



Evaluation and Eligibility Determination Rule NMAC 6.31.2.10

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- Special Education Transformation Team
- Rules Workgroup
 - PED Attorneys
 - Parent Advocate Attorneys
 - School District Attorney
- Additional Experts engaged as needed
- Solicitation of Stakeholder Input Prior to Formal Rulemaking
- Notice of Rulemaking: November 29, 2022
- Written Public Comments: 16
- Rules Hearing: January 3, 2023
- Oral Public Comments: 6
- Final Rule: January 18, 2023
- Effective Date: July 1, 2023



Summary of Rule Changes:

Reorganization of entire subsection for clarity

Provides specific deadlines and requirements for various actions related to evaluations and eligibility determinations

Revising rules related to evaluation for specific learning disability



Pre-evaluation Procedures



Multi- Layered System of Support

- MLSS interventions
 - shall be provided regardless of whether a student has been referred for an initial evaluation or determined to be eligible for special education and related services;
 - Does not prohibit a student from receiving an initial evaluation
 - Parents are permitted to request an initial evaluation before during or after the implementation of MLSS interventions.





Suspicion of a disability

- If the student is suspected of having a disability and demonstrates an obvious need for special education or related services by reason thereof, then the student shall be referred for a full and individual evaluation for special education without undue delay.





Parent Request for Evaluation or Reevaluation

- Parent requests may occur orally or in writing:
 - To any licensed personnel of the school in which the student attends.
 - Requests shall be forwarded to the school or district special education director or a school or district administrator as soon as possible after it is received.





Response to Parent Request for Evaluation or Reevaluation

- The public agency has 15 school days to respond to a parental request for a special education evaluation or reevaluation.
- If a parent request for an evaluation or reevaluation is received within 15 school days before a school break lasting at least 14 calendar days, the public agency shall respond no later than 30 calendar days from the date of the request.



Response to a Parent Request for Evaluation or Reevaluation

- The public agency response shall be through a prior written notice and shall either:
 - Propose to conduct the evaluation or reevaluation that is requested
 - If so, written informed consent to conduct the evaluation or reevaluation shall be requested.
 - Refuse to conduct the evaluation or reevaluation that is requested
 - PWN should contain reasons for the refusal
- The Procedural Safeguards Notice shall be provided along with the PWN



Challenging Response to Parent Request

- Parents have explicit right to challenge a public agency's decision or a public agency's failure to timely respond to a request for an evaluation or reevaluation through:
 - Mediation;
 - State Complaint; or
 - Due Process Hearing Request.



Referral for Evaluation or Reevaluation

- If a public agency makes a referral for an evaluation or reevaluation without receiving a parent request, the public agency shall:
 - Provide a PWN to the parents proposing to conduct the evaluation or reevaluation within 15 school days of the referral.
 - The public agency shall also seek written informed consent to conduct the evaluation or reevaluation from the parent and provide the Procedural Safeguards Notice.
- If the referral for an evaluation or reevaluation is made within 15 school days before a school break lasting at least 14 calendar days, the school/district shall provide a PWN and request consent within 30 calendar days of the referral.



Parental Consent and Consent Override

- Public agency shall provide notice to the parents that describes any evaluation or reevaluation that the public agency proposes to conduct.
- Written informed parental consent is required prior to conducting an evaluation or reevaluation.
- Public agencies must document all attempts to obtain consent.
- Public agencies may seek authorization to conduct an evaluation or reevaluation of student through the override procedures if consent is not given by the parent.
 - Filing a Due Process hearing request
 - May not use overrides procedures if parent refuses to consent to the provision of special education and related services.



Initial Evaluations, Reevaluations, and Eligibility Determinations



Evaluation and Reevaluation Documentation

- Public agency shall maintain the following documents in student's file:
 - Any request or referral for an initial evaluation or reevaluation
 - All evaluation data
 - SAT File
 - **MLSS Data**
 - Evaluation summaries or reports
- All the information shall be reported/made available to the eligibility determination team.



Timeline for Initial Evaluations and Reevaluations

- The initial evaluation and written evaluation report shall be completed within 60 calendar days of receiving parental consent for evaluation.
 - Exceptions still apply including:
 - Child is not produced for evaluation
 - Child enrolls in another LEA and the other LEA is making sufficient progress toward evaluation
- Reevaluations shall be conducted at least every 3 years unless the parent and LEA agree that a reevaluation is not necessary.



Evaluation and Reevaluations

- Evaluations must:
 - be in all areas of suspected disability;
 - sufficiently comprehensive to identify all of the child's special education and related services needs.
 - Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child;
 - use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- Evaluations and Reevaluations shall adhere to all Department rules and standards set forth in the NM TEAMS manual.



Independent Educational Evaluations

- Parents have the right to request an independent educational evaluation at the public agency's expense any time they disagree with the results of an evaluation or reevaluation.
 - One IEE per evaluation conducted by the public agency
- Public agencies shall either:
 - File a due process hearing request to show that the evaluation was appropriate
 - Provide an IEE to student.
- Public agencies may ask why the parents objects to the IEE but may not require an explanation.
- The public agency must consider any IEE (at public or private expense) that meets the public agency's criteria for the specific evaluation.
- An IEE may be used as evidence in a due process hearing case.



Eligibility Determination Timeline

- The evaluation report shall be provided to the parent at least 2 calendar days prior to the EDT meeting.
- EDT meeting shall be held within 15 school days of the completion of the evaluation report.
- If the evaluation report is completed during a break of at least 14 calendar days, then the public agency is required to hold an EDT and IEP meeting within 15 school days after the students return to school.
 - These meetings do not necessarily have to be held together.



Eligibility Determination Team

- Team:
 - Parent(s)
 - Group of qualified professionals
- The EDT shall convene to determine:
 - the educational needs of the child;
 - if the child is a child with a disability;
and
 - if the child requires special education and related services as a result of the disability.



Specific Learning Disability

- MLSS data must be considered as part of an SLD evaluation
- Requires the use of the dual discrepancy model to identify children with an SLD for grades K-12.
 - Removes the option of using the severe discrepancy model for grades 4 through 12.
- Reason for changes to Evaluation model:
 - SD may cause Over- and under-identification
 - SD results in Later identification – delays until student’s achievement is sufficiently low
 - SD not culturally responsive and can be inadequate for ELs or dual language children.

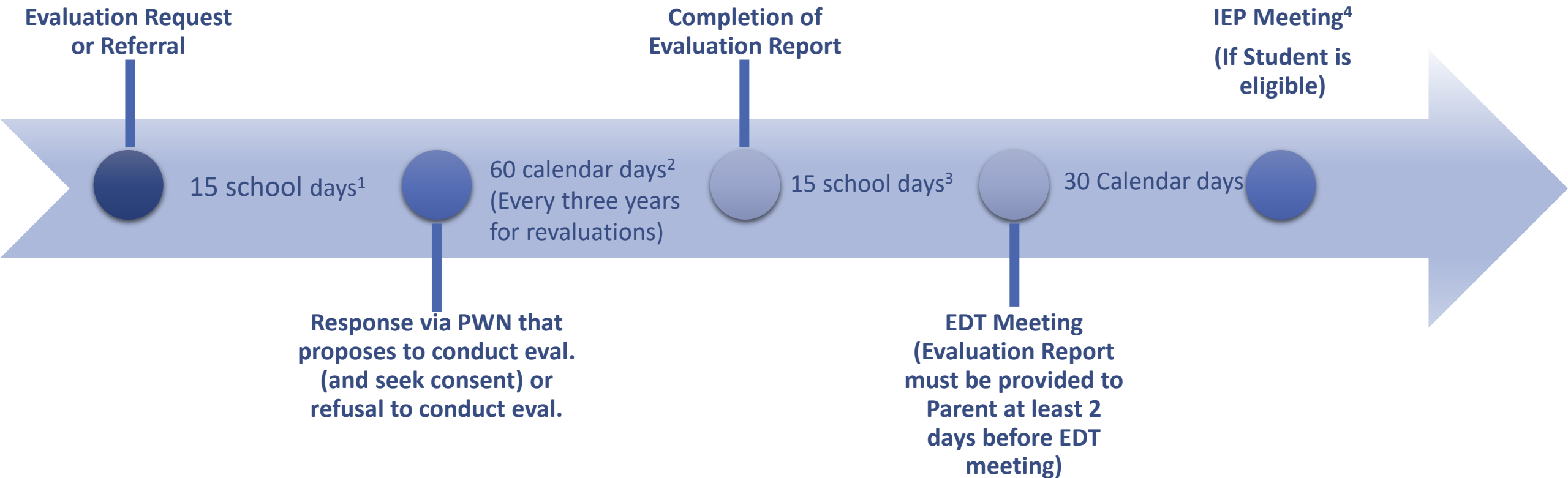


Termination of Eligibility

- Explicitly requires that an evaluation be conducted before determining that a child is no longer a child with a disability
- An evaluation is not required if services are terminated because a student has graduated with a regular high school diploma or has exceeded the age of eligibility.
 - The public agency must provide the child with a summary of the child's academic achievement and functional performance, including recommendations on how to assist the child in meeting postsecondary goals



Evaluation & Eligibility Timeline



1 If request for evaluation is received within 15 school days before a school break lasting 14 calendar days, then the public agency shall respond no later than 30 calendar days from the date of the request.
2 Child is not produced for evaluation or child enrolls in another LEA and the other LEA is making sufficient progress towards completing evaluation.
3 If the evaluation report is completed during a break of at least 14 calendar days, then the public agency is required to hold an EDT and IEP meeting within 15 school days after the students return to school.
4 Special education and related services shall be made available as soon as possible after the initial IEP meeting



Questions

