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August 22, 2012

MEMORANDUM

TO: Legislative Education Study Committee

FR: Kevin Force

RE: STAFF BRIEF: ADMINISTRATIVE RULEMAKING

Proposed Rulemakings

6.31.2 NMAC, Children with Disabilities/Gifted Children

On July 16, 2012, the Public Education Department (PED) published in the *New Mexico Register* a Notice of Proposed Rulemaking to amend special education rules regarding disabled and gifted children. The Notice, announcing a public hearing to be held on August 16, 2012, in Mabry Hall of the Jerry Apodaca Education Building, solicited public comment on the proposed amendments. (See Attachment 1, NPRM 6.31.2, Children with Disabilities/Gifted Children, 7/16/12, and Attachment 2, PED Proposed Rules 6.31.2 NMAC.)

According to the department's rationale for the rulemaking, PED proposes these amendments to better align:

- state rules with the requirements of the *Individuals with Disabilities Education Improvement Act of 2004* (IDEA);
- Individual Education Plan (IEP) academic goals in English language arts and mathematics with the requirements of the Common Core State Standards (CCSS):
 - beginning in school year 2012-2013 for grades K through 3; and
 - beginning in school year 2013-2014 for grades 4 through 12; and

- conflict management and resolution proceedings and due process hearings with the due process timelines required by federal regulations. (See Attachment 3, Rationale for Proposed Amendments to 6.31.2 NMAC).

Specifically, the proposed amendments:

- add language *explicitly* requiring that IEP goals for students in grades K through 3 be aligned with CCSS by school year 2012-2013 and for grades 4 through 12 by the school year 2013-2014;¹ and
- strike language referring to “facilitated IEP meetings” (FIEP) in certain sections dealing with due process hearings, so that the parties opting to engage in the FIEP process are no longer exempt from the requirement that they participate in a resolution session.

¹ These dates are consistent with mandated timelines in the New Mexico Common Core State Standards Implementation Plan (CCSSIP), Section 4, The Curriculum and Instruction/Instructional Materials Plan.

NPRM 6.31.2, Children with Disabilities/Gifted Children, 7/16/128/16**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**
NOTICE OF PROPOSED RULEMAKING

The Public Education Department (“Department”) hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on Thursday, August 16, 2012, from 1:00 P.M. to 2:00 P.M. The purpose of the public hearing will be to obtain input on the proposed amendments to 6.31.2 NMAC (Children with Disabilities/Gifted Children).

Interested individuals may testify either at the public hearing or submit written comments to Amy Baca, Executive Secretary Administrative Assistant, Special Education Bureau, Public Education Department, 120 South Federal Place, Room 206, Santa Fe, New Mexico 87501, via email at (spedfeedback@state.nm.us), or fax (505) 954-0001. Copies of the proposed amendments and the rationale for the changes may be accessed on the Department’s website (<http://ped.state.nm.us/>) or obtained from Ms. Baca. . Written comments must be received no later than 5:00 P.M. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Baca as soon as possible at (505) 827-1458. The Department requires at least ten (10) days advance notice to provide requested special accommodations.

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

6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

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 the NMAC) for all children attending public schools and state-supported educational programs in New Mexico shall provide the basic performance goals and indicators for children with disabilities in the general education curriculum.

(2) The IEP academic goals must align with the New Mexico content standards and benchmarks, including the expanded performance standards for students with significant cognitive disabilities, however, functional goals do not have to align with the standards and benchmarks.

(a) Beginning in the 2012-2013 school year, IEP academic goals in English language arts and mathematics for students in grades K through 3 must 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 must 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.

6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:

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 agency serves and to deal constructively with disagreements. Toward that end, 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 bureau (SEB) of the department will ensure that mediation is available to parents and public agencies who request such third-party assisted intervention before filing a state-level complaint or a request for a due process hearing. The SEB will honor a request for mediation that:

(i) is in writing;

(ii) is submitted to the SEB;

(iii) is a mutual request signed by both parties or their designated representatives;

(iv) includes a statement of the matter(s) in dispute and a description of any previous attempts to resolve these matters at the local level; and

(v) any request that does not contain all of these elements will be declined, with an explanation for the SEB's decision and further guidance, as appropriate.

(c) Formal dispute resolution.

(i) A state-level complaint may be filed with the SEB of the department by the parents of a child, or by another individual or organization on behalf of a child, as described under Subparagraph (a) of Paragraph (2) of Subsection H of 6.31.2.13 NMAC. Once a complaint has been filed, the parties may agree to convene a FIEP meeting or mediation 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 must be convened by the public agency following a request for a due process hearing, unless the parties agree in writing to waive that option or to convene a ~~[IEP meeting or]~~ mediation instead, as described under Paragraph (8) of Subsection I of 6.31.2.13 NMAC.

(d) The Mediation Procedures Act does not apply to mediations conducted under 6.31.2 NMAC.

I. Due process hearings.

(8) Preliminary meeting.

(a) Resolution session. Before the opportunity for an impartial due process hearing under Paragraphs (3) or (4) of Subsection I of 6.31.2.13 NMAC above, the 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 ~~[IEP or]~~ mediation process instead. The resolution session:

(i) shall occur within 15 days of the respondent's receipt of a request for due process;

(ii) shall include a representative of the public agency who has decision-making authority on behalf of that agency;

(iii) may not include an attorney of the public agency unless the parent is accompanied by an attorney; and

(iv) shall provide an opportunity for the parents of the child and the public agency to discuss the disputed issue(s) and the facts that form the basis of the dispute, in order to attempt to resolve the dispute;

(v) if the parties desire to have their discussions in the resolution session remain confidential, they may agree in writing to maintain the confidentiality of all discussions and that such discussions can not later be used as evidence in the due process hearing or any other proceeding; and

(vi) if an agreement is reached following a resolution session, the parties shall execute a legally binding agreement that is signed by both the parent and a representative of the agency who has the authority to bind that agency, and which is enforceable in any state court of competent jurisdiction or in a district court of the United States; if the parties execute an agreement pursuant to a resolution session, a party may void this agreement within three business days of the agreement's execution; further, if the resolution session participants reach agreement on any IEP-related matters, the binding agreement must state that the 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.



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July 16, 2012

MEMORANDUM

TO: School District Superintendents
Charter School Administrators
Special Education Directors
Regional Education Cooperatives
State Advisory Panel
Advocacy Groups
Interested Parties

FROM: Amy Lane
State Director of Special Education, Special Education Bureau

RE: Proposed Amendments to State Special Education Rule (6.31.2 NMAC)

On this date, the Special Education Bureau (SEB) of the New Mexico Public Education Department (NMPED) has issued a Notice of Proposed Rulemaking, proposing to amend the state special education rule as discussed below. Electronic copies of this document, together with the proposed amendments, may be downloaded from the SEB page of the NMPED website at www.ped.state.nm.us/seb/.

Public Comments and Hearing

The NMPED invites comments on the proposed rule changes from interested individuals and organizations. Interested parties may testify at the public hearing or submit written comments by email to spedfeedback@ped.state.nm.us, by regular mail to the Special Education Bureau, Public

SOURCE: Public Education Department

Education Department, 120 South Federal Place, Room 206, Santa Fe, New Mexico 87501, or by fax to (505) 954-0001. **Written comments must be received no later than 5:00 P.M.**

Thursday, August 16, 2012; however, the submission of written comments as soon as possible is encouraged. All comments received by the deadline will be considered before the SEB presents final recommended changes to the Secretary of Education. It is anticipated that the amendments will be in effect on September 14, 2012.

A public hearing on the proposed changes will be held in Santa Fe on Thursday, August 16, 2012, from 1:00 P.M. to 2:00 P.M. in Mabry Hall at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501.

Individuals with disabilities who require information in an alternative format or need any form of auxiliary aid to attend or participate in this hearing are asked to contact the Special Education Bureau by phone at (505) 827-1458 or via email, regular mail, or fax at the addresses above as soon as possible. The SEB requests at least ten (10) days advance notice to provide requested special accommodations.

Overview of Proposed Changes

The Special Education Bureau (SEB) proposes amendments to several sections of 6.31.2 NMAC relating to the special education of children with disabilities. The proposed changes are shown in the corresponding draft amendments.

Pursuant to 20 U.S.C. § 1407(a), each state that receives funds under Part B of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) is required to ensure that any state rule conforms to the IDEA. Several of the proposed changes will more closely align our state rules with the IDEA.

Rationale for Changes to the Special Education Rules

- 6.31.2.11 NMAC (Educational Services for Children with Disabilities) – Changes are being proposed to Subsection D on performance goals and indicators to align IEP academic goals in English language arts and mathematics with the English Language Arts Common Core Standards (6.29.13 NMAC) and the Mathematics Common Core Standards (6.29.14 NMAC) for students in grades K through 3 beginning in the 2012-2013 school year and for students in grades four through 12 beginning in the 2013-2014 school year.
- 6.31.2.13 NMAC (Additional Rights of Parents, Students and Public Agencies) – Changes are being proposed to Subsection G on conflict management and resolution and to Subsection I relating to due process hearings to more closely align to the due process timelines required by 34 CFR §§ 300.510 and 300.515(a).

The above summary description of the changes is not intended to describe in detail every change that is proposed to Chapter 31 of the New Mexico Administrative Code but rather to summarize the changes that are being proposed. All interested persons and entities are encouraged to review

the proposed changes and to comment on the proposed changes to the rules relating to the education of children with disabilities.