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### **Questions and Answers Regarding Amendments to 6.31.2.10 NMAC<sup>1</sup>**

#### **Request or Referral to Evaluate**

**1. If a parent requests an evaluation, then is a public agency required to conduct it?**

No. A public agency may refuse to conduct an evaluation as long as a prior written notice is issued within 15 school days of the request which explains the reasons for refusal. 6.31.2.10(D)(4)(b) NMAC. However, parents have the right to challenge the public agency's decision through mediation, a state complaint, or due process hearing request.

**2. When does the 15 school day deadline begin for a public agency to respond to a parent request or referral to evaluate?**

The 15 school day deadline commences when the request or referral is received by the public agency. 6.31.2.10(D)(3)–(5) NMAC. For example, the date that a licensed school staff member receives an oral or written parent request to evaluate constitutes the start of the 15 school day response deadline. 6.31.2.10(D)(2) NMAC.

**3. When responding to a request or referral, may a public agency combine the prior written notice and consent to evaluate into one document?**

The revised state regulations do not explicitly prohibit combining a prior written notice with a request for consent to evaluate. 6.31.2.10(D)(4) NMAC. However, the contents of the prior written notice must be written in a manner that is easily understandable to the parent. 34 C.F.R. § 300.503(c). Public agencies may exercise discretion in determining whether combining the documents will maintain the expected clarity of the prior written notice.

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<sup>1</sup> All citations to 6.31.2.10 NMAC in this document are referencing the amended version of the regulation which is effective on July 1, 2023.

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**4. Can a public agency first perform a hearing or vision screening prior to an evaluation and providing a prior written notice?**

Nothing in IDEA prohibits a public agency from developing and implementing policies to screen children to determine if evaluations are necessary. LETTER TO TORRES (OSEP April 7, 2009). **That said, the screening may not be used to delay an evaluation for special education and related services.** LETTER TO MILLS (OSEP May 2, 2019). A public agency must still respond to a request to evaluate with a prior written notice within 15 school days of either proposing or refusing to conduct an evaluation. 34 C.F.R. § 300.503(a)(1)–(2); 6.31.2.10(D)(4)(a)–(b) NMAC. Public agencies are encouraged to include information regarding the status and any information related to any pending vision and hearing screenings in the evaluation report

Furthermore, state law requires a school nurse or designee to administer a vision screening test for students enrolled in the public agency for pre-kindergarten, kindergarten, first grade, and third grade, and for students transferring in at those grade levels. N.M.S.A. § 22-13-30; 7.30.11.8 NMAC. Such mandatory screenings should lead to early detection of vision or hearing impairments and information obtained through these screenings should be utilized whenever possible and appropriate.

**5. If a request or referral to evaluate is submitted before the amended regulations take effect on July 1, 2023, then what is the operative evaluation timeline for conducting this evaluation following the effective date?**

A request or referral submitted before July 1, 2023 will be subject to the timelines in place before the amendments to 6.31.2.10 NMAC take effect. In this scenario, a public agency must make “reasonable efforts” to obtain parental consent upon receipt of a request or referral for an initial evaluation. 34 C.F.R. § 300.300(a)(1)(ii).

However, PED does not condone the practice of a public agency waiting to obtain parental consent to evaluate until the public agency is ready to comply with the 60-day evaluation completion timeline. This tactic ignores the public agencies’ child find obligations and carries a severe risk that evaluations of students suspected of having disabilities will be unreasonably delayed if the public agency is not taking proactive steps to determine a student’s special education eligibility.

Student Assistance Team (“SAT”)

**6. What are the differences between a parent request to evaluate and SAT referral to evaluate?**

The parent request to evaluate a student generally requires the public agency to determine whether an evaluation is appropriate for the parent’s child and would

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ultimately require that a prior written notice of the public agency's determination be provided to the parent within 15 school days. If the public agency determines that an evaluation is appropriate, it must also request parental consent to evaluate the student within 15 school days.

A SAT referral for evaluation is not triggered by a parent request for evaluation, but rather by the SAT's independent determination that an evaluation is appropriate for a student. If the SAT referral for evaluation occurs, the public agency is required to issue a prior written notice of the public agency's proposal to evaluate a student to the student's parents within 15 school days. The public agency must also request consent to evaluate the student within 15 school days.

**7. If a child displays possible signs of a disability, must their case first go to the SAT before the public agency refers child for an evaluation?**

A parent may request an initial evaluation at any time to determine if the student is a child with a disability. 34 C.F.R. § 300.301(b). The request is not conditioned upon a student advancing through the SAT process.

Public agencies may have procedures to refer students that are suspected of having a disability and a potential need for special education to the SAT team. However, if such students are referred to the SAT team, any appropriate evaluations must be conducted without undue delay.

Public agencies may also have policies and procedures to refer parent requests for evaluation to the SAT team for review. However, referral to the SAT team does not alter the school's obligation to respond within 15 school days through a prior written notice.

**8. If the SAT Team refers a student for an evaluation, do they complete a prior written notice?**

The rule revisions do not require that the prior written come from any specific individual or internal public agency division. Public agencies are encouraged to have policies and procedures in place that address the issuance of the prior written notice in response to a parent request or referral.

Conducting the Evaluation

**9. For purposes of calculating the 60 day deadline, when is the date of parental consent?**

The date that the public agency receives a consent form signed by the parent.

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**10. Is a public agency exempt from completing an evaluation within 60 days of parental consent if the public agency does not have qualified staff and uses a private provider to conduct the evaluation?**

No. The only exceptions are if the parent does not produce the child for evaluation or the child has enrolled in another public agency and the subsequent public agency is making sufficient progress to ensure prompt completion of the evaluation. 34 C.F.R. § 300.301(d); 6.31.2.10(F)(3) NMAC.

**11. Is a reevaluation also subject to the 60 day completion deadline?**

The 60 day timeline applies only to an initial evaluation. 34 C.F.R. § 300.301(c)(1).

Eligibility Determination Team (“EDT”) Meeting

**12. When must a public agency convene an EDT meeting?**

The new state rule is that a public agency must convene an EDT meeting within 15 school days after the evaluation report is completed. 6.31.2.10(J)(1) NMAC. If the report is completed during a school break period of at least 14 calendar days, then the public agency shall convene an EDT and an IEP team meeting (if the child is determined eligible) within 15 school days from the first day that student attendance resumes. Id.

**13. What if there is no MLSS data for the EDT to consider when determining a student’s eligibility? Are there different requirements for an SLD evaluation?**

The EDT is required to consider MLSS<sup>2</sup> data to the extent it is available. 6.31.2.10(F)(1) NMAC. The criteria for identifying whether a child has a specific learning disability includes data collected regarding a child’s response to research-based intervention. 6.31.2.10(K)(1)(c)(iv) NMAC.

**14. Can a public agency request the parent disclose any private evaluations at least 2 calendar days before the EDT meeting?**

There is nothing in IDEA that prohibits a public agency from requesting that a parent disclose any evaluation obtained at private expense prior to an EDT meeting. Similarly, there is nothing in IDEA that prohibits a parent from providing a private evaluation at the EDT meeting.

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<sup>2</sup> We encourage you to access detailed information regarding MLSS and its data requirements at the following link: [MLSS Guidance and Tools](#)

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**15. How does a public agency determine a child’s primary disability if there is a lack of consensus among EDT members as to which disability classification is most appropriate?**

The EDT should consider which disability category constitutes the greatest barrier to the child’s learning. IDEA does not require classifying a child according to a specific medical diagnosis.

**16. Should a public agency hold off on convening an EDT meeting in order to collect MLSS data?**

No. MLSS data should be considered by the EDT only if it is available at the time the public agency is due to convene an EDT meeting.

Reevaluation

**17. May a public agency go forward with an IEP meeting to review a reevaluation without a parent’s participation?**

After reasonable documented efforts to contact a student’s parent(s), a public agency may convene an IEP meeting to review a reevaluation without a parent’s participation if reasonable efforts (phone calls, correspondence, in-person visit attempts) are made to arrange a mutually agreed meeting time and place. 34 C.F.R. § 300.322(d). Public agencies are encouraged to document all attempts to include the parent in the IEP team meeting at a mutually agreed upon time and place.

Termination of Eligibility

**18. Must a public agency conduct a reevaluation prior to terminating a student’s special education and related services?**

A public agency must evaluate a special education student before determining they are no longer a child with a disability. 34 C.F.R. § 300.305(e); 6.31.2.10(C)(3) NMAC. The two exceptions are when a student graduates with a regular high school diploma or ages out of special education eligibility at 22 years old.

**19. What if the REED process establishes that no additional data is necessary to determine whether or not a student is eligible?**

If a public agency’s review of existing data establishes that no additional data is needed to determine whether the student is no longer a child with a disability, then the public agency must provide notice to the parent of the reasons for the determination and the

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right of the parent to request an evaluation. 34 C.F.R. § 300.305(d)(1). The public agency is obligated to provide an evaluation if requested after the REED determination. Id.

**20. What if a student still has a disability but no longer requires special education?**

If a student no longer needs special education and related services, then they would potentially no longer meet the legal definition of “child with a disability.” 34 C.F.R. § 300.8(a)(1). In this scenario, the District should carry out a review of existing data and potentially a formal assessment to reach a determination about whether the student continues to need special education and related services. Public agencies are encouraged to reconvene a SAT after the termination of special education and related services. This ensures that the student does not need other services including, but not limited to MLSS interventions and Section 504 related services.

**21. Is an evaluation required if a parent revokes consent for the provision of special education?**

No, an evaluation is not required. When a parent revokes consent in writing, the public agency must issue a prior written notice to the parent before discontinuing the provision of special education and related services to the child. 34 C.F.R. § 300.305(b)(4)(i).