how the proportionate share of those funds was calculated.

(c) Consultation process. The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.

(d) Provision of special education and related services. How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of--

(1) The types of services, including direct services and alternate service delivery mechanisms; and

(2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and

(3) How and when those decisions will be made;

(e) Written explanation by LEA regarding services. However, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract) the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

§300.135 Written affirmation.

(a) When timely and meaningful consultation, as required by §300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.

(b) If the representatives do not provide the affirmations within a reasonable period of time, the LEA must forward the documentation of the consultation process to the NMPED.

The Special Education Director of the South Valley Preparatory School has written affirmations of consultations that have occurred. Representatives from the following private school have signed affirmations of consultation:_____ ***OR*** *There are no private schools located within the [district's] educational boundaries.*

IDEA 2004 maintains the requirement that the South Valley Preparatory School spend a proportionate amount of IDEA funds for services delivered to parentally-placed students in private schools. However, the federal law has expanded and clarified the requirement that the proportionate amount—and other key issues—be determined via **timely and meaningful consultation** with representatives from the private school.

The [district's] obligation regarding proportionate spending and consultation extends to parentally-placed private school students who attend private schools located in the [district]. The OSEP memo attached to a

memo found at: http://www.ped.state.nm.us/seo/guide/Private.School.Memo.111405.pdf clearly describes what the consultation process is required to address. The memo also explains that, for 2005-06, the South Valley Preparatory School may use the best available data to calculate the proportionate amount of IDEA funds that must be expended on behalf of parentally-placed private school students, rather than conducting new child counts. The NMPED provides a non-regulatory guidance sample "Consultation Form," the use of which will help ensure that all required components of the consultation process are addressed.

Although state rules extend the child find requirement to home-schooled students, the state statutory definition of a *private school* (at § 22-1-2(K) NMSA 1978) specifically excludes a home school. Therefore, the proportionate spending and "meaningful and timely consultation" requirements that apply to parentally-placed private school students do not apply to home-schooled students. In addition, parents who home school their children do not have the right to file a state-level complaint against the South Valley Preparatory School alleging a violation of these consultation requirements (as discussed further below).

IDEA 2004 also requires that, following the consultation process, the South Valley Preparatory School must obtain written affirmation of this process, which is to be signed by private school representatives. The NMPED refers you to the sample "Written Affirmation" form in its non-regulatory guidance as an example of the type of form that may be used for this purpose. If the private school representatives do not sign the written affirmation within a "reasonable" period of time, the South Valley Preparatory School must forward documentation of the consultation process to the NMPED.

§300.136 Compliance.

(a) General. A private school official has the right to submit a complaint to the NMPED that the [district]--
- **(1) Did not engage in consultation that was meaningful and timely; or**
- **(2) Did not give due consideration to the views of the private school official.**

(b) Procedure.
- **(1) If the private school official wishes to submit a complaint, the official must provide to the NMPED the basis of the noncompliance by the South Valley Preparatory School with the applicable private school provisions in this part; and**
- **(2) The South Valley Preparatory School must forward the appropriate documentation to the NMPED.**
- **(3) (i) If the private school official is dissatisfied with the decision of the NMPED, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and**
- **(ii) The NMPED must forward the appropriate documentation to the Secretary.**

§300.137 Equitable services determined.

(a) No individual right to special education and related services. No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

(b) Decisions.
- **(1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§300.130 through 300.144 must be made in accordance with paragraph (c) of this section and §300.134(c).**
- **(2) The South Valley Preparatory School must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.**

(c) Services plan for each child served under §§300.130 through 300.144. If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from the [district], the South Valley Preparatory School must--
- **(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with §300.138(b); and**
- **(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the South Valley Preparatory School shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.**

§300.138 Equitable services provided.

(a) General.

(1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirement of §300.18.

(2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(b) Services provided in accordance with a services plan.

(1) Each parentally-placed private school child with a disability who has been designated to receive services under §300.132 must have a services plan that describes the specific special education and related services that the South Valley Preparatory School will provide to the child in light of the services that the South Valley Preparatory School has determined, through the process described in §§300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.

(2) The services plan must, to the extent appropriate--

(i) Meet the requirements of §300.320, or for a child ages three through five, meet the requirements of §300.323(b) with respect to the services provided; and

(ii) Be developed, reviewed, and revised consistent with §§300.321 through 300.324.

(c) Provision of equitable services.

(1) The provision of services pursuant to this section and §§300.139 through 300.143 must be provided:

(i) By employees of a public agency; or

(ii) Through contract by the public agency with an individual, association, agency, organization, or other entity.

(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

§300.139 Location of services and transportation.

(a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.

(b) Transportation.

(1) General.

(i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation--

(A) From the child's school or the child's home to a site other than the private school; and

(B) From the service site to the private school, or to the child's home, depending on the timing of the services.

(ii) Districts are not required to provide transportation from the child's home to the private school.

(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this chapter may be included in calculating whether the district has met the requirement of §300.133.

§300.140 Due process complaints and State complaints. *(See Chapter 2.- Procedural Safeguards)*

(a) Due process not applicable, except for child find.

(1) Except as provided in paragraph (b) of this section, the procedures in §§300.504 through 300.519 do not apply to complaints that the South Valley Preparatory School has failed to meet the requirements of §§300.132 through 300.139, including the provision of services indicated on the child's services plan.

(b) Child Find complaints—to be filed with the LEA in which the private school is located.

(1) The procedures in §§300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in §§300.131 including the requirements in §§300.300 through 300.311.

(2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of the section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the NMPED.

§300.141 Requirement that funds not benefit a private school.

(a) The LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The LEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting--

(1) The needs of a private school; or
(2) The general needs of the students enrolled in the private school.

§300.142 Use of personnel.
(a) Use of public school personnel. The LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities--
(1) To the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities; and
(2) If those services are not normally provided by the private school.
(b) Use of private school personnel. The LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.130 through 300.144 if--
(1) The employee performs the services outside of his or her regular hours of duty; and
(2) The employee performs the services under public supervision and control.

§300.143 Separate classes prohibited.
The LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if—
(a) The classes are at the same site; and
(b) The classes include students enrolled in public schools and students enrolled in private schools.

§300.144 Property, equipment, and supplies.
(a) The public agency must control and administer the funds used to provide special education and related services under §§300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.
(b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.
(c) The public agency must ensure that the equipment and supplies placed in a private school--
(1) Are used only for Part B purposes; and
(2) Can be removed from the private school without remodeling the private school facility.
(d) The public agency must remove equipment and supplies from a private school if--
(1) The equipment and supplies are no longer needed for Part B purposes; or
(2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.
(e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:
L. Children in private schools or facilities.
(1) Children enrolled by parents in private schools or facilities.
(a) Parentally placed private school children with disabilities means children with disabilities enrolled by their parents in private schools, including religious schools or facilities, such as residential treatment centers, day treatment centers, hospitals, mental health institutions, other than children with disabilities who are covered under 34 CFR §§300.145 through 300.147.
(b) A school district in which a private school or facility is located shall not be considered the resident school district of a school-age person if residency is based solely on the school-age person's enrollment at the facility and the school-age person would not otherwise be considered a resident of the state.
(c) Each district must locate, identify and evaluate all children with disabilities who are enrolled by their parents in private schools, including religious elementary schools and secondary schools located in the education jurisdiction of the district, in accordance with 34 CFR §§300.131 and 300.111.
(d) The public agency must develop a "service plan" that describes the special education and related services the district will provide to a parentally placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 34 CFR §300.132 and that is developed and implemented in accordance with 34 CFR §§300.137 through 300.139. The provision applies only to private schools and not to private facilities where an IEP must be in place.

(e) Pursuant to 34 CFR §300.133, the South Valley Preparatory School is obligated to spend a proportionate amount of its federal IDEA Part B funds to assist private school children with disabilities placed in a private school or private facility by a parent who assumes responsibility for such placement. In doing so, the South Valley Preparatory School must use the formula for calculating proportionate amount and annual count of parentally placed private school children with disabilities in accordance with 34 CFR §300.133. The public agency shall not use IDEA funds to benefit private schools as provided in 34 CFR §300.141. The state is not required to distribute state funds for such school-age persons. Furthermore, the Constitution and laws of New Mexico prohibit public agencies from spending state funds to assist private schools or facilities or their students.

(f) No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Pursuant to 34 CFR §300.137, the South Valley Preparatory School must make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities.

(g) Pursuant to 34 CFR §§300.134 and 300.135, districts must ensure timely and meaningful consultation with private school representatives and representatives of parents of parentally-placed private school children with disabilities. If the South Valley Preparatory School fails to engage in meaningful and timely consultation or did not give due consideration to a request from private school officials, private school officials have the right to submit a complaint to the department. The private school official and the South Valley Preparatory School must follow the procedures outlined in 34 CFR §300.136.

(h) Pursuant to 34 CFR §§300.140, the due process provisions of Subsection I of 6.31.2.13 NMAC are not applicable except for child find complaints which must be filed in compliance with 34 CFR §300.140(b). Any complaint that the department or any district has failed to meet the requirements in 34 CFR §§300.132 through 300.135 and §§300.137 through 300.144 must be filed in accordance with the provisions described in Subsection H of 6.31.2.13 NMAC.

(2) Children placed in or referred to private schools or facilities by New Mexico public agencies. The South Valley Preparatory School shall ensure that a child with a disability who is placed in or referred to a private school or facility by the public agency as a means of providing special education and related services is provided services in compliance with the requirements of 34 CFR §§300.146 and 300.147. Such a child has all the rights of a child with a disability who is served by a public agency.

(3) Children placed in or referred to private schools or facilities by New Mexico public non-educational agencies. For a qualified student or school-age person in need of special education placed in a private school or facility by a New Mexico public noneducational agency with custody or control of the qualified student or school-age person or by a New Mexico court of competent jurisdiction, the school district in which the facility is located shall be responsible for the planning and delivery of special education and related services, unless the qualified student's or school-age person's resident school district has an agreement with the facility to provide such services. The district must make reasonable efforts to involve the qualified student or school-age person's resident school district in the IEP process.

(4) Children placed in or referred to private schools or facilities by public noneducational agencies other than New Mexico public agencies. A school district in which a private school or facility is located shall not be considered the resident school district of a school-age person if residency is based solely on the school-age person's enrollment at the facility and the school-age person would not otherwise be considered a resident of the state.

(5) Children placed in private schools or facilities by parents when FAPE is at issue. The responsibility of a local educational agency to pay for the cost of education for a child with a disability who is placed in a private school or facility, such as residential treatment centers, day treatment centers, hospitals or mental health institutions, by parents who allege that the South Valley Preparatory School failed to offer FAPE is governed by the requirements of 34 CFR §300.148. Disagreements between a parent and the public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of Subsection I of 6.31.2.13 NMAC.

(6) If not otherwise governed by this rule, the department will determine which school district is responsible for the cost of educating a qualified student in need of special education who has been placed in a private school or facility outside the qualified student's resident school district in accordance with the following procedures.

(a) The receiving school district must notify the SEB of the department in writing no later than thirty (30) days after the receiving school district receives notice of the placement. The notice, as described on the department's website, must include: name of student, date of birth of student, date of placement,

information regarding the qualified student's resident school district, documentation of placement, including student's IEP, cost of placement, and any other information deemed relevant by the SEB. The receiving school district must provide a copy of the notice to the district identified as the student's resident district.

(b) The district identified as the student's resident district may provide any additional information it deems relevant. Such additional information must be provided no later than 15 days after the resident district receives its copy of the notice described in Subparagraph (a) of this paragraph.

(c) No later than 60 days after its receipt of the notice described in Subparagraph (a) of this paragraph, the SEB will issue its determination as to which school district is responsible for the cost of educating the student, together with the amount of any reasonable reimbursement owed to the receiving school district. The SEB may extend the 60-day timeline for good cause.

(7) The department will assign a unique student identifier for school-age persons who have service plans, including those who are not residents of the state but who are attending private residential treatment facilities in the state.

(8) Children schooled at home. The South Valley Preparatory School shall locate, evaluate and determine the eligibility of children with disabilities who are schooled at home pursuant to §§ 22-2-2(H) NMSA 1978.

[6.31.2.11 NMAC - Rp, 6.31.2.11 NMAC, A, 12/31/09]

IV. PRIVATE SCHOOLS: ENROLLED BY PARENT - WHEN FAPE IS AT ISSUE

§300.148 Placement of children by parents if FAPE is at issue.

(a) General. This part does not require the LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the public agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§300.131 through 300.144.

(b) Disagreements about FAPE. Disagreements between the parents and the public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§300.504 through 300.520. *(See Section 2 – Procedural Safeguards).*

(c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of the public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the public agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the public agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the New Mexico standards that apply to education provided by the SEA and LEAs.

(d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied--

(1) If--

(i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;

(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in §300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement--

(1) Must not be reduced or denied for failure to provide the notice if--
(i) The school prevented the parent from providing the notice;
(ii) The parents had not received notice, pursuant to §300.504, of the notice requirement in paragraph (d)(1) of this section; or
(iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and
(2) May not, in the discretion of the court or a hearing officer, be reduced or denied for failure to provide this notice if--
(i) The parents are illiterate or cannot write in English; or
(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES
L. Children in private schools or facilities.
(5) Children placed in private schools or facilities by parents when FAPE is at issue. The responsibility of a local educational agency to pay for the cost of education for a child with a disability who is placed in a private school or facility, such as residential treatment centers, day treatment centers, hospitals or mental health institutions, by parents who allege that the South Valley Preparatory School failed to offer FAPE is governed by the requirements of 34 CFR §300.148. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of Subsection I of 6.31.2.13 NMAC. *(See above pages).*

V. PRIVATE SCHOOLS: REFERRED OR PLACED BY THE PUBLIC AGENCY

§300.145 Applicability of §§300.145 through 300.147.
Sections 300.146 through 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

§300.146 Responsibility of State educational agency.
The NMPED ensures that a child with a disability who is placed in or referred to a private school or facility by a public agency--
(a) Is provided special education and related services--
(1) In conformance with an IEP that meets the requirements of §§300.320 through 300.325 *(IEP Chapter 5 of this document)***; and**
(2) At no cost to the parents;
(b) Is provided an education that meets the standards that apply to education provided by the NMPED and districts, including the requirements of this part, except for §300.18 and §300.156(c) *(Personnel qualifications Chapter 8 of this document)***; and**
(c) Has all rights of a child with a disability who is served by the public agency.

§300.147 Implementation by State educational agency. In implementing §300.146, the NMPED must--
(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;
(b) Disseminate copies of applicable standards to each private school and facility to which the public agency has referred or placed a child with a disability; and
(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

VI. CONTRACTING FOR EDUCATIONAL PLACEMENT

A. Private Schools

Authority: NMSA 1978 22-13-8. Special education: private.

L. Children in private schools or facilities.
(1) Children enrolled by parents in private schools or facilities.
(a) Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private schools, including religious schools or facilities, such as residential treatment centers, day treatment centers, hospitals, mental health institutions, other than children with disabilities who are covered under 34 CFR §§300.145 through 300.147.
(b) A school district in which a private school or facility is located shall not be considered the resident school district of a school-age person if residency is based solely on the school-age person's enrollment at the facility and the school-age person would not otherwise be considered a resident of the state.
(c) Each district must locate, identify and evaluate all children with disabilities who are enrolled by their parents in private schools, including religious elementary schools and secondary schools located in the education jurisdiction of the district, in accordance with 34 CFR §§300.131 and 300.111.
(d) Each public agency must develop a "service plan" that describes the special education and related services the district will provide to a parentally placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 34 CFR §300.132 and that is developed and implemented in accordance with 34 CFR §§300.137 through 300.139. The provision applies only to private schools and not to private facilities where an IEP must be in place.
(e) Pursuant to 34 CFR §300.133, each district is obligated to spend a proportionate amount of its federal IDEA Part B funds to assist private school children with disabilities placed in a private school or private facility by a parent who assumes responsibility for such placement. In doing so, each district must use the formula for calculating proportionate amount and annual count of parentally placed private school children with disabilities in accordance with 34 CFR §300.133. The public agency shall not use IDEA funds to benefit private schools as provided in 34 CFR §300.141. The state is not required to distribute state funds for such school-age persons. Furthermore, the Constitution and laws of New Mexico prohibit public agencies from spending state funds to assist private schools or facilities or their students.
(f) No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Pursuant to 34 CFR §300.137, the district must make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities.
(g) Pursuant to 34 CFR §§300.134 and 300.135, districts must ensure timely and meaningful consultation with private school representatives and representatives of parents of parentally-placed private school children with disabilities. If the district fails to engage in meaningful and timely consultation or did not give due consideration to a request from private school officials, private school officials have the right to submit a complaint to the department. The private school official and the district must follow the procedures outlined in 34 CFR §300.136.6.31.2 NMAC.

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(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.

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

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

C. New Mexico School for the Deaf (NMSD)

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

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

D. State-Supported Educational Programs

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

J. Children in state-supported educational programs.
  (1) Children placed or referred by other public agencies.
    (a) Applicability. The rules in this Paragraph (1) of Subsection J apply to children with disabilities who are being considered for placement in a state-supported educational program or facility by another public agency as a means of providing special education and related services.
    (b) Responsibility. The public agency shall ensure that a child with a disability who is being considered for placement in a state-supported educational program by another public agency has all the rights of a

child with a disability who is served by any other public agency, including being provided special education and related services:
(i) in conformance with an IEP;
(ii) at no cost to the child's parents; and
(iii) at a school or facility that is accredited by the department or licensed by the New Mexico department of health.

(c) Service delivery. With informed parent consent pursuant to 34 CFR §300.300 and Subsection F of 6.31.2.13 NMAC, and pursuant to the procedures in 34 CFR §300.304 and Subsection D of 6.31.2.10 NMAC, the state-supported program may conduct such additional evaluations and gather such additional information as it considers necessary to assist the IEP Team in making the placement decision. The referring public agency and the receiving state-supported educational program shall be jointly responsible for developing IEPs and ensuring that the child receives a free appropriate public education.

(d) Joint IEPs and interagency agreements. Responsibility for services for children placed in or referred to state-supported educational programs shall be defined by a jointly agreed upon IEP or other written agreement between the referring public agency and the state-supported program.

(e) Annual review. At least annually, the referring public agency, the state-supported educational program and the parent shall jointly review the child's IEP and revise it as the joint IEP Team deems appropriate.

(2) Children enrolled in state-supported educational programs by parents or other public authorities. A state-supported educational program that accepts a child with a disability at the request of a parent or upon the request or order of a noneducational public authority, and without appropriate participation by the public agency that has primary responsibility for serving the child, assumes all responsibility for ensuring the provision of FAPE. The child's LEA or another public agency with educational jurisdiction may agree to share the responsibility pursuant to a joint IEP or other written agreement between the state-supported program, the other agency and, if appropriate, the parent.

E. Residential Placements / RTC

§300.104 Residential placement.
If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

Authority: 6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

B. (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.

VII. GIFTED PROGRAMS

Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN

F. Applicability of rules to gifted children.

(1) All definitions, policies, procedures, assurances, procedural safeguards and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the educational jurisdiction of each local school district, including children in charter schools within the district, except:

(a) the requirements of 6.31.2.8 NMAC through 6.31.2.10 NMAC

(b) Subsections J, K and L of 6.31.2.11 NMAC regarding child find, evaluations and services for private school children with disabilities, children with disabilities in state-supported educational programs, children with disabilities in detention and correctional facilities and children with disabilities who are schooled at home;

(c) the requirements of 34 CFR §§300.530-300.536, Subsection I of 6.31.2.13 NMAC and 6.11.2.11 NMAC regarding disciplinary changes of placement for children with disabilities; and

(d) the requirements of 34 CFR §§300.43, 300.320(b) and 6.31.2.11(G)(2) regarding transition planning. Students identified as gifted must meet the requirements at Subsection B of 22-13-1.1 NMSA 1978, which is the next step for students without disabilities.

(2) Assuming appropriate evaluations, a child may properly be determined to be both gifted and a child with a disability and be entitled to a free appropriate public education for both reasons. The rules in this section 6.31.2.12 NMAC apply only to gifted children.

(3) Nothing in these rules shall preclude a school district or a charter school within a district from offering additional gifted programs for children who fail to meet the eligibility criteria. However, the NMPED shall only provide funds under Section 22-8-21 NMSA 1978 for department-approved gifted programs for those students who meet the established criteria.

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

OR

The South Valley Preparatory School ***does not offer*** *additional gifted programs for children who fail to meet the eligibility criteria, as described in sections 3.-Evaluation and 4.-Gifted Students. The NMPED only provides funds under Section 22-8-21 NMSA 1978 for department-approved gifted programs for those students who meet the established criteria.*

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

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

Guiding Principles from NAGC and Minimum Standards

1. Rather than any single gifted program, a continuum of programming services must exist for gifted learners.
   1.0M Gifted programming services must be accessible to all gifted learners.

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

B. Recommendations from:

- Council for Exceptional Children (CEC) Regarding Design Standards For Gifted Programs
- National Association Of Gifted Children (NAGC) Regarding Program Evaluation
- National Association Of Gifted Children (NAGC) Regarding Program Administration Or Management

For more information see the Technical Assistance and Training Document for Gifted Education at the NMPED website: http://www.ped.state.nm.us/seo/gifted/gifted.pdf

C. Special Education Service Delivery Models Least Restrictive Environment

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

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

SELF-CONTAINED

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

PULLOUT PROGRAMS-RESOURCE ROOM

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

GIFTED EDUCATION SEMINARS

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

RESOURCE CENTERS

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

D. General Education and Other Service Delivery Models Ability Grouping

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

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

E. Enrichment

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

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

F. Acceleration

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

- Early Entrance To School
- Grade Skipping
- Multi-Age Level Classes
- Telescoping/Compacting
- College Course Work

- Early Admission To College
- Advanced Placement Program (Ap)
- Accelerated Classes Outside The School Day

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

Guiding Principles (social/emotional development) from NAGC:

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

Minimum Standards relating to the Guiding Principles

1.0M Gifted Learners, because of their unique socio-emotional development, must be provided guidance and counseling services by a counselor who is familiar with the characteristics and socio-emotional needs of gifted learners.

2.0M Gifted learners must be provided career guidance consistent with their unique strengths.

3.0M Gifted learners who are placed at-risk must have special attention, counseling, and support to help them realize their full potential.

4.0M Gifted learners must be provided affective curriculum as part of differentiated curriculum and instructional services.

5.0M Gifted students who are underachieving must not be exited from gifted programs because of related problems.

VIII. OTHER INSTRUCTIONAL PROGRAMS/SERVICE DELIVERY

§300.110 Program options.

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

A. Adapted Physical Education

§300.108 Physical education.

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

(a) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide PE to children without disabilities in the same grades.

(b) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless--

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's IEP.

(c) Special physical education. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

(d) Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.

Physical Education services, specially designed where necessary, will be provided as an integral part of the educational program of each student with disabilities. The IEP Team should consider three options when making

decisions about the physical education needs of students with disabilities. These decisions must be based on a special physical education evaluation.

1. *The special PE evaluation will provide the IEP Team with the following information:*
   a. *identification of student's problems,*
   b. *identification of areas of competencies,*
   c. *documentation of the student's need for a special physical education program.*
2. *Regular Physical Education with No Modifications or Accommodations*
   NOTE: A special physical education evaluation is not necessary when the student with disabilities can participate in regular physical education with no modifications.
3. *Regular Education With Modifications or Accommodations*
   Regular PE should be considered when modifications would make it possible for the student with disabilities to be successful in a regular physical education program. The specific modifications must be described in the student's IEP. It would be the responsibility of the special education teacher to assist the regular physical education teacher with modifications for the student and to monitor the progress of the student.
4. *Special Physical Education*
   a. *A special physical education program with IEP objectives should be provided when the physical education evaluation determines that the student cannot be successful in a regular physical education class with modifications. When the IEP Team has made the recommendation and the arrangements are specified in the student's IEP, physical education for the students with disabilities may be provided by the following personnel:*
      1. *special education instructional or related service personnel who have the necessary skills and knowledge;*
      2. *physical education teacher;*
      3. *occupational therapist;*
      4. *physical therapist;*
      5. *occupational therapy assistant or physical therapy assistant working under supervision in accordance with the standards of their profession.*
   b. *When these services are provided by special education personnel, the public agency must document that they have the necessary skills and knowledge. Documentation may include, but not be limited to, in-service records, evidence of attendance at seminars or workshops, and/or transcripts of college courses.*
   c. *If specially designed physical education is prescribed in a student's IEP, the public agency will provide the services directly or make arrangements for those services to be provided through other public or private programs.*
   d. *If a public agency enrolls a student with a disability into a facility, the public agency ensures that the student receives appropriate physical education services.*

B. Behavior Improvement Classes

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

C. Early Childhood Intervention (ECI) – birth to 3 years *(see also Chapter 1.- Child Find)*

The public agency will work closely with the FIT program to provide services in the Least Restrictive Environment for these children. All federal and state requirements will be followed as outlined in previous sections.

D. Homebound Instructional Program

The public agency provides homebound instruction for students who are unable to attend school because of health/ medical reasons. These special education students must also have a Full and Individual Evaluation and are due all procedural safeguards.

1. *It is the responsibility of the IEP Team to determine:*

a. the appropriate instructional areas for special education students receiving homebound instruction;
b. modifications of the student's schedule.
The general classroom teacher on the student's home campus determines academic course work for the homebound program.

2. *The IEP Team must receive the following documentation:*
   *a. student will be unable to attend the regular school program for a **minimum** of **four** weeks;*
   b. a written medical report from the physician stating the length of time homebound service may be needed based on the medical condition. Duration of service can only be extended as indicated by the physician.
3. *It is important for the IEP Team to stress to the parents that an adult must be present in the home when a homebound teacher is providing instruction.*
4. *Dismissal procedures for homebound students are outlined in the IEP Team meeting that initiates homebound instruction. A homebound student will return to school:*
   a. when the medical release from the physician indicates it is appropriate or
   b. when the medical report from the physician expires.

Please see the STAR (Student / Teacher Accountability Reporting System) manual for location code and other detailed information on Homebound Services for Students with Chronic Illness/Acute Health Problems.

E. Home Schooled Students

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

L. Children in private schools
   (8) Children schooled at home. The public agency shall locate, evaluate and determine the eligibility of children with disabilities who are schooled at home pursuant to §§ 22-2-2(H) NMSA 1978. [6.31.2.11 NMAC - Rp, 6.31.2.11 NMAC, A, 12/31/09]

Authority: NMSA 1978 § 22-2-2(H) Department, general duties.

The NMPED shall:

H. enforce requirements for home schools. Upon finding that a home school is not in compliance with law, the NMPED may order that a student attend a public school or a private school;
   If the public agency becomes aware of a home school that is not in compliance with New Mexico requirements, the public agency administration will inform the NMPED.

F. Hospital Classes

This setting provides special education instruction in a classroom within a hospital facility, or in a residential care and treatment facility. Please see the STAR (Student/Teacher Accountability Reporting System) manual for location code and other detailed information. For more information, see II. Service Levels and Settings in Chapter 6. – LRE.

G. Preschool Program for Children with Disabilities (PPCD)

The Preschool Program for Children with Disabilities, ages three through five, is offered on selected elementary school campuses. Instruction is based on an individual education plan that is determined after evaluation has been completed. There may be several instructional personnel working together for the benefit of the student. These staff members may include, but are not limited to, a special education teacher, special education paraprofessional, educational diagnostician, speech pathologist, nurse, occupational and/or physical therapist. A student's placement in a PPCD classroom for implementation of an IEP is based on evaluation, eligibility and the student's IEP goals and objectives.

H. Speech Therapy

The speech/language pathologist utilizes a service delivery system that has a range of services from least to most restrictive. An important component of this model is the option of providing service in the regular classroom

through collaboration with the general education teacher. (Speech/language pathologist should be encouraged to implement this option when appropriate for students.)

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

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

I. Vocational Class/Program

The Vocational Class is a special education program that is offered on the high school campus. This program is designed for students with disabilities who desire vocational training, and it may be used in conjunction with the student's individual transition plan only after the public agency's regular career and technology classes have been considered and determined to be inappropriate for the student. The goals of the vocational program include on-the-job training and regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP.

Employment opportunities and training are based on a vocational evaluation, student needs and abilities, teacher recommendations and student/parental preference.

Admission to the Vocational Program is approved by the IEP Team.

New Mexico Public Education Department
Special Education Bureau

South Valley Preparatory School
POLICIES AND PROCEDURES FOR THE PROVISION OF SPECIAL EDUCATION SERVICES FOR STUDENTS WITH DISABILITIES AND GIFTED STUDENTS

Chapter 7. - DISCIPLINE / BEHAVIOR

Chapter 7. - DISCIPLINE/BEHAVIOR
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Chapter 7. - DISCIPLINE/BEHAVIOR

I. DISCIPLINE/BEHAVIOR

A. Code of Conduct and General Provisions

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

Authority: §300.530 Authority of school personnel.

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

Authority: NMAC §6.11.2.8 GENERAL PROVISIONS:

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

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

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

Authority: NMAC §6.11.2.10 ENFORCING RULES OF CONDUCT:

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

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

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

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

Authority: NMAC §6.31.2.11 POSITIVE BEHAVIOR SUPPORTS:

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

B. Corporal Punishment

22-5-4.3. SCHOOL DISCIPLINE POLICIES

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

The [district's] local school board policy allows corporal punishment. OR
The [district's] local school board policy does not allow corporal punishment.

II. DEFINITIONS

Authority: NMAC §6.11.2.7 DEFINITIONS:

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

J. "Immediate removal" means the removal of a student from school for one school day or less under emergency conditions and without a prior hearing.
K. "In-school suspension" means suspending a student from one or more regular classes while requiring the student to spend the time in a designated area at the same school or elsewhere.
L. "Legal limits" include the requirements of the federal and state constitutions and governing statutes, standards and regulations, and also include the fundamental common-law requirement that rules of student conduct be reasonable exercises of the schools' authority in pursuance of legitimate educational and related functions. There are special limitations arising from constitutional guarantees of protected free speech and expression which must be balanced against the schools need to foster an educational atmosphere free from undue disruptions to appropriate discipline.
M. "Long-term suspension" means the removal of a student from school for a specified time exceeding either ten (10) school days or any lesser period a local school board may set as a limit on temporary suspension.
N. "Parent" means the natural parent, a guardian or other person or entity having custody and control of a student who is subject to the Compulsory School Attendance Law, Section 22-12-1 et seq. NMSA 1978, or the student if (s)he is not subject to compulsory attendance.
O. "Public school" means the campus of and any building, facility, vehicle or other item of property owned, operated, controlled by or in the possession of a local school district. For purposes of student discipline, the term also includes any non-school premises being used for school-sponsored activities.
P. "Refusal to cooperate with school personnel" means a student's willful refusal to obey the lawful instructions or orders of school personnel whose responsibilities include supervision of students.
Q. "Refusal to identify self" means a person's willful refusal, upon request from school personnel known or identified as such to the person, to identify himself or herself accurately.
R. "Review authority" is a person or group authorized by the local board to review a disciplinarian's final decision to impose a long-term suspension or expulsion.
S. "Sexual harassment', regarding students, means unwelcome or unwanted conduct of a sexual nature (verbal, non-verbal or physical) when:
   (1) submission to such conduct is made either explicitly or implicitly a term or condition of the advancement of a student in school programs or activities;
   (2) submission to or rejection of such conduct by a student is used as the basis for decisions/opportunities affecting the student;
   (3) such conduct substantially interferes with a student's learning or creates an intimidating, hostile or offensive learning environment.
T. "School personnel" means all members of the staff, faculty and administration employed by the local school board. The term includes school security officers, school bus drivers and their aides, and also authorized agents of the schools, such as volunteers or chaperons, whose responsibilities include supervision of students.
U. "Student" means a person who is enrolled in one or more classes at a public school or a person who was a student during the previous school year and is participating in a school sponsored activity connected with his or her prior status as a student.
V. "Temporary suspension" means the removal of a student from school for a specified period of 10 school days or less after a rudimentary hearing.
W. "Weapon" as set forth in Section 22-5-4.7 NMSA 1978 means:
   (1) any firearm that is designed to, may readily be converted to or will expel a projectile by the action of an explosion; and
   (2) any destructive device that is an explosive or incendiary device, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter-ounce, mine or similar device.
   [08-15-97; 6.11.2.7 NMAC - Rn, 6 NMAC 1.4.7, 11-30-00]

III. CHANGE OF PLACEMENT DECISIONS – Change of Placement Analysis

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

Change of Placement Analysis

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

(a) Count the days of disciplinary removal from the student's current educational placement.
   1. Portions of a school day from which a child had been suspended are included in determining whether the child has been removed for more than 10 cumulative school days or subjected to a change of placement.
   2. An in-school suspension would not be considered a part of the days of suspension as long as the child is afforded the opportunity to:
      a. Appropriately progress in the general curriculum,
      b. Continue to receive the services specified on his or her IEP, and
      c. Continue to participate with nondisabled children to the extent he or she would have in their current placement
   3. Whether a bus suspension would count as a day of suspension would depend on whether the bus transportation is a part of the child's IEP.
      a. If the bus transportation is a part of the child's IEP, a bus suspension would be treated as a suspension unless the South Valley Preparatory School provides the bus service in some other way.
      b. If the bus transportation is not a part of the child's IEP, a bus suspension would not be considered a suspension.

(b) Determine whether the disciplinary removal(s) constitute(s) a change of placement. A disciplinary change of placement occurs if:
   1. The removal is for more than 10 consecutive school days, or
   2. The student is subject to a series of removals that constitute a pattern because they accumulate to more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed and the proximity of the removals to one another.

A. Less than 10 School Day Removals

(a) The South Valley Preparatory School is not required to provide services for removal of a student with a disability who has been removed from the current placement for 10 school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed.

(b) The South Valley Preparatory School may choose to provide the IEP services to the student with disabilities during any short term removal to ISS in order to prevent counting those days of removal toward the 10 cumulative days.

(c) In the case of a student whose behavior impedes his or her learning or that of others, convene an IEP Team meeting, if appropriate, to consider completing an FBA/BIP, including positive behavior interventions, strategies, and supports to address that behavior.

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

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

B. More than 10 School Day Removals

1. Consecutive or Cumulative Days – "Pattern"

§300.536 Change of placement because of disciplinary removals.

(a) For purposes of removals of a child with a disability from the child's current educational placement under §§300.530 through 300.535, a change of placement occurs if--

(1) The removal is for more than 10 consecutive school days; or
(2) The child has been subjected to a series of removals that constitute a pattern--
(i) Because the series of removals total more than 10 school days in a school year;
(ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals, and
(iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

(b) (1) The LEA determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
(2) This determination is subject to review through due process and judicial proceedings.

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

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

2. Manifestation Determination

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

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

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

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

(1) Either--

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

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

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

(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--

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

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

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

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

A. General. The following rules shall apply when a student with a disability under IDEA violates a rule of conduct as set forth in this rule which may result in:
(1) long-term suspension or expulsion; or
(2) any other disciplinary change of the student's current educational placement as specified in the federal regulations implementing IDEA at 34 CFR §§300.530 through 300.536 and these or other department rules and standards.

B. When behavior **is not** a manifestation of disability. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to Subsection C of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in Subsection I of this section.

C. Manifestation determination.
(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a rule of student conduct, the administrative authority, the parent and relevant members of the child's IEP team (as determined by the parent and the administrative authority) must review all relevant information in the student's file, including the child's IEP, any teacher observations and any relevant information provided by the parents to determine:
(a) if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or
(b) if the conduct in question was the direct result of the administrative authority's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the administrative authority, the parent and relevant members of the child's IEP team determine that a condition in either Subparagraph (a) or (b) of Paragraph (1) of Subsection C of 6.11.2.11 NMAC was met.
(3) If the administrative authority, the parent and relevant members of the child's IEP Team determine the condition described in Subparagraph (b) of Paragraph (1) of Subsection C of 6.11.2.11 NMAC was met, the administrative authority must take immediate steps to remedy those deficiencies.

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

E. Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child's behavior involves one of the special circumstances listed in 34 CFR §300.530(g). For purposes of this subsection, the definitions provided in 34 CFR §300.530(i) shall apply.

F. Determination of setting. The student's IEP team determines the **interim alternative educational** setting for services under Subsections B and E of this section.

G. Change of placement because of disciplinary removals. For purposes of removals of a student with a disability from the child's current educational placement under 6.11.2.11 and 6.11.2.12 NMAC, a change of placement occurs if the conditions provided in 34 CFR §300.536 are met. *(see page 7 of this Chapter)*

H. Parental notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the administrative authority must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR §300.504.

I. Services. A student with a disability who is removed from the student's current placement pursuant to this section must continue to receive special education and related services as provided in 34 CFR §300.530(d).

J. see Appeals in this Chapter.

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

§300.324 Development, review, and revision of IEP

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

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

§300.530 Authority of school personnel.

(d) Services.

(1) A child with a disability who is removed from the child's current placement pursuant to paragraph (c) or (g) of this section must--

(i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(2) [for all of (d) Services. - 2,3,4,5 - *See V.- FAPE for Removed Students*]

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

F. Behavioral management and discipline.

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

(2) See suspensions, expulsions page 12 of this Chapter.

(3) FAPE for children removed from current placement for more than 10 school days in a school year. FAPE shall be provided in compliance with all applicable requirements of 34 CFR §300.530(d) and these or other department rules and standards for all children with disabilities who have been removed from their current educational placements for disciplinary reasons for more than 10 school days during a school year, as defined in 34 CFR §300.536.

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

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

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

1. *target the specific behavior that is impeding learning by clearly defining and describing the observable behavior(s).*
2. *obtain information from a variety of sources, including but not limited to: discussions, interviews, records, and direct observation. Also, use any standardized instruments, if available. Determine duration, frequency, and intensity of any patterns of behavior.*
3. *identify and describe any antecedents - events that logically served as the stimulus for the behavior.*
4. *identify and describe any consequences - this is the action that is following and causes the student to maintain specific behavior - determine effectiveness of each.*
5. *determine the purpose of the student's behavior - usually to get something, avoid or escape something, or to control the antecedent event.*
6. *describe the relationship of the behavior to the event and provide possible variables that can be changed in the setting or the situation.*
7. *develop the behavioral intervention plan and accommodations (BIP). Teach alternatives to the behavior and include positive reinforcement along with consequences.*
8. *Implement consistently, allow enough time for the behavioral intervention plan and accommodations to work, and review as needed.*

C. Placement made by IEP Committee

Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

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

IV. REMOVALS OF STUDENTS WITH DISABILITIES

A. ISS – In School Suspension or Detention

Authority: NMAC §6.11.2.10 ENFORCING RULES OF CONDUCT:

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

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

E. In-school suspension.
   (1) In-school suspension may be imposed with or without further restriction of student privileges. Any student who is placed in an in-school suspension which exceeds ten (10) school days must be provided with an instructional program that meets both state and local educational requirements. Student privileges, however, may be restricted for longer than ten (10) school days.
   (2) In-school suspensions of any length shall be accomplished according to the procedures for a temporary suspension as set forth above. A local school board may limit the length of in-school suspensions which

may be accomplished under temporary suspension procedures. No in-school suspension student shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom.

F. Detention.
   (1) Detention may be imposed in connection with in-school suspension, but is distinct from in-school suspension in that it does not entail removing the student from any of his or her regular classes.
   (2) The authority of the schools to supervise and control the conduct of students includes the authority to impose reasonable periods of detention during the day or outside normal school hours as a disciplinary measure. No detained student shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom. Reasonable periods of detention may be imposed in accordance with the procedures for temporary suspension.

- *The local campus administrator is responsible for maintaining records on student discipline. Students with disabilities must be monitored by the local campus for total number of removals in order to follow state and federal disciplinary requirements outlined in this section.*
- *Follow section III. Change of Placement requirements.*

B. IAES - (Interim Alternative Educational Setting) Removals for Drugs, Weapons, Serious Bodily Injury

45 School Day Rule *(In three specific situations listed below §300.530 (g), the administrator may remove to IAES regardless of the Manifestation Determination decision.)*

§300.530 Authority of school personnel.

(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--
   (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the NMPED or the LEA;
   (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the NMPED or the LEA; or
   (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the NMPED or the LEA.

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

(i) Definitions. For purposes of this section, the following definitions apply:
   (1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 USC 812(c)).
   (2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
   (3) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.
   (4) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (Authority: 20 USC 1415(k)(1) and (7))

§300.531 Determination of setting.
The child's IEP Team determines the interim alternative educational setting for services under §300.530(c), (d)(5) and (g) .

Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

H. Parental notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the administrative authority must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR §300.504.

I. Services. A student with a disability who is removed from the student's current placement pursuant to this section must continue to receive special education and related services, as provided in 34 CFR §300.530(d).

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

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

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

C. Immediate Removal

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

C. Immediate removal: Students whose presence poses a continuing danger to persons or property or an ongoing threat of interfering with the educational process may be immediately removed from school, subject to the following rules.
   (1) A rudimentary hearing, as required for temporary suspensions, shall follow as soon as possible.
   (2) Students shall be reinstated after no more than one school day unless within that time a temporary suspension is also imposed after the required rudimentary hearing. In such circumstances, a single hearing will support both the immediate removal and a temporary suspension imposed in connection with the same incident(s).
   (3) The school shall exert reasonable efforts to inform the student's parent of the charges against the student and the action taken as soon as practicable. If the school has not communicated with the parent by telephone or in person by the end of the school day following the immediate removal, the school shall on that day mail a written notice with the required information to the parent's address of record.

D. Temporary suspension.
   (1) A local school board may limit temporary suspensions to periods shorter than ten (10) school days.
   (2) A student facing temporary suspension shall first be informed of the charges against him or her and, if (s)he denies them, shall be told what evidence supports the charge(s) and be given an opportunity to present his or her version of the facts. The following rules apply.
      (a) The hearing may be an informal discussion and may follow immediately after the notice of the charges is given.
      (b) Unless the administrative authority decides a delay is essential to permit a fuller exploration of the facts, this discussion may take place and a temporary suspension may be imposed within minutes after the alleged misconduct has occurred.
      (c) A student who denies a charge of misconduct shall be told what act(s) he or she is accused of committing, shall be given an explanation of the evidence supporting the accusation(s) and shall then be given the opportunity to explain his or her version of the facts. The administrative authority is not required to divulge the identity of informants, although the administrator should not withhold such information without good cause. The administrator is required to disclose the substance of all evidence on which he or she proposes to base a decision in the matter.
      (d) The administrative authority is not required to allow the student to secure counsel, to confront or cross-examine witnesses supporting the charge(s), or to call witnesses to verify the student's version of the incident, but none of these is prohibited.
      (e) The school shall exert reasonable efforts to inform the student's parent of the charges against the student and their possible or actual consequence as soon as practicable. If the school has not

communicated with the parent by telephone or in person by the end of the first full day of suspension, the school shall on that day mail a written notice with the required information to the parent's address of record.

D. Suspension - Expulsion

§300.101 Free appropriate public education (FAPE).

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

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

(a) General. The NMPED must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--

(1) Among LEAs in the State; or

(2) Compared to the rates for nondisabled children within those agencies.

(b) Review and revision of policies. If the discrepancies described in paragraph (a) of this section are occurring, the NMPED must review and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

The South Valley Preparatory School will follow the IDEA and NMAC requirements for suspension and expulsion of students with disabilities.

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

F. Behavioral management and discipline

(2) Suspensions, expulsions and disciplinary changes of placement. Suspensions, expulsions and other disciplinary changes of placement for children with disabilities shall be carried out in compliance with all applicable requirements of 34 CFR §§300.530-300.536, and these or other department rules and standards, including particularly §6.11.2.11 NMAC, governing interim disciplinary placements and long-term suspensions or expulsions of students with disabilities.

(3) FAPE for children removed from current placement for more than 10 school days in a school year. FAPE shall be provided in compliance with all applicable requirements of 34 CFR §300.530(d) and these or other department rules and standards for all children with disabilities who have been removed from their current educational placements for disciplinary reasons for more than 10 school days during a school year, as defined in 34 CFR §300.536.

(4) The South Valley Preparatory School must keep an accurate accounting of suspension and expulsion rates for children with disabilities as compared to children without disabilities to ensure that children with disabilities are not being expelled or suspended at a significantly higher rate than children without disabilities.

The South Valley Preparatory School campus principal is ultimately responsible for an accurate accounting. The principal may collaborate with the assigned special education lead teacher or diagnostician to keep records.

Authority: NMAC §6.11.2.10 ENFORCING RULES OF CONDUCT:

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

G. Discipline of students with disabilities: Students with disabilities are not immune from school disciplinary processes, nor are they entitled to remain in a particular educational program when their behavior substantially impairs the education of other children in the program. However, the South Valley Preparatory School is required by state law and regulations to meet the individual educational needs of students with disabilities to the extent that current educational expertise permits. The South Valley Preparatory School personnel may consider

any unique circumstances on a case by case basis when determining whether a change of placement, consistent with the other requirements of §6.11.2.11 NMAC, is appropriate for a student with a disability who violates a code of conduct, as provided in 34 CFR §300.530.

(1) Long-term suspensions or expulsions of students with disabilities shall be governed by the procedures set forth in §6.11.2.11 NMAC below.

(2) Temporary suspensions of students with disabilities may be imposed in accordance with the normal procedures prescribed in Subsection D of Section 6.11.2.12 NMAC, below, provided that the student is returned to the same educational placement after the temporary suspension and unless a temporary suspension is prohibited under the provisions of Subsection G, Paragraph (3) of 6.11.2.10 NMAC below.

(3) Program prescriptions. A student with a disability's individualized education program (IEP), under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), need not affirmatively authorize disciplinary actions which are not otherwise in conflict with [the regulation] this rule. However, the IEP [committee] team may prescribe or prohibit specified disciplinary measures for an individual student with a disability by including appropriate provisions in the student's IEP. Administrative authorities shall adhere to any such provisions contained in a student with a disability's IEP, except that an IEP [committee] team may not prohibit the initiation of proceedings for long-term suspension or expulsion which are conducted in accordance with this [regulation] rule.

(4) Immediate removal. Immediate removal of students with disabilities may be done in accordance with the procedures of Subsection C of Section 6.11.2.12 NMAC below.

(5) A student who has not been determined to be eligible for special education and related services under 6.31.2 NMAC and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in this subsection if the conditions set forth in 34 CFR §300.534 have been met.

(6) Referral to and action by law enforcement and judicial authorities.

(a) Nothing in these rules of conduct prohibits an administrative authority from reporting a crime committed by a student with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

(b) Transmittal of records.

(i) An administrative authority reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted, for consideration by the appropriate authorities, to whom the administrative authority reports the crime.

(ii) An administrative authority reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

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

Authority: NMAC 6.11.2.12 PROCEDURE FOR DETENTIONS, SUSPENSIONS AND EXPULSIONS: The authority of the state and the local school board to prescribe and enforce standards of conduct for South Valley Preparatory School students must be exercised consistently with constitutional safeguards of individual student rights. The right to a public education is not absolute; it may be taken away, temporarily or permanently, for violations of school rules. It is a property right which may only be denied where school authorities have adhered to the minimum procedural safeguards required to afford the student due process of law. This section prescribes minimum requirements for detention, in school suspension and temporary, long-term or permanent removal of students from the South Valley Preparatory School . The local school board may adopt procedures which afford students more protection than this [regulation] rule requires. The procedures in this section apply only to disciplinary detentions, suspensions and expulsions. They do not apply to disenrollment of students who fail to meet immunization, age, residence or other requirements for valid enrollment, nor to the removal from school membership reports of students who have been absent from school for ten (10) consecutive school days in accordance with Subsection B of Section 22-8-2 NMSA 1978. Nothing in this section should be construed as prohibiting school boards or administrative authorities from involving other school staff, students and members of the community in the enforcement of rules of student conduct to the extent they believe is appropriate.

A. Post-suspension placement of students. Any student suspended from school shall be delivered directly by a school official to the student's parent(s), legal guardian or an adult designated by the parent(s) or the legal guardian, or kept on school grounds until the usual end of the school day.

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

E. Detention and Correctional Facilities

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

K. Children in detention and correctional facilities.

(1) If a child with a disability is placed in a juvenile or adult detention or correctional facility, the facility must provide the child with FAPE after the facility learns that the child had been eligible for special education and related services in the last educational placement prior to incarceration or otherwise determines that the child is eligible.

(2) Juvenile or adult detention or correctional facilities must take reasonable steps to promptly obtain needed educational records from a child's last known school or educational facility. Record requests and transfers are subject to the regulations under the Family Educational Rights and Privacy Act (FERPA) at 34 CFR Part 99 and the provisions of Paragraph (3) of Subsection L of 6.31.2.13 NMAC. The educational program of a juvenile or adult detention or correctional facility is an educational agency for purposes of the FERPA.

(a) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the records request from the juvenile correctional facilities.

(b) To assist juvenile correctional facilities in providing FAPE for children entering the facility during the summer months, districts must provide summer emergency contact information of a person who has access to special education records, to the state's superintendent of juvenile justice services division of the children, youth and family department.

(3) A detention or correctional facility that is unable to obtain adequate records from other agencies, the child or the parents within a reasonable time after the child arrives at the facility, shall evaluate the child who is known or suspected to be a child with a disability as provided in Subsection F of 6.31.2.10 NMAC and develop an IEP for an eligible child without undue delay.

(4) FAPE for eligible students in juvenile or adult detention or correctional facilities shall be made available in programs that are suited to the security requirements of each facility and eligible student. The provisions of 34 CFR §300.324(d) apply to IEPs for students with disabilities who are convicted as adults under state law and incarcerated in adult prisons.

(5) A state-supported educational program that serves a juvenile or adult detention or correctional facility shall be responsible for ensuring that FAPE is provided to eligible children in that facility.

(6) The local school district in which a detention or correctional facility is located (that is not served by a state-supported educational program) shall be responsible for ensuring that FAPE is made available to eligible children in that facility. A child's LEA of residence or another public agency with educational jurisdiction may agree to share the responsibility pursuant to a written agreement between or among the agencies involved.

(7) Children with disabilities who are detained or incarcerated in detention or correctional facilities are wards of the state and may have surrogate parents appointed pursuant to 34 CFR §300.519 and Subsection J of 6.31.2.13 NMAC to protect their IDEA rights while in state custody.

(8) The public agency that administers the educational program in a juvenile or adult detention or correctional facility shall ensure that surrogate parents are appointed in cases where no parent as defined in 34 CFR §300.30(a) and Paragraph (14) of Subsection B of 6.31.2.7 NMAC is reasonably available or willing to make the educational decisions required for children with disabilities who are housed in that facility.

(9) Children placed in juvenile or adult detention or correctional facilities must be provided learning opportunities and instruction that meet the state standards with benchmarks.

V. SERVICES REQUIRED FOR REMOVED STUDENTS

§300.530 Authority of school personnel.

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

(b) General.

(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536).

(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.

(c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

(d) Services.

(1) A child with a disability who is removed from the child's current placement pursuant to paragraph (c) or (g) of this section must--

(i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5), of this section may be provided in an interim alternative educational setting.

(3) The South Valley Preparatory School is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who has been similarly removed.

(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

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

(e) Manifestation determination.

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

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

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

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

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

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

(1) Either--

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

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

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

(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--

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

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

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

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

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

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

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

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

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

VI. RESTRAINT - TIME-OUT

A. Use of Restraint

The use of physical restraint as a behavioral intervention for students with disabilities in the LEA may be justified in certain instances, but this type of intervention can pose a serious risk to the student, as well as to the person(s) applying the restraint. Therefore, the South Valley Preparatory School provides the following detailed guidance for the appropriate use of physical restraint for students with disabilities in the public agency schools.

Regulatory Requirements

In situations where a student with a disability demonstrates behavior that impedes his or her learning or that of others, the IDEA 2004 at 20 U.S.C. §1414(d)(3)(B)(i) requires the student's Individualized Education Program (IEP) team to consider positive behavioral interventions, strategies, and supports to address that behavior.

In a case where the student's problematic behavior is severe, persistent, and frequent, the IEP team will develop a Behavioral Intervention Plan (BIP) based on a Functional Behavioral Assessment (FBA) as part of the IEP for that student.

The BIP needs to emphasize positive interventions, strategies, and supports that teach appropriate replacement behaviors. However, an effective BIP must also address and specifically provide for emergency situations where a particular student exhibits aggressive, violent, or dangerous behavior that requires an immediate aversive intervention, such as physical restraint. In that case, physical restraint is designed to:

- protect the student and others from serious injury; or
- safeguard physical property; and
- will be used only in an emergency.

Types of Physical Restraint

The most common forms of physical restraint are **mechanical** restraints and **manual** restraints.

- **Mechanical** restraint involves the use of any device such as a blanket, tape, straps, blindfolds, or tie downs as a method of restricting a student's movement or activity.
- **Manual** restraint (also known as "therapeutic holding") involves one or more people using their bodies to restrict the student's body movement. The purpose of this type of restraint is to allow the student to reestablish self-control and/or maintain safety for others in the environment. The NMPED does not condone the use of **mechanical** restraint of students. However, we recognize that there may be certain instances where **manual** restraint of a student may be necessary, so the remainder of this guidance addresses its appropriate use for students with disabilities.
- We note that escorting a student (touching and/or holding a student without the use of force) is **not** considered a form of physical restraint. Similarly, the use of "time out" is **not** considered a form of physical restraint and guidance on time-out is provided further in this section. We also emphasize that nothing in this procedure would preclude a teacher or other staff member from using reasonable force to protect themselves, students, or other persons from assault or imminent, serious physical harm.

See the State's Technical Assistance Manual: Addressing Student Behavior—A Guide for Educators. This manual is available on the Special Education/Publications link at the NMPED's website at:
http://www.ped.state.nm.us/RtI/dl10/Addressing%20Student%20Behavior%20Guide%202010.pdf

B. Restraint Procedures

Authorization for Physical Restraint

- **In all cases**, the use of physical restraint must be approved by the student's IEP Team, documented in the student's BIP, have the expressed written agreement of the parent or legal guardian, and be addressed in the Lea's Prior Written Notice of Actions Proposed (PWN) provided to parents following an IEP meeting. The IEP Team approves the type of restraint to be used, who is authorized to apply it, the specific setting or conditions under which the use of restraint shall apply, how it will be monitored by other staff, as well as reporting requirements for when restraint is used.
- **In all cases**, a mental health professional (i.e., social worker, counselor, and psychologist) needs to be member of the IEP team if physical restraint is being considered as an intervention. The mental health professional reviews all information about the student and observes the student prior to making recommendations at the IEP meeting about the use of physical restraint in the BIP. A recommendation could include the need for additional evaluative or other information before imposing physical restraint in the student's BIP.
- **In some cases,** the IEP Team may also need to seek approval from the student's medical provider if the use of physical restraint might adversely impact or be in conflict with any medical/physical/mental condition that the student may have or be suspected of having.

Procedures

- **Physical restraint procedures must be performed by trained personnel only.** (See "Staff Training" below.)

- **Restraint may not used as a form of punishment.** Restraint will not be used to force compliance from a student.
- **The IEP team must craft the BIP so as to use a graded system of alternatives for the student's behavior.** In other words, positive interventions are the first methods for addressing unacceptable behavior. A variety of such interventions designed to de-escalate a crisis should be listed in the student's BIP, as well a provision to warn the student that restraint will be used if the target behavior does not stop. Verbal threats or refusal to comply with a staff directive or school rule would not warrant physical restraint unless this is agreed upon in the BIP. Physical restraint is the last resort to protect the student and others from harm. However, its immediate use may be justified if there is imminent, serious danger only.
- **The IEP team needs to establish that other less restrictive interventions have not been effective**. The provision for physical restraint that is in the BIP is only appropriate if less restrictive behavioral management techniques have been tried and documented as not working for the behaviors for which physical restraint will apply.
- **The use of physical restraint must be consistent with the student's IEP and Behavioral Intervention Plan (BIP).** The use of physical restraint is restricted the same way the law restricts the use of other teaching or behavioral interventions methods in general. That is, it is a denial of a Free Appropriate Public Education (FAPE) if the use of physical restraint is inconsistent with the student's IEP and BIP.
- **No form of physical restraint may be used that restricts a student from speaking or breathing.** The restraint must be applied in such a way that it is safe and only reasonable force is used. A responsible third party should monitor the student's status during the restraint procedure to check respiration and skin color, and to see that limbs are not moved out of the normal range of motion. The restraint should be immediately discontinued if the student exhibits any signs of undue physical distress or injury. In addition, the restraint must not be applied any longer than is necessary to protect the student from causing harm to himself or others.
- **Do not restrain the student in front of other students.** If possible, move to another location or clear the setting of other students.

Staff Training

- **Any staff or staff team designated to apply physical restraint must be professionally trained and/or certified in the particular technique being used.** This must happen ***prior to*** any such procedures being used on a student. Staff chosen to be trained to apply physical restraint should be individuals who are physically able to do so and can handle a crisis in a calm manner.
- **The professional training needs to emphasize the use of positive interventions, including verbal de-escalation techniques and other strategies to be attempted prior to using physical restraint.** Resources for this kind of training include, but are not limited to, Positive Behavioral Intervention and Supports (www.pbis.org); Crisis Prevention Institute (www.crisisprevention.com); and The Mandt System **(**www.manmdtsystem.com).

The public agency provides training on the proper techniques and use of restraints using the following system: _____ _____. *This training is provided at least annually to new staff and refresher courses are offered to existing trained staff.*

Recommended Documentation and Reporting

- **Any incident of physical restraint should be immediately reported to the building administrator and be documented.** Include the following in a written report:
  - Name of the student
  - Date and description of the incident that led to the restraints
  - Names and titles of staff member(s) who applied the restraints and monitored it
  - Other interventions tried
  - Type of restraints used
  - Length of time the restraints was applied
  - Any injuries sustained by the student or staff
  - Information about the student's behavior after the restraints and any further action taken by school staff including disciplinary action
- **The student's parents should be informed about the use of the restraint.** Provide a verbal report to parents the same day. This should be followed up by a written report 1–2 days later.

Local policies for physical restraint of students without IEPs should be authorized by the school's Section 504 team, or the Student Assistance Team (SAT), as well as the parents as part of the student's BIP, Section 504 Plan, or SAT Intervention Plan. Protection for students not yet eligible for special education and related services is governed by 20 U.S.C. 1415(k)(5).

C. Use of Time-out Strategies *(excluding Time-out Rooms)*

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

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

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

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

Time-out Continuum of Strategies – Exclusionary:
- **student's removal** from the classroom setting altogether for a brief amount of time in order for the student to regroup in private prior to returning to the classroom setting. May include relocating the student to another classroom or the office.
- **student's removal** from the classroom setting to a time-out room is described in detail in E. and F. below.

D. Time-out Procedures *(excluding Time-Out Rooms)*

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

1. **Evaluation.** Complete an evaluation and review existing data to determine if use of time-out is in direct conflict with the student's psychological or physical health status.
2. **Documentation.** Documentation of possible positive interventions will occur through the IEP process, which includes conducting a Functional Behavior Assessment (FBA) and developing a Behavior Intervention Plan (BIP).
3. **Adequate Notice.** The IEP Team will inform the parent/student how the time-out strategies will be utilized and the projected outcome or purpose of the use of time-out as a positive intervention strategy.
4. **Written permission.** Parent participation in the IEP Team meeting and signing agreement with the use of time-out as a part of a student's BIP and IEP will provide authorization to the LEA to implement the IEP.
5. **Amount of time. The duration of a time-out must be reasonable in light of factors such as student's age, sex, disability, cognitive functioning, and the nature of the student's misbehavior.**

- The IEP Team will consider the student's age, sex, disability, and the nature of his or her behavior in determining the maximum amount of time the student can spend in time-out.
- Best practice dictates that in most cases, the number of minutes a student spends in time-out should typically equal the student's age, but will not exceed a maximum of 10-15 minutes. The maximum amount of time will be listed in the IEP. A time-out is an opportunity for a student to regain his or her composure.
- Do not use timeout as a punishment for disruptive behavior.

6. **How time was spent during time-out.** The IEP will include a written plan that outlines what to do once a teacher places the student in the time-out situation?
7. **Criteria for returning to participation.** Identify and list the specific criteria for returning the student to the routine activities of the classroom. As a matter of best practice, a student will remain in a time-out only until he or she becomes sufficiently self-controlled to rejoin classmates, unless that time exceeds the maximum time allowed in such case the IEP Team will list other strategies.
8. **Staff must directly supervise or monitor the student while he or she is in time-out**. Some students are agitated in these circumstances. Do not discount the possibility of behavior escalating and have a plan.
9. **The LEA will keep accurate records on students placed in time-out.** The records will include the date, time, length of placement, the basis for the placement, and the teacher who made the placement determination. In addition, the records will also indicate the assistance provided to help the student regain composure.
10. **Location of the time-out.** Determine where the time-out will be located in relation to the student's seating area.

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

1. <u>Non-exclusionary time-out</u>:

- *Planned Ignoring: This is the simplest form of Non-exclusionary time-out. Planned ignoring involves the systematic removal of social reinforcement (attention) by the teacher for a specific amount of time. When the student misbehaves, the teacher breaks eye contact, turns away, and stops all social interaction with the student. Planned ignoring assumes that the teacher's social attention is reinforcing. If it is not, then this will not work to decrease the behavior. If planned ignoring is the appropriate response, the teacher should prepare initially for an increase in the behavior before the behavior will decrease.*
- *Head down on desk: This has been used by teachers for a long time. The student is simply told to put his head down on his desk for a short period of time. (timer may be used)*
- *Observation time-out: The student is removed from his/her desk for misbehaving and is usually placed in a desk away from the main classroom activities for a short period of time. The student is allowed/required to observe the classroom discussion/activities, but is not allowed to actively participate. (Use of timer recommended – 5 minutes and may reset once.)*
- *Non-observation time-out (instructional isolation): This is basically the same as observation time-out, except the student is not allowed to observe the classroom activities. Usually, the student is placed in a particular part of the classroom that does not provide for viewing other students. (use of timer recommended – 10 minutes and may reset once)*

2. <u>Exclusionary time-out</u>: The student is removed from the classroom and placed in a separate environment for cooling down and resumption of instructional activities. Clearly, this is more restrictive and other types of time-out should be attempted first.

- *Isolated instruction: This is extended time-out from the classroom. The student is required to complete class work in an isolated area, another classroom, or the office. Caution using the hallway as this could result in a social reward depending on the individual student.*
- *Time-out room described below.*

E. Use of Time-out Rooms

(*If the South Valley Preparatory School does not allow use of time-out rooms, please state this in writing below and delete all other procedures listed in this section.)*

The South Valley Preparatory School has a continuum of time-out strategies available for use with students. The LEA will not resort to student isolation (time-out rooms) as a means of eliminating negative behavior in all instances. Not all behaviors require the student's immediate removal from the classroom and the IEP Team will

make careful, well documented individualized decisions.

The South Valley Preparatory School staff decision to remove a student from regular activity and place him or her in an isolated setting, such as a time-out room, can have significant implications. The following section discusses criteria pertaining to the use of time-out rooms for students with disabilities.

Case Law Related to the Use of Time-out Rooms
The LEA will not remove a student if that removal is not justified before or at the time of placement and is not within reason given the student's age, sex, disability, and the nature of the infraction. An "unreasonable seizure" of a student occurs when he or she is not properly informed of the purpose of the time-out area or the reason for his or her removal from the classroom. Therefore, a student with a disability and his or her parent will be made aware, through the IEP process, of how the time-out room will be utilized and the projected outcome or purpose of the time-out strategies.

Technical Assistance from New Mexico State Fire Marshall's Office
In addition technical assistance from the New Mexico State Fire Marshall's Office. Subsection 5-2.1.5, Chapter 5, Means of Egress of the Life Safety Code (1997 Edition), provides as follows:
Locks, Latches, and Alarm Devices

- Doors shall be arranged to be opened readily from the egress side whenever the building is occupied.
- Locks, if provided, shall not require the use of a key, a tool, or special knowledge or effort for operation from the inside of the building.

Further, the New Mexico State Fire Marshall's Office explicitly stated that all doors (including those to time-out rooms) are to "remain open and accessible at all times." The doors should remain "free and clear of all obstructions in the event of fire or other emergency." Students placed in a time-out room should be able to self evacuate or be assisted in evacuation without delay.

F. Procedures for Use of Time-out Rooms

As a part of the FBA and BIP process, the IEP teams will document the following in order to include time-out rooms as an intervention in a student's IEP:

1. **Evaluation.** Complete an evaluation and review existing data to determine if the student's placement in a time-out room is in direct conflict with the student's psychological or physical health status.
2. **Nature of the misconduct.** The IEP Team will determine if the student's behavior can be addressed through a less intrusive time-out strategy within the classroom setting. The previous section lists time-out strategies that are less restrictive.
3. **Documentation.** Documentation of possible positive interventions will occur through the IEP process, which includes conducting a Functional Behavior Assessment (FBA) and developing a Behavior Intervention Plan (BIP).
4. **Adequate Notice.** The IEP Team will inform the parent/student how the time-out room will be utilized and the projected outcome or purpose of the use of time-out room as a positive intervention strategy.
5. **Written permission.** Parent participation in the IEP Team meeting and signing agreement with the use of time-out rooms as a part of a student's BIP and IEP will provide authorization to the LEA to implement the IEP. In addition, the LEA will obtain parental consent in order to utilize the more restrictive form of time-out which is the time-out rooms.
6. **Amount of time spent out of the classroom in isolation.** The duration of placement in a time-out room must be reasonable in light of factors such as student's age, sex, disability, cognitive functioning, and the nature of the student's misbehavior.
    a. The IEP Team will consider the student's age, sex, disability, and the nature of his or her behavior in determining the maximum amount of time the student can spend in the time-out room.
    b. Best practice dictates that in most cases, the number of minutes a student spends in a time-out room should typically equal the student's age, but will not exceed a maximum of 10-15 minutes. The maximum amount of time will be listed in the IEP. A time-out is an opportunity for a student to regain his or her composure.
    c. Do not use timeout as a punishment for disruptive behavior.
7. **How time was spent during time-out.** The IEP will include a written plan that outlines what to do once a

teacher places the student in the time-out room.

8. **A student placed in a time-out room must be permitted to use the bathroom.** Staff will consider events that preceded the student's behavior (lunch, medications) that may result in the student needing to relieve him or herself.
9. **Criteria for returning to class.** Identify and list the specific criteria for returning the student to the routine activities and the classroom environment. As a matter of best practice, a student will remain in a time-out room only until he or she becomes sufficiently self-controlled to rejoin classmates, unless that time exceeds the maximum time allowed. The IEP Team will list other strategies.
10. **Do not lock a time-out room**. The time-out rooms will remain unlocked and free and clear of obstructions. In the event of a fire or other emergency, occupants will be able to self evacuate or be assisted without delay.
11. **Staff must directly supervise or monitor the student while he or she is in a time-out room or other time-out area**. Some students are agitated in these circumstances. Do not discount the possibility of self-injury even when there is no obvious instrument for inflicting injury in time-out rooms.
12. **The LEA will keep accurate records on students placed in time-out.** The records will include the date, time, length of placement, the basis for the placement, and the teacher who made the placement determination. In addition, the records will also indicate the assistance provided to help the student regain composure. This data collection will enable the school to determine the effectiveness of the more restrictive time-out strategies on improving student behavior.
13. **Location of the time-out room.** Determine where the time-out room is located in relation to the student's classroom? The IEP Team will assure the student's behavior justifies the time it takes to transfer the student to and from the time-out room.
14. **Size of the time-out room.** The LEA assures the time-out room is of adequate size to accommodate the student and the school staff person who is responsible for supervising the student for the duration of his or her placement in the time-out room.
15. **Interior of the time-out room.** The interior of the time-out room will not be indicative of a punitive setting. The environment will enable the student to de-escalate and thereby return to and participate in the classroom setting.
16. **Time out rooms must be designed and constructed in compliance with all SDE, local, and fire code regulations.** The time-out room is a safe setting for both the student and the staff person supervising him or her. The LEA assures the time-out room meets all state, local, and fire code requirements. Time-out rooms will have adequate heating, lighting, and ventilation and be free of any dangerous objects.

It is important to note that Section 504 governs the imposition of time-out for students with disabilities. A district's time-out policy should follow the same guidelines and procedures for both disabled and non-disabled students.

VII. DUE PROCESS REQUIREMENTS

A. Procedural Safeguards

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

B. "Stay Put"/IAES

- *Previously during appeals, a child with a disability remained in the original placement, "stay-put". The new IDEA eliminates the "stay-put" requirement in the case of discipline. The "stay-put" rule still applies to the non-disciplinary dispute. Now, during the time that an appeal is pending, the child will remain in the interim alternative educational setting (IAES) until the appeal is resolved or until the expiration of the suspension, whichever occurs first.(see D. and E. below)*
- *As described below in §300.532, the hearing officer is required to make a decision within 30 school days from the date the hearing is requested. Therefore, if the student is assigned to an IAES for 45 school days, the hearing officer's decision will come first.*

- *The IEP Team will pick the appropriate IAES. The timeframe for expiration of the IAES is determined by school personnel applying the "relevant disciplinary procedures applicable to children without disabilities" referred to in the Student Code of Conduct.*

C. Appeal

§300.532 Appeal.

(a) General. The parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §300.507 and §300.508(a) and (b).

(b) Authority of hearing officer.

(1) A hearing officer under §300.511 hears, and makes a determination regarding, an appeal requested under paragraph (a) of this section.

(2) In making the determination under paragraph (b)(1) of this section, the hearing officer may—

(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child's behavior was a manifestation of the child's disability; or

(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(c) Expedited due process hearing.

(1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.

(2) The NMPED or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

(3) Unless the parents and the LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in §300.506--

(i) A resolution meeting must occur within seven days of receiving notice, and

(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the due process complaint.

(4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the NMPED ensures that the requirements in §§300.510 through 300.514 are met.

(5) The decisions on expedited due process hearings are appealable consistent with §300.514.

Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

J. Appeal.

(1) The parent of a student with a disability who disagrees with any decision regarding the placement or the manifestation determination under this section, or an administrative authority that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to Subsection I of 6.31.2.13 NMAC.

(2) A hearing officer, who hears a matter under Paragraph (1) of Subsection J of 6.11.2.11 NMAC, has the authority provided in 34 CFR §300.532(b).

(3) When an appeal under this subsection has been made by either the parent or the administrative authority, the student must remain in the interim alternative educational setting pending the decision of the hearing

officer, or until the expiration of the time period specified in Subsections B or E of this section, whichever occurs first, unless the parent and the administrative authority agree otherwise. [08-15-97; 6.11.2.11 NMAC - Rn, 6 NMAC 1.4.11 & A, 11-30-00; A, 9-15-05; A, 6/29/07]

D. Placement During Appeals

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

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

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

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

§300.229 Disciplinary information.

G. Protection for Students not yet Eligible for Special Education

§300.534 Protections for children not yet eligible for special education and related services.
(a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
(b) Basis of knowledge. The public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—
(1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
(2) The parent of the child requested an evaluation of the child pursuant to §§300.300 through 300.311; or
(3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.
(c) Exception. The public agency would not be deemed to have knowledge under paragraph (b) of this section if—
(1) The parent of the child—
(i) Has not allowed an evaluation of the child pursuant to §§300.300 through 300.311; or
(ii) Has refused services under this part; or

(2) The child has been evaluated in accordance with §§300.300 through 300.311 and determined to not be a child with a disability under this part.

(d) Conditions that apply if no basis of knowledge.

(1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.

(2) (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under §300.530, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§300.530 through 300.536 and section 612(a)(1)(A) of the Act.

H. Noncustodial Parent

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

VIII. LAW ENFORCEMENT

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

(a) Rule of construction. Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b) Transmittal of records.

(1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act (FERPA).

VIII. DISCIPLINARY RECORDS

§300.229 Disciplinary information.

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

(b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.

(c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

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

(b) Transmittal of records.

(1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

DISCLAIMER

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

For additional information regarding discipline for students with disabilities see:
New Mexico Public Education Department Technical Assistance Manual: Addressing Student Behavior
http://www.ped.state.nm.us/seo/discipline/guide.htm

New Mexico Public Education Department
Special Education Bureau

South Valley Preparatory School
POLICIES AND PROCEDURES FOR THE PROVISION OF SPECIAL EDUCATION SERVICES FOR STUDENTS WITH DISABILITIES AND GIFTED STUDENTS

Chapter 8 – GENERAL ADMINISTRATION

Chapter 8 – GENERAL ADMINISTRATION

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Chapter 8. – GENERAL ADMINISTRATION

I. SCOPE AND APPLICABILITY

Authority: 34 CFR §300.212 Public information.
The LEA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the LEA under Part B of the Act.

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

Authority: 34 CFR §300.1 Purposes.
The purposes of this part are--
(a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
(b) To ensure that the rights of children with disabilities and their parents are protected;
(c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and
(d) To assess and ensure the effectiveness of efforts to educate children with disabilities.

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

II. FAPE – FREE APPROPRIATE PUBLIC EDUCATION

Authority: 34 CFR §300.17 Free appropriate public education. Free appropriate public education or FAPE means special education and related services that--
(a) Are provided at public expense, under public supervision and direction, and without charge;
(b) Meet the standards of the NMPED, including the requirements of this part;
(c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.

Authority: 34 CFR §300.101 Free appropriate public education (FAPE).
(a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in §300.530(d).
(b) FAPE for children beginning at age 3.
(1) The NMPED ensures that--

(i) The obligation to make FAPE available to each eligible child residing in New Mexico begins no later than the child's third birthday; and

(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with §300.323(b).

(2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.

(c) Children advancing from grade to grade.

(1) The NMPED ensures that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

(2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.

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

A. All children with disabilities aged 3 through 21 or who will turn 3 at any time during the school year and who reside in New Mexico, including children with disabilities who have been suspended or expelled from school, have the right to a free appropriate public education that is made available by one or more public agencies in compliance with all applicable requirements of 34 CFR §§300.101 and 300.120 and these or other department rules and standards. Children with disabilities who are enrolled in private schools have the rights provided by 34 CFR §§300.129-300.148 and Subsection L of 6.31.2.11 NMAC.

B. Only children who meet the criteria in these rules may be included in calculating special education program units for state funding and counted as eligible children for federal flow-through funds under Part B of the IDEA. [6.31.2.8 NMAC].

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

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

(1) Children aged 3, 4, 5, 18, 19, 20, or 21 in New Mexico to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children of those ages.

(2) (i) Children aged 18 through 21 to the extent that New Mexico law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility--

(A) Were not actually identified as being a child with a disability under §300.8; and

(B) Did not have an IEP under Part B of the Act.

(ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who--

(A) Had been identified as a child with a disability under §300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or

(B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under §300.8.

(3) (i) Children with disabilities who have graduated from high school with a regular high school diploma.

(ii) The exception in paragraph (a)(3)(i) of this section does not apply to students who have graduated but have not been awarded a regular high school diploma.

(iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503.

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

(4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.

(b) Documents relating to exceptions. The NMPED assures that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by §300.700 (for purposes of making grants to States under this part), is current and accurate.

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

(a) The NMPED may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, the NMPED could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for service provided to a child with a disability.

(c) Consistent with 300.323(c), the NMPED must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

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

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

Authority: 34 CFR §300.110 Program options.

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

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

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

III. SPECIAL EDUCATION DEFINED

Authority: 34 CFR §300.39 Special education.

(a) General.

(1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including--

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section--

(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

(ii) Travel training; and

(iii) Vocational education.

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

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

(2) Physical education means--

(i) The development of--
(A) Physical and motor fitness;
(B) Fundamental motor skills and patterns; and
(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and
(ii) Includes special physical education, adapted physical education, movement education, and motor development.

(3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction--
(i) To address the unique needs of the child that result from the child's disability; and
(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(4) Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to--
(i) Develop an awareness of the environment in which they live; and
(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(5) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

(6) Vocational and technical education means organized educational activities that--
(i) Offer a sequence of courses that--
(A) Provides individuals with the rigorous and challenging academic and technical knowledge and skills the individuals need to prepare for further education and for careers (other than careers requiring a Master's or doctoral degree) in current or emerging employment sectors;
(B) May include the provision of skills or courses necessary to enroll in a sequence of courses that meet the requirements of this subparagraph; and
(C) Provides, at the postsecondary level, for a one-year certificate, an associate degree, or industry-recognized credential; and
(ii) Include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, or an individual.

Authority: 34 CFR §300.34 Related Services *(Located in Chapter 5).*
Authority: 34 CFR §300.42 Supplementary aids and services. Supplementary aids and services means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.112 through 300.116.

Authority: NMAC 6.31.2.7 Definitions:
B. The following terms shall have the following meanings for purposes of these rules.

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

(iii) the speech language pathology service consists of specially designed instruction that is provided to enable the child to have access to the general curriculum and meet the educational standards of the public agency that apply to all children; and

(iv) the service is provided at no cost to the parents under a properly developed IEP that meets the requirements of Subsection B of 6.31.2.11 NMAC.

(c) If all of the above standards are met, the service will be considered as special education rather than a related service.

(d) Student/staff caseloads shall meet the requirements of Paragraphs (1) and (2) of Subsection H of 6.29.1.9 NMAC.

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

ESEA section 9107 (37)

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

(A) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(B) includes research that —

(i) employs systematic, empirical methods that draw on observation or experiment;

(ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(iv) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(v) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(vi) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

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

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

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

(a) Day means calendar day unless otherwise indicated as business day or school day.

(b) Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in §300.148(c)(1)(ii)).

(c) (1) School day means any day, including a partial day, that children are in attendance at school for instructional purposes.

(2) School day has the same meaning for all children in school, including children with and without disabilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

Authority: NMAC §6.31.2.7 DEFINITIONS:

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

B. The following terms shall have the following meanings for purposes of these rules.
   (1) "CFR" means the code of federal regulations, including future amendments.
   (2) "Child with a disability" means a child who meets all requirements of 34 CFR §300.8 and who:
      (a) is aged 3 through 21 or will turn 3 at any time during the school year;
      (b) has been evaluated in accordance with 34 CFR §§300.304-300.311 and any additional requirements of these or other public education department rules and standards and as having one or more of the disabilities specified in 34 CFR §300.8 including intellectual disability, a hearing impairment including

deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, orthopedic impairment, autism, traumatic brain injury, and other health impairment, a specific learning disability, deaf blindness, or being developmentally delayed as defined in paragraph (4) below; and who has not received a high school diploma; and

(c) at the discretion of each local educational agency and subject to the additional requirements of Paragraph 2 of Subsection F of 6.31.2.10 NMAC, the term "child with a disability" may include a child aged 3 through 9 who is evaluated as being developmentally delayed and who, because of that condition, needs special education and related services.

(3) "Department" means the public education department.

(4) "Developmentally delayed" means a child aged 3 through 9 or who will turn 3 at any time during the school year: with documented delays in development which are at least two standard deviations below the mean on a standardized test instrument or 30 per cent below chronological age; and who in the professional judgment of the IEP team and one or more qualified evaluators needs special education and related services in at least one of the following five areas: communication development, cognitive development, physical development, social or emotional development or adaptive development. Use of the developmentally delayed option by individual local educational agencies is subject to the further requirements of Paragraph 2 of Subsection F of 6.31.2.10 NMAC. Local education agencies must use appropriate diagnostic instruments and procedures to ensure that the child qualifies as a child with a delay in in accordance with the definition in this paragraph.

(5) "Dual discrepancy" means the child does not achieve adequately for the child's age or to meet grade-level standards established in Standards for Excellence (Chapter 29 of Title 6 of the NMAC); and

(a) does not make sufficient progress to meet age or grade-level standards; or

(b) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards or intellectual development.

(6) "Dyslexia" means a condition of neurological origin that is characterized by difficulty with accurate or fluent word recognition and by poor spelling and decoding abilities, which characteristics typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction and may result in problems in reading comprehension and reduced reading experience that may impede the growth of vocabulary and background knowledge.

(7) The "educational jurisdiction" of a public agency includes the geographic area, age range and all facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions, juvenile justice facilities, state supported schools, or programs within which the agency is obligated under state laws, rules or regulations or by enforceable agreements, including a joint powers agreement (JPA) or memorandum of understanding (MOU) to provide educational services for children with disabilities. In situations such as transitions, transfers and special placements, the educational jurisdiction of two or more agencies may overlap and result in a shared obligation to ensure that a particular child receives all the services to which the child is entitled.

(8) A "free appropriate public education" (FAPE) means special education and related services which meet all requirements of 34 CFR §300.17 and which, pursuant to §300.17(b), meet all applicable department rules and standards, including but not limited to these rules (6.31.2 NMAC), the Standards for Excellence (6.29.1 NMAC) and department rules governing school personnel preparation, licensure and performance (6.60 NMAC through 6.64 NMAC), student rights and responsibilities (6.11.2 NMAC) and student transportation (6.41.3 and 6.41.4 NMAC).

(9) The "general education curriculum" pursuant to 34 CFR §300.320, means the same curriculum that the South Valley Preparatory School offers nondisabled children. For New Mexico public agencies whose non-special education programs are subject to department rules, the general curriculum includes the content standards, benchmarks and all other applicable requirements of the Standards for Excellence (Chapter 29 of Title 6 of the NMAC) and any other department rules defining curricular requirements.

(10) "LEA" means a local educational agency as defined in 34 CFR §300.28.

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

(12) The "IDEA" means the federal Individuals with Disabilities Education Improvement Act of 2004, 20 USC §§1401 and following, including future amendments.

(13) "NMAC" means the New Mexico administrative code, including future amendments.

(14) "NMSA 1978" means the 1978 Compilation of New Mexico Statutes Annotated, including future amendments.

(15) "Parent" includes, in addition to the persons specified in 34 CFR §300.30, a child with a disability who has reached age 18 and for whom there is no court-appointed general guardian, limited guardian or other court-appointed person who has legal custody or has otherwise been authorized by a court to make educational decisions on the child's behalf, as provided in Subsection K of 6.31.2.13 NMAC. Pursuant to 34 CFR §300.519 and department policy, a foster parent of a child with a disability may act as a parent under Part B of the IDEA if: (i) the foster parent or the state children, youth and families department (CYFD) provides appropriate documentation to establish that CYFD has legal custody and has designated the person in question as the child's foster parent; and (ii) the foster parent is willing to make the educational decisions required of parents under the IDEA; and has no interest that would conflict with the interests of the child. A foster parent who does not qualify under the above requirements but who meets all requirements for a surrogate parent under 34 CFR §300.519 may be appointed as a surrogate if the public agency responsible for making the appointment deems such action appropriate. (See Subsection J of 6.31.2.13 NMAC.)

(16) "Puente para los Niños" fund in New Mexico means a risk pool fund to support high cost students with disabilities identified by LEAs pursuant to 34 CFR §300.704(c)(3)(i).

(17) "SAT" means the student assistance team, which is a school-based group of people whose purpose is to provide additional educational support to students who are experiencing difficulties that are preventing them from benefiting from general education.

(18) "SEB" means the special education bureau of the public education department.

(19) "Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.

(a) As authorized by 34 CFR §§300.8(a)(2)(ii) and 300.39(a)(2)(i), "special education" in New Mexico may include speech-language pathology services.

(b) Speech-language pathology services must meet the following standards to be considered special education:

(i) the service is provided to a child who has received appropriate tier I universal screening under Subsection D of 6.29.1.9 NMAC as it may be amended from time to time, before being properly evaluated under 34 CFR §§300.301-300.306 and Subsection D of 6.31.2.10 NMAC;

(ii) the IEP Team that makes the eligibility determination finds that the child has a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance; and

(iii) the speech language pathology service consists of specially-designed instruction that is provided to enable the child to have access to the general curriculum and meet the educational standards of the public agency that apply to all children; and

(iv) the service is provided at no cost to the parents under a properly developed IEP that meets the requirements of Subsection B of 6.31.2.11 NMAC.

(c) If all of the above standards are met, the service will be considered as special education rather than a related service.

(d) Student/staff caseloads shall meet the requirements of Paragraphs (1) and (2) of Subsection H of 6.29.1.9 NMAC.

(20) A "state-supported educational program" means a publicly funded program that:

(a) provides special education and related services to children with disabilities who come within the program's educational jurisdiction;

(b) is operated by, or under contractual arrangements for, a state school, state educational institution or other state institution, state hospital or state agency; and

(c) is primarily funded through direct legislative appropriations or other direct state support to a public agency other than a local school district.

(21) "USC" means the United States Code, including future amendments.

C. Definitions related to dispute resolution. The following terms are listed in the order that reflects a continuum of dispute resolution options and shall have the following meanings for the purposes of these rules.

(1) "Facilitated IEP (FIEP) meeting" means an IEP meeting that utilizes an independent, state approved, state-funded, trained facilitator as an IEP facilitator to assist the IEP team to communicate openly and effectively, in order to resolve conflicts related to a student's IEP.

(2) "Mediation" means a meeting or series of meetings that utilizes an independent, state-approved, state-funded, trained mediator to assist parties to reconcile disputed matters related to a student's IEP or other educational, non-IEP-related issues.

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

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

IV. PERSONNEL

Authority: 34 CFR §300.156 Personnel qualifications.

(a) General. The NMPED established and maintains qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

(b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--

(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

(2) Ensure that related services personnel who deliver services in their discipline or profession--

(i) Meet the requirements of paragraph (b)(1) of this section; and

(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

(c) Qualifications for special education teachers. The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA.

(d) Policy. In implementing this section, New Mexico must adopt a policy that includes a requirement that LEAs in New Mexico take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

(e) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular NMPED or LEA employee to be highly qualified; or to prevent a parent from filing a complaint about staff qualifications with the NMPED as provided for under this part.

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

(a) Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in section 9101 of the ESEA and 34 CFR §200.56, except that the requirements for highly qualified also--

(1) Include the requirements described in paragraph (b) of this section; and

(2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.

(b) Requirements for special education teachers in general.

(1) When used with respect to any public elementary school or secondary school special education teacher teaching in New Mexico, highly qualified that--

(i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State's public charter school law;

(ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) The teacher holds at least a bachelor's degree.

(2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to certification program under which--

(i) The teacher--

(A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, prior to and while teaching;

(B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(D) Demonstrates satisfactory progress toward full certification as prescribed by New Mexico; and

(ii) New Mexico ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.

(3) Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements of paragraph (b)(1) or the requirements in (b)(1)(iii) and (b)(2) of this section.

(c) <u>Requirements for special education teachers teaching to alternate achievement standards</u>. Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR §200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either--

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR §200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(2) Meet the requirements of subparagraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of subparagraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the State.

(d) <u>Requirements for highly qualified special education teachers teaching multiple subjects</u>. When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either--

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR §200.56(b) or (c);

(2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR §200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or

(3) In the case of a new special education teacher who teaches multiple subjects, and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR §200.56(c), which may include a single, high objective State standard of evaluation (HOUSSE) covering multiple subjects.

(e) Separate HOUSSE standards for special education teachers. Provided that any adaptations of the State's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers—

(1) A State may develop a separate HOUSSE for special education teachers; and

(2) The standards described in paragraph (e)(1) of this section may include single HOUSSE evaluations that cover multiple subjects.

(f) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular NMPED or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under §§300.151 through 300.153 about staff qualifications with the NMPED as provided for under this part.

(g) Applicability of definition to ESEA; and clarification of new special education teacher.

(1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.

(2) For purposes of 300.18(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

(h) Private school teachers not covered. The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by the public agency to provide equitable services to parentally-placed private school children with disabilities under §300.138.

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

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

B. Public agency funding and staffing

(8) Staff training and qualifications

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

Authority: NMAC §6.62.2 Licensure administrators.

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

A. hold a level 2 teaching license and have met all of the requirements for a level 3-A teaching license in Subsection B of 6.60.6.9 NMAC, or hold a level 2 teaching license and for at least four years have held a level 3 school counselor license while working as a teacher or school counselor; and

B. hold a bachelor's degree and a post-baccalaureate degree from a regionally accredited college or university or hold current certification by the national board for professional teaching standards; and

C. have completed a PED-approved administration apprenticeship program:

(1) at a college or university through an educational administration program consisting of a minimum of 180 clock hours for one calendar year to include time at the beginning and end of the school year; a passing grade on the apprenticeship will verify completion of this requirement; or

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

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

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

Assistants – *See* Paraprofessionals.

Audiologist – *See* Speech/language/audiology.

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

A. Persons seeking licensure to teach students with blindness and visual impairment pursuant to the provisions of this rule shall meet the requirements of Subsection A of 6.61.10.8 NMAC.
   (1) bachelor's degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, the following:
      (a) twelve (12) semester hours in English;
      (b) twelve (12) semester hours in history including American history and western civilization;
      (c) six (6) semester hours in mathematics;
      (d) six (6) semester hours in government, economics or sociology;
      (e) twelve (12) semester hours in science, including biology, chemistry, physics, geology, zoology, or botany;
      (f) six (6) semester hours in fine arts; and
   (2) credits from a regionally accredited college or university which include twenty four to thirty-six (24-36) semester hours of professional education in a program of studies that prepares candidates to teach blind and visually impaired students, including completion of the public education department's (PED's approved functional areas and related competencies in professional education; and
   (3) a mandatory student teaching or practicum component; and
   (4) twenty-four to thirty-six (24-36) semester hours in one teaching field such as mathematics, science(s), language arts, reading, or from among history, geography, economics, civics and government (or other social studies content related areas). Individuals must also complete the PED's approved functional areas and related competencies in the teaching field; and
   (5) in addition to the requirements specified in Subsection A, Paragraphs (1), (3), (4) and (6) of 6.61.10.8 NMAC, six (6) hours of reading for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and
   (6) passage of all required portions of the New Mexico teacher assessments (NMTA) or any successor teacher examination adopted by the PED.
B. [Reserved] [6.61.10.8 NMAC - N, 08-15-03; A, 06-15-06; A, 01-29-10]

Authority: NMAC §6.63.3.7 Diagnostician - DEFINITIONS:

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

Authority: NMAC §6.63.4.7 Diagnostician:

A. "Level one licensure" means a provisional license in educational diagnosis granted for five years. The license is nonrenewable unless the license holder verifies to the public education department (PED) that he/she has not worked using the license during its effective dates and provides evidence of current employment as an educational diagnostician.
B. "Level two licensure" means a renewable nine year license in educational diagnosis awarded after successful completion of at least three full school years at level one educational diagnostician licensure and including documentation of professional development requirements and verification by the superintendent or the governing authority of a private school or state institution that the individual is meeting level one competencies and is capable of demonstrating the competencies at level two.
C. "Level three licensure" means a renewable nine year license in educational diagnosis awarded after successful completion of at least three full school years at level two educational diagnostician licensure and including documentation of completion of supervised experience requirements and verification by the superintendent or

the governing authority of a private school or state institution that the individual is meeting level two competencies and is capable of demonstrating the competencies at level three.

D. "Supervision for an entry-level educational diagnostician" means a level one educational diagnostician will be required to have a minimum of one-hour per week individual supervision with a level three licensed educational diagnostician.

E. Satisfactory experience means the individual has:
   (1) satisfactorily carried out the duties and responsibilities of the position as verified by the superintendent or the governing authority of a private school or state institution, and
   (2) satisfactorily met the quality of the practice of educational diagnosis and professional responsibilities as reported by the supervising educational diagnostician.

F. "New Mexico diagnostician examination" means a comprehensive examination that evaluates the knowledge and competencies which must be passed no later than the end of the first year of level one licensure.

G. "Full school year" means a minimum of 160 days in a school year or 480 days over multiple school years or equivalent number of days in school districts on alternative schedules of full-time or part-time educational diagnostician work, including summer work in a variety of educational settings.

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

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

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

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

Authority: NMSA 1978 §38-9-2. Definitions. Deaf Interpreter.
As used in the Deaf Interpreter Act [§§38-9-1 to 38-9-10 NMSA 1978]:

A. "appointing authority" means the presiding judge or magistrate of any court and the hearing officer or other person authorized to administer oaths in any administrative proceeding before a board, commission, agency, institution, department or licensing authority of the state or any of its political subdivisions wherein an interpreter is required pursuant to the provisions of the Deaf Interpreter Act;

B. "deaf person" means any person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit him from understanding voice communications;

C. "principal party in interest" means a person in any judicial or administrative proceeding in which he is a named party or who will or may be bound by the decision or action or foreclosed from pursuing his rights by the decision or action which may be taken in the proceeding; and

D. "interpreter" means a person who may through sign language, manual spelling or orally, through lip reading, as required, translate and communicate between a principal party in interest and other parties.

Authority: NMSA 1978 §38-9-3. Interpreter required.
If a deaf person who is a principal party in interest has provided notice and proof of disability, if required, pursuant to Section 6 [38-9-6 NMSA 1978] of the Deaf Interpreter Act, the appointing authority shall appoint an interpreter, after consultation with the deaf person, to interpret or to translate the proceedings to him and to interpret or translate his testimony. Interpreters may be selected from current lists of interpreters provided by the vocational rehabilitation division for:

A. interpreters certified by the national registry of interpreters for the deaf; or

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

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

- High degree of oral and written proficiency in both L1 and l2. (The written requirement may not be appropriate for Native American populations).
- Ability to convey meaning from one language to the other without losing the essence of the message or request.
- Sensitivity to the speaker's style.
- Ability to adjust to linguistic variations within different communities (e.g., northern New Mexico vs. borderlands of New Mexico).
- Knowledge about the cultures of the people who speak the language.
- Familiarity with the specific terminology used in the assessment, evaluation, and IEP/IFSP setting).
- Understand their function and role within the evaluation team.

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

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

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

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

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

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

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

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

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

Authority: NMAC §16.15.2.13 OT Licensing - ANNUAL RENEWAL:

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

Authority: NMAC §6.63.9.7 Paraprofessionals DEFINITIONS**:**

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

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

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

(4) certification by the public school superintendent, state-supported school superintendent, charter school administrator or private school official that the educational assistant has satisfactorily demonstrated the PED's educational assistant competencies.

Authority: NMAC 6.63.9.10 Level III/Paraprofessional Requirements
Authority: NMAC 6.63.9.11 Local District Testing To Obtain Level III Licensure
Authority: NMAC 6.63.9.13 Implementation
Authority: NMAC 6.63.9.14 Continuing Licensure

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

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

Authority: §16.20.3.8 NMAC Physical Therapists

A. The board may issue a license to an applicant, other than one applying for licensure by endorsement, who fulfills the following requirements:
   (1) completes the application;
   (2) includes a passport-size photograph taken within the preceding twelve months and affixes it to the application;
   (3) pays the non-refundable application fee in full as provided in Part 5;
   (4) passes the jurisprudence exam (as specified in §16.20.2.10) and pays the non-refundable exam fee as provided in Part 5;
   (5) official college or university transcripts from a program approved by the commission on accreditation in physical therapy education (CAPTE) verifying one of the following:
      (a) post-baccalaureate degree in physical therapy;
      (b) associate degree in physical therapy assistant.
   (6) if official transcripts are not available because of school closure or destruction of the records, e.g., the applicant must provide satisfactory evidence of meeting the required physical therapy educational program by submitting documentation that will be considered on a case-by-case basis by the board and pursuant to the following:
      (a) for applicants who graduated after January 1, 2002, documentation of graduation with a post-baccalaureate degree in physical therapy from an educational program accredited by CAPTE;
      (b) for applicants who graduated prior to January 1, 2002, documentation of graduation with a baccalaureate degree in physical therapy or a certificate in physical therapy from an educational program accredited by CAPTE;
      (c) for physical therapist assistant applicants, documentation of graduation from an accredited physical therapist assistant program accredited by CAPTE and approved by the board;
   (7) passes the national physical therapy licensure examination (NPTE) (as specified in §16.20.2.8 NMAC); if the applicant has previously taken the NPTE, the testing entity shall send the test scores directly to the board; test scores sent by individuals, organizations or other state boards will not be accepted.

B. For applicants who have not practiced since graduating from a physical therapy education program, or who have not practiced as a physical therapist or physical therapist assistant for a period of more than three (3) consecutive years, full licensure requires fulfilling the following requirements:
   (1) satisfactory completion of all application requirements for licensure as provided in Subsection A of 16.20.3.8 NMAC;
   (2) provides proof of having taken fifteen (15) continuing education contact hours for each year the applicant was not practicing as a physical therapist or physical therapist assistant (coursework to be pre-approved by the board);
   (3) provides evidence of additional competency to practice as required by the board.

C. Felony or misdemeanor convictions involving moral turpitude directly related to employment in the profession have to be satisfactorily resolved. The board may require proof that the person has been sufficiently rehabilitated to warrant the public trust if the prior conviction does not relate to employment in the profession. Proof of sufficient rehabilitation may include, but is not limited to: certified proof of completion of probation or parole supervision, payment of fees, community service or any other court ordered sanction.

D. A licensee requesting a name change must submit proof of name change, the original license and a replacement license fee.

E. Foreign educated applicants must meet all requirements for licensure as provided in Subsection A of §16.20.3.8 NMAC as well as those requirements listed in §16.20.9 NMAC.

Authority: NMAC §16.20.7.7 PT supervision DEFINITIONS:

A. "On-site supervision" means a physical therapist shall be continuously on-site and present in the same building where the assistive personnel are performing services.

B. "Maintaining continued involvement" means the supervising physical therapist or physical therapist assistant shall personally contact the patient each treatment day to assess and monitor the response to treatment. The licensed personnel shall sign all permanent records.

Authority: NMAC 16.20.7.8 Supervision of Licensed Personnel
Authority: NMAC 16.20.7.9 Supervision of Unlicensed Assistive Personnel
Authority: NMAC 16.22.4.8 Psychologists: Education requirements.

Authority: NMAC 6.63.5.7 DEFINITIONS – School Psychologist:

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

Authority: NMAC 6.63.5.8 Requirements For Persons Seeking Level 1, Entry Level School Psychologist Licensure
Authority: NMAC 6.63.5.9 Requirements For Persons Seeking Level 2, Independent School Psychologist Licensure
Authority: NMAC 6.63.5.10 Requirements For Persons Seeking Level 3, Independent School Psychologist Licensure
Authority: NMAC 6.63.5.11 Implementation
Authority: NMAC 6.63.5.12 Competencies For Entry Level School Psychologists Requiring Supervision by a Level 3 Supervising School Psychologist
Authority: NMAC 6.63.5.13 Competencies For Level II Independent School Psychologists
Authority: NMAC 6.63.5.14 Competencies For Level IIIa Clinical Supervising School Psychologists
Authority: NMAC §6.63.11.7 Rehabilitation counseling - DEFINITIONS:

A. "Rehabilitation counseling" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability who receives services under the federal Individuals with Disabilities Education Act (IDEA). The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the federal Rehabilitation Act of 1973, as amended.

B. "Related fields" means a degree in such areas as sociology, psychology, school counseling, guidance and counseling, education, special education, social work, and mental health.

C. "Transition services" means a coordinated set of activities for a student with a disability, as defined in the Individuals with Disabilities Education Act, that:

(1) is designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) is based on the individual student's needs, taking into account the student's preferences and interests; and

(3) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

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

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

Authority: NMAC §16.63.1.7 Social Worker - DEFINITIONS:
A. Appropriate supervision:
B. Licensed clinical social worker: an independent social worker with a clinical specialty is equivalent to a licensed clinical social worker (LCSW).
C. Qualified applicants:
   (1) Means those programs having received accreditation by CSWE and those programs having candidacy status, conditional status, or under review status with CSWE.
   (2) For those applicants who graduated from a institution of higher education before CSWE began to accredit programs (prior to 1974), the New Mexico board of social work examiners will require:
      (a) a letter from the university's registrar's office stating that the applicant's course of study culminated in a degree which was the equivalent of an emphasis or major in social work;
      (b) demonstrated social work experience;
      (c) documentation of social work licensure in a previous state; and
      (d) concurrence among the majority of professional members of the board that the transcripts reflect sufficient coursework in social work.
D. CSWE (council on social work education) accreditation: means those programs having received accreditation by CSWE and those programs having candidacy status or under review status with CSWE.

Authority: NMAC §6.61.6.7 Licensure Special Education Teacher Pre-K–12. DEFINITIONS:
A. "Core academic subjects" means English, language arts, reading, mathematics, science, the arts, including music and visual arts, social studies, which includes civics, government, economics, history, and geography, and modern and classical languages, except the modern and classical Native American languages and cultures of New Mexico tribes and pueblos.
B. "A highly qualified beginning pre k-12 special education teacher" under this rule means a teacher who is new to the profession, has pursued a standard route to licensure and is fully qualified to teach special education students by either providing access for those students to a regular education classroom where instruction in the core academic subjects is delivered by a highly qualified regular education teacher, or being fully qualified to teach each core academic subject the special education teacher teaches, or being fully qualified to teach either language arts, mathematics or science and becoming fully qualified to teach any other core academic subjects which the teacher teaches within two years after the date of initial employment, and who:

(1) meets the requirements for pre-k-12 special education licensure in Subsections A or B in 6.61.6.8 NMAC;
(2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason; and
(3) has passed all applicable teacher testing requirements for licensure in §§6.60.5.8 NMAC.

C. "Pre-kindergarten" means a voluntary developmental readiness program for children who have attained their fourth birthday prior to September 1.

Authority: NMAC §6.61.6.8 REQUIREMENTS:

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

Authority: NMAC §6.61.6.9 IMPLEMENTATION:

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

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

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

Authority: NMAC §16.26.1.7 DEFINITIONS:

E. "Audiologist" means a person holding at least a master's degree in audiology issued prior to January 1, 2007, or a doctoral degree in audiology who engages in the practice of audiology who may or may not dispense hearing aids and who meets the qualifications set forth in the act.

G. "Direct supervision" means on-site, in-view observation and guidance by a licensed professional in the applicant's field present (other than a paraprofessional or clinical fellow) during a therapy session with clients while an assigned activity is performed by support personnel.

H. "Indirect supervision" means those activities other than direct supervision conducted by a licensed professional (other than a paraprofessional or clinical fellow) that may include demonstration, record review, consultations, meetings and evaluation of audio or video-taped sessions.

J. "License" means a document identifying a legal privilege and authorization to practice within one of the categories established by the act. A license under this act is not transferable.

K. "Licensing year" means the period from January 31 of any year through January 30 of the next year; initial, renewed and reinstated licenses may be issued at any time set, herein, but shall expire on January 30 of the following year, except as otherwise provided in these rules.

P. "Temporary paraprofessional license" means a license issued to a person working towards full licensure as a speech-language pathologist and who provides adjunct speech-language pathology services under the supervision of a speech-language pathologist who is licensed under this act.

Q. "Temporary trainee permit" means a permit issued by the board to a person authorized to fit and dispense hearing aids only under the supervision of a sponsor as defined by these regulations. Temporary trainee permits will be issued for a one-year period and are non-renewable.

Authority: NMSA 1978 61-14B-12.1. Requirements for licensure; audiologist. (Repealed effective July 1, 2016.)

A license to practice as an audiologist shall be issued to any person who completes A. and B.:

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

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

A. holds at least a master's degree in speech pathology, speech-language pathology or communication disorders or equivalent degree regardless of degree name and meets the academic requirements for certification by a nationally recognized speech-language association; and

B. currently holds a certificate of clinical competence (CCC) from a nationally recognized speech-language association in the area for which the applicant is seeking licensure; or

C. has completed the current academic, practicum and employment experience requirements for a certificate of clinical competence from a nationally recognized speech-language association in the area for which the applicant is applying for license and has passed a recognized standard national examination in speech-language pathology.

Authority: NMSA 1978 61-14B-15.1. Requirements for licensure; apprentice in speech and language. (To be repealed effective July 1, 2016.)
A license to practice as an apprentice in speech and language shall be issued by the board to a person who files a completed application accompanied by the required fees and documentation and provides satisfactory evidence that the applicant: A. – F.

Authority: NMAC §6.69.2.7 Unsatisfactory work performance. DEFINITIONS:
A. "Administrative authority" means the superintendent, principal or a person acting under the authority of such superintendent or principal.
B. "Insubordination" means actual or implied willful refusal to follow written policies, regulations, rules, or procedures established by the public education department (PED), the local school board, or administrative authorities, or the lawful written or oral orders, requests or instructions of administrative authorities.
C. "Uncorrected unsatisfactory work performance" means unsatisfactory work performance which the licensed school personnel has failed to correct pursuant to the provisions in this regulation; provided, however, that if unsatisfactory work performance is uncorrectable through the evaluation and supervision process**,** as determined by the local school board policy, the provisions in this regulation shall not apply.
D. "Unsatisfactory work performance" means the failure by licensed school personnel to satisfactorily perform those tasks which are evaluated by the employee's supervisors, pursuant to the school district's approved plans) for evaluation and supervision of its licensed employees. Furthermore, for the purpose of this regulation unsatisfactory work performance does not include insubordination or conduct deemed to be outside the normal scope of duties of licensed school personnel.

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

New Mexico – Three-Tiered Licensure

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

Professional Development Dossier (PDD) Background and Overview Assessment of Teacher Competency

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

Level II Licensure

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

Level III Licensure

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

Application

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

The PDD

The Professional Development Dossier (PDD) is a focused, compact collection of documentation compiled by the teacher seeking licensure advancement with support from her/his school district. The PDD documentation is a collection of classroom data (lesson descriptions, handouts, student work, video and audio recordings, photos) with explanations of that data written by the teacher, accompanied by verification and recommendation by the district superintendent. No one part of the PDD serves to fully represent a teacher's work, but the entire PDD is intended to provide evidence to determine when a teacher is qualified to advance to a higher level of licensure.
The PDD is organized into five strands. These five strands are aligned with the New Mexico Teacher Competencies and are designed to help teachers document their teaching for reviewers from outside their school and district.

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

Private School Personnel

Authority: 34 CFR §300.142 Use of personnel. *(See also Sect. 5 Instructional Arrangements for Private Schools)*

(a) Use of public school personnel. The public agency may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities--

(1) To the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities; and

(2) If those services are not normally provided by the private school.

(b) Use of private school personnel. The public agency may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.130 through 300.144 if--

(1) The employee performs the services outside of his or her regular hours of duty; and

(2) The employee performs the services under public supervision and control.

V. COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

Authority: 34 CFR §300.207 Personnel development.
The public agency must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of §300.156 (related to personnel qualifications) and section 2122 of the ESEA.

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

(a) General. The public agency may not use more than 15 percent of the amount the public agency receives under Part B of the Act for any fiscal year, less any amount reduced by the public agency pursuant to §300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who have not been identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

(b) Activities. In implementing coordinated, early intervening services under this section, the public agency may carry out activities that include--

(1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(2) Providing educational and behavioral evaluations, services, and supports, including scientifically-based literacy instruction.

Authority: NMAC 6.65.2.6 Professional Development-Objective:
The rule establishes criteria for all professional development programs delivered by the public education department, statewide professional development providers, charter schools, public school districts, and for all professional development providers that apply for professional development funds, or who are awarded funding by the public education department ("PED") or by the legislature. The criteria in this rule also establishes standards for an evaluation component that will be used by the PED in accessing charter school, and school district professional development plans. The rule creates standards for developing professional development activities for schools that improve teachers' knowledge of the subjects they teach and the ability to teach those subjects to all of their students; are an integral part of the public school and school district plans for improving student achievement; provide teachers, school administrators and instructional support providers with the strategies, support, knowledge and skills to help all students meet the New Mexico academic content standards; are high quality, sustained, intensive and focused on the classroom; are developed and evaluated regularly with extensive participation of school employees and parents.

Authority: NMAC 6.65.2.7 DEFINITIONS:
A. "Alignment" means the degree to which program components match purposes and evaluation criteria.
B. "Collaboration" means the act of working positively and productively with others to meet a common goal or purpose.
C. "Data" means information from a variety of sources gathered for a purpose. For example, data related to student learning might include student work examples, scripted or videotaped observations, student achievement scores, and/or teacher-generated assessments. Data related to teacher performance might include observations; instructional artifacts; and /or student, peer or parent evaluations. The terms data and evidence are often used interchangeably.
D. "Developmental levels" means descriptors of development for students and teachers.
   (1) Developmental levels for students are descriptors of how they develop (cognitively, socially and in other ways) during their formative years in pre-k-12 education.
   (2) Developmental levels for teachers are descriptors of how they develop across the continuum of their careers. In New Mexico, the career continuum for teachers include three levels of development: the level 1 "provisional teacher" (the initial five years of a teaching career where the teacher demonstrates initial

mastery of effective teaching); the level 2 "professional teacher" (at least three years of classroom teaching experience during which a teacher demonstrates expert practice); and the level 3 "master teacher" (at least six years of experience where the teacher demonstrates exemplary practice).

E. "Differentiated" means the intentional application of multiple modes of instruction or assessment in order to meet the needs of all members of a group. The New Mexico teacher competencies are differentiated across levels of years of experience and teacher development: level 1 (provisional teacher); level 2 (professional teacher); and level 3 (master teacher).

F. "Diversity" means variety among individuals. Diversity includes, for example, variations in socio-economic status, race, developmental level, ethnicity, gender, language, learning styles, culture, abilities, age, interests, and/or personality.

G. "Job-embedded" means activities that are included as part of the responsibilities of the teacher's work day.

H. "Leadership" means the work of members of all levels of educational systems who engage in, collaborate in, and/or guide continuous instructional improvement for the benefit of the entire system.

I. "Professional development " means a systemic process by which educators increase knowledge, skills, and abilities to meet professional and organizational goals that build capacity within the individual, organization, and education system for the purpose of ensuring success for all students.

J. "Professional development plan" means a plan specifically designed to identify goals, activities and measurable objectives that will support continuous learning related to professional knowledge, skills and abilities.
   (1) The district professional development plan is a component of the comprehensive educational plan for student success that supports academic learning for all students.
   (2) The individual teacher's professional development plan (PDP) is part of the performance evaluation system requirements. The teacher's PDP is a collaborative enterprise involving the teacher and principal in establishing a yearly plan for professional learning goals, activities, and measurable objectives based on the nine New Mexico teacher competencies.

K. "Professional development program" means an organized set of professional development experiences for an education system that will support instructional learning in an identified area of improvement.

L. "Research based" means results from proven, rigorous educational research methodologies.

M. "Staff development" means organized professional learning activities. The terms "professional development and staff development" are used interchangeably by the national staff development council as well as in this rule.

N. "Student success" means attainment of knowledge, skills and attributes that will prepare and nurture individuals to become productive, engaged citizens in a democratic society.

O. "Sustained" means an effort or activity maintained in a coherent, planed manner over time.

P. "Systematic" means something that is characterized by order and planning.

Q. "Systemic" means related to an entire system: in this case, an educational organization that is made up of individual but interdependent components united by a common purpose, action plan, and accountability.

R. "Training" means a subset of professional development. Training includes specialized, often prescribed instruction and practice that help an individual become proficient in a skill or set of skills.

S. "Standards for staff development" means criteria and expectations that provide direction for designing a professional development experience that ensures educators acquire the necessary knowledge and skills.

T. "Framework for professional development " means a document that establishes the context, processes and content relative to professional development by way of a statewide definition and belief statements of professional development, guidelines for the effective designing, implementation, and evaluating of professional development initiatives at the district and school building-level, establishing the criteria for school districts to apply for professional development funds, and to provide information regarding professional development providers and other resources.

Authority: NMAC §6.65.2.8 REQUIREMENTS FOR PROGRAM DESIGN AND IMPLEMENTATION:
School district and charter school professional development programs shall meet the highest standards for professional development. New Mexico has adopted the national staff development council standards for staff development as requirements for designing, implementing, and evaluating professional development programs. All statewide, PED, charter school and public school district professional development programs and activities shall address and align with the following standards and shall articulate:

A. context standards which:
   (1) improve the learning of all students by organizing adults into learning communities whose goals are aligned with those of the school district;
   (2) require skillful school and district leaders who guide continuous instructional improvement;

(3) require resources to support adult learning and collaboration;

B. process standards which:
   (1) improve the learning of all students by using disaggregated student data to determine adult learning priorities, monitor progress, and help sustain continuous improvement;
   (2) use multiple sources of information to guide improvement and demonstrate its impact;
   (3) prepare educators to apply research to decision making;
   (4) use learning strategies appropriate to the intended goal;
   (5) apply knowledge about human learning and change;
   (6) provide educators with the knowledge and skills to collaborate;

C. content standards which:
   (1) improve the learning of all students by preparing educators to understand and appreciate all students;
   (2) create safe orderly and supportive environments, and hold high expectations for their academic achievement;
   (3) deepen educators' content knowledge;
   (4) provide them with research-based instructional strategies to assist students in meeting, rigorous academic standards and prepare them to use various types of classroom assessments appropriately;
   (5) provide educators with knowledge and skills to involve families and other stakeholders appropriately.

Authority: NMAC §6.65.2.9 REQUIREMENTS FOR PROGRAM EVALUATION:

A. All statewide, PED, charter school and public school district professional development programs shall be evaluated at least every three years to determine the effectiveness of the program based on evidence of improved educator practice and student learning.

B. Levels of program evaluation shall include evidence of:
   (1) participant response;
   (2) participant learning;
   (3) organizational change and support;
   (4) participant use of knowledge and skills; and
   (5) student learning.

Authority: NMAC §6.65.2.10 REQUIREMENTS FOR PROFESSIONAL DEVELOPMENT FUNDING:

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

A. context:
   (1) how are the resources (time, leadership, personnel, and budget considerations) structured to support the plan?
   (2) how are roles of leaders and participants defined and goals determined?
   (3) how are data related to student learning to be used to determine goals and assess outcomes?
   (4) how is collaboration among administrators and teachers embedded in the professional development process?

B. content:
   (1) what should participants know and be able to do?
   (2) is the content clearly connected to workplace requirements and clearly articulated goals?
   (3) are appropriate adult learning strategies used that will support program effectiveness?
   (4) is there a range of learning opportunities that address areas of need, diversity, skill development and refinement?
   (5) how are data related to student learning to be used to determine goals and assessment outcomes?
   (6) how is collaboration among administrators and teachers embedded in the professional development process?

New Mexico's State Improvement Grant (SIG), Circle of Commitment, addresses four main focus areas:

- Build NMPED Capacity for system alignment thus improving student access, participation and progress in general education and the provision of FAPE;
- Strengthen the statewide system of personnel development and address under-representation of targeted groups in the professional education workforce;

- Improve student outcomes; and
- Improve family and student participation and leadership in systemic reform.
  Focus areas were determined with input from a variety of stakeholder groups and individuals. This grant is congruent with the goals of the New Mexico IDEA Advisory Panel, the New Mexico Special Education State Improvement Plan, our Integrated Accountability System, as well as supporting the broader goals of the New Mexico State Department of Education.

Through this grant we will support and encourage partnerships among the New Mexico State Department of Education, the five universities which provide teacher education programs (University of New Mexico, New Mexico State University, Eastern New Mexico University, Highlands New Mexico University, and Western New Mexico University), nine regional cooperatives, local school districts and parent groups.

The public agency will carefully review the New Mexico State Performance Plan in order to remain focused on indicators for data-based decisions regarding staff development. Consideration is also given to the NMPED key indicators from focused monitoring. The focused monitoring process utilizes data from the STARS to rank school districts on the focused monitoring indicators and to make district selections for monitoring. There are five key indicator identified by a statewide group of stakeholders that covers the most important compliance issues as well as measurable aspects of educational benefit.

The key indicators are:

Indicator 1: Graduation of students with disabilities.

Indicator 3: Participation and performance of students with disabilities on statewide assessments of educational development.

Indicator 5: Least restrictive environment, emphasizing inclusion of students with disabilities in regular classes to the maximum extent appropriate with access to the general education curriculum.

Indicators 9 & 10: Identification and evaluation of students with disabilities, emphasizing possible over-identification of students as learning disabled.

VI. CURRICULUM FOR STUDENTS WITH DISABILITIES

The South Valley Preparatory School has the responsibility for providing educational and related services to eligible students in the least restrictive environment. Students with disabilities shall have the opportunity to participate in the general education classroom with instruction aligned with the New Mexico Standards of Excellence (§6.29.1 NMAC) *to the maximum extent appropriate. The IEP Team for the student with disabilities will make appropriate decisions for each individual student.*

VII. STARS– Student Teacher Accountability and Reporting System

Authority: 34 CFR §300.640 Annual report of children served—report requirement.

(a) The NMPED must annually report to the Secretary on the information required by section 618 of the Act at the times specified by the Secretary.

(b) The NMPED must submit the report on forms provided by the Secretary.

Authority: 34 CFR §300.641 Annual report of children served—information required in the report. *For all specific requirements, the public agency will remain diligent in following requirements specified by the STARS system provided by the New Mexico PED and will participate in required trainings.*

The Student Teacher Accountability Reporting System (STARS) is an upgrade to the Accountability Data System (ADS) which provides greater functionality to schools, districts, and NMPED. STARS is designed to:

- Meet the current PED and federal reporting requirements;
- Allow appropriate personnel secure access to student information;
- Improve education decision making through the use of high quality data and decision support tool;
- Provide longitudinal tracking of particular individual and subgroup education progress over time; and
- Report timely and accurate education data through standardized and ad hoc reporting capabilities.

Communications about STARS will be available on the STARS website: A self-service tool designed to provide information regarding the STARS project. www.ped.state.nm.us/stars

Authority: NMAC §6.29.1.9 PROCEDURAL REQUIREMENTS

H. Student/staff caseloads in gifted and special education.

(1) The student/staff caseload shall not exceed 35:1 for a special education teacher and 60:1 for a speech-language pathologist for special education services or speech-only services, in which properly licensed special education teachers or speech-language pathologists travel from class to class or school to school, providing services to students with disabilities whose individualized education programs (IEPs) require a minimal amount of special education. (A minimal amount of special education services shall not exceed 10 per cent of the school day/week.)

(2) The student/staff caseload shall not exceed 24:1 for a special education teacher and 35:1 for a speech-language pathologist for special education services or speech-only services which properly-licensed special education teachers or speech-language pathologists provide to students with disabilities whose IEPs require a moderate amount of special education. (A moderate amount of special education services shall be less than 50 per cent of the school day.)

(3) The student/staff caseload shall not exceed 15:1 for special education services in which properly licensed special education teachers provide services to students with disabilities whose IEPs require an extensive amount of special education for a portion of the school day as appropriate to implement the plan. (An extensive amount of special education services shall be provided 50 per cent or more of the school day.)

(4) The student/staff caseload shall not exceed 8:1 for special education services in which a properly licensed professional provides services to students with disabilities whose IEPs require a maximum amount of special education. (A maximum amount of special education services shall be provided in an amount approaching a full school day.)

(5) The student/adult caseload shall not exceed 4:1 for center-based special education services in which one of the adults in the program is a properly licensed professional providing three- and four-year old children with the amount of special education needed to implement each child's IEP. This includes a child who will turn three at any time during the school year, and who is determined to be eligible for Part B services. The child may be enrolled in a Part B preschool program at the beginning of the school year if the parent so chooses, whether or not the child has previously been receiving Part C services.

(6) The student/adult caseload shall not exceed 2:1 for center-based special education services in which three- and four-year old children have profound educational needs. This includes children who will turn three at any time during the school year, and who are determined to be eligible. The child may be enrolled in a Part B preschool program at the beginning of the school year if the parent so chooses, whether or not the child has previously been receiving Part C services.

(7) Adequate student/staff caseloads shall be provided to appropriately address needs identified in the IEPs. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to students with disabilities under Part B of IDEA.

(8) If the student/staff caseload ratio exceeds the standards provided above, a request for waiver shall be submitted to the department for review and approval by the secretary.

CASE LOADS

FULL TIME EQUIVALENTS (FTE): Teachers - How to Figure Caseload Maximums

For teachers with position codes:

94 regular education teacher of gifted
95 related service caseload teacher
96 preschool teacher
97 special education teacher

A Level Student - minimum

- each "A or minimum" level student 1/35 or .029 FTE (receives sp ed service 10% or less of the day = level 1 on STAR)
- each "A or minimum" related service student 1/60 or .017 FTE (must be under staff at code 95)

B Level Student - moderate
- each "B or moderate" level student 1/24 or .042 FTE (receives sp ed service less than half of the day = level 2 on STARS)
- each "B or moderate" related service student 1/35 or .029 FTE (must be under staff at code 95)

C Level Student – extensive - half day or more
- each "C or extensive" level student 1/15 or .067 FTE (receives sp ed service half a day or more = level 3 on STARS)

D Level Student – maximum – all day or approaching full day
- each "D or maximum" level student 1/8 or .125 FTE (receives sp ed service all day or approaching a full day = level 4 on STARS)

The FTE generated by the students cannot exceed the FTE for their caseload teacher unless a waiver is granted. These caseload waivers are granted by the South Valley Preparatory School Superintendent of Public Instruction on a case-by-case basis.

FULL TIME EQUIVALENTS (FTE): Related Service - How To Figure Caseload Maximums

1) FTE is rounded to two decimal places.
2) Figure out the total time you are hiring this person, using one of these methods.
   - **By hours per week**: If you are paying this person for preparation time and travel time per week, in addition to direct service time, include this in your total. Divide this total by the LEA workweek for teachers. This is the total FTE for this person.
   - **By total days:** Figure out the total number of days you are hiring this person for a year. Divide by the total number of days in a typical teacher contract. This is the total FTE for this person.
   - **By total hours**: Figure out the total numbers of hours you are hiring this person for a year. Divide by the total number of hours in a typical teacher contract. This is the total FTE for this person.
3) If this person is seeing any students as a caseload teacher (that is, if this person is the child's only special education teacher) this person will have a **caseload FTE**.

   FTE for A-level service = # of students / 60 (position code 95)

   FTE for B-level service = # of students / 35 (position code 95)

   FTE for 3Y/4Y/5Y itinerant* service = # of hours spent with these students / LEA work week (position code 96)

   *FTE for 3Y/4Y/5Y service for a teacher at a center-based program on the public school campus is not audited. Instead, we audit the adult-to-student ratio as required by state regulations.

   Add them together. This is the **caseload FTE** for this person.

4) Finally, figure related service FTE.
   - If the remainder of this person's service is only students who are five or older prior to September 1, then do the following:
     Total FTE minus caseload FTE = **related service FTE**
   - If the remainder of this person's service includes some 3Y/4Y/5Y students, then do the following:
     time for 3Y/4Y/5Y related service / LEA work week = 3Y/4Y/5Y related service FTE (unfunded)

     Total FTE minus caseload FTE minus 3Y/4Y/5Y rel serv FTE = **related service FTE**

Authority: NMSA 1978 22.2.8.1 Length of school day; minimum.

A. Except as otherwise provided in this section, regular students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:
   (1) kindergarten, for half-day programs, two and one-half hours per day or four hundred fifty hours per year or, for full-day programs, five and one-half hours per day or nine hundred ninety hours per year;
   (2) grades one through six, five and one-half hours per day or nine hundred ninety hours per year; and
   (3) grades seven through twelve, six hours per day or one thousand eighty hours per year.

B. Thirty-three hours of the full-day kindergarten program may be used for home visits by the teacher or for parent-teacher conferences. Twenty-two hours of grades one through five programs may be used for home visits by the teacher or for parent-teacher conferences.

C. Nothing in this section precludes a local school board from setting length of school days in excess of the minimum requirements established by Subsection A of this section.

D. The state superintendent [secretary] may waive the minimum length of school days in those districts where such minimums would create undue hardships as defined by the state board [department].

VIII. SPECIAL EDUCATION ACCOUNTABILITY SYSTEM (SEAS)

The Federal Regulations are required and listed at the beginning of this section; the State requirements follow. For continuous updated information, see the NMPED website:
http://www.ped.state.nm.us/seo/district_data/SEAS%207.12%2007.pdf

Authority: 34 CFR §300.120 Monitoring activities.

(a) The NMPED must carry out activities to ensure that §300.114 *(LRE Chapter 6)* **is implemented by the LEA.**

(b) If there is evidence that the LEA makes placements that are inconsistent with §300.114, the NMPED must-
   (1) Review the LEA's justification for its actions; and
   (2) Assist in planning and implementing any necessary corrective action.

Authority: 34 CFR §300.211 Information for NMPED.

The LEA must provide the NMPED with information necessary to enable the NMPED to carry out its duties under Part B of the Act, including, with respect to §§300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.

Authority: 34 CFR §300.213 Records regarding migratory children with disabilities.

The LEA must cooperate in the Secretary's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children.

Authority: 34 CFR §300.157 Performance goals and indicators.

The NMPED must--

(a) Have in effect established goals for the performance of children with disabilities in New Mexico that--
   (1) Promote the purposes of this part, as stated in §300.1;
   (2) Are the same as the State's objectives for progress by children in its definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the ESEA, 20 USC 6311;
   (3) Address graduation rates and dropout rates, as well as such other factors as the State may determine; and
   (4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the NMPED.

(b) Have in effect established performance indicators the NMPED will use to assess progress toward achieving the goals described in paragraph (a) of this section, including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 USC 6311; and

(c) Annually report to the Secretary and the public on the progress of the State, and of children with disabilities in New Mexico, toward meeting the goals established under paragraph (a) of this section, which may include elements of the reports required under section 1111(h) of the ESEA.

Authority: 34 CFR §300.170 Suspension and expulsion rates. *(See also Chapter 7 - Discipline)*

(a) General. The NMPED must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--

(1) Among LEAs in New Mexico; or

(2) Compared to the rates for nondisabled children within those agencies.

(b) Review and revision of policies. If the discrepancies described in paragraph (a) of this section are occurring, the NMPED must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

Authority: 34 CFR §300.229 Disciplinary information.

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

(b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.

(c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

Authority: 34 CFR §300.173 Over identification and disproportionality.

The NMPED has in effect, consistent with the purposes of this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate over-identification or disproportionate representation of children, by race and ethnicity, as children with disabilities, including children with a particular impairment as described in §300.8. *(See Chapter 3 -Iimpairments).*

§300.646 Disproportionality.

(a) General. Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in New Mexico and the LEAs of New Mexico with respect to--

(1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act;

(2) The placement in particular educational settings of these children; and

(3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(b) Review and revision of policies, practices, and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the NMPED or the Secretary of the Interior must--

(1) Provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the Act.

(2) Require the LEA, if identified under paragraph (a) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly over identified under paragraph (a) of this section; and

(3) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (b)(1) of this section.

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

E. Significant disproportionality.

(1) Pursuant to CFR 34 §300.646, the public agency must provide for the collection and examination of data to determine if significant disproportionality, based on race and ethnicity, is occurring with respect to:

(a) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment as defined by 34 CFR §300.8;
(b) the placement in particular educational settings of these children; and
(c) the incidence, duration and type of disciplinary actions, including suspensions and expulsions.

(2) The public agency must reserve the 15 percent early intervening funds if they are identified as having data that is significantly disproportionate in any one of the following categories:
(a) suspension of students with disabilities;
(b) over-identification of students with disabilities;
(c) over-identification of students with a particular impairment as defined by 34 CFR §300.8; and
(d) placement of students with disabilities in a particular setting.

(3) Review and revision of policies, practices and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with Paragraph (1) of this subsection, the South Valley Preparatory School must:
(a) provide for the review and, if appropriate, revision of the policies, procedures and practices used in the identification or placement to ensure that the policies, procedures and practices comply with the requirements of the IDEA; and
(b) require any LEA identified under Paragraph (1) of this subsection to reserve the maximum amount of funds under 34 CFR §300.226 to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly over identified under Paragraph (1) of this subsection; and
(c) require the LEA to publicly report on the revision of policies, practices and procedures described under Subparagraph (b) of this paragraph.

If disproportionality is identified consistently and not corrected, the PED may impose corrective actions on the LEA. Corrective actions range in severity from frequent monitoring visits up to the withholding of funds. If funds are withheld, the NMPED may use the funds to provide services to students and staff members through alternative arrangements.

*In addition to the requirements listed in **§300.646** above, the LEA may convene a committee of professionals and interested local community members to develop an action plan to address the issue of disproportionality. The committee will be charged with the following:*

a. collection and analysis of local data by campus to identify possible patterns in types of SAT interventions tried, length of time interventions were tried before referrals, grade level of students, staff over-identification, special education evaluations, students new to the district, etc.
b. based on an analysis of the data, identify target area(s) for response through a detailed action plan with dates due, personnel responsible, evaluation timelines, etc.
c. in the action plan, list specific activities to address the targeted area(s): examples may include, but are not limited to:
- *technical assistance from the regional education cooperatives;*
- *advice from experts to address the areas in need of assistance, including specific plans to address each subject area within a specified period of time;*
- *assistance in identifying and implementing professional development, instructional strategies, and methods of instruction based on scientifically-based research;*
- *designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support;*
- *devise additional approaches to providing technical assistance, such as collaborating with institutions of higher education, national centers of technical assistance, and private providers of scientifically-based technical assistance; and*

d. set timelines for the action plan to reconvene and analyze progress and the implementation of the strategies chosen.

The NMPED may impose the following sanctions if persistent disproportionality continues.
(1) on-site review for failure to meet appropriate services, program or compliance requirements;
(2) required fiscal audit of specific program(s) and/or of the LEA, paid for by the LEA;
(3) required submission of corrective action(s), including compensatory services, paid for by the LEA;

(4) required technical assistance from the regional education cooperatives, paid for by the LEA~~;~~ which may include:
(5) public release of program or compliance review findings;
(6) special investigation and/or follow-up verification visits;
(7) required public hearing(s) conducted by the local school board of trustees;
(8) assignment by the NMPED of a special purpose monitor, conservator, or management team, paid for by the LEA;
(9) hearing before the commissioner of education or designee;
(10) reduction in payment(s) or withholding of funds; and/or
(11) lowering of the special education compliance status and/or the accreditation rating of the LEA.

Special Education Accountability System (SEAS)
Website: http://www.ped.state.nm.us/seo/district_data/SEAS%207.12%2007.pdf

In December 2005, New Mexico PED was required to submit a State Performance Plan (SPP) to the United States Department of Education Office of Special Education Programs (OSEP). The SPP included a combination of 20 Results and Compliance Indicators established by OSEP that spans six fiscal years (2005 – 2006 through 2010 - 2011). Since the IDEA is due to be reauthorized in the near future, the SPP has been extended for two additional years (2011-2012 and 2012-2013). The SPP evaluates New Mexico's efforts to implement the requirements and purposes of Part B of the IDEA and describes how the State will improve its implementation.

As part of the SPP, each state was required to set targets for each of the Indicators that did not have a target mandated by OSEP. Each year, every state must report its progress to OSEP and the public on the progress of students with disabilities in the state. Specifically, New Mexico must report, in their Annual Performance Report (APR), their progress in meeting the measurable and rigorous targets established in the SPP. Based on the information in the State's APR and any other information available, OSEP applies the following Determinations to State's:

a. Meets Requirements of Part B of the Act,
b. Needs Assistance in Implementing Part B of the Act,
c. Needs Intervention in Implementing Part B of the Act; or
d. Needs Substantial Intervention in Implementing Part B of the Act.

Included in the State's General Supervision, Monitoring, and Enforcement requirements under 34 CFR §§300.149 and 300.600, the State must review every district each year on the SPP performance. According to the IDEA, states are required to make "Determinations" annually on the performance of the LEAs. States must use the same four categories as OSEP, listed above, in making Determinations of the status of local programs.

The General Supervision and Accountability System is an evolving process. As a result of the reauthorization of IDEA, increased accountability at the state and local level, and changes in OSEP's Monitoring Priorities, New Mexico has **moved from a Focused Monitoring System** to an **Accountability System**. New Mexico's Special Education Accountability System (SEAS) monitors and reviews all Lea's compliance and performance data annually, is similar to the No Child Left Behind (NCLB) accountability system, and mirrors the LEA's Educational Plan for Student Success (EPSS) improvement plan process, and involves stakeholders (IDEA Panel) in the process.

The primary focus of the State's monitoring activities under 34 CFR §300.600(b) must be on:
- **Results**
  - Improving educational results and functional outcomes for all students with disabilities; and
- **Compliance**
  - Ensuring that public agencies meet the program requirements under Part B of the act, with particular emphasis on those requirements that are most closely related to improving the educational results for students with disabilities.

New Mexico's SEAS focuses on student performance outcomes and the compliance requirements of the IDEA.

This Accountability System Manual is the tool designed to provide the structure for the State, LEAs, RECs, and State Supported Educational Programs in the area of General Supervision. The SEAS is the system that provides the assurances to OSEP that the state is carrying out its responsibilities, using quantifiable indicators in each of the

priority areas listed below, and using such qualitative indicators as are needed to adequately measure performance and compliance in those areas.

1. Provisions of Free and Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE).
2. State exercise of General Supervision including:
   a. child find
   b. effective monitoring
   c. use of resolution meetings
   d. mediation; and
   e. a system of transition services.
3. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent that the representation is the result of inappropriate identification.

IX. COLLABORATION WITH AGENCIES REGARDING MOUs

The NMPED has worked collaboratively with several agencies to develop memoranda of understandings (MOU) or agreement memoranda (AM) to assist in the coordination of the state agencies in providing services to students with disabilities. The LEA will abide by the requirements of each memorandum, including:
Statewide Transition Coordinating Council: http://www.ped.state.nm.us/seo/transition/stcc.fact.sheet.pdf
Family Infant Toddler Program of the New Mexico Department of Health and the New Mexico State Department of Education: http://www.ped.state.nm.us/seo/preschool/ta.parts.i.ii.suppl.pdf

The New Mexico School for the Deaf (NMSD) and the New Mexico Public Education Department (PED) formed the New Mexico Task Force on the Education of the Deaf and Hard of Hearing:
http://www.ped.state.nm.us/seo/library/deaf.ed.english.pdf

X. FUNDING

A. Federal Funds

Authority: 34 CFR §300.226 Early intervening services.

(a) General. The LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to §300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who have not been identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

(b) Activities. In implementing coordinated, early intervening services under this section, the LEA may carry out activities that include--

(1) Professional development (which may be provided by entities other than the LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(c) Construction. Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.

(d) Reporting. If the LEA develops and maintains coordinated, early intervening services under this section must annually report to the NMPED on--

(1) The number of children served under this section who received early intervening services; and

(2) The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two year period.

(e) Coordination with ESEA. Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

D. Early intervening services set aside funds. Fifteen percent (15%) set aside.
   (1) Pursuant to 34 CFR §§300.208(a)(2) and 300.226, LEAs may use up to fifteen percent of the amount the LEA receives under Part B of IDEA to implement early intervening services for children with or without disabilities in kindergarten through grade 12 with particular emphasis on children in kindergarten through grade three.
   (2) Prior to the implementation or use of these set aside funds, the LEA must have on record with the department an approved plan for use of these funds as described by 34 CFR §300.226(b) and how such activities will be coordinated with regional education cooperatives as described in 34 CFR §300.226(e), if applicable.
   (3) The LEA plan for use of set aside funds shall be submitted as an addendum to its annual application for Part B funding. If the LEA determines to implement a set aside plan after the initial application, a request for implementation of a set aside plan must be submitted for approval 60 days before the implementation of the plan.
   (4) Each LEA that develops and maintains coordinated, early intervening services (CEIS) must report annually to the department as provided in 34 CFR §300.226(d).

The LEA may use up to 15% of the entitlement received under IDEA to develop CEIS. Federal funds always retain their identity. The LEA will account for the receipt and expenditure of federal funds, and ensure that federal funds are used for allowable costs in accordance with federal fiscal requirements. The LEA will use a local option code that uniquely identifies the cost objective used to account for the expenditure of federal, state, and local funds on coordinated, early intervening services. The use of local and state funds for coordinated, early intervening services that were previously expended on special education services may result in an apparent decline in Maintenance of Effort (MOE). The LEA will maintain documentation (identification criteria, needs assessment, improvement plan, budget, etc.) that adequately describes the program implemented.

Authority: 34 CFR §300.162 Supplementation of State, local, and other Federal funds.

(a) Expenditures. Funds paid to a State under this part must be expended in accordance with all the provisions of this part.

(b) Prohibition against commingling.
   (1) Funds paid to a State under this part must not be commingled with State funds.
   (2) The requirement in paragraph (b)(1) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a State under this part. Separate bank accounts are not required. (See 34 CFR §76.702 (Fiscal control and fund accounting procedures)).

(c) State-level nonsupplanting.
   (1) Except as provided in §300.202, funds paid to a State under Part B of the Act must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the NMPED or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those Federal, State, and local funds.
   (2) If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (c)(1) of this section if the Secretary concurs with the evidence provided by the State under §300.164.

Authority: 34 CFR §300.163 Maintenance of State financial support.

(a) General. A State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(b) Reduction of funds for failure to maintain support. The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with

the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.

(c) Waivers for exceptional or uncontrollable circumstances. The Secretary may waive the requirement of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that--

(1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(2) The State meets the standard in §300.164 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.

(d) Subsequent years. If, for any fiscal year, a state fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

Authority: 34 CFR §300.164 Waiver of requirement regarding supplementing and not supplanting with Part B funds.

(a) Except as provided under §§300.202 through 300.205, funds paid to a state under Part B of the Act must be used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of NMPED or the LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act and, in no case, to supplant those Federal, State, and local funds. A state may use funds it retains under §300.704(a) and (b) without regard to the prohibition on supplanting other funds.

(b) If a State provides clear and convincing evidence that all eligible children with disabilities throughout the State have FAPE available to them, the Secretary may waive, for a period of one year or less, the requirement under §300.162 (regarding state-level non-supplanting), if the Secretary concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver under this section, it must submit a written request to the Secretary containing—

(1) An assurance that FAPE is currently available to all eligible children with disabilities throughout the State and will remain available throughout the period that the waiver is in effect, regardless of the public agency responsible for providing FAPE to them. The assurance must be signed by an official who has the authority to provide that assurance, as it applies to all eligible children with disabilities in the State;

(2) All of the evidence ~~that~~ the State wishes the Secretary to consider in determining whether all eligible children with disabilities have FAPE available to them, setting forth in detail--

(i) The basis on which the State has concluded that FAPE is available to all eligible children in the State; and

(ii) The procedures ~~that~~ the State will implement to ensure that FAPE remains available to all eligible children in the State, which must include--

(A) The State's procedures under §300.111 for ensuring that all eligible children are identified, located and evaluated;

(B) The State's procedures for monitoring public agencies to ensure that they comply with all requirements of this Part;

(C) The State's complaint procedures under §§300.151 through 300.153; and

(D) The State's hearing procedures under §§300.511 through 300.516 and §§300.530 through 300.536;

(3) A summary of all State and Federal monitoring reports and State complaint decisions (see §§300.151 through 300.153) and due process hearing decisions (see §§300.511 through 300.516 and §§300.530 through 300.536), issued within three years prior to the date of the State's request for a waiver under this section, which includes any findings that FAPE has not been available to one or more eligible children, and evidence that FAPE is now available to all children addressed in those reports or decisions; and

(4) Evidence that the State, in determining that FAPE is currently available to all eligible children with disabilities in the State, has consulted with the State advisory panel under §300.167.

(d) If the Secretary determines that the request and supporting evidence submitted by the State make a prima facie showing that FAPE is, and will remain, available to all eligible children with disabilities in

the State, the Secretary, after notice to the public throughout the State, conducts a public hearing at which all interested persons and organizations may present evidence regarding the following issues:

(1) Whether FAPE is currently available to all eligible children with disabilities in the State.

(2) Whether the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.

(e) Following the hearing, the Secretary, based on all submitted evidence, will approve a waiver, in whole or in part, for a period of one year, if the Secretary finds that the State has provided clear and convincing evidence that FAPE is currently available to all eligible children with disabilities in the State, and the State can ensure that FAPE remains available to all eligible children with disabilities, ~~in the State~~ if the Secretary grants the requested waiver.

(f) A State may receive a waiver of the requirement of section 612(a)(18)(A) of the Act and §300.164, if it satisfies the requirements of paragraphs (b) through (e) of this section.

(g) The Secretary may grant subsequent waivers for a period of one year each, if the Secretary determines that the State has provided clear and convincing evidence that all eligible children with disabilities throughout the State have, and will continue to have, FAPE available to them during the one-year period of the waiver.

Subpart C – South Valley Preparatory School Eligibility

Authority: 34 CFR §300.202 Use of amounts.

(a) General. Amounts provided to the LEA under Part B of the Act--

(1) Must be expended in accordance with the applicable provisions of this Part;

(2) Must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and

(3) Must be used to supplement State, local, and other Federal funds and not to supplant those funds.

(b) Excess cost requirement.

(1) General.

(i) The excess cost requirement prevents the LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b)(1)(ii) of this section.

(ii) The excess cost requirement does not prevent the LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children of these ages. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.

(2) (i) The LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.

(ii) The amount described in paragraph (b)(2)(i) of this section is determined in accordance with the definition of excess costs in §300.16. That amount may not include capital outlay or debt service.

(3) If two or more LEAs jointly establish eligibility in accordance with §300.223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in §300.16 in those agencies for elementary or secondary school students, as the case may be.

Authority: 34 CFR §300.16 Excess costs. Excess costs means those costs that are in excess of the average annual per-student expenditure in the LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting--

(a) Amounts received--

(1) Under Part B of the Act;

(2) Under Part A of title I of the ESEA; and

(3) Under Parts A and B of title III of the ESEA; and

(b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (see Appendix A to Part 300 for an example of how excess cost must be calculated)

Authority: 34 CFR §300.221 Notification of LEA and State agency in case of ineligibility.
If the NMPED determines that the LEA or State agency is not eligible under Part B of the Act, then the NMPED must—
(a) Notify the LEA or State agency of that determination; and
(b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:
G. Notification of LEA in case of ineligibility. Pursuant to 34 CFR §300.221, if the department determines that the LEA is not eligible under Part B of the act, the department shall notify the LEA of that determination and provide the LEA with reasonable notice and an opportunity for a hearing under 34 CFR §76.401(d).

Authority: 34 CFR §300.222 LEA and State agency compliance.
(a) General. If the NMPED, after reasonable notice and an opportunity for a hearing, finds that the LEA or State agency that has been determined to be eligible under this subpart is failing to comply with any requirement described in §§300.201 through 300.213, the NMPED must reduce or must not provide any further payments to the LEA or State agency until the NMPED is satisfied that the LEA or State agency is complying with that requirement.
(b) Notice requirement. Any State agency or LEA in receipt of a notice described in paragraph (a) of this section must, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.
(c) Consideration. In carrying out its responsibilities under this section, the NMPED must consider any decision resulting from a hearing held under §§300.511 through 300.533 that is adverse to the LEA or State agency involved in the decision.

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:
H. Withholding of funds for noncompliance. Pursuant to 34 CFR §300.222, if the department, after reasonable notice and an opportunity for a hearing under 34 CFR §76.401(d), finds that a public agency that has previously been determined to be eligible is failing to comply with any requirement described in 34 CFR §§300.201-300.213 and 34 CFR §300.608, the department must reduce or may not provide any further Part B payments to the public agency until the department is satisfied that the public agency is in compliance with that requirement.
I. Reallocation of funds. If a new LEA is created, the base payment portion of the IDEA subgrant of the LEA that would have served children with disabilities now being served by the new LEA will be adjusted pursuant to 34 CFR §300.705(b)(2). IDEA funds to new charter schools that are LEAs will be allocated pursuant to 34 CFR §§76.785-76.799 and 34 CFR §300.705(b). Pursuant to 34 CFR §300.705(c), if the department determines that a public agency is adequately using state and local funds to provide FAPE to all children with disabilities residing in the area served, the department may reallocate any portion of the funds that is not needed by that public agency to assist other LEAs that are not providing adequate special education and related services to all children with disabilities residing in their service areas. The department may also retain those funds for use at the state level, as provided by 34 CFR §300.705(c).

Authority: 34 CFR §300.223 Joint establishment of eligibility.
(a) General. The NMPED may require the LEA to establish its eligibility jointly with another LEA if the NMPED determines that the LEA will be ineligible under this subpart because the LEA will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.
(b) Charter school exception. The NMPED may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless the charter school is explicitly permitted to do so under the State's charter school statute.
(c) Amount of payments. If the NMPED requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under §300.705 if the agencies were eligible for those payments.

Authority: 34 CFR §300.203 Maintenance of effort.
(a) General. Except as provided in §§300.204 and 300.205, funds provided to LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(b) Standard.

(1) Except as provided in paragraph (b)(2) of this section, the NMPED must determine that the LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per-capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

(i) Local funds only.

(ii) The combination of State and local funds.

(2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.

(3) The NMPED may not consider any expenditures made from funds provided by the Federal Government for which the NMPED is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the NMPED in determining an LEA's compliance with the requirement in paragraph (a) of this section.

Authority: 34 CFR §300.204 Exception to maintenance of effort.

Notwithstanding the restriction in §300.203(a), the LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year, if the reduction is attributable to any of the following:

(a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.

(b) A decrease in the enrollment of children with disabilities.

(c) The termination of the obligation of the agency, consistent with this Part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the NMPED, because the child--

(1) Has left the jurisdiction of the agency;

(2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or

(3) No longer needs a program of special education.

(d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

(e) The assumption of cost by the high cost fund operated by the NMPED under §300.704(c).

Authority: 34 CFR §300.205 Adjustment to local fiscal efforts in certain fiscal years.

(a) Amounts in excess. Notwithstanding §300.202(a)(2) and (b) and §300.203(a), and except as provided in paragraph (d) of this section and §300.230(e)(2), for any fiscal year for which the allocation received by the LEA under section §300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by §300.203(a) by not more than 50 percent of the amount of that excess.

(b) Use of amounts to carry out activities under ESEA. If the LEA exercises the authority under paragraph (a) of this section, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.

(c) State prohibition. Notwithstanding paragraph (a) of this section, if the NMPED determines that the LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the NMPED has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the NMPED must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.

(d) Special rule. The amount of funds expended by LEA for early intervening services under §300.226 shall count toward the maximum amount of expenditures that the LEA may reduce under paragraph (a) of this section.

Authority: 34 CFR §300.206 School wide programs under title I of the ESEA.

(a) General. Notwithstanding the provisions of §§300.202 and 300.203 or any other provision of Part B of the

Act, an LEA may use funds received under Part B of the Act for any fiscal year to carry out a school wide program under section 1114 of the ESEA, except that the amount used in any school wide program may not exceed--

(1) (i) The amount received by the LEA under Part B of the Act for that fiscal year; divided by
(ii) The number of children with disabilities in the jurisdiction of the LEA; and multiplied by
(2) The number of children with disabilities participating in the school wide program.

(b) Funding conditions. The funds described in paragraph (a) of this section are subject to the following conditions:

(1) The funds must be considered as Federal Part B funds for purposes of the calculations required by §300.202(a)(2) and (a)(3).
(2) The funds may be used without regard to the requirements of §300.202(a)(1).

(c) Meeting other Part B requirements. Except as provided in paragraph (b) of this section, all other requirements of Part B of the Act must be met by the LEA using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in school wide program schools--

(1) Receive services in accordance with a properly developed IEP; and
(2) Are afforded all of the rights and services guaranteed to children with disabilities under the Act.

Authority: 34 CFR §300.208 Permissive use of funds.

(a) Uses. Notwithstanding §§300.202, 300.203(a), and §300.162(b), funds provided to the LEA under Part B of the Act may be used for the following activities:

(1) Services and aids that also benefit nondisabled children. For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefits from these services.
(2) Early intervening services. To develop and implement coordinated, early intervening educational services in accordance with §300.226.
(3) High cost education and related services. To establish and implement cost or risk-sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services.

(b) Administrative case management. The LEA may use funds received under Part B of the Act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel who provide the services described in the IEPs.
(See Risk Pool Funds Procedures Below)

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

B. South Valley Preparatory School funding and staffing

(1) The South Valley Preparatory School provides special education or related services to children with disabilities and shall allocate sufficient funds, staff, facilities and equipment to ensure that the requirements of the IDEA and all department rules and standards that apply to programs for children with disabilities are met.

(2) The public agency with primary responsibility for ensuring that FAPE is available to a child with a disability on the date set by the department for a child count or other report shall include that child in its report for that date. Public agencies with shared or successive responsibilities for serving a particular child during a single fiscal year are required to negotiate equitable arrangements through joint powers agreements or memorandums of understanding or interstate agreements for sharing the funding and other resources available for that child. Such agreements shall include provisions with regard to resolving disputes between the parties to the agreement.

(6) Risk pool fund. (Puente para los Niños fund.)

(a) Local educational agency high cost fund.

(i) In compliance with 34 CFR §300.704(c) the department shall maintain a risk pool fund to support high cost children with disabilities identified by LEAs.
(ii) Funds distributed under this program will be on a reimbursable basis.

(b) Application of funds. LEAs desiring to be reimbursed for the cost of children with disabilities with high needs shall file an application in accordance with the department's Puente para los Niños fund as described on the department's website. *http://www.ped.state.nm.us/SEB/fiscal/index.html*
(See Risk Pool Funds Procedures Below)

C. IDEA applications and assurances. Each New Mexico public agency that desires to receive IDEA flow-through funds shall file an annual application with the department in the form prescribed by the department. Each application shall:
   (1) provide all information requested by the department;
   (2) demonstrate to the department's satisfaction that the agency is in compliance with all applicable requirements of 34 CFR §§300.200-300.230 and these or other department rules and standards;
   (3) include an agreement that the agency upon request will provide any further information the department requires to determine the agency's initial or continued compliance with all applicable requirements;
   (4) include assurances satisfactory to the department that the public agency does and will continue to operate its programs in compliance with all applicable federal and state programmatic, fiscal and procedural requirements including the development of joint powers agreements, memoranda of understanding or other interagency agreements to address shared or successive responsibilities to meet the educational needs of a particular child during a single fiscal year; and
   (5) pursuant to Subsection C of Section 22-8-11, NMSA 1978, the department shall not approve or certify an operating budget of any school district or state-chartered charter school that fails to demonstrate that it solicited parental involvement in the process.

Risk Pool Fund - High cost education and related services

Authority: 34 CFR §300.208 and NMAC 6.31.2.9 (B) (6).
Disbursements from the Puente para los Niños risk pool fund will be made to meet the requirements of students with high needs as defined below and pursuant to the criteria that follows the definition. Disbursements from the funds may only be used for the costs associated with currently providing direct special education and related services identified in the student with high need's properly constituted Individualized Education Program (IEP). Funds are to be used to assist a student with a disability to benefit from special education and related services. Funds cannot be used for services the LEA and/or Regional Education Cooperatives (REC) would like to provide, but is not currently providing, or expenses such as legal fees, court costs, or other litigation costs. Educational and related services must be provided by individuals who are properly licensed by the NMPED and/or the New Mexico Department of Regulation and Licensing. *See paragraph (B)(6) of 6.31.2.9 NMAC listed above.*

A. Assurances

LEAs or RECs accessing the Puente para los Niños fund must assure the following:
- The student must have been evaluated in accordance with Subsections D and E of 6.31.2.10 NMAC.
- The student qualified for special education and/or related services in accordance with Subsections D, E, and F of 6.31.2.10 NMAC.
- The student has a properly constituted and up-to-date IEP in accordance with §6.31.2.11 NMAC.
- The student's placement was decided by the student's IEP team. §6.31.2.11 NMAC
- The student's placement is in the Least Restrictive Environment (LRE) in accordance with Subsection C of 6.21.2.11 NMAC.
- The LEA or REC agrees to pay at least 25% of the cost per school year to educate a student with high needs, with the exception of small LEAs, as defined in Section (B).

B. Puente para los Niños Fund Application

LEAs or RECs applying for Puente para los Niños funds will need to complete the New Mexico Public Education Department's (NMPED) application form. LEAs or RECs must provide an original and four copies of the following information:
- Number of students meeting the high need definition in Section (A) above as well as the total special education student enrollment. Include the LEA's or REC's last two enrollment counts submitted to the NMPED for the current school year.
- A narrative describing how the cost of the student with high needs impacted the LEA's or REC's budget. The account must include how the student with high needs impacted the services of the other students entitled to special education and/or related services enrolled in the LEA.
- A description of the course of action taken to date by the LEA and/or REC regarding the student with high needs. Be sure to include the number and type of Full Time Equivalent staff (FTEs) affected for each such student.

- The most recent detailed expenditure report showing budgeted and actual year-to date expenditures for each student with high needs.
- Copies of all contracts and invoices that pertain to the student with high needs.
- The student's current redacted IEP. The student's name, parent(s)/guardian(s) name, and contact information such as address and phone number should be removed. Be sure the student's unique identifier number is included on the IEP.

The application along with the supporting documentation listed in Section (B) must be received by the NMPED Special Education Bureau (SEB) at least two weeks prior to the quarterly Puente para los Niños Committee meeting. See Section II for Puente para los Niños Committee information. Completed applications will be reviewed by the Puente para los Niños Committee. Incomplete applications will be returned to the LEA or REC. LEAs or RECs will be notified of the acceptance or rejection within 45 days of the Puente para los Niños Committee meeting. Funds will be distributed according to Section (E) below.

The Puente para los Niños Committee may grant awards for less than the amount of need requested. All Puente para los Niños applications are subject to audit by either the NMPED staff and/or federal auditors. The auditors may review and verify the data submitted in the Puente para los Niños applications including assurances made by the LEAs or RECs. The auditors will consider whether the IEPs are properly constituted and implemented and why LEAs or RECs are exhibiting unusual growth rates or high costs. The results of the auditors' review may be considered by the Puente para los Niños Committee in determining, adjusting, or recovering Puente para los Niños funds.

C. Annual State Education Agency (NMPED) Distribution Schedule

After the LEA or REC receives approval to access Puente para los Niños funds, funds will be reimbursed to the LEA or REC two times per month in accordance with the NMPED reimbursement schedule. Funds will be allocated on a first-come-first served basis. Once funds for the current fiscal year have been exhausted, no further funds will be available until the next fiscal year, unless funds previously allocated to an LEA revert back to the NMPED. Re-application to the Puente para los Niños fund will be required annually for each student with high needs. Funding approval will be determined annually for the state fiscal year of July 1 through June 30. Puente para los Niños financial awards in prior years do not guarantee future eligibility.

D. Reporting Requirements

For auditing purposes, biannual or semester reports (June 30 and December 30) are required by each LEA and/or REC awarded Puente para los Niños funds. Reports must include the following information:

- Student's most current IEP, health plan, and transition plan for students fourteen years old or older.
- Student's proof of continued enrollment in the LEA or REC.
- Expenditure reports and receipts.
- LEA's or REC's proof of providing at least 25% of the cost to educate the student, unless the small LEA exception has been granted.

Notification in writing must be made to the NMPED SEB Data Fiscal Manager within fifteen days when a student with high needs disenrolls from the LEA and/or REC. Final submission of invoices for reimbursement for the student with high need's services must be received at the NMPED no later than 30 days from when the student dis-enrolled from the LEA or REC.

E. Additional Restrictions

Funds cannot be used to pay costs that otherwise would be reimbursed as medical assistance under Medicaid. Funds from the Puente para los Niños fund shall not be used to pay for legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure a FAPE for such a child. The student with high needs' private health insurance cannot be utilized without written consent from the student's parent(s) or guardian(s), as provided in 34 CFR §300.142(f).

(f) Children with disabilities who are covered by private insurance.

(1) With regard to services required to provide FAPE to an eligible child under this part, the LEA may access a parent's private insurance proceeds only if the parent provides informed consent consistent with §300.500(b)(1).

(2) Each time the LEA proposes to access the parent's private insurance proceeds, it must –

(i) Obtain parent consent in accordance with paragraph (f)(1) of this section; and

(ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

Puente para los Niños Committee

The Puente para los Niños Committee approves or disapproves all Puente para los Niños applications at the committee meetings or returns the incomplete applications to the LEA or REC for possible resubmission if additional or corrected information is needed. LEA and/or REC applicants may attend the Puente para los Niños Committee meetings. The Puente para los Niños Committee may request that a representative of the LEA or REC be available in person or via teleconferencing to answer questions when the LEA's or REC's application is being considered. Due to the discussion of personally identifiable information of individual students and the confidential nature of the Puente para los Niños Committee meetings, the meetings will not be open to the public.

Puente para los Niños Committee Membership

Membership of the State Puente para los Niños Committee shall consist of:

- SEB Data and Fiscal Manager
- SEB Business Operations Specialist
- NMPED Nurse Consultant
- LEA Superintendent
- LEA Special Education Director
- The State Director of Special Education or his/her designee

The State Director of Special Education or his/her designee shall serve as an ex officio nonvoting committee member and act as the state Puente para los Niños Committee manager.

1. The committee members will be appointed by the State Special Education Director.
2. Members of the committee from LEAs or RECs will be appointed based on their knowledge of special education program service delivery and funding, geographical representation, size of LEA, and other demographic considerations.
3. Alternate members shall be appointed. In the event a member is unable to attend a committee meeting, an alternate member shall attend.
4. Membership appointments shall be made for a period of three years.

Puente para los Niños Committee Procedures

1. The committee will review applications as deemed necessary by the State Director of Special Education.
2. All applications received by the committee will be reviewed for completeness by the committee manager or designee. Applications must include all necessary forms, narratives, and attachments as described in Section (D). If applications are not complete, they will not be considered by the committee.
3. The committee manager or designee will forward to the committee members copies of the applications in a timely manner.
4. The committee manager or designee will be responsible for presenting each application for consideration to the committee.
5. Committee members shall review and discuss the application content for completeness, accuracy, and understanding of the reason(s) for the applicant's need for Puente para los Niños funds.
6. The committee may request that a submitting school district provide clarifying information.
7. Committee members will individually indicate their agreement, disagreement or abstention with the actions of the committee.
8. A majority vote by the committee members will be sufficient to determine the committee action.
9. The committee manager or designee will ensure that notes are taken which summarize the questions and discussion related to each application. A decision summary for each application shall include the amount of the initial request, funding adjustments recommended by the committee, the amount of any award to be made, and the reasons for the action taken by the committee.
10. Committee members shall sign the decision summary.
11. The committee manager or designee, on behalf of the committee, will notify the applicant LEA and/or REC in writing of the determination of the committee. The LEA and/or REC will be provided a copy of the decision summary.
12. All applications received by the committee will be retained by the State Director of Special Education for use in the evaluation of Puente para los Niños funding.

Puente para los Niños Committee Actions

1. The committee must determine that:
   a. there are no unresolved audit examination issues related to applicant that are material in nature;
   b. there are no unresolved child count verification issues related to the applicant that are material in nature; and
   c. all corrections to state enrollment reporting required for resolution of (a) and (b) of this subsection, have been completed.
2. An application reviewed during an application cycle may be:
   a. Approved,
   b. Disapproved, or
   c. Returned to the submitting LEA and/or REC for possible resubmission at a later date during the school year, because information contained in the application is insufficient to establish a need for Puente para los Niños funds.
3. The amount of the approval may be equal to, or less than, ~~that~~ the amount requested.
4. The approval of the application may be contingent on additional requirements imposed by the committee, such as the development of an improvement plan to resolve a specific issue or concern.
5. The application approvals are subject to adjustment and recovery.

Puente para los Niños Committee Application Deadlines and meeting dates are posted on the NMPED website. Hard copy, walk-in, or electronic email applications must be received at the NMPED's Special Education Bureau by 5:00 p.m. on the application deadline day listed on the website. Fax submissions will not be accepted.

B. New Mexico School for the Deaf

Funding of the School for the Deaf

The New Mexico School for the Deaf (NMSD) and the New Mexico State Department of Education (SDE) formed the New Mexico Task Force on the Education of the Deaf and Hard of Hearing: http://www.ped.state.nm.us/seo/library/deaf.ed.english.pdf

C. New Mexico School for the Blind and Visually Impaired

Authority: 34 CFR §300.210 Purchase of instructional materials.

(a) General. An LEA that chose, by December 3, 2006, to coordinate with the National Instructional Materials Access Center when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions, as an SEA under §300.172.

(b) Rights of LEA.

(1) Nothing in this section shall be construed to require the LEA to coordinate with the National Instructional Materials Access Center (NIMAC).

(2) If the LEA chooses not to coordinate with the National Instructional Materials Access Center, the LEA must provide an assurance to the NMPED that the LEA will provide instructional materials in a timely manner to blind persons or other persons with print disabilities.

(3) Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities, who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities under 300.172(e)(1)(i), or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

Authority: 34 CFR §300.172 Access to instructional materials.

(a) General. The NMPED must—

(1) Adopt the National Instructional Materials Accessibility Standard (NIMAS), published as Appendix C to Part 300 after publication of the NIMAS in the Federal Register on July 19, 2006 (71 FR 41084), in order to provide instructional materials to blind persons or other persons with print disabilities in a timely manner; and

(2) Establish a State definition of "timely manner" for purposes of paragraphs (b)(2) and (b)(3) of this section if the State is *not* coordinating with the National Instructional Materials Access Center

(NIMAC), or (b)(3) and (c)(2) of this section if the State *is* coordinating with the NIMAC. *The NMPED is coordinating with the NIMAC.*

(b) Rights and responsibilities of the NMPED.

(1) Nothing in this section shall be construed to require any SEA to coordinate with the National Instructional Materials Access Center (NIMAC).

(2) If an SEA chooses not to coordinate with the NIMAC, the agency must provide an assurance to the Secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(3) Nothing in this section relieves an SEA of its responsibility to ensure that children with disabilities, who need instructional materials in accessible formats, but are not included under the definition of blind or other persons with print disabilities in 300.172(e)(1)(i), or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

(4) In order to meet its responsibility under paragraphs (b)(2), (b)(3), and (c) of this section to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, the NMPED must ensure that public agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities at the same time as other children are provided their instructional materials.

(c) Preparation and delivery of files. If the NMPED chooses to coordinate with the NIMAC, as of December 3, 2006, the NMPED must,

(1) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to--

(i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(2) Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(d) Assistive technology. In carrying out this section, the NMPED, to the maximum extent possible, must work collaboratively with the State agency responsible for assistive technology programs.

(e) Definitions.

(1) In this section and §300.210--

(i) Blind persons or other persons with print disabilities means children served under this Part who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled "An Act to Provide Books for Adult Blind," approved March 3, 1931, 2 USC 135a;

(ii) National Instructional Materials Access Center or NIMAC means the center established pursuant to section 674(e) of the Act;

(iii) National Instructional Materials Accessibility Standard or NIMAS has the meaning given the term in section 674(e)(3)(B) of the Act; and

(iv) Specialized formats has the meaning given the term in section 674(e)(3)(D) of the Act.

(2) The definitions in paragraph (e)(1) of this section apply to each State and LEA, whether or not the State or LEA chooses to coordinate with the NIMAC.

New Mexico School for the Blind and Visually Impaired (formerly NMSVH) has for many years operated an Instructional Resource Center (IRC) on the school's main campus to help provide educational materials for students with visual impairments statewide. In addition, it also now houses the New Mexico Repository, consisting of textbooks in Braille and large print contributed by schools from throughout New Mexico.

Access to appropriate educational materials is essential in meeting the needs of students with visual impairments, and many of these materials can be loaned to schools for eligible students at no cost to the school or student. For ordering information please go to the website: http://www.nmsbvi.k12.nm.us/content/irc.htm

Authority: NMAC §6.75.4.8 GENERAL REQUIREMENTS

A. The department adopts the NIMAS for the purpose of providing print instructional materials in alternate accessible or specialized formats to blind persons or other persons with print disabilities in a timely manner.
B. In consultation with representatives from educational institutions and publishers, the department shall ensure to the qualified student the provision of instructional materials that:
   (1) are deemed essential or required for student success;
   (2) meet requirements for nontextual mathematics or science instructional materials that use mathematical or scientific pictures, illustrations, graphs, charts, symbols or notations;
   (3) maintain structural integrity and meet requirements for textual descriptions of pictures, illustrations, graphs and charts; and
   (4) are available in an alternate accessible or specialized format.

C. The department, through its instructional materials adoption process, shall require publishers to prepare and, on or before delivery of the printed instructional materials, provide to the NIMAC electronic files containing the content of the printed instructional materials using the NIMAS for all instructional material adopted by the department after July 19, 2006. [6.75.4.8 NMAC - N, 12-14-06]

Authority: NMAC §6.75.4.9 REQUIREMENTS: RESPONSIBILITIES OF EDUCATIONAL INSTITUTIONS
A. An educational institution is not required to coordinate with the NIMAC. If the educational institution chooses to coordinate with the NIMAC, the educational institution shall acquire instructional materials in the same manner and subject to the same conditions as provided in §6.75.4.8 NMAC.
B. If an educational institution becomes a coordinating agency with NIMAC, it shall place its orders for instruction materials in alternate accessible or specialized formats through the persons responsible for coordinating services to students with disabilities with the central repository authorized by the department. The central repository shall serve as the authorized user and agent of the educational institution with NIMAC and it will have access to the NIMAC database and it may download NIMAS files in accordance with established agreements so that printed instructional materials can be efficiently converted to alternate accessible or specialized formats. The central repository will perform the conversion of the NIMAS files into the alternate accessible or specialized format and deliver it in a timely manner to the educational institution that ordered it.
C. If the educational institution chooses not to coordinate with the NIMAC, the educational institution shall provide a written assurance to the department in its annual local IDEA application that the educational institution shall provide instructional materials in an alternate accessible or specialized format to blind students or other students with print disabilities in a timely manner.
D. Educational institutions, through the persons responsible for coordinating services to students with disabilities, must certify in writing to the central repository authorized by the department that:
   (1) the materials are deemed essential or required for student success;
   (2) an electronic copy of the materials will be used solely for the student's educational purposes.
E. No educational institution, its employees or its students shall authorize any use of instructional materials that would be inconsistent with the provisions of 17 U.S.C. Section 121 as amended by Title III, Section 306 of the IDEA. [6.75.4.9 NMAC - N, 12-14-06]

D. Noneducational Funds

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:
B. Public agency funding and staffing
(5) Educational agencies may seek payment or reimbursement from noneducational agencies or public or private insurers for the services and/or devices necessary to ensure FAPE to children with disabilities. Claims for payment or reimbursement shall be subject to the procedures and limitations established in 34 CFR §§300.154(b) and 300.154(d) through (g), §22-13-8 NMSA 1978 and any laws, regulations, executive orders, contractual arrangements or other requirements governing the obligations of non-educational payors. (Note: 34 CFR §300.154(d)(2)(iv) and (v) were amended 3/18/13.)

E. Private School Funding

For additional requirements on Private School Funding and Proportionate Share, see Chapter 6 LRE.

F. Public Insurance

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

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

(1) The LEA may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this Part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.

(2) With regard to services required to provide FAPE to an eligible child under this Part, the LEA--

(i) May not require parents to sign up for, or enroll in, public benefits or insurance programs so that their child may receive FAPE under Part B of the Act;

(ii) May not require parents to incur an out-of-pocket expense, such as the payment of a deductible or co-pay incurred in filing a claim for services provided under this Part but, pursuant to paragraph (g)(2) of this section, may pay the cost that the parent otherwise would be required to pay;

(iii) May not use a child's benefits under a public benefits or insurance program if that use would--

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

(C) Increase premiums or lead to the discontinuation of benefits or insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(iv) Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notification to the child's parents consistent with paragraph (d)(2)(v) of this section, must obtain written, parental consent that--

(A) Meets the requirements of §99.30 of this title and §300.622, which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under Part 300), and the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program or Medicaid); and

(B) Specifies that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under Part 300.

(v) Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, must provide written notification, consistent with §300.503(c), to the child's parents, that includes--

(A) A statement of the parental consent provisions in paragraphs (d)(2)(iv)(A) and (B) of this section;

(B) A statement of the "no cost" provisions in paragraphs (d)(2)(i) through (iii) of this section;

(C) A statement that the parents have the right under 34 CFR part 99 and part 300 to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and

(D) A statement that the withdrawal of consent or refusal to provide consent under 34 CFR Part 99 and Part 300 to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(e) Children with disabilities who are covered by private insurance.

(1) With regard to services required to provide FAPE to an eligible child under this Part, the LEA may access a parent's private insurance proceeds only if the parent provides consent consistent with §300.9.

(2) Each time the LEA proposes to access the parent's private insurance proceeds, the LEA must--

(i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and

(ii) Inform the parents that their refusal to permit the LEA to access their private insurance does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents.

(f) Use of Part B funds.

(1) If the LEA is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the LEA may use its Part B funds to pay for the service.

(2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the LEA may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parent's benefits or insurance (e.g., the deductible or co-pay amounts).

(g) Proceeds from public benefits or insurance or private insurance.

(1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25.

(2) If the LEA spends reimbursements from Federal funds (e.g., Medicaid) for services under this Part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in §§300.163 and 300.203.

(h) Construction. Nothing in this Part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program. (Note: 34 CFR §300.154(d)(2)(iv) and (v) were amended 3/18/13.)

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:
B. Public agency funding and staffing

(7) Pursuant to 34 CFR §300.154(d), the LEA may use the Medicaid or other public benefits or insurance in which a child participates to provide or pay for services required under the IDEA Part B regulations, as permitted under the public insurance program, except as provided in (a) below.

(a) With regard to services required to provide FAPE to an eligible child, the LEA:

(i) may not require parents to sign up for, or enroll in, public insurance programs so that their child may receive FAPE under Part B of the IDEA;

(ii) may not require parents to incur an out-of-pocket expense, such as the payment of a deductible or co-pay incurred in filing a claim for services, as provided in IDEA Part B regulations. Pursuant to 34 CFR §300.154(f)(2), the public agency may pay the cost that the parent otherwise would be required to pay; and

(iii) may not use a child's benefits under a public benefits or insurance program if that use would: (a) decrease available lifetime coverage or any other insured benefit; (b) result in the family paying for services that would otherwise be covered by the public insurance program and are required for the child outside of school; (c) increase premiums or lead to the discontinuation of benefits or insurance coverage; or (d) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures. (Note: 34 CFR §300.154(d)(2)(iv) and (v) were amended 3/18/13)

(b) Pursuant to 34 CFR §300.154(e), an educational agency must obtain a parent's informed written consent for each proposed use of private insurance benefits and must inform parents that their refusal to permit the use of their private insurance will not relieve the educational agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(c) Pursuant to 34 CFR §300.154(f):

(i) if the LEA is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service required under the IDEA Part B regulations, to ensure FAPE the LEA may use its Part B funds to pay for the service; and

(ii) to avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the LEA may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

G. Residential Expenses *(See Chapter 6 LRE for references to RTC)*

Authority: NMAC §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.

H. State Funds

The state education funds for special education are weighted dollars based on service level of the student. These funds are distributed as part of the State Equalization Formula and go directly to the districts. Expenditure of these funds is generally used for teacher salaries and is at the discretion of the district.

I. Transportation

Authority: 34 CFR §300.139 Location of services and transportation. *(See also Chapter 6 LRE)*

(a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private schools, including religious, schools, to the extent consistent with law.

(b) Transportation.

(1) General.

(i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation--

(A) From the child's school or the child's home to a site other than the private school; and

(B) From the service site to the private school, or to the child's home, depending on the timing of the services.

(ii) LEAs are not required to provide transportation from the child's home to the private school.

(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of §300.133. *(§300.133 Expenditures for Parentally placed students)*

Authority: NMSA 1978 § 22-16-6. Reimbursement of parents or guardians.

The LEA local school board may, subject to regulations adopted by the state board [department], provide per capita or per mile reimbursement to a parent or guardian in cases where regular school bus transportation is impractical because of distance, road conditions or sparseness of population or in cases where the local school board has

authorized a parent to receive reimbursement for travel costs incurred by having a child attend a school outside the child's attendance zone.

XI. GIFTED STUDENTS

Technical Assistance and Training Document for Gifted Education at the NMPED website: http://www.ped.state.nm.us/seo/gifted/gifted.pdf

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

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

Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

F. Applicability of rules to gifted children.
   (1) All definitions, policies, procedures, assurances, procedural safeguards and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the educational jurisdiction of each local school district, including children in charter schools within the district, except:
      (a) the requirements of 6.31.2.8 NMAC through 6.31.2.10 NMAC
      (b) Subsections J, K and L of 6.31.2.11 NMAC regarding child find, evaluations and services for private school children with disabilities, children with disabilities in state-supported educational programs, children with disabilities in detention and correctional facilities and children with disabilities who are schooled at home;
      (c) the requirements of 34 CFR Secs. 300.530-300.536, Subsection I of 6.31.2.13 NMAC and 6.11.2.11 NMAC regarding disciplinary changes of placement for children with disabilities; and
      (d) the requirements of 34 CFR Secs. 300.43, 300.320(b) and 6.31.2.11(G)(2) regarding transition planning. Students identified as gifted must meet the requirements at Subsection B of 22-13-1.1 NMSA 1978, which is the next step plan for students without disabilities.
   (2) Assuming appropriate evaluations, a child may properly be determined to be both gifted and a child with a disability and be entitled to a free appropriate public education for both reasons. The rules in this section 6.31.2.12 NMAC apply only to gifted children.
   (3) Nothing in these rules shall preclude a school district or a charter school within a district from offering additional gifted programs for children who fail to meet the eligibility criteria. However, the NMPED shall only provide funds under Section 22-8-21 NMSA 1978 for department approved gifted programs for those students who meet the established criteria.

The South Valley Preparatory School does offer additional gifted programs for children who fail to meet the eligibility criteria as described in sections 2.-Evaluation and 3.-Gifted Students. The NMPED does not provide funds under Section 22-8-21 NMSA 1978 for gifted programs whose students do not meet the established criteria. ***OR*** *The South Valley Preparatory School does not offer additional gifted programs for children who fail to meet the eligibility criteria as described in sections 2.-Evaluation and 3.-Gifted Students. The NMPED provides funds under Section 22-8-21 NMSA 1978 only for department-approved gifted programs for those students who meet the established criteria.*

G. Advisory committees.
   (1) Each school district offering a gifted education program shall create one or more advisory committees of parents, community members, students and school staff members. The school district may create as many advisory committees as there are high schools in the district or may create a district-wide advisory committee.
   (2) The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the school district or the schools the committee advises. Representation from all schools the committee is advising is required.
   (3) Purposes. The advisory committee shall:
      (a) regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery;
      (b) demonstrate support for the gifted program;
      (c) provide information regarding the impact that cultural background, linguistic background, socioeconomic status and disability conditions within the community may have on the child referral, identification, evaluation and service delivery processes;
      (d) advocate for children who have been under-represented in gifted services due to cultural or linguistic background, socioeconomic status, or disability conditions, in order to ensure that these children have equal opportunities to benefit from services for gifted students; and
      (e) meet three or more times per year at regular intervals.
   (4) Formal documentation of committee membership, activities and recommendations shall be maintained. If proposals are made by the committee to address any of the purposes as listed in Subsection G(3) of 6.31.2.12 NMAC, they shall be submitted in writing to the district administration. The administration shall respond in writing to any proposed actions before the next scheduled meeting of the advisory committee.

<u>The advisory members should:</u>
- *be knowledgeable and interested in gifted education*
- *reflect the cultural diversity of the school's enrollment*
- *be made up of parents, community members, school staff, and students*

<u>The advisory committee does NOT:</u>
- *conduct MDT/IEP meetings*
- *review confidential information on individual students*
- *monitor the teacher, school or district regarding gifted education*

<u>Guidelines for Curriculum:</u>
Students receiving gifted services must be provided a differentiated education from that regularly provided by New Mexico school districts. It is important that teachers of gifted students be aware of the following curricular issues and resources:
- techniques for differentiation of curriculum
- methods and materials specific to gifted students
- scope and sequence of their district's regular curriculum-standards/benchmarks of district
- academic needs of individual gifted students in relation to the district's regular curriculum
- state standards
- district gifted curriculum guides
- district/community philosophy toward gifted education.

Focused monitoring:
Gifted Education in New Mexico is under the umbrella of Special Education. A gifted child in this state is defined as a school-age person whose intellectual ability paired with subject matter aptitude/achievement,

creativity/divergent thinking, or problem-solving/critical thinking is so outstanding that a properly constituted Individual Education Plan (IEP) team decides special education services are required to meet the child's educational needs.
Each district is responsible for finding children who meet the criteria for services and have a demonstrated need and providing appropriate service. All of the applicable rules for children with disabilities apply to gifted children with **two exceptions**:

- child find in private schools, home schooled children, those enrolled in state supported schools, or children in detention and correctional facilities; and
- the provisions afforded children with disabilities regarding disciplinary changes of placement.

XII. CHARTER SCHOOLS

Authority: 34 CFR §300.7 Charter school.
Charter school has the meaning given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 USC 6301 *et. seq.* (ESEA). (Authority: 20 U.S.C. 7221i(1))

Authority: 34 CFR §300.209 Treatment of charter schools and their students.
(a) Rights of children with disabilities. Children with disabilities who attend public charter schools and their parents retain all rights under this part.
(b) Charter schools that are public schools of the LEA.
(1) In carrying out Part B of the Act and these regulations with respect to charter schools that are public schools of the LEA, the LEA must--
(i) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and
(ii) Provides funds under Part B of the Act to those charter schools--
(A) On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and
(B) At the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the State's charter school law.
(2) If the public charter school is a school of the LEA that receives funding under §300.705 (Subgrants to LEAs) and includes other public schools--
(i) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and
(ii) The LEA must meet the requirements of paragraph (b)(1) of this section.
(c) Public charter schools that are LEAs. If the public charter school is an LEA, consistent with §300.28, that receives funding under §300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity.
(d) Public charter schools that are not an LEA or a school that is part of an LEA.
(1) If the public charter school is not an LEA receiving funding under §300.705, or a school that is part of an LEA receiving funding under §300.705, the NMPED is responsible for ensuring that the requirements of this part are met.
(2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However, the NMPED must maintain the ultimate responsibility for ensuring compliance with this part, consistent with §300.149.

Authority: NMAC §6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:
I. Children in charter schools.
(1) Pursuant to 34 CFR §300.209, children with disabilities who attend public charter schools and their parents retain all rights under Part B of IDEA.
(2) Charter schools that are public schools of the South Valley Preparatory School , if any:
(a) the public agency must serve children with disabilities attending those charter schools in the same manner as the public agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and

(b) the public agency must provide funds under Part B of IDEA to those charter schools on the same basis as the public agency provides funds to the public agency's other public schools, including proportional distribution based on relative enrollment of children with disabilities, and at the same time as the public distributes other federal funds to the public agency's other public schools, consistent with the state's charter school law; and

(c) if the public charter school is a school of an LEA that receives funding under 34 CFR §300.705 and includes other public schools:

(i) the LEA is responsible for ensuring that the requirements of this part are met, unless state law assigns that responsibility to some other entity; and

(ii) the LEA must meet the requirements of Paragraph (2) of this subsection.

(3) Public charter schools that are LEAs. If the public charter school is an LEA, consistent with 34 CFR §300.28, that receives funding under 34 CFR §300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless state law assigns that responsibility to some other entity. Charter schools who are LEAs authorized under the public education commission must satisfy child find requirements for children enrolled in the charter school.

(4) Public charter schools that are not an LEA or a school that is part of an LEA.

(a) If the public charter school is not an LEA receiving funding under 34 CFR §300.705, or a school that is part of an LEA receiving funding under 34 CFR §300.705, the department is responsible for ensuring that the requirements of this part are met.

(b) Subparagraph (a) of this paragraph does not preclude the governor from assigning initial responsibility for ensuring the requirements of this part are met to another entity, however, the department must maintain the ultimate responsibility for ensuring compliance with this part, consistent with 34 CFR §300.149.

For references to New Mexico Statutes on Charter Schools, please see:
http://www.conwaygreene.com/nmsu/lpext.dll?f=templates&fn=main-h.htm&2.0.

Authority: NMSA 1978 22-8B-2. Definitions.
As used in the Charter Schools Act [22-8B-1 NMSA 1978]

A. "charter school" means a conversion school or start-up school authorized by the chartering authority to operate as a public school;
B. "chartering authority" means either a local school board or the commission;
C. "commission" means the public education commission;
D. "conversion school" means an existing public school within a school district that was authorized by a local school board to become a charter school prior to July 1, 2007;
E. "division" means the charter schools division of the department;
F. "governing body" means the governing structure of a charter school as set forth in the school's charter; and
G. "start-up school" means a public school developed by one or more parents, teachers or community members authorized by the chartering authority to become a charter school.

Authority: NMSA 1978 22-8B-4. Charter schools' rights and responsibilities; operation.

A. A charter school shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry or need for special education services.
B. A charter school shall be governed by a governing body in the manner set forth in the charter; provided that a governing body shall have at least five members; and provided further that no member of a governing body for a charter school that is initially approved on or after July 1, 2005 or whose charter is renewed on or after July 1, 2005 shall serve on the governing body of another charter school.
C. A charter school shall be responsible for:
(1) its own operation, including preparation of a budget, subject to audits pursuant to the Audit Act; and
(2) contracting for services and personnel matters.
D. A charter school may contract with a school district, a university or college, the state, another political subdivision of the state, the federal government or one of its agencies, a tribal government or any other third party for the use of a facility, its operation and maintenance and the provision of any service or activity that the charter school is required to perform in order to carry out the educational program described in its

charter. Facilities used by a charter school shall meet the standards required pursuant to Section 22-8B-4.2 NMSA 1978.

E. A conversion school chartered before July 1, 2007 may choose to continue using the school district facilities and equipment it had been using prior to conversion, subject to the provisions of Subsection F of this section.

F. The school district in which a charter school is geographically located shall provide a charter school with available facilities for the school's operations unless the facilities are currently used for other educational purposes. A charter school shall not be required to pay rent for the school district facilities if the facilities can be provided at no cost to the school district. If facilities are available but cannot be provided at no cost to the school district, the school district shall not charge more than the actual direct cost of providing the facilities. The available facilities provided by a school district to a charter school shall meet all occupancy standards as specified by the public school capital outlay council. As used in this subsection, "other educational purposes" includes health clinics, daycare centers, teacher training centers, school district administration functions and other ancillary services related to a school district's functions and operations.

G. A locally chartered charter school may pay the costs of operation and maintenance of its facilities or may contract with the school district to provide facility operation and maintenance services.

H. Locally chartered charter school facilities are eligible for state and local capital outlay funds and shall be included in the school district's five-year facilities plan.

I. A locally chartered charter school shall negotiate with a school district to provide transportation to students eligible for transportation under the provisions of the Public School Code [22-1-1 NMSA 1978]. The school district, in conjunction with the charter school, may establish a limit for student transportation to and from the charter school site not to extend beyond the school district boundary.

J. A charter school shall be a nonsectarian, nonreligious and non-home-based public school.

K. Except as otherwise provided in the Public School Code, a charter school shall not charge tuition or have admission requirements.

L. With the approval of the chartering authority, a single charter school may maintain separate facilities at two or more locations within the same school district; but, for purposes of calculating program units pursuant to the Public School Finance Act [22-8-1 NMSA 1978], the separate facilities shall be treated together as one school.

M. A charter school shall be subject to the provisions of Section 22-2-8 NMSA 1978 and the Assessment and Accountability Act [22-2C-1 NMSA 1978].

N. Within constitutional and statutory limits, a charter school may acquire and dispose of property; provided that, upon termination of the charter, all assets of the locally chartered charter school shall revert to the local school board and all assets of the state-chartered charter school shall revert to the state.

O. The governing body of a charter school may accept or reject any charitable gift, grant, devise or bequest; provided that no such gift, grant, devise or bequest shall be accepted if subject to any condition contrary to law or to the terms of the charter. The particular gift, grant, devise or bequest shall be considered an asset of the charter school to which it is given.

P. The governing body may contract and sue and be sued. A local school board shall not be liable for any acts or omissions of the charter school.

Q. A charter school shall comply with all state and federal health and safety requirements applicable to public schools, including those health and safety codes relating to educational building occupancy.

R. A charter school is a public school that may contract with a school district or other party for provision of financial management, food services, transportation, facilities, education-related services or other services. The governing body shall not contract with a for-profit entity for the management of the charter school.

S. To enable state-chartered charter schools to submit required data to the department, an accountability data system shall be maintained by the department.

T. A charter school shall comply with all applicable state and federal laws and rules related to providing special education services. Charter school students with disabilities and their parents retain all rights under the federal Individuals with Disabilities Education Act and its implementing state and federal rules. Each charter school is responsible for identifying, evaluating and offering a free appropriate public education to all eligible children who are accepted for enrollment in that charter school. The state-chartered charter school, as a local educational agency, shall assume responsibility for determining students' needs for special education and related services. The division may promulgate rules to implement the requirements of this subsection.

Authority: NMSA 1978 22-8B-5. Charter schools; status; local school board authority.

A. The local school board may waive only locally imposed school district requirements for locally chartered charter schools.

B. A state-chartered charter school is exempt from school district requirements. A state-chartered charter school is responsible for developing its own written policies and procedures in accordance with this section.
C. The department shall waive requirements or rules and provisions of the Public School Code [22-1-1 NMSA 1978] pertaining to individual class load, teaching load, length of the school day, staffing patterns, subject areas, purchase of instructional material, evaluation standards for school personnel, school principal duties and driver education. The department may waive requirements or rules and provisions of the Public School Code pertaining to graduation requirements. Any waivers granted pursuant to this section shall be for the term of the charter granted but may be suspended or revoked earlier by the department.
D. A charter school shall be a public school accredited by the department and shall be accountable to the chartering authority for purposes of ensuring compliance with applicable laws, rules and charter provisions
E. A local school board shall not require any employee of the school district to be employed in a charter school.
F. A local school board shall not require any student residing within the geographic boundary of its district to enroll in a charter school.
G. A student who is suspended or expelled from a charter school shall be deemed to be suspended or expelled from the school district in which the student resides.

Authority: NMSA 1978 22-8B-10. Charter schools; employees.
A. A charter school shall hire its own employees. The provisions of the School Personnel Act [22-10A-1 NMSA 1978] shall apply to such employees; provided, however, that a charter school may determine by indicating in its charter that either its governing body or head administrator shall make all employment decisions. The governing body shall be deemed to be responsible for making all employment decisions if the charter does not specify the decision maker.
B. A charter school shall not initially employ or approve the initial employment of a head administrator who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter or daughter-in-law of a member of the governing body. A charter school shall not initially employ or approve the initial employment of a licensed school employee who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter or daughter-in-law of the head administrator. The governing body may waive the nepotism rule for family members of a head administrator.
C. Nothing in this section shall prohibit the continued employment of a person employed on or before July 1, 2007.

Authority: NMSA 1978 22-8B-13. Charter school financing.
A. The amount of funding allocated to a charter school shall be not less than ninety-eight percent (98%) of the school-generated program cost. The school district or division may withhold and use two percent of the school-generated program cost for its administrative support of a charter school.
B. That portion of money from state or federal programs generated by students enrolled in a locally chartered charter school shall be allocated to that charter school serving students eligible for that aid. Any other public school program not offered by the locally chartered charter school shall not be entitled to the share of money generated by a charter school program.
C. When a state-chartered charter school is designated as a board of finance pursuant to Section 22-8-38 NMSA 1978, it shall receive state and federal funds for which it is eligible.
D. Charter schools may apply for all federal funds for which they are eligible. .
E. All services centrally or otherwise provided by a local school district, including custodial, maintenance and media services, libraries and warehousing shall be subject to negotiation between the charter school and the school district. Any services for which a charter school contracts with a school district shall be provided by the district at a reasonable cost.

Authority: NMSA 1978 22-2-8. School standards.
The state board [department] shall prescribe standards for all public schools in the state. A copy of these standards shall be furnished by the department to each local school board, local superintendent and school principal. The standards shall include standards for the following areas:
A. curriculum, including academic content and performance standards;
B. organization and administration of education;
C. the keeping of records, including financial records prescribed by the department;
D. membership accounting;
E. teacher preparation;
F. the physical condition of public school buildings and grounds; and
G. educational facilities of public schools, including laboratories and libraries.

The LEA will follow NMPED's advice, to the extent it applies, as outlined in the following letters regarding Charter Schools.

Feb. 7, 2007, letter from Patricia Parkinson, EdD.

Is the LEA required to make existing behavioral supports that are available to all schools of the LEA also available to the charter schools that it has authorized?

20 USC §1413(a)(5)(A) of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) provides that the LEA "serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools." See also 34 C.F.R. §§300.209(b)(i) and 6.31.2.11(I)(1) NMAC. It is clear from these citations that the LEA must provide services to its charter schools on the same basis as it does to other schools within the District. Therefore, if it provides behavioral supports to its other schools within the District, it must provide those same behavioral supports to the charter school.

Must a charter school offer a continuum of services to students with IEPs enrolled in the charter school and must a representative of the LEA attend the student's IEP meeting?

Pursuant to §6.31.2.11(I)(2) NMAC, each charter school is responsible for serving children with disabilities in the same manner as in other schools within the LEA. Therefore, the charter would have to provide services to their special education students in the same manner as those services are provided at schools that are not Responsibilities to Charter Schools charters. However, based on the statute and regulations cited in the above paragraph, the LEA would have to provide the charter school with the same level of support that is provided in its other schools.

Does a representative of the LEA have to attend an IEP meeting for a student enrolled in a charter school?

The IEP team members are listed in 34 CFR §300.321(a). One of the team members is a representative of the public agency who is qualified to supervise the provision of special education services, and is knowledgeable about the general curriculum and the availability of resources of the public agency. 34 C.F.R. §300.321(a)(4). That description does not necessarily describe someone from the LEA administration, although it could. In comments to the IDEA regulations, the following was said about §300.321(a)(4):

> Section 300.321(a)(4) incorporates the language in section 614(d)(1)(B)(iv) of the Act and requires the IEP Team to include a representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities; is knowledgeable about the general education curriculum; and is knowledgeable about the availability of LEA resources. A public agency may determine which specific staff member will serve as the agency representative in a particular IEP Team meeting, so long as the individual meets these requirements. It is important, however, that the agency representative have the authority to commit agency resources and be able to ensure that whatever services are described in the IEP will actually be provided.

71 Fed. Reg. 156, p. 46670 (2006). If no one within the charter school has the authority to commit agency resources, it may be assumed that someone from the LEA administration with that authority would have to attend the IEP meeting. The LEA could designate who they want as the agency representative, just so long as that person has authority to commit agency resources. Moreover, if the principal or special education coordinator of the charter school involved has the requisite authority to commit school resources to the services described in the IEP, no one from the LEA need attend.

The question of who has the authority to commit agency resources with respect to charters is answered by both IDEA and state law. IDEA requires an LEA to provide Part B funds to its charter schools on the same basis and at the same time it provides such funds to its other public schools, consistent with the State's charter school law. 20 USC §1413(a)(5)(B). Pursuant to 22-8-6.1 NMSA 1978, as amended, a state-chartered charter school is required to submit a school-based budget to the charter school division of the NMPED. The locally-chartered charter school will continue to submit its school-based budget to the local school board.

Once the budget is approved, a charter school representative has the authority to commit resources out of the charter school budget for services required by an IEP. If the required services are within the charter school budget, an LEA representative need not attend the student's IEP meeting. However, if the services required by the student's

IEP exceed the budget of the charter school, a representative of the LEA would need to attend IEP meetings since a commitment of LEA resources would be required to comply with the student's IEP.

December 5, 2000, letter from Michael J. Davis
The SDE advises as follows:

- charter school budgets should be reviewed by the schools and the local district to ensure that enough funds are available from the state equalization guarantee and federal IDEA funds to meet each school's needs for special education and related services. All future charter school budgets will be required to allocate enough funds to meet each school's foreseeable special education responsibilities before the budgets will be approved by the SDE.
- Charter schools may provide special education and related services to eligible students with their own staffs or through contracts with their districts, regional cooperatives or other qualified service providers.
- A charter school should only ask the district to provide additional services for students with special needs if the school has exhausted its state and federal special education funds and budgeted emergency reserves. In every such case, the district must participate appropriately in the determination of eligibility and the development of the student's individualized education program (IEP).

XIII. STATE PERFORMANCE PLAN - SPP

The New Mexico PED submitted to the Submitted to the Office of Special Education Programs United States Department of Education, the State Performance Plan for Special Education FFY 2005-2010. The plan was effective December 2, 2005, and was revised: January 20, 2006. The State Performance Plan is available to the public on the website: http://www.ped.state.nm.us/seo/data/SPP.1.20.06.final.pdf

XIV. STATE-IMPOSED RULES (not required by IDEA or Federal regulations)

IDEA 2004 requires the listing of areas in which state rules, regulations and policies exceed the federal regulations. Areas listed below were submitted by the NMPED in the Part B Annual State Application: FFY 2010 OMB No. 1820-0030/Expiration Date – 06/30/2012.

State-imposed Rules (not required by IDEA or Federal Regulations)

6.31.2 NMAC--CHILDREN WITH DISABILITIES/GIFTED CHILDREN

6.31.2.7-Definitions

- 6.31.2.7(B)--State-specific definitions.
- 6.31.2.7(C)(1)-(2)—Definitions related to dispute resolution. "State-specific alternative dispute resolution (ADR) options.
- 6.31.2.7(D)—Definitions relating to Educational Services for Gifted Children.

6.31.2.9—Public Agency Responsibilities

- 6.31.2.9(B)(2)—Child Count reporting.
- 6.31.2.9(B)(3)—" Placement of students in private or public residential treatment centers, or other out of home treatment or habilitation programs, by the IEP team."
- 6.31.2.9(C)(5)—*Requirement of §22.8.11(C) NMSA 1978*

6.31.2.10—Identification, Evaluations and Eligibility Determinations

- 6.31.2.10(D)(1)(c)(iii)—*Evaluation referral records.*
- 6.31.2.10(E)(6)—*Assessment of culturally and linguistically diverse students.*
- 6.31.2.10(F)(2)— Optional use of developmentally delayed classification for children ages 3--9. *Developmentally delayed classification option.*

6.31.2.11—Educational Services for Children with Disabilities

- 6.31.2.11(A)(4)(g)—*Timeline for IFSP, IEP or IFSP-IEP development.*
- 6.31.2.11(B)(3)—*IEP team member signatures.*

- 6.31.2.11(G)(1)—*Graduation planning.*
- 6.31.2.11(G)(3)—*Development of post-school goals beginning at age 14.*
- 6.31.2.11(G)(6)—*Allows students who turn 22 during school year to continue to receive services to end of school year.*
- 6.31.2.11(K)(2)(b)—*Provides LEA summer emergency contract for purposes of providing records for children entering juvenile correction facilities during summer months.*

6.31.2.12—Educational Services for Gifted Children

- *(entire section) Services for Gifted Children.*

6.31.2.13—Additional Rights of Parents, Students and Public Agencies

- 6.31.2.13(G)(2)(c)—*Complaint Assistance IEP (CAIEP) and Facilitated IEP (FIEP) meetings.*
- 6.31.2.13(H)(2)(a)—*State complaint requirements.*
- 6.31.2.13(H)(3)—*"Preliminary meeting", CAIEP and FIEP meetings.*
- 6.31.2.13(H)(6)—*"Complaints against the department." Appointment of and investigation by an impartial person.*
- 6.31.2.13(I)(1)(b)—*Gifted services.*
- 6.31.2.13(I)(2)(c)—*Summary due process hearing.*
- 6.31.2.13(I)(3)(d)—*Scope of due process hearings.*
- 6.31.2.13(I)(5)(g)—*Due process hearing request requirements.*
- 6.31.2.13(I)(7)(b)—*IEP facilitator.*
- 6.31.2.13(I)(8)(b)—*FIEP meeting.*
- 6.31.2.13(I)(8)(c)(ii)—*FIEP meetings.*
- 6.31.2.13(I)(10)(b)—*Initial prehearing conference.*
- 6.31.2.13(I)(11)—*"Withdrawal of request for hearing." Withdrawal of due process hearing request.*
- 6.31.2.13(I)(12)—*"Prehearing procedures." Prehearing conference.*
- 6.31.2.13(I)(14)—*Stipulated facts.*
- 6.31.2.13(I)(15)—*"Summary due process hearing." Summary due process hearing.*
- 6.31.2.13(I)(20)(c),(d),(e) & (f)—*Expedited due process hearings (timeline, etc.).*
- 6.31.2.13(I)(24)—*"Expenses of the hearing." Hearing expenses.*
- 6.31.2.13(I)(25)(b)—*Civil action (timeline, gifted services as basis for action).*
- 6.31.2.13(I)(26)(b),(d) & (e)—*Attorneys' fees.*
- 6.31.2.13(I)(29)—*"Effective date and transitional provisions." Effect of revised due process rules.*
- 6.31.2.13(L)(3)(a)—*Civil "Transfer of student records." FERPA notice requirement.*
- 6.31.2.13(L)(5)(b)—*Personally identifiable information.*
- 6.31.2.13(L)(6)—*"Educational records retention and disposition schedules."*

6.30.2 NMAC—STANDARDS FOR EXCELLENCE

6.29.1 9—Procedural requirements.

- 6.29.1.9(D)- Student Intervention System-- three-tier structure
- 6.29.1.9(H)—"Student/staff ratios in gifted and special education." *Student/staff ratios*.
- 6.29.1.9(J)—*Graduation requirements.*
- 6.29.1.11—Program requirements.
- 6.29.1.11(F)—*Special education program requirements*.

6.11.2 NMAC—RIGHTS AND RESPONSIBILITIES OF THE PUBLIC SCHOOL AND PUBLIC SCHOOL STUDENTS

6.11.2.10—Discipline of students with disabilities.

- 6.11.2.10(G)(3)—*"Program prescriptions." Specification of disciplinary measures in IEP.*
- 6.11.2.10(G)(4)—*"Immediate removal." Immediate removal of students with disabilities.*

6.41.4 NMAC—STANDARDS FOR PROVIDING TRANSPORTATION FOR ELIGIBLE STUDENTS

6.41.4.8—Local board of Education Responsibilities.

- 6.41.4.8(A)(5)(b),(d),(g) &(h)—*IEP team responsibilities regarding discipline and transportation.*