

**INDIVIDUALS WITH DISABILITIES
EDUCATION ACT – MANUAL**

PORTALES MUNICIPAL SCHOOLS

PROCEDURES

THIS MANUAL IS DEDICATED TO THE 100'S OF NEW MEXICO EDUCATORS WHO SHOW UP EVERY DAY TO PROVIDE THE STUDENTS OF NEW MEXICO WITH A FREE APPROPRIATE PUBLIC EDUCATION AND WHO GIVE TIRELESSLY OF THEMSELVES AND THEIR SKILLS.

(Revised 2011)

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INTRODUCTION

The Congress of the United States has found that disability is a natural part of the human experience and in no way diminishes the right of an individual to participate in or contribute to society. Improving educational results for children with disabilities is an essential element to our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

This Individual's with Disabilities Education Act ("IDEA") Manual is designed for use by school district personnel in the identification of students eligible for special education, the development of individualized education programs, and the implementation of those programs. The IDEA Manual addresses both the form completion as well as the legal responsibilities associated with each component of both an Individualized Education Program ("IEP") and the determination by the group of qualified professionals that makes eligibility determinations.

Each term is defined in the first section of the manual, and each proceeding section deals with one particular aspect of the IDEA. Some sections also include a list of frequently asked questions ("FAQs") and answers to those questions.

This Manual provides a brief overview of the new Response to Intervention ("RTI") requirements for identification of a student as having a specific learning disability. The information contained herein is intended to assist the IEP team and not to replace the individualized consideration necessary for the development and implementation of an educational program "reasonably calculated to confer educational benefit" upon the student receiving special-education-related-services.

All schools are required to have procedures in place for identifying children who have or are suspected of having a disability and needing special education and related services. For those students who enroll in the District the mechanism for identifying these

students is contained in the enrollment form that must be completed by parents at the time they are enrolling their child.

SECTION I

1) DIAGNOSTICS/TESTING

Each public agency shall adopt and implement policies and procedures to ensure that all children with disabilities who reside within the district's jurisdiction, including children with disabilities in other non public school facilities and who are in need of special education and related services will be located, evaluated and identified in compliance with all applicable requirements of 34 CFR SECs. 300-111, 300.131, 300.301-306 and state rules and regulations. ,

Students who are referred for testing by a Student Assistance Team ("SAT"), a written parental request or referred as a result of Child Find operations must first be evaluated to determine whether the student has a disability as identified under the IDEA. This first formal diagnostic evaluation "the initial evaluation" requires informed prior written parental consent to conduct. The initial evaluation must be completed within sixty (60) calendar days of the date of parental consent.

Any re-evaluation also requires informed written parental consent secured prior to the re-evaluation taking place.

The initial evaluation should provide the IEP team with: (a) information it will need to determine whether a student has a disability and requires special education and related services; (b) information regarding the student's present levels of educational and functional performance; (c) information to assist in determining educational needs, including accommodations and services.

Please also refer to Page 71 regarding Part C to Part B transitioning.

NOTE:

Source: 34 CFR §300.301
6 NMAC 31.2.10
Revised 11/20/10

2) INITIAL EVALUATION

- A. The District will conduct a full and individual initial evaluation before providing special education and related services.
- B. Either a parent or the District may begin the request for an initial evaluation to determine eligibility.
- C. Before a student is determined eligible for receipt of special education and related services as a student with a specific learning disability, please carefully review the provisions in Section 9, Response to Intervention.

To ensure informed parental consent, the signature of the parent should be obtained by the evaluator/diagnostician, who can explain the types and purposes of the evaluations to be conducted. Make sure the referral packet to the evaluation/diagnostic staff is provided in a timely fashion. No more than fifteen (15) work days should pass before the evaluation/diagnostician meets with the parent to review the assessment plan and secure a parental consent.

While a school district can seek to compel testing, it cannot compel consent to placement.

3) PROCEDURE FOR INITIAL EVALUATION

- A. An evaluation for determination of eligibility must be completed within sixty (60) days of receiving parental consent for the evaluation.
- B. If a parent initially refuses to sign consent, “the sixty (60)” day limit begins to run only when the consent is signed.
- C. Before any initial evaluation, the parent must provide informed written consent to the testing. The consent to testing is not consent to initial placement.
- D. If there is no consent to testing, the District may file a complaint for a due process hearing.
- E. If the parent refuses to consent or fails to respond to a request for consent, the District has no further obligation. However, there should be clear

documentation of the District's efforts to obtain consent, including copies of correspondence or documentation of phone calls made to the parent. A certified letter should be sent to the parent advising that (1) his or her non-response or refusal to consent is considered a refusal of services; and (2) the child will not be considered a student with a disability for any disciplinary or educational purposes.

- F. The evaluation/assessment must provide for:
 - i. Assessing in all areas of suspected disability (including health and development including vision and hearing;
 - ii. Selection of evaluation tools that are not racially, culturally, or linguistically discriminatory;
 - iii. Are administered in the language or form most likely to yield accurate information regarding what the student knows and can do academically, developmentally and functionally;
 - iv. Selection of assessment tools that assess specific areas of educational need;
 - v. Ensure that there are a variety of tools and strategies are used to gather relevant functional and development information;
 - vi. Information provided by the parent;
 - vii. Include information on how the student is involved in and progressing in the general curriculum.

- G. Identify any accommodations in test administration that may be necessary.

- H. Assessments/evaluations must be administered by qualified personnel as specified in the instructions provided by the producers of the assessment tool.

Ensure that assessments of the students with limited English proficiency measure what is intended and not the student's English skills. For students with sensory, motor or speaking impairments ensure the assessment measures what is intended rather than the student's sensory, motor, or speaking skills.

4) CONSENT FOR WARDS OF THE STATE

If a student is a ward of the state, the District must make reasonable efforts to gain consent from the parent (maintain documentation of all such efforts), except where the parent's whereabouts cannot be determined despite reasonable efforts, or where the rights of the parent have been terminated or modified and consent is received from a judicially appointed representative. In these situations, unless the court has appointed an individual with educational decision making authority, the District is responsible for assigning a surrogate parent.

The District will ensure that the rights of a special education student are protected under the IDEA when:

- A. No parent can be identified;*
- B. After reasonable efforts, the District cannot locate a parent;*
- C. The student is a ward of the State under the laws of that State; or*
- D. The student is an unaccompanied homeless youth, as defined under federal law.*

The District must determine whether a student needs a surrogate parent, and if so, must assign an individual to act as a surrogate parent for the eligible student. If the student is an unaccompanied homeless youth, a temporary surrogate parent must be appointed from the staff of the emergency shelter, transitional shelter, independent living program, or street outreach program providing shelter and other services to the student. The temporary surrogate parent serves in that capacity until a qualified surrogate parent is appointed by the District.

If the District selects the surrogate parent, such selection will be done in compliance with applicable State and Federal laws.

The District must ensure that a person it assigns to act as a surrogate parent:

- A. Is not an employee of the New Mexico Public Education Department, the School District, or any other agency that is involved in the education or care of the student;*
- B. Has not personal or professional interest that conflicts with the student's interest; and*
- C. Has knowledge and skills that ensure adequate representation of the student.*

NOTE:

Source: 34 CFR§300.300, 301, 304, 519
6 NMAC 31.2.10

SECTION II

1) RE-EVALUATION

Generally, the purposes of a re-evaluation are to determine:

- A. Whether the student continues to be a child with a disability and continues to require the provision of special education services and/or related services;
- B. Whether the student may have an additional or different disability;
- C. Whether the student is not adequately progressing in achieving the goals and objectives set forth in his/her IEP; and;
- D. Whether the student's current special education and related services are appropriate.

The determination to conduct or not conduct a re-evaluation that meets all of the elements of an initial evaluation must be made by an IEP team. This should be done at the annual IEP meeting prior to the time the triennial evaluation would be due. In order to determine the scope of the re-evaluation the IEP team must review existing data, current classroom observation and assessments, teacher and related service provider information, and decide what assessments are or are not necessary for making the determinations set forth above.

2) RE-EVALUATION SITUATIONS

- A. The District determines that the student's educational needs, including performance, warrant a re-evaluation; or
- B. The parent or teacher requests a re-evaluation.
- C. Limitations on re-evaluation – re-evaluations shall be performed:
 - i. Not more frequently than once a year unless the parent **and** the District agree.
 - ii. At least once every three (3) years, unless the parent **and** the District agree that one is not necessary.

Caution: Do not let more than six (6) years pass between evaluations if the student has progressed from elementary to secondary school unless the IEP team can document clear reasons for not testing.

NO ADDITIONAL DATA NEEDED

If there is a determination by the IEP team and other qualified professionals that no additional data is needed, the IEP team will notify the student's parents in the Prior Written Notice and IEP of:

- A. The determination and the reason for the determination, including the existing data reviewed, a summary of the student's current classroom based on assessments, a summary of the staff observations, a review of progress towards previous goals, a summary of present levels of performance, results of any other assessments that have provided the information needed to determine a re-evaluation is not warranted; and
- B. The right to request an assessment to determine whether the student continues to be a student with a disability and what types of services would be appropriate.

NOTE:

Source: 34 CFR§ 300.300, 301, 304
6 NMAC 31.2.10

SECTION III

EVALUATION PROCEDURES

- 1) An evaluation for determination of eligibility must be completed within sixty (60) days of receiving parental consent for the evaluation.
- 2) If a parent initially refuses to sign the consent to evaluate, the sixty (60) day limit begins to run only when the consent is signed.
- 3) Before any initial evaluation, the parent must provide informed written consent to the testing. The consent to testing is not consent to initial placement.
- 4) If there is no consent to testing, the District may file a complaint for a due process hearing.

While the District can seek to compel testing, it cannot compel consent to placement. Parents may revoke consent at any time for the continued provision of all special education services for their child. The revocation of consent must be in writing. After providing prior written notice the school must cease the provision of services

Ensure that assessments of the students with limited English proficiency measure what is intended and not the student's English skills. For students with sensory, motor or speaking impairments ensure the assessment measures what is intended rather than the students sensory, motor or speaking skills.

- 5) If the parent refuses to consent or fails to respond to a request for consent, the District has no further obligation. However, there should be clear documentation of the District's efforts to obtain consent, including copies of correspondence or documentation of phone calls made to the parent. A certified letter should be sent to the parent advising that (1) his or her non-response or refusal to consent is considered a refusal of services, and (2) the child will not be considered a student with a disability for any disciplinary for any disciplinary or educational purposes.
- 6) The evaluation/assessment must provide for:
 - A. Assessing in all areas of suspected disability (including health and development, vision and hearing);
 - B. Selection of evaluation tools that are not racially, culturally or linguistically discriminatory;
 - C. Are administered in the language or form most likely to yield accurate information regarding what the student knows and can do academically, developmentally and functionally;
 - D. Selection of assessment tools that assess specific areas of educational need;

- E. Ensure that there are a variety of tools and strategies used to gather relevant functional and developmental information;
 - F. Information provided by the parent;
 - G. Information on how the student is involved and progressing in the general curriculum.
- 7) Identify any accommodations in test administration that may be necessary.
 - 8) Assessments/evaluations must be administered by qualified personnel as specified in the instructions provided by the producers of the assessment tool.
 - 9) The evaluation should not use any one single measure as the only basis for determining eligibility or determining the appropriate educational program.

NOTE:

Source: 34 CFR§ 300.305
6 NMAC 31.2.10 & 31.2.13
Revised 11/20/10

SECTION III (A)

ADDITIONAL REQUIREMENTS FOR EVALUATIONS OR RE-EVALUATIONS

- 1) As part of any evaluation or re-evaluation, the IEP team and evaluators should review any existing evaluation data on the child, including:
 - A. Information provided by the parent;
 - B. Current classroom performance information, including observations of the student in the school setting by teachers and other staff; and
 - C. Statewide and District wide assessments.

- 2) Based on the review of the information listed above, the IEP team and evaluators should make a decision regarding what additional information is needed for a determination of:
 - A. Whether the student is a student with a disability and whether the educational needs of the student require special education services. In the case of a re-evaluation, whether the student continues to qualify for receipt of services.
 - B. The student's present level of academic achievement and related developmental needs.
 - C. Whether the current level and scope of services should be modified in order for the student to meet the goals set out in the IEP.

A disability alone does not determine whether a student needs special education services in order to have the ability to access the general education curriculum.

- 3) Screening to determine instructional strategies is not to be considered an evaluation for eligibility for special education or related services.

NOTE:

Source: 34 CFR§ 300.305

6 NMAC 31.2.10

SECTION III (B)

DIAGNOSTIC EVALUATION REPORT CONTENTS

The diagnostic evaluation report should contain

- 1) Student information:
 - A) Name
 - B) Student Identification Number
 - C) Date of birth
 - D) Chronological age
 - E) Primary language or mode of communication
 - F) Gender

- 2) Identification of assessment tools:
 - A) Dates given
 - B) Administered by whom
 - C) Whether administered under conditions not consistent with those provided by the producer of the test, and the evaluators' opinion on the impact to the validity of the test results.

- 3) Findings of previous assessments/evaluations.

- 4) Description of student's relevant behavior and relationship of that behavior to student's academic and functional skills.

- 5) Relevant health, developmental, and medical findings, including source of information.

- 6) Student's performance on state and district wide assessments.

- 7) Name and title of person who wrote the report and the date the report was completed.

SECTION III (C)

INDEPENDENT EVALUATIONS

If parents disagree with the District's assessment of the student, they have the right to request an Independent Educational Evaluation ("IEE") at public expense. Public expense means that the District will pay for the full cost of the evaluation or ensure that the evaluation is provided at no cost to the parent. The parents are entitled to only one IEE at public expense each time the District conducts an evaluation with which the parents disagree.

An IEE is an evaluation conducted by a qualified examiner who is not employed by the District. Parents have the right, at any time to an IEE and to have its findings considered by the IEP team. The District is not required to reimburse the parents for a privately obtained evaluation if the parent disagrees with the District's evaluation and independently seek a private evaluation without first notifying the District in writing or at an IEP meeting in which the request is reflected in the PWN.

1) Qualified Examiner

The person selected by the parent to conduct the IEE must hold a current certification/licensure from the Public Education Department of the State of New Mexico in the field in which the examiner proposes to conduct the evaluation.

2) Considering an IEE

An IEE report is provided by the parent of a student must be considered by an IEP team if it was conducted by a qualified professional. Consideration does not require complete or even partial acceptance of findings or recommendations. To facilitate careful consideration the parent must provide the report ten (10) working days in advance of the IEP meeting so that it can be reviewed by the District personnel qualified in the area of the evaluation prior to the IEP meeting.

3) Request for an IEE

- A. Ask the parents why they disagree with the District's evaluation and with what areas they disagree, however, you may not require the parents to provide an explanation.
- B. Advise the parents that if the District disagrees with their request for an IEE at public expense the District may initiate a due process hearing request to determine if the IEE is required.
- C. Provide the parents with a copy of the procedural safeguards.
- D. Reflect the considerations and determinations made by the IEP team including the parents in the PWN.
- E. The District shall limit the amount of reimbursement made to a parent for travel for an IEE to no more than a two hundred (200) mile radius from the District if this is the same criteria applied to the District's evaluations.
- F. The District shall limit the reimbursement made to a parent for the cost of an independent educational evaluation to the cost charged by an independent contractor available through CES or EASI including

gross receipts tax if the same limitation is imposed on evaluations initiated by the District.

- G. The District 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 ninety (90) calendar days. This condition must be the same as that imposed on evaluations initiated by the District.

If the assessment conducted by the District provided for in-class observations of the student, an equivalent opportunity should be available to the individual retained by the parent to conduct the IEE. If the District assessment in the area of concern was conducted more than one year prior to the parent disagreement, the District has a right to conduct another assessment. The District will not cover costs exceeding rates that are reasonable and customary for the community for each identified assessment.

Source: 34 CFR§ 300.502
6 NMAC 31.2.10
Revised 11/11/08

SECTION IV

1) ELIGIBILITY DETERMINATION

- A. After the assessment/evaluation, the group of qualified professionals including the parent will meet to determine whether a student is a student with a disability.
- B. If the student meets the criteria for one of the listed exceptionalities, the MDT team then must determine whether by reason of such a disability the student required special education or related services. Once this determination is made the educational needs of the student will be made by a team of qualified professionals and the parent of the student.
- C. A student shall not be found to be eligible for receipt of special education services if the determinant factor is either:
 - i. Lack of appropriate instruction in reading, including the essential components of reading instruction. Essential components of reading instruction means explicit and systemic instruction in:
 - (a) Phonemic awareness
 - (b) Phonics
 - (c) Vocabulary development
 - (d) Reading fluency, including oral reading skills
 - (e) Reading comprehension strategies
 - ii. Lack of instruction in mathematics; or
 - iii. Limited English proficiency.

When considering English proficiency, make sure that this is not only a consideration of whether the student is mono-lingual or bi-lingual. Some students who are exposed only to one language are not necessarily proficient in any language, including English, and may need additional work on language acquisition.

- D. Before determining that a student no longer qualifies for special education services, the District must evaluate the student, unless the student's eligibility has terminated because either (1) the student has graduated with a regular diploma; or (2) the student's age exceeds the age of eligibility.

NOTE:

Source: 34 CFR§ 300.306
6 NMAC 31.2.10

LIST OF RECOGNIZED DISABILITIES

- A. The term “child/student with a disability” means a child with one or more of the following:
- i. Intellectual Disability;
 - ii. Hearing impairments (including deafness);
 - iii. Speech or language impairments;
 - iv. Visual impairments (including blindness);
 - v. Serious emotional disturbance (ED);
 - vi. Orthopedic impairments;
 - vii. Autism;
 - viii. Traumatic brain injury;
 - ix. Other health impairments;
 - x. Specific learning disability, or
 - xi. Deaf/blindness, and
 - xii. Multiple disabilities
 - xiii. Developmentally delayed **between the ages of 3 and 9**

and as a result needs special education and related services.

Not every student who has a disability requires special education and/or related services. The disability has to interfere with the student’s ability to participate in educational programs.

NOTE:

Source: 34 CFR§ 300.8

6 NMAC 31.2.10

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SECTION IV (A)

SPECIFIC LEARNING DISABILITIES

New Mexico is phasing out the discrepancy model¹ for determination of eligibility for students as having a specific learning disability and instead will be using Response to Intervention results to make a determination of existence of a special learning disability. A school district may use a process that determines whether a child responds to programs shown to be scientific, research-based intervention as part of the evaluation process. The agency must use the three tiered model of student intervention for students suspected of having a perceived specific learning disability consistent with the PED rules, policies and standards for children who are referred for evaluation due to a suspected disability. The EDT (educational determination team) must consider the data obtained during implementation of Tiers 1 and 2 in making an eligibility determination including data which demonstrates the student was provided appropriate instruction by qualified personnel in a regular education setting, data which demonstrates repeated assessment at reasonable intervals reflecting formal assessments of student progress, a statement of the basis for making the determination and an assurance the determination has been made in accordance with 34 CFR Sec. 300.306(c)(1); a statement of the instructional strategies used and the student centered data collected .

A parent may request an initial special education evaluation at any time during Tier 1 and Tier 2 interventions. If the school district agrees the student may be a student who is eligible for special education the district must evaluate the student. If the District disagrees with the parent it must provide a Prior Written Notice of that disagreement. The parent must be provided with a copy of their parental rights and they may challenge that decision by filing a due process complaint.

The District may continue to utilize the results of diagnostic/evaluation testing as part of consideration of eligibility in the area of a specific learning disability.

The Three Tiered approach must be used for the student suspected of having a specific learning disability to ensure that lack of instruction in reading or math is not the primary cause of the learning difficulties for the student who is being referred for evaluation.

Please refer to material at pages 61-65 and the SAT process materials including consideration of the provision of modifications and supports.

NOTE:

Source: 34 CFR§ 300.307-311
6 NMAC 31.2.10
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¹ The discrepancy model measured the difference between project achievement and performance. If a discrepancy of 1.5 standard deviations from the norm existed, a student could be deemed to have a specific learning disability.

SECTION V

1) IEP DOCUMENT

The IEP team will use the set of forms available on the Public Education Department website or the web based, computer based program which includes at a minimum the following sections and is compliance with the federal and state regulations:

- A. Present levels of educational and functional performance
- B. Goals and Objectives
- C. LRE considerations
- D. Service Schedule
- E. Testing Considerations
- F. Prior Written Notice
- G. Special Considerations
- H. Transition Planning

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.

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 student who have withdrawn or graduated. The special education director is custodian of all special education records.

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.

The District will 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.

NOTE:

Source: 34 CFR §300.324
6 NMAC 31.2.11

IEP WRITING

Each school child who receives special education and related services must have an Individualized Education Program each year the student is eligible. Each IEP must be designed for one student and must be a truly *individualized* document. The IEP creates an opportunity for teachers, parents, school administrators, related services personnel, and students (when appropriate) to work together to improve educational results for children with disabilities. The IEP is the cornerstone of a quality education for each child with a disability.

To create an effective IEP, parents, teachers, other school staff, and often the student, must come together to look closely at the student's unique needs. As members of the IEP team these individuals pool knowledge, experience, and commitment to design an educational program that will help the student be involved in and progress in, the general curriculum. The IEP guides the delivery of special education supports and services for the student with a disability. Without a doubt, writing and implementing an effective IEP requires teamwork.

The IEP development is one of the most critical elements in ensuring effective teaching, learning, and better results for all children with disabilities. The guide is designed to help teachers, aides, administrators, ancillary service personnel, and anyone involved in the education of a child with a disability to develop and carry out an IEP.

The manner in which an IEP team meeting is conducted often determines its effectiveness. The process should ensure that:

- A. The focus is on the student;
- B. All participants are viewed as having important contributions;
- C. Communications are in a style and manner that is both understanding and respectful;
- D. That the needs of the student guide the decisions made at the meeting;
- E. That these decisions can and will be implemented, as the policy requirements are met.

The Individualized Educational Program is a written document that communicates the District's offer of a free appropriate public education and is developed, reviewed, and revised in accordance with federal and state law and agreed to by a team, at a meeting of parents and professional. The IEP addresses:

- A. Whether the student is eligible for special education and related services.
 - i. A statement of the student's present levels of performance.

If this meeting is an annual meeting refer to the present levels of performance from the current IEP and utilize the progress information to discuss whether there has been progress made. For each area of need the present level of performance should be considered a baseline of current performance and in academic areas standards should be referenced. Be sure to provide this information in an understandable and simple term to insure understanding of the present levels. A clear understanding of the baseline performance will assist in developing sound goals for future performance. A critical portion of the PLP is a listing of the student's strengths in the area of performance

- ii. A statement of measurable annual goals, including academic and functional goals.

Part of the process should be identifying performance areas in which the student will require support and the assessment or monitoring information which is utilized to make that determination. Examples of performance areas include health/development, vision, hearing, social/emotional and behavioral status, and self help, academic performance (e.g., reading, writing, math, language functions, and motor abilities). Annual goals represent the IEP team's estimate of what the student can reasonably be expected to achieve in the next twelve (12) months. The question the team should ask is "with specialized instruction and support what do we expect the student to know or do within a year from now?"

- (a) The goals should be designed to meet the student's needs that result from his or her disability; and
 - (b) The goals should enable the student to be involved in, and to progress in the general education curriculum;
 - (c) All previous goals should be reviewed to determine whether the goals or objectives have been met or not. If they have not been met a review of the reasons for the lack of progress should be discussed and the viability of the goal determined by the IEP team. If it is not an appropriate goal it should be changed. If it remains an appropriate goal determine if the process for implementation needs change. All **academic** goals must align with the New Mexico content standards and benchmarks including the expanded performance standards for students with significant cognitive disabilities.
 - (d) For preschool children goals should be developed from the preschool curriculum.
 - (e) For each goal the team should determine the date (month/year) that it is anticipated that the objective will be achieved.
- iii. A statement of how the student's progress towards the goals will be measured and when that progress will be reported to the parent.

*This reporting should be done at least as often as the student's progress in general education is reported. **Caution:** Ensure that the progress reports provide specific information about how the student is doing in the classroom and in other settings.*

- iv. Determine the types of general education, special education and related services providers who will be responsible for instructing the student on the goals/objectives. Based on peer-reviewed research, a statement of the special education and related service needed for the student, and of the practicable extent to which such services will be provided. If the child is blind or visually impaired the IEP team must determine if the student requires instruction in Braille and the use of Braille.
 - v. If the student is having behavioral problems not considered serious (occasionally occurring) then consider developing a behavior goal. If the student is having behavioral problems that are serious and interfere with daily learning then the IEP team should consider developing a Behavior Intervention Plan after conducting a Functional Behavioral Assessment.
 - vi. A statement of the program modifications or supports for school personnel that will be provided for the student.
 - vii. The projected date for the beginning of the services and modifications described in the IEP, and the duration of those services. If no date can be provided, explain why in the PWN.
- B. The IEP should be reviewed regularly, but not less than once a year, in order to determine whether the student is achieving the annual goals. Revise the IEP as appropriate to address any lack of expected progress, the results of any re-evaluation, information provided by the parent(s); the student's anticipated needs, or other matters.
- C. An IEP is not:
- i. A guarantee that a student will achieve the goals and objectives set forth in their IEP;
 - ii. A vehicle for specifying the methodologies teachers and other professionals will use with the student.
 - iii. A documentation of the use of specific personnel or specific facilities.
- D. What happens after the IEP is as important as what happens during the creation of the IEP itself.

2) **SERVICES ARE PROVIDED**

As soon as possible following the development of the IEP, the school makes sure that the child's IEP is being carried out as it was written. "As soon as possible" is defined as being within five school days of the IEP meeting. Parents are given a copy of the IEP. Each of the child's teachers and service providers has access to the IEP and knows his or her specific responsibilities for carrying out the IEP. This includes the accommodations, modifications, and supports that must be provided to the child, in keeping with the IEP.

3) **PROGRESS IS MEASURED AND REPORTED TO PARENTS**

The child's progress toward the annual goal is measured, as stated in the IEP. His or her parents are regularly informed of their child's progress and whether that progress is enough or the child to achieve the goals by the end of the year. These progress reports must be given to parents at least as often as parents are informed of their nondisabled children's progress.

4) **IEP IS REVIEWED**

The child's IEP is reviewed by the IEP team at least once a year, or more often if the parents or school ask for a review. If necessary, the IEP is revised. Parents, as team members, must be invited to attend these meetings. Parents can make suggestions for changes, can agree or disagree with the IEP goals, and can agree or disagree with the placement.

If parents do not agree with the IEP or the placement, they may discuss their concerns with other members of the IEP team and try to work out an agreement. There are several options, including additional testing, an independent educational evaluation, asking for mediation (if available) or a due process hearing. The parents may also file a complaint with the state education agency.

NOTE:

Source: 34 CFR§ 300.324

6 NMAC 31.2.11

Revised 11/20/10

SECTION V (A)

PRESENT LEVELS OF PERFORMANCE

The Present Levels of Educational Performance (“PLEP”) document prepared by staff working with the student helps describe any problems that interfere with the student’s education. The PLEP can assist in developing annual goals for the student. For each performance area in which the student requires support, staff must develop a narrative statement that establishes a baseline for the student’s present level of performance in that area. The statement should be written in measurable terms that allow for monitoring and reporting on the progress the student is making.

This information usually comes from the evaluation results, such as classroom tests and assignments, individual tests given to decide eligibility for services or during re-evaluation, and observations made by parents, teachers, related service providers, and other school staff. The statement about current performance includes how the student’s disability affects his or her involvement and progress in the general curriculum.

The PLEP should include:

- 1) The student’s academic achievement;
- 2) The student’s test scores, with an evaluation of the results;
- 3) The student’s current physical condition;
- 4) A description of the student’s social/emotional maturity; and
- 5) The student’s strengths and weaknesses, including his or her learning style.

The PLEP should include a description of the modalities that are most effective for the student. PLEP measures not only academic achievement, but also functional performance.

Does the student learn better through visual, auditory, or kinesthetic activities, or some combination of these? If you do not know, start keeping record of student performance under each modality.

A deficient statement of PLEP can result in a denial of a Free Appropriate Public Education (“FAPE”).²

The PLEP must consider the unique needs of each student, establishing a baseline for creating goals and measuring progress.

Make sure the PLEP information is related to the child’s performance and is not merely a recitation of any one individual’s perceptions. If the student can perform a particular

² In *Letter to New*, 211 IDELR 464 (OSEP 1987), the finding was that a school district could not lawfully prepare IEPs with the same statement of current levels of educational performance for all students in a self-contained program for students with mental retardation. See also, *Friedman v. Vance*, 24 IDELR 654 (1996).

task on a regular basis while at school and the parent disagrees, put this information in the PLEP.

Make sure that test scores are ***not*** the ***only*** information in the PLEP so that the goals are not written in an overly broad manner. Consider the individual nature of the student's disability.

The PLEP is the model of the student from which goals and objectives will be written. That is why it is important that the model provides complete detailed information to insure appropriateness of the goals and objectives. Try to provide a three dimensional view rather than a flat, single perspective of the student.

NOTE:

Source: 34 CFR§ 300.324
6 NMAC 31.2.11

SECTION V (B)

TRANSITION-GRADUATION PLANS

In New Mexico, a transition Plan must be developed not later than the first IEP in effect when the student is ***14 or in the 8th grade, whichever comes first.*** This transition Plan must be updated annually. Graduation plans must be integrated into the transition plan and must include course of study, projected date of graduation and if not on plan the plans and strategies. Graduation plans must align with state standards and benchmarks.

Under IDEA 2004, the Transition Plan must have “appropriate measurable post-secondary goals” based upon age-appropriate transition assessments related to training, education, employment, and (where appropriate) independent living skills.³

The IDEA requires IEP teams to carefully consider each student’s goals after public school, what services are needed to assist the student in reaching his or her post-secondary goals, and whether the student is progressing toward those goals.

In addition to the required IEP attendees, the District should consider whether to invite a representative of an outside agency if appropriate if that may be responsible for providing or paying for transition services addressed in the IEP.

An IEP team may proceed with its meeting without the student if:

- 1) The student has been invited and declines to attend; and
- 2) The school has taken other steps to ensure that the student’s preferences and interests are considered.

If the representative of an agency who may be responsible for paying for services after school does not attend, the District must take other steps to obtain the agency’s participation. For example, the District can advise the agency if the agency does not participate, the District will take actions to compel compliance with the interagency agreement.

The District must advise the parent that the purpose of the meeting is to discuss transition, that the student is invited, and that one or more other agencies that may be responsible for providing or paying for transition services in the IEP are invited, and that any agency invited to participate may send a representative to the meeting.

The following transition information needs to be included in the IEP:

- 1) A statement of the transition service needs under the applicable components of the IEP that focus on the student’s course of study;
 - 2) Needed transition services, including any linkages to outside agencies; and
- One year before the student reaches the age of eighteen (18), parental rights will be transferred to the student on his or her 18th birthday.

- 3) Source: 34 CFR§ 300.320, 324, 43(b)
6 NMAC 31.2.11
Revised 11/20/10

³ The use of only a checklist has been found inadequate. *Pasadena Indep. Sch. Dist.*, 21 IDELR 248 (1994).

SECTION V (C)

GOALS AND OBJECTIVES

IEP goals are those that the child can reasonably accomplish in a year. The goals are broken down into short-term objectives or benchmarks. Goals may be academic, social or behavioral needs, physical needs, or other educational needs. The goals must be measurable, meaning that it must be possible to measure whether the student has achieved the goals.

IDEA 2004 requires the development of annual academic and functional goals. The definition of “functional” is not in the proposed regulations.

IDEA 2004 eliminates the requirement that an IEP include benchmarks or short-term objectives except for students with disabilities who take alternate assessments aligned to alternate achievement standards.

An Annual Goal is a statement that describes what a child with a disability reasonably can accomplish within a twelve-month time period in the special education program.

Short-term objectives should be written in a sequential order to reflect a progression through the various skills needed to meet the goal.

The goals and objectives are used to look both prospectively at what a student reasonably can be expected to achieve and retrospectively at whether the student has achieved that goal/objective.

- 1) When developing a goal, make sure to consider related services.
- 2) Write the goals in such a way as to allow objective measurement of the extent to which the student is making progress towards that goal.
- 3) As a general rule, there should be at least one goal for each area of need. Be careful not to create too many.

Related Services – The IEP need not include goals and objectives for related services unless there is instruction during the provision of services.⁴

Short-term objectives should not be as specific as those in daily lesson plans.

- 1) Most importantly, an IEP should not include goals that will require more than one school year to accomplish.
- 2) The IEP team must convene an IEP meeting before changing a short-term objective.

Districts must periodically report progress toward IEP goals.

- 1) This report must include a statement of whether, and to what extent, the student’s progress is sufficient to enable the student to achieve the goal by the end of the year.

⁴ Transportation is one example. Unless the transportation is intended to benefit the student in areas such as socialization or independence, goals are not needed.

- 2) If progress is not being made, consider convening an IEP meeting to review and discuss concerns, and modify the IEP if appropriate.

Note: If related services are not provided due to absence on the part of the student then the services for that missed period of time do not have to be provided. However, if the services are not provided due to the absence of the ancillary service provider or the lack of an ancillary service provider the time must be made up and the parent(s) advised of the steps to be taken by the District to provide for the missed services, i.e., extended service, service in the summer or more service time per week.

NOTE

Source: 34 CFR§ 300.320, 324
6 NMAC 31.2.11
Revised 11/11/08

SECTION V (D)

SPECIAL CONSIDERATIONS

The IEP must list the special education and related services to be provided to the child or on behalf of the child. This includes supplementary aids and services that the child needs. It also includes modifications (changes) to the program or supports for school personnel-such as training or professional development that will be provided to assist the child.

- 1) **Language Proficiency**
 - A. Give particular attention to the sections dealing with English language proficiency and assistive technology needs. Consider the language needs of the student as needs relate to the IEP, if at all.

- 2) **Behavior**
 - A. In the case of a child whose behavior impedes his learning or that of others, the teams should consider the use of positive behavioral interventions.
 - B. If the team decides that a FBA needs to be conducted, include a time frame for completion of the FBA and the development of the BIP and identify who is responsible for conducting the FBA.

- 3) **Discipline**
 - A. The IEP team needs to consider all of the possible discipline provisions set forth in the IEP and check the applicable box(es).
 - B. A BIP does not mean that a student cannot be required to follow the school-wide discipline plan.
 - C. An FBA is generally an approach that incorporates a variety of techniques and strategies to diagnose the causes of, and identify likely interventions to address the behavior.
 - D. An FBA should identify the biological, social, affective, and environmental factors that begin, maintain or end the behavior.
 - E. Generally, disciplinary sanctions should be consistent with the intervention strategies set out in the student's BIP. Nevertheless, students with disabilities are not immune from normal school disciplinary rules, provided those rules are administered in a nondiscriminatory manner and are not inconsistent with the student's IEP.

- F. The District must ensure that any disciplinary action taken with respect to the student has no adverse effect on the goals and objectives of the IEP and is not applied in a discriminatory manner in violation of Section 504⁵

NOTE:

Source: 34 CFR § 300.324
6 NMAC 31.2.11

⁵ OSEP Memorandum 95-16, 22 IDELR 531 (OSEP 1995). See *West Las Vegas (NM) School District 20 IDELR 1358* (OCR 1993), (bus driver's use of his own techniques to discipline a student with disabilities was found to be inconsistent with the discipline techniques in the student's IEP).

SECTION V (D) (1)

FUNCTIONAL BEHAVIORAL ASSESSMENT

An FBA must be done if one has not already been done when:

- 1) A student is removed for more than ten (10) school days in a year for the first time;
- 2) When the District begins a removal that constitutes a change in placement; or
- 3) When a student is placed in an alternative interim setting for drugs or weapons violations.

NOTE:

Source: 34 CFR§ 530(d) & (f)
6 NMAC 31.2.11 & 6 NMAC 11.2.11

SECTION V (D) (2)

PROCEDURES FOR CONDUCTING AN FBA

There is no one procedure for conducting an FBA, but the FBA must include information about the situational, environmental and behavioral circumstances of the behavior.

The persons conducting the FBA must meet to develop an assessment plan within ten (10) business days of the triggering event.

Who conducts an FBA?

The IDEA specifies that it is the IEP Team who conducts an FBA. With specialized training, experience and support, special and general education teachers, counselors and administrators could conduct an FBA. Most school districts use a social worker or a psychologist.

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, revise as needed)

Ensure the relevant members (including the general education teacher) participate in providing information for the FBA and develop 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 serve 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. consistently implement, allow enough time for the behavioral intervention plan and accommodations to work, and then review as needed.

NOTE:

Source: 34 CFR § 530(d) & (f)
6 NMAC 31.2.11 & 6 NMAC 11.2.11

SECTION V (D) (3)

BEHAVIOR INTERVENTION PLANS

A BIP is a written, specific, purposeful and organized plan that describes positive behavioral interventions and other strategies that will be implemented to address goals for a student's social, emotional and behavioral development within the context of the IEP process. In addition, for students whose behavior prompts disciplinary action by the school, the BIP addresses the behavior(s) of concern that led to conducting a functional behavioral assessment.

- 1) Implementation of a BIP is an issue under both Section 504 and the IDEA, particularly with regard to students whose classroom behavior is disruptive.⁶
- 2) A student's Section 504 placement team is required to develop a behavioral management plan whenever the team determines that disability-related behavior problems interfere with the student's ability to benefit from special education or related services.⁷
- 3) Including the BIP directly in the IEP document is not mandatory but is permissible.⁸
- 4) The BIP does not prevent the school district from calling the police.
- 5) The standard of appropriateness for a BIP is whether the plan is reasonably calculated to allow the student to benefit from his educational program in the least restrictive environment ("LRE"), without unduly disrupting other students.⁹
- 6) The BIP should include:
 - A. A summary of relevant and determinative information gathered from a functional analysis assessment;
 - B. An objective and measurable description of the targeted maladaptive behavior (s) and replacement positive behavior(s);
 - C. The individual student's goals and objectives specific to the behavior;
 - D. A detailed description of the behavioral interventions to be used and the circumstances for their use;
 - E. Specific schedules for recording the frequency of the use of the interventions and the frequency of the targeted and replacement

⁶ See *Orange (CA) United Sch. Dist.*, 20 IDELR 770, 773 (OCR 1993) (school district is required to develop a BIP when a student manifests repeated or serious misconduct such that modifying the child's negative behavior becomes a significant component of what actually takes place in the child's educational program).

⁷ See *Morgan v. Chris L.*, 25 IDELR 227 (6th Cir. 1997).

⁸ Consistent with generally recognized IDEA principles, a school district may elect to make a student's BIP part of the IEP. *Letter to Huefner*, 23 IDELR 1072 (OSEP 1995). In most cases, best practice includes developing, reviewing, implementing and documenting a BIP as part of the IEP process.

⁹ In *Eric J. v. Huntsville City Board of Education*, 22 IDELR 858 (N.D. Ala. 1995), the court adopted the *Rowley* standard when it rejected the parents' claim that the district had not provided an appropriate BIP for their son. The district had developed a plan that was reasonably calculated to enable the student to attend a regular-education public school and to confer an educational benefit despite his behavioral problems. See also, *Board of Education of Hendrick Hudson Central School District v. Rowley*, 553 IDELR 656 (1982).

- behaviors, including specific criteria for discontinuing the use of the intervention for lack of effectiveness or replacing it with an identified and specified alternative;
- F. The criteria, by which the procedure will be faded or phased out, or less intense/frequent restrictive behavioral intervention schedules or techniques will be used;
 - G. Those behavioral interventions which will be used in the home, residential facility, work site, or other non-educational settings; and
 - H. Specific dates for periodic review by the IEP team.
- 7) When evaluating whether an FBA and BIP are in place and current, ensure that they:
- A. Identify important, controllable, causal functional relationships applicable to a specific set of target behaviors for an individual student;
 - B. Are multimodal, each behavior typically has multiple causes contributing differentially to the expression of the behavior;
 - C. Describe the expected outcomes and goals for the plan;
 - D. Specify the interventions used to achieve the goals;
 - E. Specify the person who is responsible for specific interventions; and
 - F. Specify a review date.

NOTE:

Source: 34 CFR§ 300.324 & 530
6 NMAC 31.2.11

SECTION V (D) (4)

OTHER CONSIDERATIONS

1) BLIND OR VISUALLY IMPAIRED

If a student is blind or visually impaired plan to provide instruction in Braille unless the IEP team conducts an evaluation and determines that Braille instruction is not appropriate.

2) DEAF OR HARD OF HEARING

Consider the student's communication needs, language needs and opportunities for direct communication with peers, academic level and full range of other needs, including instruction in the child's language.

3) ASSISTIVE TECHNOLOGY

Consider whether the student needs assistive technology. If so, evaluate what type is most appropriate and how long the student is expected to need it. Consider any assessment information presented. In addressing the student's needs for assistive technology begin with low/no tech (i.e., graphic organizers, color coding, picture boards) to mid-level technology (calculator, books on tape) to higher level technology, (word processor, computers). Be sure the need for assistive technology is documented in the student's present levels of performance and that goals and objectives incorporate the assistive technology selected.

NOTE:

Source: 34 CFR § 300.324
6 NMAC 31.2.11

SECTION V (E)

LEAST RESTRICTIVE ENVIRONMENT (“LRE”)

The principles of least restrictive environment requires that placement in a special class or separate schooling should only occur when the nature or severity of the student’s disability is such that education in the general education class with appropriate accommodations, modifications, services and supports cannot be achieved satisfactorily. The District must provide a continuum of services. While considering the various placements along the continuum, remember to consider whether the goals and objectives as written can reasonably be met in the proposed placement.

- 1) LRE extends to all aspects of the student’s educational program, including nonacademic and extracurricular activities.
- 2) In providing for nonacademic and extracurricular services and activities (including meals, recess periods, and the services and activities themselves), the District shall ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate.
- 3) The amount of services to be provided must be sufficiently stated so that the level of commitment by the District is clear to all IEP team members.

When reviewing LRE consideration, ensure that the documentation accurately and adequately reflects the consideration of the less restrictive settings and sets forth the reasons and rationale for a decision that the less restrictive settings will not work. It is not enough simply to say that the “student needs a more restrictive setting.”

- 4) Interscholastic sports or extracurricular activities are not expressly included in the related service of recreation and consequently are not included in the IEP unless the IEP team determines that such activities are a related service for that particular student.

The continuum of alternative placements which may be considered by an IEP team as possible for special education students will include:

- 1) ***Instruction taking place in:***
 - A. ***Regular education classes, (full or part time)***
 - B. ***Special classes, (full or part time)***
 - C. ***Special schools, (full or part time)***
 - D. ***Homebound***
 - E. ***Hospitals, and***
 - F. ***Other institutions.***
- 2) ***Supplementary services, including but not limited to resource rooms and itinerant instruction to be provided in conjunction with the student’s regular class placement.***

Each IEP team should ensure they consider the following item when reviewing LRE considerations

Impact Statement

How does the impairment/exceptionality impact the student's ability to be involved in and progress in the general curriculum without supports and services from special education? Use information provided by all IEP team members to describe how the student's impairment/exceptionality impact his or her ability to be involved in and progress in the general curriculum.

NOTE:

Source: 34 CFR § 300.115, 116, 118, 224
6 NMAC 31.2.11
Revised 11/11/08

SECTION V (F)

EXTENDED SCHOOL YEAR (“ESY”)

Most students regress during school breaks and recoup their lost skills within an expected period of time when school reconvenes. For a student to have regression and recoupment problems the IEP must consider the student’s past performance and determine whether the student is at risk of not recouping skills within the normally expected period of time. A student with severe disabilities may also be eligible for ESY if he or she requires such services in order to maintain/attain critical skills that are essential to the progress of the student and lead to independent functioning and integration with non-disabled peers.

- 1) ESY services must be made available as necessary to provide FAPE and must be provided only if the child’s IEP team determines on an individual basis that the services are necessary to provide FAPE. Generally, if a student experiences loss or regression in skills during a break in school, services should be provided.
- 2) Critical issues for completing ESY documentation:
 - A. Do not check the ESY box with a “yes” in the IEP document unless and until you have data to support the determination.
 - B. Make sure you review all of the considerations and reflect in the PWN why the decision was made.
 - C. Make sure you have data that will support your decision.
 - D. The following is a copy of the PED questionnaire.

To determine eligibility for ESY services, the IEP team must:

- 1) Answer the following questions, and
- 2) Provide documentation indicating that the student’s regression of learned skills and the length of time it takes to regain lost skills and behavior render it unlikely that he or she will attain the state of self-sufficiency that he or she would otherwise reasonable be expected to reach.

The student....

- | | | |
|------------------------------|-----------------------------|---|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | demonstrates a severe disability in one or more areas. |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | experiences significant regression in learned skills or adaptive behaviors over regularly scheduled school breaks during the year. |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | requires a significant amount of time and effort to recoup previously learned behaviors and skills. |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | has previous record of regression and limited recoupment over regularly scheduled school breaks. |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | has previously received previous ESY services that resulted in a positive outcome. |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | would benefit more from an extended school year. |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | has needs that could be met in other summer programs but these programs have been considered and determined to be of less benefit than ESY. |

A significant number of positive responses to the statements above may indicate the need for ESY services.

NOTE:

Source: 34 CFR § 300.106
6 NMAC 31.2.11

SECTION V (G)

ACCOMMODATIONS AND MODIFICATIONS

- 1) The IEP team needs to consider if the student's disability impacts his or her ability to meet district standards. If the answer is yes then the IEP team must discuss what accommodations and/or modifications are necessary to help the student progress in the general curriculum. Accommodations are changes as to how the student demonstrates mastery of skills associated with meeting standards. Modifications are changes to the content of instruction. Ensure that accommodations and modifications are carried out in full in the general education setting. If extra time is given, determines whether the provision of extra time include in-class testing and consider what accommodations or modifications are going to apply in testing situations.
 - A. What test taking strategies has the student been taught?
 - B. Gather and use data in making decisions about accommodations.
 - C. Make sure you choose the right accommodation to fit the student's needs, but be careful not to give an unfair advantage to any student(s).
 - D. Consider the following possible accommodations or modifications:
 - i) Setting;
 - ii) Timing;
 - iii) Schedule;
 - iv) Presentation;
 - v) Response
 - vi) Cuing;
 - vii) Out-of-level testing; and
 - viii) Redirection.
 - D. Are the tests based on some performance improvement?
 - E. Do the tests include any special training for staff to provide?
 - F. If there are accommodations required for assessments, are they related to classroom modifications or assessments?
- 2) The IEP should include a statement of the modifications necessary for the students
 - A. To be able to advance appropriately towards attaining his or her annual goals;
 - B. To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other non academic activities; and
 - C. To be educated and participate with other children with disabilities.
- 3) The IEP should include a statement of any individual accommodations necessary to measure the academic and functional performance of the student on State and district-wide assessments. When exploring testing accommodations, consider:
 - A. Presentation accommodations
 - i) Can the student read and understand directions?
 - ii) Does the student need directions repeated frequently?
 - B. Response accommodations
 - i) Can the student use a writing instrument?
 - ii) Does the student have a disability that affects ability to spell?
 - iii) Does the student have trouble tracking from one page to another and maintaining his or her place?
- 4) If the IEP team determines that the student will take an alternate assessment on a particular State or district wide assessment of student achievement, the team must include in the IEP a statement of:

- A. Why the student cannot participate in the regular assessment and
- B. The particular alternate assessment selected as to appropriate for the student.

NOTE:

Source: 34 CFR §300.320
6 NMAC 31.2.11

SECTION VI

IEP TEAM

The IEP team is composed of the following individuals:

- 1) The parent¹⁰
 - A. A person having legal custody of a child;
 - B. A person acting in place of a parent such as grandparent or stepparent with whom the child lives;
 - C. An individual designated by the parent to represent the interests of the student when the parent is unavailable;
 - D. The student if age eighteen (18) or older for whom no guardian or conservator has been appointed;
 - E. A foster parent (not a therapeutic treatment parent) **if** the natural parents' authority has been limited a court order **or** the foster parent has a long term parental relationship with the child **and has no interest that would conflict with the interest of the child;**
 - F. A surrogate parent appointed for a student who is a ward of the state or for a student whose parent is unknown or whose whereabouts are unknown.

The District will ensure that the rights of a special education student are protected under the IDEA when:

- A. No parent can be identified;***
- B. After reasonable efforts, the School District cannot locate a parent;***
- C. The student is a ward of the State under the laws of that State; or***
- D. The student is an unaccompanied homeless youth, as defined under federal law.***

The District must determine whether a student needs a surrogate parent, and if so, must assign an individual to act as a surrogate parent for the eligible student. If the student is an unaccompanied homeless youth, a temporary surrogate parent may be appointed from the staff of the emergency shelter, transitional shelter, independent living program, or street outreach program providing shelter and other services to the student. The temporary surrogate parent serves in that capacity until a qualified surrogate parent is appointed by the school district.

If the District selects the surrogate parent, such selection will be done in compliance with all applicable State and federal laws.

¹⁰ If, despite several (**documented**) attempts to get the parent to attend, the parent fails or refuses to do so, you may proceed with the meeting. Be sure to include in the PWN information regarding prior attempts to contact the parent and the decision to proceed without the parents in attendance. If you have divorced parents, the District does not need to choose one parent over the other. If both have joint educational decision making then any dispute between the two must be resolved by them.

The District must ensure that a person it assigns to act as a surrogate parent:

- A. Is not an employee of the New Mexico Public Education Department, the School District, or any other agency that is involved in the education or care of the student;*
- B. Has no personal or professional interest that conflicts with the student's interest; and*
- C. Has knowledge and skills that ensure adequate representation of the student.*

- 2) Not less than one regular education teacher of the student, if the student is participating or may be participating in the regular education environment.

While a regular education teacher must be a member of the IEP team if the child is, or may be, participating in the regular education environment, the teacher need not (depending upon the child's needs and the purpose of the specific IEP team meeting) be required to participate in all decisions made as part of the meeting or to be present throughout the entire meeting or attend every meeting. For example, the regular education teacher who is a member of the IEP team must participate in discussions and decisions about how to modify the general curriculum in the regular classroom to ensure the child's involvement and progress in the general curriculum and participation in the regular education environment.

Depending upon the specific circumstances, however, it may not be necessary for the regular education teacher to participate in discussions and decisions regarding, for example, the physical therapy needs of the child, if the teacher is not responsible for implementing that portion of the child's IEP.

In determining the extent of the regular education teacher's participation at IEP meetings, public agencies and parents should discuss and try to reach agreement on whether the child's regular education teacher that is a member of the IEP team should be present at a particular IEP meeting and, if so, for what period of time. The extent to which it would be appropriate for the regular education teacher member of the IEP team to participate in IEP meetings must be decided on a case-by-case basis.

- 3) Not less than one special education teacher.

The child's *special education teacher* contributes important information and experience about how to educate children with disabilities. Because of his or her training in special education, this teacher can talk about such issues as:

- A. how to modify the general curriculum to help the child learn;
- B. the supplementary aids and services that the child may need to be successful in the regular classroom and elsewhere;
- C. how to modify testing so that the student can show what he or she has learned; and other aspects of individualizing instruction to meet the student's unique needs.

- 4) A representative of the District who is:
- A. Qualified to provide, or to supervise the provision of specially designed instruction;
 - B. Knowledgeable about the general education curriculum; and
 - C. Knowledgeable about the availability of resources of the school district

This person knows a great deal about special education services and educating children with disabilities. He or she can talk about the necessary school resources. It is important that this individual have the authority to commit resources and be able to ensure that whatever services are set out in the IEP will actually be provided.

- 5) One or more individuals who can interpret the instructional implications of evaluation results. This person (or these people) can be members 2-4 above.

The evaluation results are very useful in determining how the child is currently doing in school and what areas of need the child has. This IEP team member must be able to talk about the instructional implications of the child's evaluation results, which will help the team plan appropriate instruction to address the child's needs.

- 6) Other individuals, at the discretion of the parent or the agency who have knowledge or special expertise regarding the student.¹¹

These individuals may include people who provide related services. A child may require any of the following related services in order to benefit from special education. Related services, as listed under IDEA, include (but are not limited to):

- A. Audiology services
- B. Counseling services
- C. Early identification and assessment of disabilities in children
- D. Medical services
- E. Occupational therapy
- F. Orientation and mobility services
- G. Parent counseling and training
- H. Physical therapy
- I. Psychological services
- J. Recreation
- K. Rehabilitation counseling services
- L. School health services

¹¹ If the parent comes to the meeting with several outside individuals, make sure to identify those that meet the criteria under number 6 above.

- M. Social work services in schools
- N. Speech-language pathology services
- O. Transportation

If a child needs a particular related service in order to benefit from special education, the related service professional should be involved in developing the IEP. He or she may be invited by the school or parent to join the IEP team as a person “with knowledge or special expertise about the child.”

The District understands that parents often want the assistance of an advocate while they are dealing with the school district. With this in mind the District seeks to provide guidance to anyone who seeks to serve in the capacity of an advocate. Prior to an individual serving as an advocate the parent will need to execute and provide a copy of the consent for parent advocate to the school office to ensure compliance with FERPA regulations.

To assist the parent(s) in understanding the role of an advocate the District will:

- (1) *Advise the parent(s) that they are the persons whose knowledge is important in understanding their child’s needs.*
- (2) *Advise parents that the role of an advocate is to assist them in understanding the requirements of the Individuals with Disabilities Education Act.*

- 7) The student, as appropriate. However, the student must be invited if the purpose of the meeting is to consider post-secondary goals and transition services.

If the student is unable to attend, steps must be taken to ensure that the child’s preferences and interests are considered.

Determine whether the student needs to be in attendance for all of the IEP or for just a portion, such as the transition plan and BIP.

- 8) To the extent appropriate, and with consent of the parent (or the student, if appropriate), a representative of an agency that is likely to be responsible for paying for transition services.

NOTE:

Source: 34 CFR § 300.321, 322, 501
6 NMAC 31.2.11, 6NMAC 31.2.13

SECTION VI (A)

IEP MEETING

- 1) The District 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--
 - (a) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
 - (b) Scheduling the meeting at a mutually agreed on time and place.
- 2) Make sure to have an agenda prepared before the meeting, listing the items to be discussed during the meeting.
- 3) Have everyone in attendance identify themselves and their role in the IEP meeting.
- 4) Advise advocates that they can assist the parent, but that they cannot act in the parent's place.
- 5) If the meeting becomes contentious, consider taking a short break or tabling the meeting to get direction from the administration.
- 6) Begin the meeting on time.
- 7) If the meeting will be taped by either the district or the parent, notify the team of taping prior to commencing the meeting.

Tape recording of the IEP meeting by the District is not recommended. The quality of the tape is generally poor and it must then be maintained as an educational record if recorded by the District. The IEP written document is the formal documentation of the meeting and of the decisions made by the team.

- 8) Ask the parents if they have received and understand their rights and procedural safeguards. If the student has reached the age of eighteen (18) and not been determined incompetent by a court under state law, all the rights, roles, responsibilities and communication pertaining to the parent described in this manual are conveyed to the student.
- 9) Beginning with the year the student reaches the age of fourteen (14) and at each annual review after that time, the IEP team must discuss not only transition, but also the Pathways to Graduation and what the requirements are for graduation under each pathway. The discussion should include the difference between the various pathways, the course requirements and the course of study.

OTHER CONSIDERATIONS

When dealing with an IEP, remember to do the following:

- 1) Give parents a copy of the document setting forth parental rights only once a year or when requested or evaluating;
- 2) Add language to the parental rights document indicating the time limit for bringing due process complaints regarding the IEP – two years from the date of the IEP at issue.
- 3) Make sure all persons responsible for IEP, including licensed staff, have access to the IEP and know what their responsibilities are in the IEP.
- 4) Make sure that the PWN contains all items proposed and the reasons each item was accepted or rejected.
- 5) Do not keep minutes of the IEP meetings.
- 6) Have one person serve as the scribe for the IEP and have a different person serve as the scribe for the PWN. This approach will help you make sure that you capture all of the considerations for both documents.
- 7) Bring proposed goals and present levels of performance to the IEP meeting in order to streamline the process.
- 8) Make sure that the IEP goals are measurable.
- 9) 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. The PWN or Prior Written Notice should include any and all proposals made by any member of the IEP team and should clearly define what was decided with regard to the proposal (whether it was rejected or accepted) and the educational reasons for the decision of the team. It is recommended that the PWN be written as the meeting is on-going to ensure the complete capture of all of the proposals and the decisions of the team. If there is disagreement among team members regarding the decision include that information in the PWN along with the dissenter's reasons for dissenting.

***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.*

The IEP team should always note in the IEP documentation if there are other items to be considered in the implementation of the IEP including if there are emergency evacuation considerations (deaf or hard of hearing child, child with physical impairment, child in time out location. .

NOTE:

Source: 34 CFR § 300.324, 328
6 NMAC 31.2.11, 6NMAC 31.2.13
Revised 11/11/08

SAMPLE IEP MEETING AGENDA

1) START UP

- A. WELCOME
- B. INTRODUCTIONS
- C. SIGNATURES
- D. OUTCOMES
- E. OVERVIEW/TIME CONSTRAINTS
- F. GROUND RULES
- G. DECISION MAKING PROCESS
- H. RIGHTS

2) IEP DEVELOPMENT

- A. PRESENT LEVELS OF PERFORMANCE
- B. COGNITIVE*
- C. COMMUNICATION*
- D. HEALTH*
- E. ACADEMICS*
- F. MOTOR FUNCTIONING*
- G. PREVOCATIONAL-VOCATIONAL*
- H. SOCIAL EMOTIONAL/SOCIALIZATION/BEHAVIOR*
- I. SELF HELP*
- J. ELIGIBILITY
- K. RECOMMEND/ESTABLISH GOALS/OBJECTIVES
- L. PLACEMENT & CONSIDERATION OF LRE
- M. OFFER OF FAPE
- N. NEXT STEPS

*AS APPLICABLE

SECTION VI (B)

TEAM MEMBER ATTENDANCE

- 1) A member is not required to attend, in whole or in part, if the parent and the District agree in writing that the attendance is not necessary, because the curriculum or related service is not being modified or discussed at the meeting
- 2) *Note:* If a member is excused, get notice to the parent and have the parent sign a document acknowledging at the IEP meeting that prior to the meeting, the parent (1) was notified that the particular team member was excused, and (2) agreed to excuse that particular team member. If parent refuses to sign this document at the meeting, either reschedule the meeting or get the person to attend. Keep documentation of prior notification.
- 3) A member whose area is being discussed may be excused if there is written consent by the District and the parent, and the member submits in writing input into the development of the IEP prior to the meeting.
- 4) If student was Part C, then upon request of parent, the District must invite Part C services representative to assist in the transition.

NOTE:

Source: 34 CFR § 300.321, 322
6 NMAC 31.2.11

SECTION VII

DISCIPLINE

- 1) Federal and state laws allow the District's administration to consider each student's unique situation.
 - A. As to special education students, the District is not absolutely bound by mandatory long-term removal. 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.
 - B. The District should consider appropriate responses to zero-tolerance policies that dictate a specific outcome, e.g., alternative placement rather than expulsion for special education student whose misconduct is a manifestation of his or her disability.
 - C. School personnel have more discretion as to discipline of special education students than as to discipline of other students.
- 2) If the student is to be suspended for more than ten (10) school days cumulatively during a particular school year, then consider and implement the requirements under the IDEA.
- 3) IDEA requires a District to conduct a "manifestation determination" before imposition of long-term suspension.

Notice of Disciplinary Actions (Student Moves to another District)

*If the District 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 *** 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. If the student qualifies for receipt of special education services the receiving district who accepts the student for enrollment must provide special education services pursuant to 300101(a) and 300.530(d)*

Manifestation determination review is conducted by the IEP team to determine whether the student's behavior is a manifestation of his or her disability. If it is, the student's placement can be changed only by the IEP team. If the behavior is not a manifestation, the student can receive discipline, but the District must still provide FAPE at a location and time decided by the IEP team. The IEP must allow the student the ability to progress toward goals and objectives and to access the general curriculum.

- 4) Contact the District's special education department or site specialist when planning to discipline a special education student.
- 5) Additional considerations:
 - A. Before imposing suspension that will exceed ten days during any school year, a manifestation determination meeting must occur. At this meeting:
 - i) Parents and relevant members of the IEP team review all relevant information;
 - ii) Consider whether the student's conduct was caused by or had a direct and substantial relationship to disability; and
 - iii) Determine whether the behavior was a direct result of the failure to implement the IEP.
- 6) If student's behavior is not a manifestation, then, the student may be disciplined as any non-disabled student who committed the same violation(s) would be disciplined, EXCEPT that the special education student must be provided FAPE.
- 7) The language in the newly enacted regulation as revised from language in previous regulations indicating that services provided during removals must "enable the child to meet the goals" of the IEP and to enable the student "to progress toward meeting the goals set out in the child's IEP." If the student's misconduct is a manifestation of his or her disability, then the student's placement can be changed only by the IEP team.

NOTE:

Source: 34 CFR § 300.530-536, 518, 533
6 NMAC 31.2.11, 13

MANIFESTATION DETERMINATION REVIEW

Name: _____ MDT Meeting Date: _____

Student # _____ DOB _____ School _____ Grade _____

Parent notification was made by _____, in what form _____
on what date _____.

I. List sources of information:

- a. most recent evaluation
- b. most recent IEP; date
 - i. Exceptionality
 - ii. Secondary Exceptionality
 - iii. Special Education Services: Amount _____ Percent _____
 - iii. Related Services: Amount _____ Percent _____
 - iv. Functional Behavioral Assessment/Behavior Intervention Plan
Dates:
- c. Prior discipline referrals, if any:
- d. Teacher observations including:
 - i. Current attendance:
 - ii. Current grade:
 - iii. Behavioral concerns, if any:
- e. Any additional information the parent would like to contribute

II. Description of conduct/behavior in question

- a. Narrative from referral source, specific to the behavior
- b. Narrative from principal or designee
- c. Explanation of how the conduct (behavior) is an expellable offense
- d. Student's statement

III. Questions

- a. Was the conduct in question caused by or did it have a direct and substantial link to the child's disability? _____ YES _____ NO
- b. Was the conduct in question the direct result of the school district's failure to implement the IEP? YES _____ NO

If we, as a committee, answer YES to either question, the conduct shall be determined to be a manifestation of the student's disability. If this is true, the team shall conduct a functional behavioral assessment and implement a behavior plan or, if a behavioral intervention plan has been developed the team will review the plan and modify as necessary to address the behavior and return the student to the placement from which the student was removed, unless the parent and the district agree to change the placement as part of the modification of the behavior plan.

If we, as a committee, answer NO to both questions the conduct shall be determined to not be a manifestation of the child's disability. If this is true, then the same disciplinary procedures which are applicable to non-disabled students including long term suspension and expulsion may be applied to the student. However, FAPE must be provided if the student will be excluded from school for more than 10 cumulative school days in a school year. The IEP team must convene to determine what constitutes FAPE under this circumstance.

MEMBERS IN ATTENDANCE

Signatures

Position/Title

SPECIAL CIRCUMSTANCES

- 1) Currently, under the IDEA , schools may change a student’s placement without first conducting a manifestation determination only where the special education student has:
 - A. Drugs which includes possession and distribution;
 - B. Weapons ; or
 - C. Inflicted serious bodily injury on another person. The new law includes provision for inflicting “serious bodily injury.”

- 2) Serious bodily injury, or “maiming,” is injury that causes either:
 - A. Substantial risk of death;
 - B. Extreme physical pain;
 - C. Protracted and obvious disfigurement; or
 - D. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

- 3) Dangerous students

The District still may seek student removal through a due process hearing. The District must be able to show the student poses a threat to him/herself or to others, and the District has taken reasonable steps to minimize the likelihood of harm. The District must also be able to show that the proposed placement will provide FAPE and will help keep the behavior from recurring.

- 4) The District ’s burden of proof in student removals
The burden of proof has been reduced from “substantial evidence” to a “preponderance of the evidence.”

- 5) New law regarding stay-put placement limitation of 45-school days.

- 6) If a disciplinary action is challenged, the student’s stay-put placement remains the interim alternative educational setting (“IAES”) until either:
 - A. The 45 school days expire, or
 - B. The hearing officer issues a decision, whichever occurs first.

NOTE:

Source:34 CFR § 300.530-536, 518
6 NMAC 31.2.11, 13

SECTION VII (B)

STUDENTS NOT YET IDENTIFIED AS ELIGIBLE

- 1) A student may assert IDEA protections in a discipline procedure where:
 - A. The student wishes to revise allegations as to when school is deemed to have knowledge;
 - B. Staff or teachers have expressed concern directly to special education directors or other supervisors about a pattern of behavior demonstrated by the student; or
 - C. The District had knowledge that the student was a student with a disability.

- 2) The District is deemed to have knowledge that the student was a student with a disability if:
 - A. The parent had expressed concern regarding the student's disability status either:
 - i) In writing, or
 - ii) Orally, if parent does not know how to write, or has a disability that prevents a written statement;
 - B. The student's behavior or performance demonstrates the need for special education services; or
 - C. The parent has requested an evaluation of the student to determine whether the student is eligible for special education services.

- 3) Exceptions to whether the District is deemed to have such knowledge:
 - A. The District is not deemed to have knowledge that a student has a disability if the parent refused evaluation and/or services under IDEA, or if the student has been determined not to be eligible;
 - B. If the District has no such knowledge, the District may discipline the student in the same way as it would discipline students without disability.
 - C. However:
 - i) If an evaluation is requested during the time period, discipline would be applied.
 - ii) The student remains in the educational placement determined by the school, which placement can include suspension/expulsion.
 - iii) If the student is determined to be eligible, the District must provide special education services as well as access to the general education curriculum.

NOTE:

Source: 34 CFR § 300.530-536, 518, 533
6 NMAC 31.2.11, 13

SECTION VIII

RESPONSE TO INTERVENTION

Response to Intervention (“RTI”) theory is based upon recognition that while most children respond to conventional teaching methods, there are some children who do not. The research has disclosed two possible theories for this problem. The first is whether the student has a disability that interferes with his or her ability to learn in the same fashion as the majority of the other students. The second (and this is not really a new theory) is whether the student has received either the proper and/or adequate teaching in the area of delay.

These issues have combined to create a problem with using the discrepancy model for determining which students require special education services for a learning disability and which students simply need better instruction. With the discrepancy model, identification often occurs too late and generally requires failure before testing. There are national concerns regarding the over- and under-identification of minority students as students eligible for special education services.

The decision has been made by Congress and educators alike, that instead of determining first that the problem must lie with the child, the evaluator should assume that the problem is with the instruction. Consequently, recognition of the principles of the three-tier system has been developed.

<i>TIER ONE</i> CORE INSTRUCTION	ASSESS WITH UNIVERSAL SCREENING	<i>INTERVENTIONS -</i> WHOLE-CLASS STRATEGIES
<i>TIER TWO</i> SUPPLEMENTAL INSTRUCTION	ASSESS WITH WEEKLY PROGRESS MONITORING	<i>INTERVENTIONS -</i> USE SOLID INSTRUCTIONAL FUNDAMENTALS
<i>TIER THREE</i> INTENSIVE INDIVIDUAL INTERVENTION	ASSESS WITH TWICE- WEEKLY PROGRESS MONITORING	<i>INTERVENTIONS -</i> FOCUSED AND DESIGNED FOR STUDENT

There are six key components to the RTI model:

- 1) Universal screening.
- 2) Measurable definition of the area(s) in which the student is experiencing problems.
- 3) Establishment of a written plan clearly defining the individuals accountable for the plan, as well as how these individuals are held accountable.
- 4) Progress monitoring.
- 5) Comparison of pre-intervention and post-intervention data to determine whether the plan is working.

TIER ONE

- 1) The question that arises with this focus is how does RTI help you know whether the problem is with instruction or disability? The answer is as follows:
 - A. Monitor progress of ALL students.
 - i) Most subgroups should respond to standard instruction.
 - ii) Develop benchmark data for each grade, school, district, and classroom.
 - iii) Give specific information on specific skills for specific students compared to others in classroom.
 - iv) Monitor student progress at least 3 times per year (fall, winter, and spring).
 - B. A few students will not respond.
 - i) No one curriculum works for every student.
 - ii) No one size fits all.
 - iii) If you can measure the problem, you will know whether instruction is working.
 - iv) If all students in a small group are not performing or are having difficulty, check to see whether the problem is with instruction or core curriculum.
 - C. Consider implementing Tier 2 for those who are not responding.
- 2) Universal screening can be a useful tool and can help you catch non-responding students early. Screening will help detect the problem earlier in the student's education, so the student need not "wait and fail" before interventions can be implemented.
 - A. If you have concerns, administer short, curriculum-based measurement probes in the area of concern to monitor the progress of the intervention. These probes establish the baseline data point.
 - B. Four weeks into the intervention process, administer the measurement tool again. The results establish a second data point.
 - C. Two to four weeks later, administer the measurement tool again. These results establish a third data point.
 - D. The teacher must decide whether to continue working on interventions or refer the matter to a student assistance team ("SAT").
- 3) Progress of all students in general education must be monitored in order to gather data on all students and catch those who are not responding to Tier One interventions.
- 4) Universal screening can help determine whether there is a problem with the core curriculum being used, and will allow for class-wide interventions.
- 5) Many students previously referred for special education due to concerns about a specific learning disability are, in fact, those students who required a different method of instruction rather than special education services. This prior referral process caused a disproportionate number of students to be identified as SLD.

TIER TWO

- 1) The interventions to consider at Tier Two for those students who are not responding at the Tier One are:
 - A. Providing quality, solid, focused instruction.
 - B. Covering all of the components needed to learn a skill. Avoid the creation of splinter skills, and focusing on the essential components of reading, language and math.
 - C. Monitoring student progress more frequently than at Tier One.
 - D. Evaluating student progress more frequently than at Tier One to determine whether progress is being made.
 - E. Assessing the student's response to the new interventions in order to determine whether new or different interventions should be used.
 - F. Developing a clear, concise plan of intervention. What is going to be done differently, who is going to do it, when will it be done, where will it be done, and how long will it be done?
 - G. Using the written intervention plan to identify measurable outcomes.
 - H. These then can be used to create data-driven adjustments to the intervention process.
 - I. Creating a progress-monitoring schedule using a variety of data gathering methods.

- 2) Examples of interventions:
 - A. Target assistance on a specific skill or on components of a skill.
 - B. Modify mode of task presentation.
 - C. Cue work habits or organizational skills.
 - D. Modify direct instruction time.
 - E. Modify guided and independent practice.
 - F. Determine and implement optimal pacing.
 - G. Implement partner reading.
 - H. Have student self-correcting his or her own mistakes.
 - I. Increase task structure.
 - J. Increase task-relevant practice.
 - K. Increase opportunities to engage in active academic response (writing, reading aloud, and answering questions in class).
 - L. Provide frequent mini-lessons on skill deficits.
 - M. Provide instruction in smaller groups.
 - N. Increase frequency and types of cues and prompts.
 - O. Change scope and sequence of tasks.
 - P. Teach additional learning strategies

- 3) Tier Two interventions should be used at least four times per week in thirty- minute sessions over a period of nine weeks.

- 4) At the end of the nine-week period, return to the SAT team for additional support and determination on whether to stay at Tier Two or move to either Tier One or Tier Three. Because referral to Tier Three or special education is based on response to intervention data, the District must implement the interventions exactly as defined in order to ensure consistency in the data.

TIER THREE

- 1) Tier Three increases the intensity, frequency, and group size in the provision of interventions.
 - A. Tier Three students receive two (2) 30-minute interventions per day for a minimum of nine (9) weeks.
 - B. Each week, at least one measurement of the intervention's effectiveness is needed.
 - C. The difference between Tier Two and Tier Three is the frequency and group size of the intervention treatment. This is the last stage of the intervention model, and it is the most intensive.
- 2) At the end of the nine-week period, return to the SAT team to determine whether the next step is to stay at Tier Three, move to Tier Two, or referral to special education.
- 3) Ensure that you have proof that the intervention was carried out exactly as required in the intervention plan.
- 4) If the student does not respond at Tier Three level of interventions, when these interventions have been appropriately implemented and measured, it is likely that the student has a learning disability.
(THIS DECISION IS MADE BY THE IEP TEAM.)

NOTE:

SECTION IX

MISCELLANEOUS

I. 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 1, 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 2 level. 6.29.1 NMAC 9.

(2) In tier 2, 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(B) NMAC and federal regulations at 34 CFR Sec. 300.300.

(3) In tier 3, 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.

(4) The department's manual, *the student assistance team and the three-tier model of student intervention*, shall be the guiding document for schools and districts to use in implementing the student intervention system.

II. Child find for parentally-placed private school children with disabilities.

General. The District must locate, identify, and evaluate all children with disabilities in accordance with NMAC 6.31.2., and §§300.111 and 300.201.

who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the District and those children who are home schooled.

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.**

Activities. In carrying out the requirements of this section, the District, or, if applicable, the NMPED, must undertake activities similar to the activities undertaken for the agency's public school children.

Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if the District has met its obligation under §300.133

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.

Out-of-state children. Each LEA in which private, 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 that they attend are located.

Calculating proportionate amount. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the District, 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 District.

III. Placements for students in private residential treatment centers or other out of home programs: 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 non-medical care and room and board costs of the placement.

Agreements between the resident school district and a private residential treatment center must be on the form posted on the PED website or on a form otherwise approved by the department and approved by the Secretary of the PED. If the student is not provided special education and related services within 10 days of placement the sending school is responsible for providing services to the student.

Revised 11/20/10
Source: 6.31.2.9(b)

STAFF TRAINING

A. Method to determine 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 which a student would need appointed a surrogate parent or 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.

B. Physical Restraint

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.

C. Time Out

The staff of the District will be trained and all procedures will be followed. The IEP Team will complete the activities set out in the use of Time Out section of the Manifestation Determination to determine which non-exclusionary and/or exclusionary time-out is appropriate for the student.

D. Non-Custodial Parent Request for Information

A noncustodial parent may request in writing that the 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 school to a student's parent or guardian.

The school may not unreasonably deny this request. The District will comply with any applicable court order of which it has knowledge.

E. Use of Restraint

The use of physical restraint as a behavioral intervention for students with disabilities in the District 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 District provides the following detailed guidance for the appropriate use of physical restraint for students with disabilities in the District schools. 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.

F. 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 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. **Use of 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 time-out must have positive implications, including enabling the student to return to the classroom setting.

G. 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 regroup and return to the classroom setting.

NOTE:

Revised 11/11/08

The staff of the District 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 District to implement the IEP.
- 5) **Amount of time:** Duration of 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.
- 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. **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.
- 8) **The District 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.
- 9) **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 not been successful.

PROCEDURES

- 1) Physical restraint procedures must be performed by trained personnel only. Restraint should not be used as a form of punishment. The IEP team must craft the BIP so as to use a graded system of alternatives for the student's behavior. 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.
- 2) The IEP team needs to establish that other less restrictive interventions have not been effective.
- 3) The use of physical restraint must be consistent with the student's IEP and Behavioral Intervention Plan (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. Do not restrain the student in front of other students.
- 4) 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.

NOTE:

Source: 34 CFR§ 300.324 & 530

6 NMAC 31.2.11

Revised 11/11/08

SECTION X

PRESCHOOL PROGRAMS

The District includes in the provision of special education services programs for students who are ages three through five in its early childhood program. The District preschool services ensure the provision of a Free and Appropriate Public Education to all eligible children. A full and individual evaluation prior to receipt of Part C services must be conducted at no cost to ensure effective transitioning .

Preschool students who have a disability as defined by the IDEA and set forth in Section IV above are eligible for preschool services provided through the District. In addition to the previously defined areas of disability students can be eligible for services under the category of developmentally delayed.

Preschool children are often identified as potentially qualifying for receipt of special education services through the annual Child Find fair. The Child Find fair should be utilized to identify areas of concern for further assessment by a multidisciplinary team. Following the completion of the evaluation or assessments the IEP team will meet to review and discuss the findings of the evaluations and determine eligibility.

Once a preschool student has been found eligible the IEP team will work together to develop the IEP which will identify the special education and related services necessary to support the student's development and educational program.

Ninety (90) days prior to the student reaching the age of three the District will schedule along with the Early Intervention Services provider a transition planning conference. At the conference the District will advise the parent of their procedural safeguards under the IDEA and will discuss the need for additional evaluations if necessary to determine eligibility and schedule a meeting with the parent and the District's diagnostic staff.

If the District and parent agree there is no disability, a prior written notice will be developed reflecting the conclusion and the decision not to transition into the early childhood program of the District.

Prior to the student's third birthday the District will convene an IEP meeting to review evaluation and assessment data to determine eligibility and develop an IEP to be in place no later than the child's third birthday. If the student has a summer birthday the IEP team should consider whether ESY services are necessary to maintain the student's current level of performance. If ESY is not necessary services should begin at the start of the school year.

A student who turns three at any time during the school year who has been determined to be eligible for special education services can enroll at the beginning of the school year. There should be a transition meeting before this to ensure the appropriateness of the transition from Part C to Part B.

Source: 34 CFR § 300.111, 305, 323
6 NMAC 31.2.11
Revised 11/20/10

DISTRICT CHECKLIST OF TRANSITION ACTIVITIES

Student's name:

ACTIVITY	REQUIREMENTS	ACTUAL DATE	COMMENTS
Initial contact with parents	Can be 9 months prior to 3 rd birthday		
Records review	120-90 days before 3 rd birthday	Suspected disability <input type="checkbox"/> yes <input type="checkbox"/> no Date of referral ()	
Planning Conference	90 days before 3 rd birthday or transition into Part B arranged by Part C.		90 days before 3 rd birthday or transition. <input type="checkbox"/> yes <input type="checkbox"/> no – If no reason why.
Evaluation to determine eligibility			
IEP completed	Initiate 15 days prior 1 st day of school or 15 days prior to entry into Part B		
Services Begin			Summer Birthday <input type="checkbox"/> yes <input type="checkbox"/> no ESY considered <input type="checkbox"/> yes <input type="checkbox"/> no

SECTION XI

FREQUENTLY ASKED QUESTIONS

- 1) What do I do if a student is struggling in class and it isn't because of a lack of effort or attendance?
 - A. The new regulations require modifications and accommodations that include more intense instruction, more small-group instruction, and frequent evaluation of impact of interventions.

- 2) What do I do if a special education student gets in a fight with another student and seriously injures the other student?
 - A. Contact local law enforcement. If the student is arrested, do not suspend him or her on that day. Advise the student's parent(s) that the suspension will start when the student has been released from police custody. If suspension will result in more than 10 days (cumulative) of suspension during any one school year, you must conduct a manifestation determination before you exceed 10th cumulative day of suspension. If the misbehavior is a manifestation of the student's disability, seek to modify the IEP to address such behavior. If the misbehavior is not a manifestation, the student may be placed in an interim alternative educational placement for a period not to exceed 45 school days. Check the definition of serious bodily injury, which affects how discipline can be applied. The District may also file a due process complaint alleging that the special education student is a dangerous student. The District must follow procedural safeguards and notify the parent and the Public Education Department ("PED")/Special Education Bureau ("SEB") of the complaint.

- 3) What if a student refuses to do his classroom work?
 - A. Call a meeting with the IEP team. If you do not have a behavior intervention plan for this student, then make plans to develop one after a functional behavior assessment is complete. If a behavior intervention plan already exists, make every effort to update and modify it to address the refusal to do classroom work. If the student is belligerent, assaultive, or threatening, the student may be suspended provided that the cumulative number of suspension days does not exceed ten (10) during any given school year.

- 4) Does in-school suspension count toward the ten (10) day maximum?
- A. The case law has stated that unless the in-school suspension is substantially similar to the student's placement prior to the in-school suspension, the time in the in-school-suspension setting counts toward the ten (10) day maximum. Even if the in-school suspension setting is substantially similar to the student's prior placement, be cautious of overusing this setting, as it could be considered a change in placement without IEP team input.
- 5) Do I have to get written agreement to excuse an IEP team member from attendance at the IEP prior to the meeting?
- A. In the invitation to the IEP meeting, let the parent know that certain individuals will not be in attendance, and if that absence is not acceptable, the parent should let the District know so that the District can reschedule the meeting. If the parent does not object to the absence of these individuals, make sure the parent signs an agreement form at the IEP meeting acknowledging prior notice of, and consenting to hold the meeting regardless of the person's absence. Make sure that the parent's acknowledgment and agreement to proceed is reflected in the PWN at the start of the meeting. Make sure that the person being excused is not a necessary party to the development of the IEP and that if the person has something to report to the team, a copy of the report is available for review by the IEP team. If someone is excused after the meeting starts, make sure that the PWN reflects agreement by the parent and the District to excuse that team member, including the reason the person was excused.
- 6) Does consensus mean everyone gets to vote on a decision?
- A. No. Consensus means there is general agreement with regard to a decision about the student's educational programming. If the parent does not agree, make sure to describe the disagreement and reason behind the disagreement in the PWN. If consensus is not reached, the District representative makes the final determination, and this determination is reflected in the PWN which should include the procedural safeguards available to the parents.
- 7) Does every student need goals and objectives?
- A. No. The new law provides that objectives are required only for those students who take an alternate assessment. However, if a student will benefit from the creation of objectives tied to the goal, there is no prohibition on creating such objectives. Check with the District office to determine the procedure(s) selected by the District. Additionally, consider objectives when student has a newly emerging skill.
- 8) Who needs to be at an IEP meeting?

- A. The parent.¹²
 - B. Not less than one regular education teacher of the student (if the student is participating or may be participating in the regular education environment).
 - C. Not less than one special education teacher.
 - D. A representative of the district who:
 - i) is qualified to provide, or to supervise the provision of, specially designed instruction;
 - ii) is knowledgeable about the general education curriculum; and
 - iii) is knowledgeable about the availability of resources of the school district.
 - E. One or more individuals who can interpret the instructional implications of any special education evaluation results (this can be one or more members in items b through d above).
 - F. At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the student.¹³
 - G. As appropriate, the student.¹⁴ The student must be invited if the purpose of the meeting is to consider post-secondary goals and transition services. If the student is unable to attend, steps must be taken to ensure that the student's preferences and interests are considered.
 - H. To the extent appropriate and with consent of the parent or student, a representative of an agency that is likely to be responsible for paying for transition services.
- 9) What happens if you cannot get a parent to sign a consent-to-evaluate or consent-to-placement form?
- A. If, despite your best documented efforts, you are unable to get the parent to sign the appropriate forms, advise the parent that until he or she signs the form(s), the student either (1) will not get tested and a determination of eligibility completed, or (2) will have none of the protections available under the IDEA.

NOTE:

¹² If, despite several (**documented**) attempts to get the parent to attend, the parent fails or refuses to do so, you may proceed with the meeting. Be sure to include in the PWN the attempts to contact parent and the reasons for the decision to proceed.

¹³ If the parent comes to the meeting with several outside individuals, make sure to identify those that meet the criteria in item 8(e) above.

¹⁴ Determine whether student needs to be in attendance for all of the IEP or only for a portion, such as the transition and BIP.

SECTION XII

PRIVATE SCHOOL STUDENTS

Consultation

The District 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:

- (1) Child find. The child find process, including--
 - (a) How parentally-placed private school children suspected of having a disability can participate equitably; and
 - (b) How parents, teachers, and private school officials will be informed of the process.
- (2) Proportionate share of funds.
 - (a) Determining the proportionate share of Federal funds available to serve parentally- placed private school children with disabilities under §300.133(b), including the determination of how the proportionate share of those funds was calculated. The district shall not use the funds as provided in 34 CFR Sec. 300.141
- (3) Consultation process. The consultation process occurs between the District, private school officials, and representatives of parents of parentally-placed private school children with disabilities.
- (4) 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) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
 - (b) How and when those decisions will be made;
- (5) Written explanation by District regarding services. How, if the District 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) it will provide to the private school officials a written explanation of its reasons.

Significant Disproportion

- (1) Pursuant to CFR 34 Sec. 300.646, the school district must provide for the collection and examination of data to determine if significant disproportion, based on race and ethnicity, is occurring with respect to:
 - (a) the identification of children as children with disabilities in accordance with a particular impairment as defined by 34 CFR Sec. 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 District must reserve the fifteen percent early intervening funds if they are identified for 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 in accordance with a particular impairment as defined by 34 CFR Sec. 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 District will undertake the following:
 - (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.

Other considerations

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 whose residency is based solely on the school age person's enrollment at the facility and the student would not otherwise be considered a resident of the state.

APPENDIX A

ACRONYM GLOSSARY

BIP	Behavior Intervention Plan
ED	Emotional Disturbance
ESY	Extended School Year
FAQ	Frequently Asked Questions
FAPE	Free Appropriate Public Education An educational program reasonably calculated to confer educational benefit and special education and related services which meet all of the requirements of 34 CFR 300.17 and all department rules
FBA	Functional Behavioral Assessment
General Education Curriculum	Same curriculum as public agency offers to nondisabled children, including content standards and benchmarks and all other Standards for Excellence requirements
IAES	Interim Alternative Educational Setting
IDEA	Individuals with Disabilities Education Act
IDELR	Individuals with Disabilities Education Law Reporter
IEP	Individualized Education Program
ISS	In-School Suspension
LEA	Local Educational Agency, such as a school district
NMPED	New Mexico Public Education Department
MDT	Multidisciplinary team: In general, the MDT has the same members as the IEP team.
OCR	Office of Civil Rights
PED	Public Education Department
PLP	Present Level of Educational Performance

PWN	Prior Written Notice or Written Notice or Proposed Action: This should reflect the proposal made by any member of the IEP team and the decision to accept or reject the proposal and the reason for that decision.
RTI	Response to Intervention
SAT	Student Assistance Team
SEB	Special Education Bureau, which is part of the New Mexico Public Education Department.
SLD	Specific Learning Disability, This is reflected in the areas of reading, math or written language and a determination of the existence of such a disability cannot be solely based upon test results.
SLP SERVICES	In order to be considered special education the service must (a) be provided to a child who has received appropriate Tier 1 universal screening before being evaluated; (b) the IEP team makes the eligibility determination that the student has a communication disorder, language impairment or voice impairment that adversely impacts a student's educational performance; (c) the speech services consist of specially designed instruction that is provided to enable the child to have access to the general curriculum and meet the educational standards that apply to all children and (d) the service is provided and no cost to the parent under an IEP. If these conditions are met the program is considered special education rather than a related service.

APPENDIX B

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

(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) Developmentally delayed means a child aged 3 through 9 or will turn 9 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% below chronological age.
- (3) 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 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.
- (4) 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.

- (5) 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 LEA that apply to all children.
- (6) 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).
- (7) 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.

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 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 §§300.112 through 300.116.

Authority: NMAC 6.31.2.7 DEFINITIONS:

Special education. Special education is specially designed instruction that is provided at no cost to the parents to meet the unique needs of a child with a disability as defined in the federal Individuals With Disabilities Education Act (IDEA) regulations at 34 CFR Part 300 and state special education regulations at 6.31.2 NMAC. Special education includes classroom instruction, modified instruction in physical education, instruction provided to public school students at home, and instruction in state-supported educational programs, hospitals, institutions, and other settings. Special education includes specially designed instruction in vocational education and travel training for students whose individualized educational programs (IEPs) require such services. As set forth in the state special education regulations at paragraph (17) of subsection B of 6.31.2.7 NMAC, special education may include speech-language pathology services or other related services consisting of specially designed instruction that is provided to enable a child with a disabling condition that is recognized under the IDEA to have access to the general curriculum and meet the educational standards of the public agency that apply to all children. Special education is also designed to meet the unique needs of gifted and talented students.

These services must:

- (1) Be provided as required by IDEA, Part B, and the state special education regulations, 6.31.2 NMAC;
- (2) Be assessed as part of the EPSS process. (See section C of 6.30.2.9 NMAC); and

- (3) Support the local curriculum and EPSS.

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)

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.

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.

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.

- (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 §300.41 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 or 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 §300.614 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.

APPENDIX C

DISPUTE RESOLUTION AND DUE PROCESS COMPLAINTS

The area of dispute resolution and due process complaints is complicated and filled with applicable deadlines. The best result for your district is to contact your legal counsel as soon as possible and seek assistance on how best to respond to such matters. There are only 10 days to answer the complaint so time is of the essence. This appendix will provide a brief overview of the Impartial Due Process Procedures. For a more in-depth review refer to NMAC 6.31.2.13

A. Conflict Management and ADR (Alternative Dispute Resolutions)

Additional Rights of Parents, Students and Public Agencies

Conflict management and resolution

- (1) The school seeks to establish and maintain productive working relationships with the parents of each child the agency serves and to deal constructively with disagreements. The District will 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 6.31.2.13 NMAC to resolve disagreements at the school site if possible.
- (2) Spectrum of dispute resolution options. To facilitate dispute prevention as well as swift, early conflict resolution whenever possible, the following range of dispute resolution options is available.
 - (a) Informal dispute resolution option. If a disagreement arises between parents and the District over a student's IEP or educational program, either the parents or the District may convene a new IEP meeting at any time to attempt to resolve their differences.
 - (b) Third-party assisted intervention. Mediation is available to parents and schools who request such third-party assisted intervention before filing a state-level complaint or a request for a due process hearing.
 - (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 responding public agency must offer in writing to convene a CAIEP meeting with the parent(s) and other relevant members of the IEP team to address any IEP-related issues raised in the complaint. The parent may accept or decline this offer, or the parties may agree to convene a FIEP meeting or mediation instead.
 - (ii) A request for a due process hearing may be filed by parents or their authorized representative, or by the school district as described under Paragraph (5) of Subsection I of 6.31.2.13 NMAC. A resolution session between the parties must be 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.

Source: NMAC 6.31.2.13

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)

Filing a complaint.

- (a) An organization or individual may file a signed written complaint under the procedures described in §§300.151 through 300.152.
- (b) The complaint must include--
 - (1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;
 - (2) The facts on which the statement is based;
 - (3) The signature and contact information for the complainant; and
 - (4) If alleging violations with respect to a specific child--
 - (i) The name and address of the residence of the child;
 - (ii) The name of the school the child is attending;
 - (iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
 - (iv) A description of the nature of the problem of the child, including facts relating to the problem; and
 - (v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- (c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.151.
- (d) The party filing the complaint must forward a copy of the complaint to the District or public agency serving the child at the same time the party files the complaint with the NMPED.

Source: 34 CFR § 300.153

Complaints and due process hearings on the same issues. Pursuant to 34 CFR Sec. 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 District'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.

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) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
 - (iii) provide the District/School 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 District/School 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 which 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 District 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.

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.

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.

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

Filing a due process complaint.

(a) General.

- (1) A parent or the District/School 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 District/School 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 District/School 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.

Source: 34 CFR § 300.507

20 U.S.C. 1415(b)(6))

Due process complaint.

(a) General.

- (1) The District/School 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 U.S.C. 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) District/School response to a due process complaint.
- (1) If the District/School 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 District/School must, within 10 days of receiving the due process complaint, send to the parent a response that includes--
 - (i) An explanation of why the District/School 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 District/School under paragraph (e) (1) of this section shall not be construed to preclude the District/School 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.

Source: 20 U.S.C. 1415(b)(7), 1415(c)(2))

34 CFR § 300.508

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 District/School may not require the use of the model forms.

Due Process Complaint form:

<http://www.ped.state.nm.us/seo/dispute/SPED%20Complaint%20Form.doc>

Due Process Hearing form:

<http://www.ped.state.nm.us/seo/dispute/Due%20Process%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.

Source: 20 U.S.C. 1415(b)(8))

34 CFR § 300.509

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