

**New Mexico Public Education Department**  
**Special Education Bureau**

**Additions made by the state to the policies and procedures of special education**

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

- In addition to remediation, the SAT is responsible for ensuring that promotion and retention policies are followed and placement in an alternative program for those students who fail to make AYP for two successive school years is recommended.

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

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

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

*New Mexico School for the Arts will provide **annual training** to staff on the Policies and Procedures of this Chapter 1. Child Find /Interventions. In addition, the following is provided to school staff annually:*

1. *Clear information on when the SAT meetings are conducted*
2. *Clear information on where the SAT meetings are conducted*
3. *Name of the person responsible for scheduling/conducting the SAT meetings*
4. *SAT members will have access to printed copies of the numerous technical assistance documents provided on the NMPED website including but not limited to:*
  - *SAT Manual*
  - *Gifted: Technical Assistance Manual*

- *Response to Intervention (RtI)*
  - *Nondiscriminatory Assessment of Culturally and Linguistically Diverse Students*
  - *Facilitating Transitions for Children and Families*
5. *Clear information on where the staff may locate the printed copies of the technical assistance documents listed above.*
6. *Training on the SAT forms required for each student discussed at the SAT meeting:*
- *Notice of and Invitation to SAT meeting*
  - *SAT Referral Packet (clear teacher documentation on monitoring of strategies)*
  - *Student Observation(s)*
  - *SAT Meeting Summary(ies)*
  - *SAT Intervention Plan*
  - *SAT Intervention Progress Report(s) and Follow-Up*
  - *Academic Improvement Plan (if appropriate)*
  - *Culturally and Linguistically Diverse assessment (if appropriate)*

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

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

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

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

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

### **C. IEP Meeting Scheduled**

*The New Mexico School for the Arts will provide a written parent invitation to the IEP meeting when the group has determined the child is a child with a disability and an IEP meeting is needed. The*

*meeting will be arranged at a mutually agreeable time. The school principal / special education director will designate the person responsible for scheduling the IEP meeting with the parent and other required members. The specific requirements for the invitation to the IEP meeting are found in Chapter 2 Procedural Safeguards. Required members are found in Chapter 5 – IEP.*

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

**(c) Initial IEPs; provision of services. The New Mexico School for the Arts ensures that—**

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

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

*As soon as possible is defined by the New Mexico School for the Arts to be within 5 school days of the IEP meeting, the student will be receiving required services as determined by the IEP Team.*

*See also Chapter 5 – IEP*

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

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

**VIII. REFERRALS FOR SPECIFIC AREAS:**

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

**A. Adapted Physical Education**

**The SAT may include a request for a physical education evaluation upon initial referral.**

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

**D. Early Childhood New Mexico School for the Arts is a high school program (9-12)**

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

**E. Homebound Instructional Services**

*The SAT may include a request for an evaluation upon initial referral for homebound services. However, students already receiving special education services will receive a request for homebound*

services from the IEP committee. (For more information see also Chapter 3. - Evaluation and Chapter 5. - IEP and Chapter 6. - LRE)

### **I. Occupational Therapy and / or Physical Therapy**

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

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

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

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

### **(7) A description of other factors that is relevant to the agency's proposal or refusal.**

*The regulation §300.503 is required for all Notices including:*

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

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

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

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

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

- (ii) Is not required to convene an IEP Team meeting or develop an IEP for the child under §300.300 for the special education and related services for which the public agency requests such consent.**

*If the public agency campus staff is aware that the parent does not intend on giving consent for services, contact the Special Education Department administrator to assure appropriate documentation of FAPE is planned and offered in the IEP meeting. If campus staff is aware and the parent refuses in the IEP meeting, contact the Special Education Department administrator after the IEP meeting to assure all efforts are exhausted.*

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

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

**34 CFR § 99.31 FERPA:**

- **School officials with legitimate educational interest;**
  - **Other schools to which a student is transferring;****34 CFR §99.31 FERPA – Family Educational Rights and Privacy Act**
  - *Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without parental consent, to the following parties or under the following conditions:*
    - 
    - 
    - **Specified officials for audit or evaluation purposes;**
    - **Appropriate parties in connection with financial aid to a student;**
    - **Organizations conducting certain studies for or on behalf of the school;**
    - **Accrediting organizations;**
    - **To comply with a judicial order or lawfully issued subpoena;**
    - **Appropriate officials in cases of health and safety emergencies; and**
    - **State and local authorities, within a juvenile justice system, pursuant to specific State law.**
- *Parental Consent to Release records will be obtained in all other instances not described above. See also section V. Confidentiality and Consent for Disclosure of Records §300.622 on page 18.*

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

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

*The records shall include:*

- a. *at least the name of the person or agency that made the request,*
- b. *the date access was given, and*
- c. *the purpose for which the person or agency is authorized to use the records.*

*\*If parts of the student eligibility folder are maintained in classrooms, access records are required if the folder contains information such as an IEP report, modification sheet(s), or any assessment reports.*

2. *The record of access will be maintained as long as the public agency maintains the student's education record. The record of access shall be available only to parents, school officials responsible for custody of the records, and those state and federal officials authorized to audit the operation of the system.*

3. *Access Procedures: The cumulative record and special education legal folder shall be made available to the parent. Records may be reviewed during regular school hours upon request to the appropriate record custodian. The record custodian or designee shall be present to explain the record and to answer questions. The confidential nature of the student's records shall be maintained at all times, and the records shall be restricted to use only in the offices of the Superintendent, a principal, a counselor, or Special Education as designated by the appropriate record custodian. The original copy of the record or any document contained in the cumulative record shall not be removed from the school or the Special Education office.*

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

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

**Authority: 34 CFR §300.617 Fees.**

- (a) **The public agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.**

- (b) **A participating agency may not charge a fee to search for or to retrieve information under this part.**

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

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

- (a) **The public agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.**

- (b) **One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.**

*Custodian of Records: Unless otherwise specified in board policy, the principal is custodian of all records for currently enrolled students at the assigned school. The superintendent is the custodian of*

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

- (c) **All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.123 and 34 CFR Part 99.** Campus principal will annually train all new and returning campus staff on personally identifiable information. As new staff is employed throughout the school year, the training will be provided. The special education director is responsible for training all central office special education staff. Documentation of the date and persons attending training will be maintained by the campus principal and the special education director.
- (d) **The public agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.** Each local campus will have a listing of all personnel trained in confidentiality of student records and those who have access to the student records.

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

- (a) **The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.**
- (b) **The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.** The public agency will provide notice when records are going to be destroyed and provide an opportunity for the records to be acquired prior to destruction by the adult student or parent/guardian.

**Requirements of Surrogate**

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

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

**Surrogate Parent Assignment Guidelines:**

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

- a. Principal or other assigned staff person notifies the special education director of need and of potential surrogate parents if they are aware of any potential volunteers.
- b. The special education director or designee schedules and conducts the training using application form to document assurances below.
- c. The special education director notifies campus administration of completed training and the names of new surrogate parents.
- d. The special education director, principal or designee notifies/contacts the student's assigned surrogate parent when appropriate.

**Assurances**

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

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

A foster parent in a home verified by the New Mexico Department of Health or a child-placing agency shall not be deemed to have a financial conflict of interest by virtue of serving as the foster parent in that home. These homes include, but are not limited to, basic, habilitative, primary medical, or therapeutic foster or foster group homes. In addition, issues concerning quality of care of the child do not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to the New Mexico Department of Health.

**Documentation of Training for Volunteers to Serve as Surrogate Parent:**

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

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

- a. A foster parent may act as parent of a child with a disability, in accordance with §300.20 relating to the definition of parent.
- b. The foster parent must complete the training within 90 calendar days after the effective date of this rule or the date of initial assignment as foster parent, whichever comes later. The foster parent will be exempt if training has already been conducted by the New Mexico Department of Health and evidence is provided to the public agency.
- c. Once the individual has completed a training program conducted or provided by or through the NM Department of Health, the public agency, or any entity that receives federal funds to provide IDEA training to parents, the individual will not be required by any school to complete additional training in order to continue serving as the student's surrogate parent or to serve as the surrogate parent for other students with disabilities.

d. The public agency may provide additional training to surrogate parents and/or parents; however, the public agency cannot deny an individual who has received the training from serving as a surrogate parent on the grounds that the individual has not been trained.

e. Individuals already serving as surrogate parents, who are identified as not having received previous training, will receive training within 90 calendar days of identification if there is no evidence training was previously provided by the New Mexico Department of Health

f. The public agency will keep records of those individuals who have received training and each person trained by the public agency will be given a certificate to use should they move to another school and need evidence of training.

g. If the foster parent does not meet the criteria to serve as parent, the public agency will appoint a surrogate parent. The public agency will give preferential consideration to the foster parent of a student with a disability when assigning a surrogate parent for the child.

### **Surrogate Training Completed**

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

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

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

- (2) If a parent requests an independent educational evaluation at public expense, the NEW MEXICO SCHOOL FOR THE ARTS must, without unnecessary delay, either--**
- (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or**
  - (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.**

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

- (5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.**

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

### **EVALUATOR REQUIREMENTS**

- *The independent examiner will have the same qualifications as the public agency assessment personnel (e.g., psychologist, associate psychologist, or educational diagnostician), as required by New Mexico law and also described in Chapter 8- General Administration)*

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

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

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

### **Reimbursement or Payment**

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

### **Criteria For Fee Setting**

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

#### **Parents Seeking Reimbursement For A Unilaterally Obtained IEE**

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

#### **Consideration of Parent Initiated IEE**

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

### **VIII. CONFLICT RESOLUTION / COMPLAINT PROCEDURES**

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

*If there is disagreement expressed by the parent, the public agency should always be sure the parents have a current Procedural Safeguards document: Parent and Child Rights in Special Education, a copy of which may be found on the NMPED website at: <http://www.ped.state.nm.us/seo/parents/index.htm> If the parents say they do not have the document, provide them with the document; and an explanation of the information, and keep a record that parents have received the document. Documentation of receipt of the Procedural Safeguards is kept in the special education student's eligibility file.*

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

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

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

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

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

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

*The NMPED maintains a list of hearing officers and their qualifications. The list may be requested by calling the NMPE or at the following link on the SEB website:*

*<http://ped.state.nm.us/SEB/community/2013/2103-14%20-%20Mediator%20and%20Facilitator%20Contact%20List.pdf>*

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

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

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

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

**(c) Other evaluation procedures.** **The New Mexico School for the Arts must ensure that--**

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

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

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

*The native language information may be found in the student's cumulative folder which includes the C enrollment information. Upon enrollment, parents complete the home language portion which states the language most frequently spoken by the parents in the student's home. If a language other than English is spoken in the home, careful consideration must be given to the environmental and cultural impact. Also, language evaluations determining the student's dominant language both expressively and receptively is considered.*

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

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

For more specific procedures see also the Chapter 4 – Disabilities / Exceptionalities.  
Also, for more guidelines and information, see the NMPED TEAM manual:  
<http://www.ped.state.nm.us/SEB/technical/NMTeamManual.pdf>

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

## VII. EVALUATION REPORTS

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

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

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

Counseling services are provided to assist a child with a disability to benefit from special education. Parent counseling and training includes assisting parents in understanding the special needs of their child; providing information about child development; and helping parents acquire the skills necessary to allow them to support the implementation of their child's IEP or IFSP.

### (C) **Preventing, through early intervention, initial or further impairment or loss of function.**

The primary function of occupational and physical therapy is to directly assist the student to benefit from instruction. Occupational and physical therapy services will be provided when a disability adversely affects the educational performance. The therapist will aid the student to develop, increase, improve, and maintain skills that are prerequisites for the student to function within his/her educational environment.

Medical Requirement: In the case of physical and occupational therapy, services for students shall be prescribed by a physician for consideration by the IEP committee.

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

- Upon IEP Team discussion of current evaluation and recommendation that OT/PT services are not required due to one of the following:
- The student has accomplished the goals targeted in the IEP (Individual Educational Program);
- The student has achieved the maximum benefit from occupational and/or physical therapy;
- The student's physical dysfunction does not negatively affect his/her educational program;
- The student maintains progress and no evidence of change is seen;
- There is no current OT/PT MEDICAL REFERRAL FORM; or

- *The intervention will not impact the educational success of the student.*

*Prior to requesting a psychological evaluation, school personnel should be able to document previous educational efforts and strategies and the results of those efforts through the SAT. The SAT documented discussion should include participation in, or consideration for, other programs within New Mexico School for the Arts. Further, an intellectual and academic evaluation must be completed.*

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

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

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

**(16) Transportation includes--**

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

*Local Transportation Rules*

*The New Mexico School for the Arts rules govern special education bus students unless designated otherwise by an IEP Committee. Violation of school bus rules and regulations may result in restrictions. The student will follow local guidelines unless the IEP committee recommendations are different. Special education transportation procedures include the following:*

- It is the responsibility of the parent to have the student ready for the bus each day.*
- It is the responsibility of the parent to notify the Transportation Department of any change of address.*
- If the student is to be transported to or from a place other than home, parent submits to the Transportation Department the student's name and address, and the person's name and address who will assume responsibility for the child.*
- Card files are maintained on all students; therefore, if home or work numbers change, parents must notify the local campus, the Special Education Department, and the Transportation Department.*

*If the student will not be riding the bus for more than a day, parent contacts the Transportation Department in advance so that the driver can be notified.*

*You may also refer to the PED website for transportation information for parents:*

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

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

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

### **A. Language Dominance**

*The evaluation team will first determine the student's dominant language - most proficient method of communication (expressively and receptively). The student's dominant language is the language in which the student is most proficient. This determination may be made by formal or informal evaluation.*

*Evaluation instruments must be administered in the student's dominant language (native language or other mode of communication unless it is clearly not feasible to do so). If the primary language of the home is not English, the student will be evaluated in his/her dominant language. Documentation will be Oral Language Proficiency scores or a description of procedures used to ensure the student was evaluated in his/her dominant language when the examiner is not proficient in that language. Where no bilingual examiner is available, an interpreter may be used as long as this is allowed in the test protocol. Interpreters must be adequately trained.*

### **B. Language Proficiency**

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

### **C. Physical**

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

### **D. Emotional/Behavioral**

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

### **E. Sociological**

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

### **F. Intellectual**

*The evaluation of an individual's intellectual functioning must include an evaluation of verbal ability and performance. Intellectual functioning should be the last factor assessed, since the student's performance*

*in this area should be analyzed and interpreted in light of all the other data. While the adaptive behavior of all students must be considered to some degree, formal measures of adaptive behavior will be required only when a student is being assessed for mental retardation. Intelligence must always be addressed. An informal evaluation of intelligence may be used to determine intellectual functioning as a part of eligibility for:*

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

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

*The evaluation will include:*

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

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

## **X. ASSISTIVE TECHNOLOGY DEVICES AND SERVICES**

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

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

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

## **XI. SPECIAL PROVISIONS**

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

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

- a. identification of student's problems
- b. identification of areas of competencies

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

### **C. Functional Behavioral Assessment**

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

### **E. Homebound or Hospitalized**

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

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

*For assistance to assure that every step of a culturally competent assessment is followed, see the following:*

*NMPED website for preschool students: [http://www.ped.state.nm.us/seo/assessment/preschool\\_cld.pdf](http://www.ped.state.nm.us/seo/assessment/preschool_cld.pdf)*

*NMPED website for school age students: <http://www.ped.state.nm.us/seo/assessment/ta.pdf>*

### **G. Vocational Evaluation**

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

#### Functional Vocational Evaluation.

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

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

### **PERSONNEL RESPONSIBILITIES:**

#### Educational Diagnostician:

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

#### School Psychologist:

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

#### Speech/Language Pathologist:

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

#### Adapted P.E. teacher:

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

#### Auditory Impairments (AI) – Deaf Educator:

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

#### Visual Impairments (VI):

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

**Special Education Teachers:**

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

**Related Services Personnel**

**Occupational Therapist/Physical Therapist:**

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

**Interpreter / Translator**

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

**Chapter 4. - DISABILITIES – EXCEPTIONALITIES**

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

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

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

**Birth – 2 years / Deaf-Blind:**

*When considering students from birth through age two who have hearing impairments, or students who are deaf-blind, a teacher of infants who have auditory impairments or a*

*teacher of students who are deaf-blind, as appropriate, may perform the evaluation specified above.*

*New Mexico School for the Arts' Eligibility Determination Teams have two options when making eligibility determinations at all grade levels. Described on the following pages are both **Option 1 and Option 2** for identification of students with specific learning disabilities. New Mexico School for the Arts has chosen to follow **Option \_\_1\_\_** for identification of students with specific learning disabilities.*

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

To successfully make an appropriate eligibility determination under the specific learning disability category, Eligibility Determination Teams must understand the criteria that serve as eligibility requirements under this model (listed below). The concept of dual discrepancy is addressed in the *Identification of Learning Disabilities: Research to Practice* (Gresham, 2002). A dual discrepancy exists when the student both performs below the level evidenced by grade-level peers and also shows a learning rate substantially below that of grade-level peers.

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

#### **XIV. Discontinuation of Services**

*Discontinuation of services is based on the IEP committee's decisions that the student has mastered the goals and objectives, there is no longer an educational need, and the student no longer qualifies as a student with a disability based on current evaluation information. In rare cases, there may be a medical reason for the parent to request discontinuation of services temporarily or permanently. New Mexico School for the Arts will continue to offer a free appropriate public education (FAPE) to an eligible student with a disability as required by the IDEA regulations.*

## **Chapter 5.1 - INDIVIDUAL EDUCATION PROGRAM (IEP)**

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

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

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

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

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

*Any excusal from the IEP meeting must follow exact guidelines in §300.321(e) (1-2) and be documented in writing on the New Mexico School for the Arts form provided to you.*

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

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

For many more successful strategies, the New Mexico School for the Arts staff will refer to the NMPED document Addressing Student Behavior: A Guide for Educators that can be found at the NMPED website:

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

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

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

### Limited English Proficient (LEP) Students with Disabilities

For all LEP (Limited English Proficient) Students:

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

### G. Related Services

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

- ) **Conducting an IEP meeting without a parent in attendance.** A meeting may be conducted without a parent in attendance if the New Mexico School for the Arts is unable to convince the parents that they should attend. In this case, the New Mexico School for the Arts must keep a record of its attempts to arrange a mutually agreed on time and place such as:
  - (1) Detailed records of telephone calls made or attempted and the results of those calls;
  - (2) Copies of correspondence sent to the parents and any responses received; and
  - (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

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

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

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

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

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

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

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

- *Transportation changes*
- *Accommodations or revision of existing modifications*
- 
- *The Summary of Performance is separate documentation from the IEP meeting forms. For a sample form to assure required areas are addressed, please see the nationally ratified Summary of Performance sample form at this website:  
<http://www2.gsu.edu/~wworld/pdf/SummaryofPerformance.pdf>. This sample template form is not required by the NMPED; however, if the New Mexico School for the Arts uses a different form, NMPED will ensure that it includes all the information required by law.*

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

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

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

Definitions Below:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Chapter 5.2 - ADDITIONAL IEP REQUIREMENTS**

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

### **A. Before the IEP Meeting**

#### **Setting Up the Meeting**

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

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

In accordance with State and Federal requirements, the New Mexico School for the Arts will notify parents early enough of the IEP meeting in order to arrange a mutually agreeable time and location.

After the first written invitation to IEP meeting is provided 15 school days prior, if the parent does not respond, the New Mexico School for the Arts will document and send a second written invitation to the IEP meeting 10 school days prior. Again, if the parent still does not respond, a third invitation to IEP meeting will be sent in an attempt to get parental participation 5 school days prior to the scheduled IEP meeting. After three attempts and no response, the New Mexico School for the Arts may go forward with the IEP Team meeting as scheduled. The first attempt **MUST** be in written form, the second should also be in writing and the third may be a follow-up phone call. Detailed records of phone calls made or attempted, and the results, must be documented on the written invitation form, along with copies of

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

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

- The student (*must* be invited)
- Appropriate service agency and/or post-secondary representative(s)  
*Note: When a graduation program of study is proposed, an individual knowledgeable about high school curriculum must be included on the team. When the IEP Team meets to review the program of study and/or student progress to determine if he or she has fulfilled graduation plan requirements, a building administrator must be included on the team.*

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

#### **A Recommended "BEST PRACTICE"**

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

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

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

*The New Mexico School for the Arts will use the NMPE's two-part form designed to assist the IEP Team in ensuring that a regular education teacher is notified of his/her responsibilities and is given the opportunity to ask for support in carrying them out.*

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

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

*The special education staff should inform the administrator of the considerations regarding the*

*IEP.*

*The administrator will determine any further resources to involve in resolving the situation. The diagnostician, coordinator, or special education director may be included in problem solving.*

*The administrator may call a meeting with the parties involved or may offer suggestions to the special education staff, or may determine an IEP meeting is necessary to address the issues.*

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

### Lessons, Grading, and Reporting

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

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

### **1. Initial IEP Team Meeting:**

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

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

## **2. Annual IEP Team Meeting**

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

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

### **3. Amendment to the IEP**

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

### **4. Temporary / Transfer IEP Meeting**

*The special education teacher will be responsible for attending any temporary IEP meetings, as necessary, and working with the campus diagnostician/appraisal staff to plan the draft IEP for the temporary transfer student. The special education teacher will also assist in obtaining records from the previous district and conducting any benchmark testing, as appropriate.*

#### **(b) Review and revision of IEPs.**

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

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

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

*The special education teacher's responsibilities to ensure participation of the general education teacher may include:*

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

#### **Opportunity to Provide Input to the IEP Team:**

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

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

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

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

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

1. make an appointment with the general education teacher to discuss the general education teacher's concern;
2. listen carefully to each issue raised by the general education teacher, be sure he/she has a clear understanding of the student's educational competencies and needs. Often the general education teacher with a concern is not present in the IEP Team meeting and has not seen the evaluation information and may not understand the student's strengths and weaknesses.
3. collaboratively brainstorm possible solutions and alternatives which could be used, being careful to pay close attention to the IEP Team decisions on placement, accommodations, etc. Areas for support include pacing, methods, materials, etc.
4. keep notes of the issues and solutions to be tried and the person responsible for trying each solution, and the timeline;
5. set the next date and time to meet and discuss any progress toward the general education teacher's concerns after he/she has implemented the solutions from the meeting. The special education teacher should always follow-up. The possible ways in which special education could support the general education teacher are listed above. Don't hesitate to offer specific suggestions as ways to help the teacher.

**Progress should be noted and concerns resolved no more than two weeks from your first meeting date.**

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

1. *Any student referred for specially-designed physical education evaluation must have an identified disability.*

*A. The request for specially-designed physical education first requires an evaluation be conducted. The evaluation request may have come from the SAT upon initial referral or by the student's IEP Team.*

*B. Specially-designed physical education is provided upon consideration of a current evaluation and written report.*

2. *If specially-designed PE is provided, the goals and objectives will be approved by the IEP Team.*
3. *Parents will receive progress reports toward the specially-designed PE goals/objectives in the same timeframe as students who do not have a disability.*

## **H. Tape Recording**

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

*The New Mexico School for the Arts may NOT record without parent's knowledge.*

## Chapter 6. - LEAST RESTRICTIVE ENVIRONMENT (LRE)

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

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

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

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

*The NEW MEXICO SCHOOL FOR THE ARTS **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.*

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

1. The special PE evaluation will provide the IEP Team with the following information:

- a. identification of student's problems,
- b. identification of areas of competencies,
- c. documentation of the student's need for a special physical education program.

2. Regular Physical Education with No Modifications or Accommodations

NOTE: A special physical education evaluation is not necessary when the student with disabilities can participate in regular physical education with no modifications.

3. Regular Education With Modifications or Accommodations

Regular PE should be considered when modifications would make it possible for the student with disabilities to be successful in a regular physical education program. The specific modifications must be described in the student's IEP. It would be the responsibility of the special education teacher to assist the regular physical education teacher with modifications for the student and to monitor the progress of the student.

4. Special Physical Education

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

## **B. Behavior Improvement Classes**

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

## **C. Early Childhood Intervention (ECI) – birth to 3 years** (see also Chapter 1.- Child Find)

New Mexico School for the Arts is a high school program (9-12).

#### **D. Homebound Instructional Program**

*The public agency provides homebound instruction for students who are unable to attend school because of health/ medical reasons. These special education students must also have a Full and Individual Evaluation and are due all procedural safeguards.*

1. *It is the responsibility of the IEP Team to determine:*
  - a. *the appropriate instructional areas for special education students receiving homebound instruction;*
  - b. *modifications of the student's schedule.*  
*The general classroom teacher on the student's home campus determines academic course work for the homebound program.*
2. *The IEP Team must receive the following documentation:*
  - a. *student will be unable to attend the regular school program for a **minimum of four** weeks;*
  - b. *a written medical report from the physician stating the length of time homebound service may be needed based on the medical condition. Duration of service can only be extended as indicated by the physician.*
3. *It is important for the IEP Team to stress to the parents that an adult must be present in the home when a homebound teacher is providing instruction.*
4. *Dismissal procedures for homebound students are outlined in the IEP Team meeting that initiates homebound instruction. A homebound student will return to school:*
  - a. *when the medical release from the physician indicates it is appropriate or*
  - b. *when the medical report from the physician expires.*

*Please see the STAR (Student / Teacher Accountability Reporting System) manual for location code and other detailed information on Homebound Services for Students with Chronic Illness/Acute Health Problems.*

#### **E. Home Schooled Students**

**The New Mexico School of the Arts program requires school attendance.**

#### **H. Speech Therapy**

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

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

1. *Relative to IEP Team meetings, the speech pathologist:*
  - a. *should send home DRAFT IEP goals at least one week prior to the IEP meeting. A cover letter with name, conference time and phone number should accompany the draft IEP goals.*
  - b. *must attend IEP meetings for students with "speech impairment only";*

- (1. copy and distribute the modification checklist to all teachers of students who are SI only.
- (2. collaborate with special education teachers on the best means for distribution of students who are SI as a secondary disability.
- c. may attend IEP meetings for students who have a speech impairment in addition to another disability.
2. Other responsibilities:
  - a. Full-time pathologists traditionally schedule a set time per week to use for testing, IEP Team meetings and paperwork.
  - b. NMPED's goal is for full-time therapists to serve approximately 60 to 65 students per week. There may be circumstances in which this caseload is not possible.
  - c. Lesson plans should be used as a guide for the implementation of the IEP.

## **I. Vocational Class/Program**

*The Vocational Class is a special education program that is offered on the high school campus. This program is designed for students with disabilities who desire vocational training, and it may be used in conjunction with the student's individual transition plan only after the public agency's regular career and technology classes have been considered and determined to be inappropriate for the student. The goals of the vocational program include on-the-job training and regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP.*

*Employment opportunities and training are based on a vocational evaluation, student needs and abilities, teacher recommendations and student/parental preference.*

*Admission to the Vocational Program is approved by the IEP Team.*

## **Chapter 7. - DISCIPLINE / BEHAVIOR**

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

### **III. CHANGE OF PLACEMENT DECISIONS – Change of Placement Analysis**

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

#### **Change of Placement Analysis**

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

- a. *Count the days of disciplinary removal from the student's current educational placement.*
  1. *Portions of a school day from which a child had been suspended are included in determining whether the child has been removed for more than 10 cumulative school days or subjected to a change of placement.*
  2. *An in-school suspension would not be considered a part of the days of suspension as long as the child is afforded the opportunity to:*

- a. Appropriately progress in the general curriculum,
  - b. Continue to receive the services specified on his or her IEP, and
  - c. Continue to participate with nondisabled children to the extent he or she would have in their current placement
- 3. Whether a bus suspension would count as a day of suspension would depend on whether the bus transportation is a part of the child's IEP.
  - a. If the bus transportation is a part of the child's IEP, a bus suspension would be treated as a suspension unless the New Mexico School for the Arts provides the bus service in some other way.
- b. If the bus transportation is not a part of the child's IEP, a bus suspension would not be considered a suspension.
  - b. Determine whether the disciplinary removal(s) constitute(s) a change of placement. A disciplinary change of placement occurs if:
    - 1. The removal is for more than 10 consecutive school days, or
    - 2. The student is subject to a series of removals that constitute a pattern because they accumulate to more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed and the proximity of the removals to one another.

### **A. Less than 10 School Day Removals**

- (a) The New Mexico School for the Arts 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 New Mexico School for the Arts may choose to provide the IEP services to the student with disabilities during any short term removal to ISS in order to prevent counting those days of removal toward the 10 cumulative days.
- (c) In the case of a student whose behavior impedes his or her learning or that of others, convene an IEP Team meeting, if appropriate, to consider completing an FBA/BIP, including positive behavior interventions, strategies, and supports to address that behavior.

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

An IEP Team will:

review the disciplinary records of the student with a disability prior to the final determination regarding the

implementation of the BIP and its implementation to determine if accommodations / modifications are necessary; consult with more of the child's teachers to determine the extent to which services are needed and the location necessary to enable the student to participate in the general curriculum and advance toward achieving the goals set out in the student's IEP. If the New Mexico School for the Arts initiates disciplinary procedures applicable to all students, the special education and disciplinary records of a student with a disability are transmitted for consideration to the person or persons making the final determination regarding

## **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 New Mexico School for the Arts must convene an IEP meeting to conduct a manifestation determination and address the two questions in §300.530(e)(1) below.*

**§300.530 Authority of school personnel.**

**(e) Manifestation determination.**

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

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

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

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

- 1. target the specific behavior that is impeding learning by clearly defining and describing the observable behavior(s).*
- 2. obtain information from a variety of sources, including but not limited to: discussions, interviews, records, and direct observation. Also, use any standardized instruments, if available. Determine duration, frequency, and intensity of any patterns of behavior.*
- 3. identify and describe any antecedents - events that logically served as the stimulus for the behavior.*
- 4. identify and describe any consequences - this is the action that is following and causes the student to maintain specific behavior - determine effectiveness of each.*
- 5. determine the purpose of the student's behavior - usually to get something, avoid or escape something, or to control the antecedent event.*

6. describe the relationship of the behavior to the event and provide possible variables that can be changed in the setting or the situation.
7. develop the behavioral intervention plan and accommodations (BIP). Teach alternatives to the behavior and include positive reinforcement along with consequences.
8. Implement consistently, allow enough time for the behavioral intervention plan and accommodations to work, and review as needed.

- 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.

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

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

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

*The NEW MEXICO SCHOOL FOR THE ARTS will follow the IDEA and NMAC requirements for suspension and expulsion of students with disabilities.*

*The New Mexico School for the Arts 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.*

*Local policies for physical restraint of students without IEPs should be authorized by the school's Section 504 team, or the Student Assistance Team (SAT), as well as the parents as part of the student's BIP, Section 504 Plan, or SAT Intervention Plan. Protection for students not yet eligible for special education and related services is governed by 20 U.S.C. 1415(k)(5)*

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

*1. Non-exclusionary time-out:*

- *Planned Ignoring: This is the simplest form of Non-exclusionary time-out. Planned ignoring involves the systematic removal of social reinforcement (attention) by the teacher for a specific amount of time. When the student misbehaves, the teacher breaks eye contact, turns away, and stops all social interaction with the student. Planned ignoring assumes that the teacher's social attention is*

reinforcing. If it is not, then this will not work to decrease the behavior. If planned ignoring is the appropriate response, the teacher should prepare initially for an increase in the behavior before the behavior will decrease.

- *Head down on desk: This has been used by teachers for a long time. The student is simply told to put his head down on his desk for a short period of time. (timer may be used)*
  - *Observation time-out: The student is removed from his/her desk for misbehaving and is usually placed in a desk away from the main classroom activities for a short period of time. The student is allowed/required to observe the classroom discussion/activities, but is not allowed to actively participate. (Use of timer recommended – 5 minutes and may reset once.)*
  - *Non-observation time-out (instructional isolation): This is basically the same as observation time-out, except the student is not allowed to observe the classroom activities. Usually, the student is placed in a particular part of the classroom that does not provide for viewing other students. (use of timer recommended – 10 minutes and may reset once)*
2. *Exclusionary time-out: The student is removed from the classroom and placed in a separate environment for cooling down and resumption of instructional activities. Clearly, this is more restrictive and other types of time-out should be attempted first.*
- *Isolated instruction: This is extended time-out from the classroom. The student is required to complete class work in an isolated area, another classroom, or the office. Caution using the hallway as this could result in a social reward depending on the individual student.*
  - *Time-out room described below.*

### **E. Use of Time-out Rooms**

*New Mexico School for the Arts does not allow use of time-out rooms,*

## **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.*

### **F. Notice of Disciplinary Actions (Student Moves to another District)**

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

## **H. Noncustodial Parent**

*A noncustodial parent may request in writing that the LEA or school, for the remainder of the school year in which the request is received, provide that parent with a copy of any written notification relat*

### **DISCLAIMER**

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

For additional information regarding discipline for students with disabilities see:

New Mexico Public Education Department Technical Assistance Manual: Addressing Student Behavior  
<http://www.ped.state.nm.us/SEB/technical/StudentDiscipline.pdf>

*ing to student misconduct that is generally provided by the New Mexico School for the Arts to a student's custodial parent or guardian. The New Mexico School for the Arts may not unreasonably deny this request. The New Mexico School for the Arts will comply with any applicable court order of which the New Mexico School for the Arts has knowledge.*

## **Chapter 8 – GENERAL ADMINISTRATION**

*The public agency will carefully review the New Mexico State Performance Plan in order to remain focused on indicators for data-based decisions regarding staff development. Consideration is also given to the NMPED key indicators from focused monitoring. The focused monitoring process utilizes data from the STARS to rank school districts on the focused monitoring indicators and to make district selections for monitoring. There are five key indicator identified by a statewide group of stakeholders that covers the most important compliance issues as well as measurable aspects of educational benefit. The key indicators are:*

*Indicator 1: Graduation of students with disabilities.*

*Indicator 3: Participation and performance of students with disabilities on statewide assessments of educational development.*

*Indicator 5: Least restrictive environment, emphasizing inclusion of students with disabilities in regular classes to the maximum extent appropriate with access to the general education curriculum.*

*Indicators 9 & 10: Identification and evaluation of students with disabilities, emphasizing possible over-identification of students as learning disabled.*

## **VI. CURRICULUM FOR STUDENTS WITH DISABILITIES**

*The NEW MEXICO SCHOOL FOR THE ARTS has the responsibility for providing educational and related services to eligible students in the least restrictive environment. Students with disabilities shall have the opportunity to participate in the general education classroom with instruction aligned with the New Mexico Standards of Excellence (§6.29.1 NMAC) to the maximum extent appropriate. The IEP Team for the student with disabilities will make appropriate decisions for each individual student.*

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## **VII. STARS– Student Teacher Accountability and Reporting System**

**Authority: 34 CFR §300.640 Annual report of children served—report requirement.**

- (a) **The NMPED must annually report to the Secretary on the information required by section 618 of the Act at the times specified by the Secretary.**
- (b) **The NMPED must submit the report on forms provided by the Secretary.**

**Authority: 34 CFR §300.641 Annual report of children served—information required in the report.** *For all specific requirements, the public agency will remain diligent in following requirements specified by the STARS system provided by the New Mexico PED and will participate in required trainings.*

*The Federal Regulations are required and listed at the beginning of this section; the State requirements follow. For continuous updated information, see the NMPED website:  
[http://www.ped.state.nm.us/seo/district\\_data/SEAS%207.12%2007.pdf](http://www.ped.state.nm.us/seo/district_data/SEAS%207.12%2007.pdf)*

*If disproportionality is identified consistently and not corrected, the PED may impose corrective actions on the LEA. Corrective actions range in severity from frequent monitoring visits up to the withholding of funds. If funds are withheld, the NMPED may use the funds to provide services to students and staff members through alternative arrangements.*

*In addition to the requirements listed in §300.646 above, the LEA may convene a committee of professionals and interested local community members to develop an action plan to address the issue of disproportionality. The committee will be charged with the following:*

- a. *collection and analysis of local data by campus to identify possible patterns in types of SAT interventions tried, length of time interventions were tried before referrals, grade level of students, staff over-identification, special education evaluations, students new to the district, etc.*
- b. *based on an analysis of the data, identify target area(s) for response through a detailed action plan with dates due, personnel responsible, evaluation timelines, etc.*
- c. *in the action plan, list specific activities to address the targeted area(s); examples may include, but are not limited to:*
  - *technical assistance from the regional education cooperatives;*
  - *advice from experts to address the areas in need of assistance, including specific plans to address each subject area within a specified period of time;*

- *assistance in identifying and implementing professional development, instructional strategies, and methods of instruction based on scientifically-based research;*
  - *designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support;*
  - *devise additional approaches to providing technical assistance, such as collaborating with institutions of higher education, national centers of technical assistance, and private providers of scientifically-based technical assistance; and*
- d. *set timelines for the action plan to reconvene and analyze progress and the implementation of the strategies chosen.*

*The NMPED may impose the following sanctions if persistent disproportionality continues.*

- (1) *on-site review for failure to meet appropriate services, program or compliance requirements;*
- (2) *required fiscal audit of specific program(s) and/or of the LEA, paid for by the LEA;*
- (3) *required submission of corrective action(s), including compensatory services, paid for by the LEA;*
- (4) *required technical assistance from the regional education cooperatives, paid for by the LEA; which may include:*
- (5) *public release of program or compliance review findings;*
- (6) *special investigation and/or follow-up verification visits;*
- (7) *required public hearing conducted by the local school board of trustees;*
- (8) *assignment by the NMPED of a special purpose monitor, conservator, or management team, paid for by the LEA;*
- (9) *hearing before the commissioner of education or designee;*
- (10) *reduction in payment or withholding of funds; and/or*
- (11) *lowering of the special education compliance status and/or the accreditation rating of the LEA.*

### **Special Education Accountability System (SEAS)**

*Website: [http://www.ped.state.nm.us/seo/district\\_data/SEAS%207.12%2007.pdf](http://www.ped.state.nm.us/seo/district_data/SEAS%207.12%2007.pdf)*

*The advisory members should:*

- *be knowledgeable and interested in gifted education*
- *reflect the cultural diversity of the school's enrollment*
- *be made up of parents, community members, school staff, and students*

*The advisory committee does NOT:*

- *conduct MDT/IEP meetings*
- *review confidential information on individual students*
- *monitor the teacher, school or district regarding gifted education*