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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 or reevaluation, then is a public agency required to conduct it? \***

No. A public agency may refuse to conduct an evaluation or reevaluation as long as a prior written notice is issued within 15 school days of the request that 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 a 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. Who qualifies as “licensed school personnel” for purposes of receiving a parental request to evaluate? \***

Under state rule, licensure is defined as “a license issued by the PED authorizing a person to teach, supervise an instructional program, counsel, provide special instructional services, coach, provide health care, administer medication, perform medical procedures, or administer in the public schools of the state.” 6.68.2.7(E) NMAC. Therefore, licensed

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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.

\* Indicates a new or revised question and/or answer that was added to this updated version of the Q&A guidance document.

school personnel include any individual, employee, or contractor who provides services within the school pursuant to a PED-issued license.

**4. How should licensed school personnel respond to a parental request to evaluate when that request is made outside of the timeframe that a school staff person is contracted to work? \***

The licensed staff member who is the recipient of a parent's request to evaluate is encouraged to forward the request to the Special Education Director or District Administrator the following school day in which the staff member is on-duty to work. Additionally, the staff member may recommend that the parent submit their request in writing or by email, as well as reiterate their oral request to the staff member during school working hours. A licensed staff member should not simply ignore a parental request to evaluate due to the staff member being off-duty.

**5. 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.

If a public agency agrees to conduct an initial evaluation or reevaluation, then both the prior written notice and request for consent to evaluate may be provided to the parent at the same time, but in no case shall either be provided later than the required deadlines outlined in 6.31.2.10(D)(5) NMAC (i.e., 15 school days or 30 calendar days). A public agency may not unreasonably delay obtaining parent consent by conveying the consent form well after the prior written notice agreeing to evaluate has been issued.

**6. 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.

**7. 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.

**8. When must a public agency respond to a parental evaluation request which is received less than 14 calendar days before school is set to resume after a break? \***

In this scenario, a public agency has 15 school days to provide a response to the evaluation request. 6.31.2.10(D) NMAC. The 30 calendar day exception does not apply because the request to evaluate was not made within 15 school days before the start of a break period lasting at least 14 calendar days. *Id.* Conversely, the 30 calendar day exception would go into effect if the request is made with 14 or greater calendar days left in the break.

Student Assistance Team (“SAT”)

**9. 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 ultimately necessitate 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.

**10. If a child displays possible signs of a disability, must their case first go to the SAT before the public agency refers this 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.

**11. 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 notice 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

**12. 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.

**13. What if a public agency sends the parent a consent form to sign but the parent is nonresponsive and does not return a signed copy of the form? \***

The 60-day timeline to complete the evaluation report does not begin until the LEA receives the signed consent form from the parent. Therefore, LEAs should continue to make reasonable efforts to obtain the signed form but they do not risk going beyond the 60-day timeline until the completed form is actually received.

**14. Must a public agency convene a meeting of the Multi-Disciplinary Team (MDT), Student Assistance Team (SAT), or other gathering of school personnel before issuing a prior written notice in response to a parental request to evaluate? \***

No, the changes to the state rules regarding evaluations and eligibility determinations do not require a specific type of meeting before a public agency issues a prior written notice as a response to a parent's request to evaluate. Public agencies are at liberty to create policies for designating the school personnel responsible for determining the response via prior written notice.

**15. 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.

Furthermore, the practice of annually hiring staff on contract is not a legally cognizable reason to delay the 60-day evaluation deadline. So even if a school receives an evaluation request over summer break and there are no staff on contract to conduct it, the school is still subject to the requirement of completing the evaluation within 60 calendar days of receiving parental consent.

**16. For a multidisciplinary initial evaluation consisting of various assessments by multiple evaluators, will the 60 day deadline be tolled pending completion of every assessment?**

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No. The 60 day timeline applies to a student’s initial evaluation, which shall be a full and individual evaluation. 34 C.F.R. 300.301; 6.31.2.10(C)(1)(a) NMAC. Both federal and state rules treat the initial evaluation as only one evaluation, not multiple, and require that the initial evaluation be sufficiently comprehensive to identify all of the child's special education and related service needs, regardless of whether they are commonly linked to the disability category in which the child has been classified. 34 C.F.R. 300.304(c)(6); 6.31.2.10(G)(1) NMAC.

Eligibility Determination Team (“EDT”) Meeting

**17. 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.

**18. 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.

**19. 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](#)

**20. 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.

**21. 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.

**22. What happens if a public agency cannot reach a determination regarding a student’s special education eligibility after reviewing the initial evaluation at the EDT meeting? \***

If the EDT team determines that they are unable to render a determination with the evaluative information provided, it would be treated as though the student was not found eligible at that time. However, the public agency should then seek out additional necessary information/evaluations as soon as possible in order to make a final determination as to eligibility. To ignore those potential additional needs risks non-compliance with child find and evaluation legal requirements. The circumstances may impact whether and what timelines exist at that point. If the student is not yet eligible but additional evaluations are needed, they may be subject to a new 60 day evaluation deadline as the evaluations still might constitute an initial evaluation.

Note that the public agency is required to conduct a full and individual evaluation that is sufficiently comprehensive to identify all of the child's special education and related service needs, regardless of whether they are commonly linked to the disability category in which the child has been classified. 34 C.F.R. 300.304(c)(6); 6.31.2.10(G)(1) NMAC. While additional evaluation needs may be identified during the eligibility determination process, the public agency should ensure that the initial evaluation is sufficiently comprehensive given the information that the public agency has at the time it is conducted.

Reevaluation

**23. 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.

**24. 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). However, a reevaluation should be completed before the triennial reevaluation deadline.

**25. What deadlines are in effect if a parent requests an early reevaluation? \***

The 15 school day timeframe for providing a response via prior written notice is applicable when a parent requests reevaluation well before the triennial reevaluation obligation becomes due. As discussed in the prior question, the 60 calendar day deadline is not applicable for a reevaluation, including a request for an early reevaluation. Public agencies may not unreasonably delay an early reevaluation if a parent's consent to reevaluate has already been obtained.

**26. If a public agency holds a REED at the end of the second year of the triennial reevaluation period, then should consent to reevaluate be obtained on the date of this REED meeting? \***

The new state rules only require the issuance of a prior written notice and consent form if a referral for reevaluation is made. Parental consent may be obtained at any time (not necessarily on the date of the REED). The operative deadline is for the public agency to complete the reevaluation within the triennial timeframe (unless it is determined that an early reevaluation is needed to obtain updated information about the student).



Termination of Eligibility

**27. 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.

**28. 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 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.

**29. 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.

**30. 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).

### Out-of-State Transfer Students

**31. If a public agency recommends conducting a new evaluation of a special education student who transferred to the public agency from out-of-state, would it be considered an initial evaluation? \***

Yes, the proposal for a new evaluation would be considered an initial evaluation for purposes of determining whether the child qualifies for special education. 71 Fed. Reg. 46682. Accordingly, the date the public agency recommends conducting a new evaluation would trigger the 15 school day deadline for issuing a prior written notice and parental consent form, as well as the 60 day deadline after consent is received to complete the initial evaluation and written report.

### Preschool Transition

**32. What evaluation and eligibility requirements apply for Part C students transitioning to Part B (students served under Part C prior to age 3)? \***

The prior rules found in 6.31.2.11(A) and 34 C.F.R. § 300.124 still apply to students transitioning between IDEA Part C to Part B services. This includes the meeting timelines and requirement to have an IEP in place by the child's third birthday. However, the 15 school day response deadline would be triggered when the public agency determines an evaluation is necessary under these circumstances. Usually a preschool transition conference will be the setting for rendering a determination about the need for an evaluation and therefore consent may be requested at the conference itself or within 15 school days thereafter.

**33. What evaluation and eligibility requirements apply students identified through child find that did not transition from Part C (students age 3-4)?\***

The LEAs obligation related to Child Find, evaluation, and eligibility apply to these students in the same way they do to all K-12 students. In other words, the 15 day PWN response/referral, the 60 day initial evaluation deadline and the eligibility determination deadlines apply to these student.

The use of Child Find screening are certainly appropriate if the child does not present an obvious need for special education. The LEA should make the referral for an evaluation when a need is determined through review of screening results or other student data. A referral or a parent request for an evaluation would trigger the 15 day PWN and consent request deadline as well as all other subsequent deadlines should an evaluation be pursued by the LEA.