

**Jal Public School District  
PROCEDURES  
FOR THE  
PROVISION OF  
SPECIAL EDUCATION SERVICES  
FOR  
STUDENTS WITH DISABILITIES AND GIFTED STUDENTS**

**Chapter 1. – CHILD FIND / INTERVENTIONS**

Chapter 1. Adopted Pursuant to Board Policy: Equal Education Opportunities: Special Education  
Effective Date of Procedures: March 19, 2012  
Revised February 2012

**Chapter 1. – CHILD FIND / INTERVENTIONS**  
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## **Chapter 1. – CHILD FIND / INTERVENTIONS**

*The Jal Public School District recognizes the Public Education Department's rulemaking authority (established by the Public Education Department Act) as follows: "The secretary may make and adopt such reasonable and procedural rules as may be necessary to carry out the duties of the department and its divisions.... Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary...." (NMSA 1978 §9-24-8(D)).*

*In addition to making and adopting rules, the NMPED provides guidance to local educational agencies. To the extent that the NMPED's guidance is consistent with the IDEA (and its implementing federal regulations and state statutes and rules), and does not impose a requirement that is not otherwise imposed by the IDEA (and its implementing federal regulations and state statutes and rules) without specific notice under 34 C.F.R. §300.299(a)(2), the Jal Public School District will follow the guidance of the NMPED.*

### **I. CHILD FIND RESPONSIBILITIES**

#### **Authority: 34 CFR §300.111 Child find.**

##### **(a) General.**

###### **(1) The NMPED ensures that--**

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

##### **(b) Use of term developmental delay.**

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

- (1) The NMPED has adopted a definition of developmental delay under §300.8(b).**
- (2) The NMPED will not require the Jal Public School District to adopt and use the term developmental delay for any children within its jurisdiction.**
- (3) If the Jal Public School District uses the term developmental delay for children described in §300.8(b), the Jal Public School District will conform to both the State's definition of that term and to the age range that has been adopted by the NMPED. *(See I. B. for the Jal Public School District decision on developmentally delayed)***

##### **(c) Other children in child find. Child find also will include--**

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

#### **Authority: 34 CFR §300.19 Homeless children.**

**Homeless children has the meaning given the term homeless children and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 *et seq.***

#### **Authority: 42 U.S.C. §11434a Definitions.**

**The term "homeless children and youths"--**

- (A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302(a)(1) of this title); and**
- (B) includes--**
  - (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;**
  - (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 11302(a)(2)(C) of this title);**

- (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- (iv) migratory children (as such term is defined in section 6399 of Title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).

*The Jal Public School District will comply with its child find obligations, including with respect to homeless children and youths. The Jal Public School District will appoint a surrogate parent for an unaccompanied homeless child (for more information, see Chapter 2).*

## **A. General Requirements**

### **Authority: NMAC 6.31.2.10 IDENTIFICATION**

**A. Child find.** The Jal Public School District will adopt and implement policies and procedures to ensure that all children with disabilities who reside within the agency's educational jurisdiction, including children with disabilities attending private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, detention and correctional facilities, children who are schooled at home, highly mobile children and children who are advancing from grade to grade, regardless of the severity of their disability, and who are in need of special education and related services, are located, evaluated and identified in compliance with all applicable requirements of 34 CFR Secs. 300.111, 300.131, 300.301-306 and these or other department rules and standards. For preschool children, child find screenings shall serve as interventions under Subsection B of 6.31.2.10 NMAC.

"The child find requirements permit referrals from any source that suspects a child may be eligible for special education and related services. Child find activities typically involve some sort of screening process to determine whether the child should be referred for a full evaluation to determine eligibility for special education and related services. Therefore, persons such as employees of the SEA, LEA, or other public agencies responsible for the education of the child may identify children who might need to be referred for an evaluation. However, it is the parent of a child and the public agency that have the responsibility to initiate the evaluation procedures." 71 Fed. Reg. 46636 (August 14, 2006).

"If a child experiences academic difficulties after a parent revokes consent to the continued provision of special education and related services, nothing in the Act or the implementing regulations would prevent a parent from requesting an evaluation to determine if the child is eligible, at that time, for special education and related services." 73 Fed. 73009-73010 (December 1, 2008).

"Children who have previously received special education and related services and whose parents subsequently revoke consent should not be treated any differently in the child find process than any other child, including a child who was determined eligible and whose parent refused to provide initial consent for services. A parent who previously revoked consent for special education and related services may continue to refuse services; however, this does not diminish a State's responsibility under § 300.111 to identify, locate and evaluate a child who is suspected of having a disability and being in need of special education and related services. A public agency must obtain informed written parental consent, consistent with § 300.300(a), before conducting an initial evaluation. A parent who previously revoked consent for the continued provision of special education and related services, like any parent of a child suspected of having a disability, may refuse to provide consent for an initial evaluation." 73 Fed. 73012 (December 1, 2008).

"Concerning the request for clarification of the child find timeline, child find is an ongoing process. The Department expects that children whose parents revoke consent will be identified, located and offered an evaluation in the same manner as any other child if the child is suspected of having a disability and being in need of special education and related services. Similarly, we do not agree with the commenter that general education teachers will not refer children who previously received special education and related services. States are required to have policies and procedures in place to ensure effective child find. Ensuring that general education teachers make appropriate referrals of children suspected of having a disability, which would include the referral of children whose parents have previously revoked consent for such services, is consistent with this responsibility." 73 Fed. 73012 (December 1, 2008).

“We do not agree with the commenter that the Department should limit how frequently a parent may revoke consent and then subsequently request reinstatement in special education services because retaining flexibility to address the unique and individualized circumstances surrounding each child’s education is important. A public agency will not be considered in violation of the obligation to make FAPE available to the child for failure to provide the child with further special education services following a parent’s revocation of consent. We understand the commenter’s concern that placing a child in and out of special education services may affect the provision of FAPE; however, a public agency is only responsible for providing FAPE during the time period that the parent has provided consent for special education and related services.” 73 Fed. 73014 (December 1, 2008).

*The Jal Public School District has adopted and shall implement the following procedures to ensure that all children with disabilities who reside within the Jal Public School District educational jurisdiction and who are in need of special education and related services, are located, evaluated and identified:*

*The Jal Public School District will disseminate information to the community (including private schools, hospital, medical community, mental health institution, local day care facilities) concerning services offered to all individuals with disabilities and maintain records of efforts that may include:*

- 1. providing information regarding availability of screenings and other services through the local newspapers, brochures, and other print media;*
- 2. participating in a network of public information dissemination to assist with locating highly mobile and migrant children, which includes contacting other agencies, day care facilities, community public locations such as doctor offices, hospitals, laundry facilities, and facilities providing services to students with and without disabilities;*
- 3. referring individuals ages 0-3, through the Department of Health's Family Infant Toddler (FIT) Program; or through the Jal Public School District as part of Part C to Part B transition services.*
- 4. identifying and referring individuals with disabilities who may or may not be in school and who may need Special Education and related services using a properly constituted student assistance team (SAT);*
- 5. reviewing this process on a yearly basis, updating staff about on-going “Child Find” activities implemented in the community;*
- 6. maintaining confidentiality of all personally identifiable information used and collected in this system in the same manner that Special Education records are maintained;*
- 7. maintaining documentation of all Child Find activities including the dates of each activity and the results of each activity; and*
- 8. training appropriate staff for maintaining the documentation of all Child Find activities including students in private schools, religious schools and home schools located in the Jal Public School District;*
- 9. Annual screening will be performed by trained Jal Public School District personnel and may include:*
  - general health screening;*
  - vision screening performed to verify indicators of loss of sight, acuity, or other possible vision related problems;*
  - hearing screening to verify any hearing risk indicators;*
  - speech and language screening to verify problems in the formulation or articulation of speech or any delay in the development of language;*
  - preschool screening which typically includes vision, hearing, cognition, motor, speech-language, and health components to verify developmental delays;*
  - screening for home language and language proficiency, if warranted*
  - academic screening for school age children to determine the significance of academic delays.*

*All screenings and evaluations resulting from child find activities are free to parents, including parents of home-schooled students and parents of students who attend private school by parent choice. The Jal Public School District will utilize the “Child Study Team” process to review individual student findings from annual screenings and child find referrals.*

## **B. Developmentally Delayed**

### **Authority: NMAC 6.31.2.10 IDENTIFICATION AND ELIGIBILITY DETERMINATIONS**

...

#### **F. Eligibility determinations.**

...

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

*The Jal Public School District does use the term developmental delay and will conform to both the State's definition of that term and to the age range that has been adopted by the State. The Jal Public School District will comply with its child find obligations, including with respect to locating, identifying and evaluating children who are developmental delayed.*

### **C. Parentally-Placed in Private Schools**

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

- (a) General. The Jal Public School District will locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§300.111 and 300.201.
- (b) Child find design. The child find process is designed to ensure--
  - (1) The equitable participation of parentally-placed private school children; and
  - (2) An accurate count of those children.
- (c) Activities. In carrying out the requirements of this section, the Jal Public School District, or, if applicable, the NMPED, will undertake activities similar to the activities undertaken for the agency's public school children.
- (d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if the LEA has met its obligation under §300.133.
- (e) Completion period. The child find process will be completed in a time period comparable to that for other students attending public schools in the Jal Public School District consistent with §300.301.
- (f) Out-of-state children. Each LEA in which private, including religious, elementary schools and secondary schools are located will, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.

**Authority: Children in Private Schools**

**§300.134 Consultation - parentally-placed private school children with disabilities.**

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

- (a) **Child find.** The child find process, including--
  - (1) How parentally-placed private school children suspected of having a disability can participate equitably; and
  - (2) How parents, teachers, and private school officials will be informed of the process.

**Authority: Children in Private Schools**

**§300.140 Due process complaints and State complaints.**

- (a) Due process not applicable, except for child find.
- (b) Child find complaints—to be filed with the LEA in which the private school is located.

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

...

**L. Children in private schools**

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

...

- (b) The Jal Public School District will locate, identify and evaluate all children with disabilities who are enrolled by their parents in private schools, including religious elementary schools and secondary schools located in the education jurisdiction of the LEA, in accordance with 34 CFR Secs. 300.131 and 300.111.

*The Jal Public School District will comply with its child find obligations, including with respect to locating, identifying and evaluating parentally-placed private school children.*

## **D. Gifted Students**

*The Jal Public School District is responsible for locating, identifying and evaluating school-aged gifted children except as stated below.*

### **Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN**

...

**F. Applicability of rules to gifted children.**

- (1) All definitions, policies, procedures, assurances, procedural safeguards and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the educational jurisdiction of each local school district, including children in charter schools within the district, except:
- (a) the requirements of 6.31.2.8 NMAC through 6.31.2.10 NMAC and Subsections J, K and L of 6.31.2.11 NMAC regarding child find, evaluations and services for private school children with disabilities, children with disabilities in state-supported educational programs, children with disabilities in detention and correctional facilities and children with disabilities who are schooled at home....

### **Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN**

...

**C. Evaluation procedures for gifted children.**

- (1) The Jal Public School District will establish a child find procedure that includes a screening and referral process for students in public school who may be gifted.

*The NMPED has issued a technical assistance manual titled, "Technical Assistance Manual for Gifted Education in New Mexico" (2011), available through the NMPED website: [http://ped.state.nm.us/Rtl/07\\_gifted.html](http://ped.state.nm.us/Rtl/07_gifted.html). This technical assistance manual provides legal requirements, as well as sample forms, processes, and checklists. The forms or checklists included are offered by the PED in response to the many requests received for sample models. However, according to the PED "none of the forms are required or necessarily recommended." If they are used, Jal Public Schools will review, adapt, and/or revise the forms to fit Jal Public Schools's specific demographic and procedural needs. The Jal Public Schools, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this technical assistance manual.*

## **II. FREE APPROPRIATE PUBLIC EDUCATION (FAPE)**

### **A. Duty**

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

- (a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in Sec. 300.530(d).
- (b) FAPE for children beginning at age 3.
- (1) The NMPED ensures that—
- (i) FAPE is available to each eligible child residing in New Mexico beginning no later than the child's



- third birthday; and
- (ii) An IEP or an IFSP is in effect for the child by that date, in accordance with §300.323(b).
- (2) If a child's third birthday occurs during the summer, the child's IEP Team will determine the date when services under the IEP or IFSP will begin.
- (c) Children advancing from grade to grade.
  - (1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.
  - (2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.

**Authority: NMAC 6.31.2.2 SCOPE:**

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

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

...

**K. Children in detention and correctional facilities.**

- (1) If a child with a disability is placed in a juvenile or adult detention or correctional facility, the facility must provide the child with FAPE after the facility learns that the child had been eligible for special education and related services in the last educational placement prior to incarceration or otherwise determines that the child is eligible.

...

- (4) FAPE for eligible students in juvenile or adult detention or correctional facilities shall be made available in programs that are suited to the security requirements of each facility and eligible student. The provisions of 34 CFR Sec. 300.324(d) apply to IEPs for students with disabilities who are convicted as adults under state law and incarcerated in adult prisons.
- (5) A state-supported educational program that serves a juvenile or adult detention or correctional facility shall be responsible for ensuring that FAPE is provided to eligible children in that facility.
- (6) The local school district in which a detention or correctional facility is located (that is not served by a state-supported educational program) shall be responsible for ensuring that FAPE is made available to eligible children in that facility. A child's LEA of residence or another public agency with educational jurisdiction may agree to share the responsibility pursuant to a written agreement between or among the agencies involved.

...

- (9) Children placed in juvenile or adult detention or correctional facilities must be provided learning opportunities and instruction that meet the state standards with benchmarks.

"Revocation of parental consent releases the LEA from liability for providing FAPE from the time the parent revokes consent for special education and related services until the time, if any, that the child is evaluated and deemed eligible, once again, for special education and related services." 73 Fed. 73010 (December 1, 2008).

*The Jal Public School District will ensure that children with disabilities within its jurisdiction are located, identified, evaluated and provided a free appropriate public education, which must be available to all children residing in the State between the ages of 3 and 21, inclusive.*

**B. Ages**

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



- (a) Means an individual under three years of age who needs early intervention services because the individual—
  - (1) Is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or
  - (2) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and
- (b) May also include, at NMPED's discretion—
  - (1) At-risk infants and toddlers; and
  - (2) Children with disabilities who are eligible for services under section 619 and who previously received services under Part C of the Act until such children enter, or are eligible under New Mexico law to enter, kindergarten or elementary school, as appropriate, provided that any programs under Part C of the Act serving such children shall include--
    - (i) An educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and
    - (ii) A written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under Part C of the Act or participate in preschool programs under section 619.

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

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

**Authority: 34 CFR §300.124 Transition of children from the Part C program to preschool programs.**

The State must have in effect policies and procedures to ensure that--

- (a) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act;
- (b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with Sec.

- 300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with Sec. 300.101(b); and
- (c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.

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

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

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

The Jal Public School District will provide special education and related services appropriate to meet the needs of all children requiring special education and related services. The Jal Public School District will provide services for three-year-old and four-year-old preschool children with disabilities, unless the parent or guardian chooses not to enroll his child. If a child receiving services in the department of health's family, infant, toddler program has his third birthday during the school year, the child's parents shall have the option of having the child complete the school year in the family, infant, toddler program or enrolling the child in the public school's preschool program. A child with a disability who enrolls in the public school's preschool program and who has his third birthday during a school year may receive special education and related services from the beginning of that school year. Services for students age three through twenty-one may include, but are not limited to, evaluating particular needs, providing learning experiences that develop cognitive and social skills, arranging for or providing related services as defined by the state board and providing parent education. The services may be provided by certified school personnel or contracted for with other community agencies and shall be provided in age-appropriate, integrated settings, including home, daycare centers, Head Start programs, schools or community-based settings.

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

**A. Preschool programs for children aged 2 through 5.**

- (1) Each public agency shall ensure that a free appropriate public education is available for each preschool child with a disability within its educational jurisdiction no later than the child's third birthday and that an individualized education program (IEP) under Part B or an individual family services plan (IFSP) under Part C of the IDEA is in effect by that date in compliance with 34 CFR Secs. 300.101, 300.124 and 300.323(b).
- (2) A child who will turn three at any time during the school year who is determined eligible may enroll in a Part B preschool program at the beginning of the school year if the parent so chooses, whether or not the child has previously been receiving Part C services.
- (3) To ensure effective transitioning from IDEA Part C programs to IDEA Part B programs, each public agency must conduct a full and individual evaluation, at no cost to the parent, and in compliance with requirements of 34 CFR Secs. 300.300, 300.301, 300.302, 300.304 and 300.305 and other department rules and standards before the initial provision of Part B special education and related services to a child with a disability.
- (4) Each public agency shall develop and implement appropriate policies and procedures to ensure a smooth and effective transition from Part C to Part B programs for preschool children with disabilities within the agency's educational jurisdiction, in compliance with 34 CFR Sec. 300.124. Each LEA and other public agencies as appropriate shall make reasonable efforts to establish productive working relations with local Part C programs and when given reasonable notice shall participate in the transition planning conferences arranged by local Part C providers.
- (5) In particular:
  - (a) Each LEA shall survey Part C programs within its educational jurisdiction in its child find efforts to identify children who will be eligible to enter the LEA's Part B preschool program in future years.
  - (b) Each LEA shall promote parent and family involvement in transition planning with Part C

programs, community programs and related services providers at least six months before the child is eligible to enter the LEA's Part B preschool program.

- (c) Each LEA shall establish and implement procedures to support successful transitions including parent training, professional development for special educators and general educators, and student and parent self-advocacy training and education.
- (d) Each LEA shall assist parents in becoming their child's advocates as the child makes the transition through systems.
- (e) Each LEA shall participate in transition planning conferences arranged by the designated Part C lead agency no less than 90 days prior to the anticipated transition or the child's third birthday, whichever occurs first, to facilitate informed choices for all families.
- (f) Each LEA shall designate a team including parents and qualified professionals to review existing evaluation data for each child entering the LEA's preschool program in compliance with 34 CFR Sec. 300.305, and based on that review to identify what additional data, if any, are needed to determine the child's eligibility for Part B services or develop an appropriate program.
- (g) Each LEA shall initiate a meeting to develop an eligible child's IFSP, IEP or IFSP-IEP, in accordance with 34 CFR Sec. 300.323, no later than 15 days prior to the first day of the school year of the LEA where the child is enrolled or no later than 15 days prior to the child's entry into Part B preschool services if the transition process is initiated after the start of the school year, whichever is later, to ensure uninterrupted services. This IFSP, IEP, or IFSP-IEP will be developed by a team constituted in compliance with 34 CFR Sec. 300.321 that includes parents and appropriate early intervention providers who are knowledgeable about the child.
- (h) In compliance with 34 CFR Sec. 300.101(b)(2), if a child's birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin.
- (i) Each public agency shall develop policies and procedures to ensure a successful transition from Part B preschool for children with disabilities who are eligible for continued services in pre-kindergarten and kindergarten.

...

#### G. Graduation planning and post-secondary transitions

...

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

*The Jal Public School District will ensure that children with disabilities within its jurisdiction are located, identified, evaluated and provided a free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive.*

*The New Mexico Department of Health (DOH) coordinates the IDEA Part C Family, Infant, and Toddler (FIT) programs. The Jal Public School District does not administer a Part C FIT program. Therefore, if the Jal Public School District locates an infant or toddler who may be eligible for services under Part C, the Jal Public School District will refer the infant or toddler to the local FIT program.*

*The Jal Public School District will participate in transition planning conferences with the lead agency responsible for providing FIT services. For those children who are eligible for special education and related services under Part B of the IDEA, the Jal Public School District will have an IEP (or an IFSP, if consistent with § 300.323(b) and section 636(d) of the Act) for the child developed by the child's third birthday (or by the beginning of the school year in which the child turns three, if the parent or guardian chooses to enroll the child in the Part B program at the beginning of that school year).*

*The Office of Special Education Programs (OSEP) has issued a frequently asked questions document titled, "OSEP Early Childhood Transition FAQs" (December 1, 2009), available through the NECTAC website: [http://www.nectac.org/~pdfs/topics/transition/ECTransitionFAQs12\\_01\\_09.pdf](http://www.nectac.org/~pdfs/topics/transition/ECTransitionFAQs12_01_09.pdf). The Jal Public Schools, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this frequently asked questions document.*

### **III. MEMBERSHIP OF THE STUDENT ASSISTANCE TEAM (SAT)**

#### **Authority: NMAC 6.31.2.7 DEFINITIONS.**

...

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

...

- (15) "SAT" means the student assistance team, which is a school-based group of people whose purpose is to provide additional educational support to students who are experiencing difficulties that are preventing them from benefiting from general education.

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

...

J. For the purposes of this section: (relating to Assessment and Accountability: Remediation programs; promotion policies; restrictions):

...

- (4) "student assistance team" means a group consisting of a student's:
- (a) teacher;
  - (b) school counselor;
  - (c) school administrator; and
  - (d) parent.

*The NMPED has issued a technical assistance document titled, "Student Assistance Team and the Three-Tiered Model of Student Intervention" (Fall 2009) available through the NMPED website: <http://ped.state.nm.us/sat3tier/sat3tierModelComplete.pdf#pagemode=bookmarks>. The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this technical assistance document including:*

- *Part 2 of this technical assistance document which addresses SAT membership.*

*The SAT is made up of a team. The core team generally includes a representative from administration, regular education, and a specialty or resource area. Additionally, the parent and student (if appropriate) are encouraged to attend. When the SAT convenes to develop an academic improvement plan (AIP) as part of the State Education Reform Act (NMSA 1978 § 22-2C-6), the SAT will be composed of the required participants.*

### **IV. STUDENT ASSISTANCE TEAM (SAT) / INTERVENTIONS**

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

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

*The NMPED has issued a technical assistance document titled, "Student Assistance Team and the Three-Tiered Model of Student Intervention" (Fall 2009) available through the NMPED website: <http://ped.state.nm.us/sat3tier/sat3tierModelComplete.pdf#pagemode=bookmarks>. The NMPED's manual, "Student Assistance Team and the Three-Tiered Model of Student Intervention," shall be the guiding document for schools and districts to use in implementing the student intervention system. See NMAC 6.29.1.9.D(4). The Jal Public Schools, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this technical assistance document, and Jal Public Schools shall use this document as its guiding document.*

#### **A. SAT – Purpose And Mission**

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

A. The legislature finds that no education system can be sufficient for the education of all children unless it is founded on the sound principle that every child can learn and succeed and that the system must meet the

needs of all children by recognizing that student success for every child is the fundamental goal.

- B. The legislature finds further that the key to student success in New Mexico is to have a multicultural education system that:
- (1) attracts and retains quality and diverse teachers to teach New Mexico's multicultural student population;
  - (2) holds teachers, students, schools, school districts and the state accountable;
  - (3) integrates the cultural strengths of its diverse student population into the curriculum with high expectations for all students;
  - (4) recognizes that cultural diversity in the state presents special challenges for policymakers, administrators, teachers and students;
  - (5) provides students with a rigorous and relevant high school curriculum that prepares them to succeed in college and the workplace; and
  - (6) elevates the importance of public education in the state by clarifying the governance structure at different levels.
- ...
- D. The legislature finds further that a well-designed, well-implemented and well-maintained assessment and accountability system is the linchpin of public school reform and must ensure that:
- (1) students who do not meet or exceed expectations will be given individual attention and assistance through extended learning programs and individualized tutoring;
  - (2) students have accurate, useful information about their options and the adequacy of their preparation for post-secondary education, training or employment in order to set and achieve high goals;
  - (3) teachers who do not meet performance standards must improve their skills or they will not continue to be employed as teachers;
  - (4) public schools make adequate yearly progress toward educational excellence; and
  - (5) school districts and the state are prepared to actively intervene and improve failing public schools.
- E. The legislature finds further that improving children's reading and writing abilities and literacy throughout their years in school must remain a priority of the state.

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

- A. Remediation programs, academic improvement programs and promotion policies shall be aligned with school-district-determined assessment results and requirements of the assessment and accountability program.
- B. Local school boards shall approve school-district-developed remediation programs and academic improvement programs to provide special instructional assistance to students in grades one through eight who do not demonstrate academic proficiency. The cost of remediation programs and academic improvement programs shall be borne by the school district. Remediation programs and academic improvement programs shall be incorporated into the school district's educational plan for student success and filed with the department.
- ...
- D. Diagnosis of weaknesses identified by a student's academic achievement may serve as criteria in assessing the need for remedial programs or retention.
- E. A parent shall be notified no later than the end of the second grading period that the parent's child is not academically proficient, and a conference consisting of the parent and the teacher shall be held to discuss possible remediation programs available to assist the student in becoming academically proficient. Specific academic deficiencies and remediation strategies shall be explained to the student's parent and a written intervention plan developed containing time lines, academic expectations and the measurements to be used to verify that a student has overcome academic deficiencies. Remediation programs and academic improvement programs include tutoring, extended day or week programs, summer programs and other research-based interventions and models for student improvement.
- F. At the end of grades one through seven, three options are available, dependent on a student's academic proficiency:
- (1) the student is academically proficient and shall enter the next higher grade;
  - (2) the student is not academically proficient and shall participate in the required level of remediation. Upon certification by the school district that the student is academically proficient, the student shall enter the next higher grade; or
  - (3) the student is not academically proficient after completion of the prescribed remediation program and

- upon the recommendation of the teacher and school principal shall either be:
- (a) retained in the same grade for no more than one school year with an academic improvement plan developed by the student assistance team in order to become academically proficient, at which time the student shall enter the next higher grade; or
  - (b) promoted to the next grade if the parent refuses to allow the child to be retained pursuant to Subparagraph (a) of this paragraph. In this case, the parent shall sign a waiver indicating the parent's desire that the student be promoted to the next higher grade with an academic improvement plan designed to address specific academic deficiencies. The academic improvement plan shall be developed by the student assistance team outlining time lines and monitoring activities to ensure progress toward overcoming those academic deficiencies. Students failing to become academically proficient at the end of that year as measured by grades, performance on school district assessments and other measures identified by the school district shall be retained in the same grade for no more than one year in order to have additional time to achieve academic proficiency.
- G. At the end of eighth grade, a student who is not academically proficient shall be retained in the eighth grade for no more than one school year to become academically proficient or if the student assistance team determines that retention of the student in the eighth grade will not assist the student to become academically proficient, the team shall design a high school graduation plan to meet the student's needs for entry into the work force or a post-secondary educational institution. If a student is retained in the eighth grade, the student assistance team shall develop a specific academic improvement plan that clearly delineates the student's academic deficiencies and prescribes a specific remediation plan to address those academic deficiencies.
- H. A student who does not demonstrate academic proficiency for two successive school years shall be referred to the student assistance team for placement in an alternative program designed by the school district. Alternative program plans shall be filed with the department.
- I. Promotion and retention decisions affecting a student enrolled in special education shall be made in accordance with the provisions of the individual educational plan established for that student.
- J. For the purposes of this section:
- (1) "academic improvement plan" means a written document developed by the student assistance team that describes the specific content standards required for a certain grade level that a student has not achieved and that prescribes specific remediation programs such as summer school, extended day or week school and tutoring;
  - (2) "school-district-determined assessment results" means the results obtained from student assessments developed or adopted by a local school board and conducted at an elementary grade level or middle school level;
  - (3) "educational plan for student success" means a student-centered tool developed to define the role of the academic improvement plan within the public school and the school district that addresses methods to improve student learning and success in school and that identifies specific measures of a student's progress....

*The NMPED has issued a technical assistance document titled, "Student Assistance Team and the Three-Tiered Model of Student Intervention" (Fall 2009) available through the NMPED website: <http://ped.state.nm.us/sat3tier/sat3tierModelComplete.pdf#pagemode=bookmarks>. The NMPED's manual, "Student Assistance Team and the Three-Tiered Model of Student Intervention," shall be the guiding document for schools and districts to use in implementing the student intervention system. See NMAC 6.29.1.9.D(4). The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this technical assistance document, and Jal Public School District shall use this document as its guiding document.*

## **B. Three-Tiered Model (Response to Intervention – RtI)**

**Authority: NMAC 6.29.1.9 PROCEDURAL REQUIREMENTS**

...

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

“LEAs currently track the progress of all students through student records, report cards, progress reports, and State assessments. Students who no longer receive special education and related services due to a parent revoking consent will have their progress tracked in the same manner as students who do not receive special education and related services.” 73 Fed. Reg. 73011 (December 1, 2008).

“Once a parent revokes consent in writing under § 300.300(b)(4) for the continued provision of special education and related services, a teacher is not required to provide the previously identified IEP accommodations in the general education environment. However, general education teachers often provide classroom accommodations for children who do not have IEPs. Nothing in § 300.300(b)(4) would prevent a general education teacher from providing a child whose parent has revoked consent for the continued provision of special education and related services with accommodations that are available to non-disabled children under relevant State standards.” 73 Fed. Reg. 73012 (December 1, 2008).

*The Jal Public School District must follow a three-tier model of student intervention.*

*The NMPED has issued a technical assistance document titled, “Student Assistance Team and the Three-Tiered Model of Student Intervention” (Fall 2009) available through the NMPED website: <http://ped.state.nm.us/sat3tier/sat3tierModelComplete.pdf#pagemode=bookmarks>. The NMPED’s manual, “Student Assistance Team and the Three-Tiered Model of Student Intervention,” shall be the guiding document for schools and districts to use in implementing the student intervention system. See NMAC 6.29.1.9.D(4). The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this technical assistance document, and Jal Public School District shall use this document as its guiding document.*

## **C. Scientific, Research-Based Instruction**

**Authority: NMAC 6.31.29.1.7(CA)**

“Scientific-based research” means research that involves the application of rigorous, systematic and



objective procedures to obtain reliable and valid knowledge relevant to educational activities and programs.

**Authority: NMAC 6.31.29.1.9(D)(2)**

...

D.

...

- (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 NMAC and federal regulations at 34 CFR Sec. 300.300.

**Authority: 20 U.S.C. §7801(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.

*Districts can use the “Research-based Instruction and Intervention Checklist” to the six components of research evidence: relevance, rigor, systematic approach, objectivity, replicability, and data analyses/interpretation. This evidence might be the information that is provided by a publisher or program developer. Or, it might be an article about an educational practice. The checklist is included in the NMPED guidance document titled, “Student Assistance Team and the Three-Tiered Model of Student Intervention” (Fall 2009) available through the NMPED website: <http://ped.state.nm.us/sat3tier/sat3tierModelComplete.pdf#pagemode=bookmarks>. The NMPED’s manual, “Student Assistance Team and the Three-Tiered Model of Student Intervention,” shall be the guiding document for schools and districts to use in implementing the student intervention system. See NMAC 6.29.1.9.D(4).*

## **D. Educational Plan For Student Success (EPSS)**

**Authority: NMAC 6.30.2.9 IMPLEMENTATION: Educational Plan for Student Success ("EPSS")**

...

**B. District Educational Plan for Student Success (EPSS).** The EPSS is a long range strategic plan that each district is required to develop, implement, assess, and evaluate. It must address four questions:

- (1) Where is the district now? (Identification of Student Needs and Current Status)

- (2) Where does the district need to be? (Goals/Focus Areas)
- (3) How will the district get there and how will it achieve its plans? (Action Plans and Ongoing Assessment)
- (4) How will the district know it is making progress toward its goals/focus areas? (Comprehensive and Periodic Evaluation)
- C. Identification of Student Needs and Analysis of Current Programs. The development of a district EPSS begins with a self-study of student needs, current programs, and resources....
- D. Goals/Focus Areas. The EPSS must include goals or focus areas....
- E. Action Plan and Ongoing Assessment. The EPSS must contain an action plan and a comprehensive assessment system....
- F. Comprehensive and Periodic Evaluation. The EPSS process must include comprehensive and periodic evaluation....
- G. EPSS Models. A district must develop its EPSS utilizing a strategic planning model....

*Pre-referral interventions are provided through the SAT or similar process according to the district's Educational Plan for Student Success (EPSS) as required by the state's Standards for Excellence at 6.30.2 NMAC.*

## **E. Dyslexia**

**Authority: 22-13-32 NMSA 1978 Intervention for students displaying characteristics of dyslexia.**

- A. A student who, despite effective classroom instruction in general education as provided by department standards, demonstrates characteristics of dyslexia and is having difficulty learning to read, write, spell, understand spoken language or express thoughts clearly shall be referred to a student assistance team.
- B. In accordance with department response to intervention procedures, guidelines and policies, each school district or charter school shall provide timely, appropriate, systematic, scientific, research-based interventions prescribed by the student assistance team, with progress monitoring to determine the student's response or lack of response, for a student in the secondary tier of response to intervention who meets the criteria in Subsection A of this section prior to referring the student for a special education evaluation.
- C. A parent of a student referred to a student assistance team shall be informed of the parent's right to request an initial special education evaluation at any time during the school district's or charter school's implementation of the interventions prescribed by the student assistance team. If the school district or charter school agrees that the student may have a disability, the student assistance team shall refer the child for an evaluation. The student shall be evaluated within sixty days of receiving the parental consent for an initial evaluation. If the school district or charter school refuses the parent's request for an initial evaluation, the school district or charter school shall provide written notice of the refusal to the parent, including notice of the parent's right to challenge the school district's or charter school's decision as provided in state and federal law and rules.

- D. The department shall provide lists of recommended teacher professional development materials and opportunities for teachers and administrators regarding research-based reading instruction for students at risk for reading failure and displaying the characteristics of dyslexia.
- E. School districts and charter schools shall train school administrators and teachers who teach reading to implement appropriate research-based reading interventions prior to referring the student for a special education evaluation. School districts and charter schools shall train special education teachers to provide appropriate specialized reading instruction for students who are identified with dyslexia as a specific learning disability and who are eligible for special education services.
- F. The department shall provide technical assistance for special education diagnosticians and other special education professionals regarding the formal special education evaluation of students suspected of having a specific learning disability, such as dyslexia.
- G. The department shall adopt rules, standards and guidelines necessary to implement this section.

*Jal Public School District shall comply with the NMPED rules, standards and guidelines as necessary in order to implement interventions for students displaying characteristics of dyslexia.*

## **V. REFERRALS FOR SPECIAL EDUCATION EVALUATION**

**Authority: 34 CFR §300.301 Initial evaluations.**

...

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

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

...

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

**Authority: 34 CFR §300.504 Procedural safeguards notice.**

- (a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents—
  - (1) Upon initial referral or parent request for evaluation....

**Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS**

...

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

(1) ...

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

...

**D. Evaluations and reevaluations**

(1) Initial evaluations.

...

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

...

"[The U.S. Department of Education does] not believe it is appropriate or necessary to specify how long a child can receive early intervening services before an initial evaluation is conducted. If a child receiving early intervening services is suspected of having a disability, the LEA must conduct a full and individual evaluation in accordance with §§ 300.301, 300.304 and 300.305 to determine if the child is a child with a disability and needs special education and related services." 71 Fed. Reg. 46626 (August 14, 2006).

"The language ['public agency'] does not include employees of SEAs or LEAs (e.g., teachers and related services providers), unless they are acting for the SEA or LEA, or of other State agencies (e.g., probation officers, social workers, or staff from State agencies that are not public agencies as defined in § 300.33). The requirements in § 300.301(b) pertain to the initiation of an evaluation under §§ 300.301 through 300.305 and should not be confused with the State's child find responsibilities in § 300.111 and section 612(a)(3) of the Act. The child find requirements permit referrals from any source that suspects a child may be eligible for special education and related services." 71 Fed. Reg. 46636 (August 14, 2006).

"Section 300.301(b) provides that a parent may initiate a request for an initial evaluation to determine if the child is a child with a disability. ... If, however, the public agency does not suspect that the child has a disability and denies the request for an initial evaluation, the public agency must provide written notice to the parents, consistent with §300.503(b) and section 615(c)(1) of the Act, which explains, among other things, why the public agency refuses to conduct an initial evaluation and the information that was used as the basis to make that decision. The parent may challenge such a refusal by requesting a due process hearing...." 71 Fed. Reg. 46636 (August 14, 2006).

"The regulations are sufficiently clear on this point. Section 300.503(a), consistent with section 615(b)(3) of the Act, provides that a public agency may refuse to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, if the public agency provides written notice. This includes situations in which a public agency wishes to deny a parent's request for an initial evaluation. The written notice must meet the requirements in § 300.503(b). Thus, for situations in which a public agency wishes to deny a parent's request for an initial evaluation, the written notice would provide, among other things, an explanation of why the public agency refuses to conduct an initial evaluation and the information that was used to make that decision. A parent may challenge the public agency's refusal to conduct an initial evaluation by requesting a due process hearing." 71 Fed. Reg. 46636 (August 14, 2006).

*All referrals for an initial evaluation to determine if a child is a child with a disability will go through the SAT process. In Jal Public School District, the SAT acts on behalf of the public agency. Response to intervention is the process that all SATs follow before consideration of referral to another program or service is warranted or justified. Based upon a systematic assessment of student, classroom, and district-wide progress monitoring data, SATs determine which students are not yet demonstrating evidence of meeting goals. SATs may consider initiating a request for an initial evaluation to determine whether a child is a child with a disability, if as a result of systematic*

*assessment and intervention, the SAT suspects: (a) the child is a child with a disability; and (b) the child needs special education and related services. When the SAT refers a child to the Eligibility Determination Team for an initial evaluation to determine if the child is a child with a disability, it must provide sufficient data to the Eligibility Determination Team to enable the Team to determine whether the child has been provided with appropriate instruction delivered by qualified personnel in reading and math. The information provided by the SAT should include data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents. In the case of a Child Find student who is clearly a student with a disability and is in need of special education services, the SAT may immediately refer the child to the Eligibility Determination Team for an initial evaluation.*

## **VI. TIMELINE – REFERRAL TO EVALUATION**

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

...

- (b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§ 300.304 through 300.306—
  - (1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
  - (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.
- (c) The Jal Public School District will promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in 300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in 300.306(1)(1)--
  - (1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and
  - (2) Whenever a child is referred for an evaluation.

“One commenter recommended that public agencies provide consent forms to parents promptly after a referral for evaluation has been made so that the child's evaluation is not delayed. A few commenters asked how promptly an LEA must seek parental consent following a referral for evaluation, and whether an LEA can wait until September to obtain consent if a referral is made in June or July. Discussion: We cannot change the timeframe for an initial evaluation specified in section 614(a)(1)(C) of the Act. Section 614(a)(1)(C) of the Act requires that an initial evaluation be conducted within 60 days of receiving parental consent for the evaluation, or within the timeframe established by the State. Section 300.323(c) is a longstanding requirement that a meeting be held to develop the child's IEP within 30 days of determining that a child needs special education and related services. We decline, however, to specify the timeframe from referral for evaluation to parental consent, or the timeframe from the completion of an evaluation to the determination of eligibility, as we are not in a position to determine the maximum number of days that should apply to these periods in all circumstances.” 71 Fed. Reg. 46637 (August 14, 1006).

## **VII. SPECIAL EDUCATION DEPARTMENT RESPONSIBILITIES**

*(For more information regarding procedural safeguards including prior written notice of evaluation, consent for evaluation and procedural safeguards notice, see Chapter 2. These procedural safeguards must be provided prior to conducting an initial evaluation to determine whether the child is a child with a disability.)*

### **A. SAT Referral Packet – Data Collected**

**Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS**

...

- D. Evaluations and reevaluations
  - (1) Initial evaluations

...

- (c) Procedures for initial evaluation.

...

- (iii) The Jal Public School District will maintain a record of the receipt, processing and disposition of any referral for an individualized evaluation. All appropriate evaluation data, including complete SAT file documentation and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the multi-disciplinary team or IEP team.

## **B. Eligibility Determination Team Evaluation Conducted**

**Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS**

...

### **D. Evaluations and reevaluations**

#### **(1) Initial evaluations**

...

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

*The NMPED has issued a guidance document titled, "New Mexico Technical Evaluation and Assistance Manual: Determining Eligibility for IDEA Part B Special Education Services" ("NM TEAM"), available through the NMPED website: <http://ped.state.nm.us/SEB/technical/NMTeamManual.pdf>. The NM TEAM (July 2011) presents a sustained effort to standardize evaluation and assessment procedures and eligibility criteria in every IDEA disability category across the state. LEAs are expected to attend to the recommendations that it establishes. The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

*In the specific learning disability category, NM TEAM expectations set official NMPED eligibility policy, which LEAs are now required to adhere to under the Final Regulations of the IDEA 2004. The Jal Public School District will ensure that the group complies with the requirements of NM TEAM and the evaluation procedures set out in Chapter 3 of the Jal Public School District Procedures for the Provision of Special Education Services when evaluating a child for a possible learning disability. The evaluation will be at no cost to the parent. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a suspected learning disability using the severe discrepancy model, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM, will be considered and followed as appropriate given the characteristics and needs of the individual child. These guidelines will be considered and followed as appropriate given the characteristics and needs of the individual child. Upon completion of the evaluation, the group of qualified professionals and the parent determine whether the child is eligible for special education services under the IDEA.*

## **C. Timeline from Evaluation to IEP Meeting**

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

- (a) General. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320.

...

- (c) Initial IEPs; provision of services. The Jal Public School District will ensure that—

- (1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and
- (2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

*"Section 300.323(c) is a longstanding requirement that a meeting be held to develop the child's IEP within 30 days of determining that a child needs special education and related services. We decline, however, to specify the timeframe from referral for evaluation to parental consent, or the timeframe from the completion of an evaluation to the determination of eligibility, as we are not in a position to determine the maximum number of days that should apply to these periods in all circumstances." 71 Fed. Reg. 46637 (August 14, 2006).*



“With regard to the total timeframe from referral to IEP development, this will vary based on a number of factors, including the timing of parental consent following referral for an evaluation and whether a State establishes its own timeframe to conduct an initial evaluation. Given such factors, we do not believe it is feasible to further regulate on this timeframe.” 71 Fed. Reg. 46637 (August 14, 2006).

*“As soon as possible” is not defined in the IDEA regulations. The Fourth Circuit has concluded that “the interpretive guideline’s provision that ‘no delay is permissible’ in the implementation of the IEP is inconsistent with the federal regulations.” Board of Educ. of Montgomery County v. Brett Y. by Mark Y., 28 IDELR 460 (4<sup>th</sup> Cir. 1998). The Jal Public School District will implement the IEP as soon as possible following the development of the IEP. In most instances, that will be the following school day. Whether any delay is reasonable will depend on the individual circumstances. Since a change of placement is generally considered to occur after ten school days, implementation of an IEP within ten school days of the IEP Team meeting will generally be considered to be reasonable. Whenever possible, if delays are anticipated, these anticipated delays should be discussed in the IEP Team meeting.*

## **VIII. SCOPE OF EVALUATION**

### **Authority: 34CFR §300.301 Initial evaluations.**

- (a) **General.** Each public agency must conduct a full and individual initial evaluation, in accordance with §§ 300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

...

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

### **Authority: 34CFR §300.304 Evaluation procedures.**

...

- (b) **Conduct of evaluation.** In conducting the evaluation, the public agency must—
    - (1) **Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—**
      - (i) **Whether the child is a child with a disability under § 300.8; and**
      - (ii) **The content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);**
    - (2) **Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and**
    - (3) **Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.**
  - (c) **Other evaluation procedures.** Each public agency must ensure that—
    - (4) **The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;**
- ...
- (6) **In evaluating each child with a disability under §§ 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.**
  - (7) **Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.**



*When conducting a full and individual initial evaluation, the child will be assessed in all areas related to the suspected disability or disabilities. Additionally, the Jal Public School District recognizes that evaluation is about more than determining eligibility. For a child who qualifies for special education services, the full and individual evaluation assists the IEP Team in determining the content of the IEP. The Jal Public School District will conduct a full and individual initial evaluation that is sufficiently comprehensive to determine whether the child is a child with a disability and to determine the educational needs of the child (including all of the child's special education and related services needs).*

**Jal Public School District  
PROCEDURES  
FOR THE  
PROVISION OF  
SPECIAL EDUCATION SERVICES  
FOR  
STUDENTS WITH DISABILITIES AND GIFTED STUDENTS**

**Chapter 2. - PROCEDURAL SAFEGUARDS**

Chapter 2. Adopted Pursuant to Board Policy: Equal Education Opportunity: Special Education  
Effective Date of Procedures: March 19, 2012  
Revised January 2010  
Revised September 2010  
Revised February 2012

## **Chapter 2. - PROCEDURAL SAFEGUARDS**

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## **Chapter 2 - PROCEDURAL SAFEGUARDS**

*The Jal Public School District recognizes the Public Education Department's rulemaking authority (established by the Public Education Department Act) as follows: "The secretary may make and adopt such reasonable and procedural rules as may be necessary to carry out the duties of the department and its divisions.... Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary...." (NMSA 1978 §9-24-8(D)).*

*In addition to making and adopting rules, the PED provides guidance to local educational agencies. To the extent that the PED's guidance is consistent with the IDEA (and its implementing federal regulations and state statutes and rules), and does not impose a requirement that is not otherwise imposed by the IDEA (and its implementing federal regulations and state statutes and rules) without specific notice under 34 C.F.R. §300.299(a)(2), the Jal Public School District will follow the guidance of the PED.*

### **I. PROCEDURAL SAFEGUARDS NOTICE**

**Authority: 34 CFR §300.504 Procedural safeguards notice.**

- (a) **General.** A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only 1 time a school year, except that a copy also must be given to the parents--
  - (1) Upon initial referral or parent request for evaluation;
  - (2) Upon receipt of the first State complaint under §§300.151 through 300.153 or a due process complaint under §300.507 in a school year; and
  - (3) In accordance with the discipline procedures in 300.530(h); and
  - (4) Upon request by a parent.
- (b) **Internet Web site.** The Jal Public School District may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.
- (c) **Contents.** The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §300.148, §§300.151 through 300.153, §300.300, §§300.502 through 300.503, §§300.505 through 300.518, §300.520, §§300.530 through 300.536, and §§300.610 through 300.625 relating to--
  - (1) Independent educational evaluations;
  - (2) Prior written notice;
  - (3) Parental consent;
  - (4) Access to education records;
  - (5) Opportunity to present and resolve complaints through the due process complaint or State complaint procedures, including--
    - (i) The time period in which to file a complaint;
    - (ii) The opportunity for the agency to resolve the complaint; and
    - (iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
  - (6) The availability of mediation;
  - (7) The child's placement during the pendency of any due process complaint;
  - (8) Procedures for students who are subject to placement in an interim alternative educational setting;
  - (9) Requirements for unilateral placement by parents of children in private schools at public expense;
  - (10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
  - (11) State-level appeals (if applicable in that State);
  - (12) Civil actions, including the time period in which to file those actions; and
  - (13) Attorneys' fees.
- (d) **Notice in understandable language.** The notice required under paragraph (a) of this section must meet the requirements of §300.503(c).

**Authority: 34 CFR §300.29 Native language.**

- (a) **Native language,** when used with respect to an individual who is limited English proficient, means the

following:

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

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

...

**D. Notice requirements.**

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

**E. Communications in understandable language.**

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

*The native language information may be found in the student's cumulative folder as part of the enrollment information. Upon enrollment, parents complete the home language portion which indicates the language normally used by the parents and the language normally used by the child in the home. If necessary, additional information will be gathered to determine the native language of the parent for purposes of providing notice to the parent in the parent's native language.*

*A current copy of the "Parent and Child Rights in Special Education Procedural Safeguards Notice" is available through the NMPED website: <http://ped.state.nm.us/SEB/forms/Parent%20Rights%20August%202011%20final.pdf> (English version) and <http://ped.state.nm.us/SEB/forms/Aviso%20procedimientos%20de%20protección%20aug%202011%20final.pdf> (Spanish version). The Jal Public School District will provide the "Parent and Child Rights in Special Education Procedural Safeguards Notice" at least one time per year and when one of the situations above occurs. The annual procedural safeguards notice will be given at the annual IEP Team meeting of the child, or following the meeting if the parent does not attend. The IDEA does not require that the parent document in writing that the parent received the procedural safeguards notice. However, the IEP will be one way that the Jal Public School District documents that the required procedural safeguards notices have been sent.*

**II. PRIOR WRITTEN NOTICE**

**Authority: 34 CFR §300.503 Prior notice by the public agency; content of notice.**

- (a) Notice. Written notice that meets the requirements of paragraph (b) of this section will be given to the parents of a child with a disability a reasonable time before the Jal Public School District--
- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
  - (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
- (b) Content of notice. The notice required under paragraph (a) of this section must include--
- (1) A description of the action proposed or refused by the agency;
  - (2) An explanation of why the agency proposes or refuses to take the action;
  - (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
  - (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
  - (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;
  - (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
  - (7) A description of other factors that are relevant to the agency's proposal or refusal.
- (c) Notice in understandable language.
- (1) The notice required under paragraph (a) of this section must be--
    - (i) Written in language understandable to the general public; and
    - (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
  - (2) If the native language or other mode of communication of the parent is not a written language, the Jal Public School District will take steps to ensure--
    - (i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
    - (ii) That the parent understands the content of the notice; and
    - (iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

**Authority: 34 CFR §300.304 Evaluation procedures.**

- (a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the agency proposes to conduct.

**Authority: 34 CFR §300.505 Electronic mail.**

A parent of a child with a disability may elect to receive notices required by §§300.503 [Prior notice by the public agency; content of notice], 300.504 [Procedural safeguards notice], and 300.508 [Due process complaint] by an electronic mail communication, if the Jal Public School District makes that option available.

**Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS**

...

**D. Evaluations and reevaluations**

....  
(2)

...

- (d) Procedures for conducting evaluations and reevaluations:
- (i) the Jal Public School District will provide notice to the parents of a child with a disability that describes any evaluation procedures the agency proposes to conduct in compliance with 34 CFR Sec. 300.503....

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



...

**D. Notice requirements.**

...

- (2) **Notice of agency actions proposed or refused.** The Jal Public School District will give written notice that meets the requirements of 34 CFR Sec. 300.503 to the parents of a child with a disability a reasonable time before the Jal Public School District proposes or refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child. If the notice relates to a proposed action that also requires parental consent under 34 CFR Sec. 300.300, the agency may give notice at the same time it requests parental consent.

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

"Section 300.503(a) incorporates section 615(b)(3) of the Act and requires a public agency to provide parents with written notice that meets the requirements in § 300.503(b) a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. We do not believe that it is necessary to substitute a specific timeline to clarify what is meant by the requirement that the notice be provided within a reasonable period of time, because we are not aware of significant problems in the timing of prior written notices. In addition, prior written notice is provided in a wide variety of circumstances for which any one timeline would be too rigid and, in many cases, might prove unworkable." 71 Fed. Reg. 46691 (August 14, 2006).

"Providing prior written notice in advance of meetings could suggest, in some circumstances, that the public agency's proposal was improperly arrived at before the meeting and without parent input. Therefore, we are not changing §300.503 to require the prior written notice to be provided prior to an IEP Team meeting." 71 Fed. Reg. 46691 (August 14, 2006).

"There is nothing in the Act or these regulations that would prohibit a public agency from using the IEP as part of the prior written notice so long as the document(s) the parent receives meet all the requirements in § 300.503." 71 Fed. Reg. 46691 (August 14, 2006).

"It is not necessary to explain in the regulations that prior written notice can be provided at the same time as parental consent is requested, because parental consent cannot be obtained without the requisite prior written notice. The removal of this regulatory provision, however, is not intended to prohibit a public agency from giving prior written notice at the same time that parental consent is sought, should the agency choose to do so." 71 Fed. Reg. 46691 (August 14, 2006).

"Concerning the comment about ensuring that the parent receives the time and information needed to make informed decisions regarding their child's continued need for services, a public agency cannot discontinue services [following revocation of consent] until prior written notice consistent with § 300.503 has been provided to the parents. Therefore, we expect public agencies to promptly respond to receipt of written revocation of consent by providing prior written notice to the parents under § 300.503." 73 Fed. 73008 (December 1, 2008).

"Once a public agency receives a parent's written revocation of consent for a child's receipt of special education and related services, the public agency, under §300.503, must provide prior written notice to the parent regarding the change in educational placement and services that will result from the revocation of consent." 73 Fed. 73008 (December 1, 2008).

"Concerning the comment about ensuring that the parent receives the time and information needed to make informed decisions regarding their child's continued need for services, a public agency cannot discontinue services [following revocation of consent] until prior written notice consistent with § 300.503 has been provided to the parents. Therefore, we expect public agencies to promptly respond to receipt of written revocation of consent by providing prior written notice to the parents under § 300.503." 73 Fed. 73008 (December 1, 2008).

*The Jal Public School District declines to adopt a rigid and potentially unworkable timeline for prior written notice.*

*In the 2004 reauthorization of the IDEA, the Congress required the U.S. Department of Education to publish and widely disseminate "model forms" that are "consistent with the requirements of [Part B of the IDEA]" and "sufficient to meet those requirements." Specifically, the reauthorization required the Department to develop a form for prior written notice. The Department has, consistent with the instructions from the Congress, developed a form for prior written notice to assist States and school districts in understanding the content that Part B requires. The content of the form is based upon the requirements set forth in the final Part B regulations. The form developed by the U.S. Department of Education is available through the U.S. Department of Education's website: <http://idea.ed.gov/static/modelForms>.*

*The NM PED has developed a model form for prior written notice of the proposed actions of an IEP Team, available through the NMPED website: <http://ped.state.nm.us/SEB/forms/Secondary%20IEP.doc> .*

*The Jal Public School District will provide prior written notice of the proposed actions of an IEP Team following the IEP Team meeting, and will also provide prior written notice as required by the IDEA including whenever the Jal Public School District proposes or refuses to evaluate a student. The Jal Public School District is not required to use the format or specific language reflected in the U.S. Department of Education model form for prior written notice; however, the prior written notice provided to the parent by Jal Public School District will be consistent with the IDEA and sufficient to meet its requirements.*

*The native language information may be found in the student's cumulative folder as part of the enrollment information. If necessary, additional information will be gathered to determine the native language of the parent for purposes of providing prior written notice to the parent in the parent's native language.*

*The Jal Public School District does not make available to parents the option of receiving notices by electronic mail.*

### **III. CONSENT**

#### **Authority: 34 CFR §300.9 Consent.**

**Consent means that--**

- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;**
- (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and**
- (c) (1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.**
  - (2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).**
  - (3) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.**

#### **Authority: 34 CFR §300.300 Parental consent.**

...

#### **(d) Other consent requirements.**

- (1) Parental consent is not required before -**
  - (i) Reviewing existing data as part of an evaluation or a reevaluation; or**
  - (ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.**
- (2) In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.**

- (3) The Jal Public School District does not use a parent's refusal to consent to one service or activity under paragraphs (a) and (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.

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

...

**F. Parental consent.**

- (1) Informed parental consent as defined in 34 CFR Sec. 300.9 must be obtained in compliance with 34 CFR Sec. 300.300 before
- (a) conducting an initial evaluation or reevaluation; and
  - (b) initial provision of special education and related services to a child with a disability. Consent for initial evaluation must not be construed as consent for initial provision of special education and related services. If parental consent is not provided for the initial evaluation or the parent fails to respond to a request to provide consent, the Jal Public School District may, but is not required to, pursue the initial evaluation of the child by utilizing the due process and mediation procedures in Subsection I of 6.31.2.13 NMAC.
- (2) Pursuant to 34 CFR Sec. 300.300(d)(1), parental consent is not required before (a) reviewing existing data as part of an evaluation or a reevaluation; or (b) administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.
- ...
- (5) Pursuant to 34 CFR Sec. 300.300(d)(3), the Jal Public School District does not use a parent's refusal to consent to one service or activity for which consent is required to deny the parent or child any other service, benefit or activity of the Jal Public School District, except as required by 34 CFR Part 300.

*The native language information may be found in the student's cumulative folder as part of the enrollment information. If necessary, additional information will be gathered to determine the native language of the parent for purposes of providing prior written notice to the parent in the parent's native language.*

**A. Reasonable Efforts**

**Authority: 34 CFR §300.300 Parental consent.**

...

**(d) Other consent requirements.**

- (5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in §300.322(d).

**Authority: 34 CFR §300.322(d) Parental consent.**

...

**(d) ...the public agency must keep records...such as—**

- (1) Detailed records of telephone calls made or attempted and the results of those calls;
- (2) Copies of correspondence sent to the parents and any responses received; and
- (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

*“As a matter of practice, public agencies begin the process of obtaining parental consent by identifying the parent and contacting the parent by phone or through written correspondence, or speaking to the parent in parent-teacher conferences.” 71 Fed. Reg. 46629 (August 14, 2006).*

*“If a surrogate parent already has been appointed because the public agency, after reasonable efforts, could not locate a parent, the public agency would not have to again attempt to contact other individuals meeting the definition of parent in § 300.30 to seek consent.” 71 Fed. Reg. 46631 (August 14, 2006).*

*“We do not believe it is necessary or appropriate to require a public agency to maintain additional documentation,*

beyond that required in new §300.300(d)(5), of a parent's refusal to provide consent for initial services or to prescribe where this documentation must be obtained or maintained. Public agencies understand the importance of properly documenting a parent's refusal to consent to the initial provision of special education and related services and are in the best position to determine any additional documentation that is necessary and where to obtain and maintain such documentation." 71 Fed. Reg. 46633-46634 (August 14, 2006).

*The Jal Public School District will use reasonable efforts to obtain parental consent. The Jal Public School District will document its efforts to obtain parental consent, and maintain such documentation in the child's special education file]. The level of effort shall be appropriate to the situation. The actions of the Jal Public School District when seeking parental consent will reflect genuine effort and will include more than one effort or means.*

## **B. Consent for Initial Evaluation**

### **Authority: 34 CFR §300.300 Parental consent.**

#### **(a) Parental consent for initial evaluation.**

- (1) (i) If the Jal Public School District is proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8, the Jal Public School District will after providing notice consistent with §§300.503 and 300.504 [prior written notice and procedural safeguards notice], obtain informed consent from the parent of the child before conducting the evaluation.
- (ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.
- (iii) The Jal Public School District will make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.
- (2) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the Jal Public School District is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if--
  - (i) Despite reasonable efforts to do so, the Jal Public School District cannot discover the whereabouts of the parent of the child;
  - (ii) The rights of the parents of the child have been terminated in accordance with New Mexico law; or
  - (iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with New Mexico law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.
- (3) (i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the Jal Public School District may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.
- (ii) The Jal Public School District does not violate its obligation under §§300.111 and 300.301 through §300.311 if it declines to pursue the evaluation.

...

#### **(d) Other consent requirements.**

...

- (4) (i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the Jal Public School District will not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of the section); and
- (ii) The Jal Public School District is not required to consider the child as eligible for services under §§300.132 through 300.144.

"New § 300.300(a)(2) (proposed § 300.300(a)(2)(ii)) permits the public agency to proceed with the child's initial evaluation without first obtaining the requisite parental consent only in the circumstances detailed in § 300.300(a)(2). Therefore, when one or more of the circumstances in § 300.300(a)(2) are met and a surrogate has not yet been

appointed, the public agency need not postpone the child's evaluation to await the appointment of a surrogate. This is appropriate because in situations involving requests for initial evaluations, in most cases a surrogate parent has not yet been appointed and delaying an initial evaluation until after a surrogate is appointed and has given consent may not be in the best interests of the child." 71 Fed. Reg. 46631 (August 14, 2006).

"Consistent with the Department's position that public agencies should use their consent override procedures only in rare circumstances, § 300.300(a)(3) clarifies that a public agency is not required to pursue an initial evaluation of a child suspected of having a disability if the parent does not provide consent for the initial evaluation. State and local educational agency authorities are in the best position to determine whether, in a particular case, an initial evaluation should be pursued." 71 Fed. Reg. 46632 (August 14, 2006).

"An initial evaluation of a child is the first complete assessment of a child to determine if the child has a disability under the Act, and the nature and extent of special education and related services required. Once a child has been fully evaluated, a decision has been rendered that a child is eligible for services under the Act, and the required services have been determined, any subsequent evaluation of a child would constitute a reevaluation. In the example provided by the commenter, the second evaluation would be considered a reevaluation." 71 Fed. Reg. 46640 (August 14, 2006).

*The Jal Public School District will not conduct an initial evaluation without consent except as otherwise provided by the IDEA. The decision to use the consent override procedures is made by the Jal Public School District on a case by case basis.*

### **C. Consent for Services**

**Authority: 34 CFR §300.300 Parental consent.**

...

#### **(b) Parental consent for services.**

- (1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.**
- (2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.**
- (3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency—**
  - (i) May not use the procedures in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;**
  - (ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and**
  - (iii) Is not required to convene an IEP Team meeting or develop an IEP under §§ 300.320 and 300.324 for the child.**

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

...

#### **F. Parental consent.**

...

- (3) Pursuant to 34 CFR Sec. 300.300(b), if the parents of a child with a disability refuse consent for the initial provision of special education and related services, the Jal Public School District will not use the due process and mediation procedures in Subsection I of 6.31.2.13 NMAC in order to obtain agreement or a ruling that the services may be provided to the child. If the parent refuses consent or fails to respond to a request to provide consent for the initial provision of special education and related services, the Jal Public School District will not be considered to be in violation of the requirement to make FAPE available to the child and is not required to convene an IEP team meeting or develop an IEP under 34 CFR Secs. 300.320 and 300.324. All provisions of 34 CFR Sec. 300.300 must be followed**

**with respect to parental consent.**

“We believe it is appropriate to use the phrase, ‘initial provision of services’ in §300.300(a)(1)(ii), rather than the statutory phrase ‘consent for placement for receipt of special education and related services,’ in section 614(a)(1)(D)(i) of the Act to clarify that consent does not need to be sought every time a particular service is provided to the child. In addition, the distinction between consent for an initial evaluation and consent for initial services is more clearly conveyed in § 300.300(a)(1)(ii) than in the statutory language, and is consistent with the Department’s longstanding position that ‘placement’ refers to the provision of special education services, rather than a specific place, such as a specific classroom or specific school.” 71 Fed. Reg. 46640 (August 14, 2006).

“We believe § 300.300(b) is clear that the ‘initial provision of services’ means the first time a parent is offered special education and related services after the child has been evaluated in accordance with the procedures in §§ 300.301 through 300.311, and has been determined to be a child with a disability, as defined in § 300.8.” 71 Fed. Reg. 46633 (August 14, 2006).

“New 300.300(b)(4)(ii) ...follows the specific language in section 614(a)(1)(D)(ii)(III)(bb) of the Act and reflects the new provision in the Act that relieves public agencies of any potential liability for failure to convene an IEP Team meeting or develop an IEP for a child whose parents have refused consent or failed to respond to a request for consent to the initial provision of special education and related services. It does not, however, prevent a public agency from convening an IEP Team meeting and developing an IEP for a child as a means of informing the parent about the services that would be provided with the parent’s consent.” 71 Fed. Reg. 46634 (August 14, 2006).

“We understand the commenters’ concern that a parent of a child with a disability who refuses to consent to the provision of special education and related services may not fully understand the extent of the special education and related services their child would receive without the development of an IEP for their child. However, we do not view the consent provisions of the Act as creating the right of parents to consent to each specific special education and related service that their child receives. Instead, we believe that parents have the right to consent to the initial provision of special education and related services. ‘Fully informed,’ in this context, means that a parent has been given an explanation of what special education and related services are and the types of services that might be found to be needed for their child, rather than the exact program of services that would be included in an IEP.” 71 Fed. Reg. 46634 (August 14, 2006).

*The Jal Public School District will not conduct an initial evaluation without consent except as otherwise provided by the IDEA. The Jal Public School District understands that the consent override procedures are not available when a parent refuses to consent to the initial provision of special education and related services (or fails to respond to a request for consent to the initial provision of special education and related services). The Jal Public School District will ensure that the parent has been given an explanation of what special education and related services are and the type of services that might be found to be needed for their child. When a parent refuses to consent to the initial provision of special education and related services, the Jal Public School District will refer the child to the SAT for individual consideration.*

#### **D. Revocation of Consent for Services**

**Authority: 34 CFR §300.300 Parental consent.**

...

##### **(b) Parental consent for services.**

...

- (4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency—**
- (i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with § 300.503 before ceasing the provision of special education and related services;**
  - (ii) May not use the procedures in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;**
  - (iii) Will not be considered to be in violation of the requirement to make FAPE available to the**



- child because of the failure to provide the child with further special education and related services; and
- (iv) Is not required to convene an IEP Team meeting or develop an IEP under §§ 300.320 and 300.324 for the child for further provision of special education and related services.

**Authority: NMAC 6.31.2.13(F)(6) ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:**

...

**F. Parental consent**

...

- (6) Pursuant to 34 CFR Sec. 300.300(b)(4), parents may revoke consent for the continued provision of all special education and related services for their child. The revocation of consent must be in writing. After providing prior written notice in accordance with 34 CFR Sec. 300.503, the public agency must cease the provision of special education and related services for that child. The public agency may not use the due process and mediation procedures in Subsection I of 6.31.2.13 NMAC in order to obtain agreement or a ruling that services may be provided to the child. The public agency will not be considered to be in violation of the requirement to make FAPE available to the child once consent has been revoked. The public agency will also not be required to convene an IEP team meeting or develop an IEP for the child for further provision of special education and related services.

“[When a parent revokes consent for the provision of special education and related services], while a public agency may inquire as to why a parent is revoking consent for special education and related services, a public agency may not require a parent to provide an explanation, either orally or in writing, prior to ceasing the provision of special education and related services.” 73 Fed. 73008 (December 1, 2008).

“Section 300.300(b)(4) allows a parent at any time after the initial provision of special education and related services to revoke consent for the continued provision of special education and related services to their child in their entirety. Under § 300.300(b)(1), parental consent is for the initial provision of special education and related services generally, not for a particular service or services. Once a public agency receives a parental revocation of consent, in writing, for all special education and related services for a child and provides prior written notice in accordance with § 300.503, the public agency must, within a reasonable time, discontinue all special education and related services to the child. In this circumstance, the public agency may not use the procedures in subpart E of these regulations, including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516, to obtain agreement or a ruling that the services may be provided to the child.” 73 Fed. Reg. 73011 (December 1, 2008).

“In situations where a parent disagrees with the provision of a particular special education or related service and the parent and public agency agree that the child would be provided with FAPE if the child did not receive that service, the public agency should remove the service from the child’s IEP and would not have a basis for using the procedures in subpart E to require that the service be provided to the child. If, however, the parent and public agency disagree about whether the child would be provided with FAPE if the child did not receive a particular special education or related service, the parent may use the due process procedures in subpart E of these regulations to obtain a ruling that the service with which the parent disagrees is not appropriate for their child. Additionally, under the regulations in § 300.300(d)(2), States are free to create additional parental consent rights, such as requiring parental consent for particular services, or allowing parents to revoke consent for particular services, but in those cases, the State must ensure that each public agency in the State has effective procedures to ensure that the parents’ exercise of these rights does not result in a failure to provide FAPE to the child.” 73 Fed. Reg. 73011 (December 1, 2008).

“It is inappropriate for school personnel to encourage a parent to revoke consent for special education and related services.” 73 Fed. Reg. 73014 (December 1, 2008).

“Once a parent revokes consent for a child to receive special education and related services, the child is considered a



general education student and will be considered a general education student under the ESEA. . . . the child will not have an IEP; therefore, the State will no longer be required under the IDEA to provide accommodations that were previously included in the child's IEP. 73 Fed. Reg. 73011 (December 1, 2008).

"Students who are no longer receiving special education and related services due to the revocation of parental consent to the continued provision of special education and related services will be subject to the LEA's discipline procedures without the discipline protections provided in the Act. . . . We expect that parents will consider possible consequences of discipline procedures when making the decision to revoke consent for the provision of special education and related services." 73 Fed. Reg. 73013 (December 1, 2008).

"Once a parent revokes consent for special education and related services under § 300.300(b), the child is a general education student. Consequently, the child may be placed in any classroom where other general education students are placed. If a child whose parent has revoked consent is placed in a classroom that is co-taught by a general education teacher and a special education teacher, then that child is placed in the classroom as a general education student and should be treated the same as all other general education students in that classroom." 73 Fed. Reg. 73013 (December 1, 2008).

#### **E. Consent for Reevaluation**

##### **Authority: 34 CFR §300.300 Parental consent.**

...

##### **(c) Parental consent for reevaluations.**

- (1) Subject to paragraph (c)(2) of this section, the Jal Public School District**
  - (i) Will obtain informed parental consent, in accordance with §300.300(a)(1), prior to conducting any reevaluation of a child with a disability.**
  - (ii) If the parent refuses to consent to the reevaluation the Jal Public School District may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.**
  - (iii) The Jal Public School District does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.**
- (2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the Jal Public School District can demonstrate that--**
  - (i) It made reasonable efforts to obtain such consent; and**
  - (ii) The child's parent has failed to respond.**

...

##### **(d) Other consent requirements.**

...

- (4) (i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the Jal Public School District does not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of the section); and**
- (ii) The Jal Public School District is not required to consider the child as eligible for services under §§300.132 through 300.144.**

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

...

##### **F. Parental consent.**

...

- (4) Pursuant to 34 CFR Sec. 300.300(c)(2), informed parental consent need not be obtained for reevaluation if the Jal Public School District can demonstrate that it has taken reasonable measures to obtain that consent by using procedures consistent with those in 34 CFR Sec. 300.322(d) and the child's parent has failed to respond.**

*The Jal Public School District will not conduct a reevaluation without consent except when the Jal Public School*

*District can demonstrate that it has made reasonable efforts to obtain such consent and the child's parent has failed to respond to a request for consent. When the Jal Public School District has made reasonable efforts to obtain such consent and the child's parent has failed to respond to a request for consent, the Jal Public School District will conduct a reevaluation of the child except in the case of a home schooled or parentally-placed private schooled child. When a parent refuses to consent, the decision to use the consent override procedures is made by the Jal Public School District on a case by case basis.*

**F. Consent for Use of Medicaid or Other Public Benefits or Insurance or Private Insurance**

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

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

- (1) The Jal Public School District may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.**
- (2) With regard to services required to provide FAPE to an eligible child under this part, the Jal Public School District--**
  - (i) Will not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;**
  - (ii) Will not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay;**
  - (iii) Will not use a child's benefits under a public benefits or insurance program if that use would—**
    - (A) Decrease available lifetime coverage or any other insured benefit;**
    - (B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;**
    - (C) Increase premiums or lead to the discontinuation of benefits or insurance; or**
    - (D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and**
  - (iv) (A) Will obtain parental consent consistent with §300.9 each time that access to public benefits or insurance is sought; and**  
**(B) Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the Jal Public School District of its responsibility to ensure that all required services are provided at no cost to the parents.**

**(e) Children with disabilities who are covered by private insurance.**

- (1) With regard to services required to provide FAPE to an eligible child under this part, the Jal Public School District may access the parents' private insurance proceeds only if the parents provide consent consistent with § 300.9.**
- (2) Each time the Jal Public School District proposes to access the parents' private insurance proceeds, the agency will—**
  - (i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and**
  - (ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.**

**OSEP Memorandum 07-10 to State Directors of Special Education (May 3, 2007):**

The Office of Special Education Programs (OSEP) has received many requests for clarification regarding interpretation of the requirement at 34 CFR §300.154(d)(2)(iv)(A) of the final Part B regulations implementing the Individuals with Disabilities Education Act of 2004 (IDEA). This regulation requires that, with regard to services required to provide a free appropriate public education (FAPE) under Part B, the public agency must obtain parental consent, consistent with 34 CFR §300.9, each time that access to public benefits or insurance is sought.

In this context, "parental consent" means –

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

OSEP believes that permitting a public agency to obtain parental consent for a specified amount of services for a specified period of time would be sufficient to enable parents to make an informed decision as to whether to provide consent for a public agency to access their or their child's public benefits or other public insurance.

This consent may be obtained one time for the specific services, and duration of services identified in a child's individualized education program (IEP), and a local educational agency (LEA) would not be required to obtain a separate consent each time a Medicaid agency or other public insurer or public program is billed for the provision of required services. For example, if it is known that a child is to receive three hours per week of occupational therapy (OT) for 36 weeks, parents could be asked to give consent to the public agency's billing of the parent's public benefits or insurance for 108 hours of service for the 36-week period. (The amount billed would depend on the amount of OT service that was actually provided.) While this type of consent may be obtained at an IEP meeting, it could also be obtained at some point after the IEP is developed.

However, if the public agency seeks to use the child's or parents' public benefits or public insurance to pay for additional hours of service (due to the IEP being revised or extended) or the public agency is charging different amounts for such services, and would like to access the child's or parents' benefits or insurance for those costs, the public agency must obtain parental consent, covering the additional amount of service or costs to be charged to the child's or parents' public benefits or public insurance. The Part B provisions in 34 CFR §300.154(d)(2) are intended to ensure that the parent is fully informed of a public agency's proposed access of the child's or parents' benefits under a public benefits or public insurance program and provide written parental consent prior to the public agency's access to those public benefits or public insurance.

If parental consent is given directly to another agency, such as the State Medicaid agency, the LEA does not have to independently obtain a separate parental consent, as long as the parental consent provided to the other agency meets the requirements of 34 CFR §§300.9 and 300.154(d). The public agency seeking parental consent to access public benefits or public insurance programs is also obligated, under 34 CFR §300.154(d)(2)(iv), to notify the parent that the parent's refusal to allow access to their public benefits or public insurance does not relieve the public agency of its responsibility to ensure that all required FAPE services are provided at no cost to the parent. If another agency obtains the parental consent required by 34 CFR §§300.9 and 300.154(d)(2), the LEA must maintain a copy of the parental consent to both demonstrate its compliance under Part B of the IDEA and to ensure that it is available for the parent or child to review.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA.

*The Jal Public School District will not use Medicaid or other public benefits or insurance or private insurance without consent.*

**G. Consent for Individualized Family Service Plan (IFSP)**

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

...

- (b) IEP or IFSP for children aged three through five.
- (1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is--
    - (i) Consistent with State policy; and
    - (ii) Agreed to by the agency and the child's parents.
  - (2) In implementing the requirements of paragraph (b)(1) of this section, the Jal Public School District will--
    - (i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and
    - (ii) If the parents choose an IFSP, obtain written informed consent from the parents.

*The Jal Public School District will develop an IFSP rather than an IEP only if the parent chooses an IFSP and consents to using the IFSP. The NM Department of Health has developed model IFSP forms available through the Department of Health website: <http://nmhealth.org/ddsd/nmfit/Documents/FITDocsRpts.htm>.*

#### **IV. PARENT PARTICIPATION IN MEETINGS**

**Authority: 34 CFR §300.501 Opportunity to examine records; Parent participation in meetings.**

...

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

**Authority: 34 CFR §300.322 Parent Participation.**

- (a) The Jal Public School District responsibility—general. The Jal Public School District will take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including--
- (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

- (2) Scheduling the meeting at a mutually agreed on time and place.
- (b) Information provided to parents.
  - (1) The notice required under paragraph (a)(1) of this section must--
    - (i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and
    - (ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).
  - (2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must--
    - (i) Indicate--
      - (A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and
      - (B) That the agency will invite the student; and
    - (ii) Identify any other agency that will be invited to send a representative.
- (c) Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the Jal Public School District will use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328 (related to alternative means of meeting participation).
- (d) Conducting an IEP Team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the Jal Public School District is unable to convince the parents that they should attend. In this case, the Jal Public School District will keep a record of its attempts to arrange a mutually agreed on time and place such as:
  - (1) Detailed records of telephone calls made or attempted and the results of those calls;
  - (2) Copies of correspondence sent to the parents and any responses received; and
  - (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- (e) Use of interpreters or other action, as appropriate. The Jal Public School District will take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
- (f) Parent copy of child's IEP. The Jal Public School District will give the parent a copy of the child's IEP at no cost to the parent.

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

...

- C. Parent and student participation in meetings. The Jal Public School District will afford the parents of a child with a disability and, as appropriate, the child, an opportunity to participate in meetings with respect to the identification, evaluation and educational placement or the provision of FAPE to the child, in compliance with 34 CFR Secs. 300.322, 300.501(b) and (c), and any other applicable requirements of these or other department rules and standards.
- D. Notice requirements.
  - (1) Notice of meetings. The Jal Public School District will provide the parents of a child with a disability with advance written notice that complies with 34 CFR Sec. 300.322 for IEP meetings and any other meetings in which the parent has a right to participate pursuant to 34 CFR Sec. 300.501.

“Section 300.322(a) already requires each public agency to take steps to ensure that one or both parents are present at each meeting, including notifying parents of the meeting early enough to ensure that they have an opportunity to attend, and scheduling the meeting at a mutually agreed on time and place. We believe that these requirements are sufficient to ensure that parents are provided the opportunity to participate in meetings. We also believe that State and local officials are in the best position to determine how far in advance parents must be notified of a meeting, as this will vary based on a number of factors, including, for example, the distance parents typically have to travel to the meeting location and the availability of childcare.” 71 Fed. Reg. 46678 (August 14, 2006).

*The Jal Public School District will use reasonable efforts to ensure that one or both parents are present at each IEP Team meeting including by providing an adequate amount of advanced notice of the meeting and by being responsive to the parents' scheduling needs so that the meeting is held at a mutually agreed on time and place. The invitation will be provided to the parents early enough so that the parents have sufficient time to make the necessary arrangements to be able to attend. The Jal Public School District uses five days advanced notice as a guide. However, the amount of advanced notice and level of effort shall be appropriate to the situation. The goal of the Jal Public School District is to convince the parents to attend the IEP Team meeting, and the actions of the Jal Public School District will be consistent with the goal. The Jal Public School District will document its efforts to ensure that one or both parents are present at the meeting, and maintain such documentation in the child's special education file. The Jal Public School District will encourage and arrange alternative forms of participation if the parent is unable to attend. If the parent is unable to attend or participate through an alternative means (such as telephone conference), the Jal Public School District will provide the parent with a Prior Written Notice of Proposed Actions and a copy of the IEP.*

## **V. PROHIBITION ON MANDATORY MEDICATION**

**Authority: 34 CFR §300.174 Prohibition on mandatory medication.**

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

*The New Mexico Secretary of Education has issued a memorandum regarding the prohibition on mandatory medication dated October 7, 2005, available through the NMPED website: <http://www.ped.state.nm.us/seo/guide/medication.memo.100705.pdf>. The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this memorandum.*

## **VI. TRANSFER OF RIGHTS AT AGE 18**

**Authority: 34 CFR § 300.520 Transfer of parental rights at age of majority.**

- (a) **General.** A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)—
  - (1)(i) The Jal Public School District will provide any notice required by this part to both the child and the parents; and
  - (ii) All rights accorded to parents under Part B of the Act transfer to the child;
- (2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and
- (3) Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the child and the parents of the transfer of rights.

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

...

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

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



...

**K. Transfer of parental rights to students at age 18**

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

*The Jal Public School District follows all of the procedural requirements concerning transfer of rights at age of majority. The Jal Public School District affords all of the procedural safeguards to the adult student when rights transfer. When rights transfer, the parent continues to receive all the requisite notices, a right shared by both the adult student and the parent.*

## **VII. CONFIDENTIALITY OF STUDENT INFORMATION**

### **Authority: 34 CFR §300.610 Confidentiality.**

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

### **Authority: 34 CFR §300.611 Definitions.**

As used in §§300.611 through 300.625--

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

### **Authority: §300.32 Personally identifiable.**

Personally identifiable means information that contains--

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

### **Authority: 34 CFR §300.123 Confidentiality of personally identifiable information.**

The State must have policies and procedures in effect to ensure that public agencies in the State comply with

§§300.610 through 300.626 related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act.

**Authority: 34 CFR §300.612 Notice to parents.**

- (a) The NMPED must give notice that is adequate to fully inform parents about the requirements of §300.123 [Confidentiality of personally identifiable information], including--
  - (1) A description of the extent that the notice is given in the native languages of the various population groups in the State;
  - (2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
  - (3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
  - (4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.
- (b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

**Authority: 34 CFR §300.613 Access rights.**

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

**Authority: 34 CFR §300.614 Record of access.**

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

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

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

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

The Jal Public School District will provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

**Authority: 34 CFR §300.617 Fees.**

- (a) The Jal Public School District may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.
- (b) A participating agency may not charge a fee to search for or to retrieve information under this part.



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

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

**Authority: 34 CFR §300.619 Opportunity for a hearing.**

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

**Authority: 34 CFR §300.620 Result of hearing.**

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

**Authority: 34 CFR §300.621 Hearing procedures.**

A hearing held under §300.619 must be conducted according to the procedures under 34 CFR 99.22 [FERPA regulation].

**Authority: 34 CFR §300.622 Consent.**

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

**Authority: 34 CFR §300.535 Referral to and action by law enforcement and judicial authorities.**

- (a) Rule of construction. Nothing in this part prohibits the Jal Public School District from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.
- (b) Transmittal of records.

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

**Authority: 34 CFR §300.623 Safeguards.**

- (a) The Jal Public School District will protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
- (b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.
- (c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.123 and 34 CFR part 99 [FERPA regulations].
- (d) The Jal Public School 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.

**Authority: 34 CFR §300.624 Destruction of information.**

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

**See also, NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES**

...

**L. Confidentiality of information**

*The Jal Public School District has a Board policy ensuring compliance with FERPA. The Jal Public School District will follow Board policy including with regard to assuring the following rights:*

- *The right to inspect and review the child's education records within 45 days of the day the Jal Public School District receives a request for access. Parents should submit to the custodian of records written request that identifies the record(s) they wish to inspect. The Jal Public School District will make arrangements for access and notify the parent of the time and place where the records may be inspected.*
- *The right to request the amendment of the child's education records that the parent believes are inaccurate or misleading. Parents or eligible students may ask the Jal Public School District to amend a record that they believe is inaccurate or misleading. They should write the custodian of records, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading. If the Jal Public School District decides not to amend the record as requested by the parent or eligible student, the Jal Public School District will notify the parent of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent when notified of the right to a hearing.*
- *The right to consent to disclosures of personally identifiable information contained in the child's education records, except to the extent that FERPA authorizes disclosure without consent. One exception, which permits disclosure without consent, is disclosure to school officials with legitimate educational interests. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility. Upon request, the Jal Public School District discloses education records without consent to officials of another school district in which a child seeks or intends to enroll.*
- *The right to file a complaint with the U.S. Department of Education concerning alleged failures by the School to comply with the requirements of FERPA. The name and address of the Office that administers FERPA are:*

*Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW*

*The director of special education is custodian of the special education file for students currently enrolled at the assigned school. The director of special education is the custodian of records of the special education file of students who have withdrawn or graduated.*

*The Jal Public School District will provide notice when records are no longer needed. The parent may seek destruction of the records once they are no longer needed. The information must be destroyed at the request of the parents or, at their option the records must be given to the parents. When informing parents about their rights to destruction of personally identifiable records, the Jal Public School District advises them that the records may be needed by the child or the parents for social security benefits and other purposes.*

## **VIII. PARENT INCLUDING FOSTER AND SURROGATE PARENTS**

### **Authority: 34 CFR §300.30 Parent.**

#### **(a) Parent means--**

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless State law, regulations or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
- (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- (5) A surrogate parent who has been appointed in accordance with §300.519 or section 639(a)(5) of the Act.

#### **(b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.**

- (2) If a judicial decree or order identifies a specific person or persons under paragraph (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section.

### **Authority: 34 CFR §300.45 Ward of the State.**

#### **(a) General. Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is--**

- (1) A foster child;
- (2) A ward of the State; or
- (3) In the custody of a public child welfare agency.

#### **(b) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in §300.30.**

### **Authority: 34 CFR §300.519 Surrogate parents.**

#### **(a) General. The Jal Public School District will ensure that the rights of a child are protected when--**

- (1) No parent (as defined in §300.30) can be identified;
- (2) The Jal Public School District, after reasonable efforts, cannot locate a parent;
- (3) The child is a ward of the State under the laws of New Mexico; or
- (4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

#### **(b) Duties of Jal Public School District. The duties of the Jal Public School District under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This will include a method--**

- (1) For determining whether a child needs a surrogate parent; and
- (2) For assigning a surrogate parent to the child.

- (c) **Wards of the State.** In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.
- (d) **Criteria for selection of surrogate parents.**
  - (1) The Jal Public School District may select a surrogate parent in any way permitted under State law.
  - (2) The Jal Public School District will ensure that a person selected as a surrogate parent--
    - (i) Is not an employee of the NMPED, the Jal Public School District, or any other agency that is involved in the education or care of the child;
    - (ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
    - (iii) Has knowledge and skills that ensure adequate representation of the child.
- (e) **Non-employee requirement; compensation.** A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.
- (f) **Unaccompanied homeless youth.** In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates without regard to paragraph (d)(2)(i) of this section, until a surrogate can be appointed that meets all of the requirements of paragraph (d) of this section.
- (g) **Surrogate parent responsibilities.** The surrogate parent may represent the child in all matters relating to-
  - (1) The identification, evaluation, and educational placement of the child; and
  - (2) The provision of FAPE to the child.
- (h) **NMPED responsibility.** The NMPED must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after Jal Public School District determines that the child needs a surrogate.

**Authority: NMAC 6.31.2.7 DEFINITIONS:**

...

**B. Terms.**

...

- (14) "Parent" includes, in addition to the persons specified in 34 CFR Sec. 300.30, a child with a disability who has reached age 18 and for whom there is no court-appointed general guardian, limited guardian or other court-appointed person who has legal custody or has otherwise been authorized by a court to make educational decisions on the child's behalf as provided in Subsection K of 6.31.2.13 NMAC. Pursuant to 34 CFR Sec. 300.519 and department policy, a foster parent of a child with a disability may act as a parent under Part B of the IDEA if: (i) the foster parent or the state children, youth and families department (CYFD) provides appropriate documentation to establish that CYFD has legal custody and has designated the person in question as the child's foster parent; and (ii) the foster parent is willing to make the educational decisions required of parents under the IDEA; and has no interest that would conflict with the interests of the child. A foster parent who does not qualify under the above requirements but who meets all requirements for a surrogate parent under 34 CFR Sec. 300.519 may be appointed as a surrogate if the public agency responsible for making the appointment deems such action appropriate. (See Subsection J of 6.31.2.13 NMAC.)

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

...

**J. Surrogate parents and foster parents**

- (1) The Jal Public School District will ensure that a qualified surrogate parent is appointed in compliance with 34 CFR Sec. 300.519 when needed to protect the rights of a child with a disability who is within the agency's educational jurisdiction. A surrogate parent need not be appointed if a person who qualifies as a parent under 34 CFR Sec. 300.30(b) and Paragraph (13) of Subsection B of 6.31.2.7 NMAC can be identified.
- (2) A foster parent who meets all requirements of 34 CFR Sec. 300.30 may be treated as the child's parent pursuant to that regulation. A foster parent who does not meet those requirements but meets all requirements of 34 CFR Sec. 300.519 may be appointed as a surrogate parent if Jal Public School

District who is responsible for the appointment deems such action appropriate.

- (3) Pursuant to 34 CFR Sec. 300.519, a surrogate parent may represent the child in all matters relating to the identification, evaluation and educational placement of the child and the provision of FAPE to the child.

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

...

**K. Children in detention and correctional facilities.**

...

- (7) Children with disabilities who are detained or incarcerated in detention or correctional facilities are wards of the state and may have surrogate parents appointed pursuant to 34 CFR Sec. 300.519 and Subsection J of 6.31.2.13 NMAC to protect their IDEA rights while in state custody.
- (8) The public agency that administers the educational program in a juvenile or adult detention or correctional facility shall ensure that surrogate parents are appointed in cases where no parent as defined in 34 CFR Sec. 300.30(a) and Paragraph (14) of Subsection B of 6.31.2.7 NMAC is reasonably available or willing to make the educational decisions required for children with disabilities who are housed in that facility.

“The phrase ‘attempting to act as a parent’ is generally meant to refer to situations in which an individual attempts to assume the responsibilities of a parent under the Act. An individual may ‘attempt to act as a parent’ under the Act in many situations; for example, if an individual provides consent for an evaluation or reevaluation, or attends an IEP Team meeting as the child’s parent. We do not believe it is necessary or possible to include in these regulations the numerous situations in which an individual may ‘attempt to act as a parent.’” 71 Fed. Reg. 46567 (August 14, 2004).

“A private agency that contracts with a public agency for the education or care of the child, in essence, works for the public agency, and therefore, could not act as a parent under the Act.” 71 Fed. Reg. 46568 (August 14, 2004).

*The Jal Public School District will timely identify the need for a surrogate parent and appoint a surrogate parent who meets the IDEA criteria. The Jal Public School District does not compensate individuals for acting as surrogate parents.*

**IX. INDEPENDENT EDUCATIONAL EVALUATION (IEE)**

**Authority: 34 CFR §300.502 Independent educational evaluation.**

**(a) General.**

- (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.
- (2) The Jal Public School District will provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.
- (3) For the purposes of this subpart--
  - (i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the Jal Public School District responsible for the education of the child in question; and
  - (ii) Public expense means that the Jal Public School District either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §300.103.

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

- (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the Jal Public School District, subject to the conditions in paragraphs (b)(2) through (4) of this section.
- (2) If a parent requests an independent educational evaluation at public expense, the Jal Public School District, will, without unnecessary delay, either--
  - (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or
  - (ii) Ensure that an independent educational evaluation is provided at public expense, unless the

agency demonstrates in a hearing pursuant to §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

- (3) If the Jal Public School District files a due process complaint notice to request a hearing and the final decision is that the Jal Public School District's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.
  - (4) If a parent requests an independent educational evaluation, the Jal Public School District may ask for the parent's reason why he or she objects to the public evaluation. However, the Jal Public School District will not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.
  - (5) A parent is entitled to only one independent educational evaluation at public expense each time the Jal Public School District conducts an evaluation with which the parent disagrees.
- (c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the Jal Public School District an evaluation obtained at private expense, the results of the evaluation--
- (1) Will be considered by the Jal Public School District, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and
  - (2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.
- (d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.
- (e) Agency criteria.
- (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the Jal Public School District uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.
  - (2) Except for the criteria described in paragraph (e)(1) of this section, the Jal Public School District may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

**Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS**

...

**D. Evaluations and reevaluations**

...

- (2) ... (f) The parents of a child with a disability who disagree with an evaluation obtained by the Jal Public School District have the right to obtain an independent educational evaluation of the child at public expense pursuant to 34 CFR Sec. 300.502.

"Consistent with applicable agency criteria, it would be appropriate for a public agency to require an IEE examiner to hold, or be eligible to hold, a particular license when a public agency requires the same licensure for personnel who conduct the same types of evaluations for the agency. In contrast, it would be inconsistent with a parent's right to an IEE for a public agency to require all evaluators to be licensed, if only individuals employed by a public agency may obtain a license." 71 Fed. Reg. 46689 (August 14, 2006).

*A parent may request an IEE at public expense if the parent disagrees with an evaluation obtained by the Jal Public School District. When a parent requests an IEE at public expense, the Jal Public School District must, without unnecessary delay, either:*

- *initiate a due process hearing to show that its evaluation is appropriate; or*
- *ensure that an IEE is provided at public expense, unless the district demonstrates at a hearing that the evaluation obtained by the parent did not meet district criteria.*

*The Jal Public School District may ask but may not require the parent to state the reasons for the disagreement. A hearing officer or a court may find that there was no underlying disagreement with the evaluation, and therefore there is no entitlement to a publicly funded IEE.*

*The Jal Public School District will notify the parent of its decision to either pay for the IEE or request a due process hearing.*

*Parents are encouraged to contact the director of special education prior to obtaining an IEE to obtain approval and assistance in ensuring that the criteria are met. Parents may also make their request known by informing the IEP Team in an IEP Team meeting. The Jal Public School District representative of the IEP Team should promptly notify the director of special education of the parent's request. Parents who obtain an IEE and later seek reimbursement risk a finding by a hearing officer that the IEE did not meet Jal Public School District criteria.*

*Information on where an IEE at public expense may be obtained will be provided to the parent of a child with a disability upon request for an IEE. Only one IEE may be reimbursed for each evaluation obtained by the Jal Public School District. This would include the three-year reevaluation or reevaluations conducted more frequently. If the Jal Public School District has not conducted an evaluation, the parent does not have a right to an IEE at public expense.*

*The right of a parent to obtain an IEE is triggered if the parent disagrees with a Jal Public School District initiated evaluation. Therefore, if a parent refuses to consent to a proposed Jal Public School District evaluation, then an IEE at public expense would not be available since there would no Jal Public School District evaluation with which the parent can disagree.*

*The IEP Team will consider any IEE, whether publicly or privately funded, that meets the Jal Public School District's criteria.*

**A. Qualifications of the Evaluator**

*The following are the same criteria applied to Jal Public School District evaluator(s):*

- 1. A list of individuals who are qualified to conduct an IEE is available from the director of special education upon request. The list may not be exhaustive. Therefore, parents are free to select whomever they choose to perform the IEE so long as the evaluator meets the District's criteria.*
- 2. The evaluator conducting an IEE of a child with a disability at public expense must be located within a 200-mile radius of the District.*
- 3. Evaluators must possess current NM licensure/certification. The components of an evaluation must be administered, reviewed, and/or gathered by personnel licensed by the State of New Mexico and/or the NMPED to complete or collect each of the components respectively. For instance, individualized assessments of cognitive/intellectual ability must be administered by NMPED-licensed Educational Diagnosticians or New Mexico licensed Psychologists. See Appendix E of the NM TEAM for licensure requirements.*
- 4. Evaluators must be trained and qualified to administer the specific tests and other evaluation materials in conformance with the instructions provided by the producer.*

**B. Evaluation Criteria**

*The following are the same requirements of a Jal Public School District evaluation:*

- 1. Evaluations must comply with all requirements specified in State and federal law.*
- 2. The evaluation must be completed a reasonable time after the Jal Public School District approves the IEE.*
- 3. The report must address the Jal Public School District's format (which will be provided directly to the evaluator) for evaluation and eligibility. The report must comply with all requirements of State*



*and federal law.*

- 4. The Jal Public School District criteria applicable for Jal Public School District evaluations as described in Chapter 3 and Chapter 4 of these procedures must be followed for the IEE.*
- 5. The independent evaluator is requested to furnish an original, typed evaluation report to the Jal Public School District in advance of an IEP Team meeting where the report will be considered by the student's IEP Team.*
- 6. The report must include an original signature, title of all evaluation personnel involved in the evaluation, licensures/certifications of each evaluator, including license/certification numbers.*
- 7. Protocols must be available for review.*

**C. Cost Criteria**

- 1. The Jal Public School District will pay a fee for an IEE that allows a parent to choose from among qualified professionals in the area.*
- 2. The Jal Public School District will not pay unreasonably excessive fees. An unreasonably excessive fee is one that is 10% above the prevailing rate in the area for the specific test or type of evaluation as established by Medicaid/Medicare..*
- 3. When service providers have a sliding scale fee based on parent income, the Jal Public School District will pay the amount charged to the parent.*
- 4. Travel costs for examiners will not exceed Jal Public School District rates for travel as established by New Mexico State guidelines or Jal Public School District policy (if Jal Public School District policy is at a higher rate than the State). The Jal Public School District will not cash advance any travel costs.*

**D. Procedures to be Followed by Parents Requesting an IEE at Public Expense and Obtaining Payment/Reimbursement**

- 1. Parents obtaining an IEE without following Jal Public School District criteria and these procedures risk non-payment. The following procedures are designed to ensure an IEE that meets Jal Public School District criteria and safeguard against non-payment.*
- 2. Parents are encouraged to provide the name and address of the evaluator in advance of the IEE to enable the Jal Public School District to:*
  - a. Check the evaluator's certification/licensure, and*
  - b. Contract directly with the evaluator.*
- 3. If the parent selects an evaluator that is not on the Jal Public School District's list of qualified evaluators, the parent is encouraged to submit the name and vitae of the evaluator to the director of special education in advance of obtaining the IEE in order that the Jal Public School District may notify the parent regarding whether the evaluator is qualified to perform the IEE.*
- 4. Payment will be made directly to the evaluator upon receipt of an IEE that meets Jal Public School District criteria.*
- 5. In the event that a parent pursues an IEE independently, an original billing statement must be submitted to the Jal Public School District and all criteria must be met, including the receipt of a written report by the independent evaluator that meets Jal Public School District criteria, prior to direct payment or reimbursement.*



6. *If a parent feels that an IEE that falls outside of the Jal Public School District's criteria is justified by the child's unique circumstances, the parent must request a waiver of the criteria with a description of the unique circumstances that justify an IEE that does not fall within the Jal Public School District's criteria. The Jal Public School District will consider any such request.*
7. *Upon receipt of an IEE that does not meet Jal Public School District criteria including cost criteria, the Jal Public School District reserves the right to request a due process hearing to demonstrate that the IEE obtained by the parent did not meet Jal Public School District criteria.*

## **X. CONFLICT RESOLUTION AT THE LOWEST POSSIBLE LEVEL**

The Senate Committee for the reauthorization of IDEA in 2004 expressed that “the goal of these new provisions is fairness: to be sure that a district is aware of a problem and has a chance to resolve it in a less formal manner before having to spend the time and resources for a due process hearing.” S.Rep. No. 108-105, at 39.

“As part of the bargain of providing children with educational rights and parents with procedural safeguards to protect those rights, Congress required that parents turn first to the statute's administrative framework to resolve any conflicts they had with the school's educational services.’ *Cudjoe ex rel. Cudjoe*, 297 F.3d 1058, 1064 (10<sup>th</sup> Cir. 2002). We have interpreted the IDEA's exhaustion requirements broadly, noting Congress' clear intention to allow those with experience in educating the nation's disabled children ‘at least the first crack at formulating a plan to overcome the consequences of educational shortfalls.’ Id. at 1065.” *Ellenberg v. NMMI*, 478 F.3d 1262 (10<sup>th</sup> Cir. 2007).

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

...

#### **G. Conflict management and resolution**

- (1) The Jal Public School District seeks to establish and maintain productive working relationships with the parents of each child the agency serves and to deal constructively with disagreements. Toward that end, the each public agency is strongly encouraged to provide appropriate training for staff and parents in skills and techniques of conflict prevention and management and dispute resolution, and to utilize an informal dispute resolution method as set forth under Subparagraph (a) of Paragraph (2) of Subsection G of 6.31.2.13 NMAC to resolve disagreements at the local level whenever practicable.
- (2) Spectrum of dispute resolution options. To facilitate dispute prevention as well as swift, early conflict resolution whenever possible, the department and the Jal Public School District ensures that the following range of dispute resolution options is available to parents and Jal Public School District personnel.
  - (a) Informal dispute resolution option. If a disagreement arises between parents and the Jal Public School District over a student's IEP or educational program, either the parents or the Jal Public School District may convene a new IEP meeting at any time to attempt to resolve their differences at the local level, without state-level intervention.
  - (b) Third-party assisted intervention. The special education bureau (SEB) of the department will ensure that mediation is available to parents and public agencies who request such third-party assisted intervention before filing a state-level complaint or a request for a due process hearing. The SEB will honor a request for mediation that:
    - (i) is in writing;
    - (ii) is submitted to the SEB;
    - (iii) is a mutual request signed by both parties or their designated representatives;
    - (iv) includes a statement of the matter(s) in dispute and a description of any previous attempts to resolve these matters at the local level; and
    - (v) any request that does not contain all of these elements will be declined, with an explanation for the SEB's decision and further guidance, as appropriate.

### **Authority: NMAC 6.31.2.7 DEFINITIONS:**

...

#### **C. Definitions related to dispute resolution. The following terms are listed in the order that reflects a**

continuum of dispute resolution options and shall have the following meanings for the purposes of these rules.

...

- (3) “Mediation” means a meeting or series of meetings that utilizes an independent, state-approved, state-funded, trained mediator to assist parties to reconcile disputed matters related to a student's IEP or other educational, non-IEP-related issues.

*The Jal Public School District will work with parents to resolve conflict at the lowest possible level.*

## **XI. STATE-LEVEL COMPLAINT PROCEDURES**

### **Authority: NMAC 6.31.2.7 DEFINITIONS:**

...

- C. Definitions related to dispute resolution. The following terms are listed in the order that reflects a continuum of dispute resolution options and shall have the following meanings for the purposes of these rules.

- (1) “Facilitated IEP (FIEP) meeting” means an IEP meeting that utilizes an independent, state approved, state-funded, trained facilitator as an IEP facilitator to assist the IEP team to communicate openly and effectively, in order to resolve conflicts related to a student's IEP.
- (2) “Mediation” means a meeting or series of meetings that utilizes an independent, state-approved, state-funded, trained mediator to assist parties to reconcile disputed matters related to a student's IEP or other educational, non-IEP-related issues.

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

...

- G. Conflict management and resolution

...

- (2) Spectrum of dispute resolution options. To facilitate dispute prevention as well as swift, early conflict resolution whenever possible, the department and the Jal Public School District ensures that the following range of dispute resolution options is available to parents and Jal Public School District personnel.

...

- (c) Formal dispute resolution.

- (i) A state-level complaint may be filed with the SEB of the department by the parents of a child, or by another individual or organization on behalf of a child, as described under Subparagraph (a) of Paragraph (2) of Subsection H of 6.31.2.13 NMAC. Once a complaint has been filed, the parties may agree to convene a FIEP meeting or mediation as described under Paragraph (3) of Subsection H of 6.31.2.13 NMAC.

...

- H. State complaint procedures

- (1) Scope. This Subsection H of 6.31.2.13 NMAC prescribes procedures to be used in filing and processing complaints alleging the failure of the department or the Jal Public School District to comply with state or federal laws or regulations governing programs for children with disabilities under the IDEA or with state statutes or regulations governing educational services for gifted children.
- (2) Requirements for complaints.
- (a) The SEB of the department shall accept and investigate complaints from organizations or individuals that raise issues within the scope of this procedure as defined in the preceding Paragraph (1) of Subsection H of 6.31.2.13 NMAC. The complaint must:
- (i) be in writing;
- (ii) be submitted to the SEB (or to the secretary of education, in the case of a complaint against the department);
- (iii) be signed by the complainant or a designated representative and have the complainant's contact information; (iv) include a statement that the department or the Jal Public School

District has violated a requirement of an applicable state or federal law or regulation; and (v) contain a statement of the facts on which the allegation of violation is based, and a description of any efforts the complainant has made to resolve the complaint issue(s) with the Jal Public School District (for a complaint against the Jal Public School District). Any complaint that does not contain each of these elements will be declined, with an explanation for the SEB's decision and further guidance, as appropriate.

- (b) If the complaint alleges violations with respect to a specific child, the complaint must include the information required by 34 CFR Sec. 300.153(b)(4).
  - (c) The party filing the complaint must forward a copy of the complaint to Jal Public School District serving the child at the same time the party files the complaint with the SEB of the department.
  - (d) Pursuant to 34 CFR Sec. 300.153(c), the complaint must allege a violation that occurred not more than one year before the date the complaint is received by the SEB in accordance with Subparagraph (a) of Paragraph (2) of Subsection H of 6.31.2.13 NMSAC.
- (3) Preliminary meeting.
- (a) FIEP meeting; mediation. Parties to a state-level complaint may choose to convene a FIEP meeting or mediation. To do so, the public agency must (and the parent may) notify the SEB of the department in writing within 1 business day of reaching their decision to jointly request one of these ADR options. A FIEP meeting or mediation shall be completed not later than 14 days after the assignment of the IEP facilitator or mediator by the SEB, unless a brief extension is granted by the SEB based on exceptional circumstances. Each session in the FIEP or mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the complaint.
  - (b) Mediation requirements. If the parties choose to use mediation, the following requirements apply.
    - (i) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.
    - (ii) Any mediated agreement must state that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. Any such agreement must also be signed by both the parent and a representative of the Jal Public School District who has the authority to bind such agency, and shall be enforceable in any state court of competent jurisdiction or in a district court of the United States.
    - (iii) If a mediated agreement involves IEP-related issues, the agreement must state that the Jal Public School District will subsequently convene an IEP meeting to inform the student's service providers of their responsibilities under that agreement, and revise the student's IEP accordingly.
    - (iv) The mediator shall transmit a copy of the written mediation agreement to each party within 7 days of the meeting at which the agreement was concluded. A mediation agreement involving a claim or issue that later goes to a due process hearing may be received in evidence if the hearing officer rules that part or all of the agreement is relevant to one or more IDEA issues that are properly before the hearing officer for decision.
    - (v) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
    - (vi) Any other requirement provided in 34 CFR Sec. 300.506(b) that is not otherwise provided herein.
- (4) 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 Jal Public School 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.
- (5) Complaints against public agencies.
- (a) Impartial review. Upon receipt of a complaint that meets the requirements of Paragraph (2) of Subsection H of 6.31.2.13 NMAC above, the SEB of the department shall:

- (i) undertake an impartial investigation which shall include complete review of all documentation presented and may include an independent on-site investigation, if determined necessary by the SEB;
- (ii) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- (iii) provide the Jal Public School District 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 Jal Public School District 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 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 Jal Public School 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.

...

(7) **Extension of time limit.** An extension of the time limit under Subparagraph (b) of Paragraph (5) or Subparagraph (b) of Paragraph (6) of this Subsection H of 6.31.2.13 NMAC shall be permitted by the SEB of the department only if exceptional circumstances exist with respect to a particular complaint or if the parent or any other party filing a complaint and the public agency involved agree to extend the time to engage in mediation or a FIEP meeting.

(8) **Conflicts with federal laws or regulations.** If any federal law or regulation governing any federal program subject to this regulation affords procedural rights to a complainant which exceed those set forth in Subsection H of 6.31.2.13 NMAC for complaints within the scope of these rules, such statutory or regulatory right(s) shall be afforded to the complainant. In acknowledging receipt of such a complaint, the SEB shall set forth the procedures applicable to that complaint.

#### **I. Due Process Hearings.**

...

(22) **Rule of construction.** Nothing in this Subsection I shall be construed to affect the right of a parent to file a complaint with the SEB of the department, as described under Subsection H of 6.31.2.13 NMAC.

#### **Authority: 34 CFR §300.136 Compliance.**

(a) **General.** A private school official has the right to submit a complaint to the SEA that the LEA—

- (1) Did not engage in consultation that was meaningful and timely; or
- (2) Did not give due consideration to the views of the private school official.

(b) **Procedure.**

- (1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and
- (2) The LEA must forward the appropriate documentation to the SEA.
- (3) (i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and
- (ii) The SEA must forward the appropriate documentation to the Secretary.

*The NMPED has developed a model form for use when filing a State-level complaint, available through the NMPED website: [http://ped.state.nm.us/SEB/2012/Complaint\\_Form\\_02\\_10\\_12.doc](http://ped.state.nm.us/SEB/2012/Complaint_Form_02_10_12.doc) .*

A current copy of the “Parent and Child Rights in Special Education Procedural Safeguards Notice” is available through the NMPED website: <http://ped.state.nm.us/SEB/forms/Parent%20Rights%20August%202011%20final.pdf> (English version) and <http://ped.state.nm.us/SEB/forms/Aviso%20procedimientos%20de%20protección%20aug%202011%20final.pdf> (Spanish version). The Jal Public School District will provide the “Parent and Child Rights in Special Education Procedural Safeguards Notice” at least one time per year and upon receipt of a State-level complaint filed by a parent.

The NMPED has issued a guidance document titled, “The Facilitated IEP Meeting Fact Sheet” (February 2006), available through the NMPED website: [http://www.ped.state.nm.us/seo/dispute/iep\\_meeting.pdf](http://www.ped.state.nm.us/seo/dispute/iep_meeting.pdf). A parent can contact the Jal Public School District special education director to request a FIEP meeting as an alternative form of dispute resolution whether or not the parent has filed a State-level complaint. Both the Jal Public School District and parent must agree to engage in this process. The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.

The NMPED has issued a guidance document titled, “Special Education Mediation Fact Sheet” (February 2006), available through the NMPED website: [http://www.ped.state.nm.us/seo/dispute/iep\\_meeting.pdf](http://www.ped.state.nm.us/seo/dispute/iep_meeting.pdf). Either the Jal Public School District or the parent can request mediation as an alternative form of dispute resolution by contacting the NMPED’s Special Education Bureau and asking to speak to the ADR Coordinator to obtain a Request for Mediation form. Both the Jal Public School District and parent must agree to engage in mediation. The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.

## **XII. DUE PROCESS HEARINGS**

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

...

#### **G. Conflict management and resolution**

...

- (2) Spectrum of dispute resolution options. To facilitate dispute prevention as well as swift, early conflict resolution whenever possible, the department and the Jal Public School District ensures that the following range of dispute resolution options is available to parents and Jal Public School District personnel.

...

- (c) Formal dispute resolution.

- (ii) A request for a due process hearing may be filed by parents or their authorized representative, or by the Jal Public School District, as described under Paragraph (5) of Subsection I of 6.31.2.13 NMAC. A resolution session between the parties must be convened by the Jal Public School District 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.

...

#### **I. Due process hearings**

- (1) Scope. This Subsection I of 6.31.2.13 NMAC establishes procedures governing impartial due process hearings for the following types of cases:
  - (a) requests for due process in IDEA cases governed by 34 CFR Secs. 300.506-300.518 and 300.530-300.532; and
  - (b) claims for gifted services.
- (2) Definitions. In addition to terms defined in 34 CFR Part 300 and 6.31.2.7 NMAC, the following definitions apply to this Subsection I of 6.31.2.13 NMAC.
  - (a) "Expedited hearing" means a hearing that is available on request by a parent or Jal Public School District under 34 CFR Secs. 300.532(c) and is subject to the requirements of 34 CFR Sec. 300.532(c).
  - (b) "Gifted services" means special education services to gifted children as defined in Subsection A of

**6.31.2.12 NMAC.**

- (c) "Summary due process hearing" means a hearing designed to proceed more quickly and incur less expense than a standard due process hearing, as explained under Paragraph (15) of Subsection I of 6.31.2.13 NMAC.
- (d) "Transmit" means to mail, transmit by electronic mail or telecopier (facsimile machine) or hand deliver a written notice or other document and obtain written proof of delivery by one of the following means:
  - (i) an electronic mail system's confirmation of a completed transmission to an e-mail address that is shown to be valid for the individual to whom the transmission was sent;
  - (ii) a telecopier machine's confirmation of a completed transmission to a number which is shown to be valid for the individual to whom the transmission was sent;
  - (iii) a receipt from a commercial or government carrier showing to whom the article was delivered and the date of delivery;
  - (iv) a written receipt signed by the secretary of education or designee showing to whom the article was hand-delivered and the date delivered; or
  - (v) a due process final decision to any party not represented by counsel in a due process hearing by the U.S. postal service, certified mail, return receipt requested, showing to whom the article was delivered and the date of delivery.

...

- (28) Computation of time. In computing any period of time prescribed or allowed by Subsection I of 6.31.2.13 NMAC, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday. As used in this rule, "legal holiday" includes any day designated as a state holiday.

**Authority: 34 CFR §300.140 Due process complaints and State complaints.**

**(a) Due process not applicable, except for child find.**

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

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

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

**(c) State complaints.**

- (1) Any complaint that an SEA or LEA has failed to meet the requirements in §§ 300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in §§ 300.151 through 300.153.
- (2) A complaint filed by a private school official under § 300.136(a) must be filed with the SEA in accordance with the procedures in § 300.136(b).

*A current copy of the "Parent and Child Rights in Special Education Procedural Safeguards Notice" is available through the NMPED website: <http://ped.state.nm.us/SEB/forms/Parent%20Rights%20August%202011%20final.pdf> (English version) and <http://ped.state.nm.us/SEB/forms/Aviso%20procedimientos%20de%20protección%20aug%202011%20final.pdf> (Spanish version). The Jal Public School District will provide the parent a "Parent and Child Rights in Special Education Procedural Safeguards Notice" at least one time per year and upon receipt of a request for a due process hearing filed by a parent.*

**A. Timeline for Requesting a Due Process Hearing**

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

...



**I. Due Process Hearings.**

...

- (19)...(b) Timeline for requesting hearing. A parent or agency shall request an impartial due process hearing within two years of the date that the parent or agency knew or should have known about the alleged action that forms the basis of the due process request.
- (c) Exceptions to the timeline. The timeline described in Subparagraph (b) of Paragraph (19) of Subsection I of 6.31.2.13 NMAC above shall not apply to a parent if the parent was prevented from requesting the hearing due to:
  - (i) specific misrepresentations by the Jal Public School District that it had resolved the problem that forms the basis of the due process request; or
  - (ii) the Jal Public School District's withholding of information from the parent that was required under this part to be provided to the parent.

*The Jal Public School District will provide the parent a "Parent and Child Rights in Special Education Procedural Safeguards Notice" at least one time per year and upon receipt of a request for a due process hearing filed by a parent. The "Parent and Child Rights in Special Education Procedural Safeguards Notice" informs parents that the request for due process hearing must be filed within two years of the date that the parent knew or should have known about the problem.*

**B. Student Status during Proceedings**

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

...

**I. Due Process Hearings.**

...

**(27) Child's status during proceedings.**

- (a) Except as provided in 34 CFR Sec. 300.533 and Paragraph (4) of Subsection I of 6.31.2.13 NMAC, and unless the Jal Public School District and the parents of the child agree otherwise, during the pendency of any administrative or judicial proceeding regarding an IDEA due process request, the child involved must remain in his or her current educational placement. Disagreements over the identification of the current educational placement which the parties cannot resolve by agreement shall be resolved by the hearing officer as necessary.
- (b) If the case involves an application for initial admission to Jal Public School District, the child, with the consent of the parents, must be placed in the Jal Public School District until the completion of all the proceedings.
- (c) If a hearing officer agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the Jal Public School District and the parents for purposes of Subparagraph (a) of Paragraph (27) of Subsection I of 6.31.2.13 NMAC.

...

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

...

**J. Appeal**

- (1) The parent of a student with a disability who disagrees with any decision regarding the placement or the manifestation determination under this section, or an administrative authority that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to Subsection I of 6.31.2.13 NMAC.
- ...
- (3) When an appeal under this subsection has been made by either the parent or the administrative authority, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in Subsections B or E of this section, which ever occurs first, unless the parent and the administrative authority agree otherwise.

*The Jal Public School District will ensure that the child remains in the stay-put placement during the pendency of the*

*proceedings, unless the Jal Public School District and the parent agree otherwise.*

### **C. Request for a Due Process Hearing**

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

...

#### **I. Due Process Hearings.**

...

- (3) Bases for requesting hearing. A parent or Jal Public School District may initiate an impartial due process hearing on the following matters:
  - (a) the Jal Public School District proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child;
  - (b) the Jal Public School District refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child;
  - (c) the Jal Public School District proposes or refuses to initiate or change the identification, evaluation or educational placement of, or services to, a child who needs or may need gifted services;
  - (d) an IDEA due process hearing provides a forum for reviewing the appropriateness of decisions regarding the identification, evaluation, placement or provision of a free appropriate public education for a particular child with a disability by the Jal Public School District that is or may be responsible under state law for developing and implementing the child's IEP or ensuring that a FAPE is made available to the child; the IDEA does not authorize due process hearing officers to consider claims asserting that the department should be required to provide direct services to a child with a disability pursuant to 20 USC Sec. 1413(g)(1) and 34 CFR Sec. 300.227 because the responsible public agency is unable to establish and maintain appropriate programs of FAPE, or that the department has failed to adequately perform its duty of general supervision over educational programs for children with disabilities in New Mexico; accordingly, a due process hearing is not the proper forum for consideration of such claims and the department will decline to refer such claims against it to a hearing officer; such claims may be presented through the state-level complaint procedure under Subsection H of 6.31.2.13 NMAC above.
- (4) Bases for requesting expedited hearing.
  - (a) Pursuant to 34 CFR Sec. 300.532 and 20 USC Sec. 1415(k)(3), a parent may request an expedited hearing to review any decision regarding placement or a manifestation determination under 34 CFR Secs. 300.530-300.531.
  - (b) Pursuant to 34 CFR Sec. 300.532(c) and 20 USC Sec. 1415(k)(3), the Jal Public School District may request an expedited hearing if it believes that maintaining the current placement of a child is substantially likely to result in injury to the child or others.
- (5) Request for hearing. A parent requesting a due process hearing shall transmit written notice of the request to the Jal Public School District whose actions are in question and to the SEB of the department. The Jal Public School District, if requesting a due process hearing, shall transmit written notice of the request to the parent(s) and to the SEB of the department. The written request shall state with specificity the nature of the dispute and shall include:
  - (a) the name of the child;
  - (b) the address of the residence of the child (or available contact information in the case of a homeless child);
  - (c) the name of the school the child is attending;
  - (d) the name of the public agency, if known;
  - (e) the name, address and telephone number(s) of the party making the request (or available contact information in the case of a homeless party) and, if the party is represented by an attorney or advocate, the name, address and telephone number(s) of the attorney or advocate;
  - (f) a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem;
  - (g) a description of efforts the parties have made to resolve their dispute at the local level before filing a request for due process; and
  - (h) a proposed resolution of the problem to the extent known and available to the party requesting the



- hearing at the time;
- (i) a request for an expedited hearing must also include a statement of facts sufficient to show that a requesting parent or the Jal Public School District is entitled to an expedited hearing under 34 CFR Sec. 300.532(c) or 20 USC Sec. 1415(k)(3);
  - (j) a request for a hearing must be in writing and signed and dated by the parent or the authorized Jal Public School District representative; an oral request made by a parent who is unable to communicate by writing shall be reduced to writing by the Jal Public School District and signed by the parent;
  - (k) a request for hearing filed by or on behalf of a party who is represented by an attorney shall include a sufficient statement authorizing the representation; a written statement on a client's behalf that is signed by an attorney who is subject to discipline by the New Mexico supreme court for a misrepresentation shall constitute a sufficient authorization; and
  - (l) a party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of this paragraph....

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

**J. Appeal.**

- (1) The parent of a student with a disability who disagrees with any decision regarding the placement or the manifestation determination under this section, or an administrative authority that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to Subsection I of 6.31.2.13 NMAC.
- (2) A hearing officer who hears a matter under Paragraph (1) of Subsection J of 6.11.2.11 NMAC, has the authority provided in 34 CFR Sec. 300.532(b).
- (3) When an appeal under this subsection has been made by either the parent or the administrative authority, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in Subsections B or E of this section, which ever occurs first, unless the parent and the administrative authority agree otherwise.

*The Jal Public School District will provide the parent a "Parent and Child Rights in Special Education Procedural Safeguards Notice" at least one time per year and upon receipt of a request for a due process hearing filed by a parent. The "Parent and Child Rights in Special Education Procedural Safeguards Notice" informs parents of what must be included in a request for due process hearing. The NMPED has developed a model form for use when filing a due process hearing request, available through the NMPED website: [http://ped.state.nm.us/SEB/2012/Due\\_Process\\_Hearing\\_Form\\_02\\_10\\_12.doc](http://ped.state.nm.us/SEB/2012/Due_Process_Hearing_Form_02_10_12.doc).*

**D. Response to a Request for a Due Process Hearing (including Prior Written Notice and Notice of Insufficiency)**

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

...

**I. Due Process Hearings.**

...

- (6) Response to request for hearing.
  - (a) A request for a hearing shall be deemed to be sufficient unless the party receiving the notice of request notifies the hearing officer and the other party in writing that the receiving party believes the request has not met the requirements of Paragraph (5) of Subsection I of 6.31.2.13 NMAC.
  - (b) Jal Public School District response.
    - (i) In general. If the Jal Public School District has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process hearing request, the Jal Public School District shall, within 10 days of its receipt of the request, send to the parent a response that meets the requirements of 34 CFR Sec. 300.508(e) and 20 USC Sec. 1415(c)(2)(B)(i). This requirement presents an additional opportunity for parties to clarify

- and potentially resolve their dispute(s).
- (ii) **Sufficiency.** A response filed by the Jal Public School District pursuant to (i) of Subparagraph (b) of Paragraph (6) shall not be construed to preclude the Jal Public School District from asserting that the parent's due process hearing request was insufficient where appropriate.
  - (c) **Other party response.** Except as provided in Subparagraph (b) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC above, the non-complaining party shall, within 10 days of its receipt of the request for due process, send to the requesting party a response that specifically addresses the issues raised in the hearing request. This requirement also presents an opportunity to clarify and potentially resolve disputed issues between the parties.
  - (d) A party against whom a due process hearing request is filed shall have a maximum of 15 days after receiving the request to provide written notification to the hearing officer of insufficiency under Subparagraph (a) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC. The 15 day timeline for the Jal Public School District to convene a resolution session under Paragraph (8) of Subsection I of 6.31.2.13 NMAC below runs at the same time as the 15 day timeline for filing notice of insufficiency.

“If the party receiving the due process complaint notice believes the complaint is insufficient, the hearing officer determines the sufficiency of the complaint. There is no requirement that the party who alleges that a notice is insufficient state in writing the basis for the belief.” 71 Fed. Reg. 46698 (August 14, 2006).

*When the Jal Public School District receives a request for due process hearing, the Jal Public School District will timely provide the parent with a prior written notice regarding the subject matter contained in the parent's due process hearing request, if the Jal Public School District has not already done so. The Jal Public School District will provide prior written notice even in the event that the Jal Public School District believes the due process hearing request is insufficient. If the Jal Public School District believes the due process hearing request is insufficient, the Jal Public School District will timely notify the hearing officer.*

#### **E. Hearing Officer Ruling on Notice of Insufficiency**

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

...

#### **I. Due Process Hearings.**

...

##### **(6) Response to request for hearing.**

...

- (e) **Determination.** Within five days of receipt of a notice of insufficiency under Subparagraph (d) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC above, the hearing officer shall make a determination on the face of the due process request of whether it meets the requirements of Paragraph (5) of Subsection I of 6.31.2.13 NMAC, and shall immediately notify the parties in writing of such determination.

“If the hearing officer determines that the notice is not sufficient, the hearing officer’s decision will identify how the notice is insufficient, so that the filing party can amend the notice, if appropriate.” 71 Fed. Reg. 46698 (August 14, 2006).

#### **F. Amended Due Process Hearing Request**

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

...

#### **I. Due Process Hearings.**

...

##### **(6) Response to request for hearing.**

...

- (f) **Amended due process request.** A party may amend its due process request only if:

- (i) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to Paragraph (8) of Subsection I of 6.31.2.13 NMAC; or
- (ii) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.
- (g) **Applicable timeline.** The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under Paragraph (8) of Subsection I of 6.31.2.13 NMAC.

“If the complaint is determined to be insufficient and is not amended, the complaint could be dismissed.” 71 Fed. Reg. 46698 (August 14, 2006).

“This process ensures that the parties involved understand and agree on the nature of the complaint before the hearing begins.” 71 Fed. Reg. 46698 (August 14, 2006).

“It is up to hearing officers to determine whether a specific complaint is within the allowable timeline, including whether an amended complaint relates to a previous complaint.” 71 Fed. Reg. 46698 (August 14, 2006).

*The Jal Public School District may seek dismissal of a due process hearing complaint if the parent’s request is insufficient and is not properly or timely remedied through an amendment.*

#### **G. Resolution Session/Resolution Period**

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

...

#### **I. Due Process Hearings.**

...

##### **(8) Preliminary meeting**

- (a) **Resolution session.** Before the opportunity for an impartial due process hearing under Paragraphs (3) or (4) of Subsection I of 6.31.2.13 NMAC above, the Jal Public School District will convene a resolution session with the parents and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process request, unless the parents and the Jal Public School District agree in writing to waive such a meeting, or agree to use the FIEP or mediation process instead. The resolution session:
  - (i) will occur within 15 days of the respondent's receipt of a request for due process;
  - (ii) will include a representative of the Jal Public School District who has decision-making authority on behalf of that agency;
  - (iii) will not include an attorney of the Jal Public School District unless the parent is accompanied by an attorney; and
  - (iv) will provide an opportunity for the parents of the child and the Jal Public School District to discuss the disputed issue(s) and the facts that form the basis of the dispute, in order to attempt to resolve the dispute;
  - (v) if the parties desire to have their discussions in the resolution session remain confidential, they may agree in writing to maintain the confidentiality of all discussions and that such discussions can not later be used as evidence in the due process hearing or any other proceeding; and
  - (vi) if an agreement is reached following a resolution session, the parties shall execute a legally binding agreement that is signed by both the parent and a representative of the agency who has the authority to bind that agency, and which is enforceable in any state court of competent jurisdiction or in a district court of the United States; if the parties execute an agreement pursuant to a resolution session, a party may void this agreement within three business days of the agreement's execution; further, if the resolution session participants reach agreement on any IEP-related matters, the binding agreement must state that the Jal Public School District will subsequently convene an IEP meeting to inform the student's service providers of their responsibilities under that agreement, and revise the student's IEP accordingly.

- (b) **FIEP meeting; mediation.** Parties to a due process hearing may choose to convene a FIEP meeting or mediation instead of a resolution session. To do so, the party filing the request for the hearing must (and the responding party may) notify the hearing officer in writing within one business day of the parties' decision to jointly request one of these options. A FIEP meeting or mediation shall be completed not later than 14 days after the assignment of the IEP facilitator or mediator by the SEB, unless, upon joint request by the parties, an extension is granted by the hearing officer. Each session in the FIEP or mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the hearing. The requirements for mediation, as set forth at Subparagraph (c) of Paragraph (3) of Subsection H of 6.31.2.13 NMAC, apply to mediation in this context, as well.
- (c) **Applicable timelines.**
  - (i) If the parties agree to convene a resolution session, the applicable timelines for the due process hearing shall be suspended for up to 30 days from the date the due process request was received by the SEB (except in the case of an expedited hearing), and the meeting shall proceed according to the requirements set forth under Subparagraph (a) of Paragraph (8) of Subsection I of 6.31.2.13 NMAC above.
  - (ii) If the parties agree to convene a FIEP meeting or mediation, the Jal Public School District will contact the person or entity identified by the SEB to arrange for mediation or a FIEP meeting, as appropriate. Except for expedited hearings, the parties to the FIEP meeting or mediation process may jointly request that the hearing officer grant a specific extension of time for the prehearing conference and for completion of the hearing beyond the 20 school day period for issuance of the hearing decision. The hearing officer may grant such extensions in a regular case but may not exceed the 45 day deadline in an expedited case.
  - (iii) If the parties agree to waive all preliminary meeting options and proceed with the due process hearing, the hearing officer shall send written notification to the parties that the applicable timelines for the due process hearing procedure shall commence as of the date of that notice. The hearing officer shall thereafter proceed with the prehearing procedures, as set forth under Paragraph (12) of Subsection I of 6.31.2.13 NMAC.
- (d) **Resolution.** Upon resolution of the dispute, the party who requested the due process hearing shall transmit a written notice informing the hearing officer and the SEB that the matter has been resolved and withdrawing the request for hearing. The hearing officer shall transmit an appropriate order of dismissal to the parties and the SEB.
- (e) **Hearing.** If the parties convene a resolution session and they have not resolved the disputed issue(s) within 30 days of the receipt of the due process request by the SEB in a non-expedited case, the Jal Public School District will (and the parents may) notify the hearing officer in writing within one business day of reaching this outcome. The hearing officer shall then promptly notify the parties in writing that the due process hearing shall proceed and all applicable timelines for a hearing under this part shall commence as of the date of such notice.
- (f) Further adjustments to the timelines may be made as provided in 34 CFR Sec. 300.510(b) and (c).
- (g) The resolution of disputes by mutual agreement is strongly encouraged and nothing in these rules shall be interpreted as prohibiting the parties from engaging in settlement discussions at any time before, during or after an ADR meeting, a due process hearing or a civil action.

“We do not believe it is necessary to require an LEA to notify the parent within five days of receiving a due process complaint about the LEA’s intention to convene or waive the resolution process. An LEA that wishes to engage in a resolution meeting will need to contact the parent to arrange the meeting soon after the due process complaint is received in order to ensure that the resolution meeting is held within 15 days.” 71 Fed. Reg. 46700 (August 14, 2006).

“We urge LEAs and parents to act cooperatively in determining who will attend the resolution meeting, as a resolution meeting is unlikely to result in any resolution of the dispute if the parties cannot even agree on who should attend. The parties should keep in mind that the resolution process offers a valuable chance to resolve disputes before expending what can be considerable time and money in due process hearings. We decline to regulate further on how to resolve disputes about who should attend these meetings in the absence of information about specific problems in the process.” 71 Fed. Reg. 46701 (August 14, 2006).

“There is no authority in the Act for an LEA to permit a court-appointed advocate to attend the resolution meeting in place of a parent, unless the public agency has appointed that individual as a surrogate parent in accordance with § 300.519, or the agency determines that the person is a person acting in the place of the biological or adoptive parent of the child in accordance with § 300.30(a)(4).” 71 Fed. Reg. 46701 (August 14, 2006).

“In situations where an LEA convenes a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint, and the parent fails to participate in the resolution meeting, the LEA would need to continue to make diligent efforts throughout the remainder of the 30-day resolution period to convince the parent to participate in the resolution meeting. If, however, at the end of the 30-day resolution period, the LEA is still unable to convince the parent to participate in the resolution meeting, we believe that an LEA should be able to seek intervention by a hearing officer to dismiss the complaint.” 71 Fed. Reg. 46702 (August 14, 2006).

*The Jal Public School District will provide the parent a “Parent and Child Rights in Special Education Procedural Safeguards Notice” at least one time per year and upon receipt of a request for a due process hearing filed by a parent. The “Parent and Child Rights in Special Education Procedural Safeguards Notice” informs parents of the requirement of a resolution session. The Jal Public School District will contact the parent to arrange a resolution session within the required timeframe, unless the parties agree in writing to waive the resolution session. The Jal Public School District and the parent may also agree to participate in a FIEP meeting or mediation instead of a resolution session. The Jal Public School District may seek dismissal of a due process hearing complaint if the parent refuses to participate in a resolution session and the Jal Public School District has not agreed to waive the resolution session.*

#### **H. Summary Due Process Hearing Procedures (Alternative to Due Process Hearing)**

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

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#### **I. Due Process Hearings.**

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- (15) Summary due process hearing. These summary due process hearing procedures are designed to afford parents and public agencies an alternative, voluntary dispute resolution process that requires less time and expense than a traditional due process hearing. The use of summary due process hearing procedures shall not alter the requirement that the Jal Public School District convene a resolution session within 15 days of its receipt of the request for the hearing, unless the parties agree to waive that option in writing or choose to use a FIEP meeting or mediation instead.
- (a) Any party requesting a due process hearing may request that the dispute be assigned to a summary due process hearing track. A request for a summary due process hearing may be submitted simultaneously with the request for due process hearing, at the prehearing scheduling conference, or at a later time by agreement of all parties.
  - (b) Any party opposing a request for summary due process shall state its objection within 5 days of the date of receipt of the request for a summary due process hearing. The summary due process hearing option is voluntary. If a party timely states its opposition to this option, the matter will be placed on a traditional due process hearing track.
  - (c) On or before 10 days before the date of the hearing, each party shall submit a statement of proposed stipulated facts to the opposing party. On or before five days before the date of the hearing, the parties shall submit a joint statement of stipulated facts to the hearing officer. All agreed-upon stipulated facts shall be deemed admitted, and evidence shall not be permitted for the purpose of establishing these facts.
  - (d) On or before 5 days before the summary due process hearing, each party shall produce to the opposing party and to the hearing officer a copy of all documents that the party seeks to introduce into evidence at the hearing and identify all witnesses that the party intends to call to testify at the hearing.
  - (e) Each party shall have one half (1/2) day to present its case. In the event that extensive cross examination, arguments or other factors impede a party's ability to complete its case in one half day, the hearing officer shall have discretion to extend the time for the hearing, as needed.

- (f) The hearing officer shall issue a decision to the parties within 7 days of the completion of the summary due process hearing.
- (g) Except as modified herein, the procedural rules and procedures applicable to due process hearings as stated in Subsection I of 6.31.2.13 NMAC shall also apply to summary due process hearings.

*The summary due process hearing option is voluntary.*

## **I. Prehearing Procedures**

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

...

### **I. Due Process Hearings.**

...

- (12) Prehearing procedures. Unless extended by the hearing officer at the request of a party, within 14 days of the commencement of the timeline for a due process hearing and as soon as is reasonably practicable in an expedited case, the hearing officer shall conduct an initial prehearing conference with the parent and the Jal Public School District to:
  - (a) identify the issues (disputed claims and defenses) to be decided at the hearing and the relief sought;
  - (b) establish the hearing officer's jurisdiction over IDEA and gifted issues;
  - (c) determine the status of the resolution session, FIEP meeting or mediation between the parties, and determine whether an additional prehearing conference will be necessary as a result;
  - (d) review the hearing rights of both parties, as set forth in Paragraphs (16) and (17) of Subsection I of 6.31.2.13 NMAC below, including reasonable accommodations to address an individual's need for an interpreter at public expense;
  - (e) review the procedures for conducting the hearing;
  - (f) set a date, time and place for the hearing that is reasonably convenient to the parents and child involved; the hearing officer shall have discretion to determine the length of the hearing, taking into consideration the issues presented;
  - (g) determine whether the child who is the subject of the hearing will be present and whether the hearing will be open to the public;
  - (h) set the date by which any documentary evidence intended to be used at the hearing by the parties must be exchanged; the hearing officer shall further inform the parties that, not less than 5 business days before a regular hearing or, if the hearing officer so directs, not less than two business days before an expedited hearing, each party shall disclose to the other party all evaluations completed by that date and recommendations based on the evaluations that the party intends to use at the hearing; the hearing officer may bar any party that fails to disclose such documentary evidence, evaluation(s) or recommendation(s) by the deadline from introducing the evidence at the hearing without the consent of the other party;
  - (i) as appropriate, determine the current educational placement of the child pursuant to Paragraph (27) of Subsection I of 6.31.2.13 NMAC below;
  - (j) exchange lists of witnesses and, as appropriate, entertain a request from a party to issue an administrative order compelling the attendance of a witness or witnesses at the hearing;
  - (k) address other relevant issues and motions; and
  - (l) determine the method for having a written, or at the option of the parent, electronic verbatim record of the hearing; the Jal Public School District is responsible for arranging for the verbatim record of the hearing; and
  - (m) the hearing officer shall transmit to the parties and the SEB of the department a written summary of the prehearing conference; the summary shall include, but not be limited to, the date, time and place of the hearing, any prehearing decisions, and any orders from the hearing officer.
- (13) Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.
- (14) In order to limit testimony at the hearing to only those factual matters which remain in dispute between the parties, on or before 10 days before the date of the hearing, each party shall submit a statement of proposed stipulated facts to the opposing party. On or before five days before the date of



the hearing, the parties shall submit a joint statement of stipulated facts to the hearing officer. All agreed-upon stipulated facts shall be deemed admitted, and evidence shall not be permitted for the purpose of establishing these facts.

“We do not believe it is necessary to regulate further on the other pre-hearing issues and decisions mentioned by the commenters because we believe that States should have considerable latitude in determining appropriate procedural rules for due process hearings as long as they are not inconsistent with the basic elements of due process hearings and rights of the parties set out in the Act and these regulations. The specific application of those procedures to particular cases generally should be left to the discretion of hearing officers who have the knowledge and ability to conduct hearings in accordance with standard legal practice. There is nothing in the Act or these regulations that would prohibit a hearing officer from making determinations on procedural matters not addressed in the Act so long as such determinations are made in a manner that is consistent with a parent’s or a public agency’s right to a timely due process hearing.” 71 Fed. Reg. 46704 (August 14, 2006).

*The Jal Public School District will participate in pre-hearing conferences and will comply with scheduling and other pre-hearing orders of the hearing officer.*

## **J. Due Process Hearing Procedures**

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

...

#### **I. Due Process Hearings.**

...

##### **(16) Any party to a hearing has the right to:**

- (a) be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- (b) present evidence and confront, cross-examine and compel the attendance of witnesses;
- (c) prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before a regular hearing or, if the hearing officer so directs in the prehearing summary, at least two business days before an expedited hearing;
- (d) obtain a written, or, at the option of the parents, electronic verbatim record of the hearing; and
- (e) obtain written, or, at the option of the parents, electronic findings of fact and decisions.

##### **(17) Parents involved in hearings also have the right to:**

- (a) have the child who is the subject of the hearing present; and
- (b) open the hearing to the public.

##### **(18) The record of the hearing and the findings of fact and decisions described above must be provided at no cost to the parents.**

##### **(19) Limitations on the hearing.**

- (a) The party requesting the due process hearing shall not be allowed to raise issues at the hearing that were not raised in the request for a due process hearing (including an amended request, if such amendment was previously permitted) filed under Paragraph (5) of Subsection I of 6.31.2.13 NMAC, unless the other party agrees otherwise.

...

##### **(20) Rules for expedited hearings. The rules in Paragraphs (4) through (19) of Subsection I of 6.31.2.13 NMAC shall apply to expedited due process hearings with the following exceptions.**

- (a) The SEB of the department and the hearing officer shall ensure that a hearing is held within 20 school days of the date the request for hearing is received by the SEB, and a written decision is reached within 10 school days of the completion of the hearing, without exceptions or extensions, and thereafter mailed to the parties.
- (b) The hearing officer shall seek to hold the hearing and issue a decision as soon as is reasonably practicable within the time limit described in Subparagraph (a) of Paragraph (20) of Subsection I of 6.31.2.13 NMAC above, and shall expedite the proceedings with due regard for any progress in a resolution session, FIEP meeting or mediation, the parties' need for adequate time to prepare and the hearing officer's need for time to review the evidence and prepare a decision after the hearing.



- (c) The parties shall decide whether to convene a resolution session, FIEP meeting, or mediation before the commencement of an expedited hearing in accordance with Paragraph (8) of Subsection I of 6.31.2.13 NMAC, and are encouraged to utilize one of these preliminary meeting options. However, in the case of an expedited hearing, agreement by the parties to convene a resolution session, FIEP meeting or mediation shall not result in the suspension or extension of the timeline for the hearing stated under Subparagraph (a) of Paragraph (20) of Subsection I of 6.31.2.13 NMAC above. The timeline for resolution sessions provided in 34 CFR Sec. 300.532(c)(3) shall be observed.
- (d) Subparagraph (a) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC relating to sufficiency of the request for the expedited due process hearing does not apply to expedited hearings.
- (e) The hearing officer may shorten the 15 day timeline for providing notice of insufficiency of a request for an expedited due process hearing to 10 school days.
- (f) The hearing officer may shorten the timeline for the exchange of proposed stipulated facts between the parties as he deems necessary and appropriate given the circumstances of a particular case. The hearing officer may also shorten the timeline for providing agreed-upon stipulated facts to the hearing officer to two school days before the hearing.
- (g) Decisions in expedited due process hearings are final, unless a party brings a civil action as provided in Paragraph (25) of Subsection I of 6.31.2.13 NMAC below.

*The Jal Public School District will provide the parent a "Parent and Child Rights in Special Education Procedural Safeguards Notice" at least one time per year and upon receipt of a request for a due process hearing filed by a parent. The "Parent and Child Rights in Special Education Procedural Safeguards Notice" informs parents of the basics of a due process hearing.*

#### **K. Decision of the Hearing Officer**

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

...

#### **I. Due Process Hearings.**

...

- (11) Withdrawal of request for hearing. A party may unilaterally withdraw a request for due process at any time before a decision is issued. A written withdrawal that is transmitted to the hearing officer, and the other party at least two business days before a scheduled hearing, shall be without prejudice to the party's right to file a later request on the same claims, which shall ordinarily be assigned to the same hearing officer. A withdrawal that is transmitted or communicated within two business days of the scheduled hearing shall ordinarily be with prejudice to the party's right to file a later request on the same claims unless the hearing officer orders otherwise for good cause shown. A withdrawal that is entered during or after the hearing but before a decision is issued shall be with prejudice. In any event, the hearing officer shall enter an appropriate order of dismissal.

...

#### **(21) Decision of the hearing officer.**

- (a) In general. Subject to Subparagraph (b) of Paragraph (21) of Subsection I of 6.31.2.13 NMAC below, a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (FAPE).
- (b) Procedural issues. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies:
  - (i) impeded the child's right to a FAPE;
  - (ii) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student; or
  - (iii) caused a deprivation of educational benefits.
- (c) Rule of construction. Nothing in this paragraph shall be construed to preclude a hearing officer from ordering the Jal Public School District to comply with procedural requirements under this section.

...

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

*The Jal Public School District will comply with a final decision of a hearing officer, unless otherwise ordered by a court.*

#### **L. Children Enrolled by Their Parents in Private Schools When FAPE Is at Issue**

**Authority: 34 CFR §300.148 Placement of children by parents when FAPE is at issue.**

- (a) General. This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§300.131 through 300.144.
- (b) Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§300.504 through 300.520.
- (c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.
- (d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied—
- (1) If—
    - (i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
    - (ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;
  - (2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in § 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or
  - (3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.
- (e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement—
- (1) Must not be reduced or denied for failure to provide the notice if—
    - (i) The school prevented the parents from providing the notice;
    - (ii) The parents had not received notice, pursuant to § 300.504, of the notice requirement in paragraph (d)(1) of this section; or
    - (iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and
  - (2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if—
    - (i) The parents are not literate or cannot write in English; or
    - (ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to

the child.

*The Jal Public School District will provide the parent a "Parent and Child Rights in Special Education Procedural Safeguards Notice" at least one time per year and upon receipt of a request for a due process hearing filed by a parent. The "Parent and Child Rights in Special Education Procedural Safeguards Notice" informs parents of the basics of a due process hearing.*

#### **M. Expenses of the Due Process Hearing and Attorney's Fees**

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

...

#### **I. Due Process Hearings.**

...

(24) Expenses of the hearing. The Jal Public School District shall be responsible for paying administrative costs associated with a hearing, including the hearing officer's fees and expenses and expenses related to the preparation and copying of the verbatim record, its transmission to the SEB, and any further expenses for preparing the complete record of the proceedings for filing with a reviewing federal or state court in a civil action. Each party to a hearing shall be responsible for its own legal fees or other costs, subject to Paragraph (26) of Subsection I of 6.31.2.13 NMAC below.

...

(26) Attorney fees.

- (a) In any action or proceeding brought under 20 USC Sec. 1415, the court, in its discretion and subject to the further provisions of 20 USC Sec. 1415(i) and 34 CFR Sec. 300.517, may award reasonable attorney fees as part of the costs to:
  - (i) the parent of a child with a disability who is a prevailing party;
  - (ii) a prevailing public agency against the attorney of a parent who files a request for due process or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
  - (iii) a prevailing public agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.
- (b) Any action for attorney fees must be filed within 30 days of the receipt of the last administrative decision.
- (c) Opportunity to resolve due process complaints. A meeting conducted pursuant to Subparagraph (a) of Paragraph (8) of Subsection I of 6.31.2.13 NMAC shall not be considered:
  - (i) a meeting convened as a result of an administrative hearing or judicial action; or
  - (ii) an administrative hearing or judicial action for purposes of this paragraph.
- (d) Hearing officers are not authorized to award attorney fees.
- (e) Attorney fees are not recoverable for actions or proceedings involving services to gifted children or other claims based solely on state law.

*The Jal Public School District will pay expenses of a hearing as required to do so. The Jal Public School District will provide the parent a "Parent and Child Rights in Special Education Procedural Safeguards Notice" at least one time per year and upon receipt of a request for a due process hearing filed by a parent. The "Parent and Child Rights in Special Education Procedural Safeguards Notice" informs parents generally of the circumstances under which a prevailing parent may recover attorney's fees from a school district and a prevailing school district may recover attorney's fees from the parent.*

#### **XIII. CIVIL ACTION**

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

...

#### **I. Due Process Hearings.**

...

**(25) Civil action.**

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

*The Jal Public School District will provide the parent a “Parent and Child Rights in Special Education Procedural Safeguards Notice” at least one time per year and upon receipt of a request for a due process hearing filed by a parent. The “Parent and Child Rights in Special Education Procedural Safeguards Notice” informs parents of the timelines for appealing the decision of a hearing officer.*

**Jal Public School District  
PROCEDURES  
FOR THE  
PROVISION OF  
SPECIAL EDUCATION SERVICES  
FOR  
STUDENTS WITH DISABILITIES AND GIFTED STUDENTS**

**Chapter 3. – FULL AND INDIVIDUAL EVALUATION**

Chapter 3. Adopted Pursuant to Board Policy: Equal Education Opportunities: Special Education

Effective Date of Procedures: March 19, 2012

Revised January 2010

Revised September 2010

Revised February 2012

## **Chapter 3. - FULL AND INDIVIDUAL EVALUATION**

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## Chapter 3. - FULL AND INDIVIDUAL EVALUATION

*The Jal Public School District recognizes the Public Education Department's rulemaking authority (established by the Public Education Department Act) as follows: "The secretary may make and adopt such reasonable and procedural rules as may be necessary to carry out the duties of the department and its divisions.... Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary...." (NMSA 1978, §9-24-8(D)).*

*In addition to making and adopting rules, the NMPED provides guidance to local educational agencies. To the extent that the NMPED's guidance is consistent with the IDEA (and its implementing federal regulations and state statutes and rules), and does not impose a requirement that is not otherwise imposed by the IDEA (and its implementing federal regulations and state statutes and rules) without specific notice under 34 C.F.R. §300.299(a)(2), the Jal Public School District will follow the guidance of the NMPED.*

### I. TIMELINES

#### A. Timeline for Initial Evaluations

Authority: 34 CFR §300.301 Initial evaluations.

(a) General. The Jal Public School District will conduct a full and individual initial evaluation, in accordance with §§300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

...

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

(1) (i) Must be conducted within 60 days of receiving parental consent for the evaluation; or

(ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and

(2) Must consist of procedures--

(i) To determine if the child is a child with a disability under §300.8; and

(ii) To determine the educational needs of the child.



(d) Exception. The timeframe described in paragraph (c)(1) of this section shall not apply to Jal Public School District if--

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under §300.8.

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

**Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS**

...

**D. Evaluations and reevaluations**

**(1) Initial evaluations**

(a) The Jal Public School District will conduct a full and individual initial evaluation, at no cost to the parent, and in compliance with requirements of 34 CFR Secs. 300.305 and 300.306 and other department rules and standards before the initial provision of special education and related services to a child with a disability.

...

**(c) Procedures for initial evaluation.**

(i) The initial evaluation must be conducted within 60 calendar days of receiving parental consent for evaluation.

(ii) The Jal Public School District will follow evaluation procedures in compliance with applicable requirements of 34 CFR Sec. 300.304 and other department rules and standards to determine: (1) if the child is a child with a disability under 34 CFR Sec. 300.8; and (2) if the child requires special education and related services to benefit from their education program.

(iii) The Jal Public School District will maintain a record of the receipt, processing and disposition of any referral for an individualized evaluation. All appropriate evaluation data, including complete SAT file documentation and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the multi-disciplinary team or IEP team.

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

(i) if the parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(ii) if the child enrolls in a school of another LEA after the 60 day time frame in this subsection has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under 34 CFR Sec. 300.8.

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

(f) The multi-disciplinary team including the parent and child, if appropriate, must meet to

**determine if the child is a child with a disability and requires an IEP upon completion of the initial evaluation.**

“We believe § 300.300(b) is clear that the ‘initial provision of services’ means the first time a parent is offered special education and related services after the child has been evaluated in accordance with the procedures in §§ 300.301 through 300.311, and has been determined to be a child with a disability, as defined in § 300.8.” 71 Fed. Reg. 46633 (August 14, 2006).

“If a parent who revoked consent for special education and related services later requests that his or her child be re-enrolled in special education, an LEA must treat this request as a request for an initial evaluation under § 300.301 (rather than a reevaluation under § 300.303).” 73 Fed. 73015 (December 1, 2008).

“The 60-day timeframe begins when the public agency receives the consent for evaluation.” 71 Fed. Reg. 46636 (August 14, 2006).

“We believe it is important that it is understood that the 60-day or State-established timeframe does not apply when a child transfers from one school to another school in the same public agency. When a child transfers from one school to another school in the same public agency, we expect that an initial evaluation will be conducted within 60 days of receiving parental consent for the evaluation, or within the State-established timeframe.” 71 Fed. Reg. 46638 (August 14, 2006).

Regarding the exception for transfer students: “We do not believe it is necessary to define the phrase ‘sufficient progress’ because the meaning will vary depending on the specific circumstances in each case. As one commenter noted, there may be legitimate reasons for not completing the evaluation within the 60-day timeframe, such as differences in assessment instruments used in the previous and new public agencies, and the length of time between a child leaving one school and enrolling in the next school. Therefore, we believe that whether a new public agency is making sufficient progress to ensure prompt completion of an evaluation is best left to the discretion of State and local officials and parents to determine.” 71 Fed. Reg. 46638 (August 14, 2006).

“Before determining that a child has a specific learning disability, §300.309(b) requires that the evaluation team consider data that demonstrate that prior to, or as part of the referral process, the child received appropriate instruction in regular education settings and that data-based documentation of repeated assessments of achievement during instruction was provided to the child’s parents. If the child has not made adequate progress under these conditions after an appropriate period of time, the final regulations further require that the public agency refer the child for an evaluation to determine if special education and related services are needed. Under the final regulations, the child’s parents and the team of qualified professionals, described in §300.306(a)(1), are permitted to extend the evaluation timelines described in §§ 300.301 through 300.303 by mutual written agreement.” 71 Fed. Reg. 46750 (August 14, 2006). *(For more information, see Chapter 1 Child Find.)*

*The Jal Public School District will comply with the 60-day timeline for initial evaluations, and will report its compliance through the Student Teacher Accountability Reporting System (STARS) on the Special Education Events Template.*

*In the event of a delay, the Jal Public School District will report the range of days beyond the timeline when the evaluation was completed and any reasons for delays in STARS on the Special Education Events Template, "Non Compliance Reasons." The Jal Public School District will use valid STARS Code Sets available on the NMPED website at <http://www.ped.state.nm.us/stars/documentation.html>. The Jal Public School District will monitor and take appropriate action to address noncompliance.*

*The exceptions to the 60-day timeline (if the parent of a child repeatedly fails or refuses to produce the child for evaluation; or if the child enrolls in a school of the Jal Public School District after the 60-day timeline begins and prior to a determination by the child’s previous LEA as to whether the child is a child with a disability) are recorded in STARS, on the Special Education Events Template, "Noncompliance Reasons."*

## **B. Timeline for Reevaluations**

**Authority: 34 CFR §300.303 Reevaluations.**

**(a) General.** *The Jal Public School District will ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311—*

*(1) If the Jal Public School District determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or*

*(2) If the child's parent or teacher requests a reevaluation.*

**(b) Limitation.** *A reevaluation conducted under paragraph (a) of this section--*

*(1) May occur not more than once a year, unless the parent and the Jal Public School District agree otherwise; and*

*(2) Must occur at least once every 3 years, unless the parent and the Jal Public School District agree that a reevaluation is unnecessary.*

**Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS**

...  
D.

...

**(2) Reevaluations**

**(a)** Each LEA must ensure that a reevaluation of each child is conducted at least once every three years, unless the parent and the Jal Public School District agree that a reevaluation is unnecessary, and is in compliance with the requirements of 34 CFR Secs. 300.303-300.311, and any other applicable department rules and standards.

**(b)** Reevaluations may be conducted more often if:

**(i)** the LEA determines the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

**(ii)** the child's parent or teacher requests a reevaluation.

**(c)** Reevaluations may not occur more than once a year, unless the parent and Jal Public School District agree otherwise.

"An initial evaluation of a child is the first complete assessment of a child to determine if the child has a disability under the Act, and the nature and extent of special education and related services required. Once a child has been fully evaluated, a decision has been rendered that a child is eligible for services under the Act, and the required services have been determined, any subsequent evaluation of a child would constitute a reevaluation." 71 Fed. Reg. 46640 (August 14, 2006).

"[A] reevaluation cannot be conditioned on the parent providing a reason for requesting a reevaluation." 71 Fed. Reg. 46640 (August 14, 2006).

"If a parent requests a reevaluation and the public agency disagrees that a reevaluation is needed, the public agency must provide prior written notice to the parent, consistent with § 300.503, that explains, among other things, why the

agency refuses to conduct the reevaluation and the parent's right to contest the agency's decision through mediation or a due process hearing." 71 Fed. Reg. 46640 (August 14, 2006).

"We believe that in reaching an agreement that a reevaluation is unnecessary, as provided for in § 300.303(b), the parent and public agency will discuss the advantages and disadvantages of conducting a reevaluation, as well as what effect a reevaluation might have on the child's educational program. Therefore, we do not agree with the commenter that additional procedural safeguards are necessary to ensure that parents who agree that a reevaluation is unnecessary are aware of the implications of their decision." 71 Fed. Reg. 46641 (August 14, 2006).

"The review of existing data is part of the reevaluation process. Section 300.305(a), consistent with section 614(c)(1) of the Act, is clear that, as part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, must review existing evaluation data, and on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine whether the child continues to have a disability, and the educational needs of the child. Therefore, the opportunity for a parent and the public agency to agree that a reevaluation is unnecessary occurs before a reevaluation begins." 71 Fed. Reg. 46641 (August 14, 2006).

*The Jal Public School District will conduct timely reevaluations as required by the IDEA. The Jal Public School District will document agreements that a reevaluation is unnecessary.*

**Authority: 34 CFR §300.305 Additional requirements for evaluations and reevaluations.**

**(e) Evaluations before change in placement.**

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

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

...

**G. Graduation planning and post-secondary transitions**

...

- (5) For a child whose eligibility terminates due to graduation from secondary school with a regular diploma or due to reaching his twenty-second birthday, the Jal Public School District will provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's post-secondary goals

pursuant to 34 CFR Sec. 300.305(e)(3).

“We do not believe that the regulations should require public agencies to conduct evaluations for children to meet the entrance or eligibility requirements of another institution or agency because to do so would impose a significant cost on public agencies that is not required by the Act. While the requirements for secondary transition are intended to help parents and schools assist children with disabilities transition beyond high school, section 614(c)(5) in the Act does not require a public agency to assess a child with a disability to determine the child’s eligibility to be considered a child with a disability in another agency, such as a vocational rehabilitation program, or a college or other postsecondary setting. The Act also does not require LEAs to provide the postsecondary services that may be included in the summary of the child’s academic achievement and functional performance. We believe it would impose costs on public agencies not contemplated by the Act to include such requirements in the regulations.” 71 Fed. Reg. 46644 (August 14, 2006).

*The Jal Public School District will prepare a Summary of Performance as required by the IDEA for each child with a disability prior to the child’s eligibility terminating due to graduation with a regular high school diploma or due to exceeding age eligibility for FAPE. The Summary of Performance takes the place of a reevaluation.*

*A template Summary of Performance was developed by the National Transition Documentation Summit © 2005 based on the initial work of Stan Shaw, Carol Kochhar-Bryant, Margo Izzo, Ken Benedict, and David Parker. It reflects the contributions and suggestions of numerous stakeholders in professional organizations, school districts and universities, particularly the Connecticut Interagency Transition Task Force. It is available to be freely copied or adapted for educational purposes. The model template has been developed in collaboration with the Council for Exceptional Children’s Division on Career Development and Transition (DCDT), Division on Learning Disabilities (DLD), the Council on Educational Diagnostic Services (CEDS), Learning Disability Association (LDA), the Higher Education Consortium for Special Education (HECSE), and the Council for Learning Disabilities (CLD). It is located at: [http://www.taalliance.org/conference/materials/Thursday\\_Carol\\_Pam.doc](http://www.taalliance.org/conference/materials/Thursday_Carol_Pam.doc).*

## **II. REVIEW OF EXISTING EVALUATION DATA (REED)**

**Authority: 34 CFR §300.305 Additional requirements for evaluations and reevaluations.**

- (a) Review of existing evaluation data.** As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must--
- (1) Review existing evaluation data on the child, including--**
    - (i) Evaluations and information provided by the parents of the child;**
    - (ii) Current classroom-based local or State assessments, and classroom-based observations; and**
    - (iii) Observations by teachers and related services providers; and**
  - (2) On the basis of that review, and input from the child’s parents, identify what additional data, if any, are needed to determine—**
    - (i) (A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or**
      - (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;**
    - (ii) The present levels of academic achievement and related developmental needs of the child;**

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

**Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS**

...

**D. Evaluations and reevaluations**

...

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

...

- (ii) The initial evaluation (if appropriate) and any reevaluations must begin with a review of existing information by a group that includes the parents, the other members of a child's IEP team and other qualified professionals, as appropriate, to determine what further evaluations and information are needed to address the question in 34 CFR Sec. 300.305(a)(2). Pursuant to 34 CFR Sec. 300.305(b), the group may conduct its review without a meeting.

“The phrase, ‘qualified professionals, as appropriate’ is used to provide flexibility for public agencies to include other

professionals who may not be a part of the child's IEP Team in the group that determines if additional data are needed to make an eligibility determination and determine the child's educational needs. We believe that public agencies should have flexibility in determining how to define 'qualified professionals' and we do not believe a definition should be included in the regulations." 71 Fed. Reg. 46644 (August 14, 2006).

"If a parent who revoked consent for special education and related services later requests that his or her child be re-enrolled in special education, an LEA must treat this request as a request for an initial evaluation under § 300.301 (rather than a reevaluation under § 300.303). However, depending on the data available, a new evaluation may not always be required. An initial evaluation, under § 300.305, requires a review of existing evaluation data that includes classroom based, local, or State assessments, and classroom based observations by teachers and related services providers. On the basis of that review and input from the child's parents, the IEP Team and other qualified professionals must identify what additional data, if any, are needed to determine whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child. Therefore, a public agency may not always have to expend resources on a 'new' initial evaluation." 73 Fed. 73015 (December 1, 2008).

"Based on the review of existing evaluation data, and input from the child's parents, the IEP Team and other qualified professionals, as appropriate, must determine whether additional data are needed to determine whether the child continues to be a child with a disability, and the educational needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child continues to need special education; and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum. 34 CFR §300.305(a)(2). If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of: (i) that determination and the reasons for the determination; and (ii) the right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs. 34 CFR §300.305(d)(1). Under these circumstances, the public agency is not required to conduct an assessment unless requested to do so by the child's parents. 34 CFR §300.305(d)(2). If the parents do not request an assessment, then the review of existing data may constitute the reevaluation." OSEP Letter to Anonymous (Feb. 6, 2007).

"[T]he review of existing data is part of the reevaluation process.... The reevaluation commences with the review of existing data.... [T]he public agency is not required to obtain parental consent before reviewing existing data as part of an evaluation or a reevaluation." OSEP Letter to Anonymous (Feb. 6, 2007).

*The Jal Public School District will conduct a review of existing evaluation data (REED) prior to an initial evaluation, if appropriate, and prior to any reevaluation. The REED determines the scope of the evaluation.*



### III. EVALUATION PROCEDURES

Authority: 34 CFR §300.15 Evaluation. Evaluation means procedures used in accordance with §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

Authority: 34 CFR §300.8 Child with a disability.

(a) General.

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

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

(ii) If, consistent with §300.38(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

Authority: 34 CFR §300.34 Related services.

(a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services,

psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also includes school health services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the IEP of the child, social work services in schools, and parent counseling and training.

**Authority: 34 CFR §300.122 Evaluation.**

Children with disabilities must be evaluated in accordance with §§300.300 through 300.311 of subpart D of this part.

**Authority: 34 CFR §300.304 Evaluation procedures.**

...

**(b) Conduct of evaluation.** In conducting the evaluation, the Jal Public School District will --

- (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining--
  - (i) Whether the child is a child with a disability under §300.8; and
  - (ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
- (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
- (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(c) Other evaluation procedures. The Jal Public School District will ensure that--

(1) Assessments and other evaluation materials used to assess a child under this part--

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

- (5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same academic year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §300.301 (d)(2) and (e), to ensure prompt completion of full evaluations.
- (6) *In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.*
- (7) *Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.*

**Authority: NMAC 6.31.2.7 DEFINITIONS:**

...

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

...

- (2) "Child with a disability" means a child who meets all requirements of 34 CFR Sec. 300.8 and who:
- (a) is aged 3 through 21 or will turn 3 at any time during the school year;
  - (b) has been evaluated in accordance with 34 CFR Secs. 300.304-300.311 and any additional requirements of these or other public education department rules and standards and as having one or more of the disabilities specified in 34 CFR Sec. 300.8 including intellectual disability, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, orthopedic impairment, autism, traumatic brain injury, and other health impairment, a specific learning disability, deaf blindness, or being developmentally delayed as defined in paragraph (4) below; and who has not received a high school diploma; and
  - (c) at the discretion of each local educational agency and subject to the additional requirements of Paragraph 2 of Subsection F of 6.31.2.10 NMAC, the term "child with a disability" may include a child aged 3 through 9 who is evaluated as being developmentally delayed and who, because of that condition, needs special education and related services.

**Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN:**

...

**F. Applicability of rules to gifted children.**

...

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

**Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS**

...

**D. Evaluations and reevaluations**

...

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

...

- (iv) The Jal Public School District will use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child, including information provided by the child's family that may assist in determining if the child is a child

with a disability, the content of the child's IEP including information related to assisting the child to be involved and progress in the general education curriculum or for a preschool child to participate in appropriate activities.

- (e) The Jal Public School District will maintain a record of the receipt, processing, and disposition of any referral for an individualized reevaluation. Reevaluation shall be completed on or before the three year anniversary date. All appropriate reevaluation data and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the multi-disciplinary team or IEP team.

**Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS**

...

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

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

"Section 300.304(c)(4) requires the public agency to ensure that the child is assessed in all areas related to the suspected disability. This could include, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. This is not an exhaustive list of areas that must be assessed. Decisions regarding the areas to be assessed are determined by the suspected needs of the child. If a child's behavior or physical status is of concern, evaluations addressing these areas must be conducted." 71 Fed. Reg. 46643 (August 14, 2006).

"As stated by several commenters, it is standard test administration practice to include in the evaluation report the extent to which an assessment varied from standard conditions, including the language or other mode of communication that was used in assessing a child. It is, therefore, unnecessary to include this requirement in the regulations." 71 Fed. Reg. 46643 (August 14, 2006).

*The native language information may be found in the student's cumulative folder as part of the enrollment information. Upon enrollment, parents complete the home language portion which indicates the language normally*

*used by the parents and the language normally used by the child in the home. If necessary, additional information will be gathered to determine the native language of the child for purposes of providing and administering assessments and other evaluation materials in the child's native language or other mode of communication and in the form most likely to yield accurate information.*

The NMPED has issued a guidance document titled, "New Mexico Technical Evaluation and Assistance Manual: Determining Eligibility for IDEA Part B Special Education Services" ("NM TEAM") (April 2006), available through the NMPED website: <http://ped.state.nm.us/SEB/technical/NMTeamManual.pdf>. The NM TEAM presents a sustained effort to standardize evaluation and assessment procedures and eligibility criteria in every IDEA disability category across the state. LEAs are expected to attend to the recommendations that it establishes. In the specific learning disability category, these expectations set official NMPED eligibility policy, which LEAs are now required to adhere to under the Final Regulations of the IDEA 2004. The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.

*The NMPED has issued a guidance document titled, "New Mexico Technical Evaluation and Assistance Manual: Determining Eligibility for IDEA Part B Special Education Services" ("NM TEAM") (July 2011), available through the NMPED website: <http://ped.state.nm.us/SEB/technical/NMTeamManual.pdf>. The NM TEAM presents a sustained effort to standardize evaluation and assessment procedures and eligibility criteria in every IDEA disability category across the state. LEAs are expected to attend to the recommendations that it establishes. The Jal Public Schools, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

*In the specific learning disability category, NM TEAM expectations set official NMPED eligibility policy, which LEAs are now required to adhere to under the Final Regulations of the IDEA 2004. The Jal Public Schools will ensure that the group complies with the requirements of NM TEAM and the evaluation procedures set out in Chapter 3 of the Jal Public Schools Procedures for the Provision of Special Education Services when evaluating a child for a possible learning disability. The evaluation will be at no cost to the parent. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a suspected learning disability using the severe discrepancy model, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM, will be considered and followed as appropriate given the characteristics and needs of the individual child. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a suspected learning disability using the dual discrepancy model, Jal Public School District will follow the guidelines establish in NM TEAM (July 2011). These guidelines will be considered and followed as appropriate given the characteristics and needs of the individual child. Upon completion of the evaluation, the group of qualified professionals and the parent determine whether the child is eligible for special education services under the IDEA.*

#### **IV. DETERMINATION OF ELIGIBILITY – MULTIDISCIPLINARY TEAM**

##### **Authority: 34 CFR §300.306 Determination of eligibility.**

**(a) General. Upon completion of the administration of assessments and other evaluation measures-**

- (1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and**

- (2) The Jal Public School District will provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.
- (b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part--
- (1) If the determinant factor for that determination is--
- (i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);
- (ii) Lack of appropriate instruction in math; or
- (iii) Limited English proficiency; and
- (2) If the child does not otherwise meet the eligibility criteria under §300.8(a).
- (c) Procedures for determining eligibility and educational need.
- (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, the Jal Public School District will--
- (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, as well as recommendations about the child's physical condition, social or cultural background, and adaptive behavior; and
- (ii) Ensure that information obtained from all of these sources is documented and carefully considered.
- (2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§300.320 through 300.324.



The term “essential components of reading instruction” means explicit and systematic instruction in—

- (A) phonemic awareness;
- (B) phonics;
- (C) vocabulary development;
- (D) reading fluency, including oral reading skills; and
- (E) reading comprehension strategies.

**Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS**

...

**D. Evaluations and reevaluations**

**(1) Initial evaluations.**

...

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

...

**F. Eligibility determinations**

**(1) General rules regarding eligibility determinations**

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

“Section 300.323(c) is a longstanding requirement that a meeting be held to develop the child’s IEP within 30 days of determining that a child needs special education and related services. We decline, however, to specify the timeframe from referral for evaluation to parental consent, or the timeframe from the completion of an evaluation to the determination of eligibility, as we are not in a position to determine the maximum number of days that should apply to these periods in all circumstances.” 71 Fed. Reg. 46637 (August 14, 2006).

“[W]e believe it would be inappropriate to specify the timeframe from the completion of an evaluation to the determination of eligibility when there is no specific statutory basis to do so. The Department has long held that eligibility decisions should be made within a reasonable period of time following the completion of an evaluation.” 71 Fed. Reg. 46728 (August 14, 2006).

“The Act does not establish a timeline for providing a copy of the evaluation report or the documentation of determination of eligibility to the parents and we do not believe that a specific timeline should be included in the regulations because this is a matter that is best left to State and local discretion. It is, however, important to ensure that parents have the information they need to participate meaningfully in IEP Team meetings, which may include reviewing their child’s records. Section 300.613(a) requires a public agency to comply with a parent request to inspect and review existing education records, including an evaluation report, without unnecessary delay and before any meeting regarding an IEP, and in no case more than 45 days after the request has been made. This includes the right to a response from the public agency to reasonable requests for explanations and interpretations of records, consistent with § 300.613(b)(1). While it would be appropriate for parents to review documents related to the determination of eligibility prior to the eligibility determination, there is no requirement that eligibility be determined at an IEP Team meeting and it would not be appropriate for a public agency to provide documentation of the determination of eligibility prior to discussing a child’s eligibility for special education and related services with the parent. Section 300.306(a)(1) and section 614(b)(4)(A) of the Act require that a group of qualified professionals and the parent determine whether the child is a child with a disability. Therefore, providing documentation of the eligibility determination to a parent prior to a discussion with the parent regarding the child’s eligibility would indicate that the public agency made its determination without including the parent and possibly, qualified professionals, in the

decision.” 71 Fed. Reg. 46645 (August 14, 2006).

“Whether a child has received ‘appropriate instruction’ is appropriately left to State and local officials to determine. While information regarding the quality of instruction a child received in the past may be helpful in determining whether a child is eligible for special education services, it is not essential. Schools, however, must ensure that the determinant factor in deciding that a child is a child with a disability is not a lack of appropriate instruction in reading and math.” 71 Fed. Reg. 46646 (August 14, 2006).

“The change from ‘team members’ to ‘group members’ was made in the 1999 regulations to distinguish this group from the IEP Team, because the team of qualified professionals and the parent in §300.306(a)(1) that makes the eligibility determination does not necessarily have the same members as an IEP Team. In some States, this group of professionals may have the same individuals as the IEP Team, but in other States, this is not the case.” 71 Fed. Reg. 46649 (August 14, 2006).

“The eligibility group should work toward consensus, but under §300.306, the public agency has the ultimate responsibility to determine whether the child is a child with a disability. Parents and school personnel are encouraged to work together in making the eligibility determination. If the parent disagrees with the public agency’s determination, under §300.503, the public agency must provide the parent with prior written notice and the parent’s right to seek resolution of any disagreement through an impartial due process hearing, consistent with the requirements in §300.503 and section 615(b)(3) of the Act.” 71 Fed. Reg. 46661 (August 14, 2006).

“If a public agency believes a child is no longer a child with a disability then, as required in § 300.305(e), a public agency must evaluate the child before making that determination. If the parent disagrees with the eligibility determination, then the parent may challenge the decision using the due process procedures in section 615 of the Act.” 73 Fed. 73016 (December 1, 2008).

“Section 300.300(b)(4) allows a parent to revoke consent for the continued provision of special education and related services and does not trigger an LEA’s obligation to conduct an evaluation for a child that is receiving services before determining that a child is no longer a child with a disability. If a parent revokes consent for the continued provision of special education and related services for his or her child, the public agency is not determining that the child is no longer a child with a disability as contemplated by section 614(c)(5) of the Act and § 300.305(e). Instead, the public agency is discontinuing the provision of special education and related services pursuant to the decision of the parent and there is no obligation for the LEA to evaluate the child.” 73 Fed. 73015 (December 1, 2008).

*The NMPED has issued a guidance document titled, “New Mexico Technical Evaluation and Assistance Manual: Determining Eligibility for IDEA Part B Special Education Services” (“NM TEAM”) (July 2011), available through the NMPED website: <http://ped.state.nm.us/SEB/technical/NMTeamManual.pdf>. The NM TEAM presents a sustained effort to standardize evaluation and assessment procedures and eligibility criteria in every IDEA disability category across the state. LEAs are expected to attend to the recommendations that it establishes. The \*\*\*, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

*In the specific learning disability category, NM TEAM expectations set official NMPED eligibility policy, which LEAs are now required to adhere to under the Final Regulations of the IDEA 2004. The \*\*\* will ensure that the group complies with the requirements of NM TEAM and the evaluation procedures set out NM TEAM when evaluating a child for a possible learning disability. The evaluation will be at no cost to the parent. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a suspected learning disability using the severe discrepancy model, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM will be considered and followed as appropriate given the characteristics and needs of the individual child. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a suspected learning disability using the dual discrepancy model, Jal Public School District will follow the guidelines establish in NM TEAM (July 2011). These guidelines will be considered and followed as appropriate given the characteristics and needs of the individual child. Upon completion of the evaluation, the group of qualified professionals and the parent determine whether the child is eligible for special education services under the IDEA.*

## **V. APPRAISAL PERSONNEL**

**Authority: 34 CFR §§300.156 Personnel qualifications.**

- (a) **General.** The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

*The NMPED has issued a guidance document titled, “New Mexico Technical Evaluation and Assistance Manual: Determining Eligibility for IDEA Part B Special Education Services” (“NM TEAM”) (July 2011), available through the NMPED website: <http://ped.state.nm.us/SEB/technical/NMTeamManual.pdf>. The NM TEAM presents a sustained effort to standardize evaluation and assessment procedures and eligibility criteria in every IDEA disability category across the state. LEAs are expected to attend to the recommendations that it establishes. The \*\*\*, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

*In the specific learning disability category, NM TEAM expectations set official NMPED eligibility policy, which LEAs are now required to adhere to under the Final Regulations of the IDEA 2004. The \*\*\* will ensure that the group complies with the requirements of NM TEAM and the evaluation procedures set out in NM TEAM when evaluating a child for a possible learning disability. The evaluation will be at no cost to the parent. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a suspected learning disability using the severe discrepancy model, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM will be considered and followed as appropriate given the characteristics and needs of the individual child. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a suspected learning disability using the dual discrepancy model, Jal Public School District will follow the guidelines establish in NM TEAM (July 2011). These guidelines will be considered and followed as appropriate given the characteristics and needs of the individual child. Upon completion of the evaluation, the group of qualified professionals and the parent determine whether the child is eligible for special education services under the IDEA.*

*The components of an evaluation must be administered, reviewed, and/or gathered by personnel licensed by the State of New Mexico and/or the NMPED to complete or collect each of the components respectively. For instance, individualized assessments of cognitive/intellectual ability must be administered by NMPED-licensed Educational Diagnosticians or New Mexico licensed Psychologists. See Appendix E of the NM TEAM for licensure requirements.*

# **Jal Public School District PROCEDURES FOR THE PROVISION OF SPECIAL EDUCATION SERVICES**

# **FOR STUDENTS WITH DISABILITIES AND GIFTED STUDENTS**

## **Chapter 4. - DISABILITIES – EXCEPTIONALITIES**

**Chapter 4. Adopted Pursuant to Board Policy: Equal Education Opportunities: Special Education**  
**Effective Date of Procedures: March 19, 2012**  
**Revised September, 2011**  
**Revised February, 2012**

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

*The Jal Public School District recognizes the Public Education Department's rulemaking authority (established by the Public Education Department Act) as follows: "The secretary may make and adopt such reasonable and procedural rules as may be necessary to carry out the duties of the department and its divisions.... Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary...." (NMSA 1978 §9-24-8(D)).*

*In addition to making and adopting rules, the NMPED provides guidance to local educational agencies. To the extent that the NMPED's guidance is consistent with the IDEA (and its implementing federal regulations and state statutes and rules), and does not impose a requirement that is not otherwise imposed by the IDEA (and its implementing federal regulations and state statutes and rules) without specific notice under 34 C.F.R. §300.299(a)(2), the Jal Public School District will follow the guidance of the PED.*

## **DISABILITIES - Requirements**

*The NMPED has issued a guidance document titled, "New Mexico Technical Evaluation and Assistance Manual: Determining Eligibility for IDEA Part B Special Education Services - NMTEAM" (July 2011), available through the NMPED website: <http://ped.state.nm.us/SEB/technical/NMTeamManual.pdf>. The NM TEAM presents a sustained effort to standardize evaluation and assessment procedures and eligibility criteria in every IDEA disability category across the state. LEAs are expected to attend to the recommendations that it establishes. The Jal Public Schools, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

*In the specific learning disability category, NM TEAM expectations set official NMPED eligibility policy, which LEAs are now required to adhere to under the Final Regulations of the IDEA 2004. The Capitan Municipal Schools will ensure that the group complies with the requirements of NM TEAM and the evaluation procedures set out in Chapter 3 of the Capitan Municipal Schools Procedures for the Provision of Special Education Services when evaluating a child for a possible learning disability. The evaluation will be at no cost to the parent. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a suspected learning disability using the severe discrepancy model, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM will be considered and followed as appropriate given the characteristics and needs of the individual child. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a suspected learning disability using the dual discrepancy model will Jal Public School District will follow the guidelines establish in NM TEAM (July 2011). These guidelines will be considered and followed as appropriate given the characteristics and needs of the individual child. Upon completion of the evaluation, the group of qualified professionals and the parent determine whether the child is eligible for special education services under the IDEA.*

### **I. AUTISM SPECTRUM DISORDER**

**Authority: 34 CFR §§300.8 Child with a disability.**

...

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

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

*The Jal Public School District will ensure that a child suspected of having autism and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent. The group will comply with the evaluation procedures set out in Chapter 3 of the Jal Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having autism, the Highly Recommended and Potential Additional*

*components of an evaluation, as set forth in NM TEAM will be considered and followed as appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for autism and whether, by reason of autism, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.*

*The NM TEAM contains an Eligibility Determination Worksheet for use in making an eligibility determination under the category of autism. The Eligibility Determination: Autism and Reevaluation Eligibility Determination: Autism forms are “highly recommended” in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals.*

## **II. DEAF - BLINDNESS**

**Authority: 34 CFR §§300.8 Child with a disability.**

...

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

...

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

*The Jal Public School District will ensure that a child suspected of having deaf-blindness and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent, including any educationally necessary evaluation conducted by a licensed physician to determine the child's medically-related disability that results in the child's need for special education and related services. The group will comply with the evaluation procedures set out in Chapter 3 of the Jal Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having deaf-blindness, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM will be considered and followed as appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for deaf-blindness and whether, by reason of deaf-blindness, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.*

*The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of deaf-blindness. The Eligibility Determination: Deaf-blindness and Reevaluation Eligibility Determination: Deaf-blindness forms are “highly recommended” in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals.*

## **III. HEARING IMPAIRMENT, INCLUDING DEAFNESS**

**Authority: 34 CFR §§300.8 Child with a disability.**

...

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

...

- (3) **Deafness** means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.

...



- (5) **Hearing impairment** means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

"In New Mexico, the term deafness and hearing impairment are combined into one eligibility category called hearing impairment, including deafness." *NM TEAM* (July 2011).

*The Jal Public School District will ensure that a child suspected of being deaf or hard of hearing and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent, including any educationally necessary evaluation conducted by a licensed physician to determine the child's medically-related disability that results in the child's need for special education and related services. The group will comply with the evaluation procedures set out in Chapter 3 of the Jal Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having hearing impairment, including deafness, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM will be considered and followed as appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for hearing impairment, including deafness and whether, by reason of the child's hearing impairment, including deafness, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.*

*The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of hearing impairment, including deafness. The Eligibility Determination: Hearing Impairment, including Deafness and Reevaluation Eligibility Determination: Hearing Impairment, including Deafness forms are "highly recommended" in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals.*

#### **IV. DEVELOPMENTAL DELAY**

*The Jal Public School District does use the term developmental delay.*

**Authority: 34 CFR §§300.8 Child with a disability.**

...

- (b) **Children aged three through nine experiencing developmental delays.** Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, at the discretion of the NMPED and the Jal Public School District and in accordance with §300.111(b), include a child--
- (1) Who is experiencing developmental delays, as defined by the NMPED and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and
  - (2) Who, by reason thereof, needs special education and related services.

**Authority: NMAC 6.31.2.7 DEFINITIONS:**

...

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

...

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

appropriate diagnostic instruments and procedures to ensure that the child qualifies as a child with a developmental delay in accordance with the definition in this paragraph.

**Authority: NMAC 6.31.2.10 IDENTIFICATION...AND ELIGIBILITY DETERMINATIONS**

...

**F. Eligibility determinations**

...

**(2) Optional use of developmentally delayed classification for children aged 3 through 9**

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

*The Jal Public School District will ensure that a child suspected of having a developmental delay and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent, including any educationally necessary evaluation conducted by a licensed physician to determine the child's medically-related disability that results in the child's need for special education and related services. The group will comply with the evaluation procedures set out in Chapter 3 of the Jal Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected as having developmental delay, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM will be considered and followed as appropriate given the characteristics and needs of the individual child.*

*The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for developmentally delay, and whether, by reason of the child's developmental delay, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.*

*Children who are classified as developmental delay must be reevaluated during the school year in which they turn 9 and will no longer be eligible in this category when they become 10. A student who does not qualify under any other available category at age 10 will no longer be eligible for special education and related services.*

*The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of developmental delay. The Eligibility Determination: Developmental Delay and Reevaluation Eligibility Determination: Developmental Delay forms are "highly recommended" in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals.*

**V. EMOTIONAL DISTURBANCE**

**Authority: 34 CFR §§300.8 Child with a disability.**

...

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

...

- (4) (i) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:**
  - (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.**
  - (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.**
  - (C) Inappropriate types of behavior or feelings under normal circumstances.**
  - (D) A general pervasive mood of unhappiness or depression.**

- (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
- (ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

“The initial eligibility determination under the category of emotional disturbance at the EDT must include the participation of a New Mexico licensed psychologist.” NM TEAM (July 2011).

*The Jal Public School District will ensure that a child suspected of having an emotional disturbance and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent. The group will comply with the evaluation procedures set out in Chapter 3 of the Jal Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having an emotional disturbance, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM will be considered and followed as appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for an emotional disturbance and whether, by reason of the child’s emotional disturbance, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.*

*The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of emotional disturbance. The Eligibility Determination: Emotional Disturbance and Reevaluation Eligibility Determination: Emotional Disturbance forms are “highly recommended” in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals.*

## **VI. INTELLECTUAL DISABILITY**

**Authority: 34 CFR §§300.8 Child with a disability.**

...

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

...

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

*The Jal Public School District will ensure that a child suspected of having intellectual disability and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent. The group will comply with the evaluation procedures set out in Chapter 3 of the Jal Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having intellectual disability, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM will be considered and followed as appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for intellectual disability and whether, by reason of the child’s intellectual disability, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.*

*The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of intellectual disabilities. The Eligibility Determination: Intellectual Disability and Reevaluation Eligibility Determination: Intellectual Disability forms are “highly recommended” in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals.*

## **VII. MULTIPLE DISABILITIES**

**Authority: 34 CFR §§300.8 Child with a disability.**

...

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

...

- (7) **Multiple disabilities** means concomitant impairments (such as intellectual disability-blindness, intellectual disability-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

In New Mexico, "Children eligible for special education and related services under the category of multiple disabilities (MD) must meet the eligibility criteria in two or more IDEA categories. This eligibility category is characterized by the need for extensive and/or pervasive intensities of educational supports and, as such, is an extremely low-incidence category. It involves complex, inseparable interactions between two or more disabilities and it is neither possible nor appropriate to designate the disabilities within this category as primary and secondary. *NM TEAM* (July 2011).

*The Jal Public School District will ensure that a child suspected of having multiple disabilities and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent, including any educationally necessary evaluation conducted by a licensed physician to determine the child's medically-related disability that results in the child's need for special education and related services. The group will comply with the evaluation procedures set out in Chapter 3 of the Jal Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having multiple disabilities, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM will be considered and followed as appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for multiple disabilities and whether, by reason of the child's multiple disabilities, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.*

*The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of multiple disabilities. The Eligibility Determination: Multiple Disabilities and Reevaluation Eligibility Determination: Multiple Disabilities forms are "highly recommended" in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals.*

## **VIII. ORTHOPEDIC IMPAIRMENT**

**Authority: 34 CFR §§300.8 Child with a disability.**

...

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

...

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

*The Jal Public School District will ensure that a child suspected of having an orthopedic impairment and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent, including any educationally necessary evaluation conducted by a licensed physician to determine the child's medically-related disability that results in the child's need for special education and related services. The group will comply with the evaluation procedures set out in Chapter 3 of the Jal Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or*

*reevaluation for an individual child suspected of having an orthopedic impairment, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM will be considered and followed as appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for an orthopedic impairment and whether, by reason of the child's orthopedic impairment, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.*

*The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of orthopedic impairment. The Eligibility Determination: Orthopedic Impairment and Reevaluation Eligibility Determination: Orthopedic Impairment forms are "highly recommended" in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals. Additionally, the NM TEAM contains a sample medical examination form to be completed by a medical examiner. The Jal Public School District will ensure that an initial evaluation for an orthopedic impairment includes evaluation information from a physician and input from a school nurse.*

## **IX. OTHER HEALTH IMPAIRMENT**

**Authority: 34 CFR §§300.8 Child with a disability.**

...

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

...

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

*"The list of acute or chronic health conditions in the definition of other health impairment is not exhaustive, but rather provides examples of problems that children have that could make them eligible for special education and related services under the category of other health impairment." 71 Fed. Reg. 46550 (August 14, 2006).*

*"Part B does not necessarily require a school district to conduct a medical evaluation for the purpose of determining whether a child has ADD. If a public agency believes that a medical evaluation by a licensed physician is needed as part of the evaluation to determine whether a child suspected of having ADD meets the eligibility criteria of the OHI category, or any other disability category under Part B, the school district must ensure that this evaluation is conducted at no cost to the parents." OSEP Letter to Williams (March 14, 1994).*

*"If the school district believes that there are other effective methods for determining whether a child suspected of having ADD meets the eligibility requirements of the OHI category, or any other disability category under Part B, then it would be permissible to use qualified personnel other than a licensed physician to conduct the evaluation as long as all of the protections in evaluation procedures ... are met." OSEP Letter to Williams (March 14, 1994).*

*"The presence of a medical diagnosis or a diagnosis based on current DSM criteria does not make a child automatically eligible for special education and related services under IDEA (2004). Determination of eligibility for special education and related services is based on both: (a) an identified disability as defined by IDEA (2004) and (b) a documented need for special education services.." NM TEAM (July 2011).*

*The Jal Public School District will ensure that a child suspected of having an other health impairment and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent, including any educationally necessary evaluation conducted by a licensed physician to determine the child's medically-related disability that results in the child's need for special education and related services. The group will comply with the evaluation procedures set out in Chapter 3 of the Jal Public School District Procedures*

*for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having an other health impairment, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM will be considered and followed as appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for an other health impairment and whether, by reason of the child's other health impairment, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.*

*The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of other health impairment. The Eligibility Determination: Other Health Impairment and Reevaluation Eligibility Determination: Other Health Impairment forms are "highly recommended" in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals.*

## **X. SPECIFIC LEARNING DISABILITY**

**Authority: 34 CFR §300.8 Child with a disability.**

...

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

...

**(10) Specific learning disability.**

- (i) General.** Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.
- (ii) Disorders not included.** Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

**Authority: 34 CFR §300.307 Specific learning disabilities.**

**(a) General.** A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8 (c)(10). In addition, the criteria adopted by the State—

**(1)** Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability as defined in §300.8 (c)(10);

**(2)** Must permit the use of a process based on the child's response to scientific, research-based intervention; and

**(3)** May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability as defined in §300.8 (c)(10).



(b) Consistency with State criteria. The Jal Public School District will use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.

**Authority: NMAC 6.31.2.7 DEFINITIONS:**

"Dyslexia" means a condition of neurological origin that is characterized by difficulty with accurate or fluent word recognition and by poor spelling and decoding abilities, which characteristics typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction and may result in problems in reading comprehension and reduced reading experience that may impede the growth of vocabulary and background knowledge.

**Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS**

- C. Criteria for identifying children with perceived specific learning disabilities.
- (1) Each public agency must use the three tiered model of student intervention for students suspected of having a perceived specific learning disability, consistent with the department rules, policies and standards for children who are being referred for evaluation due to a suspected disability under the specific learning disability category in compliance with 34 CFR Sec. 300.307.
    - (a) The public agency must, subject to Subparagraph (d) of this paragraph, require that the group established under 34 CFR Secs. 300.306(a)(1) and 300.308 for the purpose of determining eligibility of students suspected of having a specific learning disability, consider data obtained during implementation of tiers 1 and 2 in making an eligibility determination.  
...
    - (d) A parent may request an initial special education evaluation at any time during the public agency's implementation of tiers 1 and 2 of the three-tier model of student intervention. If the public agency agrees with the parent that the child may be a child who is eligible for special education services, the public agency must evaluate the child. If the public agency declines the parent's request for an evaluation, the public agency must issue prior written notice in accordance with 34 CFR Sec. 300.503. The parent can challenge this decision by requesting a due process hearing.
  - (2) Preschool children suspected of having a specific learning disability must be evaluated in accordance with Subparagraph (f) of Paragraph (4) of Subsection A of 6.31.2.11 NMAC and 34 CFR Secs. 300.300 through 300.305, which may include the severe discrepancy model.
  - (3) Public agencies must implement the dual discrepancy model in kindergarten through third grade utilizing the student assistance team and the three-tier model of student intervention as defined and described in the New Mexico Technical Evaluation and Assessment Manual (New Mexico T.E.A.M.). Data on initial evaluations for perceived learning disabilities in grades K-3 must be submitted to the department through the student teacher accountability reporting system (STARS).
  - (4) In identifying children with specific learning disabilities in grades 4 through 12, the public agency may use the dual discrepancy model as defined and described in the New Mexico Technical Evaluation and Assessment Manual (New Mexico T.E.A.M.) or the severe discrepancy model as defined and described in New Mexico T.E.A.M.

In New Mexico, "A specific learning disability (SLD) is a disability rooted in a neurological processing deficit (e.g., auditory processing, memory, processing speed, phonological processing, visual/perceptual processing, etc.) and results in significant academic underachievement following sustained, high-quality, scientific, research-based instruction and intervention. SLD may be manifested in the following areas:

- Basic reading skills,
- Reading fluency skills,
- Reading comprehension skills,
- Written expression,



- Mathematics calculation,
- Mathematics problem solving,
- Oral expression, and/or
- Listening comprehension.

SLD is unique to the individual and is not the result of exclusionary factors. In order to identify SLD, the following three elements must be documented:

1. The child demonstrates significant academic underachievement that is documented and supported by a pattern of strengths and weaknesses in performance and/or achievement. This underachievement persists despite sustained, high-quality, scientific, research-based instruction and intervention.
2. There is evidence of basic neurological processing deficit(s).
3. The child's challenges are not caused by following exclusionary factors:
  - Lack of appropriate instruction in reading,
  - Lack of appropriate instruction in math,
  - Limited English proficiency,
  - Visual, hearing, or motor disability,
  - Intellectual disability,
  - Emotional disturbance,
  - Cultural factors, or
  - Environmental or economic factors.” *NM TEAM* (July 2011).

*In the specific learning disability category, NM TEAM expectations set official NMPED eligibility policy, which LEAs are now required to adhere to under the Final Regulations of the IDEA 2004. The Jal Public School District will ensure that the group complies with the requirements of NM TEAM and the evaluation procedures set out in Chapter 3 of the Jal Public School District Procedures for the Provision of Special Education Services when evaluating a child for a possible learning disability. The evaluation will be at no cost to the parent. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a suspected specific learning disability using the severe discrepancy model, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM will be considered and followed as appropriate given the characteristics and needs of the individual child. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a suspected learning disability using the dual discrepancy model will Jal Public School District will follow the guidelines establish in NM TEAM (July 2011). These guidelines will be considered and followed as appropriate given the characteristics and needs of the individual child. Upon completion of the evaluation, the group of qualified professionals and the parent determine whether the child is eligible for special education services under the IDEA.*

#### **A. Group of Qualified Professionals Required for SLD**

##### **Authority: 34 CFR §300.308 Additional group members.**

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

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

“We believe this [flexibility under §300.308(b)] allows decisions about the specific qualifications of the members to be made at the local level, so that the composition of the group may vary depending on the nature of the child's suspected disability, the expertise of local staff, and other relevant factors. For example, for a child suspected of having an SLD in the area of reading, it might be important to include a reading specialist as part of the eligibility

group. However, for a child suspected of having an SLD in the area of listening comprehension, it might be appropriate for the group to include a speech-language pathologist with expertise in auditory processing disorders.” 71 Fed. Reg. 46650 (August 14, 2006).

*The Jal Public School District will ensure that a child suspected of having a specific learning disability and needing special education services will be evaluated by a group of qualified professionals.*

## **B. Observation**

### **Authority: 34 CFR §300.310 Observation.**

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

“The person conducting the observation should be a member of the eligibility group because information from the observation will be used in making the eligibility determination. If information is available from an observation conducted as part of routine classroom instruction that is important for the eligibility group to consider, the eligibility group should include the person who conducted that routine classroom [observation]. This will eliminate redundant observations and save time and resources. Parental consent is not required for observations conducted as part of routine classroom instruction and monitoring of the child’s performance before the child is referred for an evaluation....Parental consent is required for observations conducted after the child is suspected of having a disability and is referred for an evaluation.” 71 Fed. Reg. 46659 (August 14, 2006).

*The Jal Public School District will ensure that an evaluation for a possible specific learning disability includes an observation. The group of qualified professionals will determine whether to use an observation done prior to referral or to conduct an observation after the child has been referred and parental consent is obtained.*

## **C. Achievement Deficits in One or More Specified Areas**

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

- (a) The group described in §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if-
  - (1) The child does not achieve adequately for the child’s age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child’s age or State-approved grade-level standards:
    - (i) Oral expression.
    - (ii) Listening comprehension.
    - (iii) Written expression.
    - (iv) Basic reading skill.
    - (v) Reading fluency skills.
    - (vi) Reading comprehension.
    - (vii) Mathematics calculation.
    - (viii) Mathematics problem solving.

...

*The Jal Public School District will ensure that the group of qualified professionals appropriately assesses the child's academic achievement.*

## **D. Dual Discrepancy Model**

**Authority: NMAC 6.31.2.7 DEFINITIONS**

**B.....**

- (5) “Dual discrepancy” means the child does not achieve adequately for the child's age or to meet grade-level standards established in Standards for Excellence (Chapter 29 of Title 6 of the NMAC); and
- (a) does not make sufficient progress to meet age or grade-level standards; or
  - (b) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards or intellectual development.

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

(a)...

- (2) (i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or

...

**Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:**

...

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

(3) Public agencies must implement the dual discrepancy model in kindergarten through third grade utilizing the student assistance team and the three-tier model of student intervention as defined and described in the New Mexico Technical Evaluation and Assessment Manual (New Mexico T.E.A.M.). Data on initial evaluations for perceived learning disabilities in grades K-3 must be submitted to the department through the student teacher accountability reporting system (STARS).

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

*When utilizing the dual discrepancy model, the Jal Public School District will ensure that the group of qualified professionals complies with the requirements of NM TEAM and the evaluation procedures set out in Chapter 3 of the Jal Public School District Procedures for the Provision of Special Education Services when evaluating a child for a*

*possible learning disability.*

## **E. Severe Discrepancy Model**

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

(a)...

(2) ...

- (ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with §§300.304 and 300.305; and

...

**Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:**

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

...

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

“The child must demonstrate a severe discrepancy between his/her predicted achievement level and actual achievement in the area(s) of concern based on standardized assessment scores. When considering co-normed assessments, a severe discrepancy is considered a difference of at least 1.5 standard deviations. When the assessments are not co-normed, use the regression table found at the end of this section. *NM TEAM*” (July 2011).

“There is a substantial research base summarized in several recent consensus reports [citations omitted] that does not support the hypothesis that a discrepancy model by itself can differentiate children with disabilities and children with general low achievement.” 71 Fed. Reg. 46650 (August 14, 2006).

“Intellectual development is included in §300.309(a)(2)(ii) as one of three standards of comparison, along with age and State-approved grade-level standards. The reference to ‘intellectual development’ in this provision means that the child exhibits a pattern of strengths and weaknesses in performance relative to a standard of intellectual development such as commonly measured by IQ tests. Use of the term is consistent with the discretion provided in the Act in allowing the continued use of discrepancy models.” 71 Fed. Reg. 46651 (August 14, 2006).

*When utilizing the significant discrepancy model, the Jal Public School District will ensure that the group of qualified professionals complies with the requirements of NM TEAM and the evaluation procedures set out in Chapter 3 of the Jal Public School District Procedures for the Provision of Special Education Services when evaluating a child for a possible learning disability.*

## **F. Exclusionary Factors**

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

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

...

- (3) The group determines that its findings under paragraph (a)(1) and (2) of this section are not primarily the result of--
- (i) A visual, hearing, or motor disability;
  - (ii) Intellectual disability;
  - (iii) Emotional disturbance;
  - (iv) Cultural factors;
  - (v) Environmental or economic disadvantage; or
  - (vi) Limited English proficiency.

“The identification of the effect of cultural factors on a child’s performance is a judgment made by the eligibility group based on multiple sources of information, including the home environment, language proficiency, and other contextual factors gathered in the evaluation.” 71 Fed. Reg. 46655 (August 14, 2006).

*The Jal Public School District will ensure that the group of qualified professionals eliminate all exclusionary factors before the group of qualified professionals and the parent reach the conclusion that the child is a child with a specific learning disability.*

**G. Determinant Factor Analysis for a Specific Learning Disability**

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

...

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

**Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:**

...

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

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

...

- (b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation required in 34 CFR Secs. 300.304 through 300.306:
- (i) data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
  - (ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

“Eligibility is contingent on the ability of the LEA to provide appropriate instruction. Determining the basis of low achievement when a child has been given appropriate instruction is the responsibility of the eligibility group.” 71 Fed. Reg. 46656 (August 14, 2006).

“As part of the evaluation, the eligibility group must consider whether the child received appropriate instruction from qualified personnel. For children who attend private schools or charter schools or who are home schooled, it may be necessary to obtain information from parents and teachers about the curricula used and the child’s progress with various teaching strategies. The eligibility group also may need to use information from current classroom-based assessments or classroom observations. On the basis of the available information, the eligibility group may identify other information that is needed to determine whether the child’s low achievement is due to a disability, and not primarily the result of lack of appropriate instruction. The requirements for special education eligibility or the expectations for the quality of teachers or instructional programs are not affected, and do not differ, by the location or venue of a child’s instruction.” 71 Fed. Reg. 46656 (August 14, 2006).

What is important is that the group making the eligibility decision has the information that it needs to rule out that the child’s underachievement is a result of a lack of appropriate instruction. That could include evidence that the child was provided appropriate instruction either before, or as a part of, the referral process. 71 Fed. Red. 46656 (August 14, 2006).

*The Jal Public School District will ensure that a child evaluated for a possible specific learning disability is not determined to be a child with a disability if the child’s low achievement is a result of lack of appropriate instruction in reading, lack of appropriate instruction in math, or limited English proficiency.*

## **H. Written Report for SLD**

**Authority: 34 CFR §300.311 Specific documentation for the eligibility determination.**

- (a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required by §300.306(a)(2), must include a statement of--
- (1) Whether the child has a specific learning disability;
  - (2) The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c)(1);
  - (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
  - (4) The educationally relevant medical findings, if any;
  - (5) Whether --
    - (i) The child does not achieve adequately for the child’s age or to meet New Mexico approved grade-level standards consistent with §300.309(a)(1); and
    - (ii) (A) The child does not make sufficient progress to meet age or New Mexico approved grade-level standards consistent with §300.309(a)(2)(i); or  
(B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, New Mexico approved grade-level standards or intellectual development consistent with §300.309(a)(2)(ii).
  - (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability, emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child’s achievement level; and
  - (7) If the child has participated in a process that assesses the child’s response to scientific, research-based intervention--
    - (i) The instructional strategies used and the student-centered data collected;
    - (ii) The documentation that the child’s parents were notified about—
      - (A) New Mexico’s policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
      - (B) Strategies for increasing the child’s rate of learning; and
      - (C) The parents’ right to request an evaluation.
- (b) Each group member must certify in writing whether the report reflects the member’s conclusion. If it does not reflect the member’s conclusion, the group member must submit a separate statement presenting the member’s conclusions.

**Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:**

...

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

**(1) ...**

...

- (c)** The documentation of the determination of eligibility, as required by 34 CFR Sec. 300.306(c)(1), must meet the requirements of 34 CFR Sec. 300.311, including:
  - (i)** a statement of the basis for making the determination and an assurance that the determination has been made in accordance with 34 CFR Sec. 300.306(c)(1); and
  - (ii)** a statement whether the child does not achieve adequately for the child's age or to meet state-approved grade-level standards consistent with 34 CFR Sec. 300.309(a)(1); and
  - (iii)** a statement whether the child does not make sufficient progress to meet age or grade-level standards consistent with 34 CFR Sec. 300.309(a)(2)(i), or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards or intellectual development consistent with 34 CFR Sec. 300.309(a)(2)(ii); and
  - (iv)** if the child has participated in a process that assesses the child's response to scientific, research-based intervention: a statement of the instructional strategies used and the student-centered data collected; documentation that the child's parents were notified about the state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; strategies for increasing the child's rate of learning; and the parents' right to request an evaluation.

*The Jal Public School District will ensure that the written evaluation report prepared by the group of qualified professionals for a possible learning disability contains all of the requisite documentation. The report will address whether the child meets or continues to meet the specific eligibility criteria for a specific learning disability and whether, by reason of the child's specific learning disability, the child needs or continues to need special education and related services.*

*The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of specific learning disability. The Eligibility Determination: Specific Learning Disability (Dual Discrepancy Model), Eligibility Determination: Specific Learning Disability (Severe Discrepancy Model), and Reevaluation Eligibility Determination: Specific Learning Disability forms are "highly recommended" in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals.*

## **XI. SPEECH OR LANGUAGE IMPAIRMENT**

**Authority: 34 CFR §§300.8 Child with a disability.**

...

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

...

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

**Authority: NMAC 6.31.2.7 DEFINITIONS:**

...

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

...

**(a)** As authorized by 34 CFR Sec. 300.8(a)(2)(ii) and 300.39(a)(2)(i), "special education" in New Mexico may include speech-language pathology services.

**(b)** Speech-language pathology services must meet the following standards to be considered special education:

**(i)** the service is provided to a child who has received appropriate tier I universal screening under Subsection D of 6.29.1.9 NMAC as it may be amended from time to time, before being properly evaluated under 34 CFR Secs. 300.301-300.306 and Subsection D of 6.31.2.10 NMAC;



(ii) the IEP team that makes the eligibility determination finds that the child has a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance; and

(iii) the speech language pathology service consists of specially designed instruction that is provided to enable the child to have access to the general curriculum and meet the educational standards of the public agency that apply to all children; and

(iv) the service is provided at no cost to the parents under a properly developed IEP that meets the requirements of Subsection B of 6.31.2.11 NMAC.

(c) If all of the above standards are met, the service will be considered as special education rather than a related service.

*The Jal Public School District will ensure that a child suspected of having a speech or language impairment and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent. The group will comply with the evaluation procedures set out in Chapter 3 of the Jal Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a speech or language impairment, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM will be considered and followed as appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for a speech or language impairment and whether, by reason of the child's speech or language impairment, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.*

*The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of speech or language impairment. The Eligibility Determination: Speech or Language Impairment and Reevaluation Eligibility Determination: Speech or Language Impairment forms are "highly recommended" in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals.*

## **XII. TRAUMATIC BRAIN INJURY**

**Authority: 34 CFR §§300.8 Child with a disability.**

...

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

...

**(12) Traumatic brain injury** means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

*The Jal Public School District will ensure that a child suspected of having a traumatic brain injury and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent, including any educationally necessary evaluation conducted by a licensed physician to determine the child's medically-related disability that results in the child's need for special education and related services. The group will comply with the evaluation procedures set out in Chapter 3 of the Jal Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a traumatic brain injury, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM will be considered and followed as*

*appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for a traumatic brain injury and whether, by reason of the child's traumatic brain injury, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.*

*The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of traumatic brain injury. The Eligibility Determination: Traumatic Brain Injury and Reevaluation Eligibility Determination: Traumatic Brain Injury forms are "highly recommended" in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professional.*

### **XIII. VISUAL IMPAIRMENT, INCLUDING BLINDNESS**

**Authority: 34 CFR §§300.8 Child with a disability.**

...

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

...

**(13) Visual impairment including blindness** means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

*The Jal Public School District will ensure that a child suspected of having a visual impairment including blindness and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent, including any educationally necessary evaluation conducted by a licensed physician to determine the child's medically-related disability that results in the child's need for special education and related services. The group will comply with the evaluation procedures set out in Chapter 3 of the Jal Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a visual impairment including blindness, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM will be considered and followed as appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for a visual impairment including blindness and whether, by reason of the child's visual impairment, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.*

*The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of visual impairment including blindness. The Eligibility Determination: Visual Impairment Including Blindness and Reevaluation Eligibility Determination: Visual Impairment Including Blindness forms are "highly recommended" in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals. Additionally, the NM TEAM contains a sample eye examination form to be completed by a physician. The Jal Public School District will ensure that an initial evaluation for a visual impairment including blindness includes evaluation information from a physician. The NM TEAM contains a sample authorization for disclosure of protected health information form to allow for the release of information from the child's physician.*

### **XIV. GIFTED CHILDREN**

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

...

**D. In determining whether a child is gifted, the eligibility determination team shall consider diagnostic or other evidence of the child's:**

- (1) creativity or divergent-thinking ability;**
- (2) critical thinking or problem solving ability;**
- (3) intelligence; and**

- (4) achievement.

**Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN:**

- A. Gifted child defined. As used in 6.31.2.12 NMAC, “gifted child” means a school-age person as defined in Sec. 22-13-6(D) NMSA 1978 whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking meets the eligibility criteria in 6.31.2.12 NMAC and for whom a properly constituted IEP team determines that special education services are required to meet the child’s educational needs.
- B. Qualifying areas defined.
- (1) “Intellectual ability” means a score two standard deviations above the mean as defined by the test author on a properly administered intelligence measure. The test administrator must also consider the standard error of measure (SEM) in the determination of whether or not criteria have been met in this area.
  - (2) “Subject matter aptitude/achievement” means superior academic performance on a total subject area score on a standardized measure, or as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.
  - (3) “Creativity/divergent thinking” means outstanding performance on a test of creativity/divergent thinking, or in creativity/divergent thinking as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.
  - (4) “Problem-solving/critical thinking” means outstanding performance on a test of problem-solving/critical thinking, or in problem-solving/critical thinking as documented by information from other sources as specified in Paragraph (2) of Subsection B of 6.31.2.12 NMAC.
  - (5) For students with “factors” as specified in Paragraph (2) of Subsection E of 6.31.2.12 NMAC, the impact of these factors shall be documented and alternative methods will be used to determine the student’s eligibility.
- C. Evaluation procedures for gifted children.
- ...
- (2) Analysis of data. The identification of a student as gifted shall include documentation and analysis of data from multiple sources for subject matter aptitude/achievement, creativity/divergent thinking, and problem-solving/critical thinking including:
    - (a) standardized measures, as specified in Subsection B of 6.31.2.12 NMAC, and
    - (b) information regarding the child’s abilities from other sources, such as collections of work, audio/visual tapes, judgment of work by qualified individuals knowledgeable about the child’s performance (e.g., artists, musicians, poets and historians, etc.), interviews, or observations.
  - (3) The child’s ability shall be assessed in all four areas specified in Subsection B of 6.31.2.12 NMAC.
- D. Standard method for identification. Under the standard method for identification, students will be evaluated in the areas of intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking. A student who meets the criteria established in Subsection B of 6.31.2.12 for intellectual ability and also meets the criteria in one or more of the other areas will qualify for consideration of service. A properly constituted IEP team, including someone who has knowledge of gifted education, will determine if special education services are required to meet the child’s educational needs.
- E. Alternative method for identification.
- (1) A district may apply to the public education department to utilize an alternative protocol for all students. Eligibility of a student will then be determined by a properly administered and collected, department approved alternative protocol designed to evaluate a student’s intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving /critical thinking.
  - (2) If an accurate assessment of a child’s ability may be affected by factors including cultural background, linguistic background, socioeconomic status or disability condition(s), an alternative protocol as described in Paragraph (1) of Subsection E of 6.31.2.12 NMAC will be used in all districts to determine the student’s eligibility. The impact of these factors shall be documented by the person(s) administering the alternative protocol.
  - (3) The student assistance team (SAT) process requirements will not apply to students who meet the criteria established by the alternative protocols. When a student’s overall demonstrated abilities are very superior (as defined by the alternative protocol author), a properly constituted IEP team, including someone who has knowledge of gifted education, will determine if special education services

are required to meet the child's educational needs.

**F. Applicability of rules to gifted children.**

...

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

*The Jal Public School District will ensure that a child suspected of being gifted and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent. The group will comply with the evaluation procedures set out in Chapter 3 of the Jal Public School District Procedures for the Provision of Special Education Services. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for giftedness and whether, by reason of the child's giftedness, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services as a gifted child.*

**Jal Public School District  
PROCEDURES  
FOR THE  
PROVISION OF  
SPECIAL EDUCATION SERVICES  
FOR  
STUDENTS WITH DISABILITIES AND GIFTED STUDENTS**

## **Chapter 5 - INDIVIDUALIZED EDUCATION PROGRAM (IEP)**

Chapter 5. Adopted Pursuant to Board Policy: Equal Education Opportunities: Special Education  
Effective Date of Procedures: March 19, 2012  
Revised January 2010  
Revised September 2010  
Revised February 2012

## **Chapter 5 - INDIVIDUALIZED EDUCATION PROGRAM (IEP)**

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## Chapter 5 INDIVIDUALIZED EDUCATION PROGRAM (IEP)

*The Jal Public School District recognizes the Public Education Department's rulemaking authority (established by the Public Education Department Act) as follows: "The secretary may make and adopt such reasonable and procedural rules as may be necessary to carry out the duties of the department and its divisions.... Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary...." (NMSA 1978 §9-24-8(D)).*

*In addition to making and adopting rules, the NMPED provides guidance to local educational agencies. To the extent that the NMPED's guidance is consistent with the IDEA (and its implementing federal regulations and state statutes and rules), and does not impose a requirement that is not otherwise imposed by the IDEA (and its implementing federal regulations and state statutes and rules) without specific notice under 34 C.F.R. §300.299(a)(2), the Jal Public School District will follow the guidance of the PED.*

### **I. REQUIREMENT OF AN IEP**

**Authority: 34 CFR §300.112 Individualized education programs (IEP).**

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

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

...

### **B. Individualized education programs (IEPs).**

...

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

*In the 2004 reauthorization of the IDEA, Congress required the U.S. Department of Education to publish and widely disseminate "model forms" that are "consistent with the requirements of [Part B of the IDEA]" and "sufficient to meet those requirements." Specifically, the reauthorization required the Department to develop a model IEP form. The Department has, consistent with the instructions from Congress, developed an IEP form to assist States and school districts in understanding the content that Part B requires. The content of the form is based upon the requirements set forth in the final Part B regulations. The form developed by the U.S. Department of Education is available through the U.S. Department of Education's website at: <http://idea.ed.gov/static/modelForms>.*

*The NMPED has also developed a model IEP form along with a guide to developing quality IEPs, available through the NMPED website at: <http://ped.state.nm.us/SEB/technical/IEP%20Manual%20October%202011.pdf>.*

*The Jal Public School District uses a localized IEP form that contains all of the required elements consistent with the*

*U.S. Department of Education form. Additionally, the Jal Public School District, by reference in these procedures, and through staff development (as appropriate), will inform appropriate personnel of the NMPED guide to developing quality IEPs.*

*The NMPED has issued a guidance document titled, "Technical Assistance Manual for Gifted Education in New Mexico" (Revised 2011 available through the NMPED website at: <http://ped.state.nm.us/gifted/Gifted%20TA%20manual.pdf> . Chapter 5 addresses the gifted individualized education plan development. The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

#### **A. Requirement of an IEP Team Meeting**

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

...

(c) Initial IEPs; provision of services. The Jal Public School District will ensure that--

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

Authority: 34 CFR §300.324 Development, review, and revision of IEP.

##### **(a) Development of IEP—**

...

(5) Consolidation of IEP Team meetings. To the extent possible, the Jal Public School District will encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

...

##### **(b) Review and revision of IEPs.**

(1) General. The Jal Public School District will ensure that, subject to paragraph (b)(2) and (b)(3) of this section, the IEP Team--

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

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

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

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

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

(D) The child's anticipated needs; or

(E) Other matters.

...

(c) Failure to meet transition objectives—

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

Authority: 34 CFR §300.116 Placements.

In determining the educational placement of a child with a disability, including a preschool child with a disability, the Jal Public School District will ensure that--

...

(b) The child's placement--

- (1) Is determined at least annually...

*In order to ensure timely IEP Team meetings, the Jal Public School District has systems in place to track timelines for the initial IEP Team meeting and the annual IEP Team meeting. The Jal Public School District will begin its planning and preparation for an IEP Team meeting (including notice to the parent) early enough to ensure a timely meeting.*

B. Transfer Students

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

...

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

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

- (1) Adopts the child's IEP from the previous public agency; or
  - (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324.
- (f) IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency--
- (1) Conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new public agency); and
  - (2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§300.320 through 300.324.
- (g) Transmittal of records. To facilitate the transition for a child described in paragraphs (d) and (f) of this section --
- (1) The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and
  - (2) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.

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

...

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

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

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

...

**K. Children in detention and correctional facilities.**

- (1) If a child with a disability is placed in a juvenile or adult detention or correctional facility, the facility must provide the child with FAPE after the facility learns that the child had been eligible for special education and related services in the last educational placement prior to incarceration or otherwise determines that the child is eligible.**
- (2) Juvenile or adult detention or correctional facilities must take reasonable steps to promptly obtain needed educational records from a child's last known school or educational facility. Record requests and transfers are subject to the regulations under the Family Educational Rights and Privacy Act (FERPA) at 34 CFR Part 99 and the provisions of Paragraph (3) of Subsection L of 6.31.2.13 NMAC. The educational program of a juvenile or adult detention or correctional facility is an educational agency for purposes of the FERPA.**
  - (a) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the records request from the juvenile correctional facilities.**
  - (b) To assist juvenile correctional facilities in providing FAPE for children entering the facility during the summer months, districts must provide summer emergency contact information of a person who has access to special education records, to the state's superintendent of juvenile justice services division of the children, youth and family department.**
- (3) A detention or correctional facility that is unable to obtain adequate records from other agencies, the child or the parents within a reasonable time after the child arrives at the facility, shall evaluate the child who is known or suspected to be a child with a disability as provided in Subsection F of 6.31.2.10 NMAC and develop an IEP for an eligible child without undue delay.**
- (4) FAPE for eligible students in juvenile or adult detention or correctional facilities shall be made available in programs that are suited to the security requirements of each facility and eligible student. The provisions of 34 CFR Sec. 300.324(d) apply to IEPs for students with disabilities who are convicted as adults under state law and incarcerated in adult prisons.**
- (5) A state-supported educational program that serves a juvenile or adult detention or correctional facility shall be responsible for ensuring that FAPE is provided to eligible children in that facility.**
- (6) The local school district in which a detention or correctional facility is located (that is not served by a state-supported educational program) shall be responsible for ensuring that FAPE is made available to eligible children in that facility. A child's LEA of residence or another public agency with educational jurisdiction may agree to share the responsibility pursuant to a written agreement between or among the agencies involved.**
- (7) Children with disabilities who are detained or incarcerated in detention or correctional facilities are wards of the state and may have surrogate parents appointed pursuant to 34 CFR Sec. 300.519 and Subsection J of 6.31.2.13 NMAC to protect their IDEA rights while in state custody.**
- (8) The public agency that administers the educational program in a juvenile or adult detention or correctional facility shall ensure that surrogate parents are appointed in cases where no parent as defined in 34 CFR Sec. 300.30(a) and Paragraph (14) of Subsection B of 6.31.2.7 NMAC is reasonably available or willing to make the educational decisions required for children with disabilities who are housed in that facility.**
- (9) Children placed in juvenile or adult detention or correctional facilities must be provided learning opportunities and instruction that meet the state standards with benchmarks.**

“We do not believe it is necessary to define ‘comparable services’ in these regulations because the Department interprets ‘comparable’ to have the plain meaning of the word, which is ‘similar’ or ‘equivalent.’ Therefore, when used with respect to a child who transfers to a new public agency from a previous public agency in the same State (or from another State), ‘comparable’ services means services that are ‘similar’ or ‘equivalent’ to those that were described in the child’s IEP from the previous public agency, as determined by the child’s newly designated IEP Team in the new public agency.” 71 Fed. Reg. 46681 (August 14, 2006).

*As part of its enrollment procedures, parents are asked whether their child was receiving special education services from the previous school district. When the Jal Public School District learns that a child had an IEP in effect in a previous school district, the Jal Public School District will take steps to ensure a seamless transition, including by promptly requesting records from the previous school district and providing services that are comparable to the services the child was receiving from the previous school district until such time as the Jal Public School District develops and implements a new IEP. The Jal Public School District will also conduct a review of existing evaluation*

*data to determine whether the child needs a reevaluation. When the Jal Public School District learns that a child with a disability has transferred to another public school, the Jal Public School District will take reasonable steps to promptly respond to a request for records from the public school in which the child has enrolled.*

**C. What the IEP Team Must Consider When Developing an IEP**

**Authority: 34 CFR §300.324 Development, review, and revision of IEP**

- (a) Development of IEP—(1) General. In developing each child’s IEP, the IEP Team must consider —**
- (i) The strengths of the child;**
  - (ii) The concerns of the parents for enhancing the education of their child;**
  - (iii) The results of the initial or most recent evaluation of the child; and**
  - (iv) The academic, developmental, and functional needs of the child.**

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

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

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

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

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

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

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

- (ii)** a behavioral intervention plan focusing on positive behavior supports and developed from a functional behavioral assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings;

**(e)** futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments;

**(f)** parent or family training and support, provided by qualified personnel with experience in ASD, that, for example:

- (i)** provides a family with skills necessary for a child to succeed in the home or community setting;

- (ii)** includes information regarding resources such as parent support groups, workshops, videos, conferences, and materials designed to increase parent knowledge of specific teaching and management techniques related to the child's curriculum; and

- (iii)** facilitates parental carryover of in-home training, including, for example, strategies for behavior management and developing structured home environments or communication training so that parents are active participants in promoting the continuity of interventions across all settings;

**(g)** suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social or behavioral progress based on the child's developmental and learning level and that encourages work towards individual independence as determined by, for example:

- (i)** adaptive behavior evaluation results;

- (ii)** behavioral accommodation needs across settings; and

- (iii)** transitions within the school day;

**(h)** communication interventions, including communication modes and functions that enhance

effective communication across settings such as augmentative, incidental, and naturalistic teaching;

(i) social skills supports and strategies based on social skills assessment or curriculum and provided across settings, including, for example, trained peer facilitators, video modeling, social stories, and role playing;

(j) professional educator and staff support, including, for example, training provided to personnel who work with the student to assure the correct implementation of techniques and strategies described in the IEP; and

(k) teaching strategies based on peer reviewed, research-based practices for students with ASD, including, for example, those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, and social skills training.

*The Jal Public School District recognizes that the core of the IDEA is the cooperative process that it establishes between parents and schools. Parents are given a large measure of participation at every stage of the process. The Jal Public School District will ensure that the IEP Team gathers appropriate information upon which to base development of an IEP, including information from the parents.*

#### **D. Amendment of an IEP without a Meeting**

**Authority: 34 CFR §300.324 Development, review, and revision of IEP**

##### **(a) Development of IEP—**

...

##### **(4) Agreement.**

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

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

...

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

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

...

#### **B. Individualized education programs (IEPs)**

...

##### **(4) Agreement to modify IEP meeting requirement.**

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



- (b) If changes are made to the child's IEP in accordance with subparagraph (4)(a) of this paragraph, the Jal Public School District will ensure that the child's IEP team is informed of those changes.

"Section 614(d)(3)(D) of the Act does not require the agreement between the parent and the public agency to be in writing. In addition, the parent is not required to provide *consent*, as defined in §300.9, to amend the IEP without an IEP Team meeting. However, it would be prudent for the public agency to document the terms of the agreement in writing, in the event that questions arise at a later time. Of course, changes to the child's IEP would have to be in writing." 71 Fed. Reg. 46685 (August 14, 2006).

"Section 300.324(a)(4), consistent with section 614(d)(3)(D) of the Act, permits the public agency and the parent to agree to amend the child's IEP without an IEP Team meeting. If the parent needs further information about the proposed change or believes that a discussion with the IEP Team is necessary before deciding to change the IEP, the parent does not have to agree to the public agency's request to amend the IEP without an IEP Team meeting." 71 Fed. Reg. 46685 (August 14, 2006).

"We do not believe that it is necessary to regulate on the timeframe within which a public agency must make the IEP accessible to the service providers responsible for implementing the changes, or otherwise notify them of the changes, as this will vary depending on the circumstances (e.g., whether the changes are minor or major changes) and is, therefore, best left to State and local public agency officials to determine." 71 Fed. Reg. 46686 (August 14, 2006).

*After the annual IEP Team meeting has been held for a school year, the Jal Public School District does permit amendments to the IEP without an IEP Team meeting if the parent and school agree. However, amendments without a meeting after the annual IEP Team meeting are NOT permitted for the following actions of an IEP Team:*

- *A change in eligibility;*
- *A decision to terminate eligibility for special education services (including through graduation);*
- *A change in placement; or*
- *A manifestation determination.*

*Members of the IEP Team and any other school officials responsible for implementing the child's IEP will be informed of the amendments.*

## II. MEMBERSHIP OF THE IEP TEAM

### Authority: 34 CFR §300.321 IEP Team.

(a) General. The Jal Public School District will ensure that the IEP Team for each child with a disability includes--

- (1) The parents of the child;
- (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- (4) A representative of the Jal Public School District who -
  - (i) Is qualified to provide, or supervise the provision

of, specially designed instruction to meet the unique needs of children with disabilities;

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

(iii) Is knowledgeable about the availability of resources of the Jal Public School District.

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

(6) At the discretion of the parent or the Jal Public School District, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

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

(b) Transition services participants.

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

(2) If the child does not attend the IEP Team meeting, the Jal Public School District will take other steps to ensure that the child's preferences and interests are considered.

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

services.

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

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

(e) IEP Team attendance.

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

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

(i) The parent, in writing, and the Jal Public School District consent to the excusal; and

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

(f) Initial IEP Team meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

Authority: 34 CFR §300.324 Development, review, and revision of IEP

(a) Development of IEP—

...

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

the review and revision of the IEP of the child, including the determination of—

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

- (b) Review and revision of IEPs—

...

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

Authority: 34 CFR §300.327 Educational placements.

Consistent with §300.501(c), the Jal Public School District will ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

Authority: 34 CFR §300.328 Alternative means of meeting participation.

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

Authority: NMAC 6.29.1.9 [Standards for Excellence] PROCEDURAL REQUIREMENTS

...

J. Graduation Requirements:

...

- (9) Receipt of diploma or certificate: Governing principles that will guide the development, program of study, and the granting of a diploma or use of a certificate with a follow-up plan of action in the form of an IEP for students with disabilities receiving special education services are as follows:

...

- (d) Departures from the standard program of study for students receiving special education must be considered in the order of the options listed in Subparagraph (b) of Paragraph (9) of Subsection J of 6.30.2.10 NMAC. Any modified program of study may depart from a standard program only as far as is necessary to meet an individual student's educational needs as determined by the IEP team. A building administrator or designee who has knowledge about the student must be a member of the team when an alternative program of study is developed.

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

...

**B. Individualized education programs (IEPs).**

...

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

“Section 614(d)(1)(C) of the Act allows a parent of a child with a disability and the LEA to agree that the attendance of an IEP Team member at an IEP Team meeting, in whole or in part, is not necessary under certain conditions. Allowing IEP Team members to be excused from attending an IEP Team meeting is intended to provide additional flexibility to parents in scheduling IEP Team meetings and to avoid delays in holding an IEP Team meeting when an IEP Team member cannot attend due to a scheduling conflict.” 71 Fed. Reg. 46673 (August 14, 2006).

“We cannot eliminate the different procedures for different types of excusals because section 614(d)(1)(C) of the Act clearly differentiates between circumstances in which parental consent is required and when an agreement is required to excuse an IEP member from attending an IEP Team meeting.” 71 Fed. Reg. 46673 (August 14, 2006).

“When an IEP Team member’s area is not being modified or discussed, §300.321(e)(1), consistent with section 614(d)(1)(C) of the Act, provides that the member may be excused from the meeting if the parent and LEA agree in writing that the member’s attendance is not necessary. We believe it is important to give public agencies and parents wide latitude about the content of the agreement and, therefore, decline to regulate on the specific information that an LEA must provide in a written agreement to excuse an IEP Team member from attending the IEP Team meeting when the member’s area of the curriculum or related services is not being modified or discussed.” 71 Fed. Reg. 46674 (August 14, 2006).

“When an IEP Team member’s area is being modified or discussed, §300.321(e)(2), consistent with section 614(d)(1)(C)(ii) of the Act, requires the LEA and the parent to provide written informed consent. Consistent with §300.9, consent means that the parent has been fully informed in his or her native language, or other mode of communication, and understands that the granting of consent is voluntary and may be revoked at any time. The LEA must, therefore, provide the parent with appropriate and sufficient information to ensure that the parent fully understands that the parent is consenting to excuse an IEP Team member from attending an IEP Team meeting in which the member’s area of the curriculum or related services is being changed or discussed and that if the parent does not consent the IEP Team meeting must be held with that IEP Team member in attendance.” 71 Fed. Reg. 46674 (August 14, 2006).

“With regard to the recommendation that the notice state that the parent has a legal right to require an IEP Team member to participate in an IEP Team meeting, it is important to emphasize that it is the public agency that determines the specific personnel to fill the roles for the public agency’s required participants at the IEP Team meeting. A parent does not have a legal right to require other members of the IEP Team to attend an IEP Team meeting. Therefore, if a parent invites other public agency personnel who are not designated by the LEA to be on the IEP Team, they are not required to attend.” 71 Fed. Reg. 46674 (August 14, 2006).

“We do not believe it is necessary to require consent or a written agreement between the parent and the public agency to excuse individuals who are invited to attend IEP Team meetings at the discretion of the parent or the public agency because such individuals are not required members of an IEP Team.” 71 Fed. Reg. 46675 (August 14, 2006).

*The Jal Public School District will ensure that each IEP Team meeting is duly constituted. The Jal Public School District recognizes the uniquely valuable contributions of each IEP Team member. Therefore, the Jal Public School District will not agree to routinely excuse IEP Team members. When a required member is unable to attend an IEP Team meeting, the Jal Public School District will carefully consider, based on the individual needs of the child and the issues that need to be addressed at the IEP Team meeting, whether it makes sense to offer to hold the IEP Team*

*meeting without a particular IEP Team member in attendance or whether it would be better to reschedule the meeting so that person could attend and participate in the discussion. Parents will not be pressured into agreeing to an excusal. When a member is excused, the Jal Public School District will ensure that all criteria have been met.*

### **III. CONSIDERATION OF SPECIAL FACTORS**

#### **A. Behavior**

**Authority: 34 CFR §300.324 Development, review, and revision of IEP.**

**(a) Development of IEP—**

...

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

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

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

...

**F. Behavior management and discipline.**

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

*“Section 300.324(a)(2)(i) follows the specific language in section 614(d)(3)(B)(i) of the Act and focuses on interventions and strategies, not assessments, to address the needs of a child whose behavior impedes the child's learning or that of others. Therefore, while conducting a functional behavioral assessment typically precedes developing positive behavioral intervention strategies, we do not believe it is appropriate to include this language in § 300.324(a)(2)(i).” 71 Fed. Reg. 46683 (August 14, 2006).*

*The NMPED has issued a guidance document titled, “Addressing Student Behavior: A Guide for Educators” (Revised 2010), available through the NMPED website at: <http://ped.state.nm.us/RtI/dl10/Addressing%20Student%20Behavior%20Guide%202010.pdf> . The guide includes sample forms for a functional behavioral assessment (FBA) and a behavior intervention plan (BIP). The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

*The Jal Public School District will conduct a functional behavioral assessment (FBA) as needed to address the behavioral concerns of a child whose behavior interferes with learning and as required in the disciplinary context.*

*The NMPED has issued a guidance document titled, “Technical Assistance Manual for Gifted Education in New Mexico” (September 2011), available through the NMPED website at: <http://ped.state.nm.us/gifted/Gifted%20TA%20manual.pdf>. Chapter 3 addresses the social emotional issues of gifted children. The \*\*\*, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

*“Time-out reflects 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.**”* From NMPED memorandum, “Use of Time-Out Rooms as a Behavioral Intervention” (August 7, 2003).

## **B. Language and Communication Needs**

**Authority: 34 CFR §300.324 Development, review, and revision of IEP.**

(a) Development of IEP—

...

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

...

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

*The Jal Public School District will ensure that the IEP Team addresses the language and communication needs of each child with a disability regardless of the category of disability.*

## **C. For Children with Limited English Proficiency**

**Authority: 34 CFR §300.324 Development, review, and revision of IEP.**

(a) Development of IEP—

...

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

...

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

*The Jal Public School District will ensure that the IEP Team addresses the language and communication needs of each child with limited English proficiency, as those needs relate to the child's IEP.*



#### **D. For Children Who Are Blind or Visually Impaired**

**Authority: 34 CFR §300.324 Development, review, and revision of IEP.**

(a) Development of IEP—

...

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

...

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

*For a child who is blind or visually impaired, the Jal Public School District will ensure that, based upon consideration of an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, the IEP Team determines whether instruction in Braille or the use of Braille is appropriate for the child. If Braille is appropriate, the Jal Public School District will ensure that the IEP provides for instruction in Braille or the use of Braille, as appropriate.*

#### **E. Assistive Technology Needs**

**Authority: 34 CFR §300.324 Development, review, and revision of IEP.**

(a) Development of IEP—

...

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

...

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

**Authority: 34 CFR §300.5 Assistive technology device.**

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

**Authority: 34 CFR §300.6 Assistive technology service.**

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

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

Authority: 34 CFR §300.105 Assistive technology.

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

*The Jal Public School District will ensure that the IEP Team addresses whether each child with a disability needs assistive technology devices and/or services. If the IEP Team determines that a child needs assistive technology devices and/or services, the devices and/or services will be incorporated in the child's IEP as supplementary aids and services, special education, and/or related services, as appropriate.*

#### **IV. CONTENT OF THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)**

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

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

...

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

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

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

Authority: 34 CFR §300.324 Development, review, and revision of IEP

...

(d) Children with disabilities in adult prisons.

(1) Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

(i) The requirements contained in §300.160 and §300.320(a)(6) (relating to participation of children with disabilities in general assessments).

(ii) The requirements in §300.320(b) (relating to transition planning and transition services), do not apply with respect to the children whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(2) Modifications of IEP or placement.

(i) Subject to paragraph (c)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) The requirements of §§300.320 (relating to IEPs), and 300.112 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.

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

...

**B. Individualized education programs (IEPs).**

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

*In an effort to ensure an understandable IEP, the Jal Public School District will avoid redundancy in the IEP. The IEP Team is not required to include information under one component of a child's IEP that is already contained under another component of the child's IEP. The IEP and Prior Written Notice shall be read as a whole.*

**A. Present Levels of Academic Achievement and Functional Performance**

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

- (a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--
  - (1) A statement of the child's present levels of academic achievement and functional performance, including--
    - (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
    - (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities....

“Several commenters asked the U.S. Department of Education to state that not every IEP must include a statement about the child’s ‘functional performance’ and ‘functional goals.’ The U.S. Department of Education pointed out that the language is in the statute, and therefore, cannot be omitted. Thus the IEP must always include a statement of ‘the child’s present levels of academic achievement and functional performance.’” 71 Fed. Reg. 46662 (August 14, 2006).

“It is not necessary to include a definition of ‘functional’ in these regulations because we believe it is a term that is generally understood to refer to skills or activities that are not considered academic or related to a child’s academic achievement. Instead, ‘functional’ is often used in the context of routine activities of everyday living.” 71 Fed. Reg. 4661 (August 14, 2006).

*The Jal Public School District will ensure that the IEP for every child with a disability includes a statement of the child’s functional and academic performance.*

## **B. Measurable Annual Goals**

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

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

...

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

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

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

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

“[The Act] requires an IEP to include benchmarks or short term objectives for children with disabilities who take an alternate assessment aligned to alternate achievement standards. This would apply to preschool children and children with disabilities in kindergarten through grade two only if these children are assessed in a State or districtwide assessment program and the State has opted to develop an alternate assessment based on alternate achievement standards.” 71 Fed. Reg. 46663 (August 14, 2006).

“The Act does not require goals to be written for each specific discipline....” 71 Fed. Reg. 4662 (August 14, 2006).

“For example, if the IEP Team has determined that a student needs speech and language therapy services as a component of FAPE, the IEP must include goals and objectives that address the student's need to develop and/or improve communication-related skills. It would not be necessary, however, to label the goals and objectives as ‘speech therapy’ goals and objectives. Therefore, if the IEP includes goals and objectives which appropriately address the student's need to develop communication-related skills, no additional or separate ‘therapy’ goals and objectives would be required.” OSEP *Letter to Hayden* (Oct. 3, 1994).

*The Jal Public School District will ensure that the IEP for every child with a disability includes functional and academic measurable annual goals. The Jal Public School District will further ensure that the IEP of a child who takes the NM Alternate Assessment includes benchmarks or short-term objectives. The Jal Public School District encourages an integrated IEP, rather than goals for each specific discipline.*

## **C. Measuring and Reporting Progress**

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

(a) General. As used in this part, the term individualized education program or IEP means a written

statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--

...

(3) A description of--

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

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

"The Act does not require goals...to have outcomes and measures on a specific assessment tool." 71 Fed. Reg. 46662 (August 14, 2006).

"Report cards and quarterly report cards are used as examples in 300.320(a)(3) of when periodic reports on the child's progress toward meeting the annual goals might be provided. The specific times that progress reports are to be provided to parents and the specific manner and format in which a child's progress toward meeting the annual goals is reported is best left to State and local officials to determine." 71 Fed. Reg. 46664 (August 14, 2006).

*The Jal Public School District will ensure that the IEP Team determines for each individual child how progress toward meeting the annual goals will be measured, and when parents will be provided with periodic reports of the child's progress. The Jal Public School District will maintain copies of the progress reports provided to parents in the student's special education file.*

**D. Statement of Special Education, Related Services, Supplementary Aids and Services**

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

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

...

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

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

(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this

section, and to participate in extracurricular and other nonacademic activities; and

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

...

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

**Authority: 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, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.114 through 300.116.

**Authority: 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.

...

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

...

(3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

- (i) To address the unique needs of the child that result from the child's disability; and
- (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

**Authority: 34 CFR §300.34 Related services.**

(a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation



counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also includes school health services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the IEP of the child, social work services in schools, and parent counseling and training.

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

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

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

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

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

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

**Authority: 34 CFR §300.107 Nonacademic services.**

The State must ensure the following:

(a) The Jal Public School District will take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular

services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

Authority: 34 CFR §300.117 Nonacademic settings.

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

Authority: 34 CFR §300.106 Extended school year services.

(a) General.

(1) The Jal Public School District will ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with §§300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

(3) In implementing the requirements of this section, the Jal Public School District will not--

(i) Limit extended school year services to particular categories of disability; or

(ii) Unilaterally limit the type, amount, or duration of those services.

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

(1) Are provided to a child with a disability--

(i) Beyond the normal school year of the Jal Public School District;

(ii) In accordance with the child's IEP; and

(iii) At no cost to the parents of the child; and

(2) Meet the standards of the NMPED.

“We decline to require all IEP Team meetings to include a focused discussion on research-based methods or require public agencies to provide prior written notice when an IEP Team refuses to provide documentation of research-based methods, as we believe such requirements are unnecessary and would be overly burdensome.” 71 Fed. Reg. 46665 (August 14, 2006).

“States, school districts, and school personnel must, therefore, select and use methods that research has shown to be effective, to the extent that methods based on peer-reviewed research are available. This does not mean that the service with the greatest body of research is the service necessarily required for a child to receive FAPE. Likewise, there is nothing in the Act to suggest that the failure of a public agency to provide services based on peer-reviewed research would automatically result in a denial of FAPE.” 71 Fed. Reg. 46665 (August 14, 2006).

“There is nothing in the Act that requires an IEP to include specific instructional methodologies....The Department’s longstanding position on including instructional methodologies in a child’s IEP is that it is an IEP Team’s decision. Therefore, if an IEP Team determines that specific instructional methods are necessary for the child to receive FAPE, the instructional methods may be addressed in the IEP.” 71 Fed. Reg. 46665 (August 14, 2006).

“The analysis of whether the child’s level of achievement would be jeopardized by a summer break in his or her structured educational programming should proceed by applying not only retrospective data, such as past regression and rate of recoupment, but also should include predictive data, based on the opinion of professionals in consultation with the child’s parents as well as circumstantial considerations of the child’s individual situation at home and in his or her neighborhood and community.” *Johnson v. Bixby Independent Sch. Dist. No. 4*, 921 F.2d 1022, 1028 (10<sup>th</sup> Cir. 1990).

Is the amount of minutes and hours a specific service is given required to be made a part of each child’s IEP? “Although Part B does afford State and local educational authorities some discretion in this area, public agencies must ensure that the amount of services is stated in a manner that is appropriate to the specific service and clear to all who are involved in the development and implementation of the child’s IEP. The statement of the amount of service must be sufficiently specific to reflect the commitment of agency resources to the particular service to ensure that the child’s IEP addresses the child’s identified educational needs. Therefore, it would be inconsistent with Federal requirements for States and school districts to have a practice of using ranges of time to express the agency’s level of commitment to a particular special educational or related service since a child’s IEP would not contain the specific amount of time committed for that service.” OSEP *Letter to Ackron* (1990).

*The NMPED has issued a memorandum containing guidance regarding the “Role of Related Service Providers” (August 22, 2002), available through the NMPED website at: <http://www.ped.state.nm.us/seo/library/guidance.memor.pdf>. The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance.*

*The Jal Public School District will ensure that the amount of services is stated in a manner that is appropriate to the specific service and clear to all who are involved in the development and implementation of the child’s IEP. The*

*NMPED has issued a memorandum containing guidance regarding “Frequency of Services Stated on an IEP” (September 8, 2004), available through the NMPED website at: <http://www.ped.state.nm.us/seo/guide/stars.guide.service.level.pdf>. The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance.*

*The NMPED has issued a guidance document titled, “Guidelines for Calculating Service Levels” (June 2006), available through the NMPED website at: <http://www.ped.state.nm.us/seo/guide/stars.guide.service.level.pdf>. The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

*The NMPED has posted on its website a guidance document developed by the Mountain Plains Regional Resource Center titled, “Primer on the Provision of Extended School Year Services for Parents and Educators” (2006), available through the NMPED website at: <http://www.ped.state.nm.us/seo/parents/ESY%20Services%20Doc%202006%20JC%20cb.pdf>. The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

*The NMPED has issued a guidance document titled, “An Overview of Special Education Transportation: A Primer for Parents and Educators” (2003), available through the NMPED website at: <http://www.ped.state.nm.us/seo/library/transguide.pdf>. The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

*The NMPED has issued a guidance document titled, “Technical Assistance and Training Document for Gifted Education” (September 2000), available through the NMPED website: <http://www.ped.state.nm.us/seo/gifted/gifted.pdf>. The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

## **E. Participation in State and Districtwide Assessment**

**Authority: 34 CFR § 300.160 Participation in assessments.** (new – effective May 9, 2007.)

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

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

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

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

...

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

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

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

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

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

...

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

- (1) in the appropriate general assessment in the same manner as their nondisabled peers; this may include the use of adaptations that are deemed appropriate for all students by the department; or
- (2) in the appropriate general assessment with appropriate accommodations in administration if necessary; Jal Public School District will use the current guidance from the department about accommodations as specified in the student's IEP; or
- (3) in alternate assessments for the small number of students for whom alternate assessments are appropriate under the department's established participation criteria; the IEP team must agree and document that the student is eligible for participation in an alternate assessment based on alternate achievement standards according to 34 CFR Sec. 300.320(a)(6).

*The Jal Public School District IEP team will follow NMPED guidelines when determining how a child will participate in the New Mexico Statewide Assessment Program including how to select allowable accommodations and decide whether a child with a disability meets the criteria to be assessed based on modified or alternate academic achievement standards. The Jal Public School District will use the most current forms and follow the most current guidance of the NMPED.*

**F. Transition Services and Transfer of Rights at Age of Majority**

**1. Transition Services**

**Authority: 34 CFR §300.43 Transition services.**

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

- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the

child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

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

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

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

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

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

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

...

(b) Transition services. Beginning not later than the first IEP to be in effect when the child turns [14 in New Mexico], or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include—

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

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

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

Authority: 34 CFR §300.324 Development, review, and revision of IEP

...

(c) Failure to meet transition objectives—

...

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

Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN:

...

F. Applicability of rules to gifted children.

- (1) All definitions, policies, procedures, assurances, procedural safeguards and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the educational jurisdiction of each local school district, including children in charter schools within the district, except:

...

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

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

...

G. Graduation planning and post-secondary transitions

...

- (2) Appropriate post-secondary transition planning for children with disabilities is essential. The Jalisco Public School District will integrate transition planning into the IEP process pursuant to 34 CFR Secs. 300.320(b), 300.324(c) and will establish and implement appropriate policies, procedures, programs and services to promote successful post-secondary transitions for children with disabilities. Transition services for students 14-21 include the following.
  - (a) Transition services are a coordinated set of activities for a child with a disability that emphasizes special education and related services designed to meet unique needs and prepare them for future education, employment and independent living.
  - (b) Transition services are designed to be within a results oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation.
  - (c) Transition services must be based on the individual child's needs, taking into account the child's strengths, preferences and interests and includes:
    - (i) instruction;
    - (ii) related services;
    - (iii) community experiences;
    - (iv) the development of employment and other post-school adult living objectives; and
    - (v) when appropriate, acquisition of daily living skills and the provision of a functional vocational evaluation.
  - (d) Transition services for children with disabilities may be considered special education, if provided as individually designed instruction, aligned with the state standards with benchmarks, or related service, if required to assist a child with a disability to benefit from special education as provided in 34 CFR Sec. 300.43.
- (3) State rules require the development of measurable post-school goals beginning not later than the first IEP to be in effect when the child turns 14, or younger, if determined appropriate by the IEP team,



and updated annually thereafter. Pursuant to 34 CFR Sec. 300.320(b), the IEP must include:

- (a) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and where appropriate, independent living skills;
  - (b) the transition services (including courses of study) needed to assist the child in reaching those goals; and
  - (c) a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority.
- (4) Measurable post school goals refer to goals the child seeks to achieve after high school graduation. The goals themselves must be measurable while the child is still in high school. In addition, the nature of these goals will be different depending on the needs, abilities and wishes of each individual child.

"We do not believe it is necessary to change the definition of transition services because the definition is written broadly to include a range of services, including vocational and career training that are needed to meet the individual needs of a child with a disability. The definition clearly states that decisions regarding transition services must be made on the basis of the child's individual needs, taking into account the child's strengths, preferences, and interests. As with all special education and related services, the student's IEP Team determines the transition services that are needed to provide FAPE to a child with a disability based on the needs of the child, not on the disability category or severity of the disability. We do not believe further clarification is necessary." 71 Fed. Reg. 46579 (August 14, 2006).

"[T]he only area in which postsecondary goals are not required in the IEP is in the area of independent living skills. Goals in the area of independent living are required only if appropriate. It is up to the child's IEP Team to determine whether IEP goals related to the development of independent living skills are appropriate and necessary for the child to receive FAPE." 71 Fed. Reg. 46668 (August 14, 2006).

*The Jal Public School District will ensure that the IEP Team complies with the IDEA transition provisions beginning no later than the first IEP to be in effect when the child turns 14, or younger if appropriate, and updated annually thereafter.*

## **2. Graduation Planning**

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

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

...

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

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

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

(iv) As used in paragraphs (a)(3)(i) through (a)(3)(iii) for this section, the term regular high school diploma does not

include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED).

**Authority: NMAC 6.29.1.9 [Standards for Excellence] PROCEDURAL REQUIREMENTS**

...

**J. Graduation Requirements:**

...

- (13) Graduation requirements for issuance of a conditional certificate of transition for students with an IEP. The development of a program of study and the granting of a diploma, or use of a conditional certificate of transition in the form of a continuing or transition individualized educational program (IEP) for students receiving special education services, includes the following governing principles:
- (a) The IEP team is responsible for determining whether the student has completed a planned program of study based on the student's strengths, interests, preferences, identified educational and functional needs and long-term educational or occupational goals, making the student eligible to receive either a diploma or a conditional certificate of transition. A conditional certificate of transition allows the student to participate in graduation activities. If a student receives a conditional certificate of transition, the student shall then return to the program specified in the IEP to complete the student's secondary program and meet the requirements for a diploma. In addition, all IEPs shall provide a description of how the student's progress toward meeting annual goals and graduation requirements will be measured, and at what intervals progress will be reported to parents or guardians. A student shall be awarded a diploma upon completion of a planned program of study that meets the requirements of paragraph (b).
  - (b) A student may be awarded a diploma (Section 22-13-1.1 NMSA 1978) using any of the following programs of study described in (i) through (iii). All IEP team discussion points and decisions identified herein, including the identification of the student's program of study and any student or parent proposals accepted or rejected by the IEP team (if the student has not reached the age of majority), shall be documented on the student's IEP and in the prior written notice (PWN) of proposed action.
    - (i) A standard program of study is based upon meeting or exceeding all requirements for graduation based on the New Mexico standards for excellence (Subsection J of 6.29.1.9 NMAC) with or without reasonable accommodations of delivery and assessment methods. In addition, a student shall pass all sections of the current state graduation examination(s) administered pursuant to Section 22-13-1.1(I) NMSA 1978 under standard administration or with state-approved accommodations, and shall meet all other standard graduation requirements of the \*\*\*.
    - (ii) A career readiness alternative program of study is developed to provide relevance and is based on a student's career interest as it relates to one of the career clusters, with or without reasonable accommodations of delivery and assessment methods. In addition, a student shall take the current state graduation examination(s) administered pursuant to Section 22-13-1.1(K) NMSA 1978, under standard administration or with state-approved accommodations, and achieve a level of competency pre-determined by the student's IEP team; the student shall earn at least the minimum number of credits required by the \*\*\* for graduation through standard or alternative courses that address the employability and career development standards with benchmarks and performance standards, as determined by the IEP team. Course work shall include a minimum of four units of career development opportunities and learning experiences that may include any of the following: career readiness and vocational course work, work experience, community-based instruction, student service learning, job shadowing, mentoring or entrepreneurship related to the student's occupational choices. Credits for work experience shall be related to the program of study that the school offers and specific to the \*\*\*'s ability to offer work experience or community-based instruction credits. The student shall achieve competency in all areas of the employability and career development standards with benchmarks and performance standards, as determined by the IEP team and the student's interest as it relates to the career clusters. The program of study shall address the New Mexico content standards with benchmarks and performance standards in other subject areas as appropriate.

- (iii) An ability program of study was developed for students who have a significant cognitive disability or severe mental health issues. The IEP goals and functional curriculum course work shall be based on the New Mexico standards with benchmarks and performance standards and employability and career development standards with benchmarks and performance standards. Students in this program of study shall earn the minimum number of credits or be provided equivalent educational opportunities required by the \*\*\*, with course work individualized to meet the unique needs of the student through support of the IEP. In addition, a student shall take either the current state graduation examination(s) administered pursuant to Section 22-13-1.1(K) NMSA 1978, under standard administration or with state-approved accommodations, or the state-approved alternate assessment. The student shall achieve a level of competency pre-determined by the student's IEP team on the current graduation examination or the state-approved alternate assessment, and meet all other graduation requirements established by the IEP team.
- (c) The new requirements for the career readiness and ability pathways become effective beginning with students graduating in 2009.
- (d) By the end of the eighth grade, each student's IEP shall contain a proposed individual program of study for grades nine through twelve. The program of study shall identify by name all course options the student may take and shall align with the student's long-range measurable post-secondary goals and transition services to facilitate a smooth transition to high school and beyond. This program of study shall be reviewed on an annual basis and adjusted to address the student's strengths, interests, preferences and areas of identified educational and functional needs. The IEP team shall document on the IEP the student's progress toward earning required graduation credits and passing the current graduation examination.
- (e) \*\*\* will provide each student, who has an IEP and who graduates or reaches the maximum age for special education services, a summary of the student's academic achievement and functional performance, which will include recommendations on how to assist the student in meeting post-secondary goals.
- (f) Students graduating on the standard program of study shall meet the state's minimum requirements on all sections of the graduation examination. IEP teams shall document a plan of action on the IEP and the PWN to be carried out by both the student and the \*\*\*, to ensure that the student will pass all sections of the graduation examination.
- (g) To establish a level of proficiency on the current graduation examination or the state-approved alternate assessment for students on a career readiness program of study or ability program of study, IEP teams shall review the student's performance on the first attempt, and establish a targeted proficiency on all sections that are below the state's minimum requirement. For those students who meet participation criteria for the New Mexico alternate assessment, IEP teams shall set targeted levels of proficiency based upon previous performance on the test. If the student has previously been administered the New Mexico alternate assessment and has achieved an advanced level of overall performance, the IEP team shall arrange for the student to participate in the general graduation examination, and shall identify appropriate accommodations that the student may require. IEP teams shall document the targeted levels of proficiency on the IEP and the PWN, outlining the plan of action to be taken by both the student and the \*\*\* to ensure that the student will meet the targeted levels of proficiency. \*\*\* may submit a written request for a waiver to the secretary in cases where a student has medical or mental health issues that may result in regression or that negatively influence the student's ability to achieve targeted levels of proficiency. The written request shall be signed by the \*\*\* superintendent and shall include documentation of the medical or mental health issues.
- (h) Changes in programs of study.
  - (i) Departures from the standard program of study for students receiving special education services and supports shall be considered in the order of the options listed in Subparagraph (b) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC. Any modified program of study may depart from a standard program of study only so far as is necessary to meet an individual student's educational needs as determined by the IEP team. \*\*\* is obligated to meet the requirements of IDEA to provide students with IEPs on any one of the three programs of study, and access to the general curriculum in the least restrictive environment. When an alternative program of study is developed, a building administrator or designee who has knowledge about the student shall be a member of the IEP team
  - (ii) The \*\*\* will document changes from the standard program of study on the PWN. IEP teams shall

identify the reasons for changing the student's program of study, shall provide parents with clear concise explanations of the career readiness or ability programs of study, shall notify parents and students of the potential consequences that may limit the student's post-secondary options, and shall make required changes to the IEP and course of study, to ensure that the student meets the requirements of that program of study.

- (iii) The IEP team shall not change the program of study for a student entering the final year of high school from the standard program of study to the career readiness program of study, nor from the career readiness program of study to the ability program of study, after the 20th school day of the final year of high school. IEP teams may change a student's program of study from the ability program of study to the career readiness program of study, or from the career readiness program of study to the standard program of study, if the student meets the graduation requirements of that program of study and if the change is made and documented appropriately in a revised IEP and PWN by a properly constituted IEP team in a properly convened meeting.
- (iv) Beginning with students entering the 10th grade, the \*\*\* will maintain an accurate accounting of graduation programs of study for students with IEPs. The \*\*\* will ensure that 80% or more of students with IEPs are in the standard program of study, no more than 10 - 15% of students with IEPs shall graduate in the career readiness program of study, and no more than 1- 3% of students with IEPs shall graduate in the ability program of study. If \*\*\* exceeds the above maximum percentages \*\*\* shall submit a request for a waiver regarding each student affected. The request for waiver shall include the district name, the high school name, a list of all students on the alternate program of study exceeding the maximum percentage (including student demographics, unique student identifiers and the justification for changing each student's program of study). The waiver request shall be signed and submitted by the superintendent or charter school administrator to the secretary.
- (i) A student who receives special education services may be granted a conditional certificate of transition in the form of a continuing or transition IEP when:
  - (i) the IEP team provides sufficient documentation and justification that the issuance of a conditional certificate of transition for an individual student is warranted;
  - (ii) prior to the student's projected graduation date, the IEP team provides a PWN stating that the student will receive a conditional certificate of transition;
  - (iii) the \*\*\* ensures that a conditional certificate of transition is not a program of study and does not end the student's right to a FAPE;
  - (iv) the \*\*\* ensures that a conditional certificate of transition entitles a student who has attended four years or more of high school to participate in graduation activities, and requires that the student continue receiving special education supports and services needed to obtain the high school diploma;
  - (v) the \*\*\* ensures that, prior to receiving a conditional certificate of transition, the student has a continuing or transition IEP;
  - (vi) the student's continuing or transition IEP outlines measures, resources and specific responsibilities for both the student and the \*\*\* to ensure that the student receives a diploma.
- (j) A student who does not return to complete the program of study as outlined in the continuing or transition IEP will be considered as a dropout.
- (k) A student who receives a conditional certificate of transition is eligible to continue receiving special education services until receipt of a diploma or until the end of the academic year in which the student becomes 22 years of age.
- (l) Graduation plans shall be a part of all IEPs:
  - (i) by the end of eighth grade, or by the time the student turns 14 years of age, and concurrent with the development of the student's transition plan in accordance with federal regulations at 34 CFR 300.320;
  - (ii) when a student returns to a school after an extended absence, and if an IEP program of study may have been developed but needs to be reviewed; or
  - (iii) when evaluations warrant the need for a modified program of study at any time after development of an initial graduation plan.
- (m) Graduation plans shall be a part of all of all IEPs and annual reviews, and shall follow the student in all educational settings. Receiving institutions that fall under the department's jurisdiction will recognize these graduation plans, subject to revision by new IEP teams, if appropriate to meet a

student's changing needs.

- (n) At the exit IEP meeting, the team shall review the student's transition plan, and shall confirm and document that all state and \*\*\* requirements for graduation under the final IEP have been satisfied. A building administrator who has knowledge about the student shall be a member of this team, and shall sign specifically to verify and accept completed graduation plans, goals and objectives pursuant to (i) - (iii) of Subparagraph (b) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC, or plans for a conditional certificate of transition with a continuing or transition IEP, pursuant to Subparagraph (i) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC. The IEP team shall ensure that the student has current and relevant evaluations, reports or other documentation necessary to support a smooth and effective transition to post-secondary services for a student who will graduate on one of the three programs of study. The school shall arrange for any necessary information to be provided at no cost to the students or parents. The school shall submit a list of students who will receive the diploma through a career readiness or ability program of study to the local superintendent or charter school administrator, using the students' identification numbers. This list shall be totaled and submitted to the local school board or governing body of a charter school. This information shall be treated as confidential in accordance with the FERPA.
- (o) Students eligible for special education services are entitled to a FAPE through age 21. If a student turns 22 during the school year, the student shall be allowed to complete the school year. If a student becomes 22 prior to the first day of the school year, the student is no longer eligible to receive special education services.
- (p) The receipt of a diploma terminates the service eligibility of students with special education needs.
- (q) All diplomas awarded by \*\*\* shall be identical in appearance, content and effect, except that symbols or notations may be added to individual students' diplomas to reflect official school honors or awards earned by students.

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

...

**G. Graduation planning and post-secondary transitions**

- (1) The IEP for each child with a disability in grades 8 through 12 is developed, implemented and monitored in compliance with all applicable requirements of the department's Standards for Excellence, (Chapter 29 of Title 6 of NMAC), and these or other department rules and standards. The graduation plan shall be integrated into the transition planning and services provided in compliance with 34 CFR Secs. 300.320(b), 300.324(c).
  - (a) Graduation plans must include the course of study, projected date of graduation and if the child is not on target for the graduation plan, the strategies and responsibilities of the Jal Public School District, child and family must be identified in the IEP.
  - (b) Graduation options for children with disabilities at Paragraph (9) of Subsection J of 6.30.2.10 NMAC must align with state standards with benchmarks when appropriate.
  - (c) An alternative degree that does not fully align with the state's academic standards, such as a certificate or general educational development credential (GED), does not end a child's right to FAPE pursuant to 34 CFR Sec. 300.102(a)(3).

*The Jal Public School District will ensure that the IEP Team timely conducts graduation planning and addresses all IDEA and State requirements for graduation.*

*The NMPED has issued a guidance document titled, "Pathways to the Diploma: Graduation Options for Students with Disabilities." (May 2010), available through the NMPED website at: <http://ped.state.nm.us/SEB/technical/GraduationOptionsStudentsWithDisabilities.pdf>. The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

**3. Transfer of Rights at Age of Majority**

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

...

**K. Transfer of parental rights to students at age 18**

...

- (2) Pursuant to 34 CFR Sec. 300.320(c), each annual IEP review for a child who is 16 or older must include a discussion of the rights that will transfer when the child turns 18 and, as appropriate, a discussion of the parents' plans for obtaining a guardian before that time. Each child's IEP beginning not later than when the child turns 17 must include a statement that the child and the parent have been informed of the rights that will transfer to the child at age 18.

*The Jal Public School District will ensure that the IEP Team timely complies with the requirements for transfer of rights at age of majority.*

**V. IEP IMPLEMENTATION**

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

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

...

(d) Accessibility of child's IEP to teachers and others. The Jal Public School District will ensure that—

(1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service provider who is responsible for its implementation; and

(2) Each teacher and provider described in paragraph (d)(1) of this section is informed of –

(i) His or her specific responsibilities related to implementing the child's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

“Section 300.323(d) requires that the child's IEP be accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation. The purpose of this requirement is to ensure that teachers and providers understand their specific responsibilities for implementing an IEP, including any accommodations or supports that may be needed. We agree with the commenters' recommendation and believe retaining current §300.342(b)(3)(i) and (b)(3)(ii) is necessary to ensure proper implementation of the child's IEP and the provision of FAPE to the child. However, the mechanism that the public agency uses to inform each teacher or provider of his or her responsibilities is best left to the discretion of the public agency.” 71 Fed. Reg. 46681 (August 14, 2006).

*Through timely IEP development, coordination and planning, the Jal Public School District will ensure that IEPs are in effect for each child with a disability at the beginning of the school year, and that teachers and other service providers are informed of their responsibilities for implementation of an IEP. Having teachers and other service*

*providers sign receipt for the IEP, or applicable portions of the IEP, is one way the Jal Public School District assures receipt.*

## **VI. PARENTALLY-PLACED PRIVATE SCHOOL CHILDREN**

### **Authority: 34 CFR §300.130 Definition of parentally-placed private school children with disabilities.**

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in §300.13 or secondary school in §300.36, other than children with disabilities covered under §§300.145 through 300.147.

### **Authority: 34 CFR §300.132 Provision of services for parentally-placed private school children with disabilities—basic requirement.**

- (a) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with §300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§300.190 through 300.198.
- (b) Services plan for parentally-placed private school children with disabilities. In accordance with paragraph (a) of this section and §§300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part.
- (c) Record keeping. Each LEA will maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under §§300.130 through 300.144:
  - (1) The number of children evaluated;
  - (2) The number of children determined to be children with disabilities; and
  - (3) The number of children served.

### **Authority: 34 CFR §300.137 Equitable services determined.**

- (a) No individual right to special education and related services. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.
- (b) Decisions.
  - (1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§300.130 through 300.144 must be made in accordance with paragraph (c) of this section and §300.134(c).
  - (2) The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.
- (c) Services plan for each child served under §§300.130 through 300.144. If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must—
  - (1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with §300.138(b); and
  - (2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

### **Authority: 34 CFR §300.138 Equitable services provided.**

- (a) General.
  - ...
  - (2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.
- (b) Services provided in accordance with a services plan.
  - (1) Each parentally-placed private school child with a disability who has been designated to receive

services under §300.132 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in §§300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.

- (2) The services plan must, to the extent appropriate—
  - (i) Meet the requirements of §300.320, or for a child ages three through five, meet the requirements of §300.323(b) with respect to the services provided; and
  - (ii) Be developed, reviewed, and revised consistent with §§300.321 through 300.324.
- (c) Provision of equitable services.
  - ...
  - (2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

**Authority: 34 CFR §300.139 Location of services and transportation.**

- ...
- (b) Transportation—
  - (1) General.
    - (i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation—
      - (A) From the child’s school or the child’s home to a site other than the private school; and
      - (B) From the service site to the private school, or to the child’s home, depending on the timing of the services.
    - (ii) LEAs are not required to provide transportation from the child’s home to the private school.
  - (2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of § 300.133.

**Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN:**

- ...
- F. Applicability of rules to gifted children.
  - (1) All definitions, policies, procedures, assurances, procedural safeguards and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the educational jurisdiction of each local school district, including children in charter schools within the district, except:
    - ...
    - (b) Subsections J, K and L of 6.31.2.11 NMAC regarding child find, evaluations and services for private school children with disabilities, children with disabilities in state-supported educational programs, children with disabilities in detention and correctional facilities and children with disabilities who are schooled at home;
- ...

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

- ...
- L. Children in private schools
  - (1) Children enrolled by parents in private schools or facilities.
    - (a) Parentally placed private school children with disabilities means children with disabilities enrolled by their parents in private schools, including religious schools or facilities, such as residential treatment centers, day treatment centers, hospitals, mental health institutions, other than children with disabilities who are covered under 34 CFR Secs. 300.145 through 300.147.
      - ...
    - (d) Each public agency must develop a “service plan” that describes the special education and related services the LEA will provide to a parentally placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 34 CFR Sec. 300.132 and that is developed and implemented in accordance with 34 CFR Secs. 300.137 through 300.139. The provision applies only to private schools and not to private facilities where an IEP must be in place.
- ...



- (f) **No parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Pursuant to 34 CFR Sec. 300.137, the LEA must make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities.**

*The NMPED has issued a memorandum containing guidance regarding “IDEA 2004: 20 U.S.C. Sec. 1412(a)(10)(A)(B)(C)—Children in Private Schools” (November 14, 2005), available through the NMPED website at: <http://www.ped.state.nm.us/seo/guide/Private.School.Memo.111405.pdf>. The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance.*

*The U.S. Department of Education has issued a guidance document titled, “Questions and Answers On Serving Children with Disabilities Placed By Their Parents at Private Schools” (March 2006), available through the U.S. Department of Education website <http://www.ed.gov/policy/speced/guid/idea/faq-parent-placed.doc> . The guidance document provides detailed responses to frequently asked questions, and provides a clear explanation of the Jal Public School District’s duty to parentally-placed private school children. The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

**New Mexico Public Education Department**  
**Special Education Bureau**

**Jal Public Schools**  
**POLICIES AND PROCEDURES**  
**FOR THE**  
**PROVISION OF**  
**SPECIAL EDUCATION SERVICES**  
**FOR**  
**STUDENTS WITH DISABILITIES AND GIFTED STUDENTS**

**Chapter 6. - LEAST RESTRICTIVE ENVIRONMENT (LRE)**

Date Chapter 6. Adopted by Governing Body: \_\_\_\_\_  
Date Chapter 6. First Revision: \_\_\_\_\_

**Chapter 6. - LEAST RESTRICTIVE ENVIRONMENT (LRE)**

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## **Chapter 6. LEAST RESTRICTIVE ENVIRONMENT (LRE)**

### **I. Least Restrictive Environment - Requirements**

**§300.114 LRE requirements.**

**(a) General.**

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

**(b) Additional requirement - State funding mechanism.**

**(1) General.**

- (i) The New Mexico funding mechanism does not result in placements that violate the requirements of paragraph (a) of this section; and
  - (ii) New Mexico does not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.
- (2) Assurance. If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.

**§300.117 Nonacademic settings.**

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

*In addition to information contained in this section, please refer to the NMPED website at:*

<http://www.ped.state.nm.us/seo/lre/index.htm>

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

**C. Least restrictive environment**

- (1) Except as provided in 34 CFR Sec. 300.324(d) and Subsection K of 6.31.2.11 NMAC for children with disabilities who are convicted as adults under state law and incarcerated in adult prisons, all educational placements and services for children with disabilities must be provided in the least restrictive environment that is appropriate to each child's needs in compliance with 34 CFR Secs. 300.114-300.120.
- (2) In determining the least restrictive environment for each child's needs, public agencies and their IEP teams shall ensure that the following requirements are met.
  - (a) The requirements of 34 CFR Sec. 300.114(a)(2) for each JPS to ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled, and that special classes, separate schooling or other removal of children with disabilities from the general educational environment occurs only if

- the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- (b) The required continuum of alternative placements as specified in 34 CFR Sec. 300.115.
  - (c) The requirement of 34 CFR Sec. 300.116(c) that each child with a disability be educated in the school that he or she would attend if nondisabled unless the child's IEP requires some other arrangement.
  - (d) The requirement of 34 CFR Sec. 300.116(e) that a child with a disability not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.
  - (e) The requirements of 34 CFR Sec. 300.320(a)(4) that the IEP for each child with a disability include a statement of the special education and related services and supplementary aids and services, based on peer reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities with nondisabled children.
  - (f) The requirement of 34 CFR Sec. 300.324(a)(3) that the regular education teacher of a child with a disability, as a member of the IEP team, must assist in determining the supplementary aids and services, program modifications or supports for school personnel that will be provided for the child in compliance with Sec. 300.320(a)(4).
  - (g) The requirement of 34 CFR Sec. 300.320(a)(5) that the IEP include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and the activities described in Sec. 300.320(a)(4) and 300.117.
  - (h) The requirements of 34 CFR Sec. 300.503 that the JPS give the parents written notice a reasonable time before the agency proposes or refuses to initiate or change the educational placement of the child or the provision of FAPE to the child and that the notice include a description of any other options considered and the reasons why those options were rejected. (*—Reasonable time is defined in Chapter 2. – Procedural Safeguards*)
  - (i) The requirement of 34 CFR Sec. 300.120 that the department carry out activities to ensure that Sec. 300.114 is implemented by each agency and that, if there is evidence that the JPS makes placements that are inconsistent with Sec. 300.114, the department must review the JPS's justification for its actions and assist in planning and implementing any necessary corrective action.

#### **A. Continuum of Alternative Placements**

##### **§300.115 Continuum of alternative placements.**

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

##### **Authority: 34 CFR §300.39 Special education.**

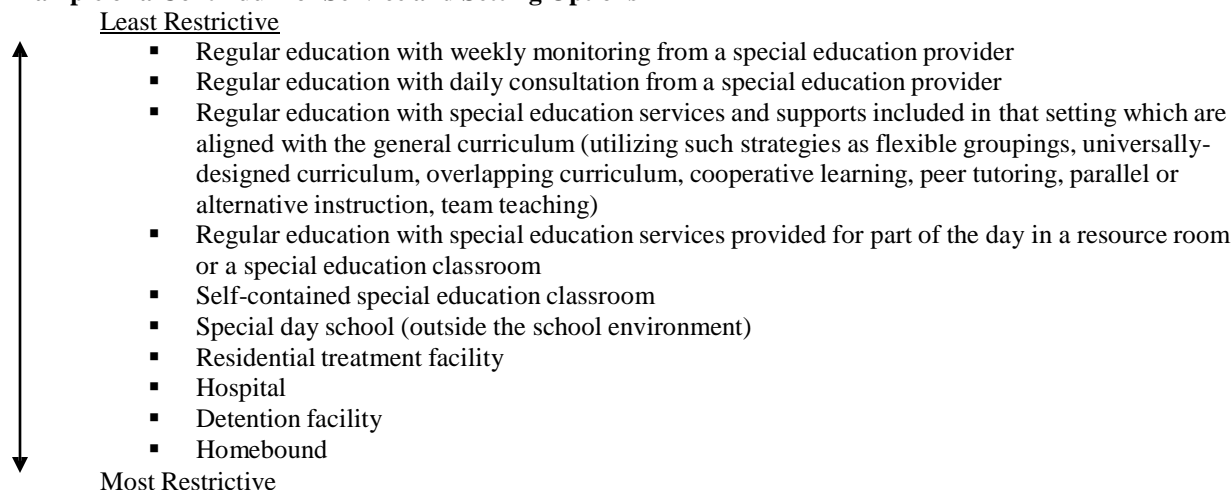
##### **(a) General.**

- (1) **Special education** means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including--
  - (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
  - (ii) Instruction in physical education.

- (2) **Special education** includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section--
- (i) **Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;** *Speech-language is a related service in New Mexico.*
  - (ii) **Travel training; and**
  - (iii) **Vocational education.**

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

#### Example of a Continuum of Service and Setting Options



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

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

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

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

1. *Can education in the general classroom, with the use of supplementary aids and services, be achieved satisfactorily for the student?*
  - a. *Has the JPS taken steps to accommodate the student with disabilities in the general classroom?*
    - (1) *Did the district provide supplementary aids and services?*
    - (2) *Did the district provide accommodations?*
  - b. *Are the services that were provided sufficient?*
    - (1) *The district does not have to provide every conceivable supplementary aid or service.*
    - (2) *IDEA (Individuals with Disabilities Education Act) does not require general education teachers to devote all or most of their time to one student with a disability.*
    - (3) *IDEA does not require that general education teachers modify the general education program beyond recognition.*
    - (4) *General education teachers are not required to modify the general education curriculum to the extent that the student with disabilities is not required to learn any of the skills normally taught in general education.*
  - c. *Will the student receive an educational benefit from general education?*
    - (1) *Can the student grasp the NM Standards for Excellence benchmarks of the general education curriculum?*
    - (2) *Consider and document the nature and severity of the student's disability in relation to receiving educational benefit from general education.*
  - d. *Examine the student's overall educational experience in the mainstream environment balancing the benefits of general and special education for each individual student.*
  - e. *What effect does the presence of the student with disabilities' have on the general classroom environment and thus on the education that the other students are receiving.*
    - (1) *Discuss and document any disruptions in the classroom.*
    - (2) *Does the student require so much of the teacher's attention that the teacher will have to ignore the other students' needs in order to attend the student with disabilities?*
2. *If education in a general classroom cannot be achieved satisfactorily, determine whether the student has been mainstreamed to the maximum extent appropriate for that student.*
  - a. *Determine if all academic and non-academic classes in general education with nondisabled peers has been considered or tried.*
  - b. *Determine if mainstreaming for lunch, recess, or other times has been considered.*

## **B. PLACEMENTS:**

### **§300.116 Placements.**

**In determining the educational placement of a child with a disability, including a preschool child with a disability, the JPS ensures that--**

#### **(a) The placement decision--**

- (1) **Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and**
- (2) **Is made in conformity with the LRE provisions of this subpart, including §§300.114 through 300.118;**

#### **(b) The child's placement--**

- (1) **Is determined at least annually;**
- (2) **Is based on the child's IEP; and**
- (3) **Is as close as possible to the child's home, unless the parent agrees otherwise;**
- (c) **Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;**



- (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
- (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (*regular classrooms = public schools K-12<sup>th</sup>*)

#### **§300.110 Program options.**

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

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

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

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

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

#### **Summary of the LRE Mandate in IDEA with Respect to Making Placement Decisions?**

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

#### **The Decision . . .**

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

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

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

1. Consider whether the student can be educated satisfactorily in the regular classroom with one or more of the following:
  - supplementary aids and supports
  - program and/or curriculum modifications
  - provision of an itinerant special education provider
  - assistance from a paraeducator
  - special education training for the regular education teacher

- the use of assistive technology
  - the development and implementation of FBAs and BIPs designed to identify and meet the daily behavioral challenges presented by the student in the regular education classroom
2. Compare the benefits provided in the regular education classroom and those provided in a special education classroom or segregated setting.
    - Compare social and communication skills, as well as academic benefits.
    - Compare the relative benefits to the student.
    - Keep in mind that regular education classroom placement is not dependent on the student's ability to learn the same things in the same way.
  3. Consider the potentially beneficial or harmful effects that a regular class placement may have on the student with an exceptionality or the other students in the class.
    - a. Positive benefits might include social interaction with nonexceptional peers, peer modeling, high expectations, and acceptance of others.
    - b. Harmful effects might include unduly disruptive behavior that impairs the student's learning or that of others even with the implementation of a BIP.
    - c. Consider each of the three factors above equally.
    - d. Keep in mind the placement decision cannot be *solely* based on
      - Category of the disability
      - Severity of the disability
      - Language and communication needs
      - Needed modifications in the curriculum
      - Configuration of the JPS's delivery system
      - Availability of space or educational and related services
      - Administrative convenience
    - e. Keep in mind that where there is a reasonable likelihood that a student with disabilities can be educated in the regular classroom with supplementary aids and supports, then that placement should be tried for as much as the school day as possible.
    - f. If the team agrees that the student should receive part or all of the special education services outside of the regular classroom, then the IEP must also provide opportunities for participation in regular education programs in academic, nonacademic, or extracurricular activities, as appropriate.
    - g. If the team agrees that the student's IEP cannot be satisfactorily implemented in the regular education classroom with the provision of supplementary services and supports, then the team can consider a more restrictive placement keeping in mind that the regular education classroom is not the LRE for that student at that time. That is, having the understanding that the ultimate plan and goal is to work towards a more fully inclusive placement when possible.
    - h. Finally, clearly articulate on the IEP document the placement decision and the justification for it based on the considerations in this booklet.

## **II. DETERMINING SERVICE LEVELS and SETTINGS**

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

### **SERVICE LEVEL**

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

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

Level 1 – Less than 10% of the day

Level 2 – 11% - 50% of the day

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

Level 4 – Up to full day / 3Y, 4Y, 5Y

**For students who attend school full-time:**

- 1) Total the minutes of special education service scheduled on the student's IEP. Special education service should include the following:
  - Service to a student from a licensed special education teacher or related service provider
  - Service to a student from a one-on-one aide or job coach
  - Service to a student from a general education teacher who is implementing curriculum modifications developed jointly with the special education teacher
  - Service to a general education teacher from a special education teacher who is consulting on a weekly basis with the general education teacher about classroom modifications for a student
- 2) Refer to the following state-mandated school day minimums:

<b><u>Grade:</u></b>	<b><u>Hours per day:</u></b>
Kn =	2.5
1-6 =	5.5
7-12=	6
- 3) Divide #1 by #2
  - 1% - 10% is Level 1 / Minimum / A
  - 11% - 49% is Level 2 / Moderate / B
  - 50% or more is Level 3 / Extensive / C
  - approaching a full day is Level 4 / Maximum / D
  - for students on block scheduling, divide the total hours of special education service in the whole year by the total hours in the whole year (i.e., for high school, use 6 hrs/day X 5 days/week X 36 weeks/year = 1080 hours) and use the percents above for each count date to determine funding

**For students in grade 3Y/4Y/5Y**, the service level is automatically Level 4 / Maximum/D.

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

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

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

*For more information see the STARS Templates and User Manual found on the NMPED website at:*

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

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

**For students AGES 3-5 choose from the following categories:**

- **EC01 Early Childhood Setting** with typically developing peers..... includes Headstart.
- **EC02 Part-Time Early Childhood / Part-Time Early Childhood Special Education Setting** – Multiple settings such that
  - (1) special education and related services are provided at home or in educational programs designed primarily for children without disabilities and
  - (2) special education and related services are provided in programs designed primarily for children with disabilities.
- **EC03 Early Childhood Special Education Setting** – Setting primarily designed for children with disabilities housed in regular school buildings or other community-based settings.

- **EC04 Homebound/Hospital** - Student receives all service in homebound setting or short-term hospital setting
- **EC06 Separate School** - Educational programs in public or private day schools designed specifically for children with disabilities.
- **EC07 Residential Facility** - A publicly or privately operated residential schools or residential medical facilities on an inpatient basis.
- **EC10 Private School – Parentally Placed** (be sure to use **school code 997**)
- **EC11 Home** – home-based parental instruction (be sure to use **school code 998**)
- **EC14 Alternative Schools (includes Family School)**  
**Alternative** is a public school within a school district that has its own principal, school building, and budget and is established to serve the needs of a particular group of students, e.g. those considered to be at-risk of dropping out. A **Family School** provides more than half-time instruction in the public schools with the remaining time in home-based parental instruction.

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

- **SA01 In Regular Class** more than 80% of the day
- **SA02 In Regular Class** between 40%-79% of the day
- **SA03 In Regular Class** less than 40% of the day
- **SA04 Homebound/Hospital** - Student receives all service in homebound setting or short-term hospital setting
- **SA05 Public Separate School**
- **SA06 Private Separate School**
- **SA07 Public Residential Facility**
- **SA08 Private Residential Facility**
- **SA09 Juvenile Detention/Corrections** Student receives services in a juvenile detention or corrections facility
- **SA10 Private School – Parentally Placed** (be sure to use **school code 997**) - Student is parentally-placed in a private school but is receiving some special education service with LEA teachers
- **SA11 Home School** (be sure to use **school code 998**) - Student is parentally-placed in a home school but is receiving some special education service with JPS teachers
- **SA12 Removed to IAES (Onsite)** - by School Personnel (not Hearing Officer)
- **SA13 Removed to IAES (Off-Site)** - by School Personnel (not Hearing Officer)
- **SA14 Alternative School** (Includes Family School)
- **SA15 Removed to IAES** – by Hearing Officer

Authority: NMAC 6.29.1.9 Procedural Requirements

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

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

### **III. PRIVATE SCHOOLS: ENROLLED BY THE PARENTS**

#### **§300.129 State responsibility regarding children in private schools.**

The NMPED has in effect policies and procedures that ensure the JPS, and, if applicable, the SEA, meet the private school requirements in §§300.130 through 300.148.

#### **§300.130 Definition of parentally-placed private school children with disabilities.**

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private including religious, schools or facilities that meet the definition of elementary schools in

§300.13 or secondary schools in §300.36, other than children with disabilities covered under §§300.145 through 300.147. (Authority: 20 U.S.C. 1412(a)(10)(A))

**§300.13 Elementary school.** Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law

**§300.36 Secondary school.** Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

**§300.131 Child find for parentally-placed private school children with disabilities.**

- (a) **General.** The JPS must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the JPS, in accordance with paragraphs (b) through (e) of this section, and §§300.111 and 300.201.
- (b) **Child find design.** The child find process must be designed to ensure--
  - (1) The equitable participation of parentally-placed private school children; and
  - (2) An accurate count of those children.
- (c) **Activities.** In carrying out the requirements of this section, the JPS, or, if applicable, the NMPED, must undertake activities similar to the activities undertaken for the agency's public school children.
- (d) **Cost.** The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if JPS has met its obligation under §300.133. (*Private school expenditures-Chapter 6 – LRE this document*)
- (e) **Completion period.** The child find process must be completed in a time period comparable to that for other students attending public schools in the JPS consistent with §300.301. (*Chapter 3- Initial Evaluations of this document*)
- (f) **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.

**§300.132 Provision of services for parentally-placed private school children with disabilities--basic requirement.**

- (a) **General.** To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the JPS, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with §300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§300.190 through 300.198.
- (b) **Services plan parentally-placed private school children with disabilities.** In accordance with paragraph (a) of this section and §§300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the JPS in which the private school is located to receive special education and related services under this part.
- (c) **Record keeping.** The JPS must maintain in its records, and provide to the NMPED, the following information related to parentally-placed private school children covered under §§300.130 through 300.144:
  - (1) The number of children evaluated;

- (2) The number of children determined to be children with disabilities; and
- (3) The number of children served.

**§300.133 Expenditures.**

- (a) **Formula.** To meet the requirement of §300.132(a), the JPS must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:
  - (1) For children aged 3 through 21, an amount that is the same proportion of the JPS's total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district served by the JPS, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.
  - (2) (i) For children aged three through five, an amount that is the same proportion of the JPS's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in private, including religious, elementary schools located in the school district served by the JPS, is to the total number of children with disabilities in its jurisdiction aged three through five.
    - (ii) As described in paragraph (a)(2)(i) of this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in §300.13.
  - (3) If the JPS has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2) of this section by the end of the fiscal year for which Congress appropriated the funds, the JPS must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.
- (b) **Calculating proportionate amount.** In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the JPS, 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 JPS. *(See Appendix B of the final regulations for an example of how proportionate share is calculated).*
- (c) **Annual count of the number of parentally-placed private school children with disabilities.**
  - (1) The Jal Public Schools must--
    - (i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with §300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the JPS; and
    - (ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.
  - (2) The child count must be used to determine the amount that the JPS must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.
- (d) **Supplement, not supplant.** State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part.

**§300.134 Consultation.**

To ensure timely and meaningful consultation, the JPS, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

- (a) **Child find.** The child find process, including--
  - (1) How parentally-placed private school children suspected of having a disability can participate equitably; and
  - (2) How parents, teachers, and private school officials will be informed of the process.
- (b) **Proportionate share of funds.** The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under §300.133(b), including the determination of how the proportionate share of those funds was calculated.
- (c) **Consultation process.** The consultation process among the JPS, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.
- (d) **Provision of special education and related services.** How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of--
  - (1) The types of services, including direct services and alternate service delivery mechanisms; and
  - (2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
  - (3) How and when those decisions will be made;
- (e) **Written explanation by JPS regarding services.** How, if the JPS disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract) the JPS will provide to the private school officials a written explanation of the reasons why the JPS chose not to provide services directly or through a contract.

**§300.135 Written affirmation.**

- (a) When timely and meaningful consultation, as required by §300.134, has occurred, the JPS must obtain a written affirmation signed by the representatives of participating private schools.
- (b) If the representatives do not provide the affirmation within a reasonable period of time, the JPS must forward the documentation of the consultation process to the NMPED.

*The Special Education Director of the JPS does have written affirmation of consultation that has occurred. Representatives from the following private school signed affirmations of consultation: \_\_\_\_\_*

***OR***

*There are no private schools located within the JPS educational boundaries.*

IDEA 2004 maintains the requirement that the JPS spend a proportionate amount of IDEA funds for services delivered to parentally-placed students in private schools. However, the federal law has expanded and clarified the requirement that the proportionate amount—and other key issues—be determined via **timely and meaningful consultation** with representatives from the private school.

The JPS's obligation regarding proportionate spending and consultation extends to parentally-placed private school students who attend private schools located in the JPS. The OSEP memo attached to a memo found at: <http://www.ped.state.nm.us/seo/guide/Private.School.Memo.111405.pdf> clearly describes what the consultation



process is required to address. The memo also explains that, for 2005-06, the JPS may use the best available data to calculate the proportionate amount of IDEA funds that must be expended on behalf of parentally-placed private school students, rather than conducting new child counts. The NMPED provides a non-regulatory guidance sample –Consultation Form, the use of which will help ensure that all required components of the consultation process are addressed.

Although state rules extend the child find requirement to home-schooled students, the state statutory definition of a *private school* (at Sec. 22-1-2(K) NMSA 1978) specifically excludes a home school. Therefore, the proportionate spending and –meaningful and timely consultation requirements that apply to parentally-placed private school students do not apply to home-schooled students. In addition, parents who home school their children do not have the right to file a state-level complaint against the JPS alleging a violation of these consultation requirements (as discussed further below).

IDEA 2004 also requires that, following the consultation process, the JPS must obtain written affirmation of this process, which is to be signed by private school representatives. The NMPED refers you to the sample –Written Affirmation form in its non-regulatory guidance as an example of the type of form that may be used for this purpose. If the private school representatives do not sign the written affirmation within a –reasonable period of time, the JPS must forward documentation of the consultation process to the NMPED.

**§300.136 Compliance.**

(a) **General.** A private school official has the right to submit a complaint to the NMPED that the JPS--

- (1) Did not engage in consultation that was meaningful and timely; or
- (2) Did not give due consideration to the views of the private school official.

(b) **Procedure.**

- (1) If the private school official wishes to submit a complaint, the official must provide to the NMPED the basis of the noncompliance by the JPS with the applicable private school provisions in this part; and
- (2) The JPS must forward the appropriate documentation to the NMPED.
- (3) (i) If the private school official is dissatisfied with the decision of the NMPED, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and  
(ii) The NMPED must forward the appropriate documentation to the Secretary.

**§300.137 Equitable services determined.**

(a) **No individual right to special education and related services.** No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

(b) **Decisions.**

- (1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§300.130 through 300.144 must be made in accordance with paragraph (c) of this section and §300.134(c).
- (2) The JPS must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.

(c) **Services plan for each child served under §§300.130 through 300.144.** If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from JPS, the JPS must--



- (1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with §300.138(b); and
- (2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the JPS shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

**§300.138 Equitable services provided.**

**(a) General.**

- (1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirement of §300.18.
- (2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

**(b) Services provided in accordance with a services plan.**

- (1) Each parentally-placed private school child with a disability who has been designated to receive services under §300.132 must have a services plan that describes the specific special education and related services that the JPS will provide to the child in light of the services that the JPS has determined, through the process described in §§300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.
- (2) The services plan must, to the extent appropriate--
  - (i) Meet the requirements of §300.320, or for a child ages three through five, meet the requirements of §300.323(b) with respect to the services provided; and
  - (ii) Be developed, reviewed, and revised consistent with §§300.321 through 300.324.

**(c) Provision of equitable services.**

- (1) The provision of services pursuant to this section and §§300.139 through 300.143 must be provided:
  - (i) By employees of JPS; or
  - (ii) Through contract by the JPS with an individual, association, agency, organization, or other entity.
- (2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

**§300.139 Location of services and transportation.**

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

**(b) Transportation.**

**(1) General.**

- (i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation--
  - (A) From the child's school or the child's home to a site other than the private school; and

- (B) From the service site to the private school, or to the child's home, depending on the timing of the services.
- (ii) LEAs are not required to provide transportation from the child's home to the private school.
- (2) **Cost of transportation.** The cost of the transportation described in paragraph (b)(1)(i) of this Chapter may be included in calculating whether the JPS has met the requirement of §300.133.

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

(a) **Due process not applicable, except for child find.**

- (1) Except as provided in paragraph (b) of this section, the procedures in §§300.504 through 300.519 do not apply to complaints that the JPS has failed to meet the requirements of §§300.132 through 300.139, including the provision of services indicated on the child's services plan.
- (b) **Child find complaints—to be filed with the LEA in which the private school is located.**
  - (1) The procedures in §§300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in §300.131 including the requirements in §§300.300 through 300.311.
  - (2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of the section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the NMPED.

**§300.141 Requirement that funds not benefit a private school.**

- (a) The JPS may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.
- (b) The JPS must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting--
  - (1) The needs of a private school; or
  - (2) The general needs of the students enrolled in the private school.

**§300.142 Use of personnel.**

- (a) **Use of public school personnel.** The JPS may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities--
  - (1) To the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities; and
  - (2) If those services are not normally provided by the private school.
- (b) **Use of private school personnel.** The JPS may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.130 through 300.144 if--
  - (1) The employee performs the services outside of his or her regular hours of duty; and
  - (2) The employee performs the services under public supervision and control.

**§300.143 Separate classes prohibited.**

The JPS may **not** use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if—

- (a) The classes are at the same site; and

- (b) The classes include students enrolled in public schools and students enrolled in private schools.

**§300.144 Property, equipment, and supplies.**

- (a) The JPS must control and administer the funds used to provide special education and related services under §§300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.
- (b) The JPS may place equipment and supplies in a private school for the period of time needed for the Part B program.
- (c) The JPS must ensure that the equipment and supplies placed in a private school--
  - (1) Are used only for Part B purposes; and
  - (2) Can be removed from the private school without remodeling the private school facility.
- (d) The JPS must remove equipment and supplies from a private school if--
  - (1) The equipment and supplies are no longer needed for Part B purposes; or
  - (2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.
- (e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

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

**L. Children in private schools or facilities.**

- (1) Children enrolled by parents in private schools or facilities.
  - (a) Parentally placed private school children with disabilities means children with disabilities enrolled by their parents in private schools, including religious schools or facilities, such as residential treatment centers, day treatment centers, hospitals, mental health institutions, other than children with disabilities who are covered under 34 CFR Secs. 300.145 through 300.147.
  - (b) A school district in which a private school or facility is located shall not be considered the resident school district of a school-age person if residency is based solely on the school-age person's enrollment at the facility and the school-age person would not otherwise be considered a resident of the state.
  - (c) Each LEA must locate, identify and evaluate all children with disabilities who are enrolled by their parents in private schools, including religious elementary schools and secondary schools located in the education jurisdiction of the LEA, in accordance with 34 CFR Secs. 300.131 and 300.111.
  - (d) The JPS must develop a --service plan that describes the special education and related services the LEA will provide to a parentally placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 34 CFR Sec. 300.132 and that is developed and implemented in accordance with 34 CFR Secs. 300.137 through 300.139. The provision applies only to private schools and not to private facilities where an IEP must be in place.
  - (e) Pursuant to 34 CFR Sec. 300.133, the JPS is obligated to spend a proportionate amount of its federal IDEA Part B funds to assist private school children with disabilities placed in a private school or private facility by a parent who assumes responsibility for such placement. In doing so, the JPS must use the formula for calculating proportionate amount and annual count of parentally placed private school children with disabilities in accordance with 34 CFR Sec. 300.133. The JPS shall not use IDEA funds to benefit private schools as provided in 34 CFR Sec. 300.141. The state is not required to distribute state funds for such school-age persons. Furthermore, the Constitution and laws of New Mexico prohibit public agencies from spending state funds to assist private schools or facilities or their students.
  - (f) No parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

- Pursuant to 34 CFR Sec. 300.137, the LEA must make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities.
- (g) Pursuant to 34 CFR Secs. 300.134 and 300.135, LEAs must ensure timely and meaningful consultation with private school representatives and representatives of parents of parentally placed private school children with disabilities. If the LEA fails to engage in meaningful and timely consultation or did not give due consideration to a request from private school officials, private school officials have the right to submit a complaint to the department. The private school official and the LEA must follow the procedures outlined in 34 CFR Sec. 300.136.
  - (h) Pursuant to 34 CFR Secs. 300.140, the due process provisions of Subsection I of 6.31.2.13 NMAC are not applicable except for child find complaints which must be filed in compliance with 34 CFR Sec. 300.140(b). Any complaint that the department or any LEA has failed to meet the requirements in 34 CFR Secs. 300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the provisions described in Subsection H of 6.31.2.13 NMAC.
- (2) Children placed in or referred to private schools or facilities by New Mexico public agencies. The Jal Public Schools shall ensure that a child with a disability who is placed in or referred to a private school or facility by the JPS as a means of providing special education and related services is provided services in compliance with the requirements of 34 CFR Secs. 300.146 and 300.147. Such a child has all the rights of a child with a disability who is served by a public agency.
  - (3) Children placed in or referred to private schools or facilities by New Mexico public non-educational agencies. For a qualified student or school-age person in need of special education placed in a private school or facility by a New Mexico public noneducational agency with custody or control of the qualified student or school-age person or by a New Mexico court of competent jurisdiction, the school district in which the facility is located shall be responsible for the planning and delivery of special education and related services, unless the qualified student's or school-age person's resident school district has an agreement with the facility to provide such services. The district must make reasonable efforts to involve the qualified student or school-age person's resident school district in the IEP process.
  - (4) Children placed in or referred to private schools or facilities by public noneducational agencies other than New Mexico public agencies. A school district in which a private school or facility is located shall not be considered the resident school district of a school-age person if residency is based solely on the school-age person's enrollment at the facility and the school-age person would not otherwise be considered a resident of the state.
  - (5) Children placed in private schools or facilities by parents when FAPE is at issue. The responsibility of a local educational agency to pay for the cost of education for a child with a disability who is placed in a private school or facility such as residential treatment centers, day treatment centers, hospitals or mental health institutions, by parents who allege that the LEA failed to offer FAPE is governed by the requirements of 34 CFR Sec. 300.148. Disagreements between a parent and the JPS regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of Subsection I of 6.31.2.13 NMAC.
  - (6) If not otherwise governed by this rule, the department will determine which school district is responsible for the cost of educating a qualified student in need of special education who has been placed in a private school or facility outside the qualified student's resident school district in accordance with the following procedures.
    - (a) The receiving school district must notify the SEB of the department in writing no later than thirty (30) days after the receiving school district receives notice of the placement. The notice, as described on the department's website, must include: name of student, date of birth of student, date of placement, information regarding the qualified student's resident school district, documentation of placement, including student's IEP, cost of placement, and any other information deemed relevant by the SEB. The receiving school district must provide a copy of the notice to the district identified as the student's resident district.
    - (b) The district identified as the student's resident district may provide any additional information it deems relevant. Such additional information must be provided no later than 15 days after the resident district receives its copy of the notice described in Subparagraph (a) of this paragraph.
    - (c) No later than 60 days after its receipt of the notice described in Subparagraph (a) of this paragraph, the SEB will issue its determination as to which school district is responsible for the cost of educating

- the student, together with the amount of any reasonable reimbursement owed to the receiving school district. The SEB may extend the 60 day timeline for good cause.
- (7) The department will assign a unique student identifier for school-age persons who have service plans, including those who are not residents of the state but who are attending private residential treatment facilities in the state.
  - (8) Children schooled at home. The JPS shall locate, evaluate and determine the eligibility of children with disabilities who are schooled at home pursuant to Secs. 22-2-2(H) NMSA 1978. [6.31.2.11 NMAC - Rp, 6.31.2.11 NMAC, A, 12/31/09]

#### **IV. PRIVATE SCHOOLS: ENROLLED BY PARENT - WHEN FAPE IS AT ISSUE**

##### **§300.148 Placement of children by parents if FAPE is at issue.**

- (a) **General.** This part does not require the JPS to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the JPS made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the JPS must include that child in the population whose needs are addressed consistent with §§300.131 through 300.144.
- (b) **Disagreements about FAPE.** Disagreements between the parents and the JPS regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§300.504 through 300.520. (*in section 2 – Procedural Safeguards*)
- (c) **Reimbursement for private school placement.** If the parents of a child with a disability, who previously received special education and related services under the authority of the JPS, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the JPS, a court or a hearing officer may require the JPS to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the JPS had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the New Mexico standards that apply to education provided by the SEA and LEAs.
- (d) **Limitation on reimbursement.** The cost of reimbursement described in paragraph (c) of this section may be reduced or denied--
  - (1) If--
    - (i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the JPS, the parents did not inform the IEP Team that they were rejecting the placement proposed by the JPS to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
    - (ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the JPS of the information described in paragraph (d)(1)(i) of this section;
  - (2) If, prior to the parents' removal of the child from the public school, the JPS informed the parents, through the notice requirements described in §300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or
  - (3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.
- (e) **Exception.** Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement--
  - (1) Must not be reduced or denied for failure to provide the notice if--
    - (i) The school prevented the parent from providing the notice;

- (ii) The parents had not received notice, pursuant to §300.504, of the notice requirement in paragraph (d)(1) of this section; or
- (iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and
- (2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if--
  - (i) The parents are not literate or cannot write in English; or
  - (ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

L. Children in private schools or facilities.

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

#### **V. PRIVATE SCHOOLS: REFERRED OR PLACED BY THE JPS**

##### **§300.145 Applicability of §§300.145 through 300.147.**

Sections 300.146 through 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

##### **§300.146 Responsibility of State educational agency.**

The NMPED ensures that a child with a disability who is placed in or referred to a private school or facility by a public agency--

- (a) Is provided special education and related services--
  - (1) In conformance with an IEP that meets the requirements of §§300.320 through 300.325 *(IEP Chapter 5 of this document)*; and
  - (2) At no cost to the parents;
- (b) Is provided an education that meets the standards that apply to education provided by the NMPED and LEAs including the requirements of this part, except for §300.18 and §300.156(c) *(Personnel qualifications Chapter 8 of this document)*; and
- (c) Has all of the rights of a child with a disability who is served by the JPS.

##### **§300.147 Implementation by State educational agency.** In implementing §300.146, the NMPED must--

- (a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;
- (b) Disseminate copies of applicable standards to each private school and facility to which the JPS has referred or placed a child with a disability; and

- (c) **Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.**

## **VI. CONTRACTING FOR EDUCATIONAL PLACEMENT**

### **A. Private Schools**

Authority: NMSA 1978 22-13-8. Special education; private.

- A. The responsibility of school districts, institutions and the state to provide a free public education for exceptional children is not diminished by the availability of private schools and services. Whenever such schools or services are utilized, it continues to be a state responsibility to assure that all exceptional children receive the education to which the laws of the state entitle them.
- B. A local school board may make an agreement with private, nonsectarian, nonprofit educational training centers for educating exceptional children and for providing for payment for such education. All financial agreements between local boards and private, nonsectarian, nonprofit educational training centers must be negotiated in accordance with regulations promulgated by the director. Payment for education and services under such agreements shall be made by the local board of education from funds available.
- C. All agreements between local school boards and private, nonsectarian, nonprofit educational training centers must be approved by the state superintendent [secretary]. All agreements must provide for diagnosis and an educational program for each child which meets state standards for such programs. The agreements must also acknowledge the authority and responsibility of the local board and the department of education to conduct on-site evaluations of programs and pupil progress to insure meeting state standards.
- D. Exceptional children attending a private, nonsectarian, nonprofit training center shall be counted in the special education membership of the school district. (STARS appropriate setting / level)

### **B. New Mexico School for the Blind and Visually Impaired (NMSBVI)**

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

### **C. New Mexico School for the Deaf (NMSD)**

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

- Preschools and kindergartens - comprehensive and stimulating learning environments for young children
- Academics - grades 1 through 12, which encompass traditional and elective subjects with a special emphasis on language and literacy development
- Student Life - a wide range of residential, educational and recreational after-school activities, such as athletics, clubs and life skills development
- Step\*Hi - statewide, family centered, early intervention services for babies, toddlers and young children
- Outreach - statewide information and educational support to public schools serving children and youth who are Deaf or Hard of Hearing
- Summer Program - a place where NMSD and non-NMSD students who are Deaf or Hard of Hearing and in grades 3 - 12 come together in fun, adventurous, academic and non-academic ways.

*For more information, see website: <http://www.nmsd.k12.nm.us/>*

### **D. State Supported Educational Programs**

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

J. Children in state-supported educational programs.

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

**E. Residential Placements / RTC**

**§300.104 Residential placement.**

**If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.**

Authority: 6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

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



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

## **VII. GIFTED PROGRAMS**

Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN:

### **F. Applicability of rules to gifted children.**

- (1) All definitions, policies, procedures, assurances, procedural safeguards and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the educational jurisdiction of each local school district, including children in charter schools within the district, except:
  - (a) the requirements of 6.31.2.8 NMAC through 6.31.2.10 NMAC
  - (b) Subsections J, K and L of 6.31.2.11 NMAC regarding child find, evaluations and services for private school children with disabilities, children with disabilities in state-supported educational programs, children with disabilities in detention and correctional facilities and children with disabilities who are schooled at home;
  - (c) the requirements of 34 CFR Secs. 300.530-300.536, Subsection I of 6.31.2.13 NMAC and 6.11.2.11 NMAC regarding disciplinary changes of placement for children with disabilities; and
  - (d) the requirements of 34 CFR Secs. 300.43, 300.320(b) and 6.31.2.11(G)(2) regarding transition planning. Students identified as gifted must meet the requirements at Subsection B of 22-13-1.1 NMSA 1978, which is the next step plan for students without disabilities.
- (2) Assuming appropriate evaluations, a child may properly be determined to be both gifted and a child with a disability and be entitled to a free appropriate public education for both reasons. The rules in this section 6.31.2.12 NMAC apply only to gifted children.
- (3) Nothing in these rules shall preclude a school district or a charter school within a district from offering additional gifted programs for children who fail to meet the eligibility criteria. However, the NMPED shall only provide funds under Section 22-8-21 NMSA 1978 for department approved gifted programs for those students who meet the established criteria.

*The Jal Public Schools **does not offer** additional gifted programs for children who fail to meet the eligibility criteria as described in sections 3.-Evaluation and 4.-Gifted Students. The NMPED only provides funds under Section 22-8-21 NMSA 1978 for department approved gifted programs for those students who meet the established criteria.*

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

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

#### Guiding Principles from NAGC and Minimum Standards

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

#### **B. Recommendations from:**

- Council for Exceptional Children (CEC) Regarding Design Standards For Gifted Programs
- National Association Of Gifted Children (NAGC) Regarding Program Evaluation
- National Association Of Gifted Children (NAGC) Regarding Program Administration Or Management

For more information see the Technical Assistance and Training Document for Gifted Education at the NMPED website: <http://www.ped.state.nm.us/seo/gifted/gifted.pdf>

#### **C. Special Education Service Delivery Models Least Restrictive Environment**

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

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

#### SELF-CONTAINED

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

#### PULLOUT PROGRAMS/RESOURCE ROOM

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

#### GIFTED EDUCATION SEMINARS

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

#### RESOURCE CENTERS

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

### **D. General Education and Other Service Delivery Models Ability Grouping**

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

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

### **E. Enrichment**

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

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

### **F. Acceleration**

Acceleration involves changing the rate of presentation of the general curriculum to enable gifted students to complete the program in less time than usual. Acceleration can occur in any curriculum content area including music, drama, art, mathematics, language arts, science and social studies. When students are accelerated into a

higher level course, they should receive the appropriate credit (e.g. middle school students taking high school courses receive high school credit; high school students taking college courses receive credit both at high school level and college level.) When implementing acceleration as a method for meeting gifted students' needs, careful articulation among programs is critical. If a student is permitted to complete course work in a shorter amount of time than usual, some provision must be made for continued academic challenge within the specific curriculum. Without some means for well planned continuation/articulation, efforts at acceleration are wasted.

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

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

Guiding Principles (social/emotional development) from NAGC:

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

Minimum Standards relating to the Guiding Principles

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

### **VIII. OTHER INSTRUCTIONAL PROGRAMS / SERVICE DELIVERY**

#### **§300.110 Program options.**

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

#### **A. Adapted Physical Education**

#### **§300.108 Physical education.**

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

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

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

1. The special PE evaluation will provide the IEP committee with the following information:
  - a. identification of student's problems,
  - b. identification of areas of competencies,
  - c. documentation of the student's need for a special physical education program.
2. Regular Physical Education with No Modifications or Accommodations  
 NOTE: A special physical education evaluation is not necessary when the student with disabilities can participate in regular physical education with no modifications.
3. Regular Education With Modifications or Accommodations  
 Regular PE should be considered when modifications would make it possible for the student with disabilities to be successful in a regular physical education program. The specific modifications must be described in the student's IEP. It would be the responsibility of the special education teacher to assist the regular physical education teacher with modifications for the student and to monitor the progress of the student.
4. Special Physical Education
  - a. A special physical education program with IEP objectives should be provided when the physical education evaluation determines that the student cannot be successful in a regular physical education class with modifications. When the IEP Team has made the recommendation and the arrangements are specified in the student's IEP, physical education for the students with disabilities may be provided by the following personnel:
    1. special education instructional or related service personnel who have the necessary skills and knowledge;
    2. physical education teachers;
    3. occupational therapist;
    4. physical therapist;
    5. occupational therapy assistant or physical therapy assistant working under supervision in accordance with the standards of their profession.
  - b. When these services are provided by special education personnel, the JPS must document that they have the necessary skills and knowledge. Documentation may include, but not be limited to, in-service records, evidence of attendance at seminars or workshops, and/or transcripts of college courses.
  - c. If specially designed physical education is prescribed in a student's IEP, the JPS will provide the services directly or make arrangements for those services to be provided through other public or private programs.

- d. *If JPS enrolls a student with a disability into a facility, JPS ensures that the student receives appropriate physical education services.*

## **B. Behavior Improvement Classes**

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

## **C. Early Childhood Intervention (ECI) – birth to 3 years** *(see also Chapter 1.- Child Find)*

The JPS will work closely with the FIT program to provide services in the Least Restrictive Environment for these children. All federal and state requirements will be followed as outlined in previous sections.

## **D. Homebound Instructional Program**

*The JPS provides homebound instruction for students who are unable to attend school because of health / medical reasons. These special education students must also have a Full and Individual Evaluation and are due all procedural safeguards.*

1. *It is the responsibility of the IEP Team to determine:*
  - a. *the appropriate instructional areas for special education students receiving homebound instruction;*
  - b. *modifications of the student's schedule.*  
*The general classroom teacher on the student's home campus determines academic course work for the homebound program.*
2. *The IEP Team must receive the following documentation:*
  - a. *student will be unable to attend the regular school program for a **minimum of four weeks**;*
  - b. *a written medical report from the physician stating the length of time homebound service may be needed based on the medical condition. Duration of service can only be extended as indicated by the physician.*
3. *It is important for the IEP Team to stress to the parents that an adult must be present in the home when a homebound teacher is providing instruction.*
4. *Dismissal procedures for homebound students are outlined in the IEP Team meeting that initiates homebound instruction. A homebound student will return to school:*
  - a. *when the medical release from the physician indicates it is appropriate or*
  - b. *when the medical report from the physician expires.*

*Please see the STAR (Student / Teacher Accountability Reporting System) manual for location code and other detailed information on Homebound Services for Students with Chronic Illness/Acute Health Problems.*

## **E. Home-schooled Students**

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

L. Children in private schools

- (8) Children schooled at home. The JPS shall locate, evaluate and determine the eligibility of children with disabilities who are schooled at home pursuant to Secs. 22-2-2(H) NMSA 1978. [6.31.2.11 NMAC - Rp, 6.31.2.11 NMAC, A, 12/31/09]

Authority: NMSA 1978 Sec. 22-2-2(H) Department, general duties.

The NMPED shall:

- H. enforce requirements for home schools. Upon finding that a home school is not in compliance with law, the NMPED may order that a student attend a public school or a private school;

*If the JPS becomes aware of a home school that is not in compliance with New Mexico requirements, the JPS administration will inform the NMPED.*

## **F. Hospital Classes**

*This setting is for providing special education instruction in a classroom in a hospital facility, or a residential care and treatment facility. Please see the STAR (Student / Teacher Accountability Reporting System) manual for location code and other detailed information. For more information, also see II. Service Levels and Settings in this Chapter 6. – LRE.*

## **G. Preschool Program for Children with Disabilities (PPCD)**

*The Preschool Program for Children with Disabilities ages three through five is offered on select elementary school campuses. Instruction is based on an individual education plan that is determined after evaluation has been completed. There may be several instructional personnel working together for the benefit of the student. These staff members may include, but are not limited to, a special education teacher, special education paraprofessional, educational diagnostician, speech pathologist, nurse, occupational and/or physical therapist. Placement in a PPCD classroom for implementation of an IEP is based on evaluation, eligibility and the student's IEP goals and objectives.*

## **H. Speech Therapy**

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

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

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

## **I. Vocational Class / Program**

The Vocational Class is a special education program that is offered on the high school campus. This program is designed for students with disabilities who desire vocational training and shall be used in conjunction with the student's individual transition plan only after the JPS's regular career and technology classes have been considered and determined inappropriate for the student. The goals of the vocational program include on-the-job training and regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP.

*Employment opportunities and training are based on a vocational evaluation, student needs and abilities, teacher recommendations and student / parental preference.*

*Admission to the Vocational Program is made by the IEP Team.*



**New Mexico Public Education Department**  
**Special Education Bureau**

**Jal Public Schools**  
**POLICIES AND PROCEDURES**  
**FOR THE**  
**PROVISION OF**  
**SPECIAL EDUCATION SERVICES**  
**FOR**  
**STUDENTS WITH DISABILITIES AND GIFTED STUDENTS**

**Chapter 7. - DISCIPLINE / BEHAVIOR**

Date Chapter 7. Adopted by Governing Body: \_\_\_\_\_

Date Chapter 7. First Revision: \_\_\_\_\_

**Chapter 7. - DISCIPLINE / BEHAVIOR**  
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## **Chapter 7. - DISCIPLINE / BEHAVIOR**

### **I. DISCIPLINE / BEHAVIOR**

#### **A. Code of Conduct and General Provisions**

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

**Authority: §300.530 Authority of school personnel.**

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

**Authority: NMAC 6.11.2.8 GENERAL PROVISIONS:**

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

**Authority: NMAC Sec. 6.11.2.9 RULES OF CONDUCT FOR NEW MEXICO PUBLIC SCHOOLS:**

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

**Authority: NMAC 6.11.2.10 ENFORCING RULES OF CONDUCT:**

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

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

Authority: NMAC Sec. 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

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

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

- F. Behavioral management and discipline.

- (1) Behavioral planning in the IEP. Pursuant to 34 CFR Sec. 324(a)(2)(i), the IEP team for a child with a disability whose behavior impedes his or her learning or that of others shall consider, if appropriate, strategies to address that behavior, including the development of behavioral goals and objectives and the use of positive behavioral interventions, strategies and supports to be used in pursuit of those goals and objectives. Public agencies are strongly encouraged to conduct functional behavioral assessments (FBAs) and integrate behavioral intervention plans (BIPs) into the IEPs for students who exhibit problem behaviors well before the behaviors result in proposed disciplinary actions for which FBAs and BIPs are required under the federal regulations.

**B. Corporal Punishment**

Authority: NMAC 6.11.2.10 ENFORCING RULES OF CONDUCT:

- E. Corporal punishment. Each local school board with community input shall determine whether to permit the use of corporal punishment and shall publish and distribute a written policy either authorizing or prohibiting its use. Where corporal punishment is authorized, the written policy shall specify the allowable forms of punishment, the conditions under which it may be used and the procedures to be followed in administering it. A school board policy authorizing corporal punishment will override any parents objection to its use unless the local board also authorizes individual parents to veto corporal punishment of their children. Where a local board has not authorized a parental veto, an administrative authority may in any event decline to apply corporal punishment if (s)he has reason to believe that an individual student is physically or emotionally unable to withstand reasonable corporal punishment or if (s)he believes that corporal punishment would be ineffective or inappropriate.

*The JPS has local school board policy allowing corporal punishment with written parent permission.*

**II. DEFINITIONS**

Authority: NMAC 6.11.2.7 DEFINITIONS:

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

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

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

### **III. CHANGE OF PLACEMENT DECISIONS – Change of Placement Analysis**

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

#### **Change of Placement Analysis**

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

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

#### **A. Less than 10 School Day Removals**

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

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

**F. Behavioral management and discipline.**

- (1) Behavioral planning in the IEP. Pursuant to 34 CFR Sec. 324(a)(2)(i), the IEP team for a child with a disability whose behavior impedes his or her learning or that of others shall consider, if appropriate, strategies to address that behavior, including the development of behavioral goals and objectives and the

use of positive behavioral interventions, strategies and supports to be used in pursuit of those goals and objectives. Public agencies are strongly encouraged to conduct functional behavioral assessments (FBAs) and integrate behavioral intervention plans (BIPs) into the IEPs for students who exhibit problem behaviors well before the behaviors result in proposed disciplinary actions for which FBAs and BIPs are required under the federal regulations.

## **B. More than 10 School Day Removals**

### **1. Consecutive or Cumulative Days – – Pattern**

#### **§300.536 Change of placement because of disciplinary removals.**

- (a) For purposes of removals of a child with a disability from the child's current educational placement under §§300.530 through 300.535, a change of placement occurs if--
  - (1) The removal is for more than 10 consecutive school days; or
  - (2) The child has been subjected to a series of removals that constitute a pattern--
    - (i) Because the series of removals total more than 10 school days in a school year;
    - (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals, and
    - (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
- (b)
  - (1) The JPS determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
  - (2) This determination is subject to review through due process and judicial proceedings.

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

An IEP Team will:

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

## **2. Manifestation Determination**

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

#### **§300.530 Authority of school personnel.**

##### **(e) Manifestation determination.**

- (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the JPS, the parent, and relevant members of the child's IEP Team (as determined by the parent and the JPS) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--
  - (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

- (ii) If the conduct in question was the direct result of the JPS's failure to implement the IEP.
- (2) The conduct must be determined to be a manifestation of the child's disability if the JPS, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.
  - *Previously, any tangential or attenuated relationship between the discipline infraction and the child's disability was sufficient to determine that the infraction was a —manifestation‖ of the child's disability. In IDEA 2004, the House Committee FAQ says to be a manifestation —it is the intention that the conduct in question was caused by, or has a direct and substantial relationship to the child's disability, and is not an attenuated association or mere correlation, such as low self-esteem, to the child's disability.‖*
  - *Relevant Members of the IEP Team: depending on the type of discipline infraction, when the infraction occurred and who was present, some members of the IEP Team may not be relevant to the discussion of the discipline event. Nonetheless, in each instance the relevant members should be determined in collaboration by the parents and the JPS.*
- (3) If the JPS, the parent and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the JPS must take immediate steps to remedy those deficiencies.
- (f) **Determination that behavior was a manifestation.** If the JPS, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must--
  - (1) Either--
    - (i) Conduct a functional behavioral assessment, unless the JPS had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
    - (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
  - (2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the JPS agree to a change of placement as part of the modification of the behavioral intervention plan.
- (g) **Special circumstances.** School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--
  - (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the NMPED or the JPS;
  - (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the NMPED or the JPS; or
  - (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the NMPED or the JPS.

Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

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

- A. **General.** The following rules shall apply when a student with a disability under IDEA violates a rule of conduct as set forth in this rule which may result in:
- (1) long-term suspension or expulsion; or
  - (2) any other disciplinary change of the student's current educational placement as specified in the federal regulations implementing IDEA at 34 CFR Secs. 300.530 through 300.536 and these or other department rules and standards.



- B. When behavior is not a manifestation of disability. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to Subsection C of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in Subsection I of this section.
- C. Manifestation determination.
- (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a rule of student conduct, the administrative authority, the parent and relevant members of the child's IEP team (as determined by the parent and the administrative authority) must review all relevant information in the student's file, including the child's IEP, any teacher observations and any relevant information provided by the parents to determine:
    - (a) if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or
    - (b) if the conduct in question was the direct result of the administrative authority's failure to implement the IEP.
  - (2) The conduct must be determined to be a manifestation of the child's disability if the administrative authority, the parent and relevant members of the child's IEP team determine that a condition in either Subparagraph (a) or (b) of Paragraph (1) of Subsection C of 6.11.2.11 NMAC was met.
  - (3) If the administrative authority, the parent and relevant members of the child's IEP team determine the condition described in Subparagraph (b) of Paragraph (1) of Subsection C of 6.11.2.11 NMAC was met, the administrative authority must take immediate steps to remedy those deficiencies.
- D. Determination that behavior is manifestation of disability. If the administrative authority, the parent and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must comply within 34 CFR Sec. 300.530(f).
- E. Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child's behavior involves one of the special circumstances listed in 34 CFR Sec. 300.530(g). For purposes of this subsection, the definitions provided in 34 CFR Sec. 300.530(i) shall apply.
- F. Determination of setting. The student's IEP team determines the **interim alternative educational** setting for services under Subsections B and E of this section.
- G. Change of placement because of disciplinary removals. For purposes of removals of a student with a disability from the child's current educational placement under 6.11.2.11 and 6.11.2.12 NMAC, a change of placement occurs if the conditions provided in 34 CFR Sec. 300.536 are met. (*see page 7 of this Chapter*)
- H. Parental notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the administrative authority must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR Sec. 300.504.
- I. Services. A student with a disability who is removed from the student's current placement pursuant to this section must continue to receive special education and related services as provided in 34 CFR Sec. 300.530(d).
- J. see Appeals in this Chapter

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

#### **§300.324 Development, review, and revision of IEP**

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

**§300.530 Authority of school personnel.**

**(d) Services.**

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

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

**F. Behavioral management and discipline.**

- (1) Behavioral planning in the IEP. Pursuant to 34 CFR Sec. 324(a)(2)(i), the IEP team for a child with a disability whose behavior impedes his or her learning or that of others shall consider, if appropriate, strategies to address that behavior, including the development of behavioral goals and objectives and the use of positive behavioral interventions, strategies and supports to be used in pursuit of those goals and objectives. Public agencies are strongly encouraged to conduct functional behavioral assessments (FBAs) and integrate behavioral intervention plans (BIPs) into the IEPs for students who exhibit problem behaviors well before the behaviors result in proposed disciplinary actions for which FBAs and BIPs are required under the federal regulations.
- (2) see suspensions, expulsions page 12 of this Chapter.
- (3) FAPE for children removed from current placement for more than 10 school days in a school year. FAPE shall be provided in compliance with all applicable requirements of 34 CFR Sec. 300.530(d) and these or other department rules and standards for all children with disabilities who have been removed from their current educational placements for disciplinary reasons for more than 10 school days during a school year, as defined in 34 CFR Sec. 300.536.

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

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

**C. Placement made by IEP Committee**

Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

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

#### **IV. REMOVALS OF STUDENTS WITH DISABILITIES**

##### **A. ISS – In School Suspension or Detention**

Authority: NMAC 6.11.2.10 ENFORCING RULES OF CONDUCT:

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

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

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

##### **B. IAES - (Interim Alternative Educational Setting) Removals for Drugs, Weapons, Serious Bodily Injury**

**45 School Day Rule** *{in 3 specific situations listed below §300.530 (g), the administrator may remove to IAES regardless of the Manifestation Determination decision}*

**§300.530 Authority of school personnel.**

- (g) **Special circumstances.** School personnel may remove a student to an interim alternative educational setting for **not more than 45 school days** without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--
- (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the NMPED or the JPS;

- (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the NMPED or the JPS; or
- (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the NMPED or the JPS;.
- (h) **Notification.** On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the JPS must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.
- (i) **Definitions.** For purposes of this section, the following definitions apply:
  - (1) **Controlled substance** means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
  - (2) **Illegal drug** means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
  - (3) **Serious bodily injury** has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.
  - (4) **Weapon** has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (Authority: 20 U.S.C. 1415(k)(1) and (7))

**§300.531 Determination of setting.**

The child's IEP Team determines the interim alternative educational setting for services under §300.530(c), (d)(5) and (g) .

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

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

*The principal or the principal's designee may order the immediate placement of a student in a IAES (Interim Alternative Education Setting) if the principal or the principal's designee reasonably believes the student's behavior is so unruly, disruptive, or abusive that it seriously interferes with a teacher's ability to communicate effectively with the students in a class, with the ability of the student's classmates to learn, or with the operation of school or a school-sponsored activity.*

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

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

**C. Immediate Removal**

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

- C. Immediate removal: Students whose presence poses a continuing danger to persons or property or an ongoing threat of interfering with the educational process may be immediately removed from school, subject to the following rules.
- (1) A rudimentary hearing, as required for temporary suspensions, shall follow as soon as possible.
  - (2) Students shall be reinstated after no more than one school day unless within that time a temporary suspension is also imposed after the required rudimentary hearing. In such circumstances, a single hearing will support both the immediate removal and a temporary suspension imposed in connection with the same incident(s).
  - (3) The school shall exert reasonable efforts to inform the student's parent of the charges against the student and the action taken as soon as practicable. If the school has not communicated with the parent by telephone or in person by the end of the school day following the immediate removal, the school shall on that day mail a written notice with the required information to the parent's address of record.
- D. Temporary suspension.
- (1) A local school board may limit temporary suspensions to periods shorter than ten (10) school days.
  - (2) A student facing temporary suspension shall first be informed of the charges against him or her and, if (s)he denies them, shall be told what evidence supports the charge(s) and be given an opportunity to present his or her version of the facts. The following rules apply.
    - (a) The hearing may be an informal discussion and may follow immediately after the notice of the charges is given.
    - (b) Unless the administrative authority decides a delay is essential to permit a fuller exploration of the facts, this discussion may take place and a temporary suspension may be imposed within minutes after the alleged misconduct has occurred.
    - (c) A student who denies a charge of misconduct shall be told what act(s) (s)he is accused of committing, shall be given an explanation of the evidence supporting the accusation(s) and shall then be given the opportunity to explain his or her version of the facts. The administrative authority is not required to divulge the identity of informants, although (s)he should not withhold such information without good cause. (S)he is required to disclose the substance of all evidence on which (s)he proposes to base a decision in the matter.
    - (d) The administrative authority is not required to allow the student to secure counsel, to confront or cross-examine witnesses supporting the charge(s), or to call witnesses to verify the student's version of the incident, but none of these is prohibited.
    - (e) The school shall exert reasonable efforts to inform the student's parent of the charges against the student and their possible or actual consequence as soon as practicable. If the school has not communicated with the parent by telephone or in person by the end of the first full day of suspension, the school shall on that day mail a written notice with the required information to the parent's address of record.

#### **D. Suspension - Expulsion**

##### **§300.101 Free appropriate public education (FAPE).**

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

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

- (a) **General.** The NMPED must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--
- (1) Among LEAs in the State; or
  - (2) Compared to the rates for nondisabled children within those agencies.
- (b) **Review and revision of policies.** If the discrepancies described in paragraph (a) of this section are occurring, the NMPED must review and, if appropriate, revises (or requires the affected State agency or

**LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.**

*The Jal Public Schools will follow the IDEA and NMAC requirements for suspension and expulsion of students with disabilities.*

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

F. Behavioral management and discipline

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

*The JPS campus principal is ultimately responsible for an accurate accounting. The principal may collaborate with the assigned special education lead teacher or diagnostician to keep records .*

Authority: NMAC 6.11.2.10 ENFORCING RULES OF CONDUCT:

- F. Detention, suspension and expulsion: Where detention, suspension and/or expulsion is determined to be the appropriate penalty, it may be imposed only in accordance with procedures that provide at least the minimum safeguards prescribed in Section 6.11.2.12 NMAC, below. Suspensions or expulsions of students with disabilities shall be subject to the further requirements of Subsection G of Section 6.11.2.10 NMAC and Section 6.11.2.11 NMAC below.
- G. Discipline of students with disabilities: Students with disabilities are not immune from school disciplinary processes, nor are they entitled to remain in a particular educational program when their behavior substantially impairs the education of other children in the program. However, the JPS is required by state law and regulations to meet the individual educational needs of students with disabilities to the extent that current educational expertise permits. The JPS personnel may consider any unique circumstances on a case by case basis when determining whether a change of placement, consistent with the other requirements of 6.11.2.11 NMAC, is appropriate for a student with a disability who violates a code of conduct as provided in 34 CFR Sec. 300.530.
- (1) Long-term suspensions [of] or expulsions of students with disabilities shall be governed by the procedures set forth in Section 6.11.2.11 NMAC below.
  - (2) Temporary suspensions of students with disabilities may be imposed in accordance with the normal procedures prescribed in Subsection D of Section 6.11.2.12 NMAC below, provided that the student is returned to the same educational placement after the temporary suspension and unless a temporary suspension is prohibited under the provisions of Subsection G, Paragraph (3) of 6.11.2.10 NMAC below.
  - (3) Program prescriptions. A student with a disability's individualized education program (IEP), under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), need not affirmatively authorize disciplinary actions which are not otherwise in conflict with [the regulation] this rule. However, the IEP [committee] team may prescribe or prohibit specified disciplinary measures for an individual student with a disability by including appropriate provisions in the student's IEP. Administrative authorities shall adhere to any such provisions contained in a student with a disability's IEP, except that an IEP [committee] team may not prohibit the initiation of proceedings for long-term suspension or expulsion which are conducted in accordance with this [regulation] rule.

- (4) Immediate removal. Immediate removal of students with disabilities may be done in accordance with the procedures of Subsection C of Section 6.11.2.12 NMAC below.
- (5) A student who has not been determined to be eligible for special education and related services under 6.31.2 NMAC and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in this subsection if the conditions set forth in 34 CFR Sec. 300.534 have been met.
- (6) Referral to and action by law enforcement and judicial authorities.
  - (a) Nothing in these rules of conduct prohibits an administrative authority from reporting a crime committed by a student with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.
  - (b) Transmittal of records.
    - (i) An administrative authority reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted, for consideration by the appropriate authorities, to whom the administrative authority reports the crime.
    - (ii) An administrative authority reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act. [08-15-97; 6.11.2.10 NMAC - Rn, 6 NMAC 1.4.10, 11-30-00; A, 6/29/07]

**Authority: NMAC 6.11.2.11 see page 8 - III. Change of Placement Decisions – more than 10 days - long term suspension or expulsion.**

**Authority: NMAC 6.11.2.12 PROCEDURE FOR DETENTIONS, SUSPENSIONS AND EXPULSIONS:** The authority of the state and the local school board to prescribe and enforce standards of conduct for JPS students must be exercised consistently with constitutional safeguards of individual student rights. The right to a public education is not absolute; it may be taken away, temporarily or permanently, for violations of school rules. But it is a property right which may only be denied where school authorities have adhered to the minimum procedural safeguards required to afford the student due process of law. This section prescribes minimum requirements for detention, in school suspension and temporary, long-term or permanent removal of students from the Jal Public Schools. The local school board may adopt procedures which afford students more protection than this [regulation] rule requires. The procedures in this section apply only to disciplinary detentions, suspensions and expulsions. They do not apply to disenrollment of students who fail to meet immunization, age, residence or other requirements for valid enrollment, nor to the removal from school membership reports of students who have been absent from school for ten (10) consecutive school days in accordance with Subsection B of Section 22-8-2 NMSA 1978. Nothing in this section should be construed as prohibiting school boards or administrative authorities from involving other school staff, students and members of the community in the enforcement of rules of student conduct to the extent they believe is appropriate.

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

## **E. Detention and Correctional Facilities**

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

### **K. Children in detention and correctional facilities.**

- (1) If a child with a disability is placed in a juvenile or adult detention or correctional facility, the facility must provide the child with FAPE after the facility learns that the child had been eligible for special education and related services in the last educational placement prior to incarceration or otherwise determines that the child is eligible.
- (2) Juvenile or adult detention or correctional facilities must take reasonable steps to promptly obtain needed educational records from a child's last known school or educational facility. Record requests and transfers are subject to the regulations under the Family Educational Rights and Privacy Act (FERPA) at 34 CFR Part 99 and the provisions of Paragraph (3) of Subsection L of 6.31.2.13 NMAC. The educational program of a juvenile or adult detention or correctional facility is an educational agency for purposes of the FERPA. (a) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the records request from the juvenile correctional facilities.  
(b) To assist juvenile correctional facilities in providing FAPE for children entering the facility during the summer months, districts must provide summer emergency contact information of a person who has access to special education records, to the state's superintendent of juvenile justice services division of the children, youth and family department.
- (3) A detention or correctional facility that is unable to obtain adequate records from other agencies, the child or the parents within a reasonable time after the child arrives at the facility, shall evaluate the child who is known or suspected to be a child with a disability as provided in Subsection F of 6.31.2.10 NMAC and develop an IEP for an eligible child without undue delay.
- (4) FAPE for eligible students in juvenile or adult detention or correctional facilities shall be made available in programs that are suited to the security requirements of each facility and eligible student. The provisions of 34 CFR Sec. 300.324(d) apply to IEPs for students with disabilities who are convicted as adults under state law and incarcerated in adult prisons.
- (5) A state-supported educational program that serves a juvenile or adult detention or correctional facility shall be responsible for ensuring that FAPE is provided to eligible children in that facility.
- (6) The local school district in which a detention or correctional facility is located (that is not served by a state-supported educational program) shall be responsible for ensuring that FAPE is made available to eligible children in that facility. A child's LEA of residence or another public agency with educational jurisdiction may agree to share the responsibility pursuant to a written agreement between or among the agencies involved.
- (7) Children with disabilities who are detained or incarcerated in detention or correctional facilities are wards of the state and may have surrogate parents appointed pursuant to 34 CFR Sec. 300.519 and Subsection J of 6.31.2.13 NMAC to protect their IDEA rights while in state custody.
- (8) The public agency that administers the educational program in a juvenile or adult detention or correctional facility shall ensure that surrogate parents are appointed in cases where no parent as defined in 34 CFR Sec. 300.30(a) and Paragraph (14) of Subsection B of 6.31.2.7 NMAC is reasonably available or willing to make the educational decisions required for children with disabilities who are housed in that facility.
- (9) Children placed in juvenile or adult detention or correctional facilities must be provided learning opportunities and instruction that meet the state standards with benchmarks.

## **V. SERVICES REQUIRED FOR STUDENTS REMOVED**

### **§300.530 Authority of school personnel.**

- (a) **Case-by-case determination.** School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.
- (b) **General.**
  - (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational



setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536).

- (2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the JPS must provide services to the extent required under paragraph (d) of this section.
- (c) **Additional authority.** For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined **not to be a manifestation** of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

(d) **Services.**

- (1) A child with a disability who is removed from the child's current placement pursuant to paragraph (c) or (g) of this section must--
  - (i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
  - (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.
- (2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5), of this section may be provided in an interim alternative educational setting.
- (3) The JPS is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, **if it provides services** to a child without disabilities who has been similarly removed.
- (4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.
- (5) If the removal is a change of placement under §300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.

(e) **Manifestation determination.**

- (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the JPS, the parent, and relevant members of the child's IEP **Team** (as determined by the parent and the JPS) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--
  - (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
  - (ii) If the conduct in question was the direct result of the JPS's failure to implement the IEP.
- (2) The conduct must be determined to be a manifestation of the child's disability if the JPS, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.
- (3) If the JPS, the parent and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the JPS must take immediate steps to remedy those deficiencies.

- (f) **Determination that behavior was a manifestation.** If the JPS, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must--
- (1) **Either--**
    - (i) Conduct a functional behavioral assessment, unless the JPS had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
    - (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
  - (2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the JPS agree to a change of placement as part of the modification of the behavioral intervention plan.
- (g) **Special circumstances.** School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--
- (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the NMPED or the JPS;
  - (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the NMPED or the JPS; or
  - (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the NMPED or the JPS;.
- (h) **Notification.** On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the JPS must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.
- (i) **Definitions.** For purposes of this section, the following definitions apply:
- (1) **Controlled substance** means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
  - (2) **Illegal drug** means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
  - (3) **Serious bodily injury** has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.
  - (4) **Weapon** has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (Authority: 20 U.S.C. 1415(k)(1) and (7))

## **VI. RESTRAINT - TIME-OUT**

### **A. Use of Restraint**

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

### **Regulatory Requirements**

In situations where a student with a disability demonstrates behavior that impedes his or her learning or that of others, the IDEA 2004 at 20 U.S.C. 1414(d)(3)(B)(i) requires the student's Individualized Education Program (IEP) team to consider positive behavioral interventions, strategies, and supports to address that behavior.

In a case where the student's problematic behavior is severe, persistent, and frequent, the IEP team will develop a Behavioral Intervention Plan (BIP) based on a Functional Behavioral Assessment (FBA) as part of the IEP for that student.

The BIP needs to emphasize positive interventions, strategies, and supports that teach appropriate replacement behaviors. However, an effective BIP must also address and specifically provide for emergency situations where a particular student exhibits aggressive, violent, or dangerous behavior that requires an immediate aversive intervention, such as physical restraint. In that case, physical restraint is designed to:

- protect the student and others from serious injury; or
- safeguard physical property; and
- will be used only in an emergency.

### **Types of Physical Restraint**

The most common forms of physical restraint are **mechanical** restraints and **manual** restraints.

- **Mechanical** restraint involves the use of any device such as a blanket, tape, straps, blindfolds, or tie downs as a method of restricting a student's movement or activity.
- **Manual** restraint (also known as –therapeutic holding) involves one or more people using their bodies to restrict the student's body movement. The purpose of this type of restraint is to allow the student to reestablish self-control and/or maintain safety for others in the environment. The NMPED does not condone the use of **mechanical** restraint of students. However, we recognize that there may be certain instances where **manual** restraint of a student may be necessary, so the remainder of this guidance addresses its appropriate use for students with disabilities.
- We note that escorting a student (touching and/or holding a student without the use of force) is **not** considered a form of physical restraint. Similarly, the use of –time out is **not** considered a form of physical restraint and guidance on time-out is provided further in this section. We also emphasize that nothing in this procedure would preclude a teacher or other staff member from using reasonable force to protect themselves, students, or other persons from assault or imminent, serious physical harm.

See the State's *Technical Assistance Manual: Addressing Student Behavior—A Guide for Educators*. This manual is available on the Special Education/Publications link at the NMPED's website at: [www.ped.state.nm.us](http://www.ped.state.nm.us)

## **B. Restraint Procedures**

### **Authorization for Physical Restraint**

- **In all cases**, the use of physical restraint must be approved by the student's IEP team, documented in the student's BIP, have the expressed written agreement of the parent or legal guardian, and be addressed in the JPS's Prior Written Notice of Actions Proposed (PWN) provided to parents following an IEP meeting. The IEP team approves the type of restraint to be used, who is authorized to apply it, the specific setting or conditions under which the use of restraint shall apply, how it will be monitored by other staff, as well as reporting requirements for when restraint is used.
- **In all cases**, a mental health professional (i.e., social worker, counselor, psychologist) needs to be member of the IEP team if physical restraint is being considered as an intervention. The mental health professional reviews all information about the student and observes the student prior to making recommendations at the IEP meeting about the use of physical restraint in the BIP. A recommendation could include the need for additional evaluative or other information before imposing physical restraint in the student's BIP.
- **In some cases**, the IEP team may also need to seek approval from the student's medical provider if the use of physical restraint might adversely impact or be in conflict with any medical/physical/mental condition that the student may have or be suspected of having.

### **Procedures**

- **Physical restraint procedures must be performed by trained personnel only.** (See –Staff Training below.)
- **Restraint may not used as a form of punishment.** Restraint will not be used to force compliance from a student.
- **The IEP team must craft the BIP so as to use a graded system of alternatives for the student's behavior.** In other words, positive interventions are the first methods for addressing unacceptable behavior. A variety of such interventions designed to de-escalate a crisis should be listed in the student's BIP, as well as a provision to

warn the student that restraint will be used if the target behavior does not stop. Verbal threats or refusal to comply with a staff directive or school rule would not warrant physical restraint unless this is agreed upon in the BIP. Physical restraint is the last resort to protect the student and others from harm. However, its immediate use may be justified if there is imminent, serious danger only.

- **The IEP team needs to establish that other less restrictive interventions have not been effective.** The provision for physical restraint that is in the BIP is only appropriate if less restrictive behavioral management techniques have been tried and documented as not working for the behaviors for which physical restraint will apply.
- **The use of physical restraint must be consistent with the student's IEP and Behavioral Intervention Plan (BIP).** The use of physical restraint is restricted the same way the law restricts the use of other teaching or behavioral interventions methods in general. That is, it is a denial of a Free Appropriate Public Education (FAPE) if the use of physical restraint is inconsistent with the student's IEP and BIP.
- **No form of physical restraint may be used that restricts a student from speaking or breathing.** The restraint must be applied in such a way that it is safe and only reasonable force is used. A responsible third party should monitor the student's status during the restraint procedure to check respiration and skin color, and to see that limbs are not moved out of the normal range of motion. The restraint should be immediately discontinued if the student exhibits any signs of undue physical distress or injury. In addition, the restraint must not be applied any longer than is necessary to protect the student from causing harm to himself or others.
- **Do not restrain the student in front of other students.** If possible, move to another location or clear the setting of other students.

#### Staff Training

- **Any staff or staff team designated to apply physical restraint must be professionally trained and/or certified in the particular technique being used.** This must happen *prior to* any such procedures being used on a student. Staff chosen to be trained to apply physical restraint should be individuals who are physically able to do so and can handle a crisis in a calm manner.
- **The professional training needs to emphasize the use of positive interventions, including verbal de-escalation techniques and other strategies to be attempted prior to using physical restraint.** Resources for this kind of training include, but are not limited to, Positive Behavioral Intervention and Supports ([www.pbis.org](http://www.pbis.org)), Crisis Prevention Institute ([www.crisisprevention.com](http://www.crisisprevention.com)), and The Mandt System ([www.mandtsystem.com](http://www.mandtsystem.com)).

*The JPS provides training on the proper technique and use of restraint using the following system: \_\_\_\_\_.*

*This training is provided at least annually to new staff and refresher courses are offered to existing trained staff.*

#### Recommended Documentation and Reporting

- **Any incident of physical restraint should be immediately reported to the building administrator and be documented.** Include the following in a written report:
  - Name of the student
  - Date and description of the incident that led to the restraints
  - Names and titles of staff member(s) who applied the restraints and monitored it
  - Other interventions tried
  - Type of restraints used
  - Length of time the restraints was applied
  - Any injuries sustained by the student or staff
  - Information about the student's behavior after the restraints and any further action taken by school staff including disciplinary action
- **The student's parents should be informed about the use of the restraint.** Provide a verbal report to parents the same day. This should be followed up by a written report 1–2 days later.

*Local policy for physical restraint for students without IEPs should be authorized by the school's Section 504 team, or the Student Assistance Team (SAT), as well as the parents as part of the student's BIP, Section 504 Plan, or SAT Intervention Plan. Protection for students not yet eligible for special education and related services is governed by 20 U.S.C. 1415(k)(5).*

### **C. Use of Time-out Strategies (excluding Time-out Rooms)**

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

IEP teams may consider the use of 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. **The 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.

#### **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.

#### **Time-out Continuum of Strategies – Non-exclusionary:**

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

#### **Time-out Continuum of Strategies – Exclusionary:**

- **student's removal** from the classroom setting altogether for a brief amount of time in order for the student to regroup in private prior to returning to the classroom setting. May include relocating the student to another classroom or the office.
- **student's removal** from the classroom setting to a time-out room is described in detail in E. and F. below.

### **D. Time-out Procedures (excluding Time-out Rooms)**

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

*Time-out is outlined as either Non-exclusionary, which is the least restrictive, or Exclusionary time-out which results from more serious behaviors that are described in the BIP. Exclusionary time-out should be used when Non-exclusionary attempts are documented and have not been successful.*

1. Non-exclusionary time-out:

- *Planned Ignoring: This is the simplest form of Non-exclusionary time-out. Planned ignoring involves the systematic removal of social reinforcement (attention) by the teacher for a specific amount of time. When the student misbehaves, the teacher breaks eye contact, turns away, and stops all social interaction with the student. Planned ignoring assumes that the teacher's social attention is reinforcing. If it is not, then this will not work to decrease the behavior. If planned ignoring is the appropriate response, the teacher should prepare initially for an increase in the behavior before the behavior will decrease.*
- *Head down on desk: This has been used by teachers for a long time. The student is simply told to put his head down on his desk for a short period of time. (timer may be used)*
- *Observation time-out: The student is removed from his/her desk for misbehaving and is usually placed in a desk away from the main classroom activities for a short period of time. The student is allowed/required to observe the classroom discussion/activities, but is not allowed to actively participate in them. (use of timer recommended – 5 minutes and may reset once)*
- *Non-observation time-out (instructional isolation): This is basically the same as observation time-out, except the student is not allowed to observe the classroom activities. Usually, the student is placed in a particular part of the classroom that does not provide for viewing other students. (use of timer recommended – 10 minutes and may reset once)*

2. *Exclusionary time-out: The student is removed from the classroom and placed in a separate environment for cooling down and instructional activities to resume. Clearly, this is more restrictive and other types of time-out should be attempted first.*
  - *Isolated instruction: This is extended time-out from the classroom. The student is required to complete class work in an isolated area, another classroom, or the office. Caution using the hallway as this could result in a social reward depending on the individual student.*
  - *Time-out Room described below.*

#### **E. Use of Time-out Rooms**

*JPS does not allow use of time out rooms.*

#### **F. Procedures for Use of Time-out Rooms**

As a part of the FBA and BIP process, the IEP teams will document the following in order to include time-out rooms as an intervention in a student's IEP:

1. **Evaluation.** Complete an evaluation and review existing data to determine if the student's placement in a time-out room is in direct conflict with the student's psychological or physical health status.
2. **Nature of the misconduct.** The IEP team will determine if the student's behavior can be addressed through a less intrusive time-out strategy within the classroom setting. The previous section lists time-out strategies that are less restrictive.
3. **Documentation.** Documentation of possible positive interventions will occur through the IEP process, which includes conducting a Functional Behavior Assessment (FBA) and developing a Behavior Intervention Plan (BIP).
4. **Adequate Notice.** The IEP Team will inform the parent/student how the time-out room will be utilized and the projected outcome or purpose of the use of time-out room as a positive intervention strategy.
5. **Written permission.** Parent participation in the IEP Team meeting and signing agreement with the use of time-out rooms as a part of a student's BIP and IEP will provide authorization to the JPS to implement the IEP. In addition, the JPS will obtain parental consent in order to utilize the more restrictive form of time-out which is the time-out rooms.
6. **Amount of time spent out of the classroom in isolation.** The duration of placement in a time-out room must be reasonable in light of factors such as student's age, sex, disability, cognitive functioning, and the nature of the student's misbehavior.
  - a. The IEP team will consider the student's age, sex, disability, and the nature of his or her behavior in determining the maximum amount of time the student can spend in the time-out room.
  - b. Best practice dictates that in most cases, the number of minutes a student spends in a time-out room should typically equal the student's age, but will not exceed a maximum of 10-15 minutes. The maximum amount of time will be listed in the IEP. A time-out is an opportunity for a student to regain his or her composure.
  - c. Do not use timeout as a punishment for disruptive behavior.
7. **How time was spent during time-out.** The IEP will include a written plan that outlines what to do once a teacher places the student in the time-out room.
8. **A student placed in a time-out room must be permitted to use the bathroom.** Staff will consider events that preceded the student's behavior (lunch, medications) that may result in the student needing to relieve him or herself.
9. **Criteria for returning to class.** Identify and list the specific criteria for returning the student to the routine activities and the classroom environment. As a matter of best practice, a student will remain in a time-out room only until he or she becomes sufficiently self-controlled to rejoin classmates, unless that time exceeds the maximum time allowed. The IEP Team will list other strategies.
10. **Do not lock a time-out room.** The time-out rooms will remain unlocked and free and clear of obstructions. In the event of a fire or other emergency, occupants will be able to self evacuate or be assisted without delay.



11. **Staff must directly supervise or monitor the student while he or she is in a time-out room or other time-out area.** Some students are agitated in these circumstances. Do not discount the possibility of self-injury even when there is no obvious instrument for inflicting injury in time-out rooms.
12. **The JPS will keep accurate records on students placed in time-out.** The records will include the date, time, length of placement, the basis for the placement, and the teacher who made the placement determination. In addition, the records will also indicate the assistance provided to help the student regain composure. This data collection will enable the school to determine the effectiveness of the more restrictive time-out strategies on improving student behavior.
13. **Location of the time-out room.** Determine where the time-out room is located in relation to the student's classroom? The IEP Team will assure the student's behavior justifies the time it takes to transfer the student to and from the time-out room.
14. **Size of the time-out room.** The JPS assures the time-out room is of adequate size to accommodate the student and the school staff person who is responsible for supervising the student for the duration of his or her placement in the time-out room.
15. **Interior of the time-out room.** The interior of the time-out room will not be indicative of a punitive setting. The environment will enable the student to de-escalate and thereby return to and participate in the classroom setting.
16. **Time out rooms must be designed and constructed in compliance with all SDE, local, and fire code regulations.** The time-out room is a safe setting for both the student and the staff person supervising him or her. The JPS assures the time-out room meets all state, local, and fire code requirements. Time-out rooms will have adequate heating, lighting, and ventilation and be free of any dangerous objects.

It is important to note that Section 504 governs the imposition of time-out for students with disabilities. A district's

time-out policy should follow the same guidelines and procedures for both disabled and non-disabled students.

## **VII. DUE PROCESS REQUIREMENTS**

### **A. Procedural Safeguards**

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

### **B. – Stay Put / IAES**

- *Previously during appeals, a child with a disability remained in the original placement, –stay-put. The new IDEA eliminates the –stay-put requirement in the case of discipline. The –stay-put rule still applies to the non-disciplinary dispute. Now during the time that an appeal is pending, the child will remain in the interim alternative educational setting (IAES) until the appeal is resolved or until the expiration of the suspension, whichever occurs first.(see D. and E. below)*
- *As described below in §300.532, the hearing officer is required to make a decision within 30 school days from the date the hearing is requested. Therefore, if the student is assigned to an IAES for 45 school days, the hearing officer's decision will come first.*
- *The IEP Team will pick the appropriate IAES. The timeframe for expiration of the IAES is determined by school personnel applying the –relevant disciplinary procedures applicable to children without disabilities referred to in the Student Code of Conduct.*

### **C. Appeal**



**§300.532 Appeal.**

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

Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

J. Appeal.

- (1) The parent of a student with a disability who disagrees with any decision regarding the placement or the manifestation determination under this section, or an administrative authority that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to Subsection I of 6.31.2.13 NMAC.
- (2) A hearing officer who hears a matter under Paragraph (1) of Subsection J of 6.11.2.11 NMAC, has the authority provided in 34 CFR Sec. 300.532(b).
- (3) When an appeal under this subsection has been made by either the parent or the administrative authority, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in Subsections B or E of this section, whichever occurs first, unless the parent and the administrative authority agree otherwise. [08-15-97; 6.11.2.11 NMAC - Rn, 6 NMAC 1.4.11 & A, 11-30-00; A, 9-15-05; A, 6/29/07]

#### **D. Placement During Appeals**

##### **§300.533 Placement during appeals.**

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

Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

#### **J. Appeal.**

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

#### **E. Resolution Meeting Prior to Due Process**

##### **§300.510 Resolution process.**

#### **(a) Resolution meeting.**

- (1) Within 15 days of receiving notice of the parents' due process complaint, and prior to the initiation of a due process hearing under §300.511, the JPS must convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that--
  - (i) Includes a representative of the JPS who has decision-making authority on behalf of that agency; and
  - (ii) May not include an attorney of the JPS unless the parent is accompanied by an attorney.
- (2) The purpose of the meeting is for the parents of the child to discuss their due process complaint, and the facts that form the basis of the due process complaint, so that the JPS has the opportunity to resolve the dispute that is the basis for the due process complaint.
- (3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if--
  - (i) The parent and the JPS agree in writing to waive the meeting; or
  - (ii) The parent and the JPS agree to use the mediation process described in §300.506.
- (4) The parent and the JPS determine the relevant members of the IEP Team to attend the meeting.

#### **(b) Resolution period.**

- (1) If the JPS has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint, the due process hearing must occur.
- (2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period.
- (3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.
- (4) If the JPS is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in §300.322(d)), the JPS may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.
- (5) If the JPS fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

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

*This process allows an opportunity for the school to resolve the parent's complaint. This can take up to 30 days and the timelines for a due process hearing begin to run only after those first 30 days. Also, there is an —expedited hearing‖ in the case of a disciplinary appeal. When the final regulations are completed, this may be resolved.*

#### **F. Notice of Disciplinary Actions (Student Moves to another District)**

*If the JPS 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 JPS shall provide to the district or school in which the student enrolls, at the same time other records of the student are provided, a copy of the order of disciplinary action. It is the decision of the receiving district or school in which the student enrolls to continue the disciplinary action under the terms of the order or to allow the student to attend regular classes without completing the period of disciplinary action. §300.229 Disciplinary information.*

#### **G. Protection for Students not Yet Eligible for Special Education**

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

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

(d) **Conditions that apply if no basis of knowledge.**

- (1) If a JPS does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.
- (2)
  - (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under §300.530, the evaluation must be conducted in an expedited manner.
  - (ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
  - (iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§300.530 through 300.536 and section 612(a)(1)(A) of the Act.

**H. Noncustodial Parent**

*A noncustodial parent may request in writing that the JPS or school, for the remainder of the school year in which the request is received, provide that parent with a copy of any written notification relating to student misconduct that is generally provided by the JPS to a student's parent or guardian.*

*The JPS may not unreasonably deny this request. The JPS will comply with any applicable court order of which the JPS has knowledge.*

**VIII. LAW ENFORCEMENT**

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

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

**VIII. DISCIPLINARY RECORDS**

**§300.229 Disciplinary information.**

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

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

**(b) Transmittal of records.**

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

**DISCLAIMER**

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

For additional information regarding discipline for students with disabilities see:

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

<http://www.ped.state.nm.us/seo/discipline/guide.htm>

**Jal Public School District  
PROCEDURES  
FOR THE  
PROVISION OF  
SPECIAL EDUCATION SERVICES  
FOR  
STUDENTS WITH DISABILITIES AND GIFTED STUDENTS**

**Chapter 8. – GENERAL ADMINISTRATION**

Chapter 8. Adopted Pursuant to Board Policy: Equal Education Opportunities: Special Education  
Effective Date of Procedures: March 19, 2012  
Revised February 2012

## **Chapter 8 – GENERAL ADMINISTRATION**

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## **Chapter 8. – GENERAL ADMINISTRATION**

*The Jal Public School District recognizes the Public Education Department's rulemaking authority (established by the Public Education Department Act) as follows: "The secretary may make and adopt such reasonable and procedural rules as may be necessary to carry out the duties of the department and its divisions.... Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary...." (NMSA 1978 §9-24-8(D)).*

*In addition to making and adopting rules, the NMPED provides guidance to local educational agencies. To the extent that the NMPED's guidance is consistent with the IDEA (and its implementing federal regulations and state statutes and rules), and does not impose a requirement that is not otherwise imposed by the IDEA (and its implementing federal regulations and state statutes and rules) without specific notice under 34 C.F.R. §300.299(a)(2), the Jal Public School District will follow the guidance of the PED.*

### **I. SCOPE AND APPLICABILITY**

#### **Authority: 34 CFR §300.1 Purposes.**

The purposes of this part are--

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

#### **Authority: 34 CFR §300.17 Free appropriate public education.**

Free appropriate public education or FAPE means special education and related services that--

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

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

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

#### **Authority: 34 CFR §300.110 Program options.**

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

#### **Authority: 34 C.F.R. §300.200. Condition of assistance.**

An LEA is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in 300.201 through 300.213.

#### **Authority: 34 C.F.R. §300.201. Consistency with State policies.**

The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under 300.101 through 300.163, and 300.165 through 300.174.



**Authority: 34 CFR §300.212 Public information.**

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

**Authority: NMAC 6.31.2.6 OBJECTIVE:**

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

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

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

*The Jal Public School District, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under 34 C.F.R. §§300.101 through 300.163, and 300.165 through 300.174. This document consisting of Chapters 1-8, in its entirety constitutes the Jal Public School District procedures, developed pursuant to and designed to implement Board policies. .*

## **II. PERSONNEL**

**Authority: 34 CFR §300.156 Personnel qualifications.**

- (a) General. The NMPED must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.
- (b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--
  - (1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and
  - (2) Ensure that related services personnel who deliver services in their discipline or profession--
    - (i) Meet the requirements of paragraph (b)(1) of this section; and
    - (ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
    - (iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.
- (c) Qualifications for special education teachers. The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA.

- (d) **Policy.** In implementing this section, a State must adopt a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.
- (e) **Rule of construction.** Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular NMPED or Jal Public School District employee to be highly qualified; or to prevent a parent from filing a complaint about staff qualifications with the NMPED as provided for under this part.

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

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

have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the State.

- (d) **Requirements for highly qualified special education teachers teaching multiple subjects.** When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either--
- (1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);
  - (2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or
  - (3) In the case of a new special education teacher who teaches multiple subjects, and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single, high objective State standard of evaluation (HOUSSE) covering multiple subjects.
- (e) **Separate HOUSSE standards for special education teachers.** Provided that any adaptations of the State's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers—
- (1) A State may develop a separate HOUSSE for special education teachers; and
  - (2) The standards described in paragraph (e)(1) of this section may include single HOUSSE evaluations that cover multiple subjects.
- (f) **Rule of construction.** Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular NMPED or Jal Public School District employee to be highly qualified, or to prevent a parent from filing a complaint under §§300.151 through 300.153 about staff qualifications with the NMPED as provided for under this part.
- (g) **Applicability of definition to ESEA; and clarification of new special education teacher.**
- (1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.
  - (2) For purposes of 300.18(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.
- (h) **Private school teachers not covered.** The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by the Jal Public School District to provide equitable services to parentally-placed private school children with disabilities under §300.138.

**Authority: NMAC 6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:**

...

**B. Public agency funding and staffing**

...

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

“The Act makes clear that the use of paraprofessionals and assistants who are appropriately trained and supervised must be contingent on State law, regulation, and written policy giving States the option of determining whether paraprofessionals and assistants can be used to assist in the provision of special education and related services under Part B of the Act, and, if so, to what extent their use would be permissible. However, it is critical that States that use paraprofessionals and assistants to assist in providing special education and related services to children with disabilities do so in a manner that is consistent with the rights of children with disabilities to FAPE under Part B of

the Act. There is no need to provide additional guidance on how States and LEAs should use paraprofessionals and assistants because States have the flexibility to determine whether to use them, and, if so, to determine the scope of their responsibilities.” 71 Fed. Reg. 46612 (August 14, 2006).

*The New Mexico highly qualified teacher requirements including for special education teachers are available through the NMPED website at: <http://teachnm.org/programs/no-child-left-behind.html>.*

*The NMPED has adopted teacher licensure rules including licensure in special education, competency testing rules, ancillary service providers' licensure rules, and special support services licensure rules. These rules are available through the NMPED website at: <http://ped.state.nm.us/Licensure/index.html>. The Jal Public School District will ensure that personnel serving children with disabilities are qualified under state licensure requirements, special education teachers are highly qualified, and paraprofessionals and assistants are appropriately trained and supervised.*

### **III. COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT**

**Authority: 34 CFR §300.207 Personnel development.**

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

**Authority: NMAC 6.65.2.6 [Professional Development] OBJECTIVE:**

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

**Authority: NMAC 6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:**

**8 (b)** Each public agency and charter school shall train their school administrators and teachers who teach reading to implement appropriate research-based reading interventions prior to referring the student for a special education evaluation and shall train their special education teachers to provide appropriate specialized reading instruction for students with dyslexia who have been identified as eligible for special education services.

*The Jal Public School District's professional development will be guided by State Performance Plan (SPP) and annual performance report (APR) data. Professional development will be provided to special and regular education teachers who teach children with disabilities based on scientifically-based research to improve educational instruction.*

*The Jal Public School District will utilize the online professional development modules provided by the New Mexico Public Education Department to train their school administrators and teachers who teach reading to implement appropriate research-based reading interventions prior to referring the student for a special education evaluation and to train their special education teachers to provide appropriate specialized reading instruction for students with dyslexia who have been identified as eligible for special education services. The Jal Public School District will maintain a record of staff completing required training.*

### **IV. CLASS LOADS**

**Authority: NMAC 6.30.2.10 PROCEDURAL REQUIREMENTS**

...

**H. Student/staff caseloads in gifted and special education.**

- (1) The student/staff caseload shall not exceed 35:1 for a special education teacher and 60:1 for a speech-language pathologist for special education services or speech-only services, in which properly licensed special education teachers or speech-language pathologists travel from class to class or school to school, providing services to students with disabilities whose individualized education programs (IEPs) require a minimal amount of special education. (A minimal amount of special education services shall not exceed 10 per cent of the school day/week.)
- (2) The student/staff caseload shall not exceed 24:1 for a special education teacher and 35:1 for a speech-language pathologist for special education services or speech-only services which properly-licensed special education teachers or speech-language pathologists provide to students with disabilities whose IEPs require a moderate amount of special education. (A moderate amount of special education services shall be less than 50 per cent of the school day.)
- (3) The student/staff caseload shall not exceed 15:1 for special education services in which properly licensed special education teachers provide services to students with disabilities whose IEPs require an extensive amount of special education for a portion of the school day as appropriate to implement the plan. (An extensive amount of special education services shall be provided 50 per cent or more of the school day.)
- (4) The student/staff caseload shall not exceed 8:1 for special education services in which a properly licensed professional provides services to students with disabilities whose IEPs require a maximum amount of special education. (A maximum amount of special education services shall be provided in an amount approaching a full school day.)
- (5) The student/adult caseload shall not exceed 4:1 for center-based special education services in which one of the adults in the program is a properly licensed professional providing three- and four-year old children with the amount of special education needed to implement each child's IEP. This includes a child who will turn three at any time during the school year, and who is determined to be eligible for Part B services. The child may be enrolled in a Part B preschool program at the beginning of the school year if the parent so chooses, whether or not the child has previously been receiving Part C services.
- (6) The student/adult caseload shall not exceed 2:1 for center-based special education services in which three- and four-year old children have profound educational needs. This includes children who will turn three at any time during the school year, and who are determined to be eligible. The child may be enrolled in a Part B preschool program at the beginning of the school year if the parent so chooses, whether or not the child has previously been receiving Part C services.
- (7) Adequate student/staff caseloads shall be provided to appropriately address needs identified in the IEPs. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to students with disabilities under Part B of IDEA.
- (8) If the student/staff caseload ratio exceeds the standards provided above, a request for waiver shall be submitted to the department for review and approval by the secretary.

*The Jal Public School District will accurately report class loads on the STARS system and comply with class load requirements established by State rule.*

## **V. STARS– Student Teacher Accountably and Reporting System**

### **Authority: 34 CFR §300.211 Information for SEA.**

The Jal Public School District will provide the NMPED with information necessary to enable the NMPED to carry out its duties under Part B of the Act, including, with respect to §§300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.

### **Authority: 34 CFR §300.213 Records regarding migratory children with disabilities.**

The Jal Public School District will cooperate in the Secretary's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children.

### **Authority: 34 CFR §300.640 Annual report of children served—report requirement.**

- (a) The NMPED must annually report to the Secretary on the information required by section 618 of the Act at the times specified by the Secretary.
- (b) The NMPED must submit the report on forms provided by the Secretary.

### **Authority: 34 CFR §300.641 Annual report of children served—information required in the report.**

- (a) For purposes of the annual report required by section 618 of the Act and §300.640, the State and the Secretary of the Interior must count and report the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year.
- (b) For the purpose of this reporting provision, a child's age is the child's actual age on the date of the child count.
- (c) The SEA may not report a child under more than one disability category.
- (d) If a child with a disability has more than one disability, the SEA must report that child in accordance with the following procedure:
  - (1) If a child has only two disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category "deaf-blindness."
  - (2) A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category "multiple disabilities."

### **Authority: 34 CFR §300.645 Annual report of children served—other responsibilities of the SEA.**

In addition to meeting the other requirements of §§ 300.640 through 300.644, the SEA must—

- (a) Establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services;
- (b) Set dates by which those agencies and institutions must report to the SEA to ensure that the State complies with §300.640(a);
- (c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;
- (d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under §§ 300.640 through 300.644; and
- (e) Ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count.

### **Authority: 34 CFR §300.646 Disproportionality.**

- (a) General. Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to--
  - (1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act;
  - (2) The placement in particular educational settings of these children; and
  - (3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

**Authority: NMAC 6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:**

...

**E. Significant disproportionality.**

- (1) Pursuant to CFR 34 Sec. 300.646, the Jal Public School District will provide for the collection and examination of data to determine if significant disproportionality, based on race and ethnicity, is occurring with respect to:
  - (a) the identification of children as children with disabilities including the identification of children as children with disabilities in accordance with a particular impairment as defined by 34 CFR 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.

*The STARS system is the system that the NMPED uses to obtain program information for its annual report of children served to the U.S. Secretary of Education. The Jal Public School District will follow the reporting requirements of the NMPED for the STARS system to ensure a timely, accurate and valid submission of data. Information regarding STARS is available through the NMPED website at: [www.ped.state.nm.us/stars](http://www.ped.state.nm.us/stars).*

**VI. SPECIAL EDUCATION ACCOUNTABILITY SYSTEM (SEAS)**

**Authority: 34 CFR §300.120 Monitoring activities.**

- (a) The NMPED must carry out activities to ensure that §300.114 [LRE requirements] is implemented by the each public agency.
- (b) If there is evidence that a public agency makes placements that are inconsistent with §300.114, the NMPED must-
  - (1) Review the public agency's justification for its actions; and
  - (2) Assist in planning and implementing any necessary corrective action.

**Authority: 34 CFR §300.157 Performance goals and indicators.**

The State must--

- (a) Have in effect established goals for the performance of children with disabilities in the State that--
  - (1) Promote the purposes of this part, as stated in §300.1;
  - (2) Are the same as the State's objectives for progress by children in its definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the ESEA, 20 U.S.C. 6311;
  - (3) Address graduation rates and dropout rates, as well as such other factors as the State may determine; and
  - (4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the State;
- (b) Have in effect established performance indicators the State will use to assess progress toward achieving the goals described in paragraph (a) of this section, including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 U.S.C. 6311; and
- (c) Annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under paragraph (a) of this section, which may include elements of the reports required under section 1111(h) of the ESEA.

**Authority: 34 CFR §300.170 Suspension and expulsion rates.**

- (a) General. The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--
  - (1) Among LEAs in the State; or
  - (2) Compared to the rates for nondisabled children within those agencies.
- (b) Review and revision of policies. If the discrepancies described in paragraph (a) of this section are occurring, the SEA must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs,



the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

**Authority: 34 CFR §300.173 Overidentification and disproportionality.**

The State must have in effect, consistent with the purposes of this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in §300.8.

**Authority: 34 CFR §300.646 Disproportionality.**

...

- (b) Review and revision of policies, practices, and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the State or the Secretary of the Interior must--
  - (1) Provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the Act.
  - (2) Require any LEA identified under paragraph (a) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) of this section; and
  - (3) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (b)(1) of this section.

**Authority: NMAC 6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:**

...

**E. Significant disproportionality.**

...

- (2) Each public agency 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 LEA must:
  - (a) provide for the review and, if appropriate, revision of the policies, procedures and practices used in the identification or placement to ensure that the policies, procedures and practices comply with the requirements of the IDEA; and
  - (b) require any LEA identified under Paragraph (1) of this subsection to reserve the maximum amount of funds under 34 CFR Sec. 300.226 to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under Paragraph (1) of this subsection; and
  - (c) require the LEA to publicly report on the revision of policies, practices and procedures described under Subparagraph (b) of this paragraph.

*State Performance Plan (December 2, 2005—updated February 1, 2012) available through the NMPED website at: [http://ped.state.nm.us/SEB/dl12/FFY\\_2005\\_2012\\_State\\_Performance\\_Plan.pdf](http://ped.state.nm.us/SEB/dl12/FFY_2005_2012_State_Performance_Plan.pdf).*

*State Annual Performance Report—FFY 2010 (July 1, 2010 – June 30, 2011) available through the NMPED website at: <http://ped.state.nm.us/SEB/dl12/Annual%20Performance%20Report%20February%202012.pdf>.*



*The Jal Public School District will work with the NMPED to ensure that it meets requirements of Part B of the Act, including by providing quantitative and qualitative information to the NMPED regarding its performance on the State Performance Plan indicators. It is the goal of the Jal Public School District to meet the measurable and rigorous targets established by the State in its State Performance Plan.*

## **VII. JOINT POWERS AGREEMENTS (INCLUDING WITH A REC) AND MEMORANDA OF UNDERSTANDING**

### **Authority: Chapter 11. Intergovernmental Agreements and Authorities**

#### **Article 1. Joint Powers Agreements**

##### **Authority: NMSA 1978 11-1-1. Short title.**

This act may be cited as the "Joint Powers Agreements Act."

##### **Authority: NMSA 1978 11-1-2. Definitions.**

As used in the Joint Powers Agreements Act:

- A. "public agency" means the federal government or any federal department, agency or instrumentality; this state, another state or any state department, agency or instrumentality; an Indian nation, tribe or pueblo; a subdivision of an Indian nation, tribe or pueblo that has authority pursuant to the law of that Indian nation, tribe or pueblo to enter into joint powers agreements directly with the state; a county, municipality, public corporation or public district of this state or another state; a New Mexico educational institution specified in Article 12, Section 11 of the constitution of New Mexico; and a New Mexico school district;
- B. "agreement" means a written contractual agreement entered into between two or more public agencies subject to any constitutional or legislative restriction imposed upon any of the contracting public agencies, but the Joint Powers Agreements Act does not authorize an interstate water supply agreement or limit the powers of an interstate water compact commission, the interstate stream commission or the state engineer, and it does not limit the powers of a state agency or political subdivision to enter into agreements with the interstate stream commission or the state engineer;
- C. "bonds" means revenue bonds;
- D. "bondholder" means any person who is the bearer of any outstanding bond or the owner of bonds that are at the time registered to other than the bearer;
- E. "indenture" means the instrument providing the terms and conditions for the issuance of the bonds and may be a resolution, order, agreement or other instrument; and
- F. "instrumentality" means a public corporate entity created by state law but which is not subject to the general laws of the state and is not a state agency or department.

##### **Authority: NMSA 1978 11-1-3. Authority to enter into agreements; approval of the secretary of finance and administration required.**

If authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting parties, even though one or more of the contracting parties may be located outside this state; provided, however, nothing contained in this Joint Powers Agreements Act shall authorize any state officer, board, commission, department or any other state agency, institution or authority, or any county, municipality, public corporation or public district to make any agreement without the approval of the secretary of finance and administration as to the terms and conditions thereof. Joint powers agreements approved by the secretary of finance and administration shall be reported to the state board of finance at its next regularly scheduled public meeting. A list of the approved agreements shall be filed with the office of the state board of finance and made a part of the minutes.

##### **Authority: NMSA 1978 11-1-4. Terms and conditions of joint agreements.**

- A. Every agreement executed by one or more public agencies shall clearly specify the purpose of the agreement or for any power which is to be exercised. The agreement shall provide for the method by which the purpose will be accomplished and the manner in which any power will be exercised under such agreement.

- B. The parties to the agreement may provide therein that:
  - (1) contributions from the funds of the public agencies may be made for the purpose set forth in the agreement; or
  - (2) payments of public funds may be made to defray cost of such agreement; or
  - (3) advances of public funds of the public agencies be made for the purpose set forth in the agreement and that such advances be repaid as provided in such agreement.
- C. The agreement may provide that funds be paid to and disbursed by the agency agreed upon by the public agencies under the terms of the agreement.
- D. The agreement shall provide for strict accountability of all receipts and disbursements.
- E. The agreement may be continued for a definite term or until rescinded or terminated, and may provide for the method by which it may be rescinded or terminated by any party.
- F. The agreement shall provide for the disposition, division or distribution of any property acquired as the result of the joint exercise of powers, and shall further provide that after the completion of the agreement's purpose any surplus money on hand shall be returned in proportion to the contributions made.
- G. If the purpose set forth in agreement is the acquisition, construction or operation of a revenue-producing facility, the agreement may provide:
  - (1) for the repayment or return to the parties of all or any part of any contributions, payments or advancements made by the parties pursuant to such agreement; and
  - (2) for payment to the parties of any sum derived from the revenues of such facilities.
- H. Payments, repayments or returns to a public agency shall be made at the time and in the manner specified in the agreement.

**Authority: NMSA 1978 11-1-5. Powers of administering agency under agreement.**

- A. The agency provided by the agreement to administer or execute the agreement may be one of the parties to the agreement or a commission or board constituted pursuant to the agreement.
- B. The administering agency under any such agreement shall be considered under the provisions of this Joint Powers Agreements Act as an entity separate from the parties to such agreement.
- C. The agency shall possess the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement, subject to any of the restrictions imposed upon the manner of exercising such power of one of the contracting public agencies or such restrictions of any public agency participating which may be designated or incorporated in the agreement.

**Authority: NMSA 1978 11-1-6. Privileges and immunities, exemptions, benefits.**

All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation and other benefits which apply to the activity of officers, agents or employees of any such public agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of the Joint Powers Agreements Act .

**Authority: NMSA 1978 11-1-7. Power to issue revenue bonds.**

In addition to other powers, any agency, commission or board provided for by a joint powers agreement pursuant to this Joint Powers Agreements Act may issue revenue bonds to pay the cost and expenses of acquiring or constructing any structures, facilities or equipment necessary to effectuate the purposes of the agreement; provided, however, such authority shall be subject to the provisions of the Joint Powers Agreements Act and the constitutional provisions of this state.

**Authority: NMAC 6.31.2.7 DEFINITIONS:**

...  
(B)

...

- (6) The “educational jurisdiction” of a public agency includes the geographic area, age range and all facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions, juvenile justice facilities, state supported schools, or programs within which the agency is obligated under state laws, rules or regulations or by enforceable agreements including joint powers agreements (JPA) or memoranda of understanding (MOU) to provide educational services

for children with disabilities. In situations such as transitions, transfers and special placements, the educational jurisdiction of two or more agencies may overlap and result in a shared obligation to ensure that a particular child receives all the services to which the child is entitled.

**Authority: NMAC 6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:**

- A. Compliance with applicable laws and regulations. Each New Mexico public agency, within the scope of its authority, shall develop and implement appropriate policies, procedures, programs and services to ensure that all children with disabilities who reside within the agency's educational jurisdiction, including children who are enrolled in private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, or are schooled at home, are identified and evaluated and have access to a free appropriate public education (FAPE) in compliance with all applicable requirements of state and federal laws and regulations. This obligation applies to all New Mexico public agencies that are responsible under laws, rules, regulations or written agreements for providing educational services for children with disabilities, regardless of whether that agency receives funds under the IDEA and regardless of whether it provides special education and related services directly, by contract, by referrals to private schools or facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions or through other arrangements.
- B. Public agency funding and staffing.
  - (1) Each public agency that provides special education or related services to children with disabilities shall allocate sufficient funds, staff, facilities and equipment to ensure that the requirements of the IDEA and all department rules and standards that apply to programs for children with disabilities are met.
  - (2) The public agency with primary responsibility for ensuring that FAPE is available to a child with a disability on the date set by the department for a child count or other report shall include that child in its report for that date. Public agencies with shared or successive responsibilities for serving a particular child during a single fiscal year are required to negotiate equitable arrangements through joint powers agreements or memorandums of understanding or interstate agreements for sharing the funding and other resources available for that child. Such agreements shall include provisions with regard to resolving disputes between the parties to the agreement.
- ...
- C. IDEA applications and assurances. Each New Mexico public agency that desires to receive IDEA flow-through funds shall file an annual application with the department in the form prescribed by the department. Each application shall:
  - (1) provide all information requested by the department;
  - (2) demonstrate to the department's satisfaction that the agency is in compliance with all applicable requirements of 34 CFR Secs. 300.200-300.230 and these or other department rules and standards;
  - (3) include an agreement that the agency upon request will provide any further information the department requires to determine the agency's initial or continued compliance with all applicable requirements;
  - (4) include assurances satisfactory to the department that the public agency does and will continue to operate its programs in compliance with all applicable federal and state programmatic, fiscal and procedural requirements including the development of joint powers agreements, memoranda of understanding or other interagency agreements to address shared or successive responsibilities to meet the educational needs of a particular child during a single fiscal year; and
  - (5) pursuant to Subsection C of Section 22-8-11, NMSA 1978, the department shall not approve and certify an operating budget of any school district or state-chartered charter school that fails to demonstrate that parental involvement in the process was solicited.

**Authority: NMAC 6.23.3.8 ESTABLISHMENT OF REGIONAL EDUCATION COOPERATIVES**

- A. The Secretary may authorize the existence and operation of one or more Cooperatives.

- (1) The authorization process is initiated by the receipt of applications and supporting resolutions requesting such authorization by two or more local school boards. By application of their governing authorities, state agencies or state institutions may be included.
- (2) No local school board or state-supported educational institution may be a member of more than one Cooperative.

**B. Procedures**

...

- (4) Upon authorization by the Secretary for the existence and operation of a Cooperative, the local school boards and governing authorities of the state agencies or state institutions shall enter into a Joint Powers Agreement. The Joint Powers Agreement, in addition to meeting all requirements of the Joint Powers Agreements Act, shall address those components as may be required by the Secretary and shall be subject to the approval of the Secretary. The Joint Powers Agreement shall further:
  - (a) establish a mechanism whereby participating local school boards and governing authorities of state-supported educational institutions electing to cooperatively participate in programs funded by monies other than IDEA-Part B notify the Council and the State Department of Education;
  - (b) include a provision requiring participating local school boards and governing authorities of state-supported educational institutions desiring to participate in Cooperative programs funded by monies other than IDEA-Part B to execute a Memorandum of Understanding in accordance with requirements established by the department.

*The Jal Public School District will comply with all requirements pertaining to Joint Powers Agreements.*

*The Jal Public School District has entered into the following Joint Powers Agreements:*

- *Regional Education IX Cooperative*

*The Jal Public School District will enter into memoranda of understanding (MOU) as needed or required.*

**VIII. FUNDING**

**Authority: 34 CFR §300.103 FAPE – methods and payments.**

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

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

...

- (f) Use of Part B funds.
  - (1) If the Jal Public School District is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the Jal Public School District may use its Part B funds to pay for the service.
  - (2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the Jal Public School District may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parent's benefits or insurance (e.g., the deductible or co-pay amounts).
- (g) Proceeds from public benefits or insurance or private insurance.
  - (1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25.

- (2) If the Jal Public School District spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in §§300.163 and 300.203.
- (h) Construction. Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.

**Authority: NMAC 6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:**

...

**B. Public agency funding and staffing**

...

- (6) Pursuant to 34 CFR Sec. 300.154(d), a public agency may use the medicaid or other public benefits or insurance in which a child participates to provide or pay for services required under the IDEA Part B regulations, as permitted under the public insurance program, except as provided in (a) below.
- (a) With regard to services required to provide FAPE to an eligible child, the public agency:
- (i) may not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the IDEA;
  - (ii) may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to the IDEA Part B regulations, but pursuant to 34 CFR Sec. 300.154(f)(2), may pay the cost that the parent otherwise would be required to pay; and
  - (iii) may not use a child's benefits under a public benefits or insurance program if that use would:
    - (A) decrease available lifetime coverage or any other insured benefit;
    - (B) result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;
    - (C) increase premiums or lead to the discontinuation of benefits or insurance; or
    - (D) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.
- (b) Pursuant to 34 CFR Sec. 300.142 (e), an educational agency must obtain a parent's informed written consent for each proposed use of private insurance benefits and must inform parents that their refusal to permit the use of their private insurance will not relieve the educational agency of its responsibility to ensure that all required services are provided at no cost to the parents.
- (c) Pursuant to 34 CFR Sec. 300.154(f):
- (i) if a public agency is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service required under the IDEA Part B regulations, to ensure FAPE the public agency may use its Part B funds to pay for the service; and
  - (ii) to avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

"We do not believe it is necessary to further clarify that the LEA is ultimately responsible for providing services because § 300.154(b)(2) sufficiently requires that if a public agency other than an educational agency fails to provide or pay for the special education and related services in § 300.154(b)(1), the LEA or State agency responsible for developing the child's IEP must provide or pay for these services to the child in a timely manner. Disagreements about the interagency agreements should not stop or delay the receipt of the services described in the child's IEP. Section 300.103(c) also addresses timely services and clarifies that, consistent with § 300.323(c), the State must ensure there is no delay in implementing a child's IEP, including any situation in which the source for providing or paying for the special education or related services to a child is being determined. Section 612(a)(12)(A)(i) of the Act provides that the financial responsibility of public agencies (other than an educational agency), including Medicaid and other public insurers obligated under Federal or State law or assigned responsibility under State

policy, must precede financial responsibility of the LEA.” 71 Fed. Reg. 46607 (August 14, 2006).

*The Jal Public School District will ensure that children with disabilities within the jurisdiction of the Jal Public School District receive the special education, related services and supplementary aids and services specified in their IEPs at no cost to their parents.*

#### **A. Use of IDEA Part B Funds—Requirements of the SEA**

**Authority: 34 CFR §300.162 Supplementation of State, local, and other Federal funds.**

- (a) Expenditures. Funds paid to a State under this part must be expended in accordance with all the provisions of this part.
- (b) Prohibition against commingling.
  - (1) Funds paid to a State under this part must not be commingled with State funds.
  - (2) The requirement in paragraph (b)(1) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a State under this part. Separate bank accounts are not required. (See 34 CFR 76.702 (Fiscal control and fund accounting procedures)).
- (c) State-level nonsupplanting.
  - (1) Except as provided in §300.202, funds paid to a State under Part B of the Act must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the NMPED or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those Federal, State, and local funds.
  - (2) If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (c)(1) of this section if the Secretary concurs with the evidence provided by the State under §300.164.

**Authority: 34 CFR §300.163 Maintenance of State financial support.**

- (a) General. A State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.
- (b) Reduction of funds for failure to maintain support. The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.
- (c) Waivers for exceptional or uncontrollable circumstances. The Secretary may waive the requirement of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that--
  - (1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or
  - (2) The State meets the standard in §300.164 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.
- (d) Subsequent years. If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

**Authority: 34 CFR §300.164 Waiver of requirement regarding supplementing and not supplanting with Part B funds.**

- (a) Except as provided under §§300.202 through 300.205, funds paid to a State under Part B of the Act must be used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of NMPED or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act and in no case to supplant those Federal, State, and local funds. A State may use funds it retains under §300.704(a) and (b) without regard to the prohibition on supplanting other funds.

- (b) If a State provides clear and convincing evidence that all eligible children with disabilities throughout the State have FAPE available to them, the Secretary may waive for a period of one year in whole or in part the requirement under §300.162 (regarding State-level nonsupplanting) if the Secretary concurs with the evidence provided by the State.
- (c) If a State wishes to request a waiver under this section, it must submit to the Secretary a written request that includes--
  - (1) An assurance that FAPE is currently available, and will remain available throughout the period that a waiver would be in effect, to all eligible children with disabilities throughout the State, regardless of the public agency that is responsible for providing FAPE to them. The assurance must be signed by an official who has the authority to provide that assurance as it applies to all eligible children with disabilities in the State;
  - (2) All evidence that the State wishes the Secretary to consider in determining whether all eligible children with disabilities have FAPE available to them, setting forth in detail--
    - (i) The basis on which the State has concluded that FAPE is available to all eligible children in the State; and
    - (ii) The procedures that the State will implement to ensure that FAPE remains available to all eligible children in the State, which must include--
      - (A) The State's procedures under §300.111 for ensuring that all eligible children are identified, located and evaluated;
      - (B) The State's procedures for monitoring public agencies to ensure that they comply with all requirements of this part;
      - (C) The State's complaint procedures under §§300.151 through 300.153; and
      - (D) The State's hearing procedures under §§300.511 through 300.516 and §§300.530 through 300.536;
  - (3) A summary of all State and Federal monitoring reports, and State complaint decisions (see §§300.151 through 300.153) and hearing decisions (see §§300.511 through 300.516 and §§300.530 through 300.536), issued within three years prior to the date of the State's request for a waiver under this section, that includes any finding that FAPE has not been available to one or more eligible children, and evidence that FAPE is now available to all children addressed in those reports or decisions; and
  - (4) Evidence that the State, in determining that FAPE is currently available to all eligible children with disabilities in the State, has consulted with the State advisory panel under §300.167.
- (d) If the Secretary determines that the request and supporting evidence submitted by the State makes a prima facie showing that FAPE is, and will remain, available to all eligible children with disabilities in the State, the Secretary, after notice to the public throughout the State, conducts a public hearing at which all interested persons and organizations may present evidence regarding the following issues:
  - (1) Whether FAPE is currently available to all eligible children with disabilities in the State.
  - (2) Whether the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.
- (e) Following the hearing, the Secretary, based on all submitted evidence, will provide a waiver, in whole or in part, for a period of one year if the Secretary finds that the State has provided clear and convincing evidence that FAPE is currently available to all eligible children with disabilities in the State, and the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.
- (f) A State may receive a waiver of the requirement of section 612(a)(18)(A) of the Act and §300.164 if it satisfies the requirements of paragraphs (b) through (e) of this section.
- (g) The Secretary may grant subsequent waivers for a period of one year each, if the Secretary determines that the State has provided clear and convincing evidence that all eligible children with disabilities throughout the State have, and will continue to have throughout the one-year period of the waiver, FAPE available to them.

**Authority: 34 CFR §300.166 Rule of construction.**

In complying with §§ 300.162 and 300.163, a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to LEAs, including funding based on student attendance or enrollment, or inflation.

*The regulatory requirements in this subsection are requirements of the NMPED. The Jal Public School District will*



*comply with the directives of the NMPED in order to ensure that the State satisfies the conditions necessary to receive IDEA Part B funds.*

#### **B. Use of IDEA Part B Funds—Requirements of the Jal Public School District**

##### **Authority: 34 CFR §300.202 Use of amounts.**

- (a) General. Amounts provided to the Jal Public School District under Part B of the Act--
  - (1) Will be expended in accordance with the applicable provisions of this part;
  - (2) Will be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and
  - (3) Will be used to supplement State, local, and other Federal funds and not to supplant those funds.
- (b) Excess cost requirement.
  - (1) General.
    - (i) The excess cost requirement prevents the Jal Public School District from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b)(1)(ii) of this section.
    - (ii) The excess cost requirement does not prevent the Jal Public School District from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children of these ages. However, the Jal Public School District will comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.
  - (2) (i) An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.
    - (ii) The amount described in paragraph (b)(2)(i) of this section is determined in accordance with the definition of excess costs in §300.16. That amount may not include capital outlay or debt service.
  - (3) If two or more LEAs jointly establish eligibility in accordance with §300.223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in §300.16 in those agencies for elementary or secondary school students, as the case may be.

##### **Authority: 34 CFR §300.16 Excess costs.**

Excess costs means those costs that are in excess of the average annual per-student expenditure in the LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting--

- (a) Amounts received--
  - (1) Under Part B of the Act;
  - (2) Under Part A of title I of the ESEA; and
  - (3) Under Parts A and B of title III of the ESEA; and
- (b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (see Appendix A to Part 300 for an example of how excess cost must be calculated)

##### **Authority: 34 CFR §300.203 Maintenance of effort.**

- (a) General. Except as provided in §§300.204 and 300.205, funds provided to Jal Public School District under Part B of the Act will not be used to reduce the level of expenditures for the education of children with disabilities made by the Jal Public School District from local funds below the level of those expenditures for the preceding fiscal year.
- (b) Standard.
  - (1) Except as provided in paragraph (b)(2) of this section, the NMPED must determine that the Jal Public School District complies with paragraph (a) of this section for purposes of establishing the Jal Public School District's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per-capita amount from either of the following sources as the Jal Public School District spent for that purpose from the same source for the most recent prior year for which information is available:
    - (i) Local funds only.



- (ii) The combination of State and local funds.
- (2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.
- (3) The NMPED may not consider any expenditures made from funds provided by the Federal Government for which the NMPED is required to account to the Federal Government or for which the Jal Public School District is required to account to the Federal Government directly or through the NMPED in determining an LEA's compliance with the requirement in paragraph (a) of this section.

**Authority: 34 CFR §300.204 Exception to maintenance of effort.**

Notwithstanding the restriction in §300.203(a), the Jal Public School District may reduce the level of expenditures by the Jal Public School District under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

- (a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.
- (b) A decrease in the enrollment of children with disabilities.
- (c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the NMPED, because the child--
  - (1) Has left the jurisdiction of the agency;
  - (2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
  - (3) No longer needs the program of special education.
- (d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.
- (e) The assumption of cost by the high cost fund operated by the NMPED under §300.704(c).

**Authority: 34 CFR §300.205 Adjustment to local fiscal efforts in certain fiscal years.**

- (a) Amounts in excess. Notwithstanding §300.202(a)(2) and (b) and §300.203(a), and except as provided in paragraph (d) of this section and §300.230(e)(2), for any fiscal year for which the allocation received by an LEA under section §300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by §300.203(a) by not more than 50 percent of the amount of that excess.
- (b) Use of amounts to carry out activities under ESEA. If the LEA exercises the authority under paragraph (a) of this section, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.
- (c) State prohibition. Notwithstanding paragraph (a) of this section, if an SEA determines that the LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the SEA has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the SEA must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.
- (d) Special rule. The amount of funds expended by the LEA for early intervening services under §300.226 shall count toward the maximum amount of expenditures that the LEA may reduce under paragraph (a) of this section.

**Authority: 34 CFR §300.206 Schoolwide programs under title I of the ESEA.**

- (a) General. Notwithstanding the provisions of §§300.202 and 300.203 or any other provision of Part B of the Act, the Jal Public School District may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed--
  - (1) (i) The amount received by the Jal Public School District under Part B of the Act for that fiscal year; divided by
  - (ii) The number of children with disabilities in the jurisdiction of the

- Jal Public School District; and multiplied by
- (2) The number of children with disabilities participating in the schoolwide program.
- (b) **Funding conditions.** The funds described in paragraph (a) of this section are subject to the following conditions:
- (1) The funds must be considered as Federal Part B funds for purposes of the calculations required by §300.202(a)(2) and (a)(3).
  - (2) The funds may be used without regard to the requirements of §300.202(a)(1).
- (c) **Meeting other Part B requirements.** Except as provided in paragraph (b) of this section, all other requirements of Part B of the Act will be met by the Jal Public School District using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in schoolwide program schools--
- (1) Receive services in accordance with a properly developed IEP; and
  - (2) Are afforded all of the rights and services guaranteed to children with disabilities under the Act.

**Authority: 34 CFR §300.208 Permissive use of funds.**

- (a) **Uses.** Notwithstanding §§300.202, 300.203(a), and §300.162(b), funds provided to the Jal Public School District under Part B of the Act may be used for the following activities:
- (1) Services and aids that also benefit nondisabled children. For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services.
  - (2) Early intervening services. To develop and implement coordinated, early intervening educational services in accordance with §300.226.
  - (3) High cost education and related services. To establish and implement cost or risk sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services.
- (b) **Administrative case management.** The Jal Public School District may use funds received under Part B of the Act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities.

**Authority: 34 CFR §300.210 Purchase of instructional materials.**

- (a) **General.** Not later than December 3, 2006, an LEA that chooses to coordinate with the National Instructional Materials Access Center, when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as an SEA under §300.172.
- (b) **Rights of LEA.**
- (1) Nothing in this section shall be construed to require an LEA to coordinate with the National Instructional Materials Access Center (NIMAC).
  - (2) If the Jal Public School District chooses not to coordinate with the National Instructional Materials Access Center, the Jal Public School District will provide an assurance to the NMPED that the Jal Public School District will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.
  - (3) Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities in 300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

**Authority: 34 CFR §300.226 Early intervening services.**

- (a) **General.** The Jal Public School District may not use more than 15 percent of the amount the Jal Public School District receives under Part B of the Act for any fiscal year, less any amount reduced by the Jal Public School District pursuant to §300.205, if any, in combination with other amounts (which may

include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who have not been identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

- (b) **Activities.** In implementing coordinated, early intervening services under this section, the Jal Public School District may carry out activities that include--
  - (1) Professional development (which may be provided by entities other than the Jal Public School District) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and
  - (2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.
- (c) **Construction.** Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.
- (d) **Reporting.** If the Jal Public School District develops and maintains coordinated, early intervening services under this section must annually report to the NMPED on--
  - (1) The number of children served under this section who received early intervening services; and
  - (2) The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two year period.
- (e) **Coordination with ESEA.** Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

**Authority: NMAC 6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:**

...

**B. Public agency funding and staffing**

- (1) Each public agency that provides special education or related services to children with disabilities shall allocate sufficient funds, staff, facilities and equipment to ensure that the requirements of the IDEA and all department rules and standards that apply to programs for children with disabilities are met.

...

- (5) Educational agencies may seek payment or reimbursement from noneducational agencies or public or private insurance for services or devices covered by those agencies that are necessary to ensure FAPE to children with disabilities. Claims for payment or reimbursement shall be subject to the procedures and limitations established in 34 CFR Secs. 300.154(b) and 300.154(d) through (g), Section 22-13-9 NMSA 1978 and any laws, regulations, executive orders, contractual arrangements or other requirements governing the noneducational payor's obligations.

- (6) Risk pool fund. (Puente para los niños fund.)

- (a) Local educational agency high cost fund.

- (i) In compliance with 34 CFR Sec. 300.704(c) the department shall maintain a risk pool fund to support high cost children with disabilities identified by LEAs.

- (ii) Funds distributed under this program will be on a reimbursable basis.

- (b) Application for funds. LEAs desiring to be reimbursed for the cost of children with disabilities with high needs shall file an application in accordance with the department's puente para los niños fund as described on the department's website.

...

- C. IDEA applications and assurances.** Each New Mexico public agency that desires to receive IDEA flow-through funds shall file an annual application with the department in the form prescribed by the department. Each application shall:

- (1) provide all information requested by the department;
  - (2) demonstrate to the department's satisfaction that the agency is in compliance with all applicable requirements of 34 CFR Secs. 300.200-300.230 and these or other department rules and standards;
  - (3) include an agreement that the agency upon request will provide any further information the

department requires to determine the agency's initial or continued compliance with all applicable requirements;

- (4) include assurances satisfactory to the department that the public agency does and will continue to operate its programs in compliance with all applicable federal and state programmatic, fiscal and procedural requirements including the development of joint powers agreements, memoranda of understanding or other interagency agreements to address shared or successive responsibilities to meet the educational needs of a particular child during a single fiscal year; and
- (5) pursuant to Subsection C of Section 22-8-11, NMSA 1978, the department shall not approve and certify an operating budget of any school district or state-chartered charter school that fails to demonstrate that parental involvement in the process was solicited.

**D. Early intervening services set aside funds. Fifteen percent set aside.**

- (1) Pursuant to 34 CFR Secs. 300.208(a)(2) and 300.266, the Jal Public School District may use up to fifteen percent of the amount the Jal Public School District receives under Part B of IDEA to implement early intervening services for children with or without disabilities in kindergarten through grade 12 with particular emphasis on children in kindergarten through grade three.
- (2) Prior to the implementation or use of these set aside funds, the Jal Public School District will have on record with the department an approved plan for use of these funds as described by 34 CFR Sec. 300.226(b) and how such activities will be coordinated with regional education cooperatives as described in 34 CFR Sec. 300.226(e), if applicable.
- (3) The Jal Public School District plan for use of set aside funds will be submitted as an addendum to its annual application for Part B funding. If the Jal Public School District determines to implement a set aside plan after the initial application, a request for implementation of a set aside plan will be submitted for approval 60 days before the implementation of the plan.
- (4) If the Jal Public School District develops and maintains coordinated, early intervening services it will report annually to the department as provided in 34 CFR Sec. 300.226(d).

*The Jal Public School District will account for the receipt and expenditure of federal funds, and ensure that federal funds are used for allowable costs in accordance with federal fiscal requirements.*

*Access to appropriate educational materials is essential in meeting the needs of students with visual impairments. The Jal Public School District will ensure that materials specified in the IEP of children with visual impairments are provided at no cost to their parents. Many of these materials can be loaned to schools for eligible students by the New Mexico School for the Blind and Visually Impaired (NMSBVI). Material, equipment and supply order forms are available through the NMSBVI website at: <http://www.nmsbvi.k12.nm.us/content/irc.htm>*

*For the purpose of assisting LEAs or State Supported Educational Programs (SSEP) in addressing the needs of high need students with disabilities, New Mexico has exercised the option of creating a LEA Puente para los Niños Fund (Risk Pool Fund) pursuant to the provisions of 34 CFR §300.704(c) and 6.31.2.9(B)(5) NMAC. The NMPED has issued a guidance document titled, "Puente para los Niños Fund - High Cost Fund" (September 2007) available through the NMPED website at: [http://www.ped.state.nm.us/seo/applications/Risk\\_Pool\\_final\\_9.07.pdf](http://www.ped.state.nm.us/seo/applications/Risk_Pool_final_9.07.pdf). The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document. If the Jal Public School District desires to be reimbursed for the cost of children with disabilities with high need, the Jal Public School District will file an application in accordance with the NMPED's Puente para los Niños fund as described on the NMPED's website and comply with all of the requirements for such funding.*

### **C. State Funds**

#### **Authority: NMSA 1978 22-8-14. Public school fund.**

##### **A. The "public school fund" is created.**

- B. The public school fund shall be distributed to school districts and state-chartered charter schools in the following parts:
- (1) state equalization guarantee distribution;
  - (2) transportation distribution; and
  - (3) supplemental distributions:
    - (a) out-of-state tuition to school districts;
    - (b) emergency; and
    - (c) program enrichment.
- C. The distributions of the public school fund shall be made by the department within limits established by law. The balance remaining in the public school fund at the end of each fiscal year shall revert to the general fund, unless otherwise provided by law.

**Authority: NMSA 1978 22-8-18. Program cost calculation; local responsibility.**

- A. The total program units for the purpose of computing the program cost shall be calculated by multiplying the sum of the program units itemized as Paragraphs (1) through (5) in this subsection by the instructional staff training and experience index and adding the program units itemized as Paragraphs (6) through (11) in this subsection. The itemized program units are as follows:
- (1) early childhood education;
  - (2) basic education;
  - (3) special education, adjusted by subtracting the units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers;
  - (4) bilingual multicultural education;
  - (5) fine arts education;
  - (6) size adjustment;
  - (7) at-risk program;
  - (8) enrollment growth or new district adjustment;
  - (9) special education units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers;
  - (10) national board for professional teaching standards certification; and
  - (11) home school student activities.
- B. The total program cost calculated as prescribed in Subsection A of this section includes the cost of early childhood, special, bilingual multicultural, fine arts and vocational education and other remedial or enrichment programs. It is the responsibility of the local school board or governing body of a charter school to determine its priorities in terms of the needs of the community served by that board. Funds generated under the Public School Finance Act [22-8-1 NMSA 1978] are discretionary to local school boards and governing bodies of charter schools, provided that the special program needs as enumerated in this section are met.

**Authority: NMSA 1978 22-8-21. Special education program units.**

- A. For the purpose of the Public School Finance Act [22-8-1 NMSA 1978], special education programs for exceptional children are those approved by the department and classified as follows:
- (1) class A programs, in which department certified individuals provide services to children whose individualized education programs require a minimal amount of special education and in which the ratio of students to professionals is regulated by the state board [department];
  - (2) class B programs, in which department certified individuals provide services to children whose individualized education programs require a moderate amount of special education and in which the ratio of students to professionals is regulated by the state board;
  - (3) class C programs, in which department certified individuals provide services to children whose individualized education programs require an extensive amount of special education and in which the ratio of students to professionals is regulated by the state board;
  - (4) class D programs, in which department certified individuals provide services to children whose individualized education programs require a maximum amount of special education and in which the ratio of students to professionals is regulated by the state board. Students in class D programs may be enrolled in private, nonsectarian, nonprofit educational training centers in accordance with the provisions of Section 22-13-8 NMSA 1978; and
  - (5) programs for developmentally disabled three- and four-year-old children meeting standards

approved by the state board.

- B. All students assigned to the programs for exceptional children classified in Subsection A of this section shall have been so assigned as a result of diagnosis and evaluation performed in accordance with the standards of the department before the students may be counted in the determination of special education program units as provided in Subsection C of this section.
- C. The number of special education program units is the sum of the following:
  - (1) the MEM in approved class A and B programs as defined in Subsection A of this section multiplied by the cost differential factor .7;
  - (2) the MEM in approved class C programs as defined in Subsection A of this section multiplied by the cost differential factor 1.0;
  - (3) the MEM in approved class D programs as defined in Subsection A of this section multiplied by the cost differential factor 2.0;
  - (4) the MEM for developmentally disabled three- and four-year-old children as defined in Subsection A of this section multiplied by the cost differential factor 2.0; provided that no developmentally disabled three- or four-year-old student shall be counted for additional ancillary service units; and
  - (5) for related services ancillary to providing special education, the number of full-time-equivalent certified or licensed ancillary service and diagnostic service personnel multiplied by the cost differential factor 25.0.
- D. For the purpose of calculating membership in class C and class D programs, students shall be counted in actual grade placement or according to chronological age if not in actual grade placement.

**Authority: NMSA 1978 22-8-25. State equalization guarantee distribution; definitions; determination of amount.**

- A. The state equalization guarantee distribution is that amount of money distributed to each school district to ensure that its operating revenue, including its local and federal revenues as defined in this section, is at least equal to the school district's program cost. For state-chartered charter schools, the state equalization guarantee distribution is the difference between the state-chartered charter school's program cost and the two percent withheld by the department for administrative services.
- B. "Local revenue," as used in this section, means seventy-five percent of receipts to the school district derived from that amount produced by a school district property tax applied at the rate of fifty cents (\$.50) to each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district and to the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act [7-32-1 NMSA 1978] and upon the assessed value of equipment in the school district as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act [7-34-1 NMSA 1978].
- C. "Federal revenue," as used in this section, means receipts to the school district, excluding amounts that, if taken into account in the computation of the state equalization guarantee distribution, result, under federal law or regulations, in a reduction in or elimination of federal school funding otherwise receivable by the school district, derived from the following:
  - (1) seventy-five percent of the school district's share of forest reserve funds distributed in accordance with Section 22-8-33 NMSA 1978; and
  - (2) seventy-five percent of grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Title 20 of the United States Code, commonly known as "PL 874 funds" or "impact aid."
- D. To determine the amount of the state equalization guarantee distribution, the department shall:
  - (1) calculate the number of program units to which each school district or charter school is entitled using an average of the MEM on second and third reporting dates of the prior year; or
  - (2) calculate the number of program units to which a school district or charter school operating under an approved year-round school calendar is entitled using an average of the MEM on appropriate dates established by the department; or
  - (3) calculate the number of program units to which a school district or charter school with a MEM of two hundred or less is entitled by using an average of the MEM on the second and third reporting dates of the prior year or the fortieth day of the current year, whichever is greater; and
  - (4) using the results of the calculations in Paragraph (1), (2) or (3) of this subsection and the instructional staff training and experience index from the October report of the prior school year, establish a total program cost of the school district or charter school;

- (5) for school districts, calculate the local and federal revenues as defined in this section;
  - (6) deduct the sum of the calculations made in Paragraph (5) of this subsection from the program cost established in Paragraph (4) of this subsection;
  - (7) deduct the total amount of guaranteed energy savings contract payments that the department determines will be made to the school district from the public school utility conservation fund during the fiscal year for which the state equalization guarantee distribution is being computed; and
  - (8) deduct ninety percent of the amount certified for the school district by the department pursuant to the Energy Efficiency and Renewable Energy Bonding Act [6-21D-1 NMSA 1978].
- E. Reduction of a school district's state equalization guarantee distribution shall cease when the school district's cumulative reductions equal its proportional share of the cumulative debt service payments necessary to service the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act.
- F. The amount of the state equalization guarantee distribution to which a school district is entitled is the balance remaining after the deductions made in Paragraphs (6) through (8) of Subsection D of this section.
- G. The state equalization guarantee distribution shall be distributed prior to June 30 of each fiscal year. The calculation shall be based on the local and federal revenues specified in this section received from June 1 of the previous fiscal year through May 31 of the fiscal year for which the state equalization guarantee distribution is being computed. In the event that a school district or charter school has received more state equalization guarantee funds than its entitlement, a refund shall be made by the school district or charter school to the state general fund [6-4-2 NMSA 1978].

**Authority: NMSA 1978 22-8-37. Public school funds.**

Except for money received for a cafeteria or for an activity fund, all money for public school purposes distributed to a school district, or collected by a county, school district or public school authorities for a school district, shall be delivered to and kept by a county treasurer or a board of finance of a school district in funds approved by the division. Disbursements from these funds shall only be made for matured debts by voucher and warrants or checks of the local school board. In no event shall any money be expended or debts incurred except as authorized by the Public School Finance Act [22-8-1 NMSA 1978]. Money for a cafeteria or for an activity fund shall be deposited in a bank, or in a savings and loan association whose deposits are insured by an agency of the United States, or may be deposited in a credit union, as long as the credit union deposit is insured by an agency of the United States, approved by the local school board. The local school board may deposit any cafeteria funds, any activity funds or any other funds in one or more accounts with any such bank or insured savings and loan association in its county, but no local school board, in any official capacity, shall deposit any cafeteria funds, any activity funds or any other funds in any one such savings and loan association the aggregate of which would exceed the amount of federal savings and loan insurance corporation insurance for a single public account. As used in this section, "deposit" includes share, share certificate and share draft.

*The State funding system for education, including funding of special education including gifted education, is explained by the NMPED in a handbook titled, "Administration and Management" (2007), available through the NMPED website at:*

*<http://www.ped.state.nm.us/div/humanites/gifted/NM%207%20Administration%20&%20Mgmt.doc>. The Jal Public School District will ensure that IEP Teams make placement decisions in compliance with the least restrictive environment mandate of the IDEA. The Jal Public School District will provide accurate information to the NMPED to assure a proper program cost calculation. The Jal Public School District will ensure that State funds are used for allowable costs in accordance with State fiscal requirements.*

**IX. GIFTED STUDENTS**

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

...

- C. Each school district offering a gifted education program will create one or more advisory committees of parents, community members, students and school staff members. The school district may create as many advisory committees as there are high schools in the district or may create a single districtwide

advisory committee. The membership of each advisory committee will reflect the cultural diversity of the enrollment of the school district or the schools the committee advises. The advisory committee will regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery and shall demonstrate support for the gifted program.

**Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN:**

...

**F. Applicability of rules to gifted children**

- (1) All definitions, policies, procedures, assurances, procedural safeguards and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the educational jurisdiction of each local school district, including children in charter schools within the district, except:
  - (a) the requirements of 6.31.2.8 NMAC through 6.31.2.10 NMAC;
  - (b) Subsections J, K and L of 6.31.2.11 NMAC regarding child find, evaluations and services for private school children with disabilities, children with disabilities in state-supported educational programs, children with disabilities in detention and correctional facilities and children with disabilities who are schooled at home;
  - (c) the requirements of 34 CFR Secs. 300.530-300.536, Subsection I of 6.31.2.13 NMAC and 6.11.2.11 NMAC regarding disciplinary changes of placement for children with disabilities; and
  - (d) the requirements of 34 CFR Secs. 300.43, 300.320(b) and 6.31.2.11(G)(2) regarding transition planning. Students identified as gifted must meet the requirements at Subsection B of 22-13-1.1 NMSA 1978, which is the next step plan for students without disabilities.
- (2) Assuming appropriate evaluations, a child may properly be determined to be both gifted and a child with a disability and be entitled to a free appropriate public education for both reasons. The rules in this section 6.31.2.12 NMAC apply only to gifted children.
- (3) Nothing in these rules shall preclude a school district or a charter school within a district from offering additional gifted programs for children who fail to meet the eligibility criteria. However, the state shall only provide funds under Section 22-8-21 NMSA 1978 for department approved gifted programs for those students who meet the established criteria.

**G. Advisory committees.**

- (1) Each school district offering a gifted education program shall create one or more advisory committees of parents, community members, students and school staff members. The school district may create as many advisory committees as there are high schools in the district or may create a district-wide advisory committee.
- (2) The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the school district or the schools the committee advises. Representation from all schools the committee is advising is required.
- (3) Purposes. The advisory committee shall:
  - (a) regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery;
  - (b) demonstrate support for the gifted program;
  - (c) provide information regarding the impact that cultural background, linguistic background, socioeconomic status and disability conditions within the community may have on the child referral, identification, evaluation and service delivery processes;
  - (d) advocate for children who have been under-represented in gifted services due to cultural or linguistic background, socioeconomic status, or disability conditions, in order to ensure that these children have equal opportunities to benefit from services for gifted students; and
  - (e) meet three or more times per year at regular intervals.
- (4) Formal documentation of committee membership, activities and recommendations shall be maintained. If proposals are made by the committee to address any of the purposes as listed in Subsection G(3) of 6.31.2.12 NMAC, they shall be submitted in writing to the district administration. The administration shall respond in writing to any proposed actions before the next scheduled meeting of the advisory committee.



*The Jal Public School District will afford children who are gifted all of the definitions, policies, procedures, assurances, procedural safeguards and services afforded to children with disabilities under State laws and rules except those expressly excepted. The Jal Public School District will create one or more advisory committees that comply with composition requirements of the State and serve the purposes established by the State. The NMPED has issued a guidance document titled, "Gifted Education Technical Assistance and Training Resource Document" (2011), available through the NMPED website at: <http://ped.state.nm.us/gifted/Gifted%20TA%20manual.pdf>. The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

## **X. PARENTALLY-PLACED PRIVATE SCHOOL CHILDREN**

**Authority: NMSA 1978 22-1-2 Definitions.** As used in the Public School Code [\[22-1-1 NMSA 1978\]](#):

...

**K. "private school"** means a school, other than a home school, that offers on-site programs of instruction and that is not under the control, supervision or management of a local school board....

**Authority: 34 CFR §300.133 Expenditures.**

- (a) **Formula.** To meet the requirement of §300.132(a), each LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:
- (1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.
  - (2) (i) For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.  
(ii) As described in paragraph (a)(2)(i) of this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in §300.13.
  - (3) If an LEA has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2) of this section by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.
- (b) **Calculating proportionate amount.** In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under §300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA. (See Appendix B for an example of how proportionate share is calculated).
- (c) **Annual count of the number of parentally-placed private school children with disabilities.**
- (1) Each LEA must—
    - (i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with §300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and
    - (ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.
  - (2) The count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.
- (d) **Supplement, not supplant.** State and local funds may supplement and in no case supplant the

proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part.

**Authority: 34 CFR §300.134 Consultation.**

To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

- (a) Child find. The child find process, including—
  - (1) How parentally-placed private school children suspected of having a disability can participate equitably; and
  - (2) How parents, teachers, and private school officials will be informed of the process.
- (b) Proportionate share of funds. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under §300.133(b), including how the determination of how the proportionate share of those funds was calculated.
- (c) Consultation process. The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.
- (d) Provision of special education and related services. How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of—
  - (1) The types of services, including direct services and alternate service delivery mechanisms; and
  - (2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
  - (3) How and when those decisions will be made;
- (e) Written explanation by LEA regarding services. How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

**Authority: 34 CFR §300.135 Written affirmation.**

- (a) When timely and meaningful consultation, as required by § 300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.
- (b) If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.

**Authority: 34 CFR §300.138 Equitable services provided.**

- (a) General.
  - (1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of §300.18.
  - (2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.
- ...
- (c) Provision of equitable services.
  - (1) The provision of services pursuant to this section and §§300.139 through 300.143 must be provided:
    - (i) By employees of a public agency; or
    - (ii) Through contract by the public agency with an individual, association, agency, organization, or other entity.

**Authority: 34 CFR §300.141 Requirement that funds not benefit a private school.**

- (a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of

instruction in a private school or to otherwise benefit the private school.

- (b) The LEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting—
  - (1) The needs of a private school; or
  - (2) The general needs of the students enrolled in the private school.

**Authority: 34 CFR §300.142 Use of personnel.**

- (a) Use of public school personnel. An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities—
  - (1) To the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities; and
  - (2) If those services are not normally provided by the private school.
- (b) Use of private school personnel. An LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.130 through 300.144 if—
  - (1) The employee performs the services outside of his or her regular hours of duty; and
  - (2) The employee performs the services under public supervision and control.

**Authority: 34 CFR §300.143 Separate classes prohibited.**

An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if—

- (a) The classes are at the same site; and
- (b) The classes include children enrolled in public schools and children enrolled in private schools.

**Authority: 34 CFR §300.144 Property, equipment, and supplies.**

- (a) A public agency must control and administer the funds used to provide special education and related services under §§300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.
- (b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.
- (c) The public agency must ensure that the equipment and supplies placed in a private school—
  - (1) Are used only for Part B purposes; and
  - (2) Can be removed from the private school without remodeling the private school facility.
- (d) The public agency must remove equipment and supplies from a private school if—
  - (1) The equipment and supplies are no longer needed for Part B purposes; or
  - (2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.
- (e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

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

...

**L. Children in private schools**

**1. Children enrolled by parents in private schools or facilities.**

- (a) Parentally placed private school children with disabilities means children with disabilities enrolled by their parents in private schools, including religious schools or facilities, such as residential treatment centers, day treatment centers, hospitals, mental health institutions, other than children with disabilities who are covered under 34 CFR Secs. 300.145 through 300.147.
- (b) A school district in which a private school or facility is located shall not be considered the resident school district of a school-age person if residency is based solely on the school-age person's enrollment at the facility and the school-age person would not otherwise be considered a resident of the state.

...

- (e) Pursuant to 34 CFR Sec. 300.133, each LEA is obligated to spend a proportionate amount of its federal IDEA Part B funds to assist private school children with disabilities placed in a private

school or private facility by a parent who assumes responsibility for such placement. In doing so, LEAs must use the formula for calculating proportionate amount and annual count of parentally placed private school children with disabilities in accordance with 34 CFR Sec. 300.133. The public agency shall not use IDEA funds to benefit private schools as provided in 34 CFR Sec. 300.141. The state is not required to distribute state funds for such school-aged persons. Furthermore, the Constitution and laws of New Mexico prohibit public agencies from spending state funds to assist private schools or facilities or their students.

...

- (g) Pursuant to 34 CFR Secs. 300.134 and 300.135, LEAs must ensure timely and meaningful consultation with private school representatives and representatives of parents of parentally placed private school children with disabilities. If the LEA fails to engage in meaningful and timely consultation or did not give due consideration to a request from private school officials, private school officials have the right to submit a complaint to the department. The private school official and the LEA must follow the procedures outlined in 34 CFR Sec. 300.136.

*The Jal Public School District will comply with the requirements for parentally-placed private school children to ensure the equitable provision of IDEA Part B funded services. The U.S. Department of Education has issued a guidance document titled, "Questions and Answers on Serving Children with Disabilities Placed By Their Parents at Private Schools" (March 2006), available through the U.S. Department of Education website at: <http://www.ed.gov/policy/speced/guid/idea/faq-parent-placed.doc>. The guidance document provides detailed responses to frequently asked questions, and provides a clear explanation of the Jal Public School District's duty to parentally-placed private school children. The Jal Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

## APPENDIX: DEFINITIONS

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

**Authority: 34 CFR §300.5 Assistive technology device.** Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

**Authority: 34 CFR §300.6 Assistive technology service.** Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes--

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

**Authority: 34 CFR §300.7 Charter school.** Charter school has the meaning given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA).

**Authority: 34 CFR §300.8 Child with a disability.**

(a) General.

- (1) Child with a disability means a child evaluated in accordance with Secs. 300.304 through 300.311 as having intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.
- (2) (i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under Secs. 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.
- (ii) If, consistent with Sec. 300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.
- (b) Children aged three through nine experiencing developmental delays. Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in Sec. 300.111(b), include a child--
  - (1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and
  - (2) Who, by reason thereof, needs special education and related services.
- (c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:
  - (1) (i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are

- engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.
- (ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.
  - (iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.
- (2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.
  - (3) Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.
  - (4) (i) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
    - (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
    - (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
    - (C) Inappropriate types of behavior or feelings under normal circumstances.
    - (D) A general pervasive mood of unhappiness or depression.
    - (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
  - (ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.
  - (5) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.
  - (6) Intellectual disability means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.
  - (7) Multiple disabilities means concomitant impairments (such as intellectual disability-blindness or intellectual disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.
  - (8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).
  - (9) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that--
    - (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and
    - (ii) Adversely affects a child's educational performance.
  - (10) Specific learning disability—
    - (i) General. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.
    - (ii) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

- (11)Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.
- (12)Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.
- (13)Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

**Authority: NMAC 6.31.2.7      DEFINITIONS:**

...

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

...

- (2) “Child with a disability” means a child who meets all requirements of 34 CFR Sec. 300.8 and who:
- (a) is aged 3 through 21 or will turn 3 at any time during the school year;
  - (b) has been evaluated in accordance with 34 CFR Secs. 300.304-300.311 and any additional requirements of these or other public education department rules and standards and as having one or more of the disabilities specified in 34 CFR Sec. 300.8 including intellectual disability, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, orthopedic impairment, autism, traumatic brain injury, and other health impairment, a specific learning disability, deaf-blindness, or being developmentally delayed as defined in paragraph (4) below; and who has not received a high school diploma; and
  - (c) at the discretion of each local educational agency and subject to the additional requirements of Subsection 2 of Paragraph F of 6.31.2.10 NMAC, the term “child with a disability” may include a child aged 3 through 9 who is evaluated as being developmentally delayed and who, because of that condition, needs special education and related services.
- ...
- (4) “Developmentally delayed” means a child aged 3 through 9 or who will turn 3 at any time during the school year: with documented delays in development which are at least two standard deviations below the mean on a standardized test instrument or 30 per cent below chronological age; and who in the professional judgment of the IEP team and one or more qualified evaluators needs special education or related services in at least one of the following five areas: receptive or expressive language, cognitive abilities, gross or fine motor functioning, social or emotional development or self-help/adaptive functioning. Use of the developmentally delayed option by individual local educational agencies is subject to the further requirements of Paragraph 2 of Subsection F of 6.31.2.10 NMAC.
- (5) “Dual discrepancy” means the child does not achieve adequately for the child's age or to meet grade-level standards established in Standards for Excellence (Chapter 29 of Title 6 of the NMAC); and
- (a) does not make sufficient progress to meet age or grade-level standards; or
  - (b) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards or intellectual development.
- (6) "Dyslexia" means a condition of neurological origin that is characterized by difficulty with accurate or fluent word recognition and by poor spelling and decoding abilities, which characteristics typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction and may result in problems in reading comprehension and reduced reading experience that may impede the growth of vocabulary and background knowledge.

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

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

**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: NMAC 6.31.2.7** **DEFINITIONS:**

...

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

...

- (7) The “general education curriculum” pursuant to 34 CFR Sec. 300.320, means the same curriculum that a public agency offers for nondisabled children. For New Mexico public agencies whose non-special education programs are subject to department rules, the general curriculum includes the content standards, benchmarks and all other applicable requirements of the Standards for Excellence (6.30.2 NMAC) and any other department rules defining curricular requirements.

**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 Sec. 300.148(d)(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 §300.11 Educational service agency.** Educational service agency means--

- (a) A regional public multiservice agency--
  - (1) Authorized by State law to develop, manage, and provide services or programs to LEAs;
  - (2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State;
- (b) Includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and
- (c) Includes entities that meet the definition of intermediate educational unit in section 602(23) of the Act as in effect prior to June 4, 1997.

**Authority: 34 CFR §300.13 Elementary school.** Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

**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 §300.15 Evaluation.** Evaluation means procedures used in accordance with Secs. 300.304



through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

**Authority:** 34 CFR §300.16 Excess costs. Excess costs means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting—

- (a) Amounts received--
  - (1) Under Part B of the Act;
  - (2) Under Part A of title I of the ESEA; and
  - (3) Under Parts A and B of title III of the ESEA and;
- (b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (See Appendix A to part 300 for an example of how excess costs must be calculated.)

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

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

**Authority:** NMAC 6.31.2.7 **DEFINITIONS:**

...

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

...

- (6) A “free appropriate public education (FAPE)” means special education and related services which meet all requirements of 34 CFR Sec. 300.17 and which, pursuant to Sec. 300.17(b), meet all applicable department rules and standards, including but not limited to these rules (6.31.2 NMAC), the Standards for Excellence (6.30.2 NMAC) and department rules governing school personnel preparation, licensure and performance (6.60 NMAC through 6.64 NMAC), student rights and responsibilities (6.11.2 NMAC) and student transportation (6.41.3 and 6.41.4 NMAC).

**Authority:** 34 CFR §300.18 Highly qualified special education teachers.

- (a) Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in section 9101 of the ESEA and [34 CFR 200.56](#) , except that the requirements for highly qualified also--
  - (1) Include the requirements described in paragraph (b) of this section; and
  - (2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.
- (b) Requirements for special education teachers in general.
  - (1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified requires that--
    - (i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State's public charter school law;
    - (ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
    - (iii) The teacher holds at least a bachelor's degree.
  - (2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to special education certification program under which--

- (i) The teacher--
  - (A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;
  - (B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;
  - (C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and
  - (D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and
- (ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.
- (3) Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements in paragraph (b)(1) or the requirements in (b)(1)(iii) and (b)(2) of this section.
- (c) Requirements for special education teachers teaching to alternate achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under [34 CFR 200.1](#)(d), highly qualified means the teacher, whether new or not new to the profession, may either--
  - (1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or
  - (2) Meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the State.
- (d) Requirements for special education teachers teaching multiple subjects. Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either--
  - (1) Meet the applicable requirements of section 9101 of the ESEA and [34 CFR 200.56](#) (b) or (c);
  - (2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under [34 CFR 200.56](#) (c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or
  - (3) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under [34 CFR 200.56](#) (c), which may include a single HOUSSE covering multiple subjects.
- (e) Separate HOUSSE standards for special education teachers. Provided that any adaptations of the State's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers--
  - (1) A State may develop a separate HOUSSE for special education teachers; and
  - (2) The standards described in paragraph (e)(1) of this section may include single HOUSSE evaluations that cover multiple subjects.
- (f) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under Secs. 300.151 through 300.153 about staff qualifications with the SEA as provided for under this part.
- (g) Applicability of definition to ESEA; and clarification of new special education teacher.
  - (1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.
  - (2) For purposes of Sec. 300.18(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

- (h) Private school teachers not covered. The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities under Sec. 300.138.

**Authority:** 34 CFR §300.19 Homeless children. Homeless children has the meaning given the term homeless children and youths in section 725 ([42 U.S.C. 11434](#) a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq.

**Authority:** 34 CFR §300.20 Include. Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

**Authority:** 34 CFR §300.21 Indian and Indian tribe.

- (a) Indian means an individual who is a member of an Indian tribe.
- (b) Indian tribe means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act, [43 U.S.C. 1601](#) et seq.).
- (c) Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a State Indian tribe that is not listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994, [25 U.S.C. 479](#) a-1.

**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 Secs. 300.320 through 300.324.

**Authority:** NMAC 6.31.2.7 DEFINITIONS:

...

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

...

- (9) "Individualized education program" or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR Secs. 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 Sec. 300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

**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 §300.25 Infant or toddler with a disability. Infant or toddler with a disability--

- (a) Means an individual under three years of age who needs early intervention services because the individual--
- (1) Is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or
  - (2) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and
- (b) May also include, at a State's discretion--
- (1) At-risk infants and toddlers; and
  - (2) Children with disabilities who are eligible for services under section 619 and who previously received services under Part C of the Act until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under Part C of the Act serving such children shall include--
- (i) An educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and

- (ii) A written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under Part C of the Act or participate in preschool programs under section 619.

**Authority:** 34 CFR §300.26 Institution of higher education. Institution of higher education—

- (a) Has the meaning given the term in section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 et seq. (HEA); and
- (b) Also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, et seq.

**Authority:** 34 CFR §300.27 Limited English proficient. Limited English proficient has the meaning given the term in section 9101(25) of the ESEA.

**Authority:** 34 CFR §300.28 Local education agency.

- (a) General. Local educational 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 subdivision 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) Educational service agencies and other public institutions or agencies. The term includes--
  - (1) An educational service agency, as defined in Sec. 300.12; and
  - (2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under State law.
- (c) BIA funded schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population.

**Authority:** NMAC 6.31.2.7 **DEFINITIONS:**

...

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

...

- (8) "LEA" means a local educational agency as defined in 34 CFR Sec. 300.28.

**Authority:** 34 CFR §300.29 Native language.

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

**Authority:** 34 CFR §300.30 Parent.

- (a) Parent means--
  - (1) A biological or adoptive parent of a child;
  - (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
  - (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
  - (4) An individual acting in the place of a biological or adoptive parent (including a grandparent,

stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

- (5) A surrogate parent who has been appointed in accordance with Sec. 300.519 or section 639(a)(5) of the Act.
- (b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.
- (2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section.

**Authority: NMAC 6.31.2.7**                      **DEFINITIONS:**

...

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

...

- (13) "Parent" includes, in addition to the persons specified in 34 CFR Sec. 300.30, a child with a disability who has reached age 18 and for whom there is no court-appointed general guardian, limited guardian or other court-appointed person who has legal custody or has otherwise been authorized by a court to make educational decisions on the child's behalf as provided in Subsection K of 6.31.2.13 NMAC. Pursuant to 34 CFR Sec. 300.519 and department policy, a foster parent of a child with a disability may act as a parent under Part B of the IDEA if: (i) the foster parent or the state children, youth and families department (CYFD) provides appropriate documentation to establish that CYFD has legal custody and has designated the person in question as the child's foster parent; and (ii) the foster parent is willing to make the educational decisions required of parents under the IDEA; and has no interest that would conflict with the interests of the child. A foster parent who does not qualify under the above requirements but who meets all requirements for a surrogate parent under 34 CFR Sec. 300.519 may be appointed as a surrogate if the public agency responsible for making the appointment deems such action appropriate. (See Subsection J of 6.31.2.13 NMAC.)

**Authority: 34 CFR §300.31 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 §300.32 Personally identifiable.** Personally identifiable means information that contains—

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

**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 §300.34 Related services.**

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

counseling and training.

- (b) Exception; services that apply to children with surgically implanted devices, including cochlear implants.**
  - (1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.**
  - (2) Nothing in paragraph (b)(1) of this section--**
    - (i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.**
    - (ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or**
    - (iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in Sec. 300.113(b).**
- (c) Individual related services terms defined. The terms used in this definition are defined as follows:**
  - (1) Audiology includes--**
    - (i) Identification of children with hearing loss;**
    - (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;**
    - (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;**
    - (iv) Creation and administration of programs for prevention of hearing loss;**
    - (v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and**
    - (vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.**
  - (2) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.**
  - (3) Early identification and assessment of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child's life.**
  - (4) Interpreting services includes--**
    - (i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and**
    - (ii) Special interpreting services for children who are deaf-blind.**
  - (5) Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.**
  - (6) Occupational therapy--**
    - (i) Means services provided by a qualified occupational therapist; and**
    - (ii) Includes--**
      - (A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;**
      - (B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and**
      - (C) Preventing, through early intervention, initial or further impairment or loss of function.**
  - (7) Orientation and mobility services--**
    - (i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and**
    - (ii) Includes teaching children the following, as appropriate:**
      - (A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);**
      - (B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;**
      - (C) To understand and use remaining vision and distance low vision aids; and**

- (D) Other concepts, techniques, and tools.
- (8) (i) Parent counseling and training means assisting parents in understanding the special needs of their child;
- (ii) Providing parents with information about child development; and
- (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.
- (9) Physical therapy means services provided by a qualified physical therapist.
- (10) Psychological services includes--
- (i) Administering psychological and educational tests, and other assessment procedures;
- (ii) Interpreting assessment results;
- (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
- (iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;
- (v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and
- (vi) Assisting in developing positive behavioral intervention strategies.
- (11) Recreation includes--
- (i) Assessment of leisure function;
- (ii) Therapeutic recreation services;
- (iii) Recreation programs in schools and community agencies; and
- (iv) Leisure education.
- (12) Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.
- (13) School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.
- (14) Social work services in schools includes--
- (i) Preparing a social or developmental history on a child with a disability;
- (ii) Group and individual counseling with the child and family;
- (iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
- (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
- (v) Assisting in developing positive behavioral intervention strategies.
- (15) Speech-language pathology services includes--
- (i) Identification of children with speech or language impairments;
- (ii) Diagnosis and appraisal of specific speech or language impairments;
- (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
- (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
- (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.
- (16) Transportation includes--
- (i) Travel to and from school and between schools;
- (ii) Travel in and around school buildings; and
- (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

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

**Authority: 34 CFR §300.36 Secondary school.** Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

**Authority: 34 CFR §300.37 Services plan.** Services plan means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with Sec. 300.132, and is developed and implemented in accordance with Secs. 300.137 through 300.139.

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

**Authority: 34 CFR §300.39 Special education.**

**(a) General.**

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

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

- (1) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.
- (2) Physical education means--
  - (i) The development of--
    - (A) Physical and motor fitness;
    - (B) Fundamental motor skills and patterns; and
    - (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and
  - (ii) Includes special physical education, adapted physical education, movement education, and motor development.
- (3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction--
  - (i) To address the unique needs of the child that result from the child's disability; and
  - (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.
- (4) Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to--
  - (i) Develop an awareness of the environment in which they live; and
  - (ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).
- (5) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

**Authority: NMAC 6.31.2.7** **DEFINITIONS:**

...



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

...

(17) As authorized by 34 CFR Sec. 300.8 and 300.39, "special education" in New Mexico may include speech-language pathology services.

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

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

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, 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 Secs. 300.114 through 300.116.

Authority: 34 CFR §300.43 Transition services.

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

- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes--
  - (i) Instruction;
  - (ii) Related services;
  - (iii) Community experiences;
  - (iv) The development of employment and other post-school adult living objectives; and
  - (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

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

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 §300.45 Ward of the State.

(a) General. Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is--

- (1) A foster child;
- (2) A ward of the State; or
- (3) In the custody of a public child welfare agency.

(b) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in Sec. 300.30.

## ADDITIONAL STATE DEFINITIONS

Authority: NMAC 6.31.2.7 **DEFINITIONS:**

A. Terms defined by federal laws and regulations. All terms defined in the following federal laws and regulations and any other federally defined terms that are incorporated there by reference are incorporated here for purposes of these rules.

- (1) The Individuals with Disabilities Education Improvement Act of 2004 (IDEA), 20 USC Secs. 1401 and following.

- (2) The IDEA regulations at 34 CFR Part 300 (governing Part B programs for school-aged children with disabilities), 34 CFR Part 301 (governing programs for preschool children with disabilities).
- (3) Pursuant to the paperwork reduction provisions of IDEA 20 USC Sec. 1408, all definitions, with the exception of those found in Subsection B of 6.31.2.7 below, contained in the IDEA Parts 300 and 301 at 34 CFR Secs. 300.1 through 300.45, will be adopted by reference.

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

- (1) “CFR” means the code of federal regulations, including future amendments.

...

- (3) “Department” means the public education department.

...

- (5) The “educational jurisdiction” of a public agency includes the geographic area, age range and all facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions, juvenile justice facilities, state supported schools, or programs within which the agency is obligated under state laws, rules or regulations or by enforceable agreements including joint powers agreements (JPA) or memoranda of understanding (MOU) to provide educational services for children with disabilities. In situations such as transitions, transfers and special placements, the educational jurisdiction of two or more agencies may overlap and result in a shared obligation to ensure that a particular child receives all the services to which the child is entitled.

...

- (7) The “general education curriculum” pursuant to 34 CFR Sec. 300.320, means the same curriculum that a public agency offers for nondisabled children. For New Mexico public agencies whose non-special education programs are subject to department rules, the general curriculum includes the content standards, benchmarks and all other applicable requirements of the Standards for Excellence (6.30.2 NMAC) and any other department rules defining curricular requirements.

...

- (10) The “IDEA” means the federal Individuals with Disabilities Education Improvement Act of 2004, 20 USC Secs. 1401 and following, including future amendments.
- (11) “NMAC” means the New Mexico administrative code, including future amendments.
- (12) “NMSA 1978” means the 1978 Compilation of New Mexico Statutes Annotated, including future amendments.

...

- (14) “Puente para los niños fund” in New Mexico means a risk pool fund to support high cost students with disabilities identified by LEAs pursuant to 34 CFR Sec. 300.704(c)(3)(i).
- (15) “SAT” means the student assistance team, which is a school-based group of people whose purpose is to provide additional educational support to students who are experiencing difficulties that are preventing them from benefiting from general education.
- (16) “SEB” means the special education bureau of the public education department.

...

- (18) A “state-supported educational program” means a publicly funded program that:
  - (a) provides special education and related services to children with disabilities who come within the program’s educational jurisdiction;
  - (b) is operated by, or under contractual arrangements for, a state school, state educational institution or other state institution, state hospital or state agency; and
  - (c) is primarily funded through direct legislative appropriations or other direct state support to a public agency other than a local school district.

- (19) “USC” means the United States code, including future amendments.

**C. Definitions related to dispute resolution. The following terms are listed in the order that reflects a continuum of dispute resolution options and shall have the following meanings for the purposes of these rules.**

- (1) “Facilitated IEP (FIEP) meeting” means an IEP meeting that utilizes an independent, state-approved, state-funded, trained facilitator as an IEP facilitator to assist the IEP team to communicate openly and effectively, in order to resolve conflicts related to a student’s IEP.
- (2) “Mediation” means a meeting or series of meetings that utilizes an independent, state-approved, state-funded, trained mediator to assist parties to reconcile disputed matters related to a student’s IEP or other educational, non-IEP-related issues.

- D. The definitions in Subsection D apply only to Section 12 (*educational services for gifted children*).
- (1) Gifted child defined. As used in 6.31.2.12 NMAC, “gifted child” means a school-age person as defined in Sec. 22-13-6(D) NMSA 1978 whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking meets the eligibility criteria in 6.31.2.12 NMAC and for whom a properly constituted IEP team determines that special education services are required to meet the child’s educational needs.
  - (2) Qualifying areas defined.
    - (a) “Intellectual ability” means a score two standard deviations above the mean as defined by the test author on a properly administered intelligence measure. The test administrator must also consider the standard error of measure (SEM) in the determination of whether or not criteria have been met in this area.
    - (b) “Subject matter aptitude/achievement” means superior academic performance on a total subject area score on a standardized measure, or as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.
    - (c) “Creativity/divergent thinking” means outstanding performance on a test of creativity/ divergent thinking, or in creativity/divergent thinking as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.
    - (d) “Problem-solving/critical thinking” means outstanding performance on a test of problem-solving/critical thinking, or in problem-solving/critical thinking as documented by information from other sources as specified in Subparagraph (b) of Paragraph (2) of Subsection B of 6.31.2.12 NMAC.
- E. The definitions in Subsection E apply only to Section 13, Subsection I (*additional rights of parents, students, and public agencies - due process hearings*).
- (1) "Expedited hearing" means a hearing that is available on request by a parent or a public agency under 34 CFR Secs. 300.532(c) and is subject to the requirements of 34 CFR Sec. 300.532(c).
  - (2) "Gifted services" means special education services to gifted children as defined in Subsection A of 6.31.2.12 NMAC.
  - (3) "Summary due process hearing" means a hearing designed to proceed more quickly and incur less expense than a standard due process hearing, as explained under Paragraph (15) of Subsection I of 6.31.2.13 NMAC.
  - (4) "Transmit" means to mail, send by electronic mail or telecopier (facsimile machine) or hand deliver a written notice or other document and obtain written proof of delivery by one of the following means:
    - (a) an electronic mail system's confirmation of a completed transmission to an e-mail address that is shown to be valid for the individual to whom the transmission was sent;
    - (b) a telecopier machine's confirmation of a completed transmission to a number which is shown to be valid for the individual to whom the transmission was sent;
    - (c) a receipt from a commercial or government carrier showing to whom the article was delivered and the date of delivery;
    - (d) a written receipt signed by the secretary of education or designee showing to whom the article was hand-delivered and the date delivered; or
    - (e) a final decision to any party not represented by counsel for a due process hearing by the U.S. postal service, certified mail, return receipt requested, showing to whom the articles was delivered and the date of delivery.