

MEMORANDUM

TO: Representative Christine Trujillo, chair, and Senator Mimi Stewart, vice chair, Legislative Education Study Committee (LESC)

FR: Tim Bedeaux, senior policy analyst, LESC

CC: Rachel S. Gudgel, director, LESC

RE: Public Education Department Rulemakings

Throughout the Covid-19 pandemic, the Public Education Department (PED) has engaged in a virtual public meeting process to propose and adopt administrative rules. This memorandum is a synopsis of recent proposed and adopted rules pertaining to public education, including analysis by LESC staff. More information on each rule can be obtained by contacting the PED policy division at rule.feedback@state.nm.us, or on the PED website at <https://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>.

Proposed Rules

6.80.4 NMAC, Charter School Application and Appeal Requirements (See Attachment 1). On July 13, 2020, PED proposed an amendment to add several new requirements to the state-chartered charter school application and renewal process. The amendment would require a charter school application to include assurances the charter school will establish an equity council and the head administrator and governing body will, in consultation with the equity council, develop a culturally and linguistically relevant framework to meet student needs. The amendment would allow a chartering authority to deny an application if the charter school proposes to open on tribal land but fails to receive approval from the tribal government or fails to comply with ongoing tribal consultation. The amendment removes the requirement for PED's Charter Schools Division to provide a report to the secretary regarding charter school appeals; statute does not require the division to prepare such a report. The proposed amendment would significantly simplify existing requirements for a charter school application. For example, where the existing rule requires charter school's mission statement to meet several specific criteria, the proposed amendment would simply require the application to include a mission statement. Of note, the proposed amendment would remove the requirement that a charter school application include an assurance that the governing body will conduct its meeting in accordance with the Open Meetings Act. It is unclear why PED chose to remove this requirement, although charter school governing body members are still required to receive training on open government requirements. The public comment period for the rule closes August 25, 2020, and the rule will become effective September 15, 2020.

6.30.18 NMAC, Partial Credit for Adjudicated or Mobile Students (See Attachment 2). On June 23, 2020, PED proposed a new rule to implement Section 22-12A-14 NMSA 1978 to allow students identified as adjudicated or mobile or those who experience classroom disruption to earn partial course credit. The proposed rule outlines requirements for both the school where a student previously attended, defined as "sending school" and the receiving school. Sending schools are required to provide the transferring student's records within two business days of receiving a request from the receiving school and must certify that the school district, charter school, or institution has implemented a system to track student credit accrual. Receiving schools would be required to request the transferring students' records from

the sending school within two business days, apply all partial credits to equivalent courses, and prioritize placement in courses. The rule does not specify a process for legislative mandates requiring “priority placement in classes that meet state graduation requirements” and “equal access to participation in sports and other extracurricular activities, career and technical programs or other special programs for which the student qualifies.” While the rule does not need to list every element of statute, PED may wish to monitor school district and charter school practices to avoid conflicts with statute. The public comment period on the rule has expired, and the final rule will become effective August 25, 2020.

6.64.19 NMAC, Competencies for Elementary Mathematics Specialists (See Attachment 3). On June 23, 2020, PED proposed a new rule to develop a teacher endorsement for elementary mathematics specialists. The proposed rule will require licensed level 2 or level 3-A teachers to have held a license for a minimum of three years in addition to a current teaching license in elementary education. The proposed rule outlines four pathways to an elementary mathematics specialist endorsement:

- *Complete 30 semester hours in a PED-approved professional preparation program and pass a middle school mathematics content knowledge assessment offered by Praxis.* Written comment from the New Mexico Partnership for Math and Science Education points out that the Praxis assessment is not aligned with nationally recognized standards developed by the Association of Mathematics Teacher Educators (AMTE).
- *Provide evidence of five years of relevant work and professional learning, including a resume and two verification letters, in kindergarten through eighth grade mathematics.* Comment from Los Alamos National Laboratory expressed a preference to replace this requirement with a portfolio-based application, as is currently done for licensure advancement in New Mexico.
- *Take and pass the Praxis middle school mathematics content knowledge assessment or submit a certificate from the National Board of Professional Teaching Standards in mathematics, early adolescence, and young adulthood.* Comment from the New Mexico Mathematics Education Collaborative notes the Praxis test does not demonstrate the same skills as National Board certification, a more rigorous process that involves content knowledge, pedagogy, and leadership skills.
- *Complete 18 credit hours in specific mathematics education coursework, nine of which are in upper-division credits.* Currently, a mathematics license requires 24 to 36 credit hours in undergraduate- or graduate-level mathematics courses. Elementary school teachers may not have much experience with mathematics courses during their preparation programs, but it is unclear whether 18 credit hours will be as rigorous as a general mathematics license. Stakeholders recommended increasing the requirement to include 30 credit hours and aligning the coursework to specific competencies in the rule.

The rule outlines competencies for elementary mathematics specialists, including ongoing professional development, participation in collaborative learning, and mentoring other elementary teachers. The New Mexico Mathematics Education Collaborative noted many AMTE best practices were omitted from the competencies, including specialized content knowledge, the ability to define complex concepts in accessible ways, and the ability to analyze students’ mathematical thinking and ideas. The public comment period on the rule has expired, and the rule will become effective August 25, 2020.

Adopted Rules

6.12.12 NMAC, Armed Public School Personnel (See Attachment 4). On July 28, 2020, PED adopted a rule establishing regulations for school security personnel who carry a firearm. The rule implements Laws 2019, Chapter 189 (House Bill 129), which affords local school boards and governing bodies of charter schools authority to allow personnel to carry firearms on school property. Pursuant to the rule, individuals are considered eligible for an armed security personnel position only if they held a former law enforcement officer position and left law enforcement in good standing. Candidates are allowed to carry firearms if they pass a physical by a licensed medical doctor and a psychological evaluation conducted by a licensed psychologist. Prior to employment, candidates must complete two trainings approved by PED and the New Mexico Public School Insurance Authority, one focused on working with students with special needs, including cultural competency and prohibited profiling practices, and another including a use-of-force training program through a local law enforcement agency or academy. The rule prohibits armed school security personnel from performing any other job in the school district or charter school while carrying a firearm. Individuals are prohibited from employment in an armed school security position if they have been convicted of a crime related to employment within the position, trafficking controlled substances, sexual offenses against children, causing physical harm to a household member or dependent, and negligent or illegal use of a firearm. Disability Rights New Mexico and the Native American Disability Law Center submitted concerns with the rule, stating armed police officers in schools may increase the rates of exclusionary school discipline, more referrals to juvenile justice, entry into the school to prison pipeline and decrease graduation rates and would prefer the option of increasing the number of support providers such as school counselors, psychiatrists, or social workers.

6.11.2 NMAC, Rights and Responsibilities of Public Schools and Public School Students (See Attachment 5). On July 28, 2020, PED repealed and replaced a rule to provide a framework for school districts, local governing boards, and charter schools to provide a safe environment for student learning. The amendments add a definition of a “student with a disability” in line with definitions in the federal Individuals with Disabilities Education Act. Prohibited activities now include a prohibition on committing violence against peers or school personnel through electronic means. Semiannual training for school personnel must now state that use of restraint and seclusion should be reserved for instances when other strategies, such as deescalation strategies or positive behavioral interventions, have been exhausted. The rule outlines an annual process for reviewing incidents of restraint and seclusion and prescribes student interventions based on the number of incidents a student receives. The rule adds an additional reporting requirement for schools through PED’s data collection and reporting system to document and submit information tied to school personnel training in behavioral intervention supports, instances when a restraint or seclusion technique is used, student information for those involved in incidents, and the type of intervention used. The Native American Disability Law Center submitted public comment requesting the department include culturally relevant and appropriate interventions for Native American students in line with the Indian Education Act.

6.30.17 NMAC, Structured Literacy Instruction, Intervention, and Professional Development (See Attachment 6). On July 14, 2020, PED adopted a new rule to codify elements of a new structured literacy program for students with dyslexia. The rule implements Section 22-13-32 NMSA 1978 by developing and implementing structured literacy instruction and interventions for students displaying difficulties in reading or characteristics of dyslexia. Under the new rule, schools are required to screen every entering first grade student for dyslexia by the first standardized reporting date. Students whose screenings show characteristics of dyslexia shall first receive targeted structured literacy interventions which are monitored to determine if progress is being made or if students should be referred to the student assistance team (SAT). According to both section 22-13-32 NMSA 1978 and the adopted rule, the SAT is

responsible for prescribing interventions in accordance with the diagnostic assessment. Membership of the SAT team, is broadly defined as a “school-based group of people whose purpose is to provide additional educational support to students who are experiencing difficulties that are preventing them from benefiting from education.” Public comment submitted by the Bilingual Multicultural Education Advisory Council noted language screenings should be culturally responsive to prevent the over-identification of dyslexia in linguistically diverse students.

6.31.2 NMAC, Children with Disabilities and Gifted Children (See Attachment 7). On July 14, 2020, PED repealed and replaced 6.31.2 NMAC to clarify requirements for serving children with disabilities and gifted children. The rule specifies the composition of a student’s individualized education program (IEP) team, and mentions two least restrictive placement options in the full continuum of services, the New Mexico School for the Deaf (NMSD) and the New Mexico School for the Blind and Visually Impaired (NMSBVI). The rule requires each local education agency (LEA) to provide the parents of a student diagnosed as hearing or visually impaired with information about the educational programs offered at NMSD or NMSBVI. The definition for IEP team lists required members consistent with the federal Individuals with Disabilities Education Act. Consistent with the Attendance for Success Act, the rule also requires detention and correctional facilities to request records from a student’s former LEA within two business days, replacing the previous language calling for the request to occur within a “reasonable” amount of time. Disability Rights New Mexico noted language in the rule may prevent parents from requesting an evaluation if the student is already participating in a three-layer intervention, like the response to intervention or student assistance team frameworks.

6.30.12 NMAC, K-5 Plus Program (See Attachment 8). On June 9, 2020, PED adopted a final rule to comply with Laws 2019, Chapters 206 and 207 (Senate Bill 1 and House Bill 5), implementing the K-5 Plus program. The adopted rule retains much of the language from the emergency K-5 Plus rule adopted in June 2019, with the exception of changes made that address issues identified by LESC staff in a previous rulemaking report. The final rule eliminated a provision that attempted to provide flexibility for classrooms where students were unable to stay with the same teacher in K-5 Plus and the regular school year. The adopted rule also aligns the program with the requirement of statute, limiting participation to all elementary school students and removing definitions that are already defined in statute. However, the adopted rule still does not clarify the definition for “low-performing elementary schools,” which are given priority for K-5 Plus funding. Previously, PED used the school’s letter grade pursuant to the A-B-C-D-F Schools Rating Act, but the rule now includes an ambiguous definition as the state’s new accountability system was still under development at the time the rule was adopted.

This is an amendment to 6.80.4 NMAC, Sections 1, 3, 7, 8, 9, 12, 13, 14, 17, 18, and 19 effective 9/15/2020.

6.80.4.1 ISSUING AGENCY: Public Education Department, hereinafter the department.

[6.80.4.1 NMAC - Rp, 6.80.4.1 NMAC, 6/29/2007; A, 9/15/2020]

6.80.4.3 STATUTORY AUTHORITY: [Sections 22-2-1, 22-8-1 through 22-8-47 and 22-8B-1 through 22-8B-17 NMSA 1978.] Sections 9-24-8, 22-2-1, 22-2-2, 22-8-1 et seq., and 22-8B-1 et seq. NMSA 1978.

[6.80.4.3 NMAC - Rp, 6.80.4.3 NMAC, 6/29/2007; A, 9/15/2020]

6.80.4.7 DEFINITIONS:

A. “Applicant” means one or more teachers, parents, or community members or a public postsecondary educational institution or nonprofit organization who submits an initial or renewal application to a chartering authority.

B. “Application for start-up charter school” means an application requesting the establishment of either a locally chartered or state-chartered charter school.

~~[B.]~~ **C. “Authorizer”** means either a local school board or the commission that permits the operation of a charter school.

~~[C.]~~ **D. “Charter school”** means a conversion school or start-up charter school authorized by a chartering authority to operate as a public school.

~~[D.]~~ **E. “Chartering authority”** means either a local school board or the commission that permits the operation of a charter school.

~~[E.]~~ **“Chief executive officer”** means the person with duties similar to that of a superintendent as set forth in Section 22-5-14 NMSA 1978.]

F. “Commission” means the public education commission.

G. “Conversion school” means an existing public school within a school district that was authorized by a local school board or the commission to become a charter school prior to July 1, 2007.

H. “Days” means, unless otherwise specified in a provision in this rule or applicable statute, business days when the period referenced is 10 days or less, and calendar days when the period referenced is 11 days or more. In computing the amount of days, exclude the day of the event that triggers the period, and include the last day of the period. If the last day is a day when the department is closed, the period continues to run until the end of the next business day that the department is not closed. Whenever a person or entity ~~[must]~~ shall act under this rule within a prescribed period after service of a notice or paper upon the person or entity, and the notice or paper is served by mail or courier service, three calendar days are added to the prescribed period.

~~[I.]~~ **“Department”** means the public education department.]

~~[J.]~~ **I. “Division”** means the charter schools division of the department ~~[which maintains offices in both Santa Fe and Albuquerque].~~

~~[K.]~~ **J. “Governing body”** means the governing ~~[body]~~ structure of a charter school as set forth in the charter school’s charter.

~~[L.]~~ **K. “Head administrator”** means the duly licensed school administrator who is the ~~[chief executive officer]~~ director of the charter school, which is the person with duties similar to that of a superintendent as set forth in Section 22-5-14 NMSA 1978.

~~[M.]~~ **L. “Locally chartered charter school”** means a charter school authorized by a local school board.

~~[N.]~~ **M. “MEM”** means membership, which is the total enrollment of qualified students on the current roll of a class or school on a specified day.

~~[O.]~~ **“New Mexico coalition for charter schools”** means the non-profit membership organization representing charter schools in New Mexico.

~~[P.]~~ **“New Mexico school boards association”** means the organization consisting of the local public school boards and the governing bodies of charter schools in New Mexico.]

~~[Q.]~~ **N. “Organizer”** means one or more persons or entities who seek to arrange, form, or otherwise ~~[put together]~~ establish a charter school.

~~[R.]~~ **O. [“Prospective applicant”] “Prospective applicants”** means one or more teachers, parents, or community members or a public post-secondary educational institution or nonprofit organization who submits a notice of intent to a chartering authority.

~~[S.]~~ **P. “Secretary”** means the New Mexico secretary of public education.

~~[T.]~~ **Q. “Start-up charter school”** means a public school developed by one or more parents, teachers, or community members who applied to and were authorized by a chartering authority to become a charter school.

~~[U.]~~ **“Application for start-up charter school”** means an application requesting the establishment of either a locally chartered or state chartered school.]

~~[V.]~~ **R. “Special education plan”** means a comprehensive written design [scheme] or method that includes specific details on how the charter school shall:

- (1) utilize state and federal funds to provide children with disabilities a free and appropriate public education, in accordance with applicable law;
- (2) provide educational services, related services, and supplementary aids and services to children with disabilities in accordance with each child’s individualized education program; and
- (3) address a continuum of alternative educational placements to meet the needs of students with disabilities, in accordance with applicable law.

~~[W.]~~ **S. “State-chartered charter school”** means a charter school authorized by the commission. [6.80.4.7 NMAC - Rp, 6.80.4.7 NMAC, 6/29/2007; A, 6/30/2008; A, 6/30/2009; A, 12/31/2018; A, 9/15/2020]

6.80.4.8 NOTICE OF INTENT TO ESTABLISH A CHARTER SCHOOL:

A. The organizers of a proposed charter school shall provide a signed written notification to the commission and the school district in which the charter school is to be located of the organizers’ intent to establish a charter school. The date for submitting a notice shall be no later than the second Tuesday of January of the year in which the prospective applicant plans to submit an application.

B. Written notification to the commission shall be made to the division [at its Albuquerque office] written notification to a local school board shall be made to the superintendent of that school district who shall provide copies of the written notification to the local school board during a duly noticed board meeting.

C. If the second Tuesday of January falls on a legal holiday, the written notification shall be timely if personally delivered on the first day following the legal holiday that the division or office of the pertinent superintendent is open for business. Notice will also be considered timely if it is postmarked four calendar days prior to the second Tuesday of January, regardless of the date on which it is received. Failure to provide timely written notification may result in an application being rejected unless the organizers can demonstrate good cause why timely written notification was not given.

[6.80.4.8 NMAC - N, 6/29/2007; A, 6/30/2008; A, 6/30/2009; A, 9/15/2020]

6.80.4.9 CONTENTS OF APPLICATION FOR START-UP CHARTER SCHOOL: A charter school application shall be a proposed agreement between the chartering authority and the charter school and shall include the following: [assurances, descriptions, outlines and plans.]

A. The mission statement of the charter school; [The mission statement must answer the following questions: “Who do you serve?”, “What do you seek to accomplish?”, “What methods will you use?” and “How will we know if you are achieving your mission?”]

B. The goals, objectives, and student performance [standards] outcomes to be achieved by the charter school; [which address how the charter school will comply with the department’s required content standards, benchmarks, and performance standards, state accreditation, standardized testing and school report card in accordance with Sections 22-2C-1 et seq. NMSA 1978. The goals and objectives must be measurable and student-centered.]

C. A description of the charter school’s educational program, student performance standards, and curriculum that meets or exceeds the department’s educational standards and [must] shall be designed to enable each student to achieve those standards. [and addresses the following:]

- ~~(1)~~ documentation, research or rationale that supports a particular curricular approach;
- ~~(2)~~ a description of the curriculum including scope and sequence, and student performance standards;
- ~~(3)~~ a timeline for alignment of the curriculum with the department’s content standards, benchmarks, and performance standards, if alignment has not been completed at the time the application is submitted;
- ~~(4)~~ strategies and methods to be used in delivering the curriculum and how the curriculum will address students’ needs and assist each student in reaching those standards;
- ~~(5)~~ length of school day and school year;
- ~~(6)~~ total number of grades the charter school proposes to provide, either immediately or in phases, class size and total projected student enrollment, and, if the charter school will be located in a school district that has a total enrollment of not more than 1,300 students, a statement that the proposed charter school’s proposed

~~enrollment for all grades, in combination with any other charter school's enrollment for all grades, will neither equal nor exceed ten percent of the total MEM of that school district;~~

~~(7) proposed requirements for graduation, if applicable.]~~

D. A description of the way a charter school's educational program will meet the individual needs of students, ~~[including]~~ particularly those students determined to be at risk, ~~including Native American students, economically disadvantaged students, students with disabilities, and English learners,~~ and which will ~~[address]~~ include the following:

(1) suggested modifications to the proposed educational program to meet individual student needs, such as bilingual, limited English proficient, and special education;

(2) an outline of a special education plan, the final plan of which ~~[must]~~ shall be completed and submitted to the charter authorizer by the end of the planning year;

(3) how the charter school will provide access to other services including but not limited to counseling and health;

(4) assurances that the charter school will establish an executive director's equity council with members selected from the charter school community in an open and transparent process; and

(5) assurances the charter school head administrator and governing body, in consultation with the school equity council, will develop a culturally and linguistically relevant framework to help prepare students for college, career, and civic life through support of students' identities, and holistic development, including social, emotional, and physical wellness.

E. A description ~~[or outline]~~ of ~~[a]~~ the charter school's plan ~~[the charter school considers adopting]~~ for evaluating student performance, the types of assessments that will be used to measure student progress toward achievement of the state's standards, and the school's student performance standards, the timeline for achievement of the standards, and the procedures for taking corrective action in the event that student performance falls below the standards. ~~[and which description or outline addresses the following:~~

~~(1) remediation for students not achieving standards, including a timeline for implementation of the remediation plan;~~

~~(2) assessments that might be considered in addition to the statewide mandated testing;~~

~~(3) documentation and reporting of student data.]~~

F. Assurances that the charter school will be economically sound, including the submission of a proposed budget for the term of the charter and a description of the manner in which the annual audit of the financial and administrative operations of the charter school is to be conducted; ~~[and addresses the following:~~

~~(1) a proposed budget for year one and the following four years based on the current unit value;~~

~~(2) a description of the administrative operations of the charter school.]~~

G. An assurance that the fiscal management of the charter school will comply with all applicable federal and state laws, ~~[regulations and rules relative]~~ and rules related to fiscal procedures; ~~[In addition to this basic assurance, the applicant shall clearly state in its assurance that the following information will be provided to the chartering authority by the end of the planning year or within 10 days of receipt of any federal or state stimulus funds:~~

~~(1) a detailed plan indicating how the charter school will manage its fiscal responsibilities;~~

~~(2) a description of its internal control procedures that the charter school will utilize to safeguard assets, segregate its payroll and other check disbursement duties, provide reliable financial information, promote operational efficiency, and ensure compliance with all applicable federal statutes and regulations and state statutes and rules relative to fiscal procedures.]~~

H. Assurances of a plan for the displacement of students, teachers, and other employees who will not attend or be employed in the conversion school;

~~[H.]~~ **I.** The names of the members of the governing body and a description of the operation of the charter school, including:

(1) the method of selecting the governing body;

(2) the qualifications and terms of members, the filling of vacancies, and the procedures for changing governing body membership; and

~~(3) an assurance that the governing body will meet and conduct its meetings in accordance with the Open Meetings Act, Sections 10-15-1 et seq., NMSA 1978;]~~

~~(4)~~ (3) the nature and extent of parental, professional educator, and community involvement in the governance and the operation of the school.

~~[(5) — an assurance that the charter school will adopt policies and procedures of the governing body, that address governance, relationship to staff, professional development, the role of the governing body in policy making, personnel decisions, budgeting, and operation of the charter school, including how decisions will be made;~~

~~_____ (6) — for locally chartered charter schools, an assurance that it will amend its charter within one year of approval to include procedures agreed upon with its chartering authority for the resolution of disputes between them;~~

~~_____ (7) — a description of how the charter school proposes to account to the chartering authority with respect to the charter school's compliance with applicable statutes, regulations, rules and charter provisions;~~

~~_____ (8) — an assurance by each governing body member that they have read the application and agree to its submission to the chartering authority.]~~

~~[**I.** **J.** An explanation of the relationship that will exist between the proposed charter school and its employees, including evidence that the terms and conditions of employment will be addressed with affected employees and their recognized representatives, if any; [and which address the following:~~

~~_____ (1) — personnel policies and procedures that comply with all applicable federal statutes and regulations, the School Personnel Act, Sections 22-10-1 et seq., NMSA 1978, and the Charter Schools Act, Sections 22-8B-1 et seq. NMSA 1978 or, if personnel policies and procedures have not been developed at the time of the application, a statement that the policies and procedures developed will comply with applicable federal and state labor laws, regulations and rules implementing them;~~

~~_____ (2) — a description of the evaluation process for staff which shall include evaluation of teachers by a licensed school administrator;~~

~~_____ (3) — the discipline process for staff, that provides for due process and demonstrates an understanding of applicable state and federal laws, regulations and rules;~~

~~_____ (4) — an assurance that the governing body or head administrator will recognize and work with employee labor representatives, if any;~~

~~_____ (5) — a proposed salary schedule;~~

~~_____ (6) — proposed job descriptions of staff;~~

~~_____ (7) — a proposed pupil teacher ratio.]~~

~~[**J.** **K.** The employment and student discipline policy of the proposed charter school; [that complies with the department's rule on students' rights and responsibilities.]~~

~~[**K.** **L.** [For charter schools, a] An [proposed] agreement between the charter school and the authorizer regarding their respective legal liability and applicable insurance coverage;~~

~~[**L.** **M.** A description of how the charter school plans to meet the transportation and food service needs of its students; [The description shall address whether the applicant intends to contract with a school district or other party for the provision of transportation and food services; the identity of the school district or that other party, if known, with whom the applicant proposes to contract; a description of the proposed terms of any contract; and for these services a description of the status of any preliminary negotiations with any school districts or other parties regarding the provision of transportation or food service.]~~

~~[**M.** **N.** A description of both the discretionary waivers and the waivers provided for in Section 22-8B-5 NMSA 1978 that the charter school is requesting or that will be provided from [~~either~~] the local school board or the department [~~or both~~] and the charter school's plan for addressing and using these waiver requests; and [~~that~~:~~

~~_____ (1) — lists the specific policy by number and title for which waivers are requested from local school board policy;~~

~~_____ (2) — lists the specific waivers that are requested from the department's requirements, rules, and provisions of the Public School Code, Sections 22-1-1 et seq. NMSA 1978, pertaining to individual class load, teaching load, length of the school day, staffing patterns, subject areas, purchase of instructional material, evaluation standards for school personnel, school principal duties, driver education, and graduation requirements.]~~

~~[**N.** **O.** A description of the facilities the charter school plans to use; including an assurance that the facilities will meet the standards required in Section 22-8B-4.2 NMSA 1978. [~~taking phase in and availability into account.~~ The charter school shall provide a detailed description of its proposed capital outlay needs, including projected requests for capital outlay assistance for the charter school. Additionally, the charter school shall provide an assurance that:~~

~~_____ (1) — the facility it seeks to use is safe and suitable for use as a school;~~

~~_____ (2) — it will develop and maintain a plan for addressing code, accessibility requirements and any other health and safety requirements, if necessary;~~

~~_____ (3) — it will develop and maintain a plan for operation, maintenance and repair of a facility;~~

~~(4) it will produce a certificate of occupancy for use of the facility; and~~
~~(5) prior to opening that the facility to be used meets all applicable federal and state health, safety and code requirements.~~

~~O. A description of the enrollment procedures to be used by the charter school that complies with Section 22-8B-4.1 NMSA 1978 and Subsection D of 6.80.4.12 NMAC.~~

~~P. An explanation of how approval of the charter school would be in the best interest of students, school district, and community where it intends to locate and serves a purpose in that community.]~~

~~[6.80.4.9 NMAC - Rp, 6.80.4.8 NMAC, 6/29/2007; A, 6/30/2008; A, 9/15/2020]~~

6.80.4.12 INITIAL REQUIREMENTS AND REVIEW PROCESS FOR START-UP CHARTER SCHOOLS:

A. Local school boards may approve the establishment of charter schools to be located in their respective school districts. The commission may approve the establishment of a charter school to be located anywhere in the state.

B. An applicant shall apply to only one chartering authority at a time. An applicant whose application has been denied by a chartering authority or approved with amendments unacceptable to the applicant may file the same application the following fiscal year with a different chartering authority.

C. Applications for start-up charter schools shall be submitted between June 1 and July 1 to be eligible for consideration for the following fiscal year. If July 1 falls on a Saturday or a Sunday, the deadline for filing applications shall be extended to the close of business of the ~~[very]~~ next Monday, even in the case of a school district closed for summer break. Applications will also be considered timely if they are postmarked four calendar days prior to July 1, regardless of the date on which they are received. Failure to submit a timely application shall result in an application being rejected by the authorizer, unless the parties agree to waive the filing deadline in accordance with Section 22-8B-6 NMSA 1978. Any such waiver shall be in writing and signed by persons authorized to take such action by the applicant and the chartering authority.

D. Enrollment in a start-up charter school shall be guided by the following.

(1) A charter applicant ~~[must]~~ shall enroll students on a first-come, first-served basis or through a lottery selection process if the total number of applicants exceeds the number of spaces available.

(2) A charter applicant shall advertise its enrollment process using newspapers, bulletin boards, and other methods designed to disseminate its availability to seek student enrollment and to ensure that there is equal opportunity for all parents and students to learn about the school and apply.

(3) A charter school shall not charge tuition or have admission requirements, except as otherwise provided in the Public School Code, Sections 22-1-1 et seq., NMSA 1978.

(4) In subsequent years of its operation, a charter school will give enrollment preference to previously properly admitted students who remain in attendance and siblings of students already admitted to or attending the school.

E. Any revision or amendment to the terms of the charter contract may be made only with the written approval of the authorizer.

F. A charter school shall be a nonsectarian, nonreligious, and non-home-based public school that operates within the geographic boundaries of a ~~[public]~~ school district.

G. A charter school shall comply with the following federal laws: Age Discrimination Act of 1975; Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; and Part B of the Individuals with Disabilities Education Act.

H. A charter school shall comply with the same federal and state audit requirements as do other public schools in the state.

I. A charter school shall meet all applicable federal, state, and local health and safety requirements.

J. A charter school shall operate in accordance with and under authority of state law.

K. A charter school shall provide equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

L. A charter school shall have an admissions process that does not discriminate against anyone on the basis of race, gender, national origin, color, disability, or age.

M. A charter school's head administrator or governing body shall not employ or approve the employment in any capacity of a person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, or sister-in-law of a member of the governing body or the head administrator. The governing body may waive the nepotism rule for family members of a head administrator.

N. Applications to the commission for establishment of a ~~[state-chartered]~~ state-chartered charter school shall be made to the division ~~[at its Albuquerque office]~~. Applications to a local school board for establishment of a locally chartered charter school shall be made to the superintendent of that school district.

O. An application for a start-up school may be made by one or more teachers, parents, community members, by a public ~~[post-secondary]~~ postsecondary educational institution, or a nonprofit organization.

P. The chartering authority shall be responsible for reviewing all applications for charter schools. Prior to the submission of the applications, the division shall provide at least three technical assistance workshops for prospective applicants on preparing a start-up application. The chartering authority shall not charge application fees.

Q. A review coordinator shall be used by the chartering authority to assist prospective applicants in the preparation of proposed charters. The ~~[assistant secretary for]~~ director of the division shall designate a review coordinator in the division for the commission. The superintendent shall appoint a review coordinator for the local school board, unless the superintendent of a school district performs this duty. Prior to the deadline for submission of applications established by the chartering authority, the review coordinator or superintendent and any prospective applicants shall confer in an attempt to identify:

(1) any concerns regarding noncompliance with requirements of the Charter Schools Act (Sections 22-8B-1 et seq., NMSA 1978), this rule, or other applicable state or federal laws or ~~[regulations]~~ rules which would arise from the establishment or operation of the proposed charter school;

(2) any licensure, curriculum, or other educational concerns which would arise from the establishment or operation of the proposed charter school; and

(3) any interests of the students, the school district, or the community which would be adversely affected by the establishment or operation of the proposed charter school and describe the apparent adverse effects.

R. Prospective applicants are to direct any request for technical assistance and information through the authorizer's designated review coordinator. The review coordinator or superintendent shall ensure that the appropriate staff members respond to requests from prospective applicants for information on school operations, policies, or practices which prospective applicants regard as necessary to enable them to present an approvable application. Prospective applicants may request information using the Inspection of Public Records Act ~~[(Chapter 14, Article 2 NMSA 1978)]~~ Sections 14-2-1 et seq. NMSA 1978. A review coordinator may require that requests for information not made pursuant to the Inspection of Public Records Act be in a format or directed to a specific person or office in the school district or department. Prospective applicants should not contact school district or department employees directly to obtain information.

S. Prior to the public meeting at which the decision is made, the chartering authority shall hold at least one public hearing to obtain information and community input to assist it in its decision whether to grant a charter school application. At any such hearing, which shall be duly noticed and held pursuant to the Open Meetings Act ~~[(Chapter 10, Article 15 NMSA 1978)]~~ Sections 10-15-1 et seq. NMSA 1978 and the requirements contained in the ~~[Laws 2009 Chapter 12]~~ Section 22-8B-6 NMSA 1978, members of the chartering authority may ask questions of the charter applicant and that applicant shall have an opportunity, subject to reasonable time limitations, to respond to any questions or concerns raised by any members of the chartering authority, and present to the chartering authority information that clarifies and verifies the information in the application that the applicant believes will assist the chartering authority in making its decision. Community input may include written or oral comments in favor of or in opposition to the application by the applicant, members of the local community, and other interested individuals. Community input shall be provided within a time limit established by the chartering authority.

T. A charter applicant shall respond to requests for information that the chartering authority regards as necessary to verify and clarify issues identified in the charter application. The charter applicant and the chartering authority ~~[each]~~ shall communicate in good faith in an attempt to verify and clarify issues identified in the charter application.

U. No earlier than three days after the public hearing to obtain information and community input, the chartering authority shall rule on the application in a public meeting. The public meeting at which the decision is made shall be held by September 1. The charter applicant and the chartering authority may, however, jointly waive the September 1 deadline provided they do so in a signed written statement. If not ruled upon by September 1, or the stipulated deadline, the charter application will be automatically reviewed by the secretary pursuant to the applicable provisions of Section 22-8B-7 NMSA 1978 and 6.80.4.14 NMAC.

V. A chartering authority may approve, approve with conditions, or deny an application. A chartering authority may deny an application where:

- (1) the application is incomplete or inadequate;
- (2) the application does not propose to offer an educational program consistent with the requirements and purposes of the Charter Schools Act [~~(Chapter 22, Article 8B-NMSA 1978)~~ Sections 22-8B-1 et seq. NMSA 1978;
- (3) the proposed head administrator or other administrative or fiscal persons were involved with another charter school whose charter was denied or revoked for fiscal mismanagement or the proposed head administrator or other administrative or fiscal member was discharged from a public school for fiscal mismanagement;
- (4) the public school capital outlay council has determined that the facilities do not meet the standards required in Section 22-8B-4.2 NMSA 1978;
- (5) for a proposed state-chartered charter school, it does not request the governing body to be designated as a board of finance, or the governing body does not qualify as a board of finance;
- (6) for a proposed charter school on tribal land, it fails to receive approval from the tribal government prior to the authorizer's decision on the proposed charter school; or
- ~~(6)~~ (7) the application is otherwise contrary to the best interests of the charter school's projected students, the local community, or the school district in whose geographic boundaries the applicant seeks to operate.

W. If the chartering authority denies a charter school application or approves the application with conditions, it shall state its reasons for the denial or imposition of conditions in writing within 14 days of the meeting. The written decision ~~[must]~~ shall be based upon the vote that was taken at the public meeting and reflect the stated reasons for the vote of the chartering authority to deny a charter school application or approve the application with conditions. The written decision shall include specific reference to those factors enumerated in Subsection V of 6.80.4.12 NMAC as well as a detailed explanation of the factor(s) that formed a basis for denial of the application, or approval with conditions, on a form developed by the department. If the chartering authority grants a charter, it shall deliver the approved charter to the applicant. The time within which to file notice of appeal shall commence upon receipt of the written denial. The chartering authority shall maintain a copy of the charter for its files.

X. If the approved charter contains a waiver request for release from department rules or the Public School Code, the applicant ~~[must]~~ shall follow the procedures on requesting waivers from the department. The department shall notify the authorizer and the charter school whether the request is granted or denied and, if denied, the reasons thereto.

Y. If the authorizer denies a charter school application or imposes conditions for approval that are unacceptable to the charter applicant, the applicant may appeal the decision to the secretary pursuant to Section 22-8B-7 NMSA 1978 and Section 6.80.4.14 NMAC.
[6.80.4.12 NMAC - Rp, 6.80.4.9 NMAC, 6/29/2007; A, 6/30/2008; A, 6/30/2009; A, 9/15/2020]

6.80.4.13 CHARTER SCHOOL RENEWAL PROCESS AND RENEWAL APPLICATIONS:

A. The governing body of a charter school seeking to renew its charter shall file its renewal application with a chartering authority no earlier than 270 days prior to the date the charter expires. Commencing with any charters that are due to expire at any time after January 1, 2008, all applications for renewal shall be submitted no later than October 1 of the fiscal year prior to the expiration of the school's charter. The chartering authority shall rule in a public meeting on the renewal application no later than January 1 of the fiscal year in which the charter expires.

B. The governing body may submit its charter renewal application to either the commission or to the local school board of the school district in which the charter school is located, but may not submit the renewal application to both authorizers simultaneously.

C. The application shall contain:

- (1) a report on the progress of the charter school in achieving the goals, objectives, student performance standards, state minimum educational standards, and other terms of the initial approved charter application, including the accountability requirements set forth in the Assessment and Accountability Act (Sections 22-2C-1 et seq., NMSA, 1978);
- (2) a financial statement that discloses the costs of administration, instruction, and other spending categories for the charter school that is understandable to the general public, that will allow comparison of costs to other schools or comparable organizations and that is in a format required by the department;
- (3) any changes to the original charter the governing board is requesting and any amendment to the initial charter, which were previously approved;

(4) a certified petition in support of the charter school renewing its charter status signed by not less than 65 percent of the employees in the charter school;

(5) a certified petition in support of the charter school renewing its charter status signed by at least 75 percent of the households whose children are enrolled in the charter school as identified in the school's 120-day report of the fiscal year prior to the expiration of the charter;

(6) a description of the charter school facilities and assurances that the facilities are in compliance with the requirements of Section 22-8B-4.2 NMSA 1978; ~~and~~

(7) a statement of the term of the renewal requested, if less than five years; if a charter school renewal application does not include a statement of the term of the renewal, it will be assumed that renewal is sought for a term of five years; and

(8) for charter schools located on tribal land, documentation of ongoing tribal consultation pursuant to Section 22-8B-12.2 NMSA 1978 and applicable federal laws and rules.

D. A chartering authority may refuse to renew a charter if it determines that:

(1) the charter school committed a material violation of any of the conditions, standards, or procedures set forth in the charter contract;

(2) the charter school failed to meet or make substantial progress toward achievement of the department's minimum educational standards or student performance standards. Failure to meet or make substantial progress toward achievement of the department's standards of excellence or student performance standards identified in the charter contract and defined by the following criteria:

~~(a)~~ Charter school earns a tier four rating as defined in the charter school academic performance framework, developed and approved by the ~~public education~~ commission, in the charter contract for the most recent two consecutive years or for three of the last four years, if available. ~~[or]~~

~~(b)~~ ~~charter school earns an F rating pursuant to Section 22-2E-1 NMSA 1978 for the most recent two consecutive years or any combination of D ratings or F ratings over the last three years;~~

(3) the charter school failed to meet generally accepted standards of fiscal management;

(4) the charter school violated any provision of law from which the charter school was not specifically exempted; ~~[or]~~

(5) the public school capital outlay council has determined that the facilities do not meet the standards required in Section 22-8B-4.2 NMSA 1978; or

(6) for a charter school located on tribal land, the charter school failed to comply with ongoing tribal consultation pursuant to Section 22-8B-12.2 NMSA 1978, Paragraph (8) of Subsection C of 6.80.4.13 NMAC, or applicable federal laws and rules.

E. If the chartering authority refuses to approve a charter school renewal application or approves the renewal application with conditions, it shall state its reasons for the non-renewal or imposition of conditions in writing within 14 days of the public meeting at which the vote was taken. The written decision ~~must~~ shall restate the motion that was voted on in the public meeting and ~~must~~ shall restate the reasons that were voted on in the public meeting during which the vote was taken. The written decision shall include specific reference to those factors enumerated in Subsection D of 6.80.4.13 NMAC as well as a detailed explanation of the factors that formed a basis for denial of the application, or approval with conditions, on a form developed by the department.

F. If the chartering authority grants renewal of a charter, it shall deliver the approved charter to the applicant and a copy to the chartering authority.

G. If the approved charter contains a waiver request for release from department rules or the Public School Code, the department shall notify the authorizer and the charter school whether the request is granted or denied and, if denied, the reasons thereto.

H. If the authorizer refuses to approve a charter school renewal application or imposes conditions for renewal that are unacceptable to the charter applicant, the applicant may appeal the decision to the secretary pursuant to Sections 22-8B-7 NMSA 1978 and 6.80.4.14 NMAC.

(I) If the chartering authority suspends, revokes, or does not renew the charter of a charter school located on tribal land, the chartering authority and charter school shall consult with the tribe pursuant to Subsections C and D of Section 22-8B-12.2 NMSA 1978.

~~(H-)~~ J. The provisions of this section shall apply to conversion schools.
[6.80.4.13 NMAC - Rp, 6.80.4.8 NMAC, 6/29/2007; A, 6/30/2008; A, 6/30/2009; A, 12/31/2018; A, 9/15/2020]

6.80.4.14 APPEALS TO THE SECRETARY:

A. Right of appeal. A charter applicant may appeal to the secretary from any chartering authority decision denying a charter school application, revoking or refusing to renew a previously approved charter, or

imposing conditions for approval or renewal that are unacceptable to the applicant. Appeals from suspension of governing bodies and head administrators by the secretary shall be governed by the procedures set forth in 6.30.6 NMAC [~~“Suspension of Authority of a Local School Board, Superintendent or Principal”~~].

B. Notice of appeal and appellant’s argument in support of appeal.

(1) Filing and service of notice and argument in support of appeal. A charter applicant or governing body of a charter school that wishes to appeal a decision of a chartering authority concerning the denial, nonrenewal, or revocation of a charter, or the imposition of conditions for approval or renewal that are unacceptable to the charter school or charter school applicant shall file and serve a written notice of appeal and its argument in support of appeal within 30 days after service of the chartering authority’s decision. One original copy plus four copies of the notice of appeal and argument in support of appeal together with the required attachments shall be filed with the secretary at the department’s main office in Santa Fe. No notice of appeal or argument in support of appeal, including exhibits or required attachments, shall be filed using compact disks, floppy disks, or email; instead, paper documents ~~[must]~~ shall be filed with the department.

(2) Appellant’s argument in support of appeal. The appellant’s argument in support of appeal shall include a statement of the reasons and argument in support of why the appellant contends the chartering authority’s decision was in error with reference to the standards set forth in Subsection B of Section 22-8B-7 NMSA 1978 that the authorizer acted arbitrarily or capriciously, rendered a decision not supported by substantial evidence, or did not act in accordance with law. The appellant shall limit the grounds of its appeal to the authorizer’s written reasons for denial, nonrenewal, revocation, or imposition of conditions.

(3) Required attachments. The appellant shall attach to each copy of the notice of appeal:

- (a) a copy of the chartering authority’s written decision, together with a copy of the authorizer’s minutes or draft minutes of the meeting if available; and
- (b) a copy of the charter or proposed charter in question.

C. Filing and service of other documents. An original document shall be filed with the secretary at the department’s main office in Santa Fe. Each party shall simultaneously serve a copy of all documents filed with the secretary including any attachments upon the other party at that party’s address of record on appeal. A party may file documents other than a notice of appeal and required documents referenced at Paragraph (5) of Subsection D of 6.80.4.14 NMAC [~~below~~], by email to the secretary provided that the email includes any attachments, as well as the sender’s name and mailing address. Filings with the secretary shall reflect by certification of the sender that a copy of all documents being submitted is simultaneously being served on the other party, the method of service, and the address where filed. Filing or service by mail is not complete until the documents are received.

D. Pre-hearing procedures.

(1) Within 10 days after receipt of the notice of appeal, the secretary shall inform the parties by letter of the date, time, and location for the appeal hearing.

(2) Except for brief inquiries about scheduling, logistics, procedure, or similar questions that do not address the merits of the case, neither party shall communicate with or encourage others to communicate with any employee of the department about a pending appeal unless the other party is simultaneously served with a copy of any written communication or has an opportunity to participate in any conversation by meeting or conference call. Nor shall any employee of the department initiate such prohibited communications. The secretary ~~[must]~~ shall disqualify himself or herself from hearing an appeal if the secretary determines, after learning of a prohibited communication, that the secretary is unable to render an unbiased decision. Appellants will be provided a point of contact in the letter referenced in Paragraph (1) of Subsection D of 6.80.4.14 NMAC.

(3) All submissions to the secretary on appeal shall focus on the factual and legal correctness of the chartering authority’s decision in light of the grounds upon which ~~[a] the chartering authority [may deny]~~ denied the [an] application, as set forth in Subsection [K] M of Section 22-8B-6 NMSA 1978 or the grounds for non-renewal or revocation as set forth in Subsection [F] K of [Section 22-8-12 NMSA 1978] Section 22-8B-12 NMSA 1978, and the standards for affirmance or reversal that the chartering authority’s decision was arbitrary, capricious, not supported by substantial evidence, or otherwise not in accordance with the law.

(4) Within 15 days of the mailing date of the appellant’s notice of appeal and reasons to the chartering authority, the chartering authority shall file one original copy and four copies with the secretary and serve upon the appellant one copy of the chartering authority’s response to the appellant’s arguments.

~~[(5) — The division shall review each party’s submissions and prepare a report for the secretary which:~~

~~(a) — analyzes and outlines the parties’ contentions on appeal with reference to the standards of Subsection K of Section 22-8B-6 and Subsections B and E of Section 22-8B-7 NMSA 1978;~~

~~(b) sets forth the staff's recommendations for the secretary to affirm or reverse the chartering authority's decision, with or without reasonable conditions or changes to the charter, and the reasons for those recommendations.~~

~~(6) At least five days before the hearing date, the division shall deliver its report and recommendations to the secretary and shall simultaneously serve a copy upon each party.]~~

~~(7)~~ (5) While an appeal is pending, the parties are strongly encouraged to continue discussions and negotiations in an effort to resolve the matter by agreement and reestablish productive working relations. An appellant may withdraw an appeal at any time before the secretary reaches a final decision. If an appeal is withdrawn, the secretary shall approve an appropriate order of dismissal. The secretary's decision and order may incorporate the terms of any agreement reached by the parties. An appeal which has been withdrawn may not be refiled.

E. Secretary hearing and decision.

(1) Within 60 days after receipt of the notice of appeal, the secretary, after a public hearing that may be held in Santa Fe or in the school district where the proposed charter school has applied for a charter, shall review the decision of the chartering authority and make written findings.

(2) Participants at the hearing before the secretary shall be the designated representatives of the appellant, the chartering authority, and the division and other department staff as appropriate.

(3) The time allotment for a hearing shall be three hours. Both parties shall be allowed up to 30 minutes for their presentations. Department staff shall be allowed 20 minutes for their presentation. The appellant may reserve part of its 30 minutes for rebuttal if desired. The order of presentations will be department staff, appellant, chartering authority, and rebuttal by the appellant if time has been reserved. The parties may present remarks from whomever they wish in their 30 minutes but ~~must~~ shall include any comments they wish to make on the staff recommendations within their allotted time. Presentations, questions, or discussions that exceed these limits may be ruled out of order by the secretary. The secretary may ask questions of the staff, the parties, or the secretary's counsel at any time and may take up to one hour after the staff's and the parties' presentations for further questions, discussion, and a decision. Unless stricken during the hearing for good cause or withdrawn, the parties can assume that the department staff and the secretary have reviewed their written submissions, which shall be deemed evidentiary submissions subject to be given increased or diminished weight based upon the oral presentations.

(4) All presentations and discussion before the secretary shall focus on the factual and legal correctness of the chartering authority's decision in light of the standards and grounds set forth in Subsection ~~[K]~~ M of Section 22-8B-6; Subsections B, C, or E of Section 22-8B-7; and Subsection ~~[F]~~ K of Section 22-8B-12 NMSA 1978.

(5) The secretary may reverse the decision of the chartering authority, with or without the imposition of reasonable conditions, if the secretary finds that the chartering authority:

- (a) acted arbitrarily or capriciously;
- (b) rendered a decision not supported by substantial evidence; or
- (c) did not act in accordance with the law.

(6) The secretary shall reverse a decision of the chartering authority denying an application, refusing to renew an application, or revoking a charter if the secretary finds that the decision was based upon a determination by the public school capital outlay council that the facilities of the proposed or existing charter school did not meet the standards required by Section 22-8B-4.2 NMSA 1978 and that the decision was:

- (a) arbitrary or capricious;
- (b) not supported by substantial evidence; or
- (c) otherwise not in accordance with the law.

(7) The department shall promptly serve a formal notice of the secretary's decision upon the parties to the appeal.

(8) A person aggrieved by a final decision of the secretary may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

F. The provisions of this section shall apply to conversion schools.

[6.80.4.14 NMAC - Rp, 6.80.4.10 NMAC, 6/29/2007; A, 6/30/2008; A, 10/15/2013; A, 12/31/2018; A, 9/15/2020]

6.80.4.17 NEW MEXICO SCHOOL FOR THE ARTS:

A. Upon approval by the commission, a state-chartered charter school may operate as the New Mexico school for the arts ("the school"), which shall be a statewide residential charter school for grades nine

through 12 offering intensive preprofessional instruction in the performing and visual arts combined with a strong academic program that leads to a New Mexico diploma of excellence.

B. An application to the commission for approval of a charter shall contain assurances of compliance together with a plan for how the school will accomplish the following requirements contained in the New Mexico School for the Arts Act, [~~being Laws 2008, Chapter 15, Sections 1 to 9~~] Sections 22-15F-1 et seq. NMSA 1978:

- (1) paying for all expenses associated with outreach activities and for room and board costs for students unable to pay all or part of the cost of room and board from a foundation or other private funding sources;
- (2) working with a foundation or soliciting other private funding sources to obtain gifts, grants, and donations to ensure that the school has adequate revenue to make the payments described in Paragraph (1) of Subsection B of 6.80.4.17 NMAC;
- (3) not using money received from the state other than charter school stimulus funds to make the payments described in Paragraph (1) of Subsection B of 6.80.4.17 NMAC;
- (4) admitting an equal number of students from each of the state's congressional districts, to the greatest extent possible and without jeopardizing admissions standards;
- (5) conducting its admissions process in a way that provides equal opportunity regardless of a student's prior exposure to artistic training and to the student's ability to pay for room and board; and
- (6) conducting admissions criteria-free outreach activities throughout the state each year that acquaint potential students with the programs at the school, to include programs specifically for middle school students and workshops for teachers.

C. By July 1 after the first year the school has provided preprofessional instruction in the performing and visual arts and by July 1 every year thereafter, the school shall submit a report simultaneously to the division and the commission containing:

- (1) non-personally identifiable demographic information about both applicants and students admitted to the school delineated by counties, congressional districts, socioeconomic status, gender, and ethnicity; and
- (2) the number of students who requested financial assistance for room and board, the total amount of financial assistance provided, and the amounts distributed delineated by the source of gifts, grants, and donations received by the school.

D. During the planning year, the school shall develop a sliding-fee scale subject to the following considerations:

- (1) the purpose of the sliding-fee scale is to defray all or part of the costs of room and board for students whose parents or guardians are financially unable to pay these fees;
- (2) in determining ability to pay, the school may use a variety of methods including but not limited to:
 - (a) self-disclosures in a financial aid application developed by the school;
 - (b) poverty thresholds as maintained by the United States census bureau;
 - (c) poverty guidelines as maintained by the United States department of health and human services;
 - (d) whether the public school that the student applicant most recently came from was a recipient of funds under Title I, Part A of the federal Elementary and Secondary Education Act of 1965, as amended;
 - (e) whether the student applicant for enrollment was eligible to receive free or reduced-price school meals at the public school previously attended; and
 - (f) the amount or percentage of assistance an enrolled student received for room and board the prior school year from the school; and

(3) the school shall submit its sliding-fee scale to the commission for initial approval during the planning year and may request changes at subsequent commission meetings for good cause shown.

E. It shall be the responsibility of the school to obtain adequate funding from private sources to pay annual outreach costs and to defray all or part of room and board fees for students financially unable to pay. No state funds except for charter school stimulus funds received and used during the planning year may be used for these purposes. Private funding sources available to the school shall include the use of a foundation or the soliciting and receipt of gifts, grants, and donations. Failure to secure adequate funding for these purposes shall constitute grounds for denial or revocation of a charter.

F. Except for provisions of this rule related to admission of students by lottery, admission on a first-come, first-serve basis, the ability to charge for residential fees, admissions criteria, and location of the school

anywhere in the state, all other provisions of this rule related to state-chartered charter schools shall apply to the school.

[6.80.4.17 NMAC - N, 6/30/2008; A, 12/31/2018; A, 9/15/2020]

6.80.4.18 DISTANCE LEARNING:

A. A charter school offering or seeking to offer distance learning courses to students shall comply with 6.30.8 NMAC.

B. Any charter school offering or seeking to offer distance learning courses in New Mexico pursuant to the Charter Schools Act, [~~Chapter 22, Article 8B NMSA 1978~~] Sections 22-8B-1 et seq. NMSA 1978, [~~must~~] shall be physically located in the state of New Mexico.

[6.80.4.18 NMAC - N, 6/30/2008; A, 9/15/2020]

6.80.4.19 LOTTERY WHEN CHARTER SCHOOL CAP IS EXCEEDED:

A. For purposes of compliance with Section 22-8B-11 NMSA 1978, the first five-year period shall be deemed to have ended in 2003 and the successive five-year periods begin in 2003.

B. If by October [~~first~~] 1, the chartering authorities have authorized more charter schools than permitted by Section 22-8B-11 NMSA 1978, the department shall notify all chartering authorities with newly authorized charter schools that those charter schools may not be established for operations until a lottery is held.

C. Within 45 days after determining that the cap for charter schools has been exceeded, the department shall conduct a lottery at a publicly noticed meeting to determine the available slots for charter schools. The department shall randomly draw the names of charter schools from the available pool of all charter schools that were authorized by October [~~first~~] 1. The charter schools whose names were drawn shall be given the available charter school slots until the maximum numbers of slots have been selected. The charter schools that are selected shall be approved for operation in the first fiscal year after the lottery. The charter schools whose names were not drawn shall be approved for operation in the second fiscal year after the lottery.

D. A charter school that was approved for operation in the second fiscal year after participation in a lottery shall not be subject to a second lottery in the event that in the second fiscal year more charter schools are authorized than permitted by Section 22-8B-11 NMSA 1978.

E. Any charter school authorized after October [~~first~~] 1 in a year in which the department conducts a lottery pursuant to this rule, shall be approved for operation no earlier than the second fiscal year after the school was authorized.

[6.80.4.19 NMAC - Rn, 6.80.4.17 NMAC, 6/30/2008; 6.80.4.19 NMAC - N, 6/30/2009; A, 9/15/2020]

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS
PART 17 PARTIAL CREDIT FOR ADJUDICATED OR MOBILE STUDENTS

6.30.18.1 ISSUING AGENCY: Public Education Department, hereinafter the “department”.
 [6.30.18.1 NMAC - N, 8/25/2020]

6.30.18.2 SCOPE: This rule shall apply to all public schools in New Mexico.
 [6.30.18.2 NMAC - N, 8/25/2020]

6.30.18.3 STATUTORY AUTHORITY: Sections 9-24-8, 22-2-1, 22-2-2, and 22-12A-14 NMSA 1978.
 [6.30.18.3 NMAC - N, 8/25/2020]

6.30.18.4 DURATION: Permanent.
 [6.30.18.4 NMAC - N, 8/25/2020]

6.30.18.5 EFFECTIVE DATE: June 23, 2020, unless a later date is cited at the end of a section.
 [6.30.18.5 NMAC - N, 8/25/2020]

6.30.18.6 OBJECTIVE: The purpose of this rule is to establish the parameters for awarding partial credits to students identified as adjudicated or mobile and who experience classroom disruption.
 [6.30.18.6 NMAC - N, 8/25/2020]

6.30.18.7 DEFINITIONS:

- A. “Adjudicated student”** means a student identified as one of the following:
- (1) neglected or abused;
 - (2) part of a family in need of court-ordered services;
 - (3) delinquent if the parent wishes to disclose the adjudication of delinquency; or
 - (4) placed in treatment foster care.
- B. “Mobile student”** means a student identified as one of the following:
- (1) migrant;
 - (2) foster;
 - (3) military dependent;
 - (4) placed in a mental health treatment facility or habilitation program for developmental disabilities pursuant to the Children’s Mental Health and Development Disabilities Act; or
 - (5) homeless as defined in the McKinney-Vento Homeless Act.
- C. “Partial credit form”** means the department-approved form that all public schools shall complete upon a student’s transfer.
- D. “Receiving school”** means the public school receiving the partial credit form.
- E. “Sending school”** means the public school sending the partial credit form.
- [6.30.18.7 NMAC - N, 8/25/2020]

6.30.18.8 SENDING SCHOOL REQUIREMENTS:

- A. Sending schools** shall award partial credit for work completed to students identified as adjudicated or mobile as defined in 6.30.18.7 NMAC.
- B. Sending schools** shall provide the transferring student’s records, including a department-approved partial credit form, within two business days of receiving a request from the receiving school.
- C. Sending schools** shall certify that the school district, charter school, or institution has implemented a student information system to track student credit accrual and facilitate accurate and timely transfer of student academic credit.
- [6.30.18.8 NMAC - N, 8/25/2020]

6.30.18.9 RECEIVING SCHOOL REQUIREMENTS:

- A. Receiving schools** shall request the transferring students’ records from the sending school within two business days.

B. Receiving schools shall apply all partial credits to the same or equivalent course and prioritize the adjudicated or mobile student's placement in courses within two business days of receiving the partial credit form.

C. Receiving schools shall certify that the school district, charter school, or institution has implemented a student information system to track student credit accrual and facilitate accurate and timely transfer of student academic credit.

[6.30.18.9 NMAC - N, 8/25/2020]

6.30.18.10 DETERMINATION OF PARTIAL CREDIT: An adjudicated or mobile student shall receive credit for any work completed prior to the transfer.

A. Public schools may award up to a maximum of one credit as follows for yearlong courses:

- (1) 0.25 credit for three to nine weeks of completed coursework;
- (2) 0.50 credit for 10 to 18 weeks of completed coursework;
- (3) 0.75 credit for 19 to 27 weeks of completed coursework; or
- (4) one credit for 28 to 36 weeks of completed coursework.

B. Public schools may award up to a maximum of one credit as follows for semester long courses:

- (1) 0.25 credit for three to nine weeks of completed coursework;
- (2) 0.50 credit for 10 to 11 weeks of completed coursework;
- (3) 0.75 credit for 12 to 14 weeks of completed coursework; or
- (4) one credit for 15 to 18 weeks of completed coursework.

[6.30.18.10 NMAC - N, 8/25/2020]

HISTORY OF 6.30.18 NMAC: [RESERVED]

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 64 SCHOOL PERSONNEL – COMPETENCIES FOR LICENSURE
PART 19 COMPETENCIES FOR ELEMENTARY MATHEMATICS SPECIALISTS

6.64.19.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
 [6.64.19.1 NMAC – N, 8/25/2020]

6.64.19.2 SCOPE: This rule applies to all institutions of higher education in New Mexico that establish or maintain a curriculum for persons seeking an endorsement as an elementary mathematics specialist to a state educator license.
 [6.64.19.2 NMAC – N, 8/25/2020]

6.64.19.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to Sections 22-2-1, 22-2-2, and 22-10A-3 NMSA 1978.
 [6.64.19.3 NMAC – N, 8/25/2020]

6.64.19.4 DURATION: Permanent.
 [6.64.19.4 NMAC – N, 8/25/2020]

6.64.19.5 EFFECTIVE DATE: August 25, 2020, unless a later date is cited at the end of a section.
 [6.64.19.5 NMAC – N, 8/25/2020]

6.64.19.6 OBJECTIVE: The objective of this rule is to establish elementary mathematics specialists competencies that are based on what elementary mathematics teachers are required to know and be able to support effective elementary mathematics programs in New Mexico schools. The competencies were developed to ensure alignment with the New Mexico content standards and benchmarks for mathematics and with the national standards of the association of mathematics teacher educators.
 [6.64.19.6 NMAC – N, 8/25/2020]

6.64.19.7 DEFINITIONS:

A. “Cultural and linguistic responsiveness” means learning environments, instructional materials, curriculum, support services, activities, and professional development that inform culturally and linguistically responsive pedagogy; reflect the cultures, languages, and lived experiences of a multicultural society; address multiple ethnic descriptions, interpretations, or perspectives of events and experiences; and encourage critical pedagogy.

B. “Professional learning experience” means the demonstration of leading professional learning or working with professional learning providers to support mathematics understanding and implementing content and pedagogy.

C. “Work experience” means the demonstration of knowledge and skills related to teaching mathematics.

[6.64.19.7 NMAC – N, 8/25/2020]

6.64.19.8 REQUIREMENTS:

A. Teachers seeking to add an endorsement as an elementary mathematics specialist to an existing New Mexico level two or level three-A teaching license shall meet the following requirements:

(1) hold a level two or three-A teaching license for a minimum of three years; and

(2) hold a teaching license in elementary education, as provided in 6.64.4 NMAC and 6.61.2

NMAC.

B. Teachers seeking to add an endorsement as an elementary mathematics specialist shall do so through one of the following pathways:

(1) Complete 30 semester hours in a department-approved professional preparation program and pass the middle school mathematics content knowledge assessment offered by Praxis; or

(2) Provide evidence of five years of relevant work and professional learning experience in K-8 mathematics. Candidates are required to provide demonstration of experience by submitting a resume and at least two verification letters stating the candidate has at least five years of relevant work and professional learning experience in the area of mathematics, which can be submitted from the following individuals:

(a) a school district superintendent, director of a charter school, or curriculum and instruction director; or

(b) professional learning providers director or team leader.

(3) Take and pass the middle school mathematics content knowledge assessment offered by Praxis; submit a passing score on a substantially similar subject knowledge middle grade mathematics assessment from another state, agency, or jurisdiction; or submit a valid, comparable certificate from the national board for professional teaching standards in mathematics, early adolescence, or mathematics, adolescence, and young adulthood; or

(4) Complete 18 semester hours of mathematics education coursework, of which nine semester hours are required to be upper division credit, in a department-approved program to include:

(a) three semester hours of multicultural education, which shall include supporting all learning in accessing mathematics;

(b) six semester hours of early mathematics development;

(c) three semester hours in mathematics pedagogical content knowledge, which shall include learning and learning, teaching, curriculum, and assessment;

(d) three semester hours of leadership, which shall cover topics of leadership knowledge and skills; and

(e) three semester hours of practicum, which shall include leadership challenges and issues that mathematics leaders encounter. The practicum experience shall include 35 hours of field experience shadowing a mathematics specialist or completing job-like activities in addition to participating in various projects, readings, and discussions as a member of a class.

[6.64.19.8 NMAC – N, 8/25/2020]

6.64.19.9 COMPETENCIES FOR ELEMENTARY MATHEMATICS SPECIALISTS: Leadership Knowledge and Skills:

(1) The elementary mathematics specialist takes an active role in their professional growth by participating in professional development opportunities that directly relate to the learning and teaching of mathematics and to their development as a mathematics instructional leader, which may include professional networks, journals, and discussion groups, among other opportunities. The opportunities shall also include occasion to stay informed of:

(a) critical issues in elementary mathematics;

(b) national, state, and school district or charter school policy initiatives;

(c) research- and evidence-based best practices for elementary math instruction;

(d) characteristics of high-quality curriculum;

(e) features of high-quality instructional materials; and

(f) qualities of superior professional learning and best practices for designing adult learning environments.

(2) The elementary mathematics specialist shall engage in and facilitate continuous and collaborative learning, drawing upon research in mathematics education to:

(a) inform practice and enhance learning opportunities for all students' and teachers' mathematical knowledge development;

(b) design and implement collaborative structures to build teacher capacity; and

(c) advance their own development and the development of others as reflective practitioners in utilizing group processes to collaboratively solve problems, make important decisions, manage conflict, and promote meaningful change.

(3) The elementary mathematics specialist shall act and communicate professionally with school and school district or charter school teams to assure high-quality mathematics instruction, including:

- (a) evaluate alignment of instructional materials to state standards and required assessments and make recommendations for addressing learning and achievement gaps;
 - (b) engage in discussions and decision-making to establish appropriate benchmarks for student learning goals from K-6;
 - (c) review curriculum and instructional materials for cultural and linguistic responsiveness and make recommendations to enhance culturally and linguistically diverse students' access to high-quality mathematics materials;
 - (d) determine the suitability of mathematics curricula and teaching materials (e.g., textbooks, technology, manipulatives) for particular learning goals;
 - (e) provision appropriate tools and resources targeted to specific individual student needs;
 - (f) collaborate with school-based professionals to develop evidence-based interventions for high- and low-achieving students; and
 - (g) collaborate with teachers and school administrators to secure additional resources as needed to maintain high expectations in mathematics classes for all students.
- (4) The elementary mathematics specialist shall plan, develop, implement, and evaluate professional development programs that assist teachers in using resources from professional mathematics organizations and support teachers in systematically reflecting and learning from practice.
- (5) The elementary mathematics specialist shall establish and maintain learning communities, such as professional learning communities.
- (6) The elementary mathematics specialist shall mentor new and experienced teachers to better serve students in terms of mathematics instruction and classroom support.
- (7) The elementary mathematics specialist shall nurture a culture of productive professionalism by:
- (a) modeling a growth mindset and productive disposition toward mathematics teaching and learning for all staff and students;
 - (b) supporting a culture of reflection, refinement, and action focused on continuous improvement in classroom best practices;
 - (c) fostering a culture of collective responsibility and a school climate that treats students as holistic beings;
 - (d) promoting the use of data analysis to drive decisions around mathematics instruction; and
 - (e) communicating and working with school staff, administrators, families, and various stakeholders to create mutually beneficial partnerships and a shared vision of mathematics teaching and learning.

[6.64.19.9 NMAC – N, 8/25/2020]

6.64.19.10 PEDAGOGICAL KNOWLEDGE FOR TEACHING MATHEMATICS:

A. To promote and advocate for equitable, high-quality mathematics instruction for all students, the elementary mathematics specialist shall collaborate with teachers and administrators in supporting the diversities of the classroom and school, including cultural, disability, linguistic, gender, socioeconomic, and developmental, to:

- (1) address issues of access and advancement at the individual student, classroom, school, school district, and charter school levels;
- (2) establish clear goals within individual student learning progressions that utilize and build upon learners' existing knowledge, skills, understandings, conceptions, and misconceptions to advance learning and use the goals to guide instructional decisions;
- (3) purposefully construct guidelines and support for promoting a mathematics learning culture within the classroom environment, including specific routines and instructional strategies that help cultivate positive mathematics identities for all students;
- (4) design student learning opportunities that:
 - (a) promote engagement in productive struggle and collaborative problem solving and extend the meaning and usefulness of mathematics in students' daily lives;
 - (b) intentionally reward effort in mathematical learning;

- (c) allow space for all students' mathematical sense-making and include multiple entry points into problem solving;
- (d) engage all students in making connection among mathematical representations to deepen understanding of mathematical concepts and procedures as tools for problem solving;
- (e) provide ample opportunity for all students to engage in academic discourse around mathematical problem solving as well as for individual expression in problem solving, such as through oral or written explanation or sharing of mathematical thinking;
- (f) utilize purposeful questions to assess and advance all students' reasoning and sense-making about important mathematical ideas and relationships;
- (g) diagnose and leverage mathematical misconceptions and errors to design appropriate learning opportunities that support all students' mathematical conceptual development, understandings, and identities;
- (h) integrate the use of appropriate mathematical tools and technology as essential resources to support students in making sense of mathematical ideas and communicating their mathematical thinking;
- (i) encourage mathematical explorations among peers to extend learning opportunities; and
- (j) assess all student abilities, through formative and summative assessments, and develop actionable strategies to help all students fill in learning gaps; and
- (5) Reflect and take action to adjust instructional approaches characterized by:
 - (a) the use of evidence to adjust instruction continually in ways that support and extend learning for all students, including differentiation and enrichment;
 - (b) the use of strategies deliberately designed to support specific groups of student learners; and
 - (c) organized support of delivery of developmentally appropriate instruction that is responsive to individual learners.

B. To promote pedagogical shifts and professional growth for self and teachers, the elementary mathematics specialist shall:

- (1) model effective problem solving and the mathematical practices, including questioning, representing, communicating, conjecturing, making connections, reasoning and providing, and self-monitoring, and cultivate the development of such practices in all learners;
- (2) model and support teachers and students in the use of technical language associated with mathematics, attending to both mathematical integrity and usability by learners;
- (3) support the use of various instructional applications of technology that are evidence-based and are developmentally-, mathematically-, and pedagogically-grounded;
- (4) research and share evidence-based instructional formats that support all students in accessing mathematical problems, including whole group, small group, partner, and individual, and that support success in achieving specific student learning goals;
- (5) support teachers in their analysis and evaluation of student ideas and work, and design appropriate responses to support and further student mathematical learning, aligned to individual goals;
- (6) apply learning trajectories related to mathematical topics and collaborate with teachers to sequence activities and design instructional tasks and assessments;
- (7) support teachers in the use of the formative assessment cycle, which includes administering a formative assessment task, analyzing student responses to the task, and designing and re-teaching lessons based on this analysis; and be able to find or create appropriate resources for this purpose;
- (8) support teachers in the use of multiple assessment strategies, including, but not limited to listening to and observing students making sense of mathematics, and in analyzing, choosing, designing, and adapting assessment tasks for monitoring student learning and to assess students' mathematical knowledge, based on students' individual learning goals and expressions and demonstrations of understanding; and
- (9) support teachers in the analysis of formative and summative assessment results and communication of results to students with actionable feedback and to appropriate and varied audiences for further support in making instructional decisions.

[6.64.19.10 NMAC – N, 8/25/2020]

HISTORY OF 6.64.19 NMAC: [RESERVED]

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION – HEALTH AND SAFETY
PART 12 ARMED PUBLIC SCHOOL SECURITY PERSONNEL

6.12.12.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
 [6.12.12.1 NMAC – N, 7/28/2020]

6.12.12.2 SCOPE: This rule applies to school districts, local school boards, state-chartered charter schools, and governing bodies of charter schools.
 [6.12.12.2 NMAC – N, 7/28/2020]

6.12.12.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to Sections 9-24-8, 22-2-1, 22-2-2, 22-5-18, 22-10A-5, 22-10A-40, 22-10A-41, and 28-2-4 NMSA 1978.
 [6.12.12.3 NMAC – N, 7/28/2020]

6.12.12.4 DURATION: Permanent.
 [6.12.12.4 NMAC – N, 7/28/2020]

6.12.12.5 EFFECTIVE DATE: July 28, 2020, unless a later date is cited at the end of a section.
 [6.12.12.5 NMAC – N, 7/28/2020]

6.12.12.6 OBJECTIVE: The objective of this rule is to provide parameters for a local school board or governing body of a charter school to authorize formerly certified and commissioned law enforcement officers employed by a school district or charter school as school security personnel to carry a firearm on school premises or other school property to mitigate loss of life during an emergency and until local law enforcement arrives.
 [6.12.12.6 NMAC – N, 7/28/2020]

6.12.12.7 DEFINITIONS:

A. “Firearm” means a handgun, as recommended by the department of public safety and authorized by the public school insurance authority, adopted for use by a local law enforcement agency in the jurisdiction within which a school district or charter school is located.

B. “School premises” means:

(1) the building and grounds, including playgrounds, playing fields, and parking areas, and any school bus or vehicle of a public school, whether owned or under contract by the school district or charter school, in or on which school or school-related activities are being conducted under the supervision of the local school board or governing body of a charter school; or

(2) any other public buildings or grounds, including playing fields and parking areas that are not public school property, in or on which school-related and school-sanctioned activities are being performed.

C. “School security personnel” means formerly certified and commissioned law enforcement officers employed by a school district or governing body of a charter school and authorized by department rules and local school board or governing body policy to carry a firearm on school premises.

[6.12.12.7 NMAC – N, 7/28/2020]

6.12.12.8 PROHIBITION OF EMPLOYMENT AS SCHOOL SECURITY PERSONNEL: Persons prohibited from employment as school security personnel include the following:

A. an individual who has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction relates to the employment as school security personnel;

B. an individual who has been convicted of trafficking in controlled substances, criminal sexual penetration or a related sexual offense, child abuse, or sexual exploitation of children;

C. an individual who has been subject to an employment investigation under Subsection H of Section 22-10A-5 NMSA 1978 that resulted in a finding of ethical misconduct, including:

(1) inappropriate touching;

(2) sexual harassment;

(3) sexual assault;

(4) sexual abuse;

(5) discrimination; or
 (6) behavior intended to induce a child into engaging in illegal, immoral, or other prohibited behavior.

D. an individual who has been convicted of battery on a household member or dependent, criminal damage to property of a household member or dependent, or stalking;

E. an individual who has been convicted of the negligent or illegal use of a firearm; or

F. an individual who has received formal discipline for the use of excessive force.

[6.12.12.8 NMAC – N, 7/28/2020]

6.12.12.9 EMPLOYMENT REQUIREMENTS OF SCHOOL SECURITY PERSONNEL: Each local school board and governing body of a charter school shall establish policies and procedures addressing pre-employment and continuing employment requirements for school security personnel. Policies and procedures shall include the following:

A. requirement of proof that the former law enforcement officer was certified and commissioned for no less than three years and left law enforcement in good standing;

B. successful completion of a 16-hour program of training, approved by the department in collaboration with the New Mexico public school insurance authority, for working with students with special needs, prior to employment as school security personnel;

C. successful completion of a four-hour program of training, approved by the department in collaboration with the New Mexico public school insurance authority, on cultural competency and prohibited profiling practices, prior to employment as school security personnel; and

D. proof of current firearms training and successful firearms qualification provided by a certified use-of-force instructor through a local law enforcement agency, or through a New Mexico law enforcement academy certified firearms instructor approved by a local law enforcement agency in the jurisdiction in which the school district or charter school is located. Firearms training shall include the following:

(1) an initial use-of-force training program of eight hours, prior to employment as school security personnel, including the following topics:

- (a) resistance;
- (b) confrontational dynamics;
- (c) deadly force (when it is justifiable);
- (d) communication;
- (e) self-control, fear, and anger management in the use of force;
- (f) consequences of unreasonable force;
- (g) vicarious liability;
- (h) legality of use of force in school setting by school security personnel;
- (i) documenting use of force;
- (j) search and seizure; and
- (k) other topics as recommended by the local law enforcement agency, school

district, or charter school;

(2) an initial firearms training program of 16 hours prior to employment as school security personnel;

(3) prior to employment as school security personnel and annually thereafter, a qualification shoot requiring qualifying scores that meet or exceed the New Mexico law enforcement academy standard scores in daytime qualification shoot and night or low light qualification shoot; and

(4) an annual firearms manipulation training program of four hours.

E. a background check indicating the individual has not been convicted of a crime or engaged in behavior that violates prohibitions against ethical misconduct pursuant to the New Mexico School Personnel Act, Section 22-10A-5 NMSA 1978, as ethical misconduct; or Subsection A of 6.12.12.8 NMAC; and

F. any other conditions required by law, department rule, or school district or charter school policy.
 [6.12.12.9 NMAC – N, 7/28/2020]

6.12.12.10 LIMITING SCOPE OF WORK OF ARMED SCHOOL SECURITY PERSONNEL: Each school board or governing body of a charter school shall adopt policies and procedures prohibiting armed school security personnel from performing any other job in the school district or charter school, by title or duty, other than

school security, while carrying a firearm. School security personnel do not have the power of arrest or detention as do school resource officers and law enforcement agents.
[6.12.12.10 NMAC – N, 7/28/2020]

6.12.12.11 ADDITIONAL SCHOOL SECURITY PERSONNEL REQUIREMENTS:

A. Prior to school security personnel being permitted to carry firearms as authorized by department rule and local school board or governing body policy, school security personnel shall successfully pass a physical and psychological evaluation to determine suitability to carry a firearm.

- (1) The physical examination shall:
 - (a) be conducted and signed by a licensed medical doctor;
 - (b) be completed on the department-approved form; and
 - (c) indicate the individual is fit for duty.
- (2) The psychological evaluation shall:
 - (a) be conducted and signed by a licensed psychologist;
 - (b) be completed on the department-approved form; and
 - (c) indicate the individual is fit for duty.

B. The school district or charter school shall bear the cost of the physical and psychological evaluations for current and potential school security personnel.

[6.12.12.11 NMAC – N, 7/28/2020]

6.12.12.12 SCHOOL SECURITY PERSONNEL CONSTRUCTION: Nothing in this rule shall be construed as:

A. Allowing armed school security personnel to carry firearms on school premises if doing so would be a violation of state or federal law; or

B. Applying to school resource officers.

[6.12.12.12 NMAC – N, 7/28/2020]

HISTORY OF 6.12.12 NMAC: [RESERVED]

~~TITLE 6 — PRIMARY AND SECONDARY EDUCATION~~
~~CHAPTER 11 — PUBLIC SCHOOL ADMINISTRATION — STUDENT RIGHTS AND RESPONSIBILITIES~~
~~PART 2 — RIGHTS AND RESPONSIBILITIES OF THE PUBLIC SCHOOLS AND PUBLIC~~
~~SCHOOL STUDENTS~~

~~6.11.2.1 — ISSUING AGENCY: Public Education Department~~
~~[08/15/1997; 07/30/1999; 6.11.2.1 NMAC — Rn, 6 NMAC 1.4.1, 11/30/2000; A, 11/13/2009]~~

~~6.11.2.2 — SCOPE: This rule applies to public schools and public school students.~~
~~[08/15/1997; 6.11.2.2 NMAC — Rn, 6 NMAC 1.4.2, 11/30/2000; A, 11/13/2009]~~

~~6.11.2.3 — STATUTORY AUTHORITY: This rule is adopted pursuant to Sections 22-2-1, 22-2-2, and 22-5-4.12 NMSA 1978 and 42 U.S.C. 11431 et seq., the McKinney-Vento Homelessness Assistance Act.~~
~~[8/15/1997; 6.11.2.3 NMAC — Rn, 6 NMAC 1.4.3, 11/30/2000; A, 11/13/2009; A, 7/1/2018]~~

~~6.11.2.4 — DURATION: Permanent~~
~~[08/15/1997; 6.11.2.4 NMAC — Rn, 6 NMAC 1.4.4, 11/30/2000]~~

~~6.11.2.5 — EFFECTIVE DATE: August 27, 1997, unless a later date is cited at the end of a section.~~
~~[08/15/1997; 6.11.2.5 NMAC — Rn, 6 NMAC 1.4.5 & A, 11/30/2000]~~

~~6.11.2.6 — OBJECTIVE: To provide a comprehensive framework within which local school boards and local school districts can carry out their educational mission and exercise their authority and responsibility to provide a safe environment for student learning, and further to provide students and parents with an understanding of the basic rights and requirements necessary to effectively function in the educational community.~~
~~[08/15/1997; 6.11.2.6 NMAC — Rn, 6 NMAC 1.4.6, 11/30/2000]~~

~~6.11.2.7 — DEFINITIONS:~~

~~A. "Administrative authority" means the local school district superintendent, a principal or a person authorized by either to act officially in a matter involving school discipline or the maintenance of order. The term may include school security officers, but only to the extent of their authority as established under written local school board policies.~~

~~B. "Criminal acts" are acts defined as criminal under federal and state law, and any applicable municipal or county criminal ordinances.~~

~~C. "Delinquent acts" are acts so defined in Subsection A of Section 32A-2-3 NMSA 1978 of the Delinquency Act.~~

~~D. "Detention" means requiring a student to remain inside or otherwise restricting his or her liberty at times when other students are free for recess or to leave school.~~

~~E. "Disciplinarian" means a person or group authorized to impose punishment after the facts have been determined by a hearing authority.~~

~~F. "Disruptive conduct" means willful conduct which:~~
~~(1) materially and in fact disrupts or interferes with the operation of the public schools or the orderly conduct of any public school activity, including individual classes; or~~
~~(2) leads an administrative authority reasonably to forecast that such disruption or interference is likely to occur unless preventive action is taken.~~

~~G. "Expulsion" means the removal of a student from school either permanently or for an indefinite time exceeding 10 school days or a locally established lesser period.~~

~~H. "Gang related activity" is disruptive conduct.~~

~~I. "Hearing authority" means a person or group designated to hear evidence and determine the facts of a case at the required formal hearing.~~

~~J. "Immediate removal" means the removal of a student from school for one school day or less under emergency conditions and without a prior hearing.~~

~~K. "In-school suspension" means suspending a student from one or more regular classes while requiring the student to spend the time in a designated area at the same school or elsewhere.~~

~~L. "Legal limits" include the requirements of the federal and state constitutions and governing statutes, standards and regulations, and also include the fundamental common law requirement that rules of student~~

conduct be reasonable exercises of the schools' authority in pursuance of legitimate educational and related functions. There are special limitations arising from constitutional guarantees of protected free speech and expression which must be balanced against the schools need to foster an educational atmosphere free from undue disruptions to appropriate discipline.

_____ **M.** "Long term suspension" means the removal of a student from school for a specified time exceeding either 10 school days or any lesser period a local school board may set as a limit on temporary suspension.

_____ **N.** "Mechanical restraint" means the use of any device or material attached or adjacent to the student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove, but "mechanical restraint" does not include mechanical supports or protective devices.

_____ **O.** "Parent" means the natural parent, a guardian or other person or entity having custody and control of a student who is subject to the Compulsory School Attendance Law, Section 22-12-1 et seq. NMSA 1978, or the student if the student is not subject to compulsory attendance.

_____ **P.** "Physical restraint" means the use of physical force without the use of any device or material that restricts the free movement of all or a portion of a student's body, but "physical restraint" does not include physical escort.

_____ **Q.** "Public school" means the campus of and any building, facility, vehicle or other item of property owned, operated, controlled by or in the possession of a local school district. For purposes of student discipline, the term also includes any non school premises being used for school sponsored activities.

_____ **R.** "Refusal to cooperate with school personnel" means a student's willful refusal to obey the lawful instructions or orders of school personnel whose responsibilities include supervision of students.

_____ **S.** "Refusal to identify self" means a person's willful refusal, upon request from school personnel known or identified as such to the person, to identify himself or herself accurately.

_____ **T.** "Restraint" when not otherwise modified means mechanical or physical restraint.

_____ **U.** "Review authority" is a person or group authorized by the local board to review a disciplinarian's final decision to impose a long term suspension or expulsion.

_____ **V.** "Seclusion" means the involuntary confinement of a student alone in a room from which egress is prevented. "Seclusion" does not mean the use of a voluntary behavior management technique, including a timeout location, as part of a student's education plan, individual safety plan, behavioral plan or individualized education program that involves the student's separation from a larger group for purposes of calming.

_____ **W.** "Sexual harassment", regarding students, means unwelcome or unwanted conduct of a sexual nature (verbal, non verbal or physical) when:

_____ (1) submission to such conduct is made either explicitly or implicitly a term or condition of the advancement of a student in school programs or activities;

_____ (2) submission to or rejection of such conduct by a student is used as the basis for decisions/opportunities affecting the student;

_____ (3) such conduct substantially interferes with a student's learning or creates an intimidating, hostile or offensive learning environment.

_____ **X.** "School personnel" means all members of the staff, faculty and administration employed by the local school board. The term includes school security officers, school bus drivers and their aides, and also authorized agents of the schools, such as volunteers or chaperons, whose responsibilities include supervision of students.

_____ **Y.** "Student" means a person who is enrolled in one or more classes at a public school or a person who was a student during the previous school year and is participating in a school sponsored activity connected with his or her prior status as a student.

_____ **Z.** "Student experiencing homelessness" means children and youth as defined by Section 725(2) of the federal McKinney Vento Act.

_____ **AA.** "Temporary suspension" means the removal of a student from school for a specified period of 10 school days or less after a rudimentary hearing.

_____ **BB.** "Weapon" as set forth in Section 22-5-4.7 NMSA 1978 means:

_____ (1) any firearm that is designed to, may readily be converted to or will expel a projectile by the action of an explosion; and

_____ (2) any destructive device that is an explosive or incendiary device, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one quarter ounce, mine or similar device.

[8/15/1997; 6.11.2.7 NMAC Rn, 6 NMAC 1.4.7, 11/30/2000; A, 7/1/2018]

6.11.2.8 GENERAL PROVISIONS:

A. Jurisdiction over students. All officials, employees and authorized agents of the public schools whose responsibilities include supervision of students shall have comprehensive authority within constitutional bounds to maintain order and discipline in school. In exercising this authority, such officials, employees and authorized agents of the public schools may exercise such powers of control, supervision, and correction over students as may be reasonably necessary to enable them to properly perform their duties and accomplish the purposes of education. This authority applies whenever students are lawfully subject to the schools' control, regardless of place. During such periods, public school authorities shall have the right to supervise and control the conduct of students, and students shall have the duty to submit to the schools' authority. The foregoing is intended to reflect the common law regarding the rights, duties and liabilities of public school authorities in supervising, controlling and disciplining students. Nothing herein shall be construed as enlarging the liability of public school authorities beyond that imposed by statute, common law or public education department rule.

B. School authority over non students. In furtherance of the state's compelling interest in the orderly operation of the public schools and school activities, school officials have the following forms of authority over non students whose actions adversely affect school operations or activities.

(1) On school property: Local school boards may prohibit entry to and provide for the removal from any public school building or grounds of any person who refuses to identify him/herself and state a lawful purpose for entering. Any person who refuses may be removed by school authorities, who may use reasonable physical force to accomplish the removal. Alternately, a person who refuses and who then refuses a lawful request to leave school premises may be subject to arrest by law officers for criminal offenses including but not limited to criminal trespass, interference with the educational process or disorderly conduct. A person who does identify him/herself and states a lawful purpose may nevertheless be subject to removal by school officials for engaging in activities prohibited by this rule. The person may also be subject to arrest by law officers if (s)he is committing any crime.

(2) Off school property: Public school authorities have indirect and limited authority over the activities of non students off school property. To the extent that non students' conduct at or near schools or school sponsored activities may constitute a criminal offense, including the crimes of interference with the educational process, disorderly conduct or criminal trespass (after refusing a lawful request to leave), school authorities may request law enforcement agencies to arrest the offenders.

C. Statement of policy. A primary responsibility of the New Mexico public schools and their professional staffs shall be to instill in students an appreciation of our representative form of government, the rights and responsibilities of the individual or group and the legal processes whereby necessary changes are effected.

(1) The school is a community and the rules and regulations of a school are the laws of that community. All persons enjoying the rights of citizenship are subject to the laws of their community. Each carries with it a corresponding obligation.

(2) The right to attend public school is not absolute. It is conditioned on each student's acceptance of the obligation to abide by the lawful rules of the school community until and unless the rules are changed through lawful processes.

(3) Teachers, administrators and other school employees also have rights and duties. Teachers are required by law to maintain a suitable environment for teaming in their classes and to assist in maintaining school order and discipline. Administrators are responsible for maintaining and facilitating the educational program by ensuring an orderly, safe environment in the public schools. In discharging their duties, all school employees have the right to be free from intimidation or abuse and to have their lawful requests and instructions followed.

(4) Nothing in this rule shall be held to affect the due process rights of school employees or their use of any local school district grievance procedure. This rule does not address employment disputes.

D. Local school board authority: Local school boards have both the authority and the responsibility to ensure that suitable rules of student conduct and appropriate disciplinary processes are established within their school districts. Within legal limits as defined in Subsection L. of 6.11.2.7 NMAC above, and subject to the minimums prescribed in this rule, local boards have discretion to develop such rules, regulations, policies and procedures as they deem appropriate to local conditions, including policies which afford students more protection than the minimums established here. Local school boards and administrative authorities which deem it appropriate may provide for student, community or appropriate state and local agency participation in the formulation and enforcement of school rules.

~~E. Severability: Any part of this rule found by adjudication before a competent tribunal to be contrary to law shall be stricken without effect to the remainder.
[08/15/1997; 6.11.2.8 NMAC Rn, 6 NMAC 1.4.8, 11/30/2000; A, 11/13/2009]~~

~~**6.11.2.9 RULES OF CONDUCT FOR NEW MEXICO PUBLIC SCHOOLS:** The acts specified in Subsection A. of 6.11.2.9 NMAC below are prohibited in all the public schools of New Mexico. Within legal limits as defined in Subsection L. of 6.11.2.7 NMAC above, local school boards have discretion to develop rules of conduct governing all others area of student and school activity.~~

~~A. Prohibited activities: The commission of or participation in the activities designated below is prohibited in all New Mexico public schools and is prohibited for students whenever they are subject to school control. Acts prohibited by this rule:~~

- ~~(1) criminal or delinquent acts;~~
- ~~(2) gang related activity;~~
- ~~(3) sexual harassment;~~
- ~~(4) disruptive conduct;~~
- ~~(5) refusal to identify self; and~~
- ~~(6) refusal to cooperate with school personnel.~~

~~B. Regulated activities: Beyond those activities designated above as prohibited, all other areas of student conduct may be regulated within legal limits by local school boards as they deem appropriate to local conditions. Conduct by non students which affects school operations may be regulated within legal limits pursuant to any of the forms of authority described in Subsection B. of 6.11.2.8 NMAC above. Activities subject to local board regulation within legal limits include, but are not limited to:~~

- ~~(1) school attendance;~~
- ~~(2) use of and access to the public schools, including:

 - ~~(a) restrictions on vehicular traffic on school property;~~
 - ~~(b) prohibition of or conditions on the presence of non school persons on school grounds or in school buildings while school is in session; and~~
 - ~~(c) reasonable standards of conduct for all persons attending school sponsored activities or other activities on school property;~~~~
- ~~(3) students' dress and personal appearance;~~
- ~~(4) use of controlled substances, alcohol and tobacco in the public schools;~~
- ~~(5) speech and assembly within the public schools;~~
- ~~(6) publications distributed in the public schools;~~
- ~~(7) the existence, scope and conditions of availability of student privileges, including extracurricular activities and rules governing participation;~~
- ~~(8) by statute, Section 22 5 4.7 NMSA 1978, each school district is required to adopt a policy providing for the expulsion from school, for a period of not less than one year, of any student who is determined to have knowingly brought a weapon to a school under the jurisdiction of the local board; the local school board or the superintendent of the school district may modify the expulsion requirement on a case by case basis; the special rule provisions of Subsection D. of 6.11.2.11 NMAC apply to students with disabilities;~~
- ~~(9) the discipline of students for out of school conduct having a direct and immediate effect on school discipline or the general safety and welfare of the school.~~

~~[08/15/1997; 6.11.2.9 NMAC Rn, 6 NMAC 1.4.9, 11/30/2000; A, 11/13/2009]~~

~~**6.11.2.10 ENFORCING RULES OF CONDUCT:**~~

~~A. Enforcing attendance requirements. Formal enforcement action under the Compulsory School Attendance Law, supra, and the Family Services Act, Section 32A 3A 1 et seq. NMSA 1978 shall be initiated whenever a student's absences indicate that the law is being violated. An administrative authority who has reason to believe a student is violating local school board attendance policies may take whatever further disciplinary action is deemed appropriate under local policies.~~

~~B. Search and seizure: School property assigned to a student and a students person or property while under the authority of the public schools are subject to search, and items found are subject to seizure, in accordance with the requirements below.~~

- ~~(1) Notice of search policy. Students shall be given reasonable notice, through distribution of written policies or otherwise, of each school's policy on searches at the beginning of each school year or upon admission for students entering during the school year.~~

~~(2) Who may search. Certified school personnel, school security personnel and school bus drivers are "authorized persons" to conduct searches when a search is permissible as set forth below. An authorized person who is conducting a search may request the assistance of some other person(s), who upon consent become(s) an authorized person for the purpose of that search only.~~

~~(3) When search permissible. Unless local school board policy provides otherwise, an authorized person may conduct a search when the authorized person has a reasonable suspicion that a crime or other breach of disciplinary rules is occurring or has occurred. An administrative authority may direct or conduct a search under the same conditions and also when the administrative authority has reasonable cause to believe that a search is necessary to help maintain school discipline.~~

~~(4) Conduct of searches; witnesses. The following requirements govern the conduct of permissible searches by authorized persons:~~

~~(a) School property, including lockers and school buses, may be searched with or without students present unless a local school board or administrative authority provides otherwise. When students are not present for locker searches, another authorized person shall serve as a witness whenever possible. Locks furnished by students should not be destroyed unless a student refuses to open one or circumstances otherwise render such action necessary in the judgment of the administrative authority.~~

~~(b) Student vehicles when on campus or otherwise under school control and students' personal effects which are not within their immediate physical possession may be searched in accordance with the requirements for locker searches.~~

~~(c) Physical searches of a student's person may be conducted only by an authorized person who is of the same sex as the student, and except when circumstances render it impossible may be conducted only in the presence of another authorized person of the same sex. The extent of the search must be reasonably related to the infraction, and the search must not be excessively intrusive in light of the student's age and sex, and the nature of the infraction.~~

~~(5) Seizure of items: Illegal items, legal items which threaten the safety or security of others and items which are used to disrupt or interfere with the educational process may be seized by authorized persons. Seized items shall be released to appropriate authorities or a student's parent or returned to the student when and if the administrative authority deems appropriate.~~

~~(6) Notification of law enforcement authorities: Unless a local school board policy provides otherwise, an administrative authority shall have discretion to notify the local children's court attorney, district attorney or other law enforcement officers when a search discloses illegally possessed contraband material or evidence of some other crime or delinquent act.~~

~~C. Basis for disciplinary action: A student may appropriately be disciplined by administrative authorities in the following circumstances:~~

~~(1) for committing any act which endangers the health or safety of students, school personnel or others for whose safety the public school is responsible, or for conduct which reasonably appears to threaten such dangers if not restrained, regardless of whether an established rule of conduct has been violated;~~

~~(2) for violating valid rules of student conduct established by the local school board or by an administrative authority to whom the board has delegated rulemaking authority, when the student knew or should have known of the rule in question or that the conduct was prohibited; or~~

~~(3) for committing acts prohibited by this rule, when the student knew or should have known that the conduct was prohibited.~~

~~D. Selection of disciplinary sanctions: Within legal limits as defined in Subsection L of 6.11.2.7 NMAC above, local school boards have discretion to determine the appropriate sanction(s) to be imposed for violations of rules of student conduct, or to authorize appropriate administrative authorities to make such determinations.~~

~~(1) School discipline and criminal charges: Appropriate disciplinary actions may be taken against students regardless of whether criminal charges are also filed in connection with an incident.~~

~~(2) Nondiscriminatory enforcement: Local school boards and administrative authorities shall not enforce school rules or impose disciplinary punishments in a manner which discriminates against any student on the basis of race, religion, color, national origin, ancestry, sex, or disability, except to the extent otherwise permitted or required by law or regulation. This statement shall not be construed as requiring identical treatment of students for violation of the same rule; it shall be read as prohibiting differential treatment which is based on race, religion, color, national origin, ancestry, sex, or disability rather than on other differences in individual cases or students.~~

~~E. Restraint and seclusion: In accordance with Section 22-5-4.12 NMSA 1978, each school shall follow requirements for the use of restraint and seclusion techniques.~~

~~(1) Schools shall establish and review annually policies and procedures, as approved by the local school board or governing body, for the use of restraint and seclusion techniques. Such policies and procedures shall require and describe appropriate training for school personnel and shall include requirements in relation to the use of restraint and seclusion techniques.~~

~~(a) A school may permit the use of restraint and seclusion techniques on any student pursuant to the requirements in Section 22-5-4.12 NMSA 1978.~~

~~(b) Less restrictive interventions, including positive behavioral intervention supports or other comparable behavior management techniques, shall be implemented prior to the use of restraint and seclusion techniques.~~

~~(c) If a restraint or seclusion technique is used on a student, trained and authorized school employees shall maintain continuous visual observation and monitoring of the student while the restraint or seclusion technique is in use, pursuant to the requirements in Section 22-5-4.12 NMSA 1978.~~

~~(2) Districts or charter schools shall develop and implement an annual training for designated school personnel regarding positive behavioral intervention supports or comparable behavior management techniques and the use of restraint and seclusion techniques. In the event that new designated school personnel are employed within the school after the provision of the annual training, the principal of the school, or a person authorized to act officially in a matter involving school discipline or the maintenance of order within the school, shall ensure that a training is provided to new designated school personnel within 60 days of employment.~~

~~(3) Schools shall update school safety plans.~~

~~(a) A school safety plan pursuant to requirements of Paragraph (7) of Subsection D of 6.12.6.8 NMAC shall include additional minimum requirements.~~

~~(i) The school safety plan shall not be specific to any individual student.~~

~~(ii) The school safety planning team shall include at least one of each of the following: administrator, educator, and special education expert and may include a counselor or social worker, nurse, and school resource officer or security staff.~~

~~(b) A school safety plan pursuant to requirements of Paragraph (7) of Subsection D of 6.12.6.8 NMAC shall be submitted to the department on a triennial basis, on a schedule as determined by the department. Notice of school safety plan submittal will be provided by the department to local education agencies 90 days prior to the due date.~~

~~(4) Schools shall establish reporting and documentation procedures pursuant to the requirements listed in Section 22-5-4.12 NMSA 1978. In addition, schools shall provide written or oral assurance of secure storage and access to written documentation in accordance with 20 U.S.C. § 1232g; 34 CFR Part 99, Family Educational Rights and Privacy Act, as well as any other applicable federal or state laws or rules governing the privacy of such documents.~~

~~(5) Exemptions to the requirements prescribed in Subsection E of 6.11.2.10 NMAC shall be pursuant to Subsections G and H of Section 22-5-4.12 NMSA 1978.~~

~~F. Corporal punishment: Corporal punishment shall be prohibited by each local school board and each governing body of a charter school pursuant to Subsection B of Section 22-5-4.3 NMSA 1978. Restraint or seclusion techniques used in compliance with Subsection E of 6.11.2.10 NMAC shall not be deemed to be corporal punishment.~~

~~G. Detention, suspension and expulsion: Where detention, suspension or expulsion is determined to be the appropriate penalty, it may be imposed only in accordance with procedures that provide at least the minimum safeguards prescribed in 6.11.2.12 NMAC, below. Suspensions or expulsions of students with disabilities shall be subject to the further requirements of Subsection I of 6.11.2.10 NMAC and 6.11.2.11 NMAC below.~~

~~H. Discipline of students experiencing homelessness: Removing students experiencing homelessness from school shall be used only as a last resort, pursuant to the requirements in 42 U.S.C. 11431 et seq., the McKinney Vento Homelessness Assistance Act.~~

~~(1) Public schools shall develop discipline policies and procedures that are reviewed at least annually and align with local school board or governing body policies. Policies and procedures shall:~~

~~(a) through professional development activities, create an awareness among educators and administrators of the types of behaviors that students experiencing homelessness may exhibit due to homelessness and provide strategies and supports to address the behaviors through the student assistance team process in accordance with Subsection D of 6.29.1.9 NMAC;~~

~~(b) take into account the issues related to a student's homelessness by talking with the student and applicable staff and families prior to taking disciplinary action;~~

_____ (c) _____ consult with school behavior response teams or other applicable personnel to assign appropriate discipline related to the behavior;

_____ (d) _____ implement discipline alternatives to out of school suspensions or expulsions or classroom removals, if possible; and

_____ (e) _____ connect students with mental health services as needed.

_____ (2) _____ Public schools shall review school discipline records and data of students experiencing homelessness in order to identify any patterns in disciplinary actions that indicate an unfair bias against the students. The collection and review of such records shall be in compliance with the Family Educational Rights and Privacy Act, as well as any other applicable federal or state laws or rules governing the privacy of such documents.

_____ **I. Discipline of students with disabilities:** Students with disabilities are not immune from school disciplinary processes, nor are they entitled to remain in a particular educational program when their behavior substantially impairs the education of other children in the program. However, the public schools are required by state law and regulations to meet the individual educational needs of students with disabilities to the extent that current educational expertise permits. Public school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, consistent with the other requirements of 6.11.2.11 NMAC, is appropriate for a student with a disability who violates a code of conduct as provided in 34 CFR Sec. 300.530.

_____ (1) _____ Long term suspensions or expulsions of students with disabilities shall be governed by the procedures set forth in 6.11.2.11 NMAC below.

_____ (2) _____ Temporary suspensions of students with disabilities may be imposed in accordance with the normal procedures prescribed in Subsection D of 6.11.2.12 NMAC below, provided that the student is returned to the same educational placement after the temporary suspension and unless a temporary suspension is prohibited under the provisions of Paragraph (3) of Subsection I of 6.11.2.10 NMAC below.

_____ (3) _____ Program prescriptions. A student with a disability's individualized education program (IEP), under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), need not affirmatively authorize disciplinary actions which are not otherwise in conflict with this rule. However, the IEP team may prescribe or prohibit specified disciplinary measures for an individual student with a disability by including appropriate provisions in the student's IEP. Administrative authorities shall adhere to any such provisions contained in a student with a disability's IEP, except that an IEP team may not prohibit the initiation of proceedings for long-term suspension or expulsion which are conducted in accordance with this rule.

_____ (4) _____ Immediate removal. Immediate removal of students with disabilities may be done in accordance with the procedures of Subsection C of 6.11.2.12 NMAC below.

_____ (5) _____ A student who has not been determined to be eligible for special education and related services under 6.31.2 NMAC and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in this subsection if the conditions set forth in 34 CFR Sec. 300.534 have been met.

_____ (6) _____ Referral to and action by law enforcement and judicial authorities.

_____ (a) _____ Nothing in these rules of conduct prohibits an administrative authority from reporting a crime committed by a student with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

_____ (b) _____ Transmittal of records.

_____ (i) _____ An administrative authority reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted, for consideration by the appropriate authorities, to whom the administrative authority reports the crime.

_____ (ii) _____ An administrative authority reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

[08/15/1997; 6.11.2.10 NMAC Rn, 6 NMAC 1.4.10, 11/30/2000; A, 6/29/2007; A, 11/13/2009; A, 10/31/2011; A, 7/1/2018]

6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

_____ **A. General.** The following rules shall apply when a student with a disability under IDEA violates a rule of conduct as set forth in this rule which may result in:

_____ (1) _____ long term suspension or expulsion; or

_____ (2) _____ any other disciplinary change of the student's current educational placement as specified in the federal regulations implementing IDEA at 34 CFR Secs. 300.530 through 300.536 and these or other public education department rules and standards.

_____ **B.** _____ When behavior is not a manifestation of disability. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to Subsection C of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in Subsection I of this section.

_____ **C.** _____ Manifestation determination.

_____ (1) _____ Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a rule of student conduct, the administrative authority, the parent and relevant members of the child's IEP team (as determined by the parent and the administrative authority) must review all relevant information in the student's file, including the child's IEP, any teacher observations and any relevant information provided by the parents to determine:

_____ (a) _____ if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or

_____ (b) _____ if the conduct in question was the direct result of the administrative authority's failure to implement the IEP.

_____ (2) _____ The conduct must be determined to be a manifestation of the child's disability if the administrative authority, the parent and relevant members of the child's IEP team determine that a condition in either Subparagraph (a) or (b) of Paragraph (1) of Subsection C of 6.11.2.11 NMAC was met.

_____ (3) _____ If the administrative authority, the parent and relevant members of the child's IEP team determine the condition described in Subparagraph (b) of Paragraph (1) of Subsection C of 6.11.2.11 NMAC was met, the administrative authority must take immediate steps to remedy those deficiencies.

_____ **D.** _____ Determination that behavior is manifestation of disability. If the administrative authority, the parent and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must comply within 34 CFR Sec. 300.530(f).

_____ **E.** _____ Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child's behavior involves one of the special circumstances listed in 34 CFR Sec. 300.530(g). For purposes of this subsection, the definitions provided in 34 CFR Sec. 300.530(i) shall apply.

_____ **F.** _____ Determination of setting. The student's IEP team determines the interim alternative educational setting for services under Subsections B and E of this section.

_____ **G.** _____ Change of placement because of disciplinary removals. For purposes of removals of a student with a disability from the child's current educational placement under 6.11.2.11 NMAC and 6.11.2.12 NMAC, a change of placement occurs if the conditions provided in 34 CFR Sec. 300.536 are met.

_____ **H.** _____ Parental notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the administrative authority must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR Sec. 300.504.

_____ **I.** _____ Services. A student with a disability who is removed from the student's current placement pursuant to this section must continue to receive special education and related services as provided in 34 CFR Sec. 300.530(d).

_____ **J.** _____ Appeal.

_____ (1) _____ The parent of a student with a disability who disagrees with any decision regarding the placement or the manifestation determination under this section, or an administrative authority that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to Subsection I of 6.31.2.13 NMAC.

_____ (2) _____ A hearing officer who hears a matter under Paragraph (1) of Subsection J of 6.11.2.11 NMAC, has the authority provided in 34 CFR Sec. 300.532(b).

_____ (3) _____ When an appeal under this subsection has been made by either the parent or the administrative authority, the student must remain in the interim alternative educational setting pending the decision

of the hearing officer or until the expiration of the time period specified in Subsections B or E of this section, whichever ever occurs first, unless the parent and the administrative authority agree otherwise.

[08/15/1997; 6.11.2.11 NMAC Rn, 6 NMAC 1.4.11 & A, 11/30/2000; A, 9/15/2005; A, 6/29/2007; A, 11/13/2009]

6.11.2.12 PROCEDURE FOR DETENTIONS, SUSPENSIONS AND EXPULSIONS: The authority of the state and of local school boards to prescribe and enforce standards of conduct for public school students must be exercised consistently with constitutional safeguards of individual student rights. The right to a public education is not absolute; it may be taken away, temporarily or permanently, for violations of school rules. But it is a property right which may only be denied where school authorities have adhered to the minimum procedural safeguards required to afford the student due process of law. This section prescribes minimum requirements for detention, in-school suspension and temporary, long-term or permanent removal of students from the public schools. Local school boards may adopt procedures which afford students more protection than this rule requires. The procedures in this section apply only to disciplinary detentions, suspensions and expulsions. They do not apply to disenrollment of students who fail to meet immunization, age, residence or other requirements for valid enrollment, nor to the removal from school membership reports of students who have been absent from school for 10 consecutive school days in accordance with Subsection B of Section 22-8-2 NMSA 1978. Nothing in this section should be construed as prohibiting school boards or administrative authorities from involving other school staff, students and members of the community in the enforcement of rules of student conduct to the extent they believe is appropriate.

A. Post suspension placement of students. Any student suspended from school shall be delivered directly by a school official to the student's parent(s), legal guardian or an adult designated by the parent(s) or the legal guardian, or kept on school grounds until the usual end of the school day.

B. Students with disabilities. This section does not apply to long-term suspension or expulsion of students who are disabled pursuant to the IDEA or Section 504. The procedures for long-term suspension or expulsion of disabled students are set forth in Section 6.11.2.11 NMAC above. School personnel under this section may remove a student with a disability who violates a rule of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to students without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under Subsection G of 6.11.2.11 NMAC above).

C. Immediate removal: Students whose presence poses a continuing danger to persons or property or an ongoing threat of interfering with the educational process may be immediately removed from school, subject to the following rules.

(1) A rudimentary hearing, as required for temporary suspensions, shall follow as soon as possible.

(2) Students shall be reinstated after no more than one school day unless within that time a temporary suspension is also imposed after the required rudimentary hearing. In such circumstances, a single hearing will support both the immediate removal and a temporary suspension imposed in connection with the same incident(s).

(3) The school shall exert reasonable efforts to inform the student's parent of the charges against the student and the action taken as soon as practicable. If the school has not communicated with the parent by telephone or in person by the end of the school day following the immediate removal, the school shall on that day mail a written notice with the required information to the parent's address of record.

D. Temporary suspension.

(1) A local school board may limit temporary suspensions to periods shorter than 10 school days.

(2) A student facing temporary suspension shall first be informed of the charges against him or her and, if (s)he denies them, shall be told what evidence supports the charge(s) and be given an opportunity to present his or her version of the facts. The following rules apply.

(a) The hearing may be an informal discussion and may follow immediately after the notice of the charges is given.

(b) Unless the administrative authority decides a delay is essential to permit a fuller exploration of the facts, this discussion may take place and a temporary suspension may be imposed within minutes after the alleged misconduct has occurred.

(c) A student who denies a charge of misconduct shall be told what act(s) (s)he is accused of committing, shall be given an explanation of the evidence supporting the accusation(s) and shall then be

given the opportunity to explain his or her version of the facts. The administrative authority is not required to divulge the identity of informants, although (s)he should not withhold such information without good cause. (S)he is required to disclose the substance of all evidence on which (s)he proposes to base a decision in the matter.

~~(d) The administrative authority is not required to allow the student to secure counsel, to confront or cross-examine witnesses supporting the charge(s), or to call witnesses to verify the student's version of the incident, but none of these is prohibited.~~

~~(e) The school shall exert reasonable efforts to inform the student's parent of the charges against the student and their possible or actual consequence as soon as practicable. If the school has not communicated with the parent by telephone or in person by the end of the first full day of suspension, the school shall on that day mail a written notice with the required information to the parent's address of record.~~

~~E. In school suspension.~~

~~(1) In school suspension may be imposed with or without further restriction of student privileges. Any student who is placed in an in-school suspension which exceeds 10 school days must be provided with an instructional program that meets both state and local educational requirements. Student privileges, however, may be restricted for longer than 10 school days.~~

~~(2) In school suspensions of any length shall be accomplished according to the procedures for a temporary suspension as set forth above. A local school board may limit the length of in-school suspensions which may be accomplished under temporary suspension procedures. No in-school suspension student shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom.~~

~~F. Detention.~~

~~(1) Detention may be imposed in connection with in-school suspension, but is distinct from in-school suspension in that it does not entail removing the student from any of his or her regular classes.~~

~~(2) The authority of the schools to supervise and control the conduct of students includes the authority to impose reasonable periods of detention during the day or outside normal school hours as a disciplinary measure. No detained student shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom. Reasonable periods of detention may be imposed in accordance with the procedures for temporary suspension.~~

~~G. Long term suspension and expulsion.~~

~~(1) Each local school board shall authorize appropriate administrative authorities to initiate procedures leading to long term suspension or expulsion. Where prompt action to suspend a student long term is deemed appropriate, a temporary suspension may be imposed while the procedures for long term suspension or expulsion are activated. However, where a decision following the required formal hearing is delayed beyond the end of the temporary suspension, the student must be returned to school pending the final outcome unless the provisions of Subparagraphs (j) and (k) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC below apply.~~

~~(2) A student who has been validly expelled or suspended is not entitled to receive any educational services from the local district during the period of the exclusion from school. A local school board may provide alternative arrangements, including correspondence courses at the student's or parent's expense pursuant to public education department requirements, if the board deems such arrangements appropriate.~~

~~(3) Each local school board shall establish, or shall authorize appropriate administrative authorities to establish, appropriate processes for handling long term suspensions and expulsions. Unless the terms expressly indicate otherwise, nothing in the procedures below shall be construed as directing that any required decision be made by any particular person or body or at any particular level of administrative organization.~~

~~(4) The following rules shall govern the imposition of long term suspensions or expulsions:~~

~~(a) Hearing authority; disciplinarian. The same person or group may, but need not, perform the functions of both hearing authority and disciplinarian. Where the functions are divided, the hearing authority's determination of the facts is conclusive on the disciplinarian, but the disciplinarian may reject any punishment recommended by the hearing authority.~~

~~(b) Review authority. Unless the local school board provides otherwise, a review authority shall have discretion to modify or overrule the disciplinarian's decision, but may not impose a harsher punishment. A review authority shall be bound by a hearing authority's factual determinations except as provided in Subparagraph (o) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC below.~~

~~(c) Disqualification. No person shall act as hearing authority, disciplinarian or review authority in a case where (s)he was directly involved in or witnessed the incident(s) in question, or if (s)he has prejudged disputed facts or is biased for or against any person who will actively participate in the proceedings.~~

~~(d) Local board participation. A local board may act as hearing authority, disciplinarian or review authority for any cases involving proposed long term suspensions or expulsions. Whenever~~

a quorum of the local board acts in any such capacity, however, the Open Meetings Act, Section 10-15-1 et seq., NMSA 1978 requires a public meeting.

~~(e) Initiation of procedures. An authorized administrative authority shall initiate procedures for long term suspension or expulsion of a student by designating a hearing authority and disciplinarian in accordance with local board policies, scheduling a formal hearing in consultation with the hearing authority and preparing and serving a written notice meeting the requirements of Subparagraph (h) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC below.~~

~~(f) Service of notice. The written notice shall be addressed to the student, through his or her parent(s), and shall be served upon the parent(s) personally or by mail.~~

~~(g) Timing of hearing. The hearing shall be scheduled no sooner than five nor later than 10 school days from the date of receipt of the notice by the parent(s). The hearing authority may grant or deny a request to delay the hearing in accordance with the provisions of Subparagraph (i) of Paragraph (4) of Subparagraph (i) of Subsection G of 6.11.2.12 NMAC below.~~

~~(h) Contents of notice. The written notice must contain all of the following information, parts of which may be covered by appropriate reference to copies of any policies or regulations furnished with the notice:~~

~~(i) the school rule(s) alleged to have been violated, a concise statement of the alleged act(s) of the student on which the charge(s) are based and a statement of the possible penalty;~~

~~(ii) the date, time and place of the hearing, and a statement that both the student and parent are entitled and urged to be present;~~

~~(iii) a clear statement that the hearing will take place as scheduled unless the hearing authority grants a delay or the student and parent agree to waive the hearing and comply voluntarily with the proposed disciplinary action or with a negotiated penalty, and a clear and conspicuous warning that a failure to appear will not delay the hearing and may lead to the imposition of the proposed penalty by default;~~

~~(iv) a statement that the student has the right to be represented at the hearing by legal counsel, a parent or some other representative designated in a written notice filed at least seventy-two (72) hours before the hearing with the contact person named pursuant to Item (vi) of Subparagraph (h) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC below;~~

~~(v) a description of the procedures governing the hearing;~~

~~(vi) the name, business address and telephone number of a contact person through whom the student, parent or designated representative may request a delay or seek further information, including access to any documentary evidence or exhibits which the school proposes to introduce at the hearing; and~~

~~(vii) any other information, materials or instructions deemed appropriate by the administrative authority who prepares the notice.~~

~~(i) Delay of hearing. The hearing authority shall have discretion to grant or deny a request by the student or the appropriate administrative authority to postpone the hearing. Such discretion may be limited or guided by local school board policies not otherwise inconsistent with this rule.~~

~~(j) Students status pending hearing. Where a student has been suspended temporarily and a formal hearing on long term suspension or expulsion will not occur until after the temporary suspension has expired, the student shall be returned to school at the end of the temporary suspension unless:~~

~~(i) the provisions of Subparagraph (k) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC below apply, or~~

~~(ii) the student and parent(s) have knowingly and voluntarily waived the students right to return to school pending the outcome of the formal proceedings, or~~

~~(iii) the appropriate administrative authority has conducted an interim hearing pursuant to a written local school board policy made available to the student which affords further due process protection sufficient to support the student's continued exclusion pending the outcome of the formal procedures.~~

~~(k) Waiver of hearing; voluntary compliance or negotiated penalty. A student and his or her parent(s) may elect to waive the formal hearing and review procedures and comply voluntarily with the proposed penalty, or may waive the hearing and review and negotiate a mutually acceptable penalty with the designated disciplinarian. Such a waiver and compliance agreement shall be made voluntarily, with knowledge of the rights being relinquished, and shall be evidenced by a written document signed by the student, the parent(s), and the appropriate school official.~~

~~(l) Procedure for hearing and decision. The formal hearing is not a trial. It is an administrative hearing designed to ensure a calm, orderly determination by an impartial hearing authority of the~~

facts of a case of alleged serious misconduct. Technical rules of evidence and procedure do not apply. The following rules govern the conduct of the hearing and the ultimate decision.

- ~~(i) The school shall have the burden of proof of misconduct.~~
- ~~(ii) The student and his or her parent shall have the following rights: The right to be represented by legal counsel or other designated representative, however, the school is not required to provide representation; the right to present evidence, subject to reasonable requirements of substantiation at the discretion of the hearing authority and subject to exclusion of evidence deemed irrelevant or redundant; the right to confront and cross-examine adverse witnesses, subject to reasonable limitation by the hearing authority; the right to have a decision based solely on the evidence presented at the hearing and the applicable legal rules, including the governing rules of student conduct.~~
- ~~(iii) The hearing authority shall determine whether the alleged act(s) of misconduct have been proved by a preponderance of the evidence presented at a hearing at which the student or a designated representative have appeared.~~
- ~~(iv) If no one has appeared on the student's behalf within a reasonable time after the announced time for the hearing, the hearing authority shall determine whether the student, through the parent, received notice of the hearing. If so, the hearing authority shall review the school's evidence to determine whether it is sufficient to support the charges(s) of misconduct.~~
- ~~(v) A hearing authority who is also a disciplinarian shall impose an appropriate sanction if (s)he finds that the allegations of misconduct have been proved under the standards of either Item (iii) or (iv) of Subparagraph (l) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC above. A hearing authority who is not a disciplinarian shall report its findings, together with any recommended sanction, to the disciplinarian promptly after the hearing.~~
- ~~(vi) Arrangements to make a tape recording or keep minutes of the proceedings shall be made by the administrative authority who scheduled the hearing and prepared the written notice. A verbatim written transcript is not required, but any minutes or other written record shall fairly reflect the substance of the evidence presented.~~
- ~~(vii) The hearing authority may announce a decision on the question of whether the allegation(s) of misconduct have been proved at the close of the hearing. A hearing authority who is also a disciplinarian may also impose a penalty at the close of the hearing.~~
- ~~(viii) In any event, the hearing authority shall prepare and mail or deliver to the student, through the parent, a written decision within five working days after the hearing. The decision shall include a concise summary of the evidence upon which the hearing authority based its factual determinations. A hearing authority who is also a disciplinarian shall include in the report a statement of the penalty, if any, to be imposed, and shall state reasons for the chosen penalty. A hearing authority who is not a disciplinarian shall forward a copy of his or her written decision to the disciplinarian forthwith. The disciplinarian shall prepare a written decision, including reasons for choosing any penalty imposed, and mail or deliver it to the student, through the parent, within five working days of receipt of the hearing authority's report.~~
- ~~(ix) A disciplinarian who is not a hearing authority may observe but not participate in the proceedings at a formal hearing. If the disciplinarian has done so and if the hearing authority announces a decision at the close of the hearing, the disciplinarian may also announce his or her decision at that time.~~
- ~~(x) The disciplinarian's decision shall take effect immediately upon initial notification to the parent, either at the close of the hearing or upon receipt of the written decision. If initial notification is by mail, the parent shall be presumed to have received the notice on the fifth calendar day after the date of mailing unless a receipt for certified mail, if used, indicates a different date of receipt.~~
- ~~(m) Effect of decision. If the hearing authority decides that no allegation(s) of misconduct have been proved, or if the disciplinarian declines to impose a penalty despite a finding that an act or acts of misconduct have been proved, the matter shall be closed. If the disciplinarian imposes any sanction on the student, the decision shall take effect immediately upon notification to the parent and shall continue in force during any subsequent review.~~
- ~~(n) Right of review. Unless the local school board was the disciplinarian, a student aggrieved by a disciplinarian's decision after a formal hearing shall have the right to have the decision reviewed if the penalty imposed was at least as severe as a long-term suspension or expulsion, an in-school suspension exceeding one school semester or a denial or restriction of student privileges for one semester or longer. A local school board may grant a right of review for less severe penalties. Local school boards shall establish appropriate mechanisms for review except where the local board was the disciplinarian, in which case its decision is final and~~

not reviewable administratively. A student request for review must be submitted to the review authority within 10 school days after the student is informed of the disciplinarian's decision.

~~(o) Conduct of review. Unless the local board provides otherwise, a review authority shall have discretion to modify the disciplinarian's decision, including imposing any lesser sanction deemed appropriate. A review authority shall be bound by the hearing authority's factual determinations unless the student persuades the review authority that a finding of fact was arbitrary, capricious or unsupported by substantial evidence or that new evidence which has come to light since the hearing and which could not with reasonable diligence have been discovered in time for the hearing would manifestly change the factual determination. Upon any such finding, the review authority shall have discretion to receive new evidence, reconsider evidence introduced at the hearing or conduct a de novo hearing. In the absence of any such finding, the review shall be limited to an inquiry into the appropriateness of the penalty imposed.~~

~~(p) Form of review. Unless the local board provides otherwise, a review authority shall have discretion to conduct a review on the written record of the hearing and decision in the case, to limit new submissions by the aggrieved student and school authorities to written materials or to grant a conference or hearing at which the student and his or her representative, and school authorities may present their respective views in person. Where a conference or hearing is granted, the record keeping requirements of Item(vi) of Subparagraph (l) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC above apply.~~

~~(q) Timing of review. Except in extraordinary circumstances, a review shall be concluded no later than 15 working days after a student's written request for review is received by the appropriate administrative authority.~~

~~(r) Decision. A review authority may announce a decision at the close of any conference or hearing held on review. In any event, the review authority shall prepare a written decision, including concise reasons, and mail or deliver it to the disciplinarian, the hearing authority and the student, through the parent, within 10 working days after the review is concluded.~~

~~(s) Effect of decision. Unless the local school board provides otherwise, a review authority's decision shall be the final administrative action to which a student is entitled.~~

~~[08/15/1997; 6.11.2.12 NMAC Rn, 6 NMAC 1.4.12, 11/30/2000; A, 6/29/2007; A, 11/13/2009]~~

HISTORY OF 6.11.2 NMAC:

PRE NMAC HISTORY: The material in this part was derived from that previously filed with the State Records Center and Archives under: State Board of Education (SBE) Regulation No. 68-2, Loco Parentis, filed February 6, 1968;
SBE Regulation No. 71-5, Rights and Responsibilities of the Public Schools, filed July 1, 1971;
SBE Regulation No. 71-6, Rights and Responsibilities of the Public Schools, filed August 26, 1971;
Amendment No. 1 to SBE Regulation 71-6, Amendment to State Board Rights and Responsibilities, filed June 19, 1972;
SBE Regulation No. 73-9, Jurisdiction Over Students, filed May 07, 1973;
SBE Regulation No. 77-3, Rights and Responsibilities of the Public Schools and Public School Students, filed July 12, 1977;
Amendment 1 to SBE Regulation No. 77-3, Rights and Responsibilities of the Public Schools and Public School Students, filed November 23, 1977;
Amendment 2 to SBE Regulation No. 77-3, Rights and Responsibilities of the Public Schools and Public School Students, filed November 23, 1977;
SBE Regulation 81-3, Rights and Responsibilities of the Public Schools and Public School Students, filed June 15, 1981;
Amendment 1 to SBE Regulation 81-3, Rights and Responsibilities of the Public Schools and Public School Students, filed October 2, 1995.

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 11 PUBLIC SCHOOL ADMINISTRATION - STUDENT RIGHTS AND RESPONSIBILITIES
PART 2 RIGHTS AND RESPONSIBILITIES OF PUBLIC SCHOOLS AND PUBLIC
SCHOOL STUDENTS

6.11.2.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
[6.11.2.1 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.2 SCOPE: This rule applies to public schools and public school students.
[6.11.2.2 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.3 STATUTORY AUTHORITY: This rule is being promulgated pursuant to Sections 22-2-1, 22-2-2, and 22-5-4.12 NMSA 1978 and 42 U.S.C. 11431 et seq., the McKinney-Vento Homelessness Assistance Act.
[6.11.2.3 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.4 DURATION: Permanent.
[6.11.2.4 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.5 EFFECTIVE DATE: July 28, 2020, unless a later date is cited at the end of a section.
[6.11.2.5 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.6 OBJECTIVE: To provide a comprehensive framework within which school districts, local school boards, locally chartered charter schools, state-chartered charter schools, and governing bodies of charter schools may carry out their educational mission and exercise their authority and responsibility to provide a safe environment for student learning and provide students and parents with an understanding of the basic rights and requirements necessary to effectively function in the educational community.
[6.11.2.6 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.7 DEFINITIONS:

A. "Administrative authority" means the school district superintendent, the head administrator of a state-chartered charter school, a principal, or their delegate to act officially in a matter involving school discipline or the maintenance of order. The term may include school security officers, but only to the extent of their authority as established under written local school board policies.

B. "Child with a disability" or "student with a disability" means a child who meets all requirements of 34 CFR Sec. 300.8 and:

- (1) is age three through 21 or who will turn age three at any time during the school year;
- (2) has been evaluated in accordance with 34 CFR Secs. 300.304 through 300.311 and any

additional requirements of these or other department rules and standards as having one or more of the disabilities specified in 34 CFR Sec. 300.8, including an intellectual disability; a hearing impairment, including deafness, speech or language impairment; a visual impairment, including blindness; emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairment; a specific learning disability; deaf-blindness; or being developmentally delayed as defined in Paragraph (4) of Subsection B of 6.31.2.7 NMAC; and who has not received a high school diploma; and

(3) at the discretion of each local educational agency and subject to the additional requirements of Paragraph (2) of Subsection F of 6.31.2.10 NMAC, may include a child age three through nine who is evaluated as being developmentally delayed and who, because of that condition, needs special education and related services.

C. "Criminal acts" means acts defined as criminal under federal and state law, and any applicable municipal or county criminal ordinances.

D. "Delinquent acts" means acts as defined in Subsection A of Section 32A-2-3 NMSA 1978, the Delinquency Act.

E. "Detention" means requiring a student to remain in a designated area in the student's school outside of instructional time, such as before school, during recess, during lunch, or after school. No detained student shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom.

F. "Disciplinarian" means a person or group authorized to impose consequence(s) after the facts of a case have been determined by a hearing authority.

G. "Disruptive conduct" means willful conduct which:

- (1) materially and in fact disrupts or interferes with the operation of a public school or the orderly conduct of any public school activity, including individual classes; or
- (2) leads an administrative authority reasonably to forecast that such disruption or interference is likely to occur unless preventive action is taken.

H. "Expulsion" means the removal of a student from school either permanently or for an indefinite time exceeding 10 school days or a locally established shorter period.

- I. "Hearing authority"** means a person or group designated to hear evidence and determine the facts of a case at a required formal hearing.
- J. "Immediate removal"** means the removal of a student from school for one school day or less under emergency conditions and without a prior hearing.
- K. "In-school suspension"** means requiring a student to spend time in a designated area at the same school or in an environment where the student is allowed to continue with their academic learning.
- L. "Legal limits"** include the requirements of the federal and state constitutions and governing statutes, standards, and regulations, and also include the fundamental common-law requirement that rules of student conduct be reasonable exercises of the schools' authority in pursuance of legitimate educational and related functions. There are special limitations arising from constitutional guarantees of protected free speech and expression which shall be balanced against the schools need to foster an educational atmosphere free from undue disruptions to appropriate discipline.
- M. "Local school board"** includes the governing body of a charter school.
- N. "Local school district" or "school district"** includes a state-chartered charter school.
- O. "Long-term suspension"** means the removal of a student from school for a specified time exceeding either 10 school days or a locally established shorter period.
- P. "Mechanical restraint"** means the use of any device or material attached or adjacent to the student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove, but "mechanical restraint" does not include mechanical supports or protective devices.
- R. "Parent"** means the natural parent, legal guardian, or other person having custody and control of a student who is subject to Section 22-12A-1 et seq. NMSA 1978, the Attendance for Success Act, or the student if the student is not subject to compulsory attendance.
- S. "Physical restraint"** means the use of physical force without the use of any device or material that restricts the free movement of all or a portion of a student's body, but "physical restraint" does not include physical escort.
- T. "Public school"** means the campus and any building, facility, vehicle, or other item of property owned, operated, controlled by or in the possession of a local school district. For purposes of student discipline, the term also includes any non-school premises being used for school-sponsored activities.
- U. "Refusal to cooperate with school personnel"** means a student's willful refusal to obey the lawful instructions or orders of school personnel whose responsibilities include supervision of students.
- V. "Refusal to identify self"** means a person's willful refusal, upon request from school personnel known or identified as such to the person, to identify themselves accurately.
- W. "Restraint"** when not otherwise modified means mechanical or physical restraint.
- X. "Review authority"** means a person or group authorized by the local school board to review a disciplinarian's final decision to impose a long-term suspension or expulsion.
- Y. "Seclusion"** means the involuntary confinement of a student alone in a room from which egress is prevented. "Seclusion" does not mean the use of a voluntary behavior management technique, including a timeout location, as part of a student's education plan, individual safety plan, behavioral plan or individualized education program that involves the student's separation from a larger group for purposes of calming.
- Z. "Sexual harassment,"** regarding students, means unwelcome or unwanted conduct of a sexual nature (verbal, non-verbal or physical) when:
- (1) submission to such conduct is made either explicitly or implicitly a term or condition of the advancement of a student in school programs or activities;
 - (2) submission to or rejection of such conduct by a student is used as the basis for decisions or opportunities affecting the student; or
 - (3) such conduct substantially interferes with a student's learning or creates an intimidating, hostile, or offensive learning environment.
- AA. "School personnel"** means all members of the staff, faculty, and administration employed by the local school board. The term includes school security officers, school bus drivers, and their aides, and also authorized agents of the schools, such as volunteers or chaperones, whose responsibilities include supervision of students.
- BB. "Student"** means a person who is enrolled in one or more classes at a public school.
- CC. "Student experiencing homelessness"** means children and youth as defined by Section 725(2) of the federal McKinney-Vento Homeless Assistance Act.
- DD. "Superintendent of a school district"** includes the head administrator of a state-chartered charter school.

EE. "Temporary suspension" means the removal of a student from school for a specified period of 10 or fewer school days after a rudimentary hearing.

FF. "Weapon," as set forth in Section 22-5-4.7 NMSA 1978, means:

(1) any firearm that is designed to, may readily be converted to, or will expel a projectile by the action of an explosion; and

(2) any destructive device that is an explosive or incendiary device, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter-ounce, mine or similar device.

[6.11.2.7 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.8 GENERAL PROVISIONS:

A. Jurisdiction over students. Public school authorities, which include all officials, employees and authorized agents of public schools, whose responsibilities include supervision of students shall have comprehensive authority within constitutional bounds to maintain order and discipline in school. In exercising this authority, such officials, employees, and authorized agents of public schools may exercise such powers of control, supervision, and correction over students as may be reasonably necessary to enable them to properly perform their duties and accomplish the purposes of education. This authority applies whenever students are lawfully subject to the schools' control, regardless of place. During such periods, public school authorities shall have the right to supervise and control the conduct of students, and students shall have the duty to submit to the schools' authority. The foregoing is intended to reflect the common law regarding the rights, duties, and liabilities of public school authorities in supervising, controlling and disciplining students. Nothing herein shall be construed as enlarging the liability of public school authorities beyond that imposed by statute, common law, or department rule.

B. School authority over non-students. In furtherance of the state's compelling interest in the orderly operation of public schools and school activities, school officials have the following forms of authority over non-students whose actions adversely affect school operations or activities.

(1) On school property: Local school boards may prohibit entry to and provide for the removal from any public school building or grounds any person who refuses to identify themselves and state a lawful purpose for entering. Any person who refuses to identify themselves may be removed by school authorities, who may use reasonable physical force to accomplish the removal. Alternately, a person who refuses to identify themselves and who refuses a lawful request to leave school premises may be subject to arrest by law enforcement officers for criminal offenses including but not limited to criminal trespass, interference with the educational process, or disorderly conduct. A person who identifies themselves and states a lawful purpose may nevertheless be subject to removal by school officials for engaging in activities prohibited by this rule. The person may also be subject to arrest by law enforcement officers if the person is committing any crime.

(2) Off school property: Public school authorities have indirect and limited authority over the activities of non-students off school property. To the extent that non-students' conduct at or near schools or school-sponsored activities may constitute a criminal offense, including the crimes of interference with the educational process, disorderly conduct or criminal trespass after refusing a lawful request to leave, school authorities may request law enforcement agencies to arrest the offenders.

C. Statement of policy. A primary responsibility of New Mexico public schools and their professional staff shall be to instill in students an appreciation of our representative form of government, the rights and responsibilities of the individual or group, and the legal processes whereby necessary changes are effected.

(1) The school is a community and the rules of a school are the laws of that community. All persons enjoying the rights of citizenship are subject to the laws of their community. Each right carries with it a corresponding obligation.

(2) The right to attend public school is not absolute. It is conditioned on each student's acceptance of the obligation to abide by the lawful rules of the school community until and unless the rules are changed through lawful processes.

(3) Teachers, administrators, and other school employees also have rights and duties. Teachers are required by law to maintain a suitable environment for learning in their classes and to assist in maintaining school order and discipline. Administrators are responsible for maintaining and facilitating the educational program by ensuring an orderly and safe environment in public schools. In discharging their duties, all school employees have the right to be free from intimidation or abuse and to have their lawful requests and instructions followed.

(4) Nothing in this rule shall be held to affect the due process rights of school employees or their use of any local school district grievance procedure. This rule does not address employment disputes.

D. Local school board authority: Local school boards have the authority and responsibility to ensure that suitable rules of student conduct and appropriate disciplinary processes are established within their school districts. Within legal limits as defined in Subsection L. of 6.11.2.7 NMAC, and subject to the minimums prescribed in this rule, local school boards have discretion to develop such rules, policies, and procedures as they deem appropriate to local conditions, including policies which afford students more protection than the minimums established here. Local school boards and administrative authorities which deem it appropriate may provide for student, community or appropriate state and local agency participation in the formulation and enforcement of school rules.

E. Severability. Any part of this rule found by adjudication before a competent tribunal to be contrary to law shall be stricken without effect to the remainder.
[6.11.2.8 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.9 RULES OF CONDUCT FOR NEW MEXICO PUBLIC SCHOOLS: The acts specified in Subsection A of 6.11.2.9 NMAC are prohibited in all public schools in New Mexico. Within legal limits as defined in Subsection L of 6.11.2.7 NMAC, local school boards have discretion to develop rules of conduct governing all others area of student and school activity.

A. Prohibited activities: The commission of or participation in the activities designated below is prohibited in all public schools and is prohibited for students whenever they are subject to school control. The following acts are prohibited by this rule:

- (1) criminal or delinquent acts;
- (2) committing, threatening to commit, or inciting others to commit or threaten to commit any act of violence, directly or indirectly, in person or through electronic means, against a public school, student, or school personnel or official;
- (3) sexual harassment;
- (4) disruptive conduct;
- (5) refusal to identify self; and
- (6) refusal to cooperate with school personnel.

B. Regulated activities: Beyond those activities designated as prohibited in Subsection A of 6.11.2.9 NMAC, all other areas of student conduct may be regulated within legal limits by local school boards as they deem appropriate to local conditions. Conduct by non-students which affects school operations may be regulated within legal limits pursuant to any of the forms of authority described in Subsection B. of 6.11.2.8 NMAC. Activities subject to local school board regulation within legal limits include:

- (1) school attendance;
- (2) use of and access to public schools, including:
 - (a) restrictions on vehicular traffic on school property;
 - (b) prohibition of, or conditions on, the presence of non-school persons on school grounds or in school buildings while school is in session; and
 - (c) reasonable standards of conduct for all persons attending school-sponsored activities or other activities on school property;
- (3) students' dress and personal appearance;
- (4) use of controlled substances, alcohol and tobacco in public schools;
- (5) speech and assembly within public schools;
- (6) publications distributed in public schools;
- (7) the existence, scope, and conditions of availability of student privileges, including extracurricular activities and rules governing participation;
- (8) per Section 22-5-4.7 NMSA 1978, each school district is required to adopt a policy providing for the expulsion from school, for a period of not less than one year, any student who is determined to have knowingly brought a weapon to a public school under the jurisdiction of the local school board. The local school board or the superintendent of the school district may modify the expulsion requirement on a case-by-case basis; the special rule provisions of Subsection D of 6.11.2.11 NMAC, apply to students with disabilities; and
- (9) the discipline of students for out-of-school conduct having a direct and immediate effect on school discipline or the general safety and welfare of the school.

[6.11.2.9 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.10 ENFORCING RULES OF CONDUCT:

A. Enforcing attendance requirements. Local school districts and public schools shall establish, maintain, and enforce attendance policies and requirements set forth in Section 22-12A-1 et seq. NMSA 1978, the Attendance for Success Act, and Section 32A-3A-1 et seq. NMSA 1978, the Family Services Act.

B. Search and seizure. School property assigned to a student and a student's person or property while under the authority of a public school are subject to search, and items found are subject to seizure, in accordance with the following requirements:

(1) Notice of search policy. Students shall be given reasonable notice, through distribution of written policies or otherwise, of each school's policy on searches at the beginning of each school year or upon admission for students entering during the school year.

(2) Who may search. Certified school personnel, school security personnel and school bus drivers are "authorized persons" to conduct searches when a search is permissible as set forth in Subsection B of 6.11.2.10 NMAC. An authorized person who is conducting a search may request the assistance of one or more people, who upon consent become authorized to search for the purpose of that search only.

(3) When a search is permissible. Unless local school board policy provides otherwise, an authorized person may conduct a search when the authorized person has a reasonable suspicion that a crime or other breach of disciplinary rules is occurring or has occurred. An administrative authority may direct or conduct a search under the same conditions and also when the administrative authority has reasonable cause to believe that a search is necessary to help maintain school discipline.

(4) Conduct of searches and witnesses. The following requirements govern the conduct of permissible searches by authorized persons.

(a) School property, including lockers and school buses, may be searched with or without students present unless a local school board or administrative authority provides otherwise. When students are not present for locker searches, another authorized person shall serve as a witness whenever possible. Locks furnished by students should not be destroyed unless a student refuses to open one or circumstances otherwise render such action necessary in the judgment of the administrative authority.

(b) Student vehicles when on campus or otherwise under school control and students' personal effects, which are not within their immediate physical possession, may be searched in accordance with the requirements for locker searches in Subparagraph (a) of Paragraph (4) of Subsection B of 6.11.2.10 NMAC.

(c) Physical searches of a student's person may be conducted only by an authorized person of the same sex as the student and, except when circumstances render it impossible, may be conducted only in the presence of another authorized person of the same sex. The extent of the search must be reasonably related to the infraction, and the search shall not be excessively intrusive in light of the student's age and sex, and the nature of the infraction.

(5) Seizure of items. Illegal items, legal items which threaten the safety or security of others and items which are used to disrupt or interfere with the educational process may be seized by authorized persons. Seized items shall be released to appropriate authorities or a student's parent or returned to the student when and if the administrative authority deems appropriate.

(6) Notification of law enforcement authorities. Unless a local school board policy provides otherwise, an administrative authority shall have discretion to notify the local children's court attorney, district attorney, or other law enforcement officers when a search discloses illegally possessed contraband material or evidence of some other crime or delinquent act.

C. Basis for disciplinary action. A student may appropriately be disciplined by administrative authorities in the following circumstances:

(1) for committing any act that endangers the health or safety of students, school personnel, or others for whose safety the public school is responsible, or for conduct that reasonably appears to threaten such dangers if not restrained, regardless of whether an established rule of conduct has been violated;

(2) for violating valid rules of student conduct established by the local school board or by an administrative authority to whom the local school board has delegated rulemaking authority, when the student knew or should have known of the rule in question or that the conduct was prohibited; or

(3) for committing acts prohibited by this rule, when the student knew or should have known that the conduct was prohibited.

D. Selection of disciplinary sanctions. Within legal limits as defined in Subsection L of 6.11.2.7 NMAC, local school boards have discretion to determine the appropriate sanction(s) to be imposed for violations of rules of student conduct or to authorize appropriate administrative authorities to make such determinations.

(1) School discipline and criminal charges. Appropriate disciplinary actions may be taken against students regardless of whether criminal charges are also filed in connection with an incident.

(2) Nondiscriminatory enforcement. Local school boards and administrative authorities shall not enforce school rules or impose disciplinary punishments in a manner which discriminates against any student on the basis of race, religion, color, national origin, ancestry, sex, or disability, except to the extent otherwise permitted or required by law or regulation. This statement shall not be construed as requiring identical treatment of students for violation of the same rule; it shall be read as prohibiting differential treatment which is based on race, religion, color, national origin, ancestry, sex, or disability rather than on other differences in individual cases or students.

E. Restraint or seclusion. In accordance with Section 22-5-4.12 NMSA 1978, each school shall establish requirements for the use of restraint and seclusion techniques.

(1) Schools shall establish policies and procedures, as approved by the local school board or governing body, for the use of restraint and seclusion techniques. Schools shall review such policies and procedures on a triennial basis, before submitting the school safety plan.

(a) A school may permit the use of restraint or seclusion techniques on any student only if the student's behavior presents an imminent danger of serious physical harm to the student or others and only if less restrictive interventions appear insufficient to mitigate the imminent danger of serious physical harm. Less restrictive interventions include de-escalation strategies, positive behavioral intervention supports, or other comparable behavior management techniques.

(b) The restraint or seclusion techniques shall be used only by school employees who are trained in the safe and effective use of restraint and seclusion techniques unless an emergency does not allow sufficient time to summon those trained school employees.

(c) The restraint or seclusion techniques shall not impede the student's ability to breathe or speak, shall be in proportion to a student's age and physical condition, and shall end when the student's behavior no longer presents an imminent danger of serious physical harm to the student or others.

(d) If a restraint or seclusion technique is used on a student, trained and authorized school employees shall maintain continuous visual observation and monitoring of the student while the restraint or seclusion technique is in use.

(2) In accordance with Section 22-5-4.12 NMSA 1978, schools shall establish policies and procedures for the use of restraint and seclusion techniques in a school safety plan.

(a) A school safety plan, pursuant to requirements of Paragraph (7) of Subsection (D) of 6.12.6.8 NMAC, shall include the following minimum requirements:

(i) The school safety plan shall not be specific to any individual student; and

(ii) The school safety planning team shall include at least one administrator, one educator, and one special education expert and may include a counselor or social worker, nurse, and school resource officer or security staff. The school safety planning team shall include personnel who are trained as designated school personnel in restraint and seclusion.

(b) A school safety plan, pursuant to requirements of Paragraph (7) of Subsection (D) of 6.12.6.8 NMAC, shall be submitted to the department on a triennial basis, on a schedule determined by the department. The department will provide local education agencies notice of a deadline to submit a school safety plan 90 days prior to the due date.

(3) Policies and procedures for the use of restraint and seclusion techniques shall require and describe appropriate training for designated school personnel.

(a) School districts and charter schools shall provide training for designated school personnel regarding de-escalation strategies, positive behavioral intervention supports, or other comparable behavior management techniques and the use of restraint or seclusion techniques. Designated school personnel shall attend training at least every two years or complete a certification course, exam, or other comparable demonstration of competency that provides evidence that the individual has up-to-date knowledge of proper restraint and seclusion techniques.

(b) In the event that new designated school personnel are identified within the school after the provision of the training, certification course, exam, or other comparable demonstration of competency, the school district or charter school shall ensure that a training or other competency demonstration is provided to new designated school personnel within 60 days of being designated.

(4) Policies regarding restraint or seclusion shall consider school district support and strategies for school employees to successfully reintegrate a student who has been restrained or secluded back into the school or classroom environment.

(5) Schools shall implement the following review procedures for incidents in which restraint or seclusion techniques are used.

(a) If a student has been restrained or secluded two or more times within 30 calendar days, the school shall review strategies used to address the student's behavior and determine whether the student needs a functional behavior assessment or referral to a student assistance team, behavioral intervention plan team, or, if a student has an individualized education program, a referral to the student's individualized education program team.

(b) If a student has been restrained or secluded two or more times within 30 calendar days, the student's individualized education program team, behavioral intervention plan team, or student assistance team shall meet within two weeks of each subsequent use to provide recommendations for avoiding future incidents requiring the use of restraint or seclusion.

(c) The review shall include whether school personnel involved in the incidents were trained in the use of de-escalation strategies, positive behavioral intervention supports, or restraint and seclusion techniques. Additionally, the review shall consider whether the individual who restrained or secluded a student needs additional training.

(d) To improve internal practices relative to incidents of restraint or seclusion, schools shall conduct an annual review and analysis of all incidents in which restraint or seclusion techniques were used, including the number of incidents, the type of incident, personnel involved, the need for additional training, and student demographics.

(6) Schools shall establish documentation and reporting procedures pursuant to the requirements listed in Section 22-5-4.12 NMSA 1978. In addition, schools shall provide written or oral assurance of secure storage and access to written documentation in accordance with this rule, 20 USC. Section 1232(g), 34 CFR Part 99, the Family Educational Rights and Privacy Act, and any other applicable federal or state laws or rules governing the privacy of such documents.

(a) A school employee shall provide the student's parent with written or oral notice on the same day the incident occurred, unless circumstances prevent same-day notification. If notice is not provided on the same day of the incident, notice shall be given within 24 hours after the incident.

(b) Within a reasonable time following the incident, no longer than two school days, a school employee shall provide the student's parent with written documentation that includes information about any persons, locations, or activities that may have triggered the behavior, if known, and specific information about the behavior and its precursors, the type of restraint or seclusion technique used, and the duration of its use. Such information, and other information determined by the department, shall be entered into the department's data collection and reporting system once the student's parent is notified and provided with written documentation.

(c) Schools shall report to the department, through the department's data collection and reporting system, the following information on a timeline and reporting frequency established by the department:

(i) the names, professional license numbers, and positions of school personnel trained in de-escalation strategies, positive behavioral intervention supports, or other comparable behavior management techniques, the date of the training, and the source of training;

(ii) all instances in which a restraint or seclusion technique is used;

(iii) all instances in which law enforcement is summoned instead of using a restraint or seclusion technique;

(iv) the names of the students and school personnel involved in an incident in which restraint or seclusion was used; and

(v) if a student was restrained, the type of restraint, including mechanical restraint or physical restraint, that was used.

(d) If a school summons law enforcement instead of using a restraint or seclusion technique on a student, the school shall comply with the reporting, documentation, and review procedures established pursuant to this rule and Section 22-5-4.12 NMSA 1978.

F. Corporal punishment. Corporal punishment shall be prohibited by each local school board pursuant to Subsection B of Section 22-5-4.3 NMSA 1978. Restraint or seclusion techniques used in compliance with Subsection E of 6.11.2.10 NMAC shall not be deemed to be corporal punishment.

G. Detention, suspension and expulsion. Where detention, suspension, or expulsion is determined to be the appropriate penalty, it may be imposed only in accordance with procedures that provide at least the minimum safeguards prescribed in 6.11.2.12 NMAC. Suspensions or expulsions of students with disabilities shall be subject to the further requirements of Subsection I of 6.11.2.10 NMAC and 6.11.2.11 NMAC.

H. Discipline of students experiencing homelessness. Removing students experiencing homelessness from school shall be used only as a last resort, pursuant to the requirements in 42 USC Sec. 11431 et seq., the McKinney-Vento Homelessness Assistance Act.

(1) Public schools shall develop discipline policies and procedures that are reviewed at least annually and align with local school board policies. Policies and procedures shall:

(a) through professional development activities, create an awareness among educators and administrators of the types of behaviors that students experiencing homelessness may exhibit due to homelessness and provide strategies and supports to address the behaviors through the student assistance team process in accordance with Subsection D of 6.29.1.9 NMAC;

(b) take into account the issues related to a student's homelessness by talking with the student and applicable staff and families prior to taking disciplinary action;

(c) consult with school behavior response teams or other applicable personnel to assign appropriate discipline related to the behavior;

(d) implement discipline alternatives to temporary or long-term suspensions or expulsions or classroom removals, if possible; and

(e) connect students with mental health services as needed.

(2) Public schools shall review school discipline records and data of students experiencing homelessness in order to identify any patterns in disciplinary actions that indicate an unfair bias against the students. The collection and review of such records shall be in compliance with the Family Educational Rights and Privacy Act, as well as any other applicable federal or state laws or rules governing the privacy of such documents.

I. Discipline of students with disabilities. Students with disabilities are not immune from school disciplinary processes, nor are they entitled to remain in a particular educational program when their behavior substantially impairs the education of other children in the program. However, public schools are required by state law and rule to meet the individual educational needs of students with disabilities to the extent that current educational expertise permits. Public school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, consistent with the other requirements of 6.11.2.11 NMAC, is appropriate for a student with a disability who violates a code of conduct as provided in 34 CFR Sec. 300.530.

(1) Long-term suspensions or expulsions of students with disabilities shall be governed by the procedures set forth in 6.11.2.11 NMAC.

(2) Temporary suspensions of students with disabilities may be imposed in accordance with the normal procedures prescribed in Subsection D of 6.11.2.12 NMAC, provided that the student is returned to the same educational placement after the temporary suspension and unless a temporary suspension is prohibited under the provisions of Paragraph (3) of Subsection I of 6.11.2.10 NMAC.

(3) Program prescriptions. A student with a disability's individualized education program (IEP), under the Individuals with Disabilities Education Improvement Act (IDEA), need not affirmatively authorize disciplinary actions which are not otherwise in conflict with this rule. However, the IEP team may prescribe or prohibit specified disciplinary measures for an individual student with a disability by including appropriate provisions in the student's IEP. Administrative authorities shall adhere to any such provisions contained in a student with a disability's IEP, except that an IEP team may not prohibit the initiation of proceedings for long-term suspension or expulsion which are conducted in accordance with this rule.

(4) Immediate removal. Immediate removal of students with disabilities may be done in accordance with the procedures of Subsection C of 6.11.2.12 NMAC.

(5) A student who has not been determined to be eligible for special education and related services under 6.31.2 NMAC and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in this subsection if the conditions set forth in 34 CFR Sec. 300.534 have been met.

(6) Referral to and action by law enforcement and judicial authorities.

(a) Nothing in these rules of conduct prohibits an administrative authority from reporting a crime committed by a student with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

(b) Transmittal of records.

(i) An administrative authority reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted, for consideration by the appropriate authorities, to whom the administrative authority reports the crime.

(ii) An administrative authority reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.
[6.11.2.10 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

A. General. The following rules shall apply when a student with a disability under IDEA violates a rule of conduct as set forth in this rule which may result in:

(1) long-term suspension or expulsion; or

(2) any other disciplinary change of the student's current educational placement as specified in the federal regulations implementing IDEA at 34 CFR Secs. 300.530 through 300.536 and these or other department rules and standards.

B. Manifestation determination.

(1) For disciplinary removals of students with disabilities that exceed 10 consecutive school days or result in a disciplinary change of placement as defined by 34 CFR 300.536, the administrative authority must conduct a manifestation determination to determine whether the conduct was a manifestation of the child's disability pursuant to this Subsection.

(2) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a rule of student conduct, the administrative authority, the parent, and relevant members of the child's IEP team (as determined by the parent and the administrative authority) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(a) if the conduct in question was caused by or had a direct and substantial relationship to, the child's disability; or

(b) if the conduct in question was the direct result of the administrative authority's failure to implement the IEP.

(3) If the administrative authority, the parent, and relevant members of the child's IEP team determine the condition in either Subparagraph (a) or (b) of Paragraph (2) of Subsection B of 6.11.2.11 NMAC is met, the conduct must be determined to be a manifestation of the child's disability.

C. Determination that behavior is manifestation of disability. If the administrative authority, the parent, and relevant members of the IEP team determine the conduct was a manifestation of the child's disability, the IEP team must take immediate steps to comply with 34 CFR Sec. 300.530(f) and remedy any deficiencies.

D. Determination that behavior is not a manifestation of disability. If the administrative authority, the parent, and relevant members of the IEP team determine the conduct was not a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to a child with a disability in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in Subsection I of this section.

E. Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child's behavior involves one of the special circumstances listed in 34 CFR Sec. 300.530(g). For purposes of this subsection, the definitions provided in 34 CFR Sec. 300.530(i) shall apply.

F. Determination of setting. The student's IEP team determines the interim alternative educational setting for services under Subsections C and D of this section.

G. Change of placement because of disciplinary removals. For purposes of removals of a student with a disability from the child's current educational placement under 6.11.2.11 NMAC and 6.11.2.12 NMAC, a change of placement occurs if the conditions provided in 34 CFR Sec. 300.536 are met.

H. Parental notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the administrative authority must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR Sec. 300.504.

I. Services. A student with a disability who is removed from the student's current placement pursuant to this section must continue to receive special education and related services as provided in 34 CFR Sec. 300.530(d).

J. Appeal.

(1) The parent of a student with a disability who disagrees with any decision regarding the placement or the manifestation determination under this section, or an administrative authority that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to Subsection I of 6.31.2.13 NMAC.

(2) A hearing officer who hears a matter under Paragraph (1) of Subsection J of 6.11.2.11 NMAC, has the authority provided in 34 CFR Sec. 300.532(b).

(3) When an appeal under this subsection has been made by the parent or the administrative authority, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in Subsections D or E of this section, whichever occurs first, unless the parent and the administrative authority agree otherwise.
[6.11.2.11 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.12 PROCEDURE FOR DETENTIONS, SUSPENSIONS, AND EXPULSIONS: The authority of the state and of local school boards to prescribe and enforce standards of conduct for public school students must be exercised consistently with constitutional safeguards of individual student rights. The right to a public education is not absolute; it may be taken away, temporarily or permanently, for violations of school rules. The right to a public education is a property right which may only be denied where school authorities have adhered to the minimum procedural safeguards required to afford the student due process of law. This section prescribes minimum requirements for detention, in-school suspension, and temporary, long-term or permanent removal of students from public schools. Local school boards may adopt procedures which afford students more protection than this rule requires. The procedures in this section apply only to disciplinary detentions, suspensions, and expulsions. They do not apply to disenrollment of students who fail to meet immunization, age, residence, or other requirements for valid enrollment, nor to the removal from school membership reports of students who have been absent from school for 10 consecutive school days in accordance with Subsection B of Section 22-8-2 NMSA 1978. Nothing in this section shall be construed as prohibiting school boards or administrative authorities from involving other school staff, students, and members of the community in the enforcement of rules of student conduct to the extent they believe is appropriate.

A. Post-suspension placement of students. Any student suspended from school shall be delivered directly by a school official to the student's parent(s) or an adult designated by the parent(s) or kept on school grounds until the usual end of the school day.

B. Students with disabilities. This section does not apply to long-term suspension or expulsion of students with disabilities pursuant to the IDEA or Section 504. The procedures for long-term suspension or expulsion of students with disabilities are set forth in Section 6.11.2.11 NMAC. School personnel under this section may remove a student with a disability who violates a rule of student conduct from the student's current placement to an appropriate interim alternative educational setting, another setting, or suspension, for no more than 10 consecutive school days to the extent those alternatives are applied to students without disabilities, and for additional removals of no more than 10 consecutive school days in the same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under Subsection G of 6.11.2.11 NMAC.

C. Immediate removal. Students whose presence poses a continuing danger to persons or property or an ongoing threat of interfering with the educational process may be immediately removed from school, subject to the following rules:

(1) A rudimentary hearing, as required for temporary suspensions, shall follow as soon as possible;

(2) Students shall be reinstated after no more than one school day unless within that time a temporary suspension is also imposed after the required rudimentary hearing. In such circumstances, a single hearing will support both the immediate removal and a temporary suspension imposed in connection with the same incident(s); and

(3) The school shall exert reasonable efforts to inform the student's parent of the charges against the student and the action taken as soon as practicable. If the school has not communicated with the parent by telephone or in person by the end of the school day following the immediate removal, the school shall on that day mail a written notice with the required information to the parent's address of record.

D. Temporary suspension.

(1) A local school board may limit temporary suspensions to periods shorter than 10 school days.

(2) A student facing temporary suspension shall be granted a rudimentary hearing in which the student shall first be informed of the charges against the student and, if the student denies them, shall be told what evidence supports the charge(s) and be given an opportunity to present the student's version of the facts. The following rules apply:

(a) the hearing may be an informal discussion and may follow immediately after the notice of the charges is given;

(b) unless the administrative authority decides a delay is essential to permit a fuller exploration of the facts, informal discussion may take place and a temporary suspension may be imposed within minutes after the alleged misconduct has occurred;

(c) a student who denies a charge of misconduct shall be told what act(s) the student is accused of committing, shall be given an explanation of the evidence supporting the accusation(s), and shall be given the opportunity to explain the student's version of the facts. The administrative authority is not required to divulge the identity of informants, although the administrative authority should not withhold such information without good cause. The administrative authority is required to disclose the substance of all evidence on which the administrative authority proposes to base a decision in the matter;

(d) the administrative authority is not required to allow the student to secure counsel, to confront or cross-examine witnesses supporting the charge(s), or to call witnesses to verify the student's version of the incident, but none of these is prohibited; and

(e) the school shall exert reasonable efforts to inform the student's parent(s) of the charges against the student and the possible or actual consequence as soon as practicable. If the school has not communicated with the parent(s) by telephone or in person by the end of the first full day of suspension, the school shall on that day mail a written notice with the required information to the parent's address of record.

E. In-school suspension.

(1) In-school suspension may be imposed with or without further restriction of student privileges. Any student who is placed in in-school suspension which exceeds 10 school days must be provided with an instructional program that meets state and local educational requirements. Student privileges, however, may be restricted for longer than 10 school days.

(2) In-school suspensions of any length shall be accomplished according to the procedures for a temporary suspension as set forth in Subsection D of 6.11.2.12 NMAC. A local school board may limit the length of in-school suspensions which may be accomplished under temporary suspension procedures. No student in in-school suspension shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom.

F. Detention.

(1) Detention may be imposed in connection with in-school suspension, but is distinct from in-school suspension in that detention does not entail removing the student from any of the student's regular classes.

(2) The authority of the schools to supervise and control the conduct of students includes the authority to impose reasonable periods of detention during the day or outside normal school hours as a disciplinary measure. Reasonable periods of detention may be imposed in accordance with the procedures for temporary suspension.

G. Long-term suspension and expulsion.

(1) Each local school board shall authorize appropriate administrative authorities to initiate procedures leading to long-term suspension or expulsion. Where prompt action to suspend a student long-term is deemed appropriate, a temporary suspension may be imposed while the procedures for long-term suspension or expulsion are activated. However, where a decision following the required formal hearing is delayed beyond the end of the temporary suspension, the student shall be returned to school pending the final outcome unless the provisions of Subparagraphs (j) and (k) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC apply.

(2) A student who has been validly expelled or suspended is not entitled to receive any educational services from the local school district during the period of the exclusion from school. A local school board may provide alternative arrangements, including correspondence courses at the expense of the student or parent(s) pursuant to department requirements, if the local school board deems such arrangements appropriate.

(3) Each local school board shall establish, or shall authorize appropriate administrative authorities to establish, appropriate processes for handling long-term suspensions and expulsions. Unless the terms expressly indicate otherwise, nothing in Paragraph (4) of Subsection G of 6.11.2.12 NMAC shall be construed as directing that any required decision be made by any particular person or body or at any particular level of administrative organization.

(4) The following rules shall govern the imposition of long-term suspensions or expulsions:

(a) Hearing authority and disciplinarian. The same person or group may perform the functions of hearing authority and disciplinarian. Where the functions are divided, the hearing authority's determination of the facts shall be conclusive to the disciplinarian, but the disciplinarian may reject any consequence(s) recommended by the hearing authority.

(b) Review authority. Unless the local school board provides otherwise, a review authority shall have discretion to modify or overrule the disciplinarian's decision, but may not impose harsher consequences. A review authority shall be bound by a hearing authority's factual determinations except as provided in Subparagraph (o) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC.

(c) Disqualification. No person shall act as hearing authority, disciplinarian, or review authority in a case where the person was directly involved in or witnessed the incident(s) in question, or if the person has prejudged disputed facts or is biased for or against any person who will actively participate in the proceedings.

(d) Local school board participation. A local school board may act as hearing authority, disciplinarian, or review authority for any cases involving proposed long-term suspensions or expulsions. However, whenever a quorum of the local school board acts in any such capacity, Section 10-15-1 et seq., NMSA 1978, the Open Meetings Act, requires a public meeting.

(e) Initiation of procedures. An authorized administrative authority shall initiate procedures for long-term suspension or expulsion of a student by designating a hearing authority and disciplinarian in accordance with local school board policies, scheduling a formal hearing in consultation with the hearing authority, and preparing and serving a written notice meeting the requirements of Subparagraph (h) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC.

(f) Service of notice. The written notice shall be addressed to the student, through the student's parent(s), and shall be served upon the parent(s) personally or by mail.

(g) Timing of hearing. The hearing shall be scheduled no sooner than five nor later than 10 school days from the date of receipt of the notice by the parent(s). The hearing authority may grant or deny a request to delay the hearing in accordance with the provisions of Subparagraph (i) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC.

(h) Contents of notice. The written notice must contain all of the following information, parts of which may be covered by appropriate reference to copies of any policies or regulations furnished with the notice:

(i) the school rule(s) alleged to have been violated, a concise statement of the alleged act(s) of the student on which the charge(s) are based, and a statement of the possible penalty;

(ii) the date, time, and place of the hearing, and a statement that both the student and parent(s) are entitled and urged to be present;

(iii) a clear statement that the hearing will take place as scheduled unless the hearing authority grants a delay or the student and parent(s) agree to waive the hearing and comply voluntarily with the proposed disciplinary action or with a negotiated penalty, and a clear and conspicuous warning that a failure to appear will not delay the hearing and may lead to the imposition of the proposed penalty by default;

(iv) a statement that the student has the right to be represented at the hearing by legal counsel, a parent or some other representative designated in a written notice filed at least 72 hours before the hearing with the contact person named pursuant to Item (vi) of Subparagraph (h) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC;

(v) a description of the procedures governing the hearing;

(vi) the name, business address, and telephone number of a contact person through whom the student, parent(s), or designated representative may request a delay or seek further information, including access to any documentary evidence or exhibits which the school proposes to introduce at the hearing; and

(vii) any other information, materials or instructions deemed appropriate by the administrative authority who prepares the notice.

(i) Delay of hearing. The hearing authority shall have discretion to grant or deny a request by the student or the appropriate administrative authority to postpone the hearing. Such discretion may be limited or guided by local school board policies not otherwise inconsistent with this rule.

(j) Student status pending hearing. Where a student has been suspended temporarily and a formal hearing on long-term suspension or expulsion will not occur until after the temporary suspension has expired, the student shall be returned to school at the end of the temporary suspension unless:

(i) the provisions of Subparagraph (k) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC apply, or

(ii) the student and parent(s) have knowingly and voluntarily waived the student's right to return to school pending the outcome of the formal proceedings; or

(iii) the appropriate administrative authority has conducted an interim hearing pursuant to a written local school board policy made available to the student which affords further due process protection sufficient to support the student's continued exclusion pending the outcome of the formal procedures.

(k) Waiver of hearing, voluntary compliance, or negotiated penalty. A student and the student's parent(s) may elect to waive the formal hearing and review procedures and comply voluntarily with the proposed penalty, or may waive the hearing and review and negotiate a mutually acceptable penalty with the designated disciplinarian. Such a waiver and compliance agreement shall be made voluntarily, with knowledge of the rights being relinquished, and shall be evidenced by a written document signed by the student, the parent(s), and the appropriate school official.

(l) Procedure for hearing and decision. The formal hearing is not a trial. The formal hearing is an administrative hearing designed to ensure a calm and orderly determination by an impartial hearing authority of the facts of a case of alleged serious misconduct. Technical rules of evidence and procedure do not apply. The following rules govern the conduct of the hearing and the ultimate decision:

(i) The school shall have the burden of proof of misconduct.

(ii) The student and the student's parent(s) shall have the following rights: The right to be represented by legal counsel or other designated representative, however, the school is not required to provide representation; the right to present evidence, subject to reasonable requirements of substantiation at the discretion of the hearing authority and subject to exclusion of evidence deemed irrelevant or redundant; the right to confront and cross-examine adverse witnesses, subject to reasonable limitation by the hearing authority; the right to have a decision based solely on the evidence presented at the hearing and the applicable legal rules, including the governing rules of student conduct.

(iii) The hearing authority shall determine whether the alleged act(s) of misconduct have been proved by a preponderance of the evidence presented at a hearing at which the student or a designated representative have appeared.

(iv) If no one has appeared on the student's behalf within a reasonable time after the announced time for the hearing, the hearing authority shall determine whether the student, through the parent(s), received notice of the hearing. If so, the hearing authority shall review the schools' evidence to determine whether it is sufficient to support the charge(s) of misconduct.

(v) A hearing authority who is also a disciplinarian shall impose an appropriate sanction if the hearing authority finds that the allegations of misconduct have been proved under the standards of either Item (iii) or (iv) of Subparagraph (l) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC. A hearing authority who is not a disciplinarian shall report the findings, together with any recommended sanction, to the disciplinarian promptly after the hearing.

(vi) Arrangements to make a tape recording or keep minutes of the proceedings shall be made by the administrative authority who scheduled the hearing and prepared the written notice. A verbatim written transcript is not required, but any minutes or other written record shall fairly reflect the substance of the evidence presented.

(vii) The hearing authority may announce a decision on the question of whether the allegation(s) of misconduct have been proved at the close of the hearing. A hearing authority who is also a disciplinarian may also impose a penalty at the close of the hearing.

(viii) In any event, the hearing authority shall prepare and mail or deliver to the student, through the parent(s), a written decision within five working days after the hearing. The decision shall include a concise summary of the evidence upon which the hearing authority based its factual determinations. A hearing authority who is also a disciplinarian shall include in the report a statement of the penalty, if any, to be imposed, and shall state reasons for the chosen penalty. A hearing authority who is not a disciplinarian shall forward a copy of the hearing authority's written decision to the disciplinarian forthwith. The disciplinarian shall prepare a written decision, including reasons for choosing any penalty imposed, and mail or deliver it to the student, through the parent(s), within five working days of receipt of the hearing authority's report.

(ix) A disciplinarian who is not a hearing authority may observe but not participate in the proceedings at a formal hearing. If the disciplinarian is present at the formal hearing and if the hearing authority announces a decision at the close of the hearing, the disciplinarian may also announce the disciplinarian's decision at that time.

(x) The disciplinarian's decision shall take effect immediately upon initial notification to the parent(s), either at the close of the hearing or upon receipt of the written decision. If initial notification is by mail, the parent(s) shall be presumed to have received the notice on the fifth calendar day after the date of mailing unless a receipt for certified mail, if used, indicates a different date of receipt.

(m) Effect of decision. If the hearing authority decides that no allegation(s) of misconduct have been proved, or if the disciplinarian declines to impose a penalty despite a finding that an act or acts of misconduct have been proved, the matter shall be closed. If the disciplinarian imposes any sanction on the student, the decision shall take effect immediately upon notification to the parent and shall continue in force during any subsequent review.

(n) Right of review. Unless the local school board was the disciplinarian, a student aggrieved by a disciplinarian's decision after a formal hearing shall have the right to have the decision reviewed if the penalty imposed was at least as severe as a long-term suspension or expulsion, an in-school suspension exceeding one school semester, or a denial or restriction of student privileges for one semester or longer. A local school board may grant a right of review for less severe penalties. Local school boards shall establish appropriate mechanisms for review except where the local board was the disciplinarian, in which case the local school board decision is final and not reviewable administratively. A student request for review must be submitted to the review authority within 10 school days after the student is informed of the disciplinarian's decision.

(o) Conduct of review. Unless the local school board provides otherwise, a review authority shall have discretion to modify the disciplinarian's decision, including imposing any lesser sanction deemed appropriate. A review authority shall be bound by the hearing authority's factual determinations unless the student persuades the review authority that a finding of fact was arbitrary, capricious, or unsupported by substantial evidence or that new evidence, which has come to light since the hearing and which could not with reasonable diligence have been discovered in time for the hearing, would manifestly change the factual determination. Upon any such finding, the review authority shall have discretion to receive new evidence, reconsider evidence introduced at the hearing, or conduct a de novo hearing. In the absence of any such finding, the review shall be limited to an inquiry into the appropriateness of the penalty imposed.

(p) Form of review. Unless the local school board provides otherwise, a review authority shall have discretion to conduct a review on the written record of the hearing and decision in the case, to limit new submissions by the aggrieved student and school authorities to written materials, or to grant a conference or hearing at which the student and the student's representative and school authorities may present their respective views in person. Where a conference or hearing is granted, the record-keeping requirements of Item (vi) of Subparagraph (l) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC apply.

(q) Timing of review. Except in extraordinary circumstances, a review shall be concluded no later than 15 working days after a student's written request for review is received by the appropriate administrative authority.

(r) Decision. A review authority may announce a decision at the close of any conference or hearing held on review. In any event, the review authority shall prepare a written decision, including concise reasons, and mail or deliver it to the disciplinarian, the hearing authority and the student, through the parent(s), within 10 working days after the review is concluded.

(s) Effect of decision. Unless the local school board provides otherwise, a review authority's decision shall be the final administrative action to which a student is entitled.

[6.11.2.12 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

HISTORY OF 6.11.2 NMAC:

6.11.2 NMAC, Rights and Responsibilities of the Public Schools and Public School Students, filed 8/15/1997, was repealed and replaced by 6.11.2 NMAC, Rights and Responsibilities of Public Schools and Public School Students, effective 7/28/2020.

New Mexico Register / Volume XXXI, Issue 13 / July 14, 2020

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS
PART 17 STRUCTURED LITERACY INSTRUCTION, INTERVENTIONS, AND PROFESSIONAL DEVELOPMENT

6.30.17.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
 [6.30.17.1 NMAC – N, 7/14/2020]

6.30.17.2 SCOPE: This rule applies to all school districts and state-chartered charter schools.
 [6.30.17.2 NMAC – N, 7/14/2020]

6.30.17.3 STATUTORY AUTHORITY: Sections 9-24-8, 22-2-2, and 22-13-32 NMSA 1978.
 [6.30.17.3 NMAC – N, 7/14/2020]

6.30.17.4 DURATION: Permanent.
 [6.30.17.4 NMAC – N, 7/14/2020]

6.30.17.5 EFFECTIVE DATE: July 14, 2020, unless a later date is cited at the end of a section.
 [6.30.17.5 NMAC – N, 7/14/2020]

6.30.17.6 OBJECTIVE: This rule provides criteria for improving literacy outcomes for all students through the development and implementation of structured literacy instruction and structured literacy interventions for students displaying difficulties in reading or characteristics of dyslexia, leading to a higher number of students achieving reading proficiency.
 [6.30.17.6 NMAC – N, 7/14/2020]

6.30.17.7 DEFINITIONS:

- A. “Department-approved screener”** means a tool, approved by the department, used to identify characteristics of dyslexia.
 - B. “First standardized reporting date”** means the 40th day count, or the second Wednesday of October.
 - C. “Licensed and accredited or credentialed teacher preparation provider”** means a licensed and accredited professional development provider who specializes in providing evidence-based training in structured literacy.
 - D. “Multi-layered system of supports”** means a coordinated and comprehensive framework that uses increasingly intensive evidence-based academic and behavioral supports that address student needs as evidenced by student data.
 - E. “Student assistance team” or “SAT”** means the student assistance team, which is a school-based group of people whose purpose is to provide additional educational support to students who are experiencing difficulties that are preventing them from benefiting from general education.
 - F. “Structured literacy”** means systematic, cumulative, explicit, diagnostic, and multisensory instruction that includes deep content knowledge and specific teaching expertise that focuses on the elements of phonological awareness, word recognition, phonics and decoding, spelling, and syntax at the sentence and paragraph levels for the prevention of reading deficits.
- [6.30.17.7 NMAC – N, 7/14/2020]

6.30.17.8 PARENT OR LEGAL GUARDIAN NOTIFICATION: At the beginning of a school year, school districts and charter schools shall notify parents or legal guardians that entering first grade students shall be screened for characteristics of dyslexia. If a student is determined to display characteristics of dyslexia per the department-approved screener, school districts and charter schools shall notify parents of the results of the screening and the structured literacy interventions that are taking place in response to the results. School districts and charter schools shall decide the method by which to inform parents or legal guardians of the results and interventions.
 [6.30.17.8 NMAC – N, 7/14/2020]

6.30.17.9 REQUIREMENTS FOR SCREENING, EVALUATION, AND INTERVENTION:

- A.** Using a department-approved screener, elementary schools shall screen all entering first grade students, in accordance with PED guidance, for dyslexia by the first standardized reporting date.
- B.** A student whose screening demonstrates characteristics of dyslexia shall receive targeted structured literacy interventions with progress monitoring to determine if the student is making adequate progress, pursuant to 22-13-32 NMSA 1978, or be referred to a student assistance team.
- C.** Consideration shall be given to ensure the student is not demonstrating characteristics of dyslexia solely due to a lack of appropriate English language program or services.
- D.** Pursuant to 22-13-32 NMSA 1978, if a student does not make adequate progress with targeted structured literacy interventions, a school shall convene a student assistance team to prescribe more frequent and intensive structured literacy interventions with progress monitoring to determine the student's level of progress. The structured literacy interventions prescribed by the student assistance team shall be in accordance with the department's multi-layered system of supports.
- E.** At no time should a student identified as demonstrating characteristics of dyslexia stop receiving targeted structured literacy interventions.
- F.** Pursuant to 22-13-32 NMSA 1978, a parent or legal guardian of a student referred to a student assistance team shall be informed of the parent's right to request an initial special education evaluation at any time. If the school district or charter school agrees that the student may have a disability, the student assistance team shall refer the child for an evaluation without undue delay, and, shall document attempts at obtaining informed consent from the student's parent(s) or legal guardian(s). The student shall be evaluated within 60 days of receiving the parental consent for an initial evaluation. If the school district or charter school refuses the parent's request for an initial evaluation, the school district or charter school shall provide written notice of the refusal to the parent, including notice of the parent's right to challenge the school district's or charter school's decision as provided in state and federal law and rules.

[6.30.17.9 NMAC – N, 7/14/2020]

6.30.17.10 REQUIREMENTS FOR DOCUMENTATION: School districts and charter schools shall submit data in accordance with PED guidance.

[6.30.17.10 NMAC – N, 7/14/2020]

6.30.17.11 REQUIREMENTS FOR PROFESSIONAL DEVELOPMENT:

- A.** Pursuant to 22-13-32 NMSA 1978, every school district and charter school shall develop and implement a literacy professional development plan that includes a detailed framework for the following:
- (1)** professional development in structured literacy by a licensed and accredited or credentialed teacher preparation provider for all elementary school teachers, including English language development teachers or teachers of English as a second language; and
 - (2)** professional development in evidence-based reading interventions for reading interventionists and special education teachers working with students demonstrating characteristics of dyslexia or diagnosed with dyslexia.
- B.** Every school district and charter school shall provide sustained professional development for the following:
- (1)** school administrators and teachers who teach reading to implement appropriate structured literacy; and
 - (2)** special education teachers to provide structured literacy for students who are identified with dyslexia as a specific learning disability and who are eligible for special education services.
- C.** The department shall:
- (1)** provide lists of recommended teacher professional development materials and opportunities for teachers and school administrators regarding structured literacy for students at risk for reading failure and displaying the characteristics of dyslexia; and
 - (2)** provide technical assistance for special education diagnosticians and other special education professionals regarding the formal special education evaluation of students suspected of having a specific learning disability, such as dyslexia.

[6.30.17.11 NMAC – N, 7/14/2020]

HISTORY OF 6.30.17 NMAC: [RESERVED]

New Mexico Register / Volume XXXI, Issue 13 / July 14, 2020

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 31 SPECIAL EDUCATION
PART 2 CHILDREN WITH DISABILITIES/GIFTED CHILDREN

6.31.2.1 ISSUING AGENCY: Public Education Department, hereinafter the department
 [6.31.2.1 NMAC - Rp, 6.31.2.1 NMAC, 7/14/2020]

6.31.2.2 SCOPE: The requirements of these rules are binding on each New Mexico public agency that has direct or delegated authority to provide special education and related services, regardless of whether that public agency is receiving funds under the federal Individuals with Disabilities Education Improvement Act of 2004 and regardless of whether it provides special education and related services directly, by contract, or through other arrangements such as referrals by the public agency to private schools or facilities. Each public agency is responsible for ensuring that all rights and protections under these rules are afforded to children referred to or placed in private schools or facilities, including residential treatment centers, day treatment centers, hospitals, or mental health institutions by that public agency.
 [6.31.2.2 NMAC - Rp, 6.31.2.2 NMAC, 7/14/2020]

6.31.2.3 STATUTORY AUTHORITY: This rule is being promulgated pursuant to Sections 22-2-1, 22-2-2, 22-13-5 and 22-13-6.1 NMSA 1978.
 [6.31.2.3 NMAC - Rp, 6.31.2.3 NMAC, 7/14/2020]

6.31.2.4 DURATION: Permanent.
 [6.31.2.4 NMAC - Rp, 6.31.2.4 NMAC, 7/14/2020]

6.31.2.5 EFFECTIVE DATE: July 1, 2020, unless a later date is specified at the end of a section.
 [6.31.2.5 NMAC - Rp, 6.31.2.5 NMAC, 7/14/2020]

6.31.2.6 OBJECTIVE: The following rule is promulgated to assist New Mexico public agencies in appropriately identifying and providing educational services for children with disabilities and gifted children. The purposes of this rule are to ensure that all children with disabilities have available a free appropriate public education which includes special education and related services to meet their unique needs; to ensure that the rights of children with disabilities and gifted children and their parents are protected; to assist public agencies to provide for the education of all children with disabilities and gifted children; and to evaluate and ensure the effectiveness of efforts to educate those children.
 [6.31.2.6 NMAC - Rp, 6.31.2.6 NMAC, 7/14/2020]

6.31.2.7 DEFINITIONS:

A. Terms defined by federal laws and rules. All terms defined in the following federal laws and rules and any other federally defined terms that are incorporated there by reference are incorporated here for purposes of these rules.

(1) The federal Individuals with Disabilities Education Improvement Act of 2004 (IDEA), 20 USC Sec. 1400 et seq.

(2) The IDEA rules, 34 CFR Parts 300 and 301.

(3) Pursuant to the paperwork reduction provisions of IDEA, 20 USC Sec. 1408, all definitions, with the exception of those found in Subsection B of 6.31.2.7 NMAC, contained in IDEA Parts 300 and 301 at 34 CFR Secs. 300.1 through 300.45, will be adopted by reference.

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

(1) “CFR” means the code of federal regulations, including future amendments.

(2) “Child with a disability” means a child who meets all requirements of 34 CFR Sec.

300.8 and:

(a) is age three through 21 or who will turn age three at any time during the school

year;

(b) has been evaluated in accordance with 34 CFR Secs. 300.304 through 300.311 and any additional requirements of these or other department rules and standards and as having one or more of the disabilities specified in 34 CFR Sec. 300.8 including an intellectual disability; a hearing impairment, including deafness, speech or language impairment; a visual impairment, including blindness; emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairment; a specific learning disability; deaf-blindness; or being developmentally delayed as defined in Paragraph (4) of Subsection B of 6.31.2.7 NMAC; and who has not received a high school diploma; and

(c) at the discretion of each local educational agency and subject to the additional requirements of Paragraph (2) of Subsection F of 6.31.2.10 NMAC, may include a child age three through nine who is evaluated as being developmentally delayed and who, because of that condition, needs special education and related services.

(3) **“Developmentally delayed”** means a child age three through nine or who will turn age three at any time during the school year with documented delays in development which are at least two standard deviations below the mean on a standardized test instrument or thirty percent below chronological age and who in the professional judgment of the IEP team and one or more qualified evaluators needs special education and related services in at least one of the following areas: communication development, cognitive development, physical development, social or emotional development, or adaptive development. Use of the developmentally delayed option by individual local educational agencies is subject to the further requirements of Paragraph (2) of Subsection F of 6.31.2.10 NMAC. Local educational agencies shall use appropriate diagnostic instruments and procedures to ensure that the child qualifies as a child with a developmental delay in accordance with the definition in this paragraph.

(4) **“Dual discrepancy”** means the child does not achieve adequately for the child's age or to meet grade-level standards established in New Mexico standards for excellence, 6.29.1 through 6.29.17 NMAC; and

(a) does not make sufficient progress to meet age or grade-level standards; or

(b) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards, or intellectual development.

(5) **“Dyslexia”** means a condition of neurological origin that is characterized by difficulty with accurate or fluent word recognition and by poor spelling and decoding abilities, which characteristics typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction and may result in problems in reading comprehension and reduced reading experience that may impede the growth of vocabulary and background knowledge.

(6) The **“educational jurisdiction”** of a public agency includes the geographic area, age range, and all facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions, juvenile justice facilities, state supported schools, or programs within which the public agency is obligated under state laws, rules, or by enforceable agreements including joint powers agreements (JPAs) or memoranda of understanding (MOUs) to provide educational services for children with disabilities. In situations such as transitions, transfers, and special placements, the educational jurisdiction of two or more public agencies may overlap and result in a shared obligation to ensure that a particular child receives all the services to which the child is entitled.

(7) A **“free appropriate public education” or “FAPE”** means special education and related services which meet all requirements of 34 CFR Sec. 300.17 and which, pursuant to 34 CFR Sec. 300.17(b), meet all applicable department rules and standards, including but not limited to these rules; the New Mexico standards for excellence; and department rules governing school personnel preparation, licensure, and performance; student rights and responsibilities; and student transportation.

(8) The **“general education curriculum,”** pursuant to 34 CFR Sec. 300.320, means the same curriculum that a public agency offers for nondisabled children. For New Mexico public agencies whose non-special education programs are subject to department rules, the general curriculum includes the content standards, benchmarks, and all other applicable requirements of the New Mexico standards for excellence and any other department rules defining curricular requirements.

(9) **“LEA”** means a local educational agency as defined in 34 CFR Sec. 300.28.

(10) **“Individualized education program” or “IEP”** means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR Secs. 300.320 through 300.324.

(11) **“IEP team”** means, pursuant to 34 CFR Sec. 300.321, the public agency shall ensure that the IEP team for each child with a disability includes:

- (a) the parents of the child;
 - (b) not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
 - (c) not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
 - (d) a representative of the public agency who:
 - (i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - (ii) is knowledgeable about the general education curriculum; and
 - (iii) is knowledgeable about the availability of resources of the public agency;
 - (e) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in Subparagraphs (b) through (e) of Paragraph (11) of Subsection B of 6.31.2.7 NMAC;
 - (f) at the discretion of the parent or public agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
 - (g) whenever appropriate, the child with a disability.
- (12) **“Individuals with Disabilities Education Improvement Act” or “IDEA”** means the federal Individuals with Disabilities Education Improvement Act of 2004, 20 USC Secs. 1401 et seq., including future amendments.
- (13) **“NMAC”** means the New Mexico administrative code, including future amendments.
- (14) **“NMSA 1978”** means the 1978 compilation of New Mexico statutes annotated, including future amendments.
- (15) **“Parent”** includes, in addition to the persons specified in 34 CFR Sec. 300.30, a child with a disability who has reached age 18 and for whom there is no court-appointed general guardian, limited guardian, or other court-appointed person who has legal custody or has otherwise been authorized by a court to make educational decisions on the child’s behalf as provided in Subsection K of 6.31.2.13 NMAC. Pursuant to 34 CFR Sec. 300.519 and department policy, a foster parent of a child with a disability may act as a parent under Part B of IDEA if: (i) the foster parent or the state children, youth, and families department (CYFD) provides appropriate documentation to establish that CYFD has legal custody and has designated the person in question as the child’s foster parent; and (ii) the foster parent is willing to make the educational decisions required of parents under IDEA, and has no interest that would conflict with the interests of the child. A foster parent who does not qualify under the requirements but who meets all requirements for a surrogate parent under 34 CFR Sec. 300.519 may be appointed as a surrogate if the public agency responsible for making the appointment deems such action appropriate.
- (16) **“Public agency”** means the state educational agency, local educational agencies (LEAs), educational services agencies (ESAs), or nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA and any other political subdivisions of the state that are responsible for providing education to children with disabilities pursuant to 34 CFR Sec. 300.33.
- (17) **“Puente para los niños fund”** means a risk pool fund in New Mexico to support high cost students with disabilities identified by LEAs pursuant to 34 CFR Sec. 300.704(c)(3)(i).
- (18) **“SAT”** means the student assistance team, which is a school-based group of people whose purpose is to provide additional educational support to students who are experiencing difficulties that are preventing them from benefiting from general education.
- (19) **“SED”** means the special education division of the department.
- (20) **“Special education”** means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.
- (a) As authorized by 34 CFR Secs. 300.8(a)(2)(ii) and 300.39(a)(2)(i), “special education” in New Mexico may include speech-language pathology services.
 - (b) Speech-language pathology services shall meet the following standards to be considered special education:
 - (i) the service is provided to a child who has received appropriate tier I universal screening under Subsection D of 6.29.1.9 NMAC as it may be amended from time to time, before being properly evaluated under 34 CFR Secs. 300.301 through 300.306 and Subsection D of 6.31.2.10 NMAC;

(ii) the IEP team that makes the eligibility determination finds that the child has a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance;

(iii) the speech language pathology service consists of specially designed instruction that is provided to enable the child to have access to the general curriculum and meet the educational standards of the public agency that apply to all children; and

(iv) the service is provided at no cost to the parents under a properly developed IEP that meets the requirements of Subsection B of 6.31.2.11 NMAC.

(c) If all of the standards are met, the service shall be considered as special education rather than a related service.

(d) Student/staff caseloads for special education shall meet the requirements of Paragraphs (1) and (2) of Subsection H of 6.29.1.9 NMAC.

(21) A **“state-supported educational program”** means a publicly-funded program that:

(a) provides special education and related services to children with disabilities who come within the program's educational jurisdiction;

(b) is operated by, or under contractual arrangements for, a state school, state educational institution, other state institution, state hospital, or state agency; and

(c) is primarily funded through direct legislative appropriations or other direct state support to a public agency other than a local school district.

(22) **“USC”** means the United States code, including future amendments.

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

(1) **“Facilitated IEP meeting”** or **“FIEP meeting”** or **“FIEP”** means an IEP meeting that utilizes an independent, state-approved, state-funded, trained facilitator as an IEP facilitator to assist the IEP team to communicate openly and effectively, in order to resolve conflicts related to a student's IEP.

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

D. The definitions in Subsection D of 6.31.2.7 NMAC apply only to 6.31.2.12 NMAC.

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

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

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

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

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

E. The definitions in Subsection E of 6.31.2.7 NMAC apply only to Subsection I of 6.31.2.13 NMAC.

(1) **“Expedited hearing”** means a hearing that is available on request by a parent or a public agency under 34 CFR Sec. 300.532(c) and is subject to the requirements of 34 CFR Sec. 300.532(c).

(2) **“Gifted services”** means services to gifted children as defined in Subsection A of 6.31.2.12 NMAC.

(3) **“Transmit”** means to mail, send by electronic mail (email) or telecopier (facsimile machine), or hand deliver a written notice or other document and obtain written proof of delivery by one of the following means:

(a) an email system's confirmation of a completed transmission to an email address that is shown to be valid for the individual to whom the transmission was sent;

- (b) a telecopier machine's confirmation of a completed transmission to a number which is shown to be valid for the individual to whom the transmission was sent;
- (c) a receipt from a commercial or government carrier showing to whom the article was delivered and the date of delivery;
- (d) a written receipt signed by the secretary of education or designee showing to whom the article was hand-delivered and the date delivered; or
- (e) a final decision to any party not represented by counsel for a due process hearing by the U.S. postal service, certified mail, return receipt requested, showing to whom the articles was delivered and the date of delivery.

F. The definitions in Subsection F of 6.31.2.7 NMAC apply only to Subsection B of 6.31.2.9 NMAC and Subsection L of 6.31.2.11 NMAC:

(1) **"Qualified student"** means, pursuant to Paragraph (1) of Subsection A of Section 22-13-8 NMSA 1978, a public school student who:

- (a) has not graduated from high school;
- (b) is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students; and
- (c) in terms of age:
 - (i) is at least five years of age prior to 12:01 a.m. on September 1 of the school year or will be five years of age prior to 12:01 a.m. on September 1 of the school year if the student is enrolled in a public school extended-year kindergarten program that begins prior to the start of the regular school year;
 - (ii) is at least three years of age at any time during the school year and is receiving special education pursuant to rules of the department; or
 - (iii) has not reached the student's 22nd birthday on the first day of the school year and is receiving special education in accordance with federal law.

(2) **"School-age person"** means, pursuant to Paragraph (2) of Subsection A of Section 22-13-8 NMSA 1978, a person who is not a qualified student but who meets the federal requirements for special education and who:

- (a) will be at least three years old at any time during the school year;
- (b) is not more than 21 years of age; and
- (c) has not received a high school diploma or its equivalent.

[6.31.2.7 NMAC - Rp, 6.31.2.7 NMAC, 7/14/2020]

6.31.2.8 RIGHT TO A FREE APPROPRIATE PUBLIC EDUCATION (FAPE):

A. All children with disabilities aged three through 21 or who will turn three at any time during the school year who reside in New Mexico, including children with disabilities who have been suspended or expelled from school, have the right to a FAPE that is made available by one or more public agencies in compliance with all applicable requirements of 34 CFR Secs. 300.101 and 300.120 and these or other department rules and standards. Children with disabilities who are enrolled in private schools have the rights provided by 34 CFR Secs. 300.129-300.148 and Subsection L of 6.31.2.11 NMAC.

B. Only children who meet the criteria in these rules may be included in calculating special education program units for state funding and counted as eligible children for federal flow-through funds under Part B of IDEA.

[6.31.2.8 NMAC - Rp, 6.31.2.8 NMAC, 7/14/2020]

6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

A. Compliance with applicable laws and rules. Each New Mexico public agency, within the scope of its authority, shall develop and implement appropriate policies, procedures, programs, and services to ensure that all children with disabilities who reside within the public agency's educational jurisdiction, including children who are enrolled in private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, or are schooled at home, are identified and evaluated and have access to a free appropriate public education (FAPE) in compliance with all applicable requirements of state and federal laws and rules. This obligation applies to all New Mexico public agencies that are responsible under laws, rules, rules, or written agreements for providing educational services for children with disabilities, regardless of whether that public agency receives funds under IDEA and regardless of whether it provides special education and related services directly, by

contract, by referrals to private schools or facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions, or through other arrangements.

B. Public agency funding and staffing.

(1) Each public agency that provides special education or related services to children with disabilities shall allocate sufficient funds, staff, facilities and equipment to ensure that the requirements of IDEA and all department rules and standards that apply to programs for children with disabilities are met.

(2) The public agency with primary responsibility for ensuring that FAPE is available to a child with a disability on the date set by the department for a child count or other report shall include that child in its report for that date. Public agencies with shared or successive responsibilities for serving a particular child during a single fiscal year are required to negotiate equitable arrangements through joint powers agreements or memorandums of understanding or interstate agreements for sharing the funding and other resources available for that child. Such agreements shall include provisions with regard to resolving disputes between the parties to the agreement.

(3) Placement of students in private residential treatment centers, or other out of home treatment or habilitation programs, by the IEP team, or by a due process decision. In no event shall a child with an IEP be allowed to remain in an out of home treatment or habilitation program for more than 10 days without receiving special education and related services. The school district in which the qualified student or school-age person lives, whether in-state or out-of-state, is responsible for the educational, nonmedical care and room and board costs of that placement. The sending school shall be responsible for the provision of special education and related services.

(a) Agreements between the resident school district of the qualified student or school-age person and a private residential treatment center shall be on the form posted on the department's website or on a form otherwise approved by the department and shall be reviewed and approved by the secretary of public education.

(b) Agreements shall provide for:

(i) student evaluations and eligibility;

(ii) an educational program for each qualified student or school-age person that meets state standards for such programs, except that teachers employed by private schools are not required to be highly qualified;

(iii) the provision of special education and related services in conformance with an IEP that meets the requirements of federal and state law and applicable rules;

(iv) adequate classroom or other physical space that allows the school district to provide an appropriate education;

(v) a detailed description of the costs for the placement; and

(vi) an acknowledgement of the authority of the local school board and the department to conduct on-site evaluations of programs and student progress to ensure that state standards are met.

(4) Educational agencies may seek payment or reimbursement from noneducational agencies or public or private insurance for services or devices covered by those agencies that are necessary to ensure FAPE to children with disabilities. Claims for payment or reimbursement shall be subject to the procedures and limitations established in 34 CFR Secs. 300.154(b) and 300.154(d) through (g), Section 22-13-8 NMSA 1978 and any laws, rules, executive orders, contractual arrangements, or other requirements governing the noneducational payor's obligations.

(5) Risk pool fund. (Puente para los ninos fund.)

(a) Local educational agency high cost fund.

(i) In compliance with 34 CFR Sec. 300.704(c), the department may maintain a risk pool fund to support high cost children with disabilities identified by LEAs.

(ii) Funds distributed under this program will be on a reimbursable basis.

(b) Application for funds. LEAs desiring to be reimbursed for the cost of children with disabilities with high needs shall file an application in accordance with the department's puente para los ninos fund as described on the department's website.

(6) Children with disabilities who are covered by public benefits or insurance. Pursuant to 34 CFR Sec. 300.154(d), a public agency may use the medicaid or other public benefits or insurance in which a child participates to provide or pay for services required under IDEA-Part B rules, as permitted under the public insurance program, except as provided in Subparagraph (a) of Paragraph (6) of Section B of 6.31.2.9 NMAC.

(a) With regard to services required to provide FAPE to an eligible child, the public agency:

(i) may not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of IDEA;

(ii) may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to IDEA-Part B rules, but pursuant to 34 CFR Sec. 300.154(f)(2), may pay the cost that the parent otherwise would be required to pay; and

(iii) may not use a child's benefits under a public benefits or insurance program if that use would: (A) decrease available lifetime coverage or any other insured benefit; (B) result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school; (C) increase premiums or lead to the discontinuation of benefits or insurance; or (D) risk loss of eligibility for home- and community-based waivers, based on aggregate health-related expenditures.

(b) Prior to obtaining the parental consent described in Subparagraph (c) of this paragraph, and prior to accessing the parent's or child's public benefits, the public agency shall provide written notice to the child's parents, consistent with 34 CFR Sec. 300.503(c). The written notice shall be provided annually thereafter.

(i) The notice shall include a statement of the parental consent provisions in 34 CFR Secs. 99.30 and 300.622 and shall specify: (A) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to the child; (B) the purpose of the disclosure (e.g., billing for services under 34 CFR Part 300; (C) the public agency to which the disclosure may be made (e.g., New Mexico medicaid program); and (D) that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under 34 CFR Part 300.

(ii) The notice shall further include: (A) a statement of the "no cost" provisions in 34 CFR Secs. 300.154(d)(2)(i) through 300.154(d)(2)(iii); (B) a statement that the parents have the right under 34 CFR Parts 99 and 300 to withdraw their consent to disclosure of their child's personally identifiable information to the New Mexico medicaid program at any time; and (C) a statement that the withdrawal of consent or refusal to provide consent under 34 CFR Parts 99 and 300 to disclose personally identifiable information to the New Mexico medicaid program does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(c) Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notice to the child's parents consistent with Subparagraph (b) of this paragraph, the public agency shall obtain written parental consent as defined by 34 CFR Sec. 300.9. The written consent, consistent with the requirements of 34 CFR Sec. 300.154(d)(2)(iv), shall:

(i) meet the requirements of 34 CFR Secs. 99.30 and 300.622 and shall specify: (A) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to the child; (B) the purpose of the disclosure (e.g., billing for services under 34 CFR Part 300; (C) the public agency to which the disclosure may be made (e.g., New Mexico medicaid program); and

(ii) shall specify that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under 34 CFR Part 300.

(d) The public agency is not required to obtain a new parental consent if the following conditions are present:

(i) there is no change in any of the following: (A) the type of services to be provided to the child; (B) the amount of services to be provided to the child; or (C) the cost of the services to be charged to the public benefits or insurance program; and

(ii) the public agency has on file a parental consent meeting the requirements of 34 CFR Secs. 300.9, 99.30, and 300.622.

(e) Once the public agency obtains the one-time consent consistent with 34 CFR Sec. 300.154(d)(2)(iv), the public agency is not required to obtain parental consent before it accesses the child's or parent's public benefits or insurance in the future, regardless of whether there is a change in the type or amount of services to be provided to the child or a change in the cost of the services to be charged to the public benefits or insurance program.

(f) If a child transfers to a new public agency, the new public agency shall provide the written notification described in 34 CFR Sec. 300.154(d)(2)(v) and Subparagraph (b) of this paragraph, and shall then obtain parental consent meeting the requirements of 34 CFR Sec. 300.154(d)(2)(iv).

(7) Children with disabilities who are covered by private insurance benefits. Pursuant to 34 CFR Sec. 300.154(e), an educational agency shall obtain a parent's informed written consent for each proposed use

of private insurance benefits and shall inform parents that their refusal to permit the use of their private insurance will not relieve the educational agency of its responsibility to ensure that all required services are provided at no cost to the parents. The public agency may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to IDEA-Part B rules.

(8) Pursuant to 34 CFR Sec. 300.154(f):

(a) if a public agency is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service required under IDEA-Part B rules, to ensure FAPE the public agency may use its Part B funds to pay for the service; and

(b) to avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

(9) Staff training and qualifications.

(a) Each public agency is responsible for ensuring that personnel serving children with disabilities are qualified under state licensure requirements and are adequately prepared for their assigned responsibilities, pursuant to 34 CFR Sec. 300.156. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to children with disabilities under Part B of IDEA.

(b) Each public agency and charter school shall train their school administrators and teachers who teach reading to implement appropriate research-based reading interventions prior to referring the student for a special education evaluation and shall train their special education teachers to provide appropriate specialized reading instruction for students with dyslexia who have been identified as eligible for special education services.

C. IDEA applications and assurances. Each New Mexico public agency that desires to receive IDEA flow-through funds shall file an annual application with the department in the form prescribed by the department. Each application shall:

(1) provide all information requested by the department;

(2) demonstrate to the department's satisfaction that the public agency is in compliance with all applicable requirements of 34 CFR Secs. 300.200 through 300.230 and these or other department rules and standards;

(3) include an agreement that the public agency upon request will provide any further information the department requires to determine the public agency's initial or continued compliance with all applicable requirements;

(4) include assurances satisfactory to the department that the public agency does and will continue to operate its programs in compliance with all applicable federal and state programmatic, fiscal and procedural requirements including the development of joint powers agreements, memoranda of understanding or other interagency agreements to address shared or successive responsibilities to meet the educational needs of a particular child during a single fiscal year; and

(5) pursuant to Subsection C of Section 22-8-11 NMSA 1978, the department shall not approve and certify an operating budget of any school district or state-chartered charter school that fails to demonstrate that parental involvement in the process was solicited.

D. Early intervening services set aside funds. Fifteen percent set aside.

(1) Pursuant to 34 CFR Secs. 300.208(a)(2) and 300.226, LEAs may use up to fifteen percent of the amount the LEA receives under Part B of IDEA to implement early intervening services for children with or without disabilities in kindergarten through grade 12 with particular emphasis on children in kindergarten through grade three.

(2) Prior to the implementation or use of these set aside funds, the LEA shall have on record with the department an approved plan for use of these funds as described by 34 CFR Sec. 300.226(b) and how such activities will be coordinated with regional education cooperatives as described in 34 CFR Sec. 300.226(e), if applicable.

(3) The LEA plan for use of set aside funds shall be submitted as an addendum to its annual application for Part B funding. If the LEA determines to implement a set aside plan after the initial application, a request for implementation of a set aside plan shall be submitted for approval 60 days before the implementation of the plan.

(4) Each LEA that develops and maintains coordinated, early intervening services shall report annually to the department as provided in 34 CFR Sec. 300.226(d).

E. Significant disproportionality.

(1) Pursuant to CFR 34 Sec. 300.646, LEAs shall provide for the collection and examination of data to determine if significant disproportionality, based on race and ethnicity, is occurring with respect to:

(a) the identification of children as children with disabilities including the identification of children as children with disabilities in accordance with a particular impairment as defined by 34 CFR Sec. 300.8;

(b) the placement in particular educational settings of these children; and

(c) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(2) Each public agency shall reserve the fifteen percent early intervening funds if they are identified for having data that is significantly disproportionate in any one of the following categories:

(a) suspension of students with disabilities;

(b) over identification of students with disabilities;

(c) over identification of students in accordance with a particular impairment as defined by 34 CFR Sec. 300.8; and

(d) placement of students with disabilities in a particular setting.

(3) Review and revision of policies, practices, and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities or the placement in particular educational settings of these children, in accordance with Paragraph (1) of this subsection, the LEA shall:

(a) provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of IDEA; and

(b) require any LEA identified under Paragraph (1) of this subsection to reserve the maximum amount of funds under 34 CFR Sec. 300.226 to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly over-identified under Paragraph (1) of this subsection; and

(c) require the LEA to publicly report on the revision of policies, practices, and procedures described under Subparagraph (b) of this paragraph.

F. Annual determinations. Each local educational agency and other public agencies when applicable shall be assigned an annual determination. The determinations shall be consistent with those provided in 34 CFR Sec. 300.603(b) based on the local educational agency's performance on the targets established in the department's state performance plan.

(1) For determinations of needs intervention and needs substantial intervention, the local educational agency may request an opportunity for an informal hearing. The request for hearing shall be made in writing to the secretary of public education within 30 days of the date of the determination.

(2) The hearing will afford the local educational agency the opportunity to demonstrate why the department should not make the determination of needs intervention or needs substantial intervention. The hearing shall be conducted by the secretary or the secretary's designee. Formal rules of evidence shall not apply to the hearing.

G. Notification of public agency in case of ineligibility. Pursuant to 34 CFR Sec. 300.221, if the department determines that a public agency is not eligible under Part B of IDEA, the department shall notify the affected public agency of that determination and provide the public agency with reasonable notice and an opportunity for a hearing under 34 CFR Sec. 76.401(d).

H. Withholding of funds for noncompliance. Pursuant to 34 CFR Sec. 300.222, if the department, after reasonable notice and an opportunity for a hearing under 34 CFR Sec. 76.401(d), finds that a public agency that has previously been determined to be eligible is failing to comply with any requirement described in 34 CFR Secs. 300.201 through 300.213 and 300.608, the department shall reduce or may not provide any further Part B payments to the public agency until the department is satisfied that the public agency is in compliance with that requirement.

I. Reallocation of funds. If a new LEA is created, the base payment portion of IDEA subgrant of the LEA that would have served children with disabilities now being served by the new LEA will be adjusted pursuant to 34 CFR Sec. 300.705(b)(2). IDEA funds to new charter schools that are LEAs will be allocated pursuant to 34 CFR Secs. 76.785 through 76.799 and 300.705(b). Pursuant to 34 CFR Sec. 300.705(c), if the department determines that a public agency is adequately providing FAPE to all children with disabilities residing in the area served by that public agency with state and local funds, the department may reallocate any portion of the funds under this part that are not needed by that public agency to provide FAPE to other LEAs in the state that are not

adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs or the department may also retain those funds for use at the state level as provided by 34 CFR Sec. 300.705(c).

J. Prohibition on mandatory medication. Each LEA and other public agencies serving students with disabilities are prohibited from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the federal Controlled Substances Act (21 USC 812(c)) for a student as a condition of attending school, receiving an evaluation under 34 CFR Secs. 300.300 through 300.311, or receiving services under Part B of IDEA. This prohibition shall be construed as provided in 34 CFR Sec. 300.174(b). [6.31.2.9 NMAC - Rp, 6.31.2.9 NMAC, 7/14/2020]

6.31.2.10 IDENTIFICATION, EVALUATIONS, AND ELIGIBILITY DETERMINATIONS:

A. Child find. Each public agency shall adopt and implement policies and procedures to ensure that all children with disabilities who reside within the public agency's educational jurisdiction, including children with disabilities attending private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, detention and correctional facilities, children who are schooled at home, highly mobile children, children who reside on Indian reservations, and children who are advancing from grade to grade, regardless of the severity of their disability, and who are in need of special education and related services, are located, evaluated, and identified in compliance with all applicable requirements of 34 CFR Secs. 300.111, 300.131, 300.301 through 300.306, and these or other department rules and standards. For preschool children, child find screenings shall serve as interventions under Subsection B of 6.31.2.10 NMAC.

B. The public agency shall follow a three-layer model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning as set forth in Subsection D of 6.29.1.9 NMAC.

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

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

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

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

(i) data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

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

(i) a statement of the basis for making the determination and an assurance that the determination has been made in accordance with 34 CFR Sec. 300.306(c)(1); and

(ii) a statement whether the child does not achieve adequately for the child's age or to meet state-approved grade-level standards consistent with 34 CFR Sec. 300.309(a)(1); and

(iii) a statement whether the child does not make sufficient progress to meet age or grade-level standards consistent with 34 CFR Sec. 300.309(a)(2)(i), or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards, or intellectual development consistent with 34 CFR Sec. 300.309(a)(2)(ii); and

(iv) if the child has participated in a process that assesses the child's response to scientific, research-based intervention: a statement of the instructional strategies used and the student-centered data collected; documentation that the child's parents were notified about the state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; strategies for increasing the child's rate of learning; and the parents' right to request an evaluation.

(d) Notwithstanding the provisions of Subsection D of 6.31.2.10 NMAC, a parent may request an initial special education evaluation at any time during the public agency's implementation of layers 1 and 2 of the three-layer model of student intervention. If the public agency agrees with the parent that the child may be a child who is eligible for special education services, the public agency shall evaluate the child. If the public agency declines the parent's request for an evaluation, the public agency shall issue prior written notice in accordance with 34 CFR Sec. 300.503. The parent may challenge this decision by requesting a due process hearing.

(2) Preschool children suspected of having a specific learning disability shall be evaluated in accordance with Subparagraph (f) of Paragraph (5) of Subsection A of 6.31.2.11 NMAC and 34 CFR Secs. 300.300 through 300.305, which may include the severe discrepancy model.

(3) Public agencies shall implement the dual discrepancy model in kindergarten through third grade utilizing the student assistance team and the three-layer model of student intervention as defined and described in the *New Mexico Technical Evaluation and Assessment Manual* (New Mexico T.E.A.M.). Data on initial evaluations for perceived learning disabilities in kindergarten through grade three shall be submitted to the department through the student teacher accountability reporting system (STARS).

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

D. Evaluations and reevaluations.

(1) Initial evaluations.

(a) Each public agency shall conduct a full and individual initial evaluation, at no cost to the parent, and in compliance with requirements of 34 CFR Secs. 300.305 and 300.306 and other department rules and standards before the initial provision of special education and related services to a child with a disability.

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

(c) Procedures for initial evaluation.

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

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

(iii) Each public agency shall maintain a record of the receipt, processing, and disposition of any referral for an individualized evaluation. All appropriate evaluation data, including complete SAT file documentation and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the eligibility determination team.

(iv) A parent may request an initial special education evaluation at any time. If the public agency agrees with the parent that the child may be a child who is eligible for special education services, the public agency shall evaluate the child. If the public agency declines the parent's request for an evaluation, the public agency shall issue prior written notice in accordance with 34 CFR Sec. 300.503. The parent can challenge this decision by requesting a due process hearing.

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

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

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

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

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

(2) Reevaluations.

(a) Each LEA shall ensure that a reevaluation of each child is conducted at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary, and is in compliance with the requirements of 34 CFR Secs. 300.303 through 300.311, and any other applicable department rules and standards.

(b) Reevaluations may be conducted more often if:

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

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

(c) Reevaluations may not occur more than once a year, unless the parent and public agency agree otherwise.

(d) Procedures for conducting evaluations and reevaluations.

(i) The public agency shall provide notice to the parents of a child with a disability that describes any evaluation procedures the public agency proposes to conduct in compliance with 34 CFR Sec. 300.503.

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

(iii) If it is determined that a child requires an individualized evaluation or reevaluation, the public agency is required to follow the procedures established by the department.

(iv) Each public agency shall use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the child's family that may assist in determining if the child is a child with a disability, the content of the child's IEP including information related to assisting the child to be involved and progress in the general education curriculum or for a preschool child to participate in appropriate activities.

(e) Each public agency shall maintain a record of the receipt, processing, and disposition of any referral for an individualized reevaluation. Reevaluation shall be completed on or before the three year anniversary date. All appropriate reevaluation data and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the eligibility determination team or IEP team.

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

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

(1) Each public agency shall ensure that tests and other evaluation materials used to assess children are selected, provided, and administered so as not to be discriminatory on a racial or cultural basis and are provided and administered in the child's native language or other mode of communication, such as American sign language, and in the form most likely to yield accurate information, on what the child knows and can do academically, developmentally and functionally, unless it is clearly not feasible to select, provide, or administer pursuant to 34 CFR Sec. 300.304(c)(1).

(2) Each public agency shall ensure that selected assessments and measures are valid and reliable and are administered in accordance with instructions provided by the assessment producer and are administered by trained and knowledgeable personnel.

(3) Each public agency shall consider information about a child's language proficiency in determining how to conduct the evaluation of the child to prevent misidentification. A child may not be determined to be a child with a disability if the determinant factor for that eligibility determination is limited English proficiency. Comparing academic achievement results with grade level peers in the public agency with similar cultural and linguistic backgrounds should guide this determination process and ensure that the child is exhibiting the characteristics of a disability and not merely language difference in accordance with 34 CFR Sec. 300.306(b)(1).

(4) Each public agency shall ensure that the child is assessed in all areas related to the suspected disability.

(5) Policies for public agency selection of assessment instruments include:

(a) assessment and evaluation materials that are tailored to assess specific areas of educational need; and

(b) assessments that are selected ensure that results accurately reflect the child's aptitude or achievement level.

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

F. Eligibility determinations.

(1) General rules regarding eligibility determinations

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

(b) The public agency shall provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

(2) Optional use of developmentally delayed classification for children aged three through nine.

(a) The developmentally delayed classification may be used at the option of individual local educational agencies but may only be used for children who do not qualify for special education under any other disability category.

(b) Children who are classified as developmentally delayed shall be reevaluated during the school year in which they turn nine and will no longer be eligible in this category when they become 10. A student who does not qualify under any other available category at age 10 will no longer be eligible for special education and related services.

[6.31.2.10 NMAC - Rp, 6.31.2.10 NMAC, 7/14/2020]

6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

A. Preschool programs for children aged three through five.

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

(2) Eligibility to enroll in Part B preschool program. If a child turns three at any time during the school year and is determined to be eligible under Part B, the child may enroll in a Part B preschool program when the child turns three if the parent so chooses, whether or not the child has previously been receiving Part C services.

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

(a) The initial comprehensive evaluation process shall be conducted in all areas of suspected disability.

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

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

(4) Each public agency shall develop and implement appropriate policies and procedures to ensure a smooth and effective transition from Part C to Part B programs for preschool children with disabilities

within the public agency's educational jurisdiction, in compliance with 34 CFR Sec. 300.124. Each LEA and other public agencies as appropriate shall make reasonable efforts to establish productive working relations with local Part C programs and when given reasonable notice shall participate in the transition planning conferences arranged by local Part C providers.

(5) In particular:

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

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

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

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

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

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

(g) Development of IFSP, IEP or IFSP-IEP.

(i) The IFSP, IEP, or IFSP-IEP will be developed by a team constituted in compliance with 34 CFR Sec. 300.321, including parents. For children transitioning from Part C programs to Part B programs, the team shall also include one or more early intervention providers who are knowledgeable about the child. "Early intervention providers" are defined as Part C service coordinators or other representatives of the Part C system.

(ii) For each child transitioning from a Part C program to a Part B preschool program, the LEA shall initiate a meeting to develop the eligible child's IFSP, IEP, or IFSP-IEP, in accordance with 34 CFR Sec. 300.124. The IFSP, IEP or IFSP shall be developed and implemented no later than the child's third birthday, consistent with 34 CFR Sec. 300.101(b).

(h) In compliance with 34 CFR Sec. 300.101(b)(2), if a child's birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin. Each public agency shall engage in appropriate planning with the Part C lead agency so that the eligible child will be prepared to receive Part B special education and related services when the IEP team determines that the services under the IEP or IFSP will begin.

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

B. Individualized education programs (IEPs).

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

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

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

(4) Agreement to modify IEP meeting requirement.

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

(b) If changes are made to the child's IEP in accordance with Subparagraph (a) of this paragraph, the public agency shall ensure that the child's IEP team is informed of those changes.

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

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

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

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

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

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

(ii) a behavioral intervention plan focusing on positive behavior supports and developed from a functional behavioral assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings;

(e) futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments;

(f) parent or family training and support, provided by qualified personnel with experience in ASD, that:

(i) provides a family with skills necessary for a child to succeed in the home or community setting;

(ii) includes information regarding resources such as parent support groups, workshops, videos, conferences, and materials designed to increase parent knowledge of specific teaching and management techniques related to the child's curriculum; and

(iii) facilitates parental carryover of in-home training, including, for example, strategies for behavior management and developing structured home environments or communication training so that parents are active participants in promoting the continuity of interventions across all settings;

(g) suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social or behavioral progress based on the child's developmental and learning level and that encourages work towards individual independence as determined by:

(i) adaptive behavior evaluation results;

(ii) behavioral accommodation needs across settings; and

(iii) transitions within the school day;

- (h) communication interventions, including communication modes and functions that enhance effective communication across settings such as augmentative, incidental, and naturalistic teaching;
- (i) social skills supports and strategies based on social skills assessment or curriculum and provided across settings, including trained peer facilitators, video modeling, social stories, and role playing;
- (j) professional educator and staff support, including training provided to personnel who work with the student to assure the correct implementation of techniques and strategies described in the IEP; and
- (k) teaching strategies based on peer reviewed, research-based practices for students with ASD, including those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, and social skills training.

(6) Each local education agency in the state shall provide the parents of a student who is diagnosed as hearing impaired, deaf, blind, visually impaired, or deafblind with information about the educational programs offered by the New Mexico school for the deaf (NMSD) or New Mexico school for the blind and visually impaired (NMSBVI) prior to and at each IEP. NMSD and NMSBVI shall provide LEAs relevant information as described in this paragraph. At the parent's or public agency's request, NMSD, NMSBVI, or both shall be invited to the IEP meeting so that the full continuum of services is represented at the IEP meeting pursuant to 34 CFR Secs. 300.115 and 300.321(a)(6).

C. Least restrictive environment.

(1) Except as provided in 34 CFR Sec. 300.324(d) and Subsection K of 6.31.2.11 NMAC for children with disabilities who are convicted as adults under state law and incarcerated in adult prisons, all educational placements and services for children with disabilities shall be provided in the least restrictive environment that is appropriate to each child's needs in compliance with 34 CFR Secs. 300.114 through 300.120.

(2) In determining the least restrictive environment for each child's needs, public agencies and their IEP teams shall ensure that the following requirements are met.

(a) The requirements of 34 CFR Sec. 300.114(a)(2) for each public agency to ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled, and that special classes, separate schooling, or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(b) The required continuum of alternative placements as specified in 34 CFR Sec. 300.115.

(c) The requirement of 34 CFR Sec. 300.116(c) that each child with a disability be educated in the school that he or she would attend if nondisabled unless the child's IEP requires some other arrangement.

(d) The requirement of 34 CFR Sec. 300.116(e) that a child with a disability not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

(e) The requirements of 34 CFR Sec. 300.320(a)(4) that the IEP for each child with a disability include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities with nondisabled children.

(f) The requirement of 34 CFR Sec. 300.324(a)(3) that the regular education teacher of a child with a disability, as a member of the IEP team, shall assist in determining the supplementary aids and services, program modifications or supports for school personnel that will be provided for the child in compliance with 34 CFR Sec. 300.320(a)(4).

(g) The requirement of 34 CFR Sec. 300.320(a)(5) that the IEP include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and the activities described in 34 CFR Secs. 300.320(a)(4) and 300.117.

(h) The requirements of 34 CFR Sec. 300.503 that a public agency give the parents written notice a reasonable time before the public agency proposes or refuses to initiate or change the educational placement of the child or the provision of FAPE to the child and that the notice include a description of any other options considered and the reasons why those options were rejected.

(i) The requirement of 34 CFR Sec. 300.120 that the department carry out activities to ensure that Sec. 300.114 is implemented by each public agency and that, if there is evidence that a public agency makes placements that are inconsistent with Sec. 300.114, the department shall review the public agency's justification for its actions and assist in planning and implementing any necessary corrective action.

D. Performance goals and indicators.

(1) Pursuant to the requirements of 34 CFR Sec. 300.157(a), the content standards and benchmarks from the department's standards for excellence (Chapter 29 of Title 6 of NMAC) for all children attending public schools and state-supported educational programs in New Mexico shall provide the basic performance goals and indicators for children with disabilities in the general education curriculum.

(2) The IEP academic goals shall align with the New Mexico content standards and benchmarks, including the expanded performance standards for students with significant cognitive disabilities, however, functional goals do not have to align with the standards and benchmarks.

(a) Beginning in the 2012-2013 school year, IEP academic goals in English language arts and mathematics for students in kindergarten through grade three shall align with the English Language Arts Common Core Standards (6.29.13 NMAC) and the Mathematics Common Core Standards (6.29.14 NMAC).

(b) Beginning in the 2013-2014 school year, IEP academic goals in English language arts and mathematics for students in grades four through 12 shall align with the English Language Arts Common Core Standards (6.29.13 NMAC) and the Mathematics Common Core Standards (6.29.14 NMAC).

(3) Unless waivers or modifications covering individual public agencies' programs have been allowed by the department or the secretary of education, the general education curriculum and the content standards and benchmarks shall only be adapted to the extent necessary to meet the needs of individual children with disabilities as determined by IEP teams in individual cases.

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

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

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

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

F. Behavioral management and discipline.

(1) Behavioral planning in the IEP. Pursuant to 34 CFR Sec. 324(a)(2)(i), the IEP team for a child with a disability whose behavior impedes his or her learning or that of others shall consider, if appropriate, strategies to address that behavior, including the development of behavioral goals and objectives and the use of positive behavioral interventions, strategies, and supports to be used in pursuit of those goals and objectives. Public agencies are strongly encouraged to conduct functional behavioral assessments (FBAs) and integrate behavioral intervention plans (BIPs) into the IEPs for students who exhibit problem behaviors well before the behaviors result in proposed disciplinary actions for which FBAs and BIPs are required under the federal rules.

(2) Suspensions, expulsions, and disciplinary changes of placement. Suspensions, expulsions and other disciplinary changes of placement for children with disabilities shall be carried out in compliance with all applicable requirements of 34 CFR Secs. 300.530 through 300.536, and these or other department rules and standards, including particularly 6.11.2.11 NMAC, governing interim disciplinary placements and long-term suspensions or expulsions of students with disabilities.

(3) FAPE for children removed from current placement for more than 10 school days in a school year. FAPE shall be provided in compliance with all applicable requirements of 34 CFR Sec. 300.530(d) and these or other department rules and standards for all children with disabilities who have been removed from their current educational placements for disciplinary reasons for more than 10 school days during a school year, as defined in 34 CFR Sec. 300.536.

(4) LEAs shall keep an accurate accounting of suspension and expulsion rates for children with disabilities as compared to children without disabilities to ensure that children with disabilities are not being expelled or suspended at a significantly higher rate than children without disabilities.

G. Graduation planning and post-secondary transitions.

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

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

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

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

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

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

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

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

- (i) instruction;
- (ii) related services;
- (iii) community experiences;
- (iv) the development of employment and other post-school adult living

objectives; and

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

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

(3) State rules require the development of measurable post-school goals beginning not later than the first IEP to be in effect when the child turns 14, or younger, if determined appropriate by the IEP team, and updated annually thereafter. Pursuant to 34 CFR Sec. 300.320(b), the IEP shall include:

(a) appropriate measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills;

(b) the transition services (including courses of study) needed to assist the child in reaching those goals; and

(c) a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority.

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

(5) For a child whose eligibility terminates due to graduation from secondary school with a regular diploma or due to reaching the child's twenty-second birthday, the public agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's post-secondary goals pursuant to 34 CFR Sec. 300.305(e)(3).

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

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

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

(a) adopts and implements the child's IEP from the previous public agency; or

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

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

(a) conducts an evaluation pursuant to 34 CFR Secs. 300.304 through 300.306 (if determined to be necessary by the new public agency); and

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

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

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

(b) the previous public agency in which the child was enrolled shall take reasonable steps to promptly respond to the request from the new public agency.

I. Children in charter schools.

(1) Pursuant to 34 CFR Sec. 300.209, children with disabilities who attend public charter schools and their parents retain all rights under Part B of IDEA.

(2) Charter schools that are public schools of the LEA:

(a) the LEA shall serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and

(b) the LEA shall provide funds under Part B of IDEA to those charter schools on the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities, and at the same time as the LEA distributes other federal funds to the LEA's other public schools, consistent with the state's charter school law; and

(c) if the public charter school is a school of an LEA that receives funding under 34 CFR Sec. 300.705 and includes other public schools:

(i) the LEA is responsible for ensuring that the requirements of this part are met, unless state law assigns that responsibility to some other entity; and

(ii) the LEA shall meet the requirements of Paragraph (2) of this subsection.

(3) Public charter schools that are LEAs. If the public charter school is an LEA, consistent with 34 CFR Sec. 300.28, that receives funding under 34 CFR Sec. 300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless state law assigns that responsibility to some other entity.

Charter schools who are LEAs authorized under the public education commission shall satisfy child find requirements for children enrolled in the charter school.

(4) Public charter schools that are not an LEA or a school that is part of an LEA.

(a) If the public charter school is not an LEA receiving funding under 34 CFR Sec. 300.705, or a school that is part of an LEA receiving funding under 34 CFR Sec. 300.705, the department is responsible for ensuring that the requirements of this part are met.

(b) Subparagraph (a) of this paragraph does not preclude the governor from assigning initial responsibility for ensuring the requirements of this part are met to another entity, however, the department shall maintain the ultimate responsibility for ensuring compliance with this part, consistent with 34 CFR Sec. 300.149.

J. Children in state-supported educational programs.

(1) Children placed or referred by other public agencies.

(a) Applicability. The rules in this Paragraph (1) of Subsection J of 6.31.2.11 NMAC apply to children with disabilities who are being considered for placement in a state-supported educational program or facility by another public agency as a means of providing special education and related services.

(b) Responsibility. Each public agency shall ensure that a child with a disability who is being considered for placement in a state-supported educational program by another public agency has all the rights of a child with a disability who is served by any other public agency, including being provided special education and related services:

(i) in conformance with an IEP;

(ii) at no cost to the child's parents; and

(iii) at a school or facility that is accredited by the department or licensed by the New Mexico department of health.

(c) Service delivery. With informed parent consent pursuant to 34 CFR Sec. 300.300 and Subsection F of 6.31.2.13 NMAC, and pursuant to the procedures in 34 CFR Sec. 300.304 and Subsection D of 6.31.2.10 NMAC, the state-supported program may conduct such additional evaluations and gather such additional information as it considers necessary to assist the IEP team in making the placement decision. The referring public agency and the receiving state-supported educational program shall be jointly responsible for developing IEPs and ensuring that the child receives a free appropriate public education.

(d) Joint IEPs and interagency agreements. Responsibility for services for children placed in or referred to state-supported educational programs shall be defined by a jointly agreed upon IEP or other written agreement between the referring public agency and the state-supported program.

(e) Annual review. At least annually, the referring public agency, the state-supported educational program, and the parent shall jointly review the child's IEP and revise it as the joint IEP team deems appropriate.

(2) Children enrolled in state-supported educational programs by parents or other public authorities. A state-supported educational program that accepts a child with a disability at the request of a parent or upon the request or order of a noneducational public authority, and without inviting the public agency that has primary responsibility for serving the child to participate in the IEP process, assumes all responsibility for ensuring the provision of FAPE. The child's LEA or another public agency with educational jurisdiction may agree to share the responsibility pursuant to a joint IEP or other written agreement between the state-supported program, the other public agency and, if appropriate, the parent.

K. Children at the New Mexico School for the Deaf (NMSD).

(1) NMSD is a state educational agency established to provide educational services to persons who are 21 years of age or younger on the first day of school, who are deaf or hard of hearing, and who may have one or more other disabilities. The school serves as a special school on the continuum of placement options. The school serves students who require specialized or intensive educational services or services related to hearing impairment or deafness. NMSD provides a variety of services to the students and school districts around the state, including outreach, consultation, and training services. NMSD also provides comprehensive services on a day or residential basis. The comprehensive day and residential programs are not intended to serve students whose needs are appropriately addressed in a group home or hospital setting or in a residential treatment facility.

(2) To be eligible to receive free services from NMSD, a student shall be deaf or hearing impaired as determined by an audiological evaluation and be a resident of New Mexico.

(3) The student's resident school district shall conduct child find, pursuant to 34 CFR Sec. 300.111 and Subsection A of 6.31.2.10 NMAC.

- (4) In addition to the requirements of identification, evaluations, and eligibility determinations of students with disabilities pursuant to 6.31.2.10 NMAC and 34 CFR Secs. 300.100 through 300.230 and 300.300 through 300.328, if a student's resident school district finds, has reason to know, or receives documentation that a student is deaf, has a hearing impairment, or is deafblind, the following criteria shall apply:
- (a) the resident school district shall convene the initial IEP team meeting;
 - (b) the IEP team shall include members specified in Paragraph (11) of Subsection B of 6.31.2.7 NMAC, including staff from the NMSD if invited by the parent or the resident school district pursuant to 34 CFR Sec. 300.321(a)(6);
 - (c) the resident school district shall provide the parents of the student with information on the continuum of alternative placements, including the alternative placements listed in the definition of special education under 34 CFR Sec. 300.39 (instruction in regular classrooms, special classes, special schools, home instruction, and instruction in hospitals and institutions); and supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with regular class placement;
 - (d) in addition to the requirements of Subsection B of 6.31.2.11 NMAC, the IEP team shall be tasked with:
 - (i) determining if the student has a hearing disability, which impacts the student's ability to access education, ability to develop language or communication, social emotional development, and/or overall development; and
 - (ii) determining the student's placement in the least restrictive environment, in compliance with 34 CFR Secs. 300.114 through 300.120 and Subsection C of 6.31.2.11 NMAC, which for the student may be an environment specifically designed for deaf and hard of hearing children, and whether this is the most appropriate setting in providing educational services and supports to meet the student's IEP.
 - (e) the student's placement, whether in the resident school district, NMSD, or other educational entity, is the entity that shall have full responsibility for FAPE and all services defined in the student's IEP unless the resident school district and NMSD agree to share services, responsibilities, and costs pursuant to 34 CFR Sec. 300.103; and
 - (f) the composition of the IEP team after a student's placement and service determinations shall:
 - (i) include a representative from the resident school district at the request of the parent, NMSD, or the resident school district if the final placement for the student is at NMSD; and
 - (ii) include a representative from NMSD at the request of the parent, the resident school district, or NMSD if the final placement for the student is at the resident school district or other educational entity.
- L.** Children at the New Mexico school for the blind and visually impaired (NMSBVI).
- (1) NMSBVI is a state educational agency established to provide educational services for students who are 21 years of age or younger on the first day of school and who have a diagnosed visual impairment and who may have one or more other disabilities. The school serves as a special school on the continuum of placement options. The school serves students who require specialized or intensive educational services or services related to the visual impairment or blindness and those who need extensive training related to the expanded core curriculum for blind and visually impaired students. NMSBVI provides a variety of services to the students and school districts around the state, including outreach, consultation, and training services. NMSBVI also provides comprehensive services on a day or residential basis. The comprehensive day and residential programs are not intended to serve students whose needs are appropriately addressed in a group home or hospital setting or in a residential treatment facility.
 - (2) To be eligible to receive free services from the NMSBVI, a student shall have a visual impairment or blindness as determined by a medical eye exam and be a resident of New Mexico.
 - (3) The student's resident school district shall conduct child find, pursuant to 34 CFR Sec. 300.111 and Subsection A of 6.31.2.10 NMAC.
 - (4) In addition to the requirements of identification, evaluations, and eligibility determinations of students with disabilities pursuant to 6.31.2.10 NMAC and 34 CFR Secs. 300.100 through 300.230 and 300.300 through 300.328, if a student's resident school district finds, has reason to know, or receives documentation that a student is blind, has a visual impairment, or is deafblind, the following criteria shall apply:
 - (a) the resident school district shall convene the initial IEP team meeting;
 - (b) the IEP team shall include members specified in Paragraph (11) of Subsection B of 6.31.2.7 NMAC, including staff from NMSBVI if invited by the parent or the resident school district pursuant to 34 CFR Sec. 300.321(a)(6);

(c) the resident school district shall provide the parents of the student with information on the continuum of alternative placements, including the alternative placements listed in the definition of special education under 34 CFR Sec. 300.39 (instruction in regular classrooms, special classes, special schools, home instruction, and instruction in hospitals and institutions); and supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with regular class placement;

(d) in addition to the requirements of Subsection B of 6.31.2.11 NMAC, the IEP team shall be tasked with:

(i) determining if the student has a visual disability, which impacts the student's ability to access education, ability to develop language or communication, social emotional development, and/or overall development; and

(ii) determining the student's placement in the least restrictive environment, in compliance with 34 CFR Secs. 300.114 through 300.120 and Subsection C of 6.31.2.11 NMAC, which for the student may be an environment specifically designed for blind or visually impaired children, and whether this is the most appropriate setting in providing educational services and supports to meet the student's IEP.

(e) the student's placement, whether in the resident school district, NMSBVI, or other educational entity, is the entity that shall have full responsibility for FAPE and all services defined in the student's IEP unless the resident school district and NMSBVI agree to share services, responsibilities, and costs pursuant to 34 CFR Sec. 300.103; and

(f) the composition of the IEP team after a student's placement and service determinations shall:

(i) include a representative from the resident school district at the request of the parent, NMSBVI, or the resident school district if the final placement for the student is at NMSBVI; and

(ii) include a representative from NMSBVI at the request of the parent, the resident school district, or NMSBVI if the final placement for the student is at the resident school district or other educational entity.

M. Children in detention and correctional facilities.

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

(2) Juvenile or adult detention or correctional facilities shall take reasonable steps to obtain needed educational records from a child's last known school or educational facility within two business days, as required under Section 22-13-33 NMSA 1978, of the child arriving at the juvenile or correctional facility. Record requests and transfers are subject to the rules under the Family Educational Rights and Privacy Act (FERPA) at 34 CFR Part 99 and the provisions of Paragraph (3) of Subsection L of 6.31.2.13 NMAC. The educational program of a juvenile or adult detention or correctional facility is an educational agency for purposes of FERPA.

(a) The previous public agency in which the child was enrolled shall take reasonable steps to promptly respond to the records request from the juvenile correctional facilities.

(b) To assist juvenile correctional facilities in providing FAPE for children entering the facility during the summer months, school districts shall provide summer emergency contact information of a person who has access to special education records, to the state's directors in the juvenile justice services division of the children, youth, and family department.

(3) A detention or correctional facility that is unable to obtain adequate records from other public agencies, the child or the parents within the required two business days, as required under Section 22-13-33 NMSA 1978, after the child arrives at the facility, shall evaluate the child who is known or suspected to be a child with a disability as provided in Subsection F of 6.31.2.10 NMAC and develop an IEP for an eligible child without undue delay.

(4) FAPE for eligible students in juvenile or adult detention or correctional facilities shall be made available in programs that are suited to the security requirements of each facility and eligible student. The provisions of 34 CFR Sec. 300.324(d) apply to IEPs for students with disabilities who are convicted as adults under state law and incarcerated in adult prisons.

(5) A state-supported educational program that serves a juvenile or adult detention or correctional facility shall be responsible for ensuring that FAPE is provided to eligible children in that facility.

(6) The local school district in which a detention or correctional facility is located (that is not served by a state-supported educational program) shall be responsible for ensuring that FAPE is made available to eligible children in that facility. A child's LEA of residence or another public agency with educational jurisdiction

may agree to share the responsibility pursuant to a written agreement between or among the public agencies involved.

(7) Children with disabilities who are detained or incarcerated in detention or correctional facilities are wards of the state and may have surrogate parents appointed pursuant to 34 CFR Sec. 300.519 and Subsection J of 6.31.2.13 NMAC to protect their rights under IDEA while in state custody.

(8) The public agency that administers the educational program in a juvenile or adult detention or correctional facility shall ensure that surrogate parents are appointed in cases where no parent as defined in 34 CFR Sec. 300.30(a) and Paragraph (14) of Subsection B of 6.31.2.7 NMAC is reasonably available or willing to make the educational decisions required for children with disabilities who are housed in that facility.

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

N. Children in private schools or facilities.

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

(a) Parentally placed private school children with disabilities means children with disabilities enrolled by their parents in private schools, including religious schools or facilities, such as residential treatment centers, day treatment centers, hospitals, and mental health institutions, that include other children with disabilities who are covered under 34 CFR Secs. 300.145 through 300.147.

(b) A school district in which a private school or facility is located shall not be considered the resident school district of a school-age person if residency is based solely on the school-age person's enrollment at the facility and the school-age person would not otherwise be considered a resident of the state.

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

(d) Each public agency shall develop a "service plan" that describes the special education and related services the LEA will provide to a parentally placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 34 CFR Sec. 300.132 and that is developed and implemented in accordance with 34 CFR Secs. 300.137 through 300.139. The provision applies only to private schools and not to private facilities where an IEP shall be in place.

(e) Pursuant to 34 CFR Sec. 300.133, each LEA is obligated to spend a proportionate amount of its federal IDEA-Part B funds to assist private school children with disabilities placed in a private school or private facility by a parent who assumes responsibility for such placement. In doing so, LEAs shall use the formula for calculating proportionate amount and annual count of parentally placed private school children with disabilities in accordance with 34 CFR Sec. 300.133. The public agency shall not use IDEA funds to benefit private schools as provided in 34 CFR Sec. 300.141. The state is not required to distribute state funds for such school-age persons. Furthermore, the constitution and laws of New Mexico prohibit public agencies from spending state funds to assist private schools or facilities or their students.

(f) No parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Pursuant to 34 CFR Sec. 300.137, the LEA shall make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities.

(g) Pursuant to 34 CFR Secs. 300.134 and 300.135, LEAs shall ensure timely and meaningful consultation with private school representatives and representatives of parents of parentally placed private school children with disabilities. If the LEA fails to engage in meaningful and timely consultation or did not give due consideration to a request from private school officials, private school officials have the right to submit a complaint to the department. The private school official and the LEA shall follow the procedures outlined in 34 CFR Sec. 300.136.

(h) Pursuant to 34 CFR Secs. 300.140, the due process provisions of Subsection I of 6.31.2.13 NMAC are not applicable except for child find complaints which shall be filed in compliance with 34 CFR Sec. 300.140(b). Any complaint that the department or any LEA has failed to meet the requirements in 34 CFR Secs. 300.132 through 300.135 and 300.137 through 300.144 shall be filed in accordance with the provisions described in Subsection H of 6.31.2.13 NMAC.

(2) Children placed in or referred to private schools or facilities by New Mexico public agencies. Each public agency shall ensure that a child with a disability who is placed in or referred to a private school or facility by the public agency as a means of providing special education and related services is provided

services in compliance with the requirements of 34 CFR Secs. 300.146 and 300.147. Such a child has all the rights of a child with a disability who is served by a public agency.

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

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

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

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

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

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

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

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

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

[6.31.2.11 NMAC - Rp, 6.31.2.11 NMAC, 7/14/2020]

6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN:

A. Evaluation procedures for gifted children.

(1) Each school district shall establish a child find procedure that includes a screening and referral process for students in public schools who may be gifted.

(2) Analysis of data. The identification of a student as gifted shall include documentation and analysis of data from multiple sources for subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking including:

(a) standardized measures, as specified in Subsection B of 6.31.2.12 NMAC, and

(b) information regarding the child's abilities from other sources, such as collections of work, audio/visual tapes, judgment of work by qualified individuals knowledgeable about the child's performance (e.g., artists, musicians, poets, and historians, etc.), interviews, or observations.

(3) The child's ability shall be assessed in all four areas specified in Subsection B of 6.31.2.12 NMAC.

B. Standard method for identification. Under the standard method for identification, students will be evaluated in the areas of intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking. A student who meets the criteria established in Subsection B of 6.31.2.12 for intellectual ability and also meets the criteria in one or more of the other areas will qualify for consideration of service. A properly constituted IEP team, including someone who has knowledge of gifted education, will determine if services are required to meet the child's educational needs.

C. Alternative method for identification.

(1) A school district may apply to the department to utilize an alternative protocol for all students. Eligibility of a student will then be determined by a properly administered and collected, department-approved alternative protocol designed to evaluate a student's intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking.

(2) If an accurate assessment of a child's ability may be affected by factors including cultural background, linguistic background, English language proficiency level, socioeconomic status, or disability condition(s), an alternative protocol as described in Paragraph (1) of Subsection E of 6.31.2.12 NMAC will be used in all school districts to determine the student's eligibility. The impact of these factors shall be documented by the person(s) administering the alternative protocol.

(3) The student assistance team (SAT) process requirements will not apply to students who meet the criteria established by the alternative protocols. When a student's overall demonstrated abilities are very superior (as defined by the alternative protocol author), a properly constituted IEP team, including someone who has knowledge of gifted education, will determine if special education services are required to meet the child's educational needs.

D. Applicability of rules to gifted children.

(1) All definitions, policies, procedures, assurances, procedural safeguards, and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the educational jurisdiction of each local school district, including children in charter schools within the school district, except:

(a) the requirements of 6.31.2.8 NMAC through 6.31.2.10 NMAC;

(b) Subsections J, K, and L of 6.31.2.11 NMAC regarding child find, evaluations, and services for private school children with disabilities, children with disabilities in state-supported educational programs, children with disabilities in detention and correctional facilities, and children with disabilities who are schooled at home;

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

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

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

(3) Nothing in these rules shall preclude a school district or a charter school within a school district from offering additional gifted programs for children who fail to meet the eligibility criteria. However, the state shall only provide funds under Section 22-8-21 NMSA 1978 for department-approved gifted programs for those students who meet the established criteria.

E. Advisory committees.

(1) Each school district offering a gifted education program shall create one or more advisory committees of parents, community members, students, and school staff members. The school district may create as many advisory committees as there are high schools in the school district or may create a district-wide advisory committee.

(2) The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the school district or the schools the advisory committee advises. Representation from all schools the committee is advising is required.

(3) Purposes. The advisory committee shall:

(a) regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement, and service delivery;

(b) demonstrate support for the gifted program;

(c) provide information regarding the impact that cultural background, linguistic background, socioeconomic status, and disability conditions within the community may have on the child referral, identification, evaluation, and service delivery processes;

(d) advocate for children who have been underrepresented in gifted services due to cultural or linguistic background, socioeconomic status, or disability conditions, in order to ensure that these children have equal opportunities to benefit from services for gifted students; and

(e) meet three or more times per year at regular intervals.

(4) Formal documentation of committee membership, activities, and recommendations shall be maintained. If proposals are made by the committee to address any of the purposes as listed in Paragraph (3) of Subsection G of 6.31.2.12 NMAC, they shall be submitted in writing to the school district administration. The school district administration shall respond in writing to any proposed actions before the next scheduled meeting of the advisory committee.

[6.31.2.12 NMAC - Rp, 6.31.2.12 NMAC, 7/14/2020]

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

A. General responsibilities of public agencies. Each public agency shall establish, implement, and maintain procedural safeguards that meet the requirements of 34 CFR Secs. 300.500 through 300.536, and all other applicable requirements of these or other department rules and standards.

B. Examination of records. Each public agency shall afford the parents of a child with a disability an opportunity to inspect and review all education records related to the child in compliance with 34 CFR Secs. 300.501(a), 300.613 through 300.620, 34 CFR Part 99, and any other applicable requirements of these or other department rules and standards.

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

D. Notice requirements.

(1) Notice of meetings. Each public agency shall provide the parents of a child with a disability with advance written notice that complies with 34 CFR Sec. 300.322 for IEP meetings and any other meetings in which the parent has a right to participate pursuant to 34 CFR Sec. 300.501.

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

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

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

F. Parental consent.

(1) Informed parental consent as defined in 34 CFR Sec. 300.9 shall be obtained in compliance with 34 CFR Sec. 300.300 before: (a) conducting an initial evaluation or reevaluation; and (b) initial provision of special education and related services to a child with a disability. Consent for initial evaluation shall not be construed as consent for initial provision of special education and related services. If parental consent is not provided for the initial evaluation or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the due process and mediation procedures in Subsection I of 6.31.2.13 NMAC.

(2) Pursuant to 34 CFR Sec. 300.300(d)(1), parental consent is not required before: (a) reviewing existing data as part of an evaluation or a reevaluation; or (b) administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

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

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

(5) Pursuant to 34 CFR Sec. 300.300(d)(3), a public agency may not use a parent's refusal to consent to one service or activity for which consent is required to deny the parent or child any other service, benefit, or activity of the public agency, except as required by 34 CFR Part 300.

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

G. Conflict management and resolution.

(1) Each public agency shall seek to establish and maintain productive working relationships with the parents of each child the public agency serves and to deal constructively with disagreements. Each public agency is strongly encouraged to provide appropriate training for staff and parents in skills and techniques of conflict prevention and management and dispute resolution and to utilize an informal dispute resolution method as set forth under Subparagraph (a) of Paragraph (2) of Subsection G of 6.31.2.13 NMAC to resolve disagreements at the local level whenever practicable.

(2) Spectrum of dispute resolution options. To facilitate dispute prevention as well as swift, early conflict resolution whenever possible, the department and the public agency shall ensure that the following range of dispute resolution options is available to parents and public agency personnel.

(a) Informal dispute resolution option. If a disagreement arises between parents and a public agency over a student's IEP or educational program, either the parents or the public agency may convene a new IEP meeting at any time to attempt to resolve their differences at the local level without state-level intervention.

(b) Third-party assisted intervention. The special education division (SED) of the department will ensure that mediation is available to parents and public agencies who request such third-party assisted intervention before filing a state-level complaint or a request for a due process hearing. The SED will honor a request for mediation that:

- (i) is in writing;
- (ii) is submitted to the SED;
- (iii) is a mutual request signed by both parties or their designated

representatives;

(iv) includes a statement of the matter(s) in dispute and a description of any previous attempts to resolve these matters at the local level; and

(v) any request that does not contain all of these elements will be declined, with an explanation for the SED's decision and further guidance, as appropriate.

(c) Formal dispute resolution.

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

(ii) A request for a due process hearing may be filed by parents or their authorized representative, or by a public agency, as described under Paragraph (5) of Subsection I of 6.31.2.13 NMAC. A resolution session between the parties shall be convened by the public agency following a request for a due process hearing, unless the parties agree in writing to waive that option or to convene a mediation instead, as described under Paragraph (8) of Subsection I of 6.31.2.13 NMAC.

(d) The Mediation Procedures Act, Section 44-7B-1 et seq. NMSA 1978, does not apply to mediations conducted under 6.31.2 NMAC.

H. State complaint procedures.

(1) Scope and dissemination.

(a) Subsection H of 6.31.2.13 NMAC prescribes procedures to be used in filing and processing complaints alleging the failure of the department or a public agency to comply with state or federal laws or rules governing programs for children with disabilities under IDEA or with state laws or rules governing educational services for gifted children.

(b) The SED shall disseminate information regarding state complaint procedures to parents and other interested individuals and organizations, as identified by the SED, including parent centers, information centers, advocacy agencies, independent living centers, and other appropriate entities throughout the state.

(i) The SED shall place documents regarding state complaint procedures in English and Spanish, including state complaint forms, in an easily accessible location on the SED website.

(ii) The SED shall, on a yearly basis, send an email to the organizations and individuals identified in Subparagraph (b) of Paragraph (1) of Subsection H of 6.31.2.13 NMAC providing information regarding state complaint procedures and encouraging these organizations and individuals to post a link to the SED website on their website.

(iii) Upon request by any individual or organization, the SED shall provide the information regarding state complaint procedures, as posted on the SED's website, in print or electronic form.

(2) Requirements for complaints.

(a) The SED of the department shall accept and investigate complaints from organizations or individuals that raise issues within the scope of this procedure as defined in the preceding Paragraph (1) of Subsection H of 6.31.2.13 NMAC. The complaint shall: (i) be in writing; (ii) be submitted to the SED (or to the secretary of education, in the case of a complaint against the department); (iii) be signed by the complainant or a designated representative and have the complainant's contact information; (iv) if alleging violations with respect to a specific child, include the name and address of the child and the school the child is attending; (v) include a statement that the department or a public agency has violated a requirement of an applicable state or federal law or rules; (vi) contain a statement of the facts on which the allegation of violation is based; and (vii) include a description of a proposed resolution of the problem to the extent known. Any complaint that does not contain each of these elements will be declined, with an explanation for the SED's decision and further guidance, as appropriate.

(b) If the complaint alleges violations with respect to a specific child, the complaint shall include the information required by 34 CFR 300.153(b)(4).

(c) The party filing the complaint shall forward a copy of the complaint to the public agency serving the child at the same time the party files the complaint with the SED of the department.

(d) Pursuant to 34 CFR Sec. 300.153(c), the complaint shall allege a violation that occurred not more than one year before the date the complaint is received by the SED in accordance with Subparagraph (a) of Paragraph (2) of Subsection H of 6.31.2.13 NMAC.

(3) Preliminary meeting.

(a) FIEP meeting: mediation. Parties to a state-level complaint may choose to convene a FIEP meeting or mediation. To do so, the public agency shall (and the parent may) notify the SED of the

department in writing within one business day of reaching their decision to jointly request one of these ADR options. A FIEP meeting or mediation shall be completed not later than 14 days after the assignment of the IEP facilitator or mediator by the SED, unless a brief extension is granted by the SED based on exceptional circumstances. Each session in the FIEP or mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the complaint.

(b) Mediation requirements. If the parties choose to use mediation, the following requirements apply.

(i) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.

(ii) Any mediated agreement shall state that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. Any such agreement shall also be signed by both the parent and a representative of the public agency who has the authority to bind such public agency, and shall be enforceable in any state court of competent jurisdiction or in a district court of the United States.

(iii) If a mediated agreement involves IEP-related issues, the agreement shall state that the public agency will subsequently convene an IEP meeting to inform the student's service providers of their responsibilities under that agreement, and revise the student's IEP accordingly.

(iv) The mediator shall transmit a copy of the written mediation agreement to each party within seven days of the meeting at which the agreement was concluded. A mediation agreement involving a claim or issue that later goes to a due process hearing may be received in evidence if the hearing officer rules that part or all of the agreement is relevant to one or more IDEA issues that are properly before the hearing officer for decision.

(v) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(vi) Any other requirement provided in 34 CFR 300.506(b) that is not otherwise provided herein.

(4) Complaints and due process hearings on the same issues, which are pursuant to 34 CFR Sec. 300.152(c).

(a) The SED of the department shall set aside any part of a written complaint that is also the subject of a due process hearing under Subsection I of 6.31.2.13 NMAC until the conclusion of the hearing and any civil action. Any issue in the complaint that is not a part of the due process hearing or civil action will be resolved by the SED as provided in Subsection H of 6.31.2.13 NMAC.

(b) If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the SED shall inform the complainant to that effect.

(c) A complaint alleging a public agency's failure to implement a due process decision will be resolved by the SED as provided in this Subsection H of 6.31.2.13 NMAC.

(5) Complaints against public agencies.

(a) Impartial review. Upon receipt of a complaint that meets the requirements of Paragraph (2) of Subsection H of 6.31.2.13 NMAC, the SED of the department shall:

(i) undertake an impartial investigation which shall include complete review of all documentation presented and may include an independent on-site investigation, if determined necessary by the SED;

(ii) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(iii) provide the public agency with the opportunity to respond to the allegations in the complaint; and

(iv) review all relevant information and make an independent determination as to whether the public agency is violating a requirement of an applicable state or federal law or rule.

(b) Decision. A written decision which includes findings of fact, conclusions, and the reasons for the decision and which addresses each allegation in the complaint shall be issued by the SED and mailed to the parties within 60 days of receipt of the written complaint, regardless of whether or not the parties agree to convene a FIEP meeting or mediation. Such decision shall further include procedures for effective implementation of the final decision, if needed, including technical assistance, negotiations, and if corrective action is required, such action shall be designated and shall include the timeline for correction and the possible consequences for continued noncompliance.

(c) Failure or refusal to comply. If the public agency fails or refuses to comply with the applicable law or rules, and if the noncompliance or refusal to comply cannot be corrected or avoided by informal means, compliance may be effected by the department by any means authorized by state or federal laws or rules. The department shall retain jurisdiction over the issue of noncompliance with the law or rules and shall retain jurisdiction over the implementation of any corrective action required.

(6) Complaints against the department. If the complaint concerns a violation by the department and: is submitted in writing to the secretary of education; is signed by the complainant or a designated representative; includes a statement that the department has violated a requirement of an applicable state or federal law or rule; contains a statement of facts on which the allegation of violation is based, and otherwise meets the requirements of Paragraph (2) of Subsection H of 6.31.2.13 NMAC, the secretary of education or designee shall appoint an impartial person or impartial persons to conduct an investigation.

(a) Investigation. The person or persons appointed shall: acknowledge receipt of the complaint in writing; undertake an impartial investigation which shall include a complete review of all documentation presented and may include an independent onsite investigation, if necessary; give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; provide the department with the opportunity to respond to the complaint; and review all relevant information and make an independent determination as to whether the department is violating a requirement of an applicable state or federal law or rule.

(b) Decision. A written decision, including findings of fact, conclusions, recommendations for corrective action, and the reasons for the decision and addressing each allegation in the complaint, shall be issued by the person or people appointed pursuant to this paragraph and mailed to the parties within 60 days of receipt of the written complaint. The person or people appointed pursuant to this paragraph has no authority to order rulemaking by the department.

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

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

I. Due process hearings.

(1) Scope. Subsection I of 6.31.2.13 NMAC establishes procedures governing impartial due process hearings for the following types of cases:

(a) requests for due process in IDEA cases governed by 34 CFR Secs. 300.506 through 300.518 and 300.530 through 300.532; and

(b) claims for gifted services.

(2) Bases for requesting hearing. A parent or public agency may initiate an impartial due process hearing on the following matters:

(a) the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child;

(b) the public agency refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child;

(c) the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of, or services to, a child who needs or may need gifted services.

(3) Bases for requesting expedited hearing.

(a) Pursuant to 34 CFR Sec. 300.532 and 20 USC Sec. 1415(k)(3), a parent may request an expedited hearing to review any decision regarding placement or a manifestation determination under 34 CFR Secs. 300.530 through 300.531.

(b) Pursuant to 34 CFR Sec. 300.532(c) and 20 USC Sec. 1415(k)(3), a public agency may request an expedited hearing if it believes that maintaining the current placement of a child is substantially likely to result in injury to the child or others.

(4) Request for hearing. A parent requesting a due process hearing shall transmit written notice of the request to the public agency whose actions are in question and to the SED of the department. A public

agency requesting a due process hearing shall transmit written notice of the request to the parent(s) and to the SED of the department. The written request shall state with specificity the nature of the dispute and shall include:

- (a) the name of the child;
- (b) the address of the residence of the child (or available contact information in the case of a homeless child);
- (c) the name of the school the child is attending;
- (d) the name of the public agency, if known;
- (e) the name and address of the party making the request (or available contact information in the case of a homeless party);
- (f) a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem;
- (g) a proposed resolution of the problem to the extent known and available to the party requesting the hearing at the time;
- (h) a request for an expedited hearing shall also include a statement of facts sufficient to show that a requesting parent or public agency is entitled to an expedited hearing under 34 CFR Secs. 300.532(c) or 20 USC Sec. 1415(k)(3);
- (i) a request for a hearing shall be in writing and signed and dated by the parent or the authorized public agency representative; an oral request made by a parent who is unable to communicate by writing shall be reduced to writing by the public agency and signed by the parent;
- (j) a request for hearing filed by or on behalf of a party who is represented by an attorney shall include a sufficient statement authorizing the representation; a written statement on a client's behalf that is signed by an attorney who is subject to discipline by the New Mexico supreme court for a misrepresentation shall constitute a sufficient authorization; and
- (k) a party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of this paragraph.

(5) Response to request for hearing.

(a) A request for a hearing shall be deemed to be sufficient unless the party receiving the notice of request notifies the hearing officer and the other party in writing that the receiving party believes the request has not met the requirements of Paragraph (5) of Subsection I of 6.31.2.13 NMAC.

(b) Public agency response.

(i) In general. If the public agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process hearing request, such public agency shall, within 10 days of its receipt of the request, send to the parent a response that meets the requirements of 34 CFR Sec. 300.508(e) and 20 USC Sec. 1415(c)(2)(B)(i). This requirement presents an additional opportunity for parties to clarify and potentially resolve their dispute(s).

(ii) Sufficiency. A response filed by a public agency pursuant to Item (i) of Subparagraph (b) of Paragraph (6) shall not be construed to preclude such public agency from asserting that the parent's due process hearing request was insufficient where appropriate.

(c) Other party response. Except as provided in Subparagraph (b) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC, the non-complaining party shall, within 10 days of its receipt of the request for due process, send to the requesting party a response that specifically addresses the issues raised in the hearing request. This requirement also presents an opportunity to clarify and potentially resolve disputed issues between the parties.

(d) A party against whom a due process hearing request is filed shall have a maximum of 15 days after receiving the request to provide written notification to the hearing officer of insufficiency under Subparagraph (a) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC. The 15-day timeline for the public agency to convene a resolution session under Paragraph (8) of Subsection I of 6.31.2.13 NMAC runs at the same time as the 15-day timeline for filing notice of insufficiency.

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

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

(i) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to Paragraph (8) of Subsection I of 6.31.2.13 NMAC; or

(ii) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than five days before a due process hearing occurs.

(g) Applicable timeline. The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under Paragraph (8) of Subsection I of 6.31.2.13 NMAC.

(6) Duties of the SED of the department. Upon receipt of a written request for due process, the SED shall:

(a) appoint a qualified and impartial hearing officer who meets the requirements of 34 CFR Sec. 300.511(c) and 20 USC Sec. 1415(f)(3)(A);

(b) arrange for the appointment of a qualified and impartial mediator or IEP facilitator pursuant to 34 CFR Sec. 300.506 to offer ADR services to the parties;

(c) inform the parent in writing of any free or low-cost legal and other relevant services available in the area; the SED shall also make this information available whenever requested by a parent; and

(d) inform the parent that in any action or proceeding brought under 20 USC Sec. 1415, a state or federal court, in its discretion and subject to the further provisions of 20 USC Sec. 1415(g)(3)(b) and 34 CFR Sec. 300.517, may award reasonable attorneys' fees as part of the costs to a prevailing party;

(e) the SED shall also:

(i) keep a list of the persons who serve as hearing officers and a statement of their qualifications;

(ii) appoint another hearing officer if the initially appointed hearing officer excuses himself or herself from service;

(iii) ensure that mediation and FIEP meetings are considered as voluntary and are not used to deny or delay a parent's right to a hearing; and

(iv) ensure that within 45 days of commencement of the timeline for a due process hearing, a final written decision is reached and a copy transmitted to the parties, unless one or more specific extensions of time have been granted by the hearing officer at the request of either party (or at the joint request of the parties, where the reason for the request is to allow the parties to pursue an ADR option); and

(f) following the decision, the SED shall, after deleting any personally identifiable information, transmit the findings and decision to the state IDEA advisory panel and make them available to the public upon request.

(7) Preliminary meeting.

(a) Resolution session. Before the opportunity for an impartial due process hearing under Paragraphs (3) or (4) of Subsection I of 6.31.2.13 NMAC, the public agency shall convene a resolution session with the parents and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process request, unless the parents and the public agency agree in writing to waive such a meeting, or agree to use the mediation process instead. The resolution session:

(i) shall occur within 15 days of the respondent's receipt of a request for due process;

(ii) shall include a representative of the public agency who has decision-making authority on behalf of that public agency;

(iii) may not include an attorney of the public agency unless the parent is accompanied by an attorney; and

(iv) shall provide an opportunity for the parents of the child and the public agency to discuss the disputed issue(s) and the facts that form the basis of the dispute, in order to attempt to resolve the dispute;

(v) if the parties desire to have their discussions in the resolution session remain confidential, they may agree in writing to maintain the confidentiality of all discussions and that such discussions cannot later be used as evidence in the due process hearing or any other proceeding; and

(vi) if an agreement is reached following a resolution session, the parties shall execute a legally binding agreement that is signed by both the parent and a representative of the public agency who has the authority to bind that public agency, and which is enforceable in any state court of competent jurisdiction or in a district court of the United States; if the parties execute an agreement pursuant to a resolution

session, a party may void this agreement within three business days of the agreement's execution; further, if the resolution session participants reach agreement on any IEP-related matters, the binding agreement shall state that the public agency will subsequently convene an IEP meeting to inform the student's service providers of their responsibilities under that agreement and revise the student's IEP accordingly.

(b) FIEP meeting; mediation. Parties to a due process hearing may choose to convene a FIEP meeting or mediation instead of a resolution session. To do so, the party filing the request for the hearing shall (and the responding party may) notify the hearing officer in writing within one business day of the parties' decision to jointly request one of these options. A FIEP meeting or mediation shall be completed not later than 14 days after the assignment of the IEP facilitator or mediator by the SED, unless, upon joint request by the parties, an extension is granted by the hearing officer. Each session in the FIEP or mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the hearing. The requirements for mediation, as set forth at Subparagraph (c) of Paragraph (3) of Subsection H of 6.31.2.13 NMAC apply to mediation in this context as well.

(c) Applicable timelines.

(i) If the parties agree to convene a resolution session, the applicable timelines for the due process hearing shall be suspended for up to 30 days from the date the due process request was received by the SED (except in the case of an expedited hearing), and the meeting shall proceed according to the requirements set forth under Subparagraph (a) of Paragraph (8) of Subsection I of 6.31.2.13 NMAC.

(ii) If the parties agree to convene a FIEP meeting or mediation, the public agency shall contact the person or entity identified by the SED to arrange for mediation or a FIEP meeting, as appropriate. Except for expedited hearings, the parties to the FIEP meeting or mediation process may jointly request that the hearing officer grant a specific extension of time for the prehearing conference and for completion of the hearing beyond the 45 day period for issuance of the hearing decision. The hearing officer may grant such extensions in a regular case but may not exceed the 20 school day deadline in an expedited case.

(iii) If the parties agree to waive all preliminary meeting options and proceed with the due process hearing, the hearing officer shall send written notification to the parties that the applicable timelines for the due process hearing procedure shall commence as of the date of that notice. The hearing officer shall thereafter proceed with the prehearing procedures, as set forth under Paragraph (12) of Subsection I of 6.31.2.13 NMAC.

(d) Resolution. Upon resolution of the dispute, the party who requested the due process hearing shall transmit a written notice informing the hearing officer and the SED that the matter has been resolved and withdraw the request for hearing. The hearing officer shall transmit an appropriate order of dismissal to the parties and the SED.

(e) Hearing. If the parties convene a resolution session and they have not resolved the disputed issue(s) within 30 days of the receipt of the due process request by the SED in a non-expedited case, the public agency shall (and the parents may) notify the hearing officer in writing within one business day of reaching this outcome. The hearing officer shall then promptly notify the parties in writing that the due process hearing shall proceed and all applicable timelines for a hearing under this part shall commence as of the date of such notice.

(f) Further adjustments to the timelines may be made as provided in 34 CFR Secs. 300.510(b) and 300.510(c).

(g) The resolution of disputes by mutual agreement is strongly encouraged and nothing in these rules shall be interpreted as prohibiting the parties from engaging in settlement discussions at any time before, during, or after an ADR meeting, a due process hearing, or a civil action.

(8) Hearing officer responsibility and authority. Hearing officers shall conduct proceedings under these rules with due regard for the costs and other burdens of due process proceedings for public agencies, parents, and students. In that regard, hearing officers shall strive to maintain a reasonable balance between affording parties a fair opportunity to vindicate their IDEA rights and the financial and human costs of the proceedings to all concerned. Accordingly, each hearing officer shall exercise such control over the parties, proceedings, and the hearing officer's own practices as the hearing officer deems appropriate to further those ends under the circumstances of each case. In particular, and without limiting the generality of the foregoing, the hearing officer, at the request of a party or upon the hearing officer's own initiative and after the parties have had a reasonable opportunity to express their views on disputed issues:

(a) shall ensure by appropriate orders that parents and their duly authorized representatives have timely access to records and information under the public agency's control which are reasonably necessary for a fair assessment of the IDEA issues raised by the requesting party;

(b) shall limit the issues for hearing to those permitted by IDEA which the hearing officer deems necessary for the protection of the rights that have been asserted by the requesting party in each case;

(c) may issue orders directing the timely production of relevant witnesses, documents, or other information within a party's control, protective orders, or administrative orders to appear for hearings, and may address a party's unjustified failure or refusal to comply by appropriate limitations on the claims, defenses, or evidence to be considered;

(d) shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in federal courts or the courts of New Mexico;

(e) may issue such other orders and make such other rulings, not inconsistent with express provisions of these rules or IDEA, as the hearing officer deems appropriate to control the course, scope, and length of the proceedings while ensuring that the parties have a fair opportunity to present and support all allowable claims and defenses that have been asserted; and

(f) shall not permit non-attorneys to represent parties at due process hearings.

(9) Duties of the hearing officer. The hearing officer shall excuse himself or herself from serving in a hearing in which he or she believes a personal or professional bias or interest exists which conflicts with his or her objectivity. The hearing officer shall:

(a) make a determination regarding the sufficiency of a request for due process within five days of receipt of any notice of insufficiency and notify the parties of this determination in writing;

(b) schedule an initial prehearing conference within 14 days of commencement of the timeline for a due process hearing or as soon as reasonably practicable in an expedited case pursuant to Paragraph (12) of Subsection I of 6.31.2.13 NMAC;

(c) reach a decision, which shall include written findings of fact, conclusions of law, and reasons for these findings and conclusions and shall be based solely on evidence presented at the hearing;

(d) transmit the decision to the parties and to the SED within 45 days of the commencement of the timeline for the hearing, unless a specific extension of time has been granted by the hearing officer at the request of a party to the hearing, or at the joint request of the parties where the reason for the request is to permit the parties to pursue an ADR option; for an expedited hearing, no extensions or exceptions beyond the time frame provided in Subparagraph (a) of Paragraph (19) of Subsection I of 6.31.2.13 NMAC;

(e) the hearing officer may reopen the record for further proceedings at any time before reaching a final decision after transmitting appropriate notice to the parties; the hearing is considered closed and final when the written decision is transmitted to the parties and to the SED; and

(f) the decision of the hearing officer is final, unless a party brings a civil action as set forth in Paragraph (24) of Subsection I of 6.31.2.13 NMAC.

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

(11) Prehearing procedures. Unless extended by the hearing officer at the request of a party, within 14 days of the commencement of the timeline for a due process hearing and as soon as is reasonably practicable in an expedited case, the hearing officer shall conduct an initial prehearing conference with the parent and the public agency to:

(a) identify the issues (disputed claims and defenses) to be decided at the hearing and the relief sought;

(b) establish the hearing officer's jurisdiction over IDEA and gifted issues;

(c) determine the status of the resolution session, FIEP meeting, or mediation between the parties and determine whether an additional prehearing conference will be necessary as a result;

(d) review the hearing rights of both parties, as set forth in Paragraphs (15) and (16) of Subsection I of 6.31.2.13 NMAC, including reasonable accommodations to address an individual's need for an interpreter at public expense;

(e) review the procedures for conducting the hearing;

(f) set a date, time, and place for the hearing that is reasonably convenient to the parents and child involved; the hearing officer shall have discretion to determine the length of the hearing, taking into consideration the issues presented;

(g) determine whether the child who is the subject of the hearing will be present and whether the hearing will be open to the public;

(h) set the date by which any documentary evidence intended to be used at the hearing by the parties shall be exchanged; the hearing officer shall further inform the parties that, not less than five business days before a regular hearing or, if the hearing officer so directs, not less than two business days before an expedited hearing, each party shall disclose to the other party all evaluations completed by that date and recommendations based on the evaluations that the party intends to use at the hearing; the hearing officer may bar any party that fails to disclose such documentary evidence, evaluation(s), or recommendation(s) by the deadline from introducing the evidence at the hearing without the consent of the other party;

(i) as appropriate, determine the current educational placement of the child pursuant to Paragraph (26) of Subsection I of 6.31.2.13 NMAC;

(j) exchange lists of witnesses and, as appropriate, entertain a request from a party to issue an administrative order compelling the attendance of a witness or witnesses at the hearing;

(k) address other relevant issues and motions; and

(l) determine the method for having a written, or at the option of the parent, electronic verbatim record of the hearing; the public agency shall be responsible for arranging for the verbatim record of the hearing; and

(m) the hearing officer shall transmit to the parties and the SED of the department a written summary of the prehearing conference; the summary shall include, but not be limited to, the date, time, and place of the hearing, any prehearing decisions, and any orders from the hearing officer.

(12) Each hearing involving oral arguments shall be conducted at a time and place that is reasonably convenient to the parents and child involved.

(13) In order to limit testimony at the hearing to only those factual matters which remain in dispute between the parties, on or before 10 days before the date of the hearing, each party shall submit a statement of proposed stipulated facts to the opposing party. On or before five days before the date of the hearing, the parties shall submit a joint statement of stipulated facts to the hearing officer. All agreed-upon stipulated facts shall be deemed admitted, and evidence shall not be permitted for the purpose of establishing these facts.

(14) Any party to a hearing has the right to:

(a) be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(b) present evidence and confront, cross-examine, and compel the attendance of witnesses;

(c) prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before a regular hearing or, if the hearing officer so directs in the prehearing summary, at least two business days before an expedited hearing;

(d) obtain a written, or, at the option of the parents, electronic verbatim record of the hearing; and

(e) obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(15) Parents involved in hearings also have the right to:

(a) have the child who is the subject of the hearing present; and

(b) open the hearing to the public.

(16) The record of the hearing and the findings of fact and decisions shall be provided at no cost to the parents.

(17) Limitations on the hearing.

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

(b) Timeline for requesting hearing. A parent or public agency shall request an impartial due process hearing within two years of the date that the parent or public agency knew or should have known about the alleged action that forms the basis of the due process request.

(c) Exceptions to the timeline. The timeline described in Subparagraph (b) of Paragraph (18) of Subsection I of 6.31.2.13 NMAC shall not apply to a parent if the parent was prevented from requesting the hearing due to:

(i) specific misrepresentations by the public agency that it had resolved the problem that forms the basis of the due process request; or

(ii) the public agency's withholding of information from the parent that was required under this part to be provided to the parent.

(18) Rules for expedited hearings. The rules in Paragraphs (4) through (18) of Subsection I of 6.31.2.13 NMAC shall apply to expedited due process hearings with the following exceptions.

(a) The SED of the department and the hearing officer shall ensure that a hearing is held within 20 school days of the date the request for hearing is received by the SED, and a written decision is reached within 10 school days of the completion of the hearing, without exceptions or extensions, and thereafter mailed to the parties.

(b) The hearing officer shall seek to hold the hearing and issue a decision as soon as is reasonably practicable within the time limit described in Subparagraph (a) of Paragraph (19) of Subsection I of 6.31.2.13 NMAC, and shall expedite the proceedings with due regard for any progress in a resolution session, FIEP meeting, or mediation, the parties' need for adequate time to prepare and the hearing officer's need for time to review the evidence and prepare a decision after the hearing.

(c) The parties shall decide whether to convene a resolution session, FIEP meeting, or mediation before the commencement of an expedited hearing in accordance with Paragraph (8) of Subsection I of 6.31.2.13 NMAC and are encouraged to utilize one of these preliminary meeting options. However, in the case of an expedited hearing, agreement by the parties to convene a resolution session, FIEP meeting, or mediation shall not result in the suspension or extension of the timeline for the hearing stated under Subparagraph (a) of Paragraph (19) of Subsection I of 6.31.2.13 NMAC. The timeline for resolution sessions provided in 34 CFR Sec. 300.532(c)(3) shall be observed.

(d) Subparagraph (a) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC relating to sufficiency of the request for the expedited due process hearing does not apply to expedited hearings.

(e) The hearing officer may shorten the timeline for the exchange of proposed stipulated facts between the parties as the hearing officer deems necessary and appropriate given the circumstances of a particular case. The hearing officer may also shorten the timeline for providing agreed-upon stipulated facts to the hearing officer to two school days before the hearing.

(f) Decisions in expedited due process hearings are final, unless a party brings a civil action as provided in Paragraph (24) of Subsection I of 6.31.2.13 NMAC.

(19) Decision of the hearing officer.

(a) In general. Subject to Subparagraph (b) of Paragraph (20) of Subsection I of 6.31.2.13 NMAC, a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (FAPE).

(b) Procedural issues. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies:

(i) impeded the child's right to a FAPE;

(ii) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student; or

(iii) caused a deprivation of educational benefits.

(c) Rule of construction. Nothing in this paragraph shall be construed to preclude a hearing officer from ordering a public agency to comply with procedural requirements under this section.

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

(21) Modification of final decision. Clerical mistakes in final decisions, orders, or parts of the record and errors therein arising from oversight or omission may be corrected by the hearing officer at any time on the hearing officer's own initiative or on the request of any party and after such notice, if any, as the hearing officer orders. Such mistakes may be corrected after a civil action has been brought pursuant to Paragraph (24) of Subsection I of 6.31.2.13 NMAC only with leave of the state or federal district court presiding over the civil action.

(22) Expenses of the hearing. The public agency shall be responsible for paying administrative costs associated with a hearing, including the hearing officer's fees and expenses and expenses related to the preparation and copying of the verbatim record, its transmission to the SED, and any further expenses for preparing the complete record of the proceedings for filing with a reviewing federal or state court in a civil action.

Each party to a hearing shall be responsible for its own legal fees or other costs, subject to Paragraph (25) of Subsection I of 6.31.2.13 NMAC.

(23) Civil action.

(a) Any party aggrieved by the decision of a hearing officer in an IDEA matter has the right to bring a civil action in a state or federal district court pursuant to 20 USC Sec. 1415(i) and 34 CFR Sec. 300.516. Any civil action shall be filed within 30 days of the receipt of the hearing officer's decision by the appealing party.

(b) A party aggrieved by the decision of a hearing officer in a matter relating solely to the identification, evaluation, or educational placement of or services to a child who needs or may need gifted services may bring a civil action in a state court of appropriate jurisdiction within 30 days of receipt of the hearing officer's decision by the appealing party.

(24) Attorney fees.

(a) In any action or proceeding brought under 20 USC Sec. 1415, the court, in its discretion and subject to the further provisions of 20 USC Sec. 1415(i) and 34 CFR Sec. 300.517, may award reasonable attorney fees as part of the costs to:

(i) the parent of a child with a disability who is a prevailing party;
(ii) a prevailing public agency against the attorney of a parent who files a request for due process or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(iii) a prevailing public agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(b) Any action for attorney fees shall be filed within 30 days of the receipt of the last administrative decision.

(c) Opportunity to resolve due process complaints. A meeting conducted pursuant to Subparagraph (a) of Paragraph (8) of Subsection I of 6.31.2.13 NMAC shall not be considered:

(i) a meeting convened as a result of an administrative hearing or judicial action; or

(ii) an administrative hearing or judicial action for purposes of this paragraph.

(d) Hearing officers are not authorized to award attorney fees.

(e) Attorney fees are not recoverable for actions or proceedings involving services to gifted children or other claims based solely on state law.

(25) Child's status during proceedings.

(a) Except as provided in 34 CFR Sec. 300.533 and Paragraph (4) of Subsection I of 6.31.2.13 NMAC, and unless the public agency and the parents of the child agree otherwise, during the pendency of any administrative or judicial proceeding regarding an IDEA due process request, the child involved shall remain in his or her current educational placement. Disagreements over the identification of the current educational placement which the parties cannot resolve by agreement shall be resolved by the hearing officer as necessary.

(b) If the case involves an application for initial admission to public school, the child, with the consent of the parents, shall be placed in the public school until the completion of all the proceedings.

(c) If a hearing officer agrees with the child's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the public agency and the parents for purposes of Subparagraph (a) of Paragraph (26) of Subsection I of 6.31.2.13 NMAC.

J. Surrogate parents and foster parents.

(1) Each public agency shall ensure that a qualified surrogate parent is appointed in compliance with 34 CFR Sec. 300.519 when needed to protect the rights of a child with a disability who is within the public agency's educational jurisdiction. A surrogate parent need not be appointed if a person who qualifies as a parent under 34 CFR Sec. 300.30(b) and Paragraph (13) of Subsection B of 6.31.2.7 NMAC can be identified.

(2) A foster parent who meets all requirements of 34 CFR Sec. 300.30 may be treated as the child's parent pursuant to that rule. A foster parent who does not meet those requirements but meets all requirements of 34 CFR Sec. 300.519 may be appointed as a surrogate parent if the public agency that is responsible for the appointment deems such action appropriate.

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

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

(1) Pursuant to Secs. 12-2A-3 and 28-6-1 NMSA 1978, a person's age of majority begins on the first instant of his or her 18th birthday and a person who has reached the age of majority is an adult for all purposes not otherwise limited by state law. A guardianship proceeding under the probate code is the only way an adult in New Mexico can legally be determined to be incompetent and have the right to make his or her own decisions taken away. Public agencies and their IEP teams are not empowered to make such determinations under New Mexico law. Accordingly, pursuant to 34 CFR Sec. 300.520, when a child with a disability reaches age 18 and does not have a court-appointed general guardian, limited guardian, or other person who has been authorized by a court to make educational decisions on the student's behalf or who has not signed a power of attorney as provided under New Mexico law:

(a) a public agency shall provide any notices required by 34 CFR Part 300 to the child and the parents;

(b) all other rights accorded to parents under Part B of IDEA, New Mexico law, or department rules and standards transfer to the child; and

(c) the public agency shall notify the individual and the parents of the transfer of rights.

(2) Pursuant to 34 CFR Sec. 300.320(c), each annual IEP review for a child who is age 14 or older shall include a discussion of the rights that will transfer when the child turns age 18 and, as appropriate, a discussion of the parents' plans for obtaining a guardian before that time. The IEP of a child who is age 14 or older shall include a statement that the child and the parent have been informed of the rights that will transfer to the child at age 18.

L. Confidentiality of information.

(1) Confidentiality requirements. Each public agency collecting, using, or maintaining any personally identifiable information on children under Part B of IDEA shall comply with all applicable requirements of 34 CFR Secs. 300.610 through 300.626, and the federal Family Educational Rights and Privacy Act, 34 CFR Part 99.

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

(3) Transfer of student records.

(a) Pursuant to 34 CFR Sec. 99.31(a)(2), an educational agency may transfer child records without parental consent when requested by another educational agency in which a child seeks or intends to enroll as long as the sending educational agency has included the proper notification that it will do so in its required annual FERPA notice to children and parents. In view of the importance of uninterrupted educational services to children with disabilities, each New Mexico public agency is hereby directed to include such language in its annual FERPA notice and to ensure that it promptly honors each proper request for records from an educational agency that has become responsible for serving a child with a disability.

(b) State-supported educational programs and the educational programs of juvenile or adult detention or correctional facilities are educational agencies for purposes of the Family Educational Rights and Privacy Act (FERPA) and are entitled to request and receive educational records on children with disabilities on the same basis as local school districts. Public agencies shall promptly honor requests for records to assist such programs in providing appropriate services to children within their educational jurisdiction.

(c) Pursuant to 34 CFR Sec. 99.34(b), an educational agency that is authorized to transfer student records to another educational agency without parental consent under Sec. 99.31(a)(2) may properly transfer to the receiving educational agency all educational records the sending educational agency maintains on a child, including medical, psychological and other types of diagnostic and service information which the educational agency obtained from outside sources and used in making or implementing educational programming decisions for the child.

(d) Pursuant to Paragraph (3) of Subsection E of 6.29.1.9 NMAC, 34 CFR Sec. 300.229 and the federal Elementary and Secondary Education Act of 1965 at 20 USC 7221(g), any transfer of educational records to a private or public elementary or secondary school in which a child with disabilities seeks, intends, or is instructed to enroll shall include the following:

(i) transcripts and copies of all pertinent records as normally transferred for all students;

(ii) the child's current individualized education program with all supporting documentation, including the most recent multidisciplinary evaluations and any related medical, psychological, or other diagnostic or service information that was consulted in developing the IEP; and

(iii) disciplinary records with respect to current or previous suspensions or expulsions of the child.

(4) Parental refusals of consent for release of information. If parental consent is required for a particular release of information regarding a child with a disability and the parent refuses consent, the sending or receiving public agency may use the impartial due process hearing procedures specified in Subsection I of 6.31.2.13 NMAC to determine if the information may be released without parental consent. If the hearing officer determines that the proposed release of information is reasonably necessary to enable one or more public agencies to fulfill their educational responsibilities toward the child, the information may be released without the parent's consent. The hearing officer's decision in such a case shall be final and not subject to further administrative review.

(5) Destruction of information.

(a) Pursuant to 34 CFR Sec. 300.624, each public agency shall inform parents when personally identifiable information collected, maintained, or used under 34 CFR Part 300 is no longer needed to provide educational services to the child. As at other times, the parents shall have the right to inspect and review all educational records pertaining to their child pursuant to 34 CFR Sec. 300.613. The information shall be destroyed at the request of the parents or, at their option, the records shall be given to the parents. When informing parents about their rights to destruction of personally identifiable records under these rules, the public agency should advise them that the records may be needed by the child or the parents for social security benefits and other purposes.

(b) If the parents do not request the destruction of personally identifiable information about their children, the public agency may retain that information permanently. In either event, a permanent record of a student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. Additional information that is not related to the student's IDEA services may be maintained if allowed under 34 CFR Part 99.

(6) Educational records retention and disposition schedules.

(a) Definitions as used in this paragraph:

(i) "destruction" means physical destruction or removal of personal identifiers from educational records so that the information is no longer personally identifiable; and

(ii) "educational records" means the type of records covered under the definition of "educational records" in 34 CFR Part 99 of the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g (FERPA).

(b) Pursuant to 1.20.2.102 NMAC, the public agency shall notify the parents that the public agency shall retain specific information for five years to include:

(i) most recent IEP;

(ii) most recent 2 years of child progress reports or referral form;

(iii) related services reports;

(iv) summary of academic achievement and functional performance;

(v) parent communication;

(vi) public agency community action;

(vii) writing sample; and

(viii) staff reports on behavior.

(c) Pursuant to 34 CFR Sec. 300.624 and Paragraph (5) of this subsection, federal rules and department rules require public agencies to inform parents of proposed destruction of special education records.

(d) Pursuant to 34 CFR Sec. 300.624, the information shall be destroyed at the request of the parents. However, a permanent record of a child's name, address, phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limit. Notice of destruction of child records shall include:

- (i) informing parents at the last IEP meeting of personally identifiable information that is no longer needed to provide special education and related service and information that shall be retained according to the state for five years under 1.20.1.102 NMAC;
- (ii) documentation at the last IEP meeting and prior written notice of the information that is required to be maintained indefinitely;
- (iii) documentation at the last IEP meeting and the prior written notice that the parent accepted or rejected the proposed action to maintain records;
- (iv) if the parent requests that the public agency destroy information not required indefinitely, the public agency shall maintain the last IEP and prior written notice that states the parent required the public agency to destroy allowable information that shall be maintained for five years; and
- (v) the public agency shall inform the parents of the proposed date of destruction of records at the last IEP meeting and document on the prior written notice of action the proposed date of destruction of records.

M. Computation of time.

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

(2) Notwithstanding Paragraph (1) of this subsection, if the due date of a decision referenced in Subsection H of 6.31.2.13 NMAC falls on a Saturday, a Sunday, or a legal holiday, the decision will be due on the previous business day.

(3) Notwithstanding Paragraph (1) of this subsection, if the due date of a decision referenced in Subsection I of 6.31.2.13 NMAC falls on a Saturday, a Sunday, or a legal holiday, the decision shall be mailed no later than the actual due date. A decision is considered "mailed" when addressed, stamped, and placed in a United States postal service mailbox. If a parent exercises the option of receiving the decision electronically, the decision is "mailed" when transmitted electronically.

[6.31.2.13 NMAC - Rp, 6.31.2.13 NMAC, 7/14/2020]

6.31.2.14 RULES OF CONSTRUCTION:

A. U.S. department of education interpretations. The U.S. department of education's (USDE) interpretations of the provisions of 34 CFR Part 300 as set forth in its Analysis of Comments and Changes to Part 300 at 71 Federal Register 46547-46753 (August 14, 2006), and other interpretations that are published or announced by the USDE in the federal register are recognized as the federal government's official positions regarding the requirements of IDEA. Such interpretations shall be followed by the department to the extent that they do not conflict with express provisions of IDEA or case law from the federal courts.

B. Uniform Statute and Rule Construction Act. The Uniform Statute and Rule Construction Act, Sections 12-2A-1 through 12-2A-20 NMSA 1978, applies to the interpretation of 6.31.2 NMAC except to the extent that these rules incorporate permissible variations under the New Mexico version of the Uniform Statute and Rule Construction Act. References in 6.31.2 NMAC to state or federal laws or rules are intended to incorporate future amendments unless a provision in these rules is irreconcilable with a future amendment under the standards of the Uniform Statute and Rule Construction Act.

C. Conflicts with state or federal laws or rules. If any state law or a state rule adopted by the department or a federal law or regulation grants greater rights to an individual or public agency than these rules provide, the provision(s) granting greater rights shall control to the extent necessary to avoid a conflict.

[6.31.2.14 NMAC - Rp, 6.31.2.14 NMAC, 7/14/2020]

HISTORY OF 6.31.2 NMAC:

Pre-NMAC History:

Material in this Part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives:

SBE Regulation 85-4, Educational Standards for New Mexico Schools Basic, Special Education, Vocational Programs, 10/21/1985

SBE Regulation 86-7, Educational Standards for New Mexico Schools, 9/2/1986

SBE Regulation 87-8, Educational Standards For New Mexico Schools, 2/2/1988

SBE Regulation 88-9, Educational Standards For New Mexico Schools, 10/28/1988

SBE Regulation 89-8, Educational Standards For New Mexico Schools, 11/22/1989
SBE Regulation 90-2, Educational Standards For New Mexico Schools, 9/7/1990

History of Repealed Material:

6 NMAC 5.2, Children with Disabilities/Gifted Children, filed 9/17/1997 - Repealed, 8/14/2000
6.31.2 NMAC, Children with Disabilities/Gifted Children, filed 8/1/2000 - Repealed, 6/29/2007

Other history:

6.31.2 NMAC, Children with Disabilities/Gifted Children, filed 6/29/2007 was repealed and replaced with 6.31.2 NMAC, Children with Disabilities/Gifted Children, effective 7/14/2020.

New Mexico Register / Volume XXXI, Issue 11 / June 9, 2020

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS
PART 12 K-5 PLUS PROGRAM

6.30.12.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
 [6.30.12.1 NMAC – Rp, 6.30.12.1 NMAC, 6/9/2020]

6.30.12.2 SCOPE: This rule applies to all school districts and public schools, including charter schools.
 [6.30.12.2 NMAC - Rp, 6.30.12.2 NMAC, 6/9/2020]

6.30.12.3 STATUTORY AUTHORITY: Sections 9-24-8, 22-2-1, 22-2-2, and 22-13D-1 et seq. NMSA 1978.
 [6.30.12.3 NMAC - Rp, 6.30.12.3 NMAC, 6/9/2020]

6.30.12.4 DURATION: Permanent.
 [6.30.12.4 NMAC - Rp, 6.30.12.4 NMAC, 6/9/2020]

6.30.12.5 EFFECTIVE DATE: June 9, 2020, unless a later date is cited at the end of a section.
 [6.30.12.5 NMAC - Rp, 6.30.12.5 NMAC, 6/9/2020]

6.30.12.6 OBJECTIVE: This rule provides criteria for the development and implementation of the K-5 plus program in order to maximize successful outcomes for students. Development and implementation includes assisting school districts and charter schools as they build capacity to offer K-5 plus programs. Development and implementation also includes assessing and evaluating K-5 plus programs.
 [6.30.12.6 NMAC - Rp, 6.30.12.6 NMAC, 6/9/2020]

6.30.12.7 DEFINITIONS:

A. “Capacity” means having the appropriate numbers of teachers and students participating in the K-5 plus program to meet program eligibility requirements.

B. “Evidence-based scientific math strategies and program” means instructional strategies and mathematics programs that apply rigorous, systematic, and objective procedures to obtain valid measures relevant to math instruction and that are developmentally appropriate and integrate standards for mathematical practices.

C. “Evidence-based scientific reading strategies and program” means instructional strategies and reading programs that apply rigorous, systematic, and objective procedures to obtain valid knowledge relevant to reading development, reading instruction, and reading difficulties.

D. “High-priority schools” means, for the purpose of the K-5 plus program, a public school:

- (1) in which eighty percent or more of the elementary school’s students are eligible for free or reduced-fee lunch at the time the public school applies for the K-5 plus program;
- (2) that is a low-performing elementary school;
- (3) that participated in K-3 plus or K-5 plus programs in the most recent school year;
- (4) that is identified as a comprehensive support and improvement school; or
- (5) that is identified as a targeted support and improvement school.

E. “Instructional day” means at least five and one-half instructional hours per day for qualifying schools.

F. “K-5 plus program” means a voluntary program, for approved elementary schools, that extends the school year by 25 or more additional instructional days for the purpose of literacy and numeracy instruction. The additional 25 or more instructional days will commence prior to the regular school year.

G. “K-5 plus program units” means the number of students participating in a department-approved K-5 plus program multiplied by a factor of 0.3.

H. “Local education agency or “LEA” means a school district, or a locally chartered, or state-chartered charter school.

I. “Multi-layered system of support” means an umbrella framework that encompasses response to intervention and positive behavioral intervention and supports.

J. “Progress monitoring” means a scientifically-based practice that teachers use to evaluate the effectiveness of their instruction for individual students and their entire class through:

- (1) the identification of goals;
- (2) measurement of progress toward meeting those goals, comparing expected and actual rates of learning; and
- (3) adjustments in instruction.

K. “School-wide” means the program is offered as many of grade levels an elementary school has.

L. “Screening assessment” means the standardized assessment administered multiple times per year for all students to assess specific skills and to identify academically at-risk students.
[6.30.12.7 NMAC - Rp, 6.30.12.7 NMAC, 6/9/2020]

6.30.12.8 PROGRAM DEVELOPMENT AND IMPLEMENTATION: The department shall support schools in their capacity-building to increase participation in the K-5 plus program. Capacity-building includes professional development, curriculum development, teacher recruitment, parent and family outreach, assessment, and program design and evaluation.
[6.30.12.8 NMAC - N, 6/9/2020]

6.30.12.9 PROGRAM ELIGIBILITY: To be eligible for K-5 plus program units a school shall commit to:

- A.** provide 25 or more additional instructional days of K-5 plus programming prior to the start of the regular school year;
- B.** keep students who participate in the K-5 plus program with the same teacher and cohort of students for the following regular school year;
- C.** provide K-5 plus teachers additional professional development on how young children learn to read; and
- D.** implement the program school-wide.

[6.30.12.9 NMAC - Rp, 6.30.12.8 NMAC, 6/9/2020]

6.30.12.10 PROGRAM ELEMENT INSTRUCTION:

- A.** K-5 plus programs shall include:
 - (1) a daily classroom schedule with time for all students to practice independent reading;
 - (2) instruction and intervention provided to students based on screening assessment data to guide instruction to meet student needs;
 - (3) a comprehensive evidence-based early literacy core basal reading program or intervention in alignment with the English language arts common core state standards established in 6.29.13.8 NMAC that:
 - (a) identify the concepts and skills necessary to establish the foundation of success in early reading;
 - (b) include instructional strategies that ensure children learn identified concepts and skills; and
 - (c) include key early literacy skills instruction including but not limited to phonological awareness, phonics, reading fluency, vocabulary, comprehension, and writing to support comprehension.
 - (4) a sequential comprehensive, developmentally appropriate early mathematics program that aligns with the mathematics common core state standards established in 6.29.14 NMAC that:
 - (a) identify the concepts and skills necessary to establish the foundation of success in early mathematics; and
 - (b) include instructional strategies that ensure children learn identified concepts and skills; and
 - (5) implementation of the department’s multi-layered system of support.
- B.** Schools shall provide intervention services in literacy and numeracy for students enrolled in the K-5 plus program who are not meeting grade level requirements.

[6.30.12.10 NMAC - Rp, 6.30.12.9 NMAC, 6/9/2020]

6.30.12.11 PROGRAM ELEMENT - ASSESSMENT: K-5 plus schools shall administer a common screening assessment for student literacy that diagnoses the acquisition of reading skills, including phonemic awareness, letter knowledge, alphabetic decoding, vocabulary, spelling, comprehension and fluency at the following times:

- A. beginning of the K-5 plus program;
- B. end of the K-5 plus program;
- C. beginning of the regular school year;
- D. middle of the regular school year; and
- E. end of the regular school year.

[6.30.12.11 NMAC - Rp, 6.30.12.10 NMAC, 6/9/2020]

6.30.12.12 PROFESSIONAL DEVELOPMENT:

- A. The LEA shall provide professional development to K-5 plus teachers in the following areas:
 - (1) early literacy research and its implications for instruction for phonemic awareness, letter knowledge, alphabetic decoding, vocabulary, spelling, comprehension and fluency in kindergarten and grades one through five;
 - (2) best practices of culturally and linguistically responsive instruction, including instruction for English language learners; and
 - (3) best practices in early mathematics instruction.

B. To support successful implementation of K-5 plus programs, the department shall develop and disseminate information on best practices in the areas of professional development, curriculum development, teacher recruitment, parent and family outreach, assessment, and program design.

[6.30.12.12 NMAC - Rp, 6.30.12.11 NMAC, 6/9/2020]

6.30.12.13 APPLICATION AND REVIEW PROCESS:

A. Pursuant to the K-5 Plus Act, the department shall review all applications for approval. Priority will be given to those schools identified as high-priority schools. The department shall approve applicants that meet the application deadlines and demonstrate the capacity to meet K-5 plus program requirements as set forth in statute, regulation and department guidance, provided there is sufficient funding.

B. No later than October 15 of each year, a school district or charter school that wishes to apply for a new K-5 plus program for the next fiscal year shall submit to the department the actual number of students who participated in its K-5 plus programs in the current calendar year and an estimate of the number of students the school district or charter school expects will participate in the K-5 plus programs in the next calendar year.

C. No later than November 15 of each year, the department shall notify the legislature of the number of students participating in K-5 plus programs in the current school year and of the number of students projected to participate in K-5 plus programs in the next school year.

[6.30.12.13 NMAC - Rp, 6.30.12.12 NMAC, 6/9/2020]

6.30.12.14 FUNDING MECHANISMS:

A. Funding for individual school K-5 plus programs shall be calculated based on the approved number of K-5 plus program units .

B. A school district or charter school that provides a department-approved K-5 plus program to all elementary students shall be eligible to generate K-5 plus program units using the total average number of elementary school students enrolled on the second and third reporting date of the previous school year.

[6.30.12.14 NMAC - Rp, 6.30.12.13 NMAC, 6/9/2020]

6.30.12.15 EVALUATION AND REPORTING AND AUDITING:

A. Schools shall comply with annual and interim reports as required by the department for student and program assessment and evaluation.

B. All students participating in K-5 plus shall be reported to the department through the department's data collection and reporting system. Required fields include the following:

- (1) daily attendance;
- (2) demographic information;
- (3) services rendered under the multi-layered system of support;
- (4) assigned teacher; and
- (5) number of years the student has participated in the K-5 plus program.

C. The department may request additional information regarding staffing, endorsements, licensure levels, program elements, class roster reports, professional development activities, parent and family involvement activities, implementation successes and challenges, and suggested modifications.

D. Site monitoring visits by the department or by evaluators designated by the department shall be conducted. District and school personnel shall attend site visits as needed as determined by the department.

E. The department shall report annually to the legislature and the governor on the development and progress of the K-5 plus program.

F. The department shall establish a K-5 plus advisory committee composed of representatives of school districts and charter schools that participate in the K-5 plus program, the legislative education study committee, the legislative finance committee and other stakeholders. The advisory committee shall meet twice a year to advise the department on K-5 plus implementation.

[6.30.12.15 NMAC – Rp, 6.30.12.14 NMAC 6/9/2020]

HISTORY OF 6.30.12 NMAC:

6.30.12 NMAC, K-3 Plus Program, filed 10/30/2014, was repealed and replaced by 6.30.12 NMAC, K-5 Plus Program, effective 6/9/2020.