

**From:** [Lee White](#)  
**To:** [FeedBack, Rule, PED](#)  
**Subject:** [EXTERNAL] Re: 6.31.2  
**Date:** Thursday, December 8, 2022 10:34:02 AM

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Dear Committee,

The proposed new rule changes for NMAC 6.31.2 may create some unintended consequences if accepted as proposed. Below are a few of them:

- **Deadline to request consent:**  
*The IDEA currently does not have a deadline to request parent consent. It has been advised that consent should be requested “in a timely manner” and that “it would generally not be acceptable to wait several months.” We need to truly define what a “timely manner” is. The Office of Special Education has offered that this would vary based on a number of factors, including the timing of parental consent following referral for an evaluation and whether a State establishes its own timeframe to conduct an initial evaluation. It is important for districts to review existing evaluation data to determine whether an evaluation is needed and to determine the scope of the evaluation if one is needed. If this is not done, it could result in the opposite of the current problem with too many evaluations being done and initial evaluations that don’t cover all areas of suspected disability or are not adequate to determine the educational needs of the student. This will overload the system, cause a delay in completing initial evaluations, create an impediment to determining the appropriate areas to evaluate, interfere with the proper use of MLSS, and could result in over-identification. MLSS was not designed to interfere with Child Find, but MLSS is mandatory and is there for a reason. It helps prevent over-identification and ensure that students get interventions early. There is an important balance. How many days should a district have to request consent? They need to have sufficient time to review the records and make a decision regarding whether to evaluate, the scope of any evaluation, or whether to provide prior written notice of a refusal to evaluate. I see 15 school days as a minimum during the school year. This may not be enough time in some cases, such as when a hearing/vision screening is needed, the student is an English Learner, or outside evaluations are needed for review. It appears 45 school days is more reasonable. A different deadline could be applied if the request is made less than 45 school days before the end of the school year or during the summer, then perhaps 45 business days may suffice.*
- **Should deadline for consent apply to oral requests?**  
*The problem with oral consent, especially to teachers, is recognized in 34 CFR 300.534, which requires the notice to a teacher be in writing. This makes sense as there may be many casual conversations between a teacher and a parent, including in the cafeteria, at recess, on a field trip, or even socially, and it is important to have a more formal request if the LEA is required to act on a specific timeline based on a request. A parent can still request an evaluation orally, and the districts are still obligated to respond. It’s just that the consent deadline we are talking about adding will not apply to an oral request.*

- To whom should the request be made?  
*I believe that a building, campus or district administrator should be the one who receives the request. Again, there are often many casual communications between a parent and a teacher. This would be hard to monitor.*
- What deadline should apply to re-evaluations?  
*A deadline for initial evaluations is important because the students are not yet receiving services. For a reevaluation, the student is already receiving services based on their Present Levels of Academic Achievement and Functional Performance. The need to complete a reevaluation by a certain date will vary greatly depending on the type of evaluation. Many districts conduct a REED for the 3-year re-evaluation at the students' annual IEP meeting so that they can be sure to cover it timely and identify early what evaluations they have to complete. Sometimes other evaluations are requested because they are needed to determine appropriate changes to the IEP. How soon those evaluations are needed will depend on the reason for the evaluation. An example of such an evaluation could be for an adult transition planning (for a student who is under 22 but has met his/her credit requirements), it may not be needed until the end of that school year. An evaluation may be requested to consider exiting a student from special education. Those are less urgent than initials or ones needed to revise an IEP. One may be requested to determine whether a student who has been identified as a student with one disability instead qualifies with another disability. Since the IEP is not driven by the label, that may not be time-sensitive. On the other hand, if an OT evaluation is needed to add services, it would need to be done more quickly. How soon they can be, or need to be, completed will vary depending on the type of evaluation. An evaluation for FAS takes much longer than other evaluations because neurology appointments are not readily available. Functional vocational assessments, FBAs, and AT evaluations often take more than 2 months from start to finish. Other times a reevaluation is completed because the parent requests an early reevaluation. Districts typically agree to do those, even if they don't think they are needed, but if they have to complete them in sixty days, more of these requests may be rejected. I think the IEP team is best equipped to make a decision regarding how soon the evaluation is needed. The parent is a member of the team and has due process rights related to that decision.*
- Deadline to provide copy of report to Parents:  
*Districts already struggle to complete evaluations on time due to numerous issues, including those aforementioned. However, adding a requirement to share the report with the parent a week prior to the EDT, removes a week from the current timeframe. I would suggest that 2 calendar days prior to an EDT is more adequate.*

**Lee White**  
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**Providing students the skills to thrive!**

***United Towards Excellence!***

**From:** [Shannon Vasquez](#)  
**To:** [FeedBack, Rule, PED](#)  
**Subject:** [EXTERNAL] NMCA- Response to Proposed Rule change  
**Date:** Monday, December 12, 2022 10:28:39 AM  
**Attachments:** [NMCA response to Notice of Proposed Rule Making.docx](#)

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Shannon Vasquez

Special Education Director

New Mexico Connections Academy

**"Our task is to provide an education for the kinds of kids we have, not the kinds of kids we use to have, or want to have, or the kids that exist in our dreams."**

**K.P. Gerlach**

Shannon Vasquez

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The proposed amendment to **6.31.2 NMAC, Children with Disabilities/Gifted Children**, primarily amends section 6.31.2.10, Identification, Evaluation, and Eligibility Determination by:

2. providing public agency requirements when a student receives a regular high school diploma or exceeds the age of eligibility; Specifics??
5. providing requirements of the public agency when it receives a parent request for evaluation, including a 15 school-day prior written notice deadline with considerations for school breaks

Summary:

(5) A requirement that an oral or written request for an evaluation made to any employee of the school attended by the student must be forwarded or communicated to the school or district special education director or school administrator as soon as possible after received.

The district must, no later than 15 school days after receipt of the request (not the date the request was communicated to the DSE or administrator), either provide notice of its proposal to evaluate and request parent consent or provide prior written notice of its refusal to evaluate. (There is an exception if the request is made within 15 school days before a 14 calendar day district break (such as summer or the winter break). In that case, the district has 30 calendar days to respond. (Note, this would require a response during the summer.)

Concern and Input:

Perspective: NMCA is an online school whose population is located throughout the state of NM. Total number of students with IEPs, as of 12/2/22, is 319. NMCA contracts with a company for evaluations. Diagnosticians must travel to the student's hometown or city. That said, the biggest obstacle we have is the 15 day *after a request is made by a parent* to send and have consent. The consent "starts the clock" and does not allow for schools to implement and document interventions. The formalized testing is only part of the process. Providing interventions is not a delay tactic. It is necessary to have the data for an eligibility determination team to confidently and intelligently decide the second prong of determining if a student needs special education. See below:

1. As a result of the disability, does the child require specially designed instruction in order to be involved in and make progress in the general education curriculum or developmentally appropriate activities, as appropriate?

NMCA would request the 15 days by changed to 30 days for the intervention data to be collected with fidelity. Shortening deadlines could lead to over identifying students for special education- especially since schools are still trying to bridge the skill gap from the two years of Covid.

**From:** [RENEE RUSS](#)  
**To:** [FeedBack, Rule, PED](#)  
**Cc:** [JAMES SPARKS](#); [DEBORAH, WESTBROOK](#)  
**Subject:** [EXTERNAL] 6.31.2 NMAC, Children with Disabilities/Gifted Children  
**Date:** Friday, December 16, 2022 9:12:09 AM

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Feedback pertaining to 6.31.2 NMAC, Children with Disabilities/Gifted Children:

1. The district must, no later than 15 school days after receipt of the request (not the date the request was communicated to the DSE or administrator), either provide notice of its proposal to evaluate and request parent consent or provide prior written notice of its refusal to evaluate. (there is an exception if the request is made within 15 school days before a 14 calendar day district break (such as summer or the winter break). In that case, the district has 30 calendar days to respond. (Note, this would require a response during the summer.)
2. If a student is referred for an evaluation by the district, the district must seek parent consent within 15 school days of the referral, with the same exception for a referral made within 15 school days prior to a 14-calendar-day break.

**This requirement would place the burden on the LEA and require additional personnel to meet State mandated deadlines.**

In 6.31.2.10 B (1) - There needs to be clarity in regards to students currently on an IEP - confusing - makes sense with general education, but not for currently identified students

Thank you,  
Renee Russ

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***Renee Russ***  
***Superintendent***  
***Clovis Municipal Schools***  
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**From:** [Dahn Freed](#)  
**To:** [FeedBack, Rule, PED](#)  
**Subject:** [EXTERNAL] Comment regarding proposed rule changes 6.31.2.10  
**Date:** Friday, December 16, 2022 10:14:00 AM  
**Attachments:** [Proposed Rule Changes- Response to PED \(3\).pdf](#)

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Please find attached comments regarding the rule changes to 6.31.2.10.  
Thank you.

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December 16, 2022

To whom it may concern,

Thank you for the opportunity to respond and comment to the proposed rule changes to 6.31.2.10 NMAC. The following are concerns regarding the proposed changes.

I would like to acknowledge that providing clarification on guidance regarding timelines for the process of identification, evaluation and services is very helpful. However, the currently proposed timelines will create significant challenges for school districts, particularly during a time when staff shortages are high. Additionally, the current timelines will limit the ability of staff to conduct quality and thorough evaluations, limit the ability to apply thorough analysis to the referral questions, and the one exception does not address the reality of staffing issues in NM schools.

I outline these concerns in more detail below and also provide some alternate suggestions I hope the Department will take into consideration.

#### **6.31.2.10 (E) Evaluation requests and referrals**

(1) Either a parent of a child or a public agency may initiate a request for a full and individual evaluation to determine if the child is a child with a disability or may request a reevaluation to determine if the child's educational needs have changed.

(2) The request for initial evaluation or reevaluation by a parent may be made in writing or orally. A parental request for a full and individual evaluation made to any employee of the school in which the student attends shall be forwarded or communicated to the school or district special education director or a school or district administrator as soon as possible after it is received.

(3) The public agency shall respond to a parental request for initial evaluation or reevaluation to the public agency no later than 15 school days from the receipt of the request. If a parent request for an evaluation or reevaluation is received within 15 school days before the start of a scheduled period in which student attendance is not required for at least 14 calendar days, the public agency shall respond no later than 30 calendar days from the date of the request.

(4) The public agency shall respond to a parental request for initial evaluation or reevaluation by:

(a) providing prior written notice consistent with 34 CFR Sec. 300.503 that proposes to conduct the requested evaluation or reevaluation, providing a copy of the procedural safeguards notice to parents required by 34 CFR Sec. 300.504, and seeking parental consent for the evaluation; or  
(b) providing prior written notice consistent with 34 CFR Sec. 300.503 of the public agency’s refusal to conduct the evaluation or reevaluation and a copy of the procedural safeguards notice required by 34 CFR Sec. 300.504.

**(1) Each public agency shall maintain a record of the receipt, processing, and disposition of any request**

#### Concerns/Suggestions

- “any employee of the school”, implies that the request can be made to custodial staff, cafeteria staff, aides, teachers, administrator, etc.
  - “receipt of the request” is not clear. Is this receipt from the parent to any school staff member, or is this receipt of the request by a staff member to an administrator?
  - *In order to establish, track, and document a proper timeline (15 school days), and ensure the parent request is responded to appropriately, it is less ambiguous for all parties if the request for evaluation by a parent (either orally or in writing) is to be made to an administrator.*
- 1. 6.31.2.10 (E)( 3) and (5) Evaluation requests and referrals**
- (re: Exception to the 15 school days and 14-calendar day break)
    - The exception to the timeline accounts for a two week break. Which would include both the winter break and summer. According to the proposed rule, a school would have 30 days to respond from the request following a 14 day break. In this scenario, if a request either by the parent, or a SAT is made the last two weeks of school, it would require the district to respond with PWN in June. I understand there are situations where conducting summer evaluations are necessary, but it is not the norm. The majority of districts are not required to maintain staff during summer months. It is challenging to find staff during the school year, but it can be almost impossible during June and July, especially in rural NM, even when you look to contracting agencies.
    - *In order to ensure requests made before a break in instructional time longer than 14 days do not get lost within the system, implement the timeline upon return from any 14 day break. i.e., respond within 15 school days following the end of the break. This still sets the clock in motion, but when schools are required to be in session.*

6.31.2.10 (F) Timeline for evaluations

(1) “All appropriate evaluation data, including complete Student Assistance Team file documentation, multi layered systems of supports data,…”

Concerns/Suggestions

- Current guidance from the Public Education Department’s Curriculum and Instruction Division regarding MLSS, is that documentation of interventions is not required. I agree with this proposal to include this information as this data is vital in appropriate determination of eligibility, particularly with Specific Learning Disabilities, and no more so than with Dual Discrepancy.
- In order to ensure appropriate documentation, it will require documentation to occur as part of the MLSS process and the guidance from C and I to match the NMAC proposals.

(2) “ The initial evaluation and written evaluation report shall be completed within 60 calendar days of receiving parental consent for evaluation.”

Concerns/Suggestions

- This proposal is truly the most concerning of the recommendations.
- Determining the identification of a disability for a child is not a matter that should be taken lightly. It is a serious responsibility. Having the entire 60 days to do the evaluation is imperative for multiple reasons outlined below.
- The completion of the written report, inclusive of the 60 day timeline, (particularly in very involved evaluation cases such as AU, ED, MD, OHI or combination), will decrease an already challenging timeframe for conducting a full and individual evaluation that meets the standards and requirement for conducting a compliant and most importantly, comprehensive and quality evaluation.
- The entire 60 day timeframe (calendar days) is critical for conducting a comprehensive and thorough evaluation. In involved evaluations such as AU, OHI, ED or when looking at Multiple Disabilities, or any combination, the initial evaluation shall include all of the highly recommended components of each eligibility category as outlined in the NM TEAM. A good evaluation requires a thorough analysis of the information and this takes time.
  1. Requiring the written report during this time frame greatly reduces completing all of the highly recommended components.

2. Additionally, the written report on evaluation of this magnitude could be quite extensive, requires thorough analysis and consultation *by the entire evaluation team*, differential diagnosis, and may take several days to write.
- There is no flexibility in the 60 day (calendar days) timeline for non-instructional times (breaks, weekends). This already puts a strain on the system to complete an evaluation currently and this does not include the completion of the report.
    1. Example: If consent is obtained prior to Thanksgiving. Using this year as an example, November 17th, the 60 day timeline falls on January 15th. There are approximately **26 school days** during this 60 day time frame for schools in session 5 days per week. For a small rural school in session 4 days a week, **there are only 20 school days** with most providers available one day per week and this does not include any student absences.
  - **Another solution: Require the EDT be held within 30 days of the completion of the evaluation.**
    1. this allows for:
      - a. the full 60 day timeline to be devoted exclusively to conducting a comprehensive evaluation,
      - b. time to complete a thorough analysis of the evaluation data for the written report,
      - c. the completed EDT report to be provided to the IEP team in advance of the meeting, and;
      - d. for the report to be provided to the parents within 2 calendar days of the meeting.

**6.31.2.10 G. Procedures for conducting evaluations and reevaluations.**

(4) The public agency shall provide the parents with a written report of the evaluation or reevaluation at least two calendar days before the eligibility determination team meeting.

- Concerns/Suggestions-See above. This is reasonable with a 30 day timeline for the EDT to be held.

**6.31.2.10 J. Eligibility determinations**

(1) “If an individual evaluation is completed during a scheduled period in which student attendance is not required for at least 14 calendar days, **the public agency shall convene both a meeting of the eligibility determination team and (if the child is determined eligible) a meeting of the IEP team** to develop or revise the child’s IEP no later than 15 school days from the first day when the student attendance resumes.”

Concerns/Suggestions

- Why does this include the IEP meeting? The federal requirement states the IEP be held no later than 30 days after the EDT decision has been made.
  - *"300.323 (C) (1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services ;and.*
  - In most cases, the IEP is held in conjunction with the EDT. However, there are instances in which it may not be feasible to hold them on the same day, including a parent schedule that does not allow for time to attend both meetings or parent fatigue.
  - Parent fatigue may limit meaningful participation. Sitting through an eligibility determination meeting and hearing about their child's disability for the first time may be emotional and draining for a parent, even when they are the entity seeking the evaluation. It may not be appropriate to hold an IEP meeting following the EDT or on the same day when a parent has not had the opportunity to process the information.
- (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.

Concerns/Suggestions

- The term “who does not qualify” is inconsistent with the NM TEAM and NMAC. The term *who is not eligible* is more appropriate.

**6.31.2 K. Criteria for identifying children with suspected specific learning disabilities.**

Concerns/Suggestions

- Should this section not reflect the same language from 6.31.2.10 (E)(3) or include a reference to (E)(3), i.e., 15 day timeline?
  - (d) “A parent may request a full and individual evaluation for eligibility for special education at any time during the public agency’s implementation of the multi-layered system of supports. 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 and Subsection E of this section. The parent may challenge the

decision to decline a request for evaluation by requesting mediation or a due process hearing or by submitting a state complaint. “

(3) Public agencies shall use the dual discrepancy model to identify children with specific learning disabilities in kindergarten through grade 12 as described in the **New Mexico technical evaluation and assessment manual.**

Concerns/Suggestions

- Should be capitalized as in (G)(1) New Mexico Technical Evaluation and Assessment Manual (New Mexico T.E.A.M.)

Thank you for your consideration of these matters. I welcome the opportunity for any questions you may have. I would be pleased to discuss these concerns further.

Sincerely,

*Dahn Freed*

Deputy Director, Region 9 Education Cooperative  
Director, Educational Services (Ancillary, Consultants, Professional Development)Region 9  
Licensed Educational Diagnostician  
Consultant and Project Coordinator to the Special Education Division for New Mexico Technical Evaluation Manual and Developing Quality IEPs

**From:** [Christa Kulidge](#)  
**To:** [FeedBack, Rule, PED](#)  
**Subject:** [EXTERNAL] Public comment attached NMAC 6.31.2  
**Date:** Saturday, December 31, 2022 2:14:16 PM  
**Attachments:** [Proposed rule change.docx](#)

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Hello,

Attached, please find comments and concerns regarding proposed rule changes to NMAC 6.31.2

Thank you,

Christa Kulidge  
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"Rising to Excellence in every Pursuit"

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For Public comment on proposed rule change 6.31.2 NMAC

From: Christa Kulidge, Director of Exceptional Programs, Farmington Schools and current president of NM CASE (Council for Administrators of Special Education)

Dear Committee members:

I would like to voice concerns and potential suggestions regarding some of the proposed rule changes being presented (I have included the verbiage from the rule in blue):

The statement “(2) **The request for initial evaluation or reevaluation by a parent may be made in writing or orally. A parental request for a full and individual evaluation made to any employee of the school** in which the student attends shall be forwarded or communicated to the school or district special education director or a school or district administrator as soon as possible after it is received” does not clarify a process. This indicates that the parent can make this request to a bus driver while in the grocery store and be counted as a “request”. This can be inferred to indicate the district will be required to train all employees (including custodians, lunch staff, bus driver and assistants, administrative assistants, etc.) in understanding what a parental request might entail. As a special education director, I am uncomfortable with placing that expectation on non-certified staff. At a minimum, I would request the term “certified staff” be added to the statement rather than the extremely broad term “any employee”.

“**The public agency shall respond to a parental request for initial evaluation or reevaluation to the public agency no later than 15 school days from the receipt of the request. If a parent request for an evaluation or reevaluation is received within 15 school days before the start of a scheduled period in which student attendance is not required for at least 14 calendar days, the public agency shall respond no later than 30 calendar days from the date of the request.**” This timeline can create a significant hardship for many districts. As you know, districts across the state are experiencing unprecedented numbers of staff openings with no qualified applicants to be found. Although the legislators have been working tirelessly to assist in providing funding for districts, special education and related services remain exponentially understaffed. Creating such a rigid requirement, when there are not adequate staff to meet the requirement, will only create a system in which schools will be set up to fail horribly. Many smaller districts do not have access to evaluation staff on a daily (or even weekly) basis. I am in a larger district and do not have the staff nor the federal funding to hire the staff that would be needed to fulfill these timelines. For example, if I have a student whose parent requests an autism evaluation on May 25<sup>th</sup>, this rule would require me to have an autism team (psychologist, diagnostician, SLP, OT, PT, etc) available during the summer to complete the autism evaluation. These staff are not on contract during the summer months and have no desire to work (even with pay). Even if I respond on June 25 and garner consent, my team must complete the evaluation by August 25 (approximately 2 weeks into the school year). The comprehensive evaluation process includes identifying interventions (if the school does not have concerns, these would not exist), completing observations (difficult collecting valid data the first week of school), evaluating and

writing the report or reports. This unrealistic expectation may likely lead to inappropriate evaluation processes and outcomes.

There are also sections of the proposed rule that indicate the TEAM must be followed within the rules. I ask that you be aware that the last two iterations of the TEAM incorporated rule changes that had already been in place for a year or more. I am concerned that there may be inconsistencies that will hinder procedural requirements and timelines; I suggest that language be included to clarify next steps when changes occur that have not yet been incorporated into the TEAM.

The aforementioned concerns are my opinions—no the collective opinion of NM CASE; however, my concerns have been echoed by other district personnel across the state.

I am happy to provide more detail if the committee would prefer; I have attempted to be as brief as possible as I am hopeful that others have also voiced their concerns.

Respectfully,

Christa Kulidge, M.Ed  
Director of Exceptional Programs, Farmington Schools  
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**From:** [Alexis DeLaCruz](#)  
**To:** [FeedBack, Rule, PED](#)  
**Subject:** [EXTERNAL] Public Comment on NMAC 6.31.2  
**Date:** Monday, January 2, 2023 7:56:38 AM  
**Attachments:** [2023 01 02 NADLC Comment on NMAC 6.31.2 Children w Disabilities Proposed Rulemaking.pdf](#)

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Good morning,

Please find attached feedback for proposed rulemaking amendment of NMAC 6.31.2, Children with Disabilities/ Gifted Children.

Thank you,

Alexis M. DeLaCruz



**Alexis M. DeLaCruz | Attorney**

(she/her/hers)

**Native American Disability Law Center**

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Toll-free: (800) 862-7271 | Office: (505) 566-5880

Hours: Mon. – Thur., 8 a.m. – 6 p.m. (MDT)

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**Alexis M. DeLaCruz**  
Attorney at Law

Via Email Only

January 2, 2023

Policy and Legislative Affairs Division  
New Mexico Public Education Department  
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Santa Fe, NM 87501  
Email: [Rule.Feedback@ped.nm.gov](mailto:Rule.Feedback@ped.nm.gov)  
Fax: 505.827.6520

To Whom It May Concern:

I write to provide feedback on the New Mexico Public Education Department's (PED) proposed rulemaking to amend 6.31.2.10 NMAC, Children with Disabilities/ Gift Children, Identification, Evaluations, and Eligibility Determinations and to specifically commend the PED's efforts to engage in this rulemaking as an effective means of engaging with stakeholders including the state's special education attorneys and advocates. The rest of this letter includes minor nits in the amended language and substantive suggestions for PED's consideration.

*First*, under 6.31.2.10(B)(2), the last sentence currently reads: "A parent may request... evaluation or special education...". The word should be "for," not "or."

*Second*, under 6.31.2.10(C)(1)(a), regarding initial evaluation, I urge the PED to include language that makes it clear the public educational agencies shall "conduct and complete" a full and individual initial evaluation when a parent requests one. The rationale is that the word "complete" triggers the 15-day timeline for the Eligibility Determination Team (EDT) to convene upon completion of a student's initial evaluation; adding the word "complete" is consistent with the intent of the amendment and would clarify any confusion as to when the EDT convenes.

Also, under 6.31.2.10(C)(3)(b), I suggest PED add the word "standard" either instead of "regular" high school diploma or in addition to "regular" high school diploma. I believe this language clarifies that achieving a standard high school diploma ends a student with a disability's IDEA eligibility.

905 W. APACHE STREET • FARMINGTON, NEW MEXICO 87401  
1515 E CEDAR AVE, STE D-1 • FLAGSTAFF, ARIZONA 86004  
Toll Free 1-800-862-7271 • Fax 505-566-5889

*The Protection & Advocacy System for Native Americans with Disabilities.*

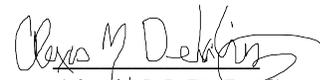
Funding provided by the Administration on Intellectual & Developmental Disabilities, the Rehabilitation Services Administration, the Center for Mental Health Services, the Social Security Administration, Page 10 of 79  
the New Mexico Civil Legal Services Commission, the New Mexico Administrative Office of the Courts

Lastly, under (E)(3), I propose reducing the allowable number of school days a public agency has to respond to a parent request for evaluation from 15 school days to 10 school days. 15 school days allows a public agency an additional three weeks to formally respond to a parent request for evaluation causing further delay in evaluating the student. On balance, by utilizing a shorter timeline – 10 school days – the public agency still has ample time to address the parental request while also ensuring the student’s rights to evaluation is not unreasonably delayed.

*Third*, under 6.31.2.10(I)(1), the current sentence reads “The parent...have the right...” However, it should be parents have for consistency with the next section. *See* (I)(2).

*Fourth*, and more generally, on behalf of the Law Center’s client communities, I applaud the PED’s proposed rulemaking efforts to provide more definitive timelines and requirements for public educational agencies throughout the identification, initial evaluation and reevaluation procedures for children with disabilities. On information and belief, this proposed amendment is the result of PED’s commitment to engaging stakeholders who had longstanding concerns about the proper identification, evaluation and eligibility determinations of students with disabilities in New Mexico. As evidenced by this resultant proposed rule, engaging in the rulemaking process is an efficient, meaningful means of ensuring that New Mexico’s students’ education civil rights are enforced and consistent with the clear requirements of the Individuals with Disabilities Education Act (IDEA). Thank you.

Sincerely,

  
Alexis M. DeLaCruz

**From:** [Lisa Peterson](#)  
**To:** [FeedBack, Rule, PED](#)  
**Subject:** [EXTERNAL] Public comment for Rule 6.31.2  
**Date:** Monday, January 2, 2023 11:15:37 AM  
**Attachments:** [NMA SP Public Commient 1-2-23.docx](#)

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**CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.**

On behalf of the New Mexico Association of School Psychologists I would like to submit the public comment below and attached for Rule 6.31.2.

January 2, 2023

Policy and Legislative Action Division, New Mexico Public Education Department,

As the board members of the New Mexico Association of School Psychologists, we are writing to provide public comment to the proposed amendment to **6.31.2 NMAC, Children with Disabilities/Gifted Children**. While we appreciate the PED's efforts to clarify issues related to the assessment of students in our schools, we have two concerns about the proposed amendment.

First, the amended rules state that all testing and report writing must be done within 60 days, and that the eligibility determination meeting must take place within 15 school days afterward. As most psychoeducational evaluations require input from multiple professionals, including school psychologists, educational diagnosticians, and/or speech language pathologists, it can be challenging to complete all testing and synthesize findings within 60 days. As the new rule also states that the parent must receive a copy of the report at least two days before the EDT, it would make more sense for that to be the deadline for the report that will be shared and finalized at the EDT. .

Additionally, we have significant concerns about the rules that indicate parent requests for testing which seem to indicate that school districts must evaluate all of these students. While we support parent involvement and advocacy, this will place an undue burden on school psychologists and other evaluation professionals. New Mexico faces a significant shortage of school psychologists. The National Association of School Psychologists recommends a ratio of one school psychologist for every 500 students, but New Mexico is estimated to be well over 1:2000. PED reports that there are less than 200 certified school psychologists working in the state, which supports this estimate. School psychologists are already stretched thin, and with the academic and mental health concerns coming out of the pandemic we are barely able to keep up with our assessment loads. By forcing school districts to evaluate every student when it is requested by a parent, whether or not any interventions have been implemented through multi-layered systems of support (MLSS) or considering whether the school has identified any concerns that would justify an evaluation for special education services, we will not be able to effectively do our job within the stated timelines. We are also concerned that this will create a two-tiered system, where parents who understand the system are able to get their child ahead of the others whose parents either do not know about this rule or have elected to trust the school to provide support through MLSS before considering the need for special education. This appears to go against the Yazzie/Martinez ruling, which mandates equal educational opportunities for all students.

In summary, we advocate for practices that best support the needs of New Mexico children and families while understanding the roles and responsibilities of school psychologists. Thank you for considering this public comment.

Sincerely,

New Mexico Association of School Psychologists Board  
On behalf of Lisa S. Peterson, PhD, NMASP President

**Lisa S. Peterson, PhD, NCSP** (she/hers)

Assistant Professor

Director, School Psychology Doctoral Program

New Mexico State University

575-646-2868 (office)



**BE BOLD. Shape the Future.**

January 2, 2023

Policy and Legislative Action Division, New Mexico Public Education Department,

As the board members of the New Mexico Association of School Psychologists, we are writing to provide public comment to the proposed amendment to **6.31.2 NMAC, Children with Disabilities/Gifted Children**. While we appreciate the PED's efforts to clarify issues related to the assessment of students in our schools, we have two concerns about the proposed amendment.

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In summary, we advocate for practices that best support the needs of New Mexico children and families while understanding the roles and responsibilities of school psychologists. Thank you for considering this public comment.

Sincerely,

New Mexico Association of School Psychologists Board  
On behalf of Lisa S. Peterson, PhD, NMAASP President

**From:** [Marissa Pacheco](#)  
**To:** [FeedBack, Rule, PED](#)  
**Subject:** [EXTERNAL] More Talking Points  
**Date:** Monday, January 2, 2023 12:40:10 PM

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Hello,

Thank you for all you do!

I would like to propose we also bring up if pertinent the following:

- School psychologists should be able to train interns with a Masters Level degree with at least three years of experience.
- The assessment of Autism, Other Health Impairment, and Emotional Disturbance should only be conducted by a school psychologist due to our extensive education to do so.
- School psychologists should be paid at a different level than teachers and as such should be paid more.
- The assessment timeline should be stopped during the summer and resume when we return.

Thank you for your attention and time.

Sincerely,  
Marissa Pacheco

**From:** [Krumm, Ellen](#)  
**To:** [FeedBack, Rule, PED](#)  
**Subject:** [EXTERNAL] Please reject the bill  
**Date:** Tuesday, January 3, 2023 11:29:37 AM

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**I am concerned about the proposed rule requiring school districts to automatically test students after a parent request. While parent participation is so important in regards to students' education, the process of interventions to address the concerns is vital to help determine the need for testing.**

The current climate in this country after the COVID crisis has resulted in an increase workload for school psychologists. In addition to this issue, there is a shortage of school psychologists in the state of New Mexico. If further responsibilities are added to already overwhelming caseloads, I fear that the shortage will become a much bigger issue. Already, I must, very often take home work to complete after work hours, even after working overtime at my office.

**Please vote to oppose this bill.**

Truly yours,  
Ellen Krumm  
Licensed School Psychologist

**From:** [Krumm, Ellen](#)  
**To:** [FeedBack, Rule, PED](#)  
**Subject:** [EXTERNAL] Please reject the bill  
**Date:** Tuesday, January 3, 2023 11:29:37 AM

---

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

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**Please vote to oppose this bill.**

Truly yours,  
Ellen Krumm  
Licensed School Psychologist

**From:** [Joan Curtiss](#)  
**To:** [FeedBack, Rule, PED](#)  
**Subject:** [EXTERNAL] Evaluation Timeline  
**Date:** Tuesday, January 3, 2023 1:19:36 PM

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**CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.**

Thank you for addressing the timeline with evaluations. For years this has been a long standing problem. These clarifications will be helpful for the schools, the parents, and particularly the students who need the special instruction.

Joan Curtiss  
Senior Advocate  
Disability Rights New Mexico  
3916 Juan Tabo Pl. NE.  
Albuquerque, NM. 87111  
505-256-3100 Fax: 505-256-3184

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**From:** [Elise Ipock](#)  
**To:** [Feedback, Rule, PED](#)  
**Subject:** [EXTERNAL] "NMPED proposed amendments to Sec. 6.31.2.10 NMAC  
**Date:** Tuesday, January 3, 2023 2:20:48 PM  
**Attachments:** [Letter, 1-3-23.pdf](#)  
[letter to NMPED 8-30-19.PDF](#)  
[NMPED - on a mission.PDF](#)  
[20-6-30 FINAL Petition for Rulemaking w Letter and attachments.pdf](#)

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CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

The letter attached below (Letter, 1-3-23) contains Organizing Parents Education Network's public comment regarding proposed amendments to Sec. 6.31.2.10. The other attached documents are referred to in the letter. If you have any questions, I can be reached at 505-243-3403.

Sincerely,

Elise L Ipock



# DISABILITY RIGHTS NEW MEXICO

3916 Juan Tabo Blvd., NE • Albuquerque, New Mexico 87111

TEL: (505) 256-3100 • FAX: (505) 256-3184

State-wide Toll Free 1-800-432-4682

WEBSITE: [www.drn.org](http://www.drn.org) • EMAIL: [info@drnm.org](mailto:info@drnm.org)

Gary Housepian, Chief Executive Officer

*Promoting and Protecting the Rights of Persons with Disabilities*

June 30 2020

Ryan Stewart, Secretary of Education  
New Mexico Public Education Department  
300 Don Gaspar Ave.  
Santa Fe, New Mexico 87501

**RE: Petition to amend §6.31.2.10 NMAC to add timelines for school district response to parental request for initial special education evaluation pursuant to §§6.31.2.10(C)(1)(d) and 6.31.2.10(D)(1)(b) NMAC.**

Dear Secretary Stewart:

The undersigned agencies and individual attorneys, advocates, and supporters petition the New Mexico Public Education Department pursuant to the procedure described in “Default Procedures for Rulemaking” (§1.24.25.1 NMAC *et seq.*), specifically §1.24.25.10 NMAC (“Initiation of the Rulemaking Process by the Public”). Statutory authority for these rules can be found under Section 14-4-5.8 NMSA 1978 (Procedural Rules).

The suggested text of the proposed amendment, in strikethrough format, is attached as **Attachment A**.

## **PURPOSE AND REASONS FOR PROPOSED AMENDMENT**

The proposed amendment seeks to remedy a longstanding problem of excessive delay in initial evaluation for special education services, following a parental request for such evaluation. In school districts throughout New Mexico, it is the experience of families of students having or suspected of having disabilities, as well as their advocates and attorneys, that oral or written requests for initial evaluation for special education services frequently meet with unreasonably lengthy delays before the evaluation is ultimately conducted or denied.

Both federal regulation and our state rule provide that initial evaluation “must be conducted within 60 calendar days of receiving parental consent for evaluation.” 34 CFR Sec. 300.301(c)(1)(i), §6.31.2.10 (D)(1)(c)(i) NMAC. The receipt of parental consent starts the 60-day clock. The problem is that districts do not seek parental consent immediately upon receiving a parental request for evaluation. By habit or by design, school districts often fail to seek or to accept parental consent until several months—or even a year or more—from the time when the parental request is made, many times on the same date that the district has scheduled the

evaluation to occur. Obtaining parental consent on or around the date when the evaluation is finally conducted gives the false impression that districts are timely evaluating students for special education and related services, and satisfying their Child Find obligation. On paper, evaluations are typically completed within the 60 day timeline triggered on the date the district obtained informed parental consent; however, this does not account for when the parent first made the request.

In reality, such district-controlled delays contravene both the letter and the spirit of the IDEA and its implementing regulations under federal and state law. For the reasons that follow, NMPED should add language to the rules governing initial special education evaluations, to require districts to respond within ten (10) calendar days to parental requests for an initial special education evaluation by either: (1) taking all reasonable steps to obtain informed consent from the parent, (thus starting the 60-day clock), or (2) providing prior written notice of the district's refusal to conduct such evaluation.

### ***Child Find Obligation***

All New Mexico school districts are required to act in compliance with their Child Find obligation, which requires that they “shall adopt and implement policies and procedures to ensure that all children with disabilities who reside within the agency’s educational jurisdiction...are located, evaluated, and identified in compliance with all applicable requirements of 34 CFR Secs. 300.111, 300.131, 300.301-306 and these and other department rules and standards.” *See also, Letter to Anonymous*, 50 IDELR 258 (OSEP 2008) (LEA must act in timely manner to meet child find requirements, because LEA “must ensure that eligible children with disabilities receive required instruction and services without undue delay and within a reasonable period of time”)

Lengthy delays in conducting evaluations, whether they are referrals by districts or requests by parents, frustrate the purposes of Child Find.

***Parents, as well as districts, have a right to request initial evaluation at any time.***

Under the regulations implementing the IDEA, at 34 CFR Sec. 300.301(b), “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.” New Mexico rules in turn reflect this parental right at §6.31.2.10 (D)(1)(b) NMAC, using identical language.

***“At any time” means that parental request may be made even during district implementation of other interventions, which may not be used to delay the evaluation process.***

Parents have a right to make a request for evaluation at any time, even if the district plans or has begun implementing student interventions under the three tiered model described in §6.31.2.10(C) NMAC. *See* §6.31.2.10(C)(1)(d) NMAC (“A parent may request an initial special education evaluation at any time during the public agency’s implementation of tiers 1 and 2 of three-tier model of student intervention.”). Districts are not permitted to use such interventions

to delay or to deny evaluation for eligibility under IDEA. *Memorandum to State Directors of Special Education*, 56 IDELR 50, 114 LRP 4677 (OSEP/21/11)(“A Response to Intervention (RtI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA).”)

***The parental request need not be in writing.***

There is no requirement in the IDEA that the request be in writing. 34 CFR Sec. 300.301(b), §6.31.2.10 (D)(1)(b) NMAC. Oral as well as a written requests invoke the district’s obligation to respond. *See, e.g., District of Columbia Public Schools*, 115 LRP 16744, 12 ECLPR 109 (SEA DC 2015), *Khepera Charter School*, 115 LRP 20478, 15632-14-15-KE (Mar. 21, 2015).

***Districts must then provide prior written notice of their proposal to evaluate or refusal to evaluate.***

The district must provide prior written notice before it either “proposes to” or “refuses to” “initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.” 34 CFR Sec. 300.503(a). The notice must contain substantial information about the action proposed by the district. 34 CFR Sec. 300.503(b).

***Evaluation must be conducted within 60 days of the district’s receipt of informed consent.***

Both federal and state regulation require that an evaluation be conducted “within 60 days of receiving parental consent for the evaluation.” 34 CFR Sec. 300.301(c)(1)(i); §6.31.2.10(D)(1)(c)(i) NMAC.

“Informed consent” for purposes of the IDEA requires that the parent be “fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication,” and that the parent “understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom,” 34 CFR Sec. 300.9(a), (b). Given this definition of informed consent, districts often refuse to accept parent-initiated provision of informed consent, and require that consent be given only after a diagnostician or other district personnel explains the instruments to be used and procedures to be followed, providing the parent with a district-designed informed consent form for signature and that time. Therefore, students with disabilities and their families are at the mercy of district timelines for seeking and obtaining informed consent, and are frequently subject to lengthy waiting periods.

Districts are required to “make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.” 34 CFR Sec. 300.300(b)(2). Again, this requirement is imposed by districts’ Child Find obligation:

The child find requirements in §300.111 and section 612(a)(3)(A) of IDEA require that all children with disabilities in the State who are in need of special education and related services be identified, located, and evaluated. Therefore, it would generally

not be acceptable for an LEA to wait several months to conduct an evaluation or to seek parental consent for an initial evaluation if the public agency suspects the child to be a child with a disability.

*Letter to Anonymous*, 50 IDELR 258 (OSEP 2008)

***Unreasonable delays in evaluation have been found to violate the IDEA.***

According to authorities recently cited in a complaint resolution report approved by NMPED's Special Education Division, lengthy delays in evaluation can rise to the level of denial of FAPE:

It is generally not acceptable for a district to wait months before conducting an evaluation, especially when the parent requested the evaluation. *Avaras v. Clarkstown Central School District*, 73 IDELR 50 (S.D.N.Y. 2018)(use a common sense approach and one year delay in evaluation may be a denial of FAPE); 71 Fed. Reg. 46,540 (2006). *See, e.g.*, *District of Columbia Public Schools*, 115 LRP 16744, 12 ECLPR 109 (SEA DC 2015)(districts cannot delay evaluation by requiring pre-referral meeting). If the district agrees with the need for an evaluation, it must evaluate the child, adhering to the appropriate timelines. However, if the district declines the parent's evaluation request, it must issue a prior written notice under 34 CFR § 300.503(a)(2). School breaks and limited staff availability do not increase the time frame for initial evaluations. *Letter to Reyes*, 59 IDELR 49 (OSEP 2012).

*Carrillo v. Albuquerque Public Schools*, Complaint Resolution Report, Complaint No. 1920-25, at 12.

***The IDEA provides that states may impose evaluation timeframes like the one proposed here. Other states have done so.***

The IDEA provides that States may also “establish[ ] a timeframe within which the evaluation must be conducted, within that timeframe.” 34 CFR Sec. 300.301(c)(ii). A number of states have done just that. To list a few examples:

- Illinois: 23 Ill. Adm. Code 226.110 (within 14 school days of request for evaluation, district must determine whether evaluation warranted and either provide written notice of denial or take actions to initiate evaluation). **Attachment B.**
- Michigan: Mich. Admin. Code R 340.1721 (within 10 school days of written request for evaluation, district must provide prior written notice and when necessary request written consent to evaluate). **Attachment C.**
- Texas: 19 Texas Admin. Code Section 89.1011 (no later than 15<sup>th</sup> school day following parental request, district must provide prior written notice of either proposal to evaluate—and opportunity to give written consent—or denial of evaluation, along with procedural safeguards). **Attachment D.**

- California: 30 Ed. Code 56043(a) (proposed assessment plan developed within 15 calendar days of referral for assessment). **Attachment E.**

Some other states, Arkansas for example, use a “referral conference” as a response to parental requests. *See* §4.0 Ark. Dept. Educ. Special Educ. & Rel. Services (Referral)(District must provide parent with notice of referral conference—where decision whether to evaluate is made—within 7 calendar days of receiving referral, and referral conference must be held within 21 calendar days). **Attachment F.** Such “pre-referral meetings” may not be themselves used to delay the evaluation process. District of Columbia Public Schools, 115 LRP 16744, 12 ECLPR 109 (SEA DC 2015). Even so, the conference is at least a time-constrained response, rather than a non-response.

### **SUMMARY OF SPECIFIC CHANGES PROPOSED**

- (1) **Section 6.31.2.10 (A) NMAC (Child find).** Proposal to add 34 CFR Sec. 300.503 (Prior notice by the public agency; content of notice) to the list of CFR sections cited in the Child Find provision. This is the CFR section which requires prior written notice when a district either “(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) Refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child.”
- (2) **Section 6.31.2.10 (B) NMAC (describing the three tier model of student intervention).** Proposal to add language which reflects the language in Section 6.31.2.10 (C)(1) NMAC, referencing 34 CFR Sec. 300.301(b)(providing for parental or public agency right to “initiate a request for an initial evaluation to determine if the child is a child with a disability.” In this and other sections of the rules describing the “three tier model of student intervention,” we are mindful that the NMPED is beginning to implement the new Multi-Layered System of Supports (MLSS) model. We realize there may be further revisions to this rule necessitated by that change, but did not feel we were in the position to be able to assess or predict what revisions would be appropriate.
- (3) **Section 6.31.2.10(C)(1)(d) NMAC (describing parental right to request initial special education evaluation during implementation of tiers 1 and 2 of student interventions):**
  - Specifies that parental request may be made “orally or in writing.”
  - Adds language clarifying that the request may be made “before or” during implementation of tiers 1 and 2 of student interventions.
  - Adds Section 6.31.2.10(C)(1)(d)(i), which—like Section 6.31.2.10(D)(1)(c)(new section) which follows, requires district response to request for initial evaluation, within 10 calendar days of the request, by either:

- (a) Taking all necessary steps to obtain informed consent from the parent to conduct the initial evaluation consistent with 34 CFR Secs. 300.9, 300.300 [CFR provisions regarding informed consent], providing prior written notice of its proposal to conduct an evaluation consistent with 300.503, and provide a copy of the procedural safeguards notice required by 300.504, or
- (b) Providing prior written notice of the public agency's refusal to conduct the initial evaluation consistent with 34 CFR Sec. 300.503 and a copy of the procedural safeguards notice required by 300.504.
- This new section further provides in subsection (c) that a district's failure to take action under subsections (i)(a) or (i)(b) will be construed as a denial of the parental request.
- Indicating in subsections (i)(b) and (i)(c) that parents can challenge a denial by filing a request for due process.

**(4) Section 6.31.2.10(D)(1) NMAC (Initial Evaluations):**

- Adds a new section (1)(c)(Public Agency Response to Parental Request for Evaluation), which contains language identical to that in new Section 6.31.2.10(C)(1)(d)(i), requiring districts to respond to a parental request (specifying "oral or written) within 10 calendar days by either (a) taking all necessary steps to obtain informed consent, provide written notice of proposal to conduct evaluation, and provide procedural safeguard notice or (b) provide written notice of the district's refusal to conduct the initial evaluation, with (c) the failure to take action under subsections (i)(a) or (i)(b) construed as a denial of the request.
- Re-numbers subsequent subsections accordingly.
- Adds language to new subsection (d)(iii)—formerly (c)(iii)—to clarify that "parent-initiated requests" are included in districts' obligation to "maintain a record of the receipt, processing and disposition of any referral for an individualized evaluation."

**DELAYED INITIAL EVALUATION IS A PROBLEM KNOWN TO NMPED, AND THE PROPOSED AMENDMENT PROVIDES A REASONABLE SOLUTION.**

In proposing this amendment, the undersigned agencies, attorneys, and advocates understand that the problem of delayed initial evaluation is familiar to NMPED.

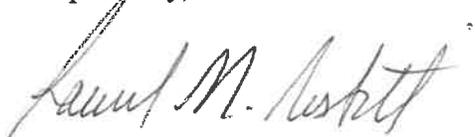
Delayed evaluation issues have been at the center of many due process and state complaints over the years, and are well-documented. More recently, the issue arose in the course of the *Yazzie/Martinez* litigation, where the *Martinez* Plaintiffs alleged failure to properly identify students with disabilities, with delays of up to a full school year in Albuquerque for initial evaluation, assessment and placement, and with identification and educational services

being based on availability of financial resources rather than student need. *Martinez, et al. v. State of New Mexico*, No. D-101-CV-2014-00793, Third Amended Complaint for Declaratory and Injunctive Relief, at ¶¶101-103. The *Yazzie/Martinez* Court then cited failures in identification (and related shortages of qualified diagnosticians) in support of its conclusion that New Mexico's system of education for students with disabilities is constitutionally inadequate. See, e.g., *Martinez, et al. v. State of New Mexico*, No. D-101-CV-2014-00793, *consol. with Yazzie v. State of New Mexico, et al.*, No D-101-CV-2014-02224, *Court's Findings of Fact and Conclusions of Law and Order re Final Judgment*, at ¶¶2329-2332 (Dec. 20, 2018). This problem was again raised in yesterday's motion hearings in the case, in which the State's Motion to Dismiss was denied.

On August 14, 2019, during a listening session hosted by representatives of NMPED in Santa Fe, representatives from several of the signing agencies spoke at some length about the problem of delayed evaluation. And just last month, on May 8th, representatives of Disability Rights New Mexico, Native American Disability Rights Center, and Pegasus Legal Services for Children met with NMPED Director of Special Education Deborah Dominguez-Clark and SED Chief Counsel Debra Poulin, who listened as we again explained this pervasive and persistent problem, sharing with them that this proposed amendment was being developed.

We are confident that NMPED is ready to craft a remedy, and to provide instruction to districts about their obligations to timely identify and provide special education services to students with disabilities. We believe that the amendments we have proposed present a simple, clear, and reasonable solution to this longstanding problem in New Mexico. We are happy to answer any questions NMPED has for us about the proposal, and to work together with the Department to implement this remedy.

Respectfully,



Laurel Nesbitt, Staff Attorney  
Jesse Clifton, Staff Attorney  
Joan Curtiss, Senior Advocate  
**Disability Rights New Mexico**

Alexis DeLaCruz  
Heather Hoechst  
**Native American Disability Law Center**

Jerri Katzerman  
Lily Hofstra  
**Pegasus Legal Services for Children**

Secretary Stewart

June 30, 2020

Page 8

Naomi Sandweiss, Executive Director

**Parents Reaching Out**

Delfy Peña Roach, Executive Director

Monica Miura, Family Advocate, System Policy Advocate

Alberto Orega, Family Advocate

**Families ASAP**

Gail Stewart, Attorney

**Steven Granberg, Attorney at Law, P.A.**

Victoria Lucero, Attorney

**The Law Office of Victoria Lucero, LLC**

cc: Deborah Dominguez-Clark, Director of Special Education, [Deborah.Clark@state.nm.us](mailto:Deborah.Clark@state.nm.us)  
Debra Poulin, Chief Counsel, Special Education Division, [Debra.Poulin@state.nm.us](mailto:Debra.Poulin@state.nm.us)

**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 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, 300.301-306, 300.503, 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 tier 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, consistent with the department rules, policies and standards for children who are being referred for evaluation due to a suspected disability in compliance with 34 CFR Sec. 300.301(b).

**C.** Criteria for identifying children with perceived specific learning disabilities.  
**(1)** Each public agency must use the three tiered model of student intervention for students suspected of having a perceived specific learning disability, consistent with the department rules, policies and standards for children who are being referred for evaluation due to a suspected disability under the specific learning disability category in compliance with 34 CFR Sec. 300.307.

**(a)** The public agency must, subject to Subparagraph (d) of this paragraph, require that the group established under 34 CFR Secs. 300.306(a)(1) and 300.308 for the purpose of determining eligibility of students suspected of having a specific learning disability, consider data obtained during implementation of tiers 1 and 2 in making an eligibility determination.

**(b)** To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation required in 34 CFR Secs. 300.304 through 300.306:

**(i)** data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

**(ii)** data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

**(c)** The documentation of the determination of eligibility, as required by 34 CFR Sec. 300.306(c)(1), must meet the requirements of 34 CFR Sec. 300.311, including:

**(i)** a statement of the basis for making the determination and an assurance that the determination has been made in accordance with 34 CFR Sec. 300.306(c)(1); and

**(ii)** a statement whether the child does not achieve adequately for the child's age or to meet state-approved grade-level standards consistent with 34 CFR Sec. 300.309(a)(1); and

**(iii)** a statement whether the child does not make sufficient progress to meet age or grade-level standards consistent with 34 CFR Sec. 300.309(a)(2)(i), or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards or intellectual development consistent with 34 CFR Sec. 300.309(a)(2)(ii); and

**(iv)** if the child has participated in a process that assesses the child's response to scientific, research-based intervention: a statement of the instructional strategies used and the student-centered data collected; documentation that the child's parents were notified about the state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; strategies for increasing the child's rate of learning; and the parents' right to request an evaluation.

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

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(j) The public agency shall respond to a parental request for initial special education evaluation no later than 10 calendar days from receipt of the oral or written request by either:

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(a) Taking all necessary steps to obtain informed consent from the parent to conduct the initial evaluation consistent with 34 CFR Secs. 300.9 and 300.300, providing prior written notice of its proposal to conduct an evaluation consistent with Sec. 300.503, and providing a copy of the procedural safeguards notice required by Sec. 300.504, or:

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(b) Providing prior written notice of the public agency's refusal to conduct the initial evaluation consistent with 34 CFR Sec. 300.503 and a copy of the procedural safeguards notice required by Sec. 300.504. The parent can challenge this decision by requesting a due process hearing.

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(c) A public agency's failure to take action as set forth in either subsections (i)(a) or (i)(b) above will be construed as a denial of the parent's request for special education evaluation. The parent can challenge this decision by requesting a due process hearing.

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(2) Preschool children suspected of having a specific learning disability must 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.

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(3) Public agencies must implement the dual discrepancy model in kindergarten through third grade utilizing the student assistance team and the three-tier model of student intervention as defined and described in the New Mexico Technical Evaluation and Assessment Manual (New Mexico T.E.A.M.). Data on initial evaluations for perceived learning disabilities in grades K-three must 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 Technical Evaluation and Assessment Manual (New Mexico T.E.A.M.) or the severe discrepancy model as defined and described in New Mexico T.E.A.M.

D. Evaluations and reevaluations.

(1) Initial evaluations.

(a) Each public agency must 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) Public Agency Response to Parental Request for Evaluation.

(j) The public agency shall respond to a parental request for initial special education evaluation no later than 10 calendar days from receipt of the oral or written request by either:

(a) Taking all necessary steps to obtain informed consent from the parent to conduct the initial evaluation consistent with 34 CFR Secs. 300.9 and 300.300, providing prior written notice of its proposal to conduct an evaluation

consistent with Sec. 300.503, and providing a copy of the procedural safeguards notice required by Sec. 300.504, or:

(b) Providing prior written notice of the public agency's refusal to conduct the initial evaluation consistent with 34 CFR Sec. 300.503 and a copy of the procedural safeguards notice required by Sec. 300.504. The parent can challenge this decision by requesting a due process hearing.

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(c) A public agency's failure to take action as set forth in either subsections (i)(a) or (i)(b) above will be construed as a denial of the parent's request for special education evaluation. The parent can challenge this decision by requesting a due process hearing.

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(d) Procedures for initial evaluation.

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

(ii) Each public agency must 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, including parent-initiated requests. 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 during the SAT process. If the public agency agrees with the parent that the child may be a child who is eligible for special education services, the public agency must evaluate the child. If the public agency declines the parent's request for an evaluation, the public agency must issue prior written notice in accordance with 34 CFR Sec. 300.503. The parent can challenge this decision by requesting a due process hearing.

(e)(4) Exception to the 60 day time frame. The requirements of this subsection do not apply:

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

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

(f)(e) The exception to the 60 day time frame in Item (ii) of Subparagraph (e) 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.

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

(2) Reevaluations.

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

(b) Reevaluations may be conducted more often if:

(i) the LEA determines the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or  
(ii) the child's parent or teacher requests a reevaluation.

(c) Reevaluations may not occur more than once a year, unless the parent and public agency agree otherwise.

Attachment A

(d) Procedures for conducting evaluations and reevaluations.

(i) The public agency must provide notice to the parents of a child with a disability that describes any evaluation procedures the agency proposes to conduct in compliance with 34 CFR Sec. 300.503.

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

(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 must 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 must 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 must 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 must 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 must 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 must determine whether the child is a child with a disability, as defined in 34 CFR Sec. 300.8 and Paragraph (2) of Subsection B of 6.31.2.7 NMAC. The

## Attachment A

determination shall be made in compliance with all applicable requirements of 34 CFR Sec. 300.306 and these or other department rules and standards and, for a child suspected of having a specific learning disability, in compliance with the additional procedures of 34 CFR Secs. 300.307-300.311, and these or other department rules, policies and standards.

(b) The public agency must 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 education agencies but may only be used for children who do not qualify for special education under any other disability category.

(b) Children who are classified as developmentally delayed must be reevaluated during the school year in which they turn 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, 6/29/2007; A, 12/31/2009; A, 7/29/2011]

West's Illinois Administrative Code  
Title 23. Education and Cultural Resources  
Subtitle A. Education  
Chapter I. State Board of Education  
Subchapter F. Instruction for Specific Student Populations  
Part 226. Special Education (Refs & Annos)  
Subpart B. Identification of Eligible Children

**23 Ill. Adm. Code 226.110**

**226.110 Evaluation Procedures**

**Currentness**

Procedures for requesting and conducting initial evaluations of children who are suspected of requiring special education and related services shall conform to the requirements of 34 CFR 300.301, 300.304, 300.305, 300.306 and 300.309. For purposes of this Section, the “date of referral” shall be understood to be the date of written parental consent for an evaluation, and screening procedures done in accordance with 34 CFR 300.302 shall not be considered an evaluation. Written consent for the initial evaluation shall be obtained in conformance with the requirements of 34 CFR 300.300. In addition, the following requirements shall apply.

**a) Procedures for Requesting an Initial Evaluation**

Each school district shall develop and make known to all concerned persons procedures by which an evaluation may be requested. These procedures shall:

- 1) Designate the steps to be taken in making a request for an evaluation;
- 2) Designate the persons to whom a request may be made;
- 3) Identify the information that must be provided;
- 4) Provide any assistance that may be necessary to enable persons making requests to meet any related requirements established by the district; and
- 5) Identify the process for providing the parents with notice of their rights with respect to procedural safeguards.

**b) A request may be made by a parent of a child or by an employee of a State educational agency, another State agency, a local educational agency, or a community service agency.**

c) District's Response to Request

1) The school district shall be responsible for processing the request, deciding what action should be taken, and initiating the necessary procedures.

2) To determine whether the child requires an evaluation, the district may utilize screening data and conduct preliminary procedures, such as observation of the child, assessment for instructional purposes, consultation with the teacher or other individual making the request, and a conference with the child.

3) Within 14 school days after receiving a request for an evaluation, the district shall determine whether an evaluation is warranted. If the district determines not to conduct an evaluation, it shall provide written notice to the parents in accordance with 34 CFR 300.503(b). If an evaluation is to be conducted:

A) The district shall convene a team of individuals (including the parent) having the knowledge and skills necessary to administer and interpret evaluation data. The composition of the team will vary depending upon the nature of the child's symptoms and other relevant factors.

B) The team shall identify the assessments necessary to complete the evaluation in accordance with 34 CFR 300.305 and shall prepare a written notification for the parents as required under 34 CFR 300.304(a). For each domain, the notification shall either describe the needed assessments or explain why none are needed.

C) The district shall ensure that the notification of the team's conclusions is transmitted to the parents within the 14-school-day timeline applicable under this subsection (c)(3), along with the district's request for the parents' consent to conduct the needed assessments.

d) Upon completion of the assessments identified pursuant to subsection (c)(3), but no later than 60 school days following the date the parent signs the written consent to perform the needed assessments, the determination of eligibility shall be made and the IEP meeting shall be completed. If fewer than 60 school days remain in a school year after the date of parental consent, *the eligibility determination shall be made and the IEP meeting shall be completed prior to the first day of the following school year.* (Section 14-8.02(b) of the School Code)

e) At the conclusion of the meeting convened pursuant to subsection (d), the team shall prepare a report describing its consideration of pre-existing information about the child, all new evaluation reports obtained, and any other information relevant to the decision about the child's eligibility. This description shall relate the information considered to the child's needs and shall further conform to the requirements of Section 226.130 if applicable. The IEP Team's report shall also include:

1) the date of the meeting;

2) the signatures of the participants, indicating their presence at the meeting; and

3) any separate written statement provided by a participant who wishes to be on record as disagreeing with the conclusions expressed in the team's report.

f) The school district shall provide a copy of the IEP Team's report to the parent at the conclusion of the team's meeting. In addition, the district shall provide to the parent written notice conforming to the requirements of Section 226.520 as to the eligibility determination reached with respect to the child. The parent shall also be entitled to receive copies of any evaluation reports upon request.

g) A copy of the IEP Team's report, together with all documentation upon which it is based, shall become a part of the child's temporary student record.

h) If an assessment is conducted under nonstandard conditions, a description of the extent to which the assessment varied from standard conditions shall be included in the evaluation report. This information is needed so that the team of evaluators can assess the effects of these variances on the validity and reliability of the information reported and determine whether additional assessments are needed. For example, the use of a translator when a qualified bilingual specialist is not available may create nonstandard conditions.

i) If any needed portion of the evaluation cannot be completed due to lack of parental involvement, religious convictions of the family, or inability of the child to participate in an evaluative procedure, the district shall note the missing portions in the child's evaluation report and state the reasons why those portions could not be completed.

j) In the event that the student is determined to be eligible for special education and related services pursuant to the procedures described in subsections (d) and (e), the IEP meeting shall be conducted within 30 days after the date of that determination.

k) If a district fails to conduct the evaluation, the parent of the child in question (or the student, if Section 226.690 applies) may appeal this failure in an impartial due process hearing or request consideration of this failure using the State complaint procedures set forth at Section 226.570.

#### **Credits**

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

Current through rules published in the Illinois Register Volume 43, Issue 40, October 4, 2019.

23 ILAC § 226.110, 23 IL ADC 226.110

Michigan Administrative Code

Education

Superintendent of Public Instruction

Special Education Programs and Services

Part 2. Initial Evaluation, Time Lines, Individualized Education Program, District Responsibilities, and Due Process Procedures

**Mich. Admin. Code R 340.1721**

R 340.1721. Request for initial evaluation.

**Currentness**

Rule 21. Within 10 school days of receipt of a written request for an initial evaluation of a student suspected of having a disability, and before any formal evaluation designed to determine eligibility for special education programs and services, the public agency shall provide the parent with written notice consistent with 34 CFR § 300.503 and, when necessary shall request written consent to evaluate.

**Credits**

History: 1979 AC; 1980 AACS; 2002 AACS; 2010 AACS; 2011 AACS; 2013 AACS.

(By the authority of the superintendent of public instruction under sections 1701 and 1703 of 1976 PA 451, MCL 380.1701 and MCL 380.1703, and Executive Reorganization Order No. 1996-6, MCL 388.993)

Current with amendments included in the Michigan Register, Issue Number 19-2019, dated November 1, 2019.

Mich. Admin. Code R 340.1721, MI ADC R 340.1721

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19 Texas Administrative Code § 89.1011.

(b) If a parent submits a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the school district must, not later than the 15th school day after the date the district receives the request:

(1) provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503; a copy of the procedural safeguards notice required by 34 CFR, §300.504; and an opportunity to give written consent for the evaluation; or

(2) provide the parent with prior written notice of its refusal to conduct an evaluation consistent with 34 CFR, §300.503, and a copy of the procedural safeguards notice required by 34 CFR, §300.504.



## **EDUCATION CODE - EDC**

**TITLE 2. ELEMENTARY AND SECONDARY EDUCATION [33000 - 64100]** ( *Title 2 enacted by Stats. 1976, Ch. 1010. )*

**DIVISION 4. INSTRUCTION AND SERVICES [46000 - 65001]** ( *Division 4 enacted by Stats. 1976, Ch. 1010. )*

**PART 30. SPECIAL EDUCATION PROGRAMS [56000 - 56865]** ( *Part 30 repealed and added by Stats. 1980, Ch. 797, Sec. 9. )*

**CHAPTER 1. General Provisions [56000 - 56070]** ( *Chapter 1 added by Stats. 1980, Ch. 797, Sec. 9. )*

**ARTICLE 3. General Provisions [56040 - 56048]** ( *Article 3 added by Stats. 1980, Ch. 797, Sec. 9. )*

The primary timelines affecting special education programs are as follows:

- 56043.** (a) A proposed assessment plan shall be developed within 15 calendar days of referral for assessment, not counting calendar days between the pupil's regular school sessions or terms or calendar days of school vacation in excess of five schooldays, from the date of receipt of the referral, unless the parent or guardian agrees in writing to an extension, pursuant to subdivision (a) of Section 56321.
- (b) A parent or guardian shall have at least 15 calendar days from the receipt of the proposed assessment plan to arrive at a decision, pursuant to subdivision (c) of Section 56321.
- (c) Once a child has been referred for an initial assessment to determine whether the child is an individual with exceptional needs and to determine the educational needs of the child, these determinations shall be made, and an individualized education program team meeting shall occur within 60 days of receiving parental consent for the assessment, pursuant to subdivision (a) of Section 56302.1, except as specified in subdivision (b) of that section, and pursuant to Section 56344.
- (d) The individualized education program team shall review the pupil's individualized education program periodically, but not less frequently than annually, pursuant to subdivision (d) of Section 56341.1.
- (e) A parent or guardian shall be notified of the individualized education program team meeting early enough to ensure an opportunity to attend, pursuant to subdivision (b) of Section 56341.5. In the case of an individual with exceptional needs who is 16 years of age or younger, if appropriate, the meeting notice shall indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the individual with exceptional needs, and the meeting notice described in this subdivision shall indicate that the individual with exceptional needs is invited to attend, pursuant to subdivision (e) of Section 56341.5.

- (f) (1) An individualized education program required as a result of an assessment of a pupil shall be developed within a total time not to exceed 60 calendar days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays, from the date of receipt of the parent's or guardian's written consent for assessment, unless the parent or guardian agrees in writing to an extension, pursuant to Section 56344.
- (2) A meeting to develop an initial individualized education program for the pupil shall be conducted within 30 days of a determination that the child needs special education and related services pursuant to Section 300.323(c)(1) of Title 34 of the Code of Federal Regulations and in accordance with Section 56344.
- (g) (1) Beginning not later than the first individualized education program to be in effect when the pupil is 16 years of age, or younger if determined appropriate by the individualized education program team, and updated annually thereafter, the individualized education program shall include appropriate measurable postsecondary goals and transition services needed to assist the pupil in reaching those goals, pursuant to paragraph (8) of subdivision (a) of Section 56345.
- (2) The individualized education program for pupils in grades 7 to 12, inclusive, shall include any alternative means and modes necessary for the pupil to complete the district's prescribed course of study and to meet or exceed proficiency standards for graduation, pursuant to paragraph (1) of subdivision (b) of Section 56345.
- (3) Beginning not later than one year before the pupil reaches 18 years of age, the individualized education program shall contain a statement that the pupil has been informed of the pupil's rights under this part, if any, that will transfer to the pupil upon reaching 18 years of age, pursuant to Section 56041.5, subdivision (g) of Section 56345, and Section 300.520 of Title 34 of the Code of Federal Regulations.
- (h) Beginning at the age of 16 years or younger, and annually thereafter, a statement of needed transition services shall be included in the pupil's individualized education program, pursuant to Section 56345.1 and Section 1414(d)(1)(A)(i)(VIII) of Title 20 of the United States Code.
- (i) A pupil's individualized education program shall be implemented as soon as possible following the individualized education program team meeting, pursuant to Section 300.323(c)(2) of Title 34 of the Code of Federal Regulations and in accordance with Section 56344.
- (j) An individualized education program team shall meet at least annually to review a pupil's progress, the individualized education program, including whether the annual goals for the pupil are being achieved, the appropriateness of the placement, and to make any necessary revisions, pursuant to subdivision (d) of Section 56343. The local educational agency shall maintain procedures to ensure that the individualized education program team reviews the pupil's individualized education program periodically, but not less frequently than annually, to determine whether the annual goals for the pupil are being achieved, and revises the individualized education program as appropriate to address, among other matters, the provisions specified in subdivision (d) of Section 56341.1, pursuant to subdivision (a) of Section 56380.
- (k) A reassessment of a pupil shall occur not more frequently than once a year, unless the parent and the local educational agency agree otherwise in writing, and shall occur at least once every three years, unless the parent and the local educational agency agree, in writing, that a reassessment is unnecessary, pursuant to Section 56381, and in accordance with Section 1414(a)(2) of Title 20 of the United States Code.
- (l) A meeting of an individualized education program team requested by a parent or guardian to review an individualized education program pursuant to subdivision (c) of Section 56343 shall be held within 30 calendar days, not counting days

between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays, from the date of receipt of the parent's or guardian's written request, pursuant to Section 56343.5.

(m) If an individual with exceptional needs transfers from district to district within the state, the following are applicable pursuant to Section 56325:

(1) If the child has an individualized education program and transfers into a district from a district not operating programs under the same local plan in which he or she was last enrolled in a special education program within the same academic year, the local educational agency shall provide the pupil with a free appropriate public education, including services comparable to those described in the previously approved individualized education program, in consultation with the parents or guardians, for a period not to exceed 30 days, by which time the local educational agency shall adopt the previously approved individualized education program or shall develop, adopt, and implement a new individualized education program that is consistent with federal and state law, pursuant to paragraph (1) of subdivision (a) of Section 56325.

(2) If the child has an individualized education program and transfers into a district from a district operating programs under the same special education local plan area of the district in which he or she was last enrolled in a special education program within the same academic year, the new district shall continue, without delay, to provide services comparable to those described in the existing approved individualized education program, unless the parent and the local educational agency agree to develop, adopt, and implement a new individualized education program that is consistent with state and federal law, pursuant to paragraph (2) of subdivision (a) of Section 56325.

(3) If the child has an individualized education program and transfers from an educational agency located outside the state to a district within the state within the same academic year, the local educational agency shall provide the pupil with a free appropriate public education, including services comparable to those described in the previously approved individualized education program, in consultation with the parents or guardians, until the local educational agency conducts an assessment as specified in paragraph (3) of subdivision (a) of Section 56325.

(4) In order to facilitate the transition for an individual with exceptional needs described in paragraphs (1) to (3), inclusive, the new school in which the pupil enrolls shall take reasonable steps to promptly obtain the pupil's records, as specified, pursuant to subdivision (b) of Section 56325.

(n) The parent or guardian shall have the right and opportunity to examine all school records of the child and to receive complete copies within five business days after a request is made by the parent or guardian, either orally or in writing, and before any meeting regarding an individualized education program of his or her child or any hearing or resolution session pursuant to Chapter 5 (commencing with Section 56500), in accordance with Section 56504 and Chapter 6.5 (commencing with Section 49060) of Part 27.

(o) Upon receipt of a request from a local educational agency where an individual with exceptional needs has enrolled, a former educational agency shall send the pupil's special education records, or a copy of those records, to the new local educational agency within five working days, pursuant to subdivision (a) of Section 3024 of Title 5 of the California Code of Regulations.

(p) The department shall do all of the following:

(1) Have a time limit of 60 calendar days after a complaint is filed with the state educational agency to investigate the complaint.

- (2) Give the complainant the opportunity to submit additional information about the allegations in the complaint.
- (3) Review all relevant information and make an independent determination as to whether there is a violation of a requirement of this part or Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).
- (4) Issue a written decision pursuant to Section 300.152(a)(5) of Title 34 of the Code of Federal Regulations.
- (q) A prehearing mediation conference shall be scheduled within 15 calendar days of receipt by the Superintendent of the request for mediation, and shall be completed within 30 calendar days after the request for mediation, unless both parties to the prehearing mediation conference agree to extend the time for completing the mediation, pursuant to Section 56500.3.
- (r) Any request for a due process hearing arising from subdivision (a) of Section 56501 shall be filed within two years from the date the party initiating the request knew or had reason to know of facts underlying the basis for the request, except that this timeline shall not apply to a parent if the parent was prevented from requesting the due process hearing, pursuant to subdivision (l) of Section 56505.
- (s) The Superintendent shall ensure that, within 45 calendar days after receipt of a written due process hearing request, the hearing is immediately commenced and completed, including any mediation requested at any point during the hearing process, and a final administrative decision is rendered, pursuant to subdivision (f) of Section 56502.
- (t) If either party to a due process hearing intends to be represented by an attorney in the due process hearing, notice of that intent shall be given to the other party at least 10 calendar days before the hearing, pursuant to subdivision (a) of Section 56507.
- (u) Any party to a due process hearing shall have the right to be informed by the other parties to the hearing, at least 10 calendar days before the hearing, as to what those parties believe are the issues to be decided at the hearing and their proposed resolution of those issues, pursuant to paragraph (6) of subdivision (e) of Section 56505.
- (v) Any party to a due process hearing shall have the right to receive from other parties to the hearing, at least five business days before the hearing, a copy of all documents, including all assessments completed and not completed by that date, and a list of all witnesses and their general area of testimony that the parties intend to present at the hearing, pursuant to paragraph (7) of subdivision (e) of Section 56505.
- (w) An appeal of a due process hearing decision shall be made within 90 calendar days of receipt of the hearing decision, pursuant to subdivision (k) of Section 56505.
- (x) A complaint filed with the department shall allege a violation of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) or a provision of this part that occurred not more than one year before the date that the complaint is received by the department, pursuant to Section 56500.2 and Section 300.153(c) of Title 34 of the Code of Federal Regulations.

*(Amended by Stats. 2014, Ch. 327, Sec. 12. (AB 1599) Effective January 1, 2015.)*

ARKANSAS DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND RELATED SERVICES  
4.00 REFERRAL  
Rev. July 2010

4.01 REFERRAL GENERALLY

4.01.1 If a child is suspected of having a disability which adversely affects educational performance and who by reason thereof, needs special education and related services, a referral may be made at any time to the local educational agency by -

- 4.01.1.1 The child's teacher;
- 4.01.1.2 Other educational personnel;
- 4.01.1.3 The child's parent(s);
- 4.01.1.4 The child; or
- 4.01.1.5 Other individuals with relevant knowledge of the child.

4.01.2 A referral is to be made in writing through the completion of the required Referral Form and provided to the principal or designee of the school in which the child is enrolled. Where the referral originates from a parent, an individual not associated with the school, or other agency personnel, an employee of the local educational agency where the child is enrolled must complete the Referral Form and forward it to the principal or designee of the school.

4.01.3 Informal data collection conducted pursuant to § 4.02 of this part must be completed prior to any referral conference.

4.01.4 Where appropriate, a child's parent(s) must be informed of the referral and shall be offered an explanation of its purpose.

4.02 CONTENT OF REFERRAL

Along with the information provided in the Referral Form, any information which may assist in determining whether or not a child is a child with a disability should be submitted, including, but not limited to -

4.02.1 The results of hearing and vision screening;

- 4.02.2 Home or classroom behavior checklists;
- 4.02.3 Existing medical, social, or educational data;
- 4.02.4 Examples of the child's academic work; and
- 4.02.5 Screening inventories.

#### 4.03 NOTICE OF REFERRAL CONFERENCE

- 4.03.1 Within seven (7) calendar days of the date the local educational agency receives the written referral, the local educational agency must schedule a referral conference at a time and place agreed upon by the parent(s) and provide the parent(s) with written notification of the referral and referral conference consistent with the notice requirements established in §9.04 of these regulations.
- 4.03.2 In addition to meeting the requirements of §9.04 of these regulations, notice of a referral conference must be provided to the parent(s) early enough to ensure that they will have an opportunity to attend and must include the time and location of the conference and who will be in attendance.
- 4.03.3 The agency may provide initial notice to the parent(s) through the use of -
  - 4.03.3.1 Registered mail;
  - 4.03.3.2 Certified mail; or
  - 4.03.3.3 First class mail.
- 4.03.4 If the parents do not respond to the initial written notice within seven (7) calendar days of its dissemination, a subsequent notice must be issued to the parents by any communication means necessary, specifying that the referral conference will be held seven (7) calendar days from the date of dissemination of the subsequent notice, but in no case more than 21 calendar days from receipt of the written referral.
  - 4.03.4.1 If the parents do not respond to the subsequent notice, the referral conference may be conducted without the parent in attendance.
  - 4.03.4.2 If no parent can be identified or located after reasonable efforts by the agency or if the child is a

ward of the State or an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434 a(6)), then a surrogate parent must be assigned to the child pursuant to §15.00 of these regulations.

- 4.03.5 The public agency shall maintain written documentation of its efforts to ensure that the requirements of §4.00 have been met.

#### 4.04 REFERRAL CONFERENCE

- 4.04.1 If a child is referred to the local educational agency pursuant to §4.01, a referral conference must be held for the purpose of reviewing all existing information related to the child and to determine the actions to be taken.
- 4.04.2 The referral conference must be attended by at least three (3) persons, including the principal or a designee and one teacher directly involved in the education of the child. The conference may also be attended by the child, if appropriate, and by other individuals at the discretion of the parents or agency.
- 4.04.3 Decisions made at the referral conference must be recorded on the required Referral Conference Decision Form and signed by the principal or a designee. The Referral Conference Decision Form shall also include the names of the participants of the conference.
- 4.04.4 Options for referral conference outcomes include -
  - 4.04.4.1 A decision to conduct a comprehensive evaluation of the child consistent with the eligibility criteria set out in §6.00 of these regulations;
  - 4.04.4.2 A decision to conduct a specialized evaluation of the child consistent with the eligibility criteria set out in §6.00 of these regulations; or
  - 4.04.4.3 A decision not to conduct an evaluation of the child.
- 4.04.5 Subsequent to the conclusion of the referral conference, the local educational agency must provide the parent written notice of the decision reached at the referral conference, consistent with § 9.04 of these regulations. If the parent was not present at the referral conference, notice must be given to the parent within seven (7) calendar days after the referral conference by -

4.04.5.1 Registered mail;

4.04.5.2 Certified mail; or

4.04.5.3 First class mail.

4.04.6 If the local educational agency has reason to believe that the parent may require assistance in understanding the decision reached at the referral conference, a representative of the local educational agency must contact the parent by telephone or initiate a home visit to explain the decision.

#### 4.05 TEMPORARY PLACEMENT DURING EVALUATION

4.05.1 If a referral conference results in a decision to evaluate a child, and existing data and educational observations establish the need for immediate intervention or differential diagnostic data gathering, the local educational agency, with the parent's written consent, may initiate a temporary placement for the child to provide special education and related services.

4.05.2 The temporary placement of a child is limited to sixty (60) calendar days, during which time the evaluation must be completed.

4.05.3 If a determination is made to initiate a temporary placement for a child, the reason(s) for such placement must be stated on the Referral Conference Decision Form, and an interim Individualized Educational Program must be developed and implemented for the period of time the student is in the temporary placement, not to exceed sixty (60) calendar days.

#### 4.06 CONSENT TO EVALUATE

4.06.1 The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under 34 CFR 300.8 must, after providing notice consistent with 34 CFR 300.503 and 300.504, obtain informed consent, consistent with 34 CFR 300.1 from the parent of the child before conducting the evaluation.

4.06.1.1 Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

- 4.06.1.2 The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.
- 4.06.2 For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if -
  - 4.06.2.1 Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;
  - 4.06.2.2 The rights of the parents of the child have been terminated in accordance with State law; or
  - 4.06.2.3 The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.
- 4.06.3 If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph 4.06.1 of this section, 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 procedural safeguards in subpart E of this part (including the mediation procedures under 34 CFR 300.506 or the due process procedures under 34 CFR 300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.
  - 4.06.3.1 The public agency does not violate its obligation under 34 CFR 300.111 and 300.301 through 300.311 if it declines to pursue the evaluation.
- 4.06.4 Public agency personnel must also provide the parent with a copy of "Information for Parents Regarding Consent," and must ensure that the parent understands the information it contains.

Meetings Every Thursday Evening,  
6:30-8:00 P.M.  
5121 Masthead N.E., 2nd Floor  
Albuquerque, NM 87109

Email: [nm.open100@gmail.com](mailto:nm.open100@gmail.com)  
Facebook: OPEN New Mexico



August 30, 2019

Dear NMPED (c/o Kara Bobroff, Katarina Sandoval, Deborah-Dominguez-Clark),

Thank you for the opportunity to participate at the August 14 event focused on special education. We were glad to be able to provide information concerning some of the systemic issues impacting our children across the state. It is our hope that this meeting is the beginning of dialogue. We'd love to hear back from NMPED about its specific plans or any questions.

OPEN participants left the meeting with some concerns.

First, NMPED's commitment to a year long listening tour across the state does not seem to be a good use of time. Many issues about the delivery of special education are apparent and would not require a year to discover.

As you heard in presentations by other groups on August 14, New Mexico school districts are routinely and repeatedly delaying and denying students evaluations for special education eligibility determination. Evaluation is a fundamental first step in getting appropriate special education and when families are being blocked by their own schools and school districts, NMPED should be able to see that its immediate action is required. Why would a listening tour be substituted for simply telling the school districts now that delays and refusals of evaluations will not be tolerated? We request action on this critical issue by NMPED.

Second, parents and grandparents from OPEN traveled to Santa Fe on a Wednesday afternoon in the first week of school because they wanted to inform NMPED of problems surrounding special education across the state. We were upset to learn that the press was barred from the meeting. This should have been a public and well-publicized event. Parents do not feel ashamed or in need of "confidentiality" when they speak about their children or the problems they face daily in obtaining appropriate education. It was patronizing of NMPED to tell the press that they were banned in order to protect participants on "sensitive" issues. Parents want to create *more* understanding in our communities and across the state about the educational needs for their children with disabilities. The press gives our children respect by reporting about special education: NMPED was wrong to silence parents and advocates by banning the press.

When NMPED does initiate its listening tour, we ask that you ensure that these meetings are open to the public. Parents across the state are not ashamed of their children or frank discussion of their educational needs. Please do not patronize us by pretending this is too "sensitive" a topic for public discussion.

We will close by asking that NMPED please respond to the Rulemaking petition OPEN initiated in March 2019. We have provided the petition now multiple times — including again on August 14 — and still have heard nothing.

for OPEN,

*June A. Hg*  
*McNulty*  
*Albuquerque Journal*  
*Kara Lambert*

cc: Parents Reaching Out  
DRNM  
EPICS  
Pegasus Legal Services for Children  
Native American Disability Law Center  
Searchlight New Mexico  
Albuquerque Journal —  
Santa Fe New Mexican  
Santa Fe Reporter  
Governor Michelle Lujan Grisham



To: [Rule.Feedback@ped.nm.gov](mailto:Rule.Feedback@ped.nm.gov)

from: Organizing Parents Education Network (OPEN) - public comment on rulemaking

date: 1-3-23

re: NMPED proposed amendments to §6.31.2.10 NMAC

OPEN supports the amendments proposed to §6.31.2.10 NMAC.

These amendments are necessary to ensure that students with disabilities in New Mexico can receive timely evaluations and timely special education services, as intended by federal law (the IDEA).

For too long, school districts across the State have gamed the system by ignoring and delaying parental requests for special education evaluations, resulting in our students waiting months and even multiple school years before receiving evaluations and special education services. IDEA has ALWAYS allowed parents to request evaluation and has ALWAYS required that evaluations be complete within 60 days of consent. See 20 U.S.C. §1414(a)(1)(B); 20 U.S.C. §1414(a)(1)(C)(i)(I),(II).

School districts have thwarted IDEA's intended timetables by refusing to acknowledge parental requests for evaluation and then delaying provision of Consent forms for parent signature. The Districts purposely delay provision of Consent forms to create false statistics which claim to show that the school district completed the evaluation in the 60 day period.

NMPED was clearly put on notice about the issues of evaluation refusals and delays at the August 2019 summit in Santa Fe, New Mexico. All advocacy groups who made presentations to NMPED on August 14, 2019 (1-3pm) at Mabry Hall highlighted parents' inability to obtain special education evaluations. Those presenters were Parents Reaching Out (PRO), Native American Disability Law Center, Organizing Parents Education Network, Disability Rights New Mexico, Education for Parents of Indian Children with special needs (EPICS).

On August 30, 2019, OPEN followed up with a letter to NMPED requesting immediate action on school districts' widespread refusal to conduct timely evaluations. (That letter is attached here.)

On September 6, 2019, the *Albuquerque Journal* published a letter from Katarina Sandoval, NMPED Deputy Cabinet Secretary, Academic Engagement & Student Success, referencing the problem of evaluation delays raised by advocates for children with disabilities. (That letter is attached here.). In part that letter stated,

The process [of NMPED reviewing delivery of special education in NM] began recently at a listening session with special education advocates. Chief among their concerns were delays in evaluating students who might need special education services — potentially resulting in delayed diagnoses and students not receiving services they need. While we understand and appreciate schools not rushing to place students in special education, we also know that timely evaluations ultimately lead to needed services.

Additionally, in June 2020, special education advocates and attorneys submitted proposed rulemaking to NMPED Special Education Department to help the Department by drafting necessary amendments to existing rules and providing abundant explanation and research on the issue of delayed/denied evaluations for special education. That packet is also attached here.

NMPED has taken more than three years to address this serious foundational issue regarding delivery of special education in our state.

The proposed amendments should be issued because the amendments seek to build in necessary timelines and checks and balances in order that students in New Mexico have access to special education evaluation and services promised by federal law (IDEA).

encls:

- (1) 8/30/19 OPEN letter to NMPED
- (2) 9/6/19 *Albuquerque Journal* Guest Column by NMPED Deputy Secretary
- (3) 6/30/20 letter from Disability Rights New Mexico and other advocates, attorneys with proposal for amendments to state Rules

## Guest Columns

### State on a mission to improve special ed

By Katarina Sandoval / Deputy Cabinet Secretary, Academic Engagement & Student Success, N.m. Public Education Department

Published: Friday, September 6th, 2019 at 12:02am

Updated: Friday, September 6th, 2019 at 3:02pm

There are about 55,000 special education students in New Mexico's public schools. They represent approximately 16% of all public education students from pre-kindergarten through 12th grade. And while many are receiving high-quality instruction and services that fit their individual needs, we know we can do even better.

And we know working together is the way to accomplish that. That's why, over the course of the 2019-20 school year, the New Mexico Public Education Department is comprehensively reviewing the state of special education. We are soliciting input from and listening to students, parents, school staff and special education advocates. We want to know what is working, identify issues and solutions, and share best practices from around New Mexico with other schools, educators and parents across the state.

The process began recently at a listening session with special education advocates. Chief among their concerns were delays in evaluating students who might need special education services – potentially resulting in delayed diagnoses and students not receiving services they need. While we understand and appreciate schools not rushing to place students in special education, we also know that timely evaluations ultimately lead to needed services.

Advocates also said they spend a lot of time advising parents about their rights and providing technical assistance about how special education works. Too often, they said, schools and districts speak in overly technical, difficult-to-parse language. Advocates told stories about barriers to access that some families face. Providing quality special education requires working with parents, who know their children best, to ensure students are receiving the support and services to which they are entitled.

At the New Mexico Public Education Department, we will continue our listening sessions, while simultaneously learning from successful general education and special education teachers from across the state. Over the course of the year, we will chronicle best practices from New Mexico educators and schools so that we continue to improve how well we serve our students with disabilities. Just last week, the U.S. Department of Education issued its annual Results-Driven Accountability (RDA) Report for 2019. The report rates states based on how well they serve students with disabilities, including how the state meets federal requirements and responds to concerns from school communities. In 2019, New Mexico's rating improved 10 percentage points, to 76.7%, compared to 67.7% in 2018.

Our efforts will culminate in a Special Education Summit in the summer of 2020, where we will host information sessions and professional development workshops for special education and general education educators and administrators, aimed at improving services – not just for special education students, but for all students.

In the end, special education students are simply students. They have different needs, but our dreams for them are the same: happy, healthy and successful lives. Although they receive some extra help or services, they should, to the greatest extent possible, have the same educational access and opportunities as their peers in the classroom. Our goal over the next year is to create an educational system that serves special education students as well as possible, because by doing so, we serve all students well.

**From:** [JULIE MEADORS](#)  
**To:** [FeedBack, Rule, PED](#)  
**Subject:** [EXTERNAL] Reponses to Proposed Rule Changes  
**Date:** Tuesday, January 3, 2023 4:05:49 PM  
**Attachments:** [Proposed Rule Changes- Response to PED by Julie Meadors, LED.docx.pdf](#)

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CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

**Julie Meadors, MA ED, NM LED #263040**

**Lead Educational Diagnostician**

**Carlsbad Municipal Schools**

**office: (575) 234-3305 ext. 1970**

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To Whom it may concern,

Thank you for the opportunity to comment on the proposed rule changes to 6.31.2 NMAC. The following are concerns regarding the proposed changes.

The current proposed timelines will create significant challenges for our educational diagnostician department as well as for all ancillary and related service providers, especially during our current times when staff vacancies are high. Additionally, the current timelines will limit the ability for teams to conduct Full Comprehensive Evaluations that our students and parents have a right to receive.

I outline these concerns in more detail below in [BLUE](#).

#### **6.31.2.10 (E) Evaluation requests and referrals**

(1) Either a parent of a child or a public agency may initiate a request for a full and individual evaluation to determine if the child is a child with a disability or may request a reevaluation to determine if the child's educational needs have changed.

(2) The request for initial evaluation or reevaluation by a parent may be made in writing or orally. A parental request for a full and individual evaluation made to any employee of the school in which the student attends shall be forwarded or communicated to the school or district special education director or a school or district administrator as soon as possible after it is received.

(3) The public agency shall respond to a parental request for initial evaluation or reevaluation to the public agency no later than 15 school days from the receipt of the request. If a parent request for an evaluation or reevaluation is received within 15 school days before the start of a scheduled period in which student attendance is not required for at least 14 calendar days, the public agency shall respond no later than 30 calendar days from the date of the request.

(4) The public agency shall respond to a parental request for initial evaluation or reevaluation by:  
(a) providing prior written notice consistent with 34 CFR Sec. 300.503 that proposes to conduct the requested evaluation or reevaluation, providing a copy of the procedural safeguards notice to parents required by 34 CFR Sec. 300.504, and seeking parental consent for the evaluation; or  
(b) providing prior written notice consistent with 34 CFR Sec. 300.503 of the public agency's refusal to conduct the evaluation or reevaluation and a copy of the procedural safeguards notice required by 34 CFR Sec. 300.504.

(1) Each public agency shall maintain a record of the receipt, processing, and disposition of any request

## Concerns/Suggestions

- There should be an option for denial and a PWN as it is not specific to ‘whom’ determines the student is suspected of having a disability and/or what that disability is. (as in many cases teachers do not understand that ODD is not recognized under PED)
- “any employee of the school”, implies that the request can be made to custodial staff, cafeteria staff, aides, teachers, administrator, etc.
- “receipt of the request” is not clear. Is this receipt from the parent to any school staff member, or is this receipt of the request by a staff member to an administrator?
- In order to establish, track, and document a proper timeline (15 school days), and ensure the parent request is responded to appropriately, it is streamlined and less likely to get lost in the process if all parties direct the request for evaluation by a parent (either orally or in writing) to the administrator in the building. The administrator would then immediately contact their team that considers evaluations.
- **6.31.2.10 (E) (2) and (5) Evaluation requests and referrals**
- (re: Exception to the 15 school days and 14-calendar day break)  
When school is out for the summer. According to the proposed rule, a school would have 30 days to respond from the request following a 14 day break. We do not always have the full team of evaluators in the summer months if a request comes as soon as school is out for summer. The change needs to consider that we are out more than the 14 day calendar break during the summer for schools that do not go year round.
- There should be an option to refuse the evaluation or reevaluation if the Review of Existing Evaluation Data does not support the need for an evaluation. In (5) of this sections it does not allude to that possibility, it only states that a PWN be provided to conduct an evaluation and get consent. It needs to state **When the public agency makes a referral for an evaluation without a parental request, the public agency shall provide prior written notice consistent with 34 CFR Sec. 300.503 that proposes to conduct or explain the rejection for the requested evaluation or reevaluation,...**

6.31.2.10 (F) Timeline for evaluations

(1) “All appropriate evaluation data, including complete Student Assistance Team file documentation, multi layered systems of supports data,…”

Concerns/Suggestions

- In order to ensure appropriate documentation, it will require documentation to occur as part of the MLSS process and the guidance from C and I to match the NMAC proposals.

(2) “ The initial evaluation and written evaluation report shall be completed within 60 calendar days of receiving parental consent for evaluation.”

Concerns/Suggestions

This proposal is the one that we are most concerned with.

The completion of the written report, within the 60 day timeline, (particularly when multiple areas of suspected disability are part of the comprehensive evaluation in order to ensure the student is properly educationally diagnosed), will add a new layer of panic to an already challenging timeline for conducting a full and comprehensive individual evaluation.

The 60 day timeframe (calendar days) is crucial for conducting a comprehensive and thorough evaluation. Teams need the entire 60 days in order to complete all evaluations, interpret and collaborate with all team members.

Requiring the written report during this time line would very likely take up days of the evaluation process. The written report can take days due to it needing to be comprehensive making sure to triangulate all data that a student has. This triangulation includes classroom data, evaluative data, possible medical diagnosis, outside psychological evaluations at times, as well as parental data.

This would not be such a significant issue if the 60 day timeline was school days, but it is not- it is Calendar Days. Weekends, inservice days, and holidays eat up many of the days within the 60 day timeline.

- the full 60 day timeline should be devoted exclusively to conducting a comprehensive evaluation,
- time to complete and thorough analysis of the evaluation data for the written report should be completed in the 30 days after the 60 day timeline

#### **6.31.2.10 G. Procedures for conducting evaluations and reevaluations.**

(4) The public agency shall provide the parents with a written report of the evaluation or reevaluation at least two calendar days before the eligibility determination team meeting.

#### **6.31.2.10 J. Eligibility determinations**

(1) “If an individual evaluation is completed during a scheduled period in which student attendance is not required for at least 14 calendar days, the public agency shall convene both a meeting of the eligibility determination team and (if the child is determined eligible) a meeting of the IEP team to develop or revise the child’s IEP no later than 15 school days from the first day when the student attendance resumes.”

##### Concerns/Suggestions

- Does this really need to include the IEP meeting? The federal requirement states the IEP be held no later than 30 days after the EDT decision has been made.

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

Most of the time in Carlsbad we hold the EDT the same day as the IEP.

- (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.

##### Concerns/Suggestions

The NM TEAM manual uses the term “who is not eligible”, not “who does not qualify”. The terms need to match.

#### **6.31.2 K. Criteria for identifying children with suspected specific learning disabilities.**

- (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.

##### Concerns/Suggestions

- This paragraph states Specific Learning Disability for Preschool Children and the following paragraph states K through 12 for using Dual Discrepancy for Specific Learning Disability. Is the statement in #2 referring to the actual eligibility category of Specific Learning Disability

or just referring to cognitive and academic deficits that may fall under a category appropriate for Preschool Aged Children

- Should this section not reflect the same language from 6.31.2.10 (E)(3) or include a reference to (E)(3), i.e., 15 day timeline?

**(d)** “A parent may request a full and individual evaluation for eligibility for special education at any time during the public agency’s implementation of the multi-layered system of supports. 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 and Subsection E of this section. The parent may challenge the decision to decline a request for evaluation by requesting mediation or a due process hearing or by submitting a state complaint. “

**(3)** Public agencies shall use the dual discrepancy model to identify children with specific learning disabilities in kindergarten through grade 12 as described in the **New Mexico technical evaluation and assessment manual.**

Concerns/Suggestions

- Should be capitalized as in (G)(1) New Mexico Technical Evaluation and Assessment Manual (New Mexico T.E.A.M.)

Thank you for your consideration of these matters. I welcome the opportunity for any questions you may have. I would be pleased to discuss further.

Sincerely,

Julie Meadors NM #23040  
Lead Educational Diagnostician  
Carlsbad Municipal School District  
[julie.meadors@carlsbadschools.net](mailto:julie.meadors@carlsbadschools.net)  
575-234-3305 ext. 1970  
Personal cell phone number 575-361-9155



**From:** [Katie Gordon](#)  
**To:** [FeedBack, Rule, PED](#)  
**Subject:** [EXTERNAL] Public comments on changes to 6.31.2.10  
**Date:** Tuesday, January 3, 2023 4:25:44 PM  
**Attachments:** [DRNM comments on NMAC 6.31.2.10.pdf](#)

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**CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.**

Please find attached written public comments from Disability Rights New Mexico (DRNM) on the proposed changes to NMAC 6.31.2.10.

Thank you,  
Katie Gordon

Katie Gordon, M.Div., M.A.  
Senior Advocate  
Disability Rights New Mexico



## DISABILITY RIGHTS NEW MEXICO

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Gary Housepian, Chief Executive Officer

*Promoting and Protecting the Rights of Persons with Disabilities*

January 3, 2023

Policy and Legislative Affairs Division  
New Mexico Public Education Department  
300 Don Gaspar Ave., Room 121  
Santa Fe, New Mexico 87501

*Transmitted via electronic mail on January 3, 2023 to: [Rule.Feedback@ped.nm.gov](mailto:Rule.Feedback@ped.nm.gov).*

Dear NMPED Policy and Legislative Affairs Division Staff:

Disability Rights New Mexico (DRNM) is pleased to provide feedback on the proposed changes by amendment to 6.31.2 NMAC, Children with Disabilities/Gifted Children. DRNM is the designated protection and advocacy agency of New Mexico, and as such, it is our mission to protect, promote, and expand the rights of individuals with disabilities across the state. We are keenly interested in the proposed changes to these rules and their impact upon students with disabilities in New Mexico public schools.

DRNM applauds the NMPED for these proposed changes and its effort to bring the NMAC rules into conformity with the implementing regulations of the Individuals with Disabilities in Education Act (IDEA). We are pleased with the clarifying language found in the entire text, but particularly in the following proposed sections:

- NMAC 6.31.2.10 (B) clarifies that students do not have to be involved in the Multi-Level Systems of Support (MLSS) or its predecessor, the Student Assistance Team (SAT), in order to qualify for special education evaluations. Initial evaluations may occur at any time at the request of parents or staff and may occur completely independently from the MLSS or SAT process. This is significant because DRNM has seen students with disabilities languish in the SAT process, sometimes for multiple school years, while waiting for a special education evaluation to occur. The proposed language cleanly describes how parents or district staff can bypass the MLSS or SAT process in order to move along necessary evaluations for students suspected of having disabilities. This asserts the right of parents to request evaluations for students who need them as soon as possible without undue delay.
- NMAC 6.31.2.10 (E) (1) opens up various entry points for parents to request student evaluations by stating that parents may request testing “in writing or orally” from any

employee of the student's school, and that this request will be forwarded to the proper special education staff or administrator as soon as possible. In the past, DRNM has seen parents routed and re-routed through winding and at times nonsensical school district flow charts to simply request special education evaluations for their students. Again, DRNM has seen this process of requesting evaluations take months, if not entire school years, for a parent to complete due to confusing and frustrating administrative barriers. Allowing the parent to give this request to *any* school staff, orally or in writing, with the knowledge that the request will be passed on to the correct administrator, will be a relief for many families. We anticipate that parental requests for special education evaluations will now be received and processed in a streamlined, timely manner as required by the language proposed here.

- NMAC 6.31.2.10 (E) (3) provides the most significant changes to the regulations, for which DRNM applauds the NMPED and other stakeholders who drafted the text. The proposed language asserts that when a district receives a parental request for initial special education evaluations, the district must respond to the request within 15 school days (or 30 calendar days, if the request is made within 15 days of a two-week student break). This provision is an enormous help for parents and students. Pursuant to 34 CFR § 300.301, districts are required to evaluate students suspected of having a disability within 60 days of receiving parental consent following request for evaluation (or to otherwise give the parents notice that they may invoke their right to due process). However, over the past four decades, DRNM has worked countless cases in which the “60-day clock” was purposefully and significantly delayed by the district. Some school districts defer evaluations by stating that the parents must sign a “district-specific” consent form. Other districts delay starting the clock by insisting that parents must meet with an educational diagnostician in order to truly give informed consent for testing, even if the wait to meet with the next available diagnostician is six months long. DRNM has seen endless methods by which school districts actively “delay the clock” to the point where some families simply give up on the evaluation process altogether.

The proposed language gives school districts a hard deadline for responding to parental requests for evaluation. The hard deadline of either 15 school days or 30 calendar days gives both parents and the district a specific date to start the 60-day clock. Most significantly, if a district fails to respond by the deadline, the parental right to due process may be invoked. This is a major leap forward for New Mexico's unidentified students with disabilities.

As always, DRNM appreciates the opportunity to comment on these proposed changes to regulation, as they significantly impact the constituency we serve. We look forward to seeing these proposed changes amended into the existing regulations. Thank you for your time and your service.

Sincerely,

Katie Gordon, M.Div., M.A.  
Senior Advocate  
Disability Rights New Mexico

**From:** [Christine James](#)  
**To:** [FeedBack, Rule, PED](#)  
**Cc:** [Samantha Adams](#); [Jennifer Nutley](#); [Amanda Nelson](#)  
**Subject:** [EXTERNAL] Public Comments re Proposed rule Changes to 6.31.2 NMAC  
**Date:** Tuesday, January 3, 2023 4:41:04 PM  
**Attachments:** [image002.png](#)  
[2023-01-03 APS Public Comments re 6.31.2.pdf](#)

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Please see the attached correspondence. Thank you.



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2023



SAMANTHA M. ADAMS  
JENNIFER NUTLEY  
AMANDA K. NELSON

January 3, 2023

VIA EMAIL: [Rule.Feedback@ped.nm.gov](mailto:Rule.Feedback@ped.nm.gov)

Policy and Legislative Affairs Division  
New Mexico Public Education Department  
300 Don Gaspar Ave., Room 121  
Santa Fe, New Mexico 87501

**Re: Proposed Rule Changes to 6.31.2 NMAC**

To Whom It May Concern:

We write on behalf of the Albuquerque Public Schools Board of Education (“APS” or the “District”), regarding the proposed rule changes to 6.2.31 NMAC. APS provides four comments regarding proposed changes to 6.31.2 NMAC.

The proposed changes to 6.31.2 NMAC are inconsistent in regards to “written informed parental consent for the initial evaluation.” The rule should be consistent with 34 C.F.R. 300.300 and require the public agency obtain written informed parental consent for the initial evaluation. Consistency in 6.31.2 requiring written informed parental consent will clarify when deadlines are triggered. APS proposes that written informed parental consent can be “met” by electronic communications such as e-mail communications between the public agency and parent(s).

APS proposes striking out “reevaluation” in the proposed change to 6.31.2.10(D)(2). As proposed, “[t]he public agency shall obtain written informed parental consent for the initial evaluation or reevaluation in accordance with the requirements of 34 CFR Sec. 300.300 and subsection of F of 6.31.2.13 NMAC prior to conducting any evaluation.” Written informed parental consent is unnecessary for a reevaluation because a Review of Existing Education Data (“REED”) can occur at any time without informed parental consent.

The proposed timeline changes in 6.31.2.10(F)(2) will create a burden on Districts and will compromise the quality of the evaluation and the written reports adversely affecting students. The proposed change reads “[t]he initial evaluation and written evaluation report shall be completed within 60 calendar days of receiving parental consent for evaluation.” The sixty day timeline is already a challenge for Districts to meet. Requiring that the written report during this time frame may impact the ability to complete all

data collection necessary for the written report. APS adopts and incorporates all public comments submitted regarding the sixty day deadline. APS proposes that the parties be given discretion to mutually agree to extend this timeframe. This is appropriate given the variety of factors that can cause delays.

Lastly, APS joins and adopt public comments regarding the New Mexico Public Education Department to include school district representatives in the amendment process.

Thank you for the opportunity to submit written comments. If you have any questions or concerns regarding this response, please contact Samantha M. Adams ([sam@adamscrow.com](mailto:sam@adamscrow.com)) or Amanda K. Nelson ([amanda@adamscrow.com](mailto:amanda@adamscrow.com)) by phone or email.

Sincerely,



**SAMANTHA M. ADAMS**  
**JENNIFER NUTLEY**  
**AMANDA K. NELSON**  
**ADAMS+CROW LAW FIRM**

**From:** [Lisa Chacon-Kedge](#)  
**To:** [FeedBack, Rule, PED](#)  
**Subject:** [EXTERNAL] Input regarding proposed rule changes to 6.31.2 NMAC, Children with Disabilities/Gifted Children  
**Date:** Tuesday, January 3, 2023 4:57:48 PM  
**Attachments:** [image001.png](#)

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Regarding the proposed amendments that would require districts to respond to parent requests for evaluation within 15 school days by providing prior written notice (and seek informed written consent if district determines it is appropriate), I would like to say that our member districts do recognize that the establishment of some clear parameters detailing the response time for parents is needed. I would, however, ask that the State consider amendments that outline process for written request for evaluation versus oral request for evaluation. In some cases, a request for assistance in dealing with an academic or behavioral issue that a student is experiencing may not specifically include the term "evaluation." (Pfrommer, J. (2022) *IDEA Child Find Scenarios: Training Staff on If and When to Evaluate*).

- Written request for evaluation, keep amendment to require districts to respond within 15 school days.
- Specific oral request for evaluation, keep amendment to require districts to respond within 15 school days.
- Parent request for support or assistance (orally or in writing) to address a child's difficulty with academics or behavior
  - Provide opportunity for district representative to communicate with parent to clarify what parent is requesting and to confirm whether the parent is indeed requesting evaluation or some other support. 15-day timeline for PWN to parent would start on date that district representative clarifies request from parent.

Regarding the proposed amendment that would require districts to conduct initial evaluation and complete report within 60 days of receiving parental consent to evaluate, this creates a higher expectation or greater burden on school districts (particularly rural school districts in New Mexico that already have difficulty with staffing and in cases when an evaluator does not feel comfortable or trained to complete a certain portion of the evaluation). To be clear, in many instances, it is possible to complete all highly recommended components of an initial evaluation that are outlined in NM - TEAM (2017) AND complete a written evaluation report within 60 calendar days. But there are an equal number of instances when evaluation teams need every day within that 60-day timeline to collect every element / component needed in order to support eligibility determination teams with making informed decisions regarding eligibility. As an educational diagnostician with 18 years of experience in New Mexico, I can say without a doubt that some evaluations simply take more time to complete due to the nature and complexity of the students and their presenting difficulties (example a student with suspected autism and concerns regarding presence of Tourette or emotional disturbance; potential autism and ID). Many situations or factors emerge that can create barriers/obstacles to completing all highly recommended essential components of initial evaluations. My concern is that raising the expectation to complete evaluations and report within 60 calendar days increases the potential for mistakes to be made and raises the potential of essential components being overlooked (i.e., observations).

I would ask that the State consider adjusting this amendment by changing the proposed language to

allow for the completion of all evaluation components within the 60 days (IQ tests, achievement tests, processing, adaptive behavior scales, language assessments, occupational therapy assessments, physical therapy assessments, rating scales, observations, FBA, etc.) and add language that would require districts to complete report within a specific timeline following the end of the 60-days (2 weeks?).

Other issues that I'd ask the State to consider that can affect the timeliness of assigning staff to districts include (HB 128 FBI background check requirements, ERB approval for retirees who return to work, schedule and availability of staff who are assigned to multiple small, rural districts).

Lisa Chacon-Kedge  
Education Coordinator



Northwest Regional Education Cooperative #2

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[lisa@nwrec2.org](mailto:lisa@nwrec2.org)

**From:** [Lisa Chacon-Kedge](#)  
**To:** [FeedBack, Rule, PED](#)  
**Subject:** [EXTERNAL] RE: Input regarding proposed rule changes to 6.31.2 NMAC, Children with Disabilities/Gifted Children  
**Date:** Tuesday, January 3, 2023 5:00:05 PM  
**Attachments:** [image001.png](#)

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Please consider Evelyn Howard Hand's recommendation to form a committee to discuss obstacles to meeting current established timelines.

Lisa Chacon-Kedge  
Education Coordinator



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**From:** Lisa Chacon-Kedge  
**Sent:** Tuesday, January 3, 2023 4:58 PM  
**To:** [Rule.Feedback@ped.nm.gov](mailto:Rule.Feedback@ped.nm.gov)  
**Subject:** Input regarding proposed rule changes to 6.31.2 NMAC, Children with Disabilities/Gifted Children

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include the term “evaluation.” (Pfrommer, J. (2022) *IDEA Child Find Scenarios: Training Staff on If and When to Evaluate*).

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**Lisa Chacon-Kedge**  
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**From:** [Julia Lowe](#)  
**To:** [FeedBack, Rule, PED](#)  
**Subject:** [EXTERNAL] NMAC 6.31.2 Proposed rule changes- public comment  
**Date:** Tuesday, January 3, 2023 5:00:10 PM

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Good evening,

Thank you for allowing me the opportunity to speak at the hearing today regarding proposed rule changes. I represent Child Find for Rio Rancho Public Schools. I would like to share some additional statistical data regarding the concerns regarding the proposed changes to timelines. As I mentioned earlier, our goal is to provide timely and thorough comprehensive evaluations to our youngest students. This can be very complicated due to their needs and age. Often evaluation needs multiple sessions with a multidisciplinary team participating. For Rio Rancho public schools our child find identification rate is 98%. Meaning that the referrals that are made through either Part C or our clinic process are necessary referrals for students who will need intervention. At child find in Rio Rancho since July of 2022 we have made 197 referrals for evaluations. Over 75% of the referrals are for comprehensive evaluations that include a school psychologist, diagnostician, SLP, and OT. Often times a physical therapist is required as well. We are working in a manner that allows us to thoughtfully identify students with special needs.

**Julia**

Julia Lowe, M.S., CCC-SLP  
Child Find Coordinator  
Speech-Language Pathologist  
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