

ALBUQUERQUE PUBLIC SCHOOLS
MANUAL OF SPECIAL EDUCATION ADMINISTRATIVE PROCEDURES

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INTRODUCTION

On February 15, 2023, Albuquerque Public Schools revised Procedural Directive for Special Education instructed the Superintendent to promulgate administrative procedures for providing special education services to Albuquerque Public Schools students, set forth in a set of written instructions called the “Manual of Special Education Administrative Procedures” (the “Manual”). The Superintendent designated the Associate Superintendent of Special Education as the position responsible for the implementation of the procedural directive. In response, the Associate Superintendent for Special Education adopted the previous Special Education Procedural Directives as the Manual and initiated a comprehensive review of the same.

This Manual is presently under review and revision, to include, among other updates, recent changes in the New Mexico Administrative Code (NMAC) regarding serving students with

disabilities and students who are gifted. See generally 6.31.2 NMAC; see also 6.31.3 NMAC. Some revisions are reflected below where indicated.

While other revisions are being finalized, APS will follow:

- NMAC’s timelines and requirements (such as issuing prior written notice and obtaining consent) for responding to parent and staff referrals for initial and reevaluations in 6.31.2.10(D) NMAC;
- NMAC’s timelines and completion requirements for initial evaluations in 6.31.2.10(F) NMAC;
- NMAC’s timeline for the provision of written evaluation reports in 6.31.2.10(G)(4) NMAC; and
- NMAC’s timelines for eligibility determination team meetings in 6.31.2.10(J)(1) NMAC.

The persons responsible for implementing the duties in this Manual are the Associate Superintendent of Special Education and site-based Supervisors.

Board Policy Cross Reference:

[II Special Education](#)

Procedural Directive Cross Reference:

[Procedural Directive for Special Education](#)

DEFINITIONS

For purposes of these administrative procedures:

“academic achievement” generally refers to a child’s performance in academic areas (e.g., reading or language arts, math, science, and history). (71 Fed. Reg. 46662 (August 14, 2006))

“assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device. (34 C.F.R. § 300.5)

“assistive technology service” means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. (34 C.F.R. § 300.6)

“BIP” means behavioral intervention plan.

“consent” means that —

- a. The parent has been 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;

b. 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; and

c.

1. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

2. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

3. If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

(34 C.F.R. § 300.9)

“controlled substance” means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)). (34 C.F.R. § 300.530(i)(1))

“destruction of information” means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. (34 C.F.R. § 300.611(a))

“developmentally delayed” means a child aged three (3) through nine (9) or who will turn three (3) at any time during the school year; with documented delays in development which are at least two standard deviations below the mean on a standardized test instrument or thirty per cent (30%) below chronological age; and who in the professional judgment of the IEP Team and one or more qualified evaluators needs special education and related services in at least one of the following five areas: communication development, cognitive development, physical development, social or emotional development or adaptive development. (6.31.2.7.(B)(4) NMAC)

“dual discrepancy” means the child does not achieve adequately for the child's age or to meet grade-level standards established in Standards for Excellence (Chapter 29 of Title 6 of the NMAC); and

a. does not make sufficient progress to meet age or grade-level standards; or

b. exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards or intellectual development.

(6.31.2.7(B)(5) NMAC)

“dyslexia” means a condition of neurological origin that is characterized by difficulty with accurate or fluent word recognition and by poor spelling and decoding abilities, which characteristics typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction and may result in problems in reading comprehension and reduced reading

experience that may impede the growth of vocabulary and background knowledge.
(6.31.2.7(B)(6) NMAC)

“early intervention providers” means Part C service coordinators or other representatives of the Part C system.

“education records” means the type of records covered under the definition of “education records” in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

“EDT” means Eligibility Determination Team which consists of a group of qualified professionals and the parents of the child. Following the completion of an initial evaluation or reevaluation, the EDT determines whether the child is a child with a disability and the educational needs of the child. (34 C.F.R. § 300.306(a)(1))

“ESY” means extended school year.

“elementary school” means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

“extended school year services” means special education and related services that meet the standards of the state and are provided to a child with a disability:

- Beyond the normal school year of the public agency;
- In accordance with the child’s IEP; and
- At no cost to the parents of the child.

(34 C.F.R. § 300.106(b))

“facilitated IEP (FIEP)” meeting means an IEP meeting that utilizes an independent state-approved, state-funded, trained facilitator to assist the IEP team to communicate openly and effectively, in order to resolve conflicts related to a student’s IEP. (6.31.2.7 (C)(1) NMAC)

“FAPE” means free appropriate public education. FAPE means, among other things, special education and related services that are provided in conformity with an IEP that meets the requirements of § 300.320 through § 300.324. (34 C.F.R. § 300.17)

“FBA” means functional behavioral assessment.

“functional performance” refers to skills or activities that are not considered academic or related to a child’s academic achievement. Functional is often used in the context of routine activities of everyday living. The range of functional is as varied as the individual needs of children with disabilities. (71 Fed. Reg. 46661 (August 14, 2006))

“homeless children” shall be defined in compliance with the McKinney-Vento Homeless Assistance Act (section 725) meaning individuals who lack a fixed, regular, and adequate nighttime residence. This includes:

- i. children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
- ii. children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 103(a)(2)(C));
- iii. children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- iv. migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

(42 U.S.C. §11434a)

“illegal drug” means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of federal law. (34 C.F.R. § 300.530(i)(2))

“independent educational evaluation” means an evaluation conducted by a qualified examiner who is not employed by Albuquerque Public Schools. (34 C.F.R. § 300.502(a) (3) (i))

“initial evaluation” means the first complete assessment of a child to determine if the child has a disability under the Act, and the nature and extent of special education and related services required. (34 C.F.R. § 300.301) Once a child has been fully evaluated, a decision has been rendered that the child is eligible for services under the Act, and the required services have been determined; any subsequent evaluation of the child, for purposes of these administrative procedures, would constitute a “reevaluation.” (71 Fed. Reg. 46640 (August 14, 2006))

“IDEA” means the Individuals with Disabilities Education Act.

“IEP” means an individualized education program.

“IFSP” means an individual family services plan.

“measurable postsecondary goals” refer to goals the child seeks to achieve after high school graduation. The goals themselves must be measurable while the child is still in high school. In addition, the nature of these goals will be different depending on the needs, abilities, and wishes of each individual child. (6.31.2.11(G) (4) NMAC)

“mediation” means a meeting or series of meetings that utilizes a mediator to assist parties to reconcile disputed matters related to a student's IEP or other educational, non-IEP related issues. (6.31.2.7(C)(3) NMAC)

“parent” means —

1. A biological or adoptive parent of a child;
2. A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
3. A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
4. An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or
5. A surrogate parent who has been appointed in accordance with § 300.519 or section 639(a)(5) of the Act.

(34 C.F.R. § 300.34(a))

“participating agency” means any school district, agency, or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of IDEA. (34 CFR § 300.611)

“peer-reviewed research” generally refers to research that is reviewed by qualified and independent reviewers to ensure that the quality of the information meets the standards of the field before the research is published. However, there is no single definition of peer-reviewed research because the review process varies depending on the type of information to be reviewed. (71 Fed. Reg. 46664 (August 14, 2006))

“personally identifiable information” means information that includes:

- The child’s name, the parent’s name as the parent, or the name of another family member;
- The child’s address;
- A personal identifier, such as the child’s social security number or student number; or
- A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(34 CFR § 300.32)

“public expense” means that Albuquerque Public Schools either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with the provisions of Part B of IDEA, which allow each state to use whatever state, local, federal, and private sources of support are available in the state to meet the requirements of Part B of IDEA. (34 C.F.R. § 300.502(a) (3) (ii))

“related services” means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health

services and school nurse services, social work services in schools, and parent counseling and training. (34 C.F.R. § 300.34(a))

“secondary school” means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

“serious bodily injury” has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code. (34 C.F.R. § 300.530(i)(3))

“special education” means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. (34 C.F.R. § 300.39(a))

“supplementary aids and services” means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with the least restrictive environment requirements of the IDEA. (34 C.F.R. § 300.42)

“transition services” means a coordinated set of activities for a child with a disability that emphasizes special education and related services designed to meet unique needs and prepare the student for future education, employment, and independent living. Transition services must:

- Be designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- Be based on the individual child’s needs;
- Take into account the child’s strengths, preferences, and interests; and
- Include:
 - Instruction;
 - Related services;
 - Community experiences;
 - The development of employment and other post-secondary adult living objectives; and
 - If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(34 C.F.R. § 300.43(a); 6.31.2.11(G) (2) NMAC)

“unaccompanied youth” includes a youth not in the physical custody of a parent or guardian. (42 U.S.C. § 11434a(6))

“ward of the state” as used in IDEA, means a child who, as determined by New Mexico, is: A foster child; Considered a ward of the state under state law; or In the custody of a public child

welfare agency. However, ward of the state does not include a foster child who has a foster parent who meets the definition of a parent as used in IDEA. (34 C.F.R. § 300.45)

“weapon” has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (34 C.F.R. § 300.530(i)(4))

Effective: February 15, 2023

1- CHILD FIND

Explanation of Child Find and Albuquerque Public Schools Requirements A free appropriate public education (FAPE) must be available to all children with disabilities residing in the Albuquerque Public Schools between the ages of 3 and 21, including children with disabilities who have been suspended or expelled from school. (34 C.F.R. § 300.101(a))

The process of identifying, locating, and evaluating these children is referred to as child find.

In order to comply with the child find requirements, Albuquerque Public Schools shall have procedures in place to ensure that all children with disabilities within its jurisdiction/geographical boundaries, including children with disabilities who are homeless children or are wards of the state, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated. (34 CFR § 300.111(a))

The obligation to make FAPE available to each eligible child residing in the Albuquerque Public Schools begins no later than the child’s third birthday. Albuquerque Public Schools shall have procedures to ensure that an IEP or an IFSP is in effect by that date. If a child’s third birthday occurs during the summer, the child’s IEP Team shall determine the date when services under the IEP or IFSP will begin. (34 C.F.R. § 300.101(b))

In compliance with child find provisions of the IDEA and New Mexico Administrative Code, Albuquerque Public Schools also shall, within its jurisdiction/geographical boundaries, identify, locate, and evaluate:

- Children who are suspected of being a child with a disability under §300.8 and in need of special education, even though they are advancing from grade to grade;
- Highly mobile children, including migrant children; and
- Children who are suspected of being developmental delayed.
- Federal regulation requires states to define “developmental delayed”
 - The New Mexico Public Education Department has adopted a definition of development delay in accordance with 34 CFR §300.8(b)
 - The New Mexico Public Education Department does not require Albuquerque Public Schools to adopt and use the term developmental delayed for any children within its geographical boundaries; however,
 - Albuquerque Public Schools conforms to the definition and age range adopted by the New Mexico Public Education Department. Please refer to the Definitions

section of these administrative procedures for the definition of developmental delayed.

(34 CFR §300.8(b), 34 CFR § 300.111(c); 6.31.2.12(F) NMAC)

The Albuquerque Public Schools child find duty includes locating, identifying, and evaluating all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located within the geographical boundaries of the Albuquerque Public Schools, even though these children may not reside within the geographical boundaries of the Albuquerque Public Schools. (34 C.F.R. § 300.131(a))

Child Find Referrals and Activities

Albuquerque Public Schools shall accept referrals, as per child find provisions, from any source that suspects a child may be eligible for special education and related services. (71 Fed. Reg. 46636 (August 14, 2006))

Multi-Layered System of Supports shall be the guiding documents for schools to use in implementing and documenting student interventions to support a referral to SAT or an evaluation to determine eligibility for special education and related services. For initial Referrals, students may be referred to SAT at any layer of MLSS. For additional details regarding MLSS, please refer to the MLSS Procedural Directive.

Albuquerque Public Schools shall train its school administrators and teachers who teach reading to implement appropriate research-based reading interventions prior to referring the student for a special education evaluation. (6.31.2.9(B)(10)(b) NMAC)

If Albuquerque Public Schools agrees with the parent that the child may be a child who is eligible for special education services, Albuquerque Public Schools 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. (6.31.2.10(C)(1)(d) NMAC and 6.31.2.10((D)(1)(c)(iv) NMAC)

Albuquerque Public Schools' child find activities include a screening process to determine whether the child should be referred for a full evaluation to determine eligibility for special education and related services. (71 Fed. Reg. 46636 (August 14, 2006))

Child Find Activities Following Revocation of Consent

Children who have previously received special education and related services and whose parents subsequently revoked consent shall not be treated any differently in the child find process than any other child, including a child who was determined eligible and whose parent refused to provide initial consent for services. (73 Fed. 73012 (December 1, 2008))

Child Find and Parentally-Placed Private School Children

Albuquerque Public Schools, in compliance with federal regulation, shall, locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located within the geographical boundaries of the Albuquerque Public Schools even though these children may not reside within the geographical boundaries of the Albuquerque Public Schools. (34 CFR §300.131(a))

Albuquerque Public Schools child find process for parentally placed private school children shall ensure that any child placed in a private school have an equitable opportunity to participate in child find activities as any other child. Albuquerque Public Schools shall keep an accurate count of children parentally placed in a private school. (34 CFR §300.131(b))

In carrying out its child find duties to parentally-placed private school children:

- Albuquerque Public Schools shall undertake activities similar to the activities undertaken for students who attend Albuquerque Public Schools;
- The cost of carrying out the child find requirements, including individual evaluations, shall not be considered in determining if Albuquerque Public Schools has met its proportionate share obligation;
- The child find process shall be completed in a time period comparable to that for other students attending Albuquerque Public Schools; and
- Albuquerque Public Schools shall include parentally placed private school children who reside in a state other than New Mexico in carrying out its child find requirements if the child is attending a private school located within Albuquerque Public Schools.

(34 CFR §300.131)

Albuquerque Public Schools shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children regarding the child find process, including, but not limited to:

- How parentally placed private school children suspected of having a disability can participate in child find activities equitably; and
- How parents, teachers, and private school officials will be informed of the process.

(34 CFR § 300.134)

Legal Cross Ref.:

42 U.S.C. 11431 et seq

34 CFR §300.101

34 CFR §300.111

34 CFR §300.124

34 CFR §300.131

34 CFR § 300.134

34 CFR § 300.503

34 CFR § 300.8

6.29.1.9(E) NMAC

6.31.2.9 (B) NMAC

6.31.2.10(D) NMAC

6.31.2.10(F) (2) NMAC

6.31.2.11(A) NMAC
6.31.2.12(F) NMAC
6.31.3.9(B)(2) NMAC
71 Fed. Reg. 46636
73 Fed. Reg. 73012
§22-13-5 NMSA 1978

Procedural Directive Cross Ref.:
MLSS Procedural Directive

Effective: February 15, 2023
Revised: August 2, 2023

2 - DEVELOPMENTAL PRESCHOOL PROGRAMS

Explanation of Developmental Preschool Programs and APS Requirements

To comply with federal and state statute and regulation regarding developmental preschool programs, Albuquerque Public Schools shall ensure that:

- A free appropriate public education is available to each eligible child residing in the Albuquerque Public Schools jurisdiction/geographical boundaries beginning no later than the child's third birthday;
- An IEP or IFSP is in effect for the child by the child's third birthday; and
- If a child's third birthday occurs during the summer, the child's IEP Team determines the date when services under the IEP or IFSP will begin.

(34 CFR §300.101(b))

Albuquerque Public Schools shall provide a free appropriate public education for each eligible preschool child with a disability residing within its boundaries no later than the child's third birthday and shall ensure that an IEP or an IFSP, as required by the Individuals with Disabilities Education Act, is in effect by the appropriate date as outlined in federal and state regulation.

(34 CFR Secs. 300.101, 300.124 and 300.323(b) and 6.31.2.11(A) (1) NMAC)

If a child receiving services in the department of health's family, infant, toddler program has his or her third birthday during the school year, the child's parents shall have the option of having the child complete the school year in the Part C family, infant, toddler program or enrolling the child, if eligible, in the public school's Part B preschool program when the child turns three.

Transitions from Part C Programs

To ensure effective transitioning from IDEA Part C programs for Infants and Toddlers to IDEA Part B programs, Albuquerque Public Schools shall conduct a full and individual initial comprehensive evaluation, at no cost to the parent which shall be in compliance with the federal and state regulations and standards, before the commencement of Part B special education and related services to a child with a disability. (6.31.2.11(A) (3) NMAC)

Albuquerque Public Schools shall implement appropriate procedures to ensure a smooth and effective transition from Part C to Part B programs for preschool children with disabilities within the Albuquerque Public Schools' jurisdiction. (6.31.2.11(A) (4) NMAC)

Albuquerque Public Schools shall make reasonable efforts to establish productive working relations with local Part C programs, including by participating in transition planning conferences arranged by the Part C provider when given reasonable notice. (6.31.2.11(A) (4) NMAC and 34 C.F.R. 300.124(c))

Albuquerque Public Schools shall take specific actions as part of the transition. These actions include, but are not limited to:

- Conducting surveys of Part C programs within its jurisdiction/geographical boundaries during its child find efforts to identify children who may be eligible to enter the Albuquerque Public Schools Part B preschool program in future years.
- Promoting parent and family involvement in transition planning with Part C programs, community programs, and related services providers at least six months before the child is eligible to enter the Albuquerque Public Schools Part B preschool program.
- Establishing and implementing procedures to support successful transitions including parent training, professional development for special educators and general educators, and student and parent self-advocacy training and education.
- Assisting parents in becoming their child's advocates as the child makes the transition through systems.
- Participation in transition planning conferences arranged by the designated Part C lead agency no less than ninety (90) days prior to the anticipated transition or the child's third birthday, whichever occurs first, to facilitate informed choices for all families.
- Designation of a team including parents and qualified professionals to review existing evaluation data for each child entering Albuquerque Public Schools' preschool program in compliance with 34 CFR Sec. 300.305, and based on that review to identify what additional data, if any, are needed to determine the child's eligibility for Part B services or develop an appropriate program. The notice of procedural safeguards shall be given to the parents as provided in Paragraph (3) of Subsection D of 6.31.2.13 NMAC.
- Development of IFSP, IEP or IFSP-IEP by a team constituted in compliance with 34 CFR Sec. 300.321 that includes parents. For children transitioning from Part C programs to Part B programs, the team must also include one or more early intervention providers who are knowledgeable about the child.
- The [district] initiates a meeting to develop an eligible child's IFSP, IEP or IFSP-IEP, in accordance with 34 CFR §300.323, no later than 15 days prior to the first day of the school year of the LEA where the child is enrolled or no later than 15 days prior to the child's entry into Part B preschool services if the transition process is initiated after the start of the school year, whichever is later, to ensure uninterrupted services. This IFSP, IEP, or IFSP-IEP will be developed by a team constituted in compliance with 34 CFR §300.321 that includes parents and appropriate early intervention providers who are knowledgeable about the child.

- In compliance with 34 CFR Sec. 300.101(b)(2), if a child's birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin.
- Each public agency must engage in appropriate planning with the Part C lead agency so that the eligible child will be prepared to receive Part B special education and related services when the IEP team determines that the services under the IEP or IFSP will begin. Each public agency shall develop policies and procedures to ensure a successful transition from Part B preschool for children with disabilities who are eligible for continued services in pre-kindergarten and kindergarten.

(6.31.2.11(A) (5) NMAC)

Educational Services

Albuquerque Public Schools shall provide special education and related services appropriate to meet the needs of all children within its jurisdiction/geographical boundaries requiring special education and related services. Albuquerque Public Schools shall provide services for three-year-old and four-year-old preschool children with disabilities within its jurisdiction/geographical boundaries, unless the parent chooses not to enroll his/her child. If a child receiving services in the New Mexico Department of Health's family, infant, toddler program has his/her third birthday during the school year, the child's parents shall have the option of having the child complete the school year in the New Mexico Department of Health's family, infant, toddler program or enrolling the child in the Albuquerque Public Schools' preschool program. (§22-13-5 NMSA 1978)

Services for students age three (3) through twenty-one (21) may include, but are not limited to:

- evaluating particular needs
- providing learning experiences that develop cognitive and social skills
- arranging for or providing related services as defined by the New Mexico Public Education Department
- providing parent education.

The services may be provided by certified school personnel or contracted for with other community agencies and shall be provided in age-appropriate, integrated settings, including home, daycare centers, headstart programs, schools or community-based settings. (§22-13-5 NMSA 1978)

Legal Cross Ref.:

42 U.S.C. 11431 et seq

34 CFR §300.101

34 CFR §300.111

34 CFR §300.323

34 CFR §300.124

34 CFR §300.131

34 CFR § 300.134

6.31.2.10(F) (2) NMAC

6.31.2.11(A) NMAC

6.31.2.12(F) NMAC
71 Fed. Reg. 46636
73 Fed. Reg. 73012
§22-13-5 NMSA 1978

Effective: February 15, 2023

3 - PROCEDURAL SAFEGUARDS

Procedural Safeguards

In accordance with the Individuals with Disabilities Education Act (IDEA), the district shall ensure procedural safeguards are in place for children with disabilities and children who are suspected of having disabilities as well as their respective parent(s)/guardian(s). With respect to the provision of a free appropriate public education, the procedural safeguards requirement is designed to, among other things, provide parents/guardians of children with disabilities, or those children suspected of having disabilities, meaningful involvement in the educational process of their children and provide information about the right to participate in their children's educational programming decisions.

Scope of Procedural Safeguards

Procedural safeguards pertain to the following circumstances:

- Independent educational evaluations
- Prior written notice
- Parental consent
- Access to educational records
- Opportunity to present and resolve complaints through the due process complaint and state complaint procedures, including:
 - Time period to file complaint
 - Opportunity for the Albuquerque Public Schools to resolve the complaint
 - Differences between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures
- Availability of mediation
- Child's placement during the due process complaint
- Procedures for students placed – or who may be placed – in an interim alternative educational setting
- Requirements for unilateral placement by parents of children in private schools at public expense
- Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations
- State-level appeals
- Civil actions, including the time period in which to file those actions, and
- Attorney's fees

Procedural Safeguards Notice

APS's *Special Education Procedural Safeguards for Students with Disabilities and Their Families Required Under Part B* are available to staff, parents and interested members of the public on APS's Special Education Department website via the following links:

English:

<https://www.aps.edu/special-education/documents/aps-procedural-safeguards-english>

Spanish:

<https://www.aps.edu/special-education/documents/spanish-procedural-safeguards-2020>

Vietnamese:

<https://www.aps.edu/special-education/documents/procedural-safeguards-vietnamese>

ASL Video:

<https://www.youtube.com/watch?v=cm59T2NZLvE>

Parent(s)/guardian(s) of a student who needs, or is believed to need, special education and related services have the right to receive notice of their procedural safeguards concerning identification, evaluation and placement under the IDEA. At least one time each year, parents/guardians must receive a copy of the procedural safeguards. A student's parent/guardian or representative of a student who is requesting an initial evaluation for special education, either verbally or in writing, must also receive a copy of the procedural safeguards.

Schools shall also provide a copy of the procedural safeguards:

- Upon initial referral or parent request for evaluation
- Upon receipt of the first state complaint and upon receipt of the first due process complaint in a school year
- In accordance with the discipline procedures under the Individuals with Disabilities Education Act, and
- Upon request by a parent

Notice in Understandable Language

The procedural safeguards notice shall be written in language understandable to the public and provided in the parent's native language or other mode of communication the parent uses., unless it is not feasible to do so.

Legal Cross Ref.:

Individuals with Disabilities Education Act, 20 U.S.C. § 1415(d)

34 C.F.R. § 300.121

34 C.F.R. § 300.500-536

Administrative Procedure Cross Ref.:

Confidentiality of Information

Conflict Resolution at the Lowest Possible Level
Consent
Discipline of Student with Disabilities/Behavior
Due Process Hearings
Independent Educational Evaluations
Parent, Including Foster and Surrogate Parent
Prior Written Notice
State Level Complaint Procedures
Unilateral Placement of Children in Private Schools at Public Expense

Effective: February 15, 2023

Revised: April 6, 2023

3A - PARENT, INCLUDING FOSTER AND SURROGATE PARENT

Parent For purposes of this administrative procedure, "parent" means:

- A biological or adoptive parent of a child;
- A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
- A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State, if the child is a ward of the State);
- An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- A surrogate parent who has been appointed in accordance with § 300.519 or section 639(a)(5) of the Act.

(34 C.F.R. § 300.30(a))

For purposes of this administrative procedure, the term "unaccompanied youth" includes a youth not in the physical custody of a parent or guardian. (42 U.S.C. § 11434a(6))

Foster Parents

A foster parent of a child with a disability may act as a parent if:

- The foster parent or the state children, youth and families department (CYFD) provides appropriate documentation to establish that CYFD has legal custody and has designated the person in question as the child's foster parent;
- The foster parent is willing to make the educational decisions required of parents under the IDEA; and
- The foster parent has no interest that would conflict with the interests of the child.

(6.31.2.7(B)(14) NMAC)

A foster parent who does not qualify under the above requirements to act as a parent but who meets all requirements for a surrogate parent may be appointed as a surrogate if Albuquerque Public Schools deems such action appropriate. (6.31.2.7(B)(14) NMAC)

Surrogate Parents

Albuquerque Public Schools shall ensure that the rights of a child are protected when:

- No parent can be identified;
- Albuquerque Public Schools, after reasonable efforts, cannot locate a parent;
- The child is a ward of the State; or
- The child is an unaccompanied homeless youth.

(34 C.F.R. § 300.519(a))

Albuquerque Public Schools shall assign an individual to act as a surrogate parent for a child who requires a surrogate parent. (34 C.F.R. § 300.519(b))

The assignment shall be made not more than thirty (30) days after Albuquerque Public Schools determines that the child needs a surrogate parent. (34 C.F.R. § 300.519(h))

Albuquerque Public Schools shall maintain a list of trained surrogate parents, provide a training program for surrogate parents, manage the contracting and remuneration process for surrogate parents, and assign surrogate parents to students identified as needing surrogate parents. (34 C.F.R. § 300.519(b)(2))

Albuquerque Public Schools may select a surrogate parent in any way permitted under State law. (34 C.F.R. § 300.519(d)(1))

Albuquerque Public Schools shall ensure that a person selected as a surrogate parent--

- Is not an employee of the PED, the Albuquerque Public Schools, or any other agency that is involved in the education or care of the child;
- Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
- Has knowledge and skills that ensure adequate representation of the child.

(34 C.F.R. § 300.519(d)(2))

In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates without regard to whether that individual is an employee of the PED, the Albuquerque Public Schools, or any other agency that is involved in the education or care of the child, until a surrogate can be appointed that meets all of the requirements of a surrogate parent. (34 C.F.R. § 300.519(f))

The surrogate parent may represent the child in all matters relating to:

- The identification, evaluation, and educational placement of the child; and
- The provision of FAPE to the child.

(34 C.F.R. § 300.519(g))

In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the criteria for surrogate parents. (34 C.F.R. § 300.519(c))

Parent Hierarchy

When more than one person who meets the definition of parent is attempting to act as the parent, Albuquerque Public Schools shall address those situations in the following hierarchical manner:

- If a judicial decree or order identifies a specific person or persons as the parent of a child or to make educational decisions on behalf of the child, then such person or persons shall be determined to be the parent for purposes of these administrative procedures. (34 C.F.R. § 300.30(b)(2))
- Unless there is a judicial decree or order, the biological or adoptive parent, when attempting to act as the parent and when more than one party is qualified to act as a parent, must be presumed to be the parent for purposes of these administrative procedures unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. (34 C.F.R. § 300.30(b)(1))

Legal Cross Ref.:

34 C.F.R. § 300.30

34 C.F.R. § 300.519

42 U.S.C. § 11434a

6.31.2.7 NMAC

Administrative Procedure Cross Ref.:

Prior Written Notice

Consent

Parent Participation in Meetings

Effective: February 15, 2023

3B - PRIOR WRITTEN NOTICE

Explanation of Prior Written Notice by Albuquerque Public Schools

Federal and state statutes and regulations require Albuquerque Public Schools to provide prior written notice to parents of students receiving special education and related services. This administrative procedure outlines the requirements for prior written notice.

The Prior Written Notice of Proposed Actions section of the IEP provides the parent with prior written notice of the decisions (proposals or refusals) the IEP Team has made before Albuquerque Public Schools acts to implement those decisions.

The Prior Written Notice of Proposal to Conduct an Individualized Multidisciplinary Evaluation and Prior Written Notice of Reevaluation forms provide the parent with prior written notice of Albuquerque Public Schools' proposal to evaluate the child. In addition, the parent is provided with the Consent for Multidisciplinary Special Education Evaluation form with the prior written notice.

The Notice to Parents Proposal for Revocation of Special Education Services form provides the parent with prior written notice before ceasing special education and related services based on the parent's signed Revocation of Consent for Special Education and Related Services form.

Requirements to Provide Prior Written Notice

According to federal and state statute and regulation, every child shall receive FAPE. Special education and related services are included in a child's FAPE; and therefore, a proposal to revise a child's IEP, which typically involves a change to the type, amount, or location of the special education and related services being provided to a child, would trigger requirements to provide prior written notice. (34 CFR § 300.503)

A parent shall be given written notice, within a reasonable amount of time before Albuquerque Public Schools:

- Proposes to initiate or change the identification, evaluation or educational placement of the student or the provision of a free appropriate public education for the child; or
- Refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of a free appropriate public education for the child

(34 C.F.R. §300.503(a))

If, during an IEP Team meeting, the IEP Team, including the parent, agrees to a change in the IEP, Albuquerque Public Schools still shall provide written notice, since providing such notice following an IEP Team meeting allows the parent time to fully consider the change and determine if he/she has additional suggestions, concerns, or questions.

In the circumstance that Albuquerque Public Schools is not proposing a change, but rather agreeing to a change that has been proposed by a parent, Albuquerque Public Schools still shall be required to provide prior written notice to the parent.

"Nothing in the statute or regulations indicates that the notice is related to a parent's attitude toward any changes proposed or refused by the public agency." OSEP Letter to Lieberman (August 15, 2008).

Timeline for Prior Written Notice

Albuquerque Public Schools shall adequately meet the requirements of prior written notice as long as the prior written notice is provided a reasonable time before Albuquerque Public Schools implements the proposal (or refusal) described in the notice. (71 Fed. Reg. 46691 (August 14, 2006) and § 300.503)

Albuquerque Public Schools declines to substitute a specific timeline to clarify what is meant by the requirement that the notice be provided within a reasonable period of time, since prior written notice is provided in a wide variety of circumstances for which any one timeline would be too rigid and, in many cases, might prove unworkable. (71 Fed. Reg. 46691)

However, with respect to IEP Team decisions, the prior written notice shall be provided at the close of the IEP Team meeting. (6.31.2.11 NMAC) In the context of an IEP Team meeting, the prior written notice shall not be finalized and given to the parent until after the IEP Team has made its final decisions. Providing prior written notice in advance of meetings could suggest, in some circumstances, that the public agency's proposal was improperly arrived at before the meeting and without parent input. (71 Fed. Reg. 46691)

When APS staff refers a child for *any* special education evaluation, the District must (a) provide to the parent(s) prior written notice with a copy of procedural safeguards; and (b) request parental consent within 15 school days from the staff referral (this time is extended to 30 days when the staff referral is made 15 days or less before a student break of at least 14 calendar days). 6.31.2.10(D)(5) NMAC.

Content of Prior Written Notice

The prior written notice shall include:

- A description of the action that Albuquerque Public Schools proposes or refuses to take;
- An explanation of why Albuquerque Public Schools is proposing or refusing to take the action;
- A description of each evaluation procedure, assessment, record, or report Albuquerque Public Schools used in deciding to propose or refuse the action;
- A statement that the parent has protections under the procedural safeguards provisions in Part B of IDEA;
- An explanation of how the parent can obtain a description of the procedural safeguards if the action that Albuquerque Public Schools is proposing or refusing is not an initial referral for evaluation;
- Resources for the parent to contact for help in understanding Part B of IDEA;
- A description of any other options that the IEP Team considered and the reasons why those options were rejected; and
- A description of other factors relevant to why Albuquerque Public Schools proposed or refused the action.

(34 C.F.R. §300.503(b))

There is nothing in IDEA which prohibits Albuquerque Public Schools from using the IEP as part of the prior written notice as long as the document(s) the parent receives meet all the requirements in § 300.503. Therefore, Albuquerque Public Schools shall provide the parent with the IEP and prior written notice to satisfy the requirements of prior written notice. (71 Fed. Reg. 466691)

Notice in Understandable Language

The notice shall be:

- Written in language understandable to the general public; and
- Provided in the parent's native language or other mode of communication the parent uses, unless it is clearly not feasible to do so.

(34 C.F.R. §300.503(c))

If the parent's native language or other mode of communication is not a written language, Albuquerque Public Schools shall ensure that:

- The notice is translated for the parent orally or by other means in the parent's native language or other mode of communication;
- The parent understands the content of the notice; and
- There is written evidence that these requirements have been met.

(34 C.F.R. §300.503(c))

Prior Written Notice Following Revocation of Consent

Once Albuquerque Public Schools receives a parent's written revocation of consent for a child's receipt of special education and related services, Albuquerque Public Schools shall provide prior written notice to the parent regarding the change in educational placement and services that will result from the revocation of consent. (73 Fed. 73008 (December 1, 2008))

Albuquerque Public Schools shall not discontinue services following revocation of consent until prior written notice has been provided to the parents. Therefore, Albuquerque Public Schools shall promptly respond to receipt of written revocation of consent by providing prior written notice to the parents as per federal regulation. (73 Fed. 73008 (December 1, 2008) and § 300.503)

When a parent revokes consent for the provision of special education and related services, Albuquerque Public Schools may inquire as to why a parent is revoking consent for special education and related services. Albuquerque Public Schools shall not, however, require a parent to provide an explanation, either orally or in writing, prior to ceasing the provision of special education and related services. (73 Fed. 73008 (December 1, 2008))

Legal Cross Ref.:

34 C.F.R. §300.503

71 Fed. Reg. 46691 (August 14, 2006)

73 Fed. 73008 (December 1, 2008)

Administrative Procedure Cross Ref.:

Parent, Including Foster and Surrogate Parents
Consent

Parent Participation in Meetings

Effective: February 15, 2023

Revised: August 2, 2023

3C - CONSENT

Explanation of Consent

Albuquerque Public Schools is required to receive consent from parents or guardians for evaluations of students and for the initial provision of special education and related services. It is the responsibility of the school district to promptly request parental consent to evaluate a child and to determine if the child needs special education and related services whenever a child is referred for an evaluation (34 CFR § 300.309(c). It is APS' expectation that evaluators will provide the parents with a copy of the Procedural Safeguards and request informed parental consent within ten school days of receiving a referral for evaluation from the SAT (See Student Assistance Team: General Screening and Student Intervention Guidelines for deadlines to convene the SAT and issue a Prior Written Notice of intent to evaluate or refusal to evaluate).

The Consent for Multidisciplinary Special Education Evaluation and Consent for Initial Special Education Services forms are used to obtain informed parental consent for evaluation and the initial provision of special education and related services.

The Revocation of Consent for Special Education and Related Services is designed to enable a parent or guardian to document in writing his or her revocation of consent.

If the parent or guardian wishes to revoke his/her consent after the child has begun receiving special education and related services, the parent or guardian shall be required to do so in writing. (34 C.F.R. § 300.300(b) (4))

The parent's or guardian's withdrawal of consent does not negate or undo an action that has occurred in the period of time after the parent or guardian initially gave consent but before the parent or guardian withdrew it. Additionally, Albuquerque Public Schools shall not amend or change, after the parent's or guardian's withdrawal of consent, the child's education records to remove any references that the child previously received special education and related services. (34 C.F.R. § 300.9(c) (2) and 34 C.F.R. § 300.9(c) (3))

Timeline after Gaining Consent

The District must conduct an initial evaluation within 60 days of receiving parental consent (34 CFR § 300.301(c); NMAC 6.31.2 (1)(D)(I)(d). There are two exceptions to the 60-day evaluation timeline:

1. If the parent of a child repeatedly fails or refuses to present the child for the evaluation,
or
2. If the child enrolls in a school of another public agency after the initiation of the evaluation and prior to a determination as to whether the child is a child with a disability (34 CFR §300.301 (d).

Consent for Initial Evaluations

“An initial evaluation of a child is the first complete assessment of a child to determine if the child has a disability under the Act, and the nature and extent of special education and related services required. Once a child has been fully evaluated, a decision has been rendered that a child is eligible for services under the Act, and the required services have been determined, any subsequent evaluation of a child would constitute a reevaluation.” (71 Fed. Reg. 46640 (August 14, 2006)); also, (OSEP Letter to Kaczynski (September 5, 2007))

Albuquerque Public Schools shall not conduct an initial evaluation of a child to determine whether the child is eligible under Part B of IDEA to receive special education and related services without first providing the parent or guardian with prior written notice of the proposed action as set forth in the “Prior Written Notice” administrative procedure and obtaining the parent’s or guardian’s consent. (34 C.F.R. § 300.300(a))

Albuquerque Public Schools shall make reasonable efforts to obtain the parent’s or guardian’s informed consent for an initial evaluation to decide whether the child is a child with a disability. (34 C.F.R. § 300.300(a) (1) (iii)) It is APS’ expectation that evaluators will request informed parental consent within ten days of receiving a referral for evaluation irrespective of the source of referral including a parent request for evaluation. The parent’s or guardian’s consent for initial evaluation shall not mean that the parent or guardian has also given his/her consent for Albuquerque Public Schools to start providing special education and related services to the child. (34 C.F.R. § 300.300(a) (1) (ii))

Albuquerque Public Schools shall not use the parent’s or guardian’s refusal to consent to one service or activity as a basis for denying the parent or guardian of the child any other service, benefit, or activity, unless another Part B requirement requires the school district to do so. (34 C.F.R. § 300.300(d) (3))

The screening of a child by district personnel to determine appropriate instructional strategies shall not be considered an evaluation for purposes of determining eligibility for special education and related services. Therefore, screening may occur without obtaining informed parental consent. (71 Fed. Reg. 46639 (August 14, 2006))

Parental consent shall not be required for observations conducted as part of routine classroom instruction and monitoring of the child’s performance before the child is referred for an evaluation. (71 Fed. Reg. 46659 (August 14, 2006))

If the child is enrolled in public school or seeking to enroll in a public school and the parents or guardians have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, Albuquerque Public Schools may, but is not required to, seek to conduct an initial evaluation of the child by using the IDEA’s mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. Albuquerque Public Schools is not considered to be in violation of its child find obligations to locate, identify, and evaluate the child if it does not pursue an evaluation of the child in these circumstances. (34 C.F.R. § 300.300(a) (3))

Special Rules for Initial Evaluation of Wards of the State

If a child is a ward of the state and is not living with his/her parent— Albuquerque Public Schools is not required to obtain consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

- Despite reasonable efforts to do so, Albuquerque Public Schools cannot discover the whereabouts of the child's parent;
- The rights of the parents have been terminated in accordance with New Mexico state statute; or
- A judge has assigned the right to make educational decisions to an individual other than the parent and that individual has provided consent for an initial evaluation.

(34 C.F.R. §§ 300.300(a) (2) and 300.45)

Parental Consent for Services and Refusal of Services

Albuquerque Public Schools shall obtain the parent's or guardian's informed consent before providing special education and related services to the child for the first time. (34 C.F.R. § 300.300(b) (1))

If after Albuquerque Public Schools has made reasonable efforts to obtain informed parental consent, the parent or guardian does not respond to a request to provide consent for the child to receive special education and related services for the first time, or if the parent or guardian refuses to give such consent or later revokes consent in writing, Albuquerque Public Schools shall not use the procedural safeguards (i.e., due process complaint, or an impartial due process hearing) to obtain agreement or a ruling that the special education and related services that were recommended by the child's IEP Team may be provided to the child without the parent's or guardian's consent. (34 C.F.R. § 300.300(b) (3)) However, Albuquerque Public Schools shall make reasonable efforts to obtain informed parental consent for the initial provision of special education and related services. (34 C.F.R. § 300.300(b)(2))

If the parent or guardian refuses to give consent for the child to receive special education and related services for the first time, or if the parent or guardian does not respond to a request to provide such consent or later revokes consent in writing and Albuquerque Public Schools does not provide the child with the special education and related services for which it originally sought parental consent, Albuquerque Public Schools shall:

- Not be in violation of the requirement to make a free appropriate public education available to the child for its failure to provide those services to the child; and
- Not be required to have an IEP Team meeting or develop an IEP for the child for the special education and related services for which the parent's or guardian's consent was requested.

(34 C.F.R. §§ 300.300(b) (3) (iii) and 300.300(b) (4) (iii))

If the parent or guardian revokes his/her consent in writing at any point after the child is first provided special education and related services, then Albuquerque Public Schools shall not continue to provide such services, but shall provide the parent or guardian with prior written notice, as described in the "Prior Written Notice" administrative procedure, before discontinuing those services. (34 C.F.R. § 300.300(b)(4)(i))

Students under the age of 18 may not legally refuse services or revoke consent of services. Students age 18 or older may legally revoke services unless a guardian or representative is

legally appointed to continue to make decisions on behalf of the student. A student's refusal to access supports shall not be construed as a revocation of services. Parents or guardians of students under the age of 18, must be notified immediately of a student's refusal of services. An IEP Team meeting, to include the parent or guardian, shall be convened at a mutually agreed on time to discuss reasons for the refusal of services and to discuss various options for the delivery of such services. All services, supports and accommodations must be written in the IEP and communicated with all staff who work with the student. Communication to staff must include how services are to be consistently implemented and how to respond to future refusal of services.

Consent for Reevaluations

Albuquerque Public Schools shall obtain the parent's or guardian's informed consent before it reevaluates the child, unless Albuquerque Public Schools can demonstrate that:

- It took reasonable steps to obtain parental consent for the child's reevaluation; and
- The parent or guardian did not respond.

(34 C.F.R. §§ 300.300(c)(1)(i) and 300.300 (c) (2))

If the parent or guardian refuses to consent to the child's reevaluation, Albuquerque Public Schools may, but is not required to, pursue the child's reevaluation by using the mediation, due process complaint, resolution meeting, and impartial due process hearing procedures to seek to override the parent's or guardian's refusal to consent to the child's reevaluation. (34 C.F.R. § 300.300(c) (1) (ii))

As with initial evaluations, Albuquerque Public Schools shall not violate its obligations under Part B of IDEA if it declines to pursue the reevaluation in this manner. (34 C.F.R. § 300.300(c) (1) (iii))

Documentation of Reasonable Efforts to Obtain Consent

Albuquerque Public Schools shall maintain documentation of reasonable efforts to obtain parental consent for initial evaluations, to provide special education and related services for the first time, for a reevaluation, and to locate parents or wards of the state for initial evaluations. The documentation shall include a record of Albuquerque Public Schools' attempts in these areas, such as:

- Detailed records of telephone calls made or attempted and the results of those calls;
- Copies of correspondence sent to the parent or guardian and any responses received; and
- Detailed records of visits made to the parent's or guardian's home or place of employment and the results of those visits.

(34 C.F.R. § 300.300(d) (5))

Other Consent Requirements

Parental consent shall not be required before Albuquerque Public Schools may:

- Review existing data as part of the child's evaluation or a reevaluation; or

- Give the child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from parents or guardians of all children. (34 C.F.R. §§ 300.300(d)(1)(i) and (ii))

If the parent or guardian has enrolled the child in a private school at the parent's or guardian's own expense or if the parent or guardian is home schooling the child, and does not provide consent for the child's initial evaluation or the child's reevaluation, or fails to respond to a request to provide parental consent, Albuquerque Public Schools shall not use its dispute resolution procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and shall not be required to consider the child as eligible to receive equitable services (services made available to some parentally-placed private school children with disabilities). (34 C.F.R. § 300.300(d) (4))

Legal Cross Ref.:

34 C.F.R. § 300.9

34 C.F.R. § 300.45

34 C.F.R. § 300.300

71 Fed. Reg. 46639 (August 14, 2006)

71 Fed. Reg. 46640 (August 14, 2006)

71 Fed. Reg. 46659 (August 14, 2006)

Administrative Procedure Cross Ref.:

Prior Written Notice

Effective: February 15, 2023

3D - PARENT PARTICIPATION IN MEETINGS

Albuquerque Public Schools shall afford parents of a child with a disability an opportunity to participate in meetings with respect to:

- The identification, evaluation, and educational placement of the child; and
- The provision of FAPE to the child.

(34 C.F.R. § 300.501(b)(1))

Right of Parent to Participate in Meetings

Albuquerque Public Schools shall afford the parents of a child with a disability an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. In the Albuquerque Public Schools, these meetings are Eligibility Determination Team (EDT) and/or IEP Team meetings. (34 C.F.R. § 300.501(b)(1))

The right to participate in meetings does not include informal or unscheduled conversations involving Albuquerque Public Schools personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. The right to participate in

meetings also does not include preparatory activities that Albuquerque Public Schools personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting. (34 C.F.R. § 300.501(b)(3))

Ensuring Parent Participation

Albuquerque Public Schools shall provide notice of EDT and/or IEP Team meetings to ensure that parents of children with disabilities have the opportunity to participate in EDT and/or IEP Team meetings. (34 C.F.R. § 300.501(b)(2); 34 C.F.R. § 300.322) The steps Albuquerque Public Schools shall take to ensure parent participation in EDT and/or IEP Team meetings shall include:

- Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
- Scheduling the meeting at a mutually agreed on time and place.

(34 C.F.R. § 300.322(a))

Albuquerque Public Schools' officials shall determine how far in advance parents must be notified of an EDT and/or IEP Team meeting as this will vary based on a number of factors including, for example, the distance parents typically have to travel to the meeting location and the availability of childcare. (71 Fed. Reg. 46670 (August 14, 2006))

Generally, Albuquerque Public Schools expects that notice of an EDT and/or IEP Team meeting shall be provided ten (10) days prior to the meeting.

IDEA does not require school districts to schedule EDT and/or IEP Team meetings in the evenings. Therefore, it is not unreasonable for Albuquerque Public Schools to schedule meetings of the EDT and/or IEP Team only during regular school hours or regular business hours because these times are most suitable for Albuquerque Public Schools personnel to attend these meetings. (OSEP Letter to Thomas, 51 IDELR 224 (June 3, 2008))

Only when Albuquerque Public Schools is unable to convince a parent to participate in an EDT and/or IEP Team meeting may the meeting be conducted without a parent. (71 Fed. Reg. 46679 (August 14, 2006))

In this case, Albuquerque Public Schools shall keep a record of its attempts to arrange a mutually agreed on time and place, such as:

- Detailed records of telephone calls made or attempted and the results of those calls;
- Copies of correspondence sent to the parent and any responses received; and
- Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(34 C.F.R. § 300.322(d))

If neither parent can attend an EDT and/or IEP Team meeting, Albuquerque Public Schools shall use other methods to ensure parent participation, including individual or conference telephone calls. (34 C.F.R. § 300.322(d); 34 C.F.R. § 300.328)

Preparation versus Predetermination

Predetermination occurs when a school district has made decisions regarding components of the IEP prior to the IEP Team meeting, and presents one option at the meeting and is unwilling to consider other alternatives. Albuquerque Public Schools shall engage in preparatory activities but shall not predetermine the outcome of an IEP Team meeting, since such predetermination deprives the parent of the right to participate in the meeting.

With respect to a draft IEP, Albuquerque Public Schools encourages staff to come to an IEP Team meeting prepared to discuss evaluation findings and preliminary recommendations. Likewise, parents have the right to bring questions, concerns, and preliminary recommendations to the IEP Team meeting as part of a full discussion of the child's needs and the services to be provided to meet those needs. (71 Fed. Reg. 46678 (August 14, 2006))

If Albuquerque Public Schools personnel develop a draft IEP prior to the IEP Team meeting, Albuquerque Public Schools personnel shall make it clear to the parent at the outset of the meeting that the services proposed by the Albuquerque Public Schools are preliminary recommendations for review and discussion with the parent. Albuquerque Public Schools personnel are encouraged to provide the parent with a copy of draft(s) prior to the IEP Team meeting, if Albuquerque Public Schools personnel have developed draft(s) ahead of time. It is not permissible for Albuquerque Public Schools to have the final IEP completed before an IEP Team meeting begins. (71 Fed. Reg. 46678 (August 14, 2006))

Albuquerque Public Schools personnel are encouraged to develop drafts of the student profile, present levels of academic achievement and functional performance, goals, applicable objectives and/or benchmarks, and applicable components of the transition plan prior to the IEP Team meeting. Albuquerque Public Schools personnel may not develop drafts of statements related to the least restrictive environment, special education and related services and prior written notice of proposed actions prior to the IEP Team meeting.

Use of Interpreters

Albuquerque Public Schools shall take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. (34 C.F.R. § 300.322(e))

Copies of Evaluation Report , EDT Record and IEP

Upon completion of the administration of assessments and other evaluation measures, Albuquerque Public Schools shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

Albuquerque Public Schools shall give the parent a copy of the child's IEP at no cost to the parent. (34 C.F.R. § 300.322(f))

The specific timeframe in which the Albuquerque Public Schools provides a copy of the IEP to the parent is best left to the Albuquerque Public Schools to determine. (71 Fed. Reg. 46687 (August 14, 2006))

However, written notice of actions proposed or refused by the Albuquerque Public Schools shall be provided at the close of the IEP meeting. (6.31.2.11(B)(3) NMAC)

Therefore, generally, Albuquerque Public Schools expects that a copy of the IEP and the Prior Written Notice shall be provided to the parent at the close of the meeting.

Legal Cross Ref.:

34 C.F.R. § 300.322

34 C.F.R. § 300.328

34 C.F.R. § 300.501

71 Fed. Reg. 46687

71 Fed. Reg. 46670

71 Fed. Reg. 46678

71 Fed. Reg. 46679

6.31.2.11 NMAC

Administrative Procedure Cross Ref.:

Prior Written Notice

Effective: February 15, 2023

3E - CONFIDENTIALITY OF INFORMATION

Parent Rights to Access Records

In order to comply with federal regulation, Albuquerque Public Schools shall permit a parent to inspect and review any education records relating to the parent's child that are collected, maintained, or used by Albuquerque Public Schools under Part B of IDEA.

Albuquerque Public Schools shall comply with a parent's request to inspect and review any education records regarding the parent's child without unnecessary delay and before any meeting regarding an IEP, resolution meeting or impartial special education due process hearing, and in no case more than forty-five (45) calendar days after the parent has made a request.

A parent's right to inspect and review education records includes:

- The right to a response from Albuquerque Public Schools to the parent's reasonable requests for explanations and interpretations of the records;
- The right to request that Albuquerque Public Schools provide copies of the records if the parent cannot effectively inspect and review the records unless the parent receives those copies; and

- The right to have the parent's representative inspect and review records of the parent's child.

Albuquerque Public Schools shall presume that the parent has authority to inspect and review records relating to the parent's child unless advised that the parent does not have the authority under applicable state statute and regulation governing such matters as guardianship, separation, and divorce. (34 CFR § 300.613)

Albuquerque Public Schools Record of Parties who Access Records

Albuquerque Public Schools shall keep a record of parties, who are not the parent or an authorized district employee, obtaining access to education records collected, maintained, or used under Part B of IDEA including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. (34 CFR § 300.614)

Records Regarding Information on More Than One Child

If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information. (34 CFR §300.615)

List of Types and Locations of Information

Upon request, Albuquerque Public Schools shall provide a parent with a list of the types and locations of education records collected, maintained, or used by Albuquerque Public Schools. (34 CFR §300.616)

Fees for Copies of Records

Albuquerque Public Schools may charge a fee for copies of records that are made for the parent under Part B of IDEA, if the fee does not effectively prevent the parent from exercising his or her right to inspect and review those records.

Albuquerque Public Schools shall not charge a fee to search for or to retrieve information under Part B of IDEA. (34 CFR §300.617)

Amendment of Records at Parent's Request

If the parent believes that information in the education records regarding the child collected, maintained, or used under Part B of IDEA is inaccurate, misleading, or violates the privacy or other rights of the child, the parent may request that Albuquerque Public Schools amend the record.

Albuquerque Public Schools shall decide whether to amend the record in accordance with the request within a reasonable period of time of receipt of the request.

If Albuquerque Public Schools refuses to amend the record in accordance with the parent's request, it shall inform the parent of the refusal and advise the parent of his/her right to a hearing as described immediately below in the "Hearings" subsection of this administrative procedure. (34 CFR §300.618)

Hearings

Albuquerque Public Schools shall, on request, provide the parent an opportunity for a hearing to challenge information in education records regarding the parent's child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. (34 CFR § 300.619)

Hearing Procedures

A hearing to challenge information in education records shall be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA). (34 CFR §300.621)

Result of Hearing

If, as a result of the hearing, Albuquerque Public Schools decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the record accordingly and inform the parent in writing.

If, as a result of the hearing, Albuquerque Public Schools decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, Albuquerque Public Schools shall inform the parent of his/her right to place in the records that it maintains on the child a statement commenting on the information or providing any reasons the parent disagrees with the decision of Albuquerque Public Schools.

Such an explanation placed in the records of the child shall:

- Be maintained by Albuquerque Public Schools as part of the records of the child as long as the record or contested portion is maintained by Albuquerque Public Schools; and
- If Albuquerque Public Schools discloses the records of the child or the challenged information to any party, the explanation shall also be disclosed to that party.

(34 CFR §300.620)

Parental Consent to Disclosure of Personally Identifiable Information

Unless the disclosure is authorized without parental consent in accordance with the Family Educational Rights and Privacy Act (FERPA), the parent's consent shall be obtained before personally identifiable information contained in education records is disclosed to parties other than school officials with a legitimate educational interest. The parent's consent shall not be

required before personally identifiable information is released to participating agencies for purposes of meeting a requirement of Part B of IDEA.

Parental consent, or the consent of an eligible child who has reached the age of majority under state statute, shall be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If a child is enrolled, or is going to go to enroll in a private school that is not located in the same school district where the child resides, the parent's consent shall be obtained before any personally identifiable information about the child is released between officials in the school district where the private school is located and officials in the school district where the child resides.

(34 CFR §300.622)

Safeguards to Protect Confidentiality

Albuquerque Public Schools shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction of information stages.

All persons collecting or using personally identifiable information shall receive training or instruction regarding New Mexico's statutes and regulations and district policies and administrative procedures regarding confidentiality under Part B of IDEA and the Family Educational Rights and Privacy Act (FERPA).

Albuquerque Public Schools shall maintain, for public inspection, a current listing of the names and positions of those employees within Albuquerque Public Schools who may have access to personally identifiable information.

(34 CFR § 300.623)

Destruction of Information

Albuquerque Public Schools shall inform the parent when personally identifiable information collected, maintained, or used under Part B of IDEA is no longer needed to provide educational services to the child. The information shall be destroyed at the parent's request. However, a permanent record of the child's name, address, and phone number, his/her grades, attendance record, classes attended, grade level completed, and year completed shall be maintained without time limitation. (34 CFR §300.624)

Legal Cross Ref.:

34 CFR § 300.611

34 CFR § 300.32

34 CFR § 300.613

34 CFR § 300.614

34 CFR §300.615
34 CFR §300.616
34 CFR §300.617
34 CFR §300.618
34 CFR § 300.619
34 CFR §300.620
34 CFR §300.621
34 CFR §300.622
34 CFR § 300.623
34 CFR §300.624

Administrative Procedure Cross Ref.:
Consent

Effective: February 15, 2023

3F - UNILATERAL PLACEMENT BY PARENTS OF CHILDREN IN PRIVATE SCHOOLS AT PUBLIC EXPENSE

Part B of IDEA does not require Albuquerque Public Schools to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if Albuquerque Public Schools made a free appropriate public education available to the child and the parent chooses to place the child in a private school or facility. However, the school district where the private school is located shall include the child in the population whose needs are addressed under the Part B provisions regarding children who have been placed by their parents in a private school in compliance with federal regulation. (34 CFR §300.131 through 300.144)

Legal Cross Ref.:
34 CFR §300.131 through 300.144 34 CFR §300.148

Administrative Procedure Cross Ref.:
Parents, Including Foster and Surrogate Parents

Effective: February 15, 2023

3G - INDEPENDENT EDUCATIONAL EVALUATION

As described below, the parent has the right to obtain an independent educational evaluation (IEE) of the child if the parent disagrees with the evaluation of the child that was obtained or conducted by Albuquerque Public Schools. (34 C.F.R. § 300.502(a) (1))

If the parent requests an independent educational evaluation, Albuquerque Public Schools shall provide the parent with information about where the parent may obtain an independent

educational evaluation and about Albuquerque Public Schools' criteria that apply to independent educational evaluations. (34 C.F.R. § 300.502(a) (2))

Parental Right to Independent Educational Evaluation at Public Expense

The parent has the right to an independent educational evaluation of the child at public expense if the parent disagrees with an evaluation of the child obtained or conducted by Albuquerque Public Schools. This independent educational evaluation shall be subject to the following conditions:

- If the parent requests an independent educational evaluation of the child at public expense, Albuquerque Public Schools shall, without unnecessary delay, either:
 - File a due process complaint to request a hearing to show that its evaluation of the child is appropriate; or
 - Provide an independent educational evaluation at public expense, unless Albuquerque Public Schools demonstrates in a hearing that the evaluation of the child that the parent obtained did not meet the school district's criteria.
- If Albuquerque Public Schools requests a hearing and the final decision is that the district's evaluation of the child is appropriate, the parent still shall have the right to an independent educational evaluation, but not at public expense.
- If the parent requests an independent educational evaluation of the child, the district may ask why the parent objects to the evaluation of the child obtained by Albuquerque Public Schools. However, Albuquerque Public Schools shall not require an explanation and shall not unreasonably delay either providing the independent educational evaluation of the child at public expense or filing a due process complaint to request a due process hearing to defend the district's evaluation of the child.

(34 C.F.R. § 300.502(b))

The parent shall be entitled to only one independent educational evaluation of the parent's child at public expense each time Albuquerque Public Schools conducts an evaluation of the child with which the parent disagrees. (34 C.F.R. § 300.502(b) (5))

Parent-Initiated Independent Educational Evaluations

If the parent obtains an independent educational evaluation of the child at public expense or the parent shares with Albuquerque Public Schools an evaluation of the child that the parent obtained at private expense:

- Albuquerque Public Schools shall consider the results of the evaluation of the child, if it meets the district's criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education to the child; and
- The parent or Albuquerque Public Schools may present the evaluation as evidence at a due process hearing regarding the child.

(34 C.F.R. § 300.502(c))

All parent-initiated educational evaluations shall comply with Albuquerque Public Schools established procedures for an independent educational evaluation.

Albuquerque Public Schools Criteria for Independent Educational Evaluations

If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that Albuquerque Public Schools uses when it initiates an evaluation (to the extent those criteria are consistent with the parent's right to an independent educational evaluation). (34 C.F.R. § 300.502(e) (1))

Albuquerque Public Schools has established the following criteria, which shall be followed by evaluators conducting independent educational evaluations:

- The individual or agency shall conduct business within Bernalillo County; The individual or agency shall have assessment experience and follow evaluation guidelines set forth by New Mexico Technical Evaluation Assessment Manual (NMTEAM);
- Fees shall be aligned with fees of evaluators contracted or employed by Albuquerque Public Schools in comparable roles;
- The individual or agency shall hold a current New Mexico license in one or more of the following professions:
 - Educational Diagnostician;
 - School Psychologist;
 - Clinical Psychologist;
 - Psychiatrist;
 - Neuropsychologist;
 - Audiologist;
 - Speech Language Pathologist;
 - Occupational Therapist;
 - Physical Therapist; and
- Any other evaluators must provide documentation of licensure in their respective field(s).

Legal Cross Ref.:
34 C.F.R. § 300.502

Administrative Procedure Cross Ref.:
Prior Written Notice
Consent

Effective: February 15, 2023

3H - PROHIBITION ON MANDATORY MEDICATION

Albuquerque Public Schools shall not require parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a student as a condition of attending school, receiving an evaluation

under 34 CFR Secs. 300.300 through 300.311, or receiving services under Part B of the IDEA. This prohibition shall be construed as provided in 34 CFR Sec. 300.174(b). (6.31.2.9(J) NMAC)

Legal Cross Ref.:

6.31.2.13 NMAC

Effective: February 15, 2023

3I - CONFLICT RESOLUTION AT THE LOWEST POSSIBLE LEVEL

IDEA requires that parents turn first to IDEA's administrative framework to resolve any conflicts they have with Albuquerque Public Schools including regarding identification, evaluation, educational placement, or the provision of a FAPE. The Tenth Circuit federal court of appeals has interpreted the IDEA's exhaustion requirements broadly, "noting Congress' clear intention to allow those with experience in educating the nation's disabled children 'at least the first crack at formulating a plan to overcome the consequences of educational shortfalls.'" (Ellenberg v. New Mexico Military Institute, 478 F.3d 1262 (10 th Cir. 2007))

Albuquerque Public Schools seeks to establish and maintain productive working relationships with the parents of each child it serves and to deal constructively with disagreements. Toward that end, Albuquerque Public Schools provides appropriate training for staff and parents in skills and techniques of conflict prevention and management and dispute resolution. (6.31.2.13(G)(1) NMAC)

Albuquerque Public Schools shall utilize informal dispute resolution methods to resolve disagreements at the local level whenever practicable. (6.31.2.13(G)(2) NMAC)

Albuquerque Public Schools shall encourage parents to contact the principal first in an effort to resolve a conflict. If efforts to resolve the conflict at the campus level fail, Albuquerque Public Schools shall encourage parents to call the Special Education Department to be directed to appropriate district-level personnel.

To facilitate dispute prevention, as well as swift, early conflict resolution whenever possible, the New Mexico Public Education Department and the Albuquerque Public Schools shall ensure that the following range of dispute resolution options is available to parents:

- Informal dispute resolution option. If a disagreement arises between parents and Albuquerque Public Schools over a student's IEP or educational program, either the parents or Albuquerque Public Schools may convene a new IEP meeting at any time to attempt to resolve their differences at the local level, without state-level intervention.
- Informal dispute resolution option. If a disagreement arises between parents and Albuquerque Public Schools over a student's IEP or educational program, Albuquerque Public Schools may provide district personnel trained and experienced in facilitation to assist the student's IEP Team in resolving the conflict at the local level.
- Third-party assisted intervention. The Special Education Bureau of the Public Education Department ensures that mediation is available to parents and Albuquerque Public

Schools who request such third-party assisted intervention before filing a state-level complaint or a request for a due process hearing.

- Formal dispute resolution. A state-level complaint may be filed with the Special Education Bureau of the Public Education Department by the parents of a child, or by another individual or organization on behalf of a child. Once a complaint has been filed, the parties may agree to convene a FIEP meeting or mediation. To do so, Albuquerque Public Schools must (and the parent may) notify the Special Education Bureau in writing within 1 business day of reaching their decision to jointly request one of these alternative dispute resolution options.
- Formal dispute resolution. A request for a due process hearing may be filed by parents or their authorized representative, or by the Albuquerque Public Schools. A resolution session between the parties shall be convened by Albuquerque Public Schools following a request for a due process hearing, unless the parties agree in writing to waive that option or to convene a FIEP meeting or mediation instead.

(6.31.2.13(G)(2) NMAC)

The Special Education Bureau of the Public Education Department shall honor a request for mediation that:

- Is in writing;
- Is submitted to the Special Education Bureau of the Public Education Department;
- Is a mutual request signed by both parties or their designated representatives;
- Includes a statement of the matter(s) in dispute and a description of any previous attempts to resolve these matters at the local level; and
- Any request that does not contain all of these elements will be declined, with an explanation for the Special Education Bureau of the Public Education Department's decision and further guidance, as appropriate.

(6.31.2.13(G)(2)(b) NMAC)

Legal Cross Ref.:

6.31.2.13 NMAC

Administrative Procedure Cross Ref.:

Prior Written Notice

State-Level Complaint Procedures

Due Process Hearings

Effective: February 15, 2023

3J - STATE-LEVEL COMPLAINT PROCEDURES

Parents have the right to file a state-level complaint. For information on state-level complaints please refer to the Special Education Bureau of the Public Education Department.

Effective: February 15, 2023

3K - DUE PROCESS HEARINGS

Parents have the right to file for a due process hearing. For more information about how to file for a due process hearing, please refer to New Mexico Administrative Code (6.31.2.13(I)).

Effective: February 15, 2023

4 - FULL AND INDIVIDUAL EVALUATION

Initial Evaluation

Albuquerque Public Schools is required by federal regulations to conduct an initial evaluation of a child with a suspected disability before special education services are provided. This evaluation must take place within sixty (60) days of receiving consent to perform the evaluation. To comply with these regulations, Albuquerque Public Schools shall conduct a full and individual initial evaluation, in accordance with §300.305 and §300.306, before the initial provision of special education and related services to a child with a disability. (34 C.F.R. § 300.301(a))

The initial evaluation shall consist of procedures to:

- Determine if the child is a child with a disability under federal law (34 CFR §300.8) and
- Determine the educational needs of the child

(34 C.F.R. § 300.301(c) (2))

The sixty (60) day time frame for an initial evaluation shall begin when Albuquerque Public Schools receives the consent for evaluation. (71 Fed. Reg. 46636 (August 14, 2006))

Reevaluation of Children with a Disability

Albuquerque Public Schools may reevaluate a child with a disability if that reevaluation occurs not more than once a year, unless the parent and district agree otherwise. (34 C.F.R. § 300.303(b)(1))

Albuquerque Public Schools shall reevaluate a child with a disability at least once every three (3) years, unless the parent and the district agree that a reevaluation is unnecessary. (34 C.F.R. § 300.303(b)(2))

Albuquerque Public Schools shall ensure that a reevaluation of each child with a disability is conducted in accordance with § 300.304 through §300.311, which include:

- If the district determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- If the child's parent or teacher requests a reevaluation.

(34 C.F.R. § 300.303(a))

A reevaluation shall not be conditioned on the parent providing a reason for requesting a reevaluation. (71 Fed. Reg. 46640 (August 14, 2006))

If a parent requests a reevaluation and Albuquerque Public Schools disagrees that a reevaluation is needed, Albuquerque Public Schools shall provide prior written notice to the parent as set forth in the “Prior Written Notice” administrative procedure. (71 Fed. Reg. 46640 (August 14, 2006))

Children classified as developmentally delayed must be reevaluated no later than the school year in which they turn nine (9) years of age. When children become 10 years of age, they are no longer eligible as developmentally delayed. Depending on the results of the evaluation, a child may be determined to no longer qualify for services or may be found eligible for services under another eligibility category. (6.31.2 .10(F)(2)(b) NMAC)

Scope of Evaluations

In conducting an evaluation, Albuquerque Public Schools shall use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, which may assist in determining:

- Whether the child is a child with a disability under § 300.8 and
- The content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities)

(34 C.F.R. § 300.304(b) (1))

Albuquerque Public Schools shall ensure that when evaluating each child with a disability under §§ 300.304 through 300.306, the evaluation is sufficiently comprehensive to address all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c) (6))

Albuquerque Public Schools shall ensure that the child is assessed in all areas related to the suspected disability. This may include, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. This shall not be an exhaustive list of areas that must be assessed. Decisions regarding the areas to be assessed shall be determined by the suspected needs of the child. If a child’s behavior or physical status is of concern, evaluations addressing these areas shall be conducted. (71 Fed. Reg. 46643 (August 14, 2006))

The scope of an initial evaluation (if appropriate) and any reevaluation shall be determined by a review of existing evaluation data as set forth in federal regulation. (34 C.F.R. § 300.305)

Evaluation Assessments and Process

Albuquerque Public Schools shall 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. (34 C.F.R. § 300.304(b) (2))

Albuquerque Public Schools shall use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. (34 C.F.R. § 300.304(b) (3))

Albuquerque Public Schools shall select and administer assessments and other evaluation materials so as to not be racially or culturally discriminatory. (34 C.F.R. § 300.304(c)(1)(i))

Albuquerque Public Schools shall provide and administer tests in the child's native language or other mode of communication and in the form most likely to yield accurate information about what the child knows and can do academically, developmentally and functionally, unless it is clearly not feasible to do so. (34 C.F.R. § 300.304(c) (1) (ii))

Albuquerque Public Schools shall use assessments for the purposes for which the assessments or measures are valid and reliable. (34 C.F.R. § 300.304(c) (1) (iii))

Albuquerque Public Schools shall ensure that assessments and other measures are administered by trained and knowledgeable personnel. (34 C.F.R. § 300.304(c) (1) (IV))

Albuquerque Public Schools shall ensure that assessments are administered in accordance with the instructions provided by the producer of the assessments. (34 C.F.R. § 300.304(c) (1) (v))

Albuquerque Public Schools shall include assessments and other evaluation materials tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. (34 C.F.R. § 300.304(c) (2))

Albuquerque Public Schools shall select and administer assessments so as best to ensure that, if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or any other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure). (34 C.F.R. § 300.304(c) (3))

Albuquerque Public Schools shall ensure that the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. (34 C.F.R. § 300.304(c) (4))

When a child transfers from one district to another in the same school year, Albuquerque Public Schools shall coordinate with the other school district, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations. (34 C.F.R. § 300.304(c) (5))

Albuquerque Public Schools shall comply with the additional procedures, as appropriate, for determining the presence of a specific learning disability. (34 C.F.R. §§ 300.307 through 300.311)

Members of the Eligibility Determination Team

Within 60 calendar days of receiving parental consent, the Initial evaluation, and the written report will be completed. 6.31.2.10(F)(2) NMAC. APS 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(G)(4) NMAC. Upon completion of the administration of assessments and other evaluation measures, Albuquerque Public Schools will convene a team meeting to determine whether the child qualifies as a student in need of special education and related services. This Eligibility Determination Team (EDT) shall be comprised of a group of qualified professionals and the parent. (34 C.F.R. § 300.306 (1)). If the EDT is considering whether the child is a child with a specific learning disability (SLD), the EDT shall also include the child's regular education teacher. If the child for whom SLD is being considered does not have a regular education teacher, the EDT shall include a regular education teacher qualified to teach a child of his or her age. The EDT shall also include at least one person qualified to conduct educational evaluations such as a school psychologist, speech language pathologist, an educational diagnostician or remedial reading teacher. (34. C.F.R. § 300.308).

The district shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. (34 C.F.R. § 300.306 (a) (2)).

NM TEAM

The New Mexico Public Education Department has issued a guidance document entitled, New Mexico Technical Evaluation and Assistance Manual: Determining Eligibility for IDEA Part B Special Education Services (NM TEAM).

The NM TEAM presents a sustained effort to standardize evaluation and assessment procedures and eligibility criteria in every IDEA disability category across New Mexico. School districts are expected to attend to the recommendations that NM TEAM establishes.

Albuquerque Public Schools by reference in this administrative procedure, and through staff professional development (as appropriate), shall inform appropriate personnel of this guidance document. Albuquerque Public Schools shall utilize the guidance of NM TEAM.

Legal Cross Ref.:

34 C.F.R. § 300.301

34 C.F.R. § 300.303

34 C.F.R. § 300.304

34 C.F.R. § 300.305

34 C.F.R. § 300.306

34 C.F.R. § 300.308

71 Fed. Reg. 46636

71 Fed. Reg. 46640

71 Fed. Reg. 46643

6.31.2.10 NMAC

[New Mexico Technical Evaluation and Assistance Manual: Determining Eligibility for IDEA Part B Special Education Services](#)

Administrative Procedure Cross Ref.:

Prior Written Notice

Independent Education Evaluations

Effective: February 15, 2023

5 - DISABILITIES - EXCEPTIONALITIES

The New Mexico Public Education Department has issued a guidance document entitled, New Mexico Technical Evaluation and Assistance Manual: Determining Eligibility for IDEA Part B Special Education Services (NM TEAM).

The NM TEAM presents a sustained effort to standardize evaluation and assessment procedures and eligibility criteria in every IDEA disability category across New Mexico. School districts are expected to attend to the recommendations that NM TEAM establishes.

Albuquerque Public Schools, by reference in this administrative procedure and through staff professional development (as appropriate), shall inform appropriate personnel of this guidance document. Albuquerque Public Schools shall utilize the guidance of NM TEAM.

Specific Learning Disabilities

In the specific learning disability category, the expectations in NM TEAM establish the official New Mexico Public Education Department eligibility policy, to which the district is now required to adhere under the Final Regulations of the IDEA 2004.

Albuquerque Public Schools shall utilize NM TEAM's guidance for specific learning disabilities.

Albuquerque Public Schools by reference in this administrative procedure, and through staff professional development (as appropriate), shall inform appropriate personnel of these guidance documents. Albuquerque Public Schools shall comply with the Public Education Department's required elements and utilize its guidance.

Legal Cross Ref.:

[New Mexico Technical Evaluation and Assistance Manual: Determining Eligibility for IDEA Part B Special Education Services](#)

[Guidelines for Dual Discrepancy](#)

[How to Calculate Mean & Standard Deviation](#)

[Federal Rules and Regulations—Dual Discrepancy](#)

Effective: February 15, 2023

6A - IEP TEAM MEMBERSHIP AND PARTICIPANTS

When to Convene an IEP Team Meeting

An IEP Team meeting must be held to review the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved. (34 C.F.R. § 300.324(b)(1)(i))

The IEP Team must revise the IEP as appropriate to address:

- Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;
- The results of any reevaluation conducted under §300.303;
- Information about the child provided to, or by, the parents, as described under §300.305(a)(2) [review of existing evaluation data];
- The child's anticipated needs; or
- Other matters.

(34 C.F.R. § 300.324(b)(1)(ii))

Amending the IEP without a Meeting

After the annual IEP Team meeting for a school year, in making changes to a child's IEP the parent of a child with a disability and Albuquerque Public Schools may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. (34 C.F.R. § 300.324(a)(4)(i))

Albuquerque Public Schools designates the Special Education Instructional Manager as the individual with the authority to enter into such an agreement with the parent to amend the IEP without a meeting.

If the IEP is amended by agreement without convening an IEP Team meeting, Albuquerque Public Schools shall provide prior written notice to the parents of the amendments a reasonable time before Albuquerque Public Schools implements the amendments. (OSERS Questions and Answers on Individualized Education Programs, Evaluations, and Reevaluations, 47 IDELR 166 (January 1, 2007))

If changes are made to the child's IEP by agreement without a meeting, Albuquerque Public Schools shall ensure that the child's IEP Team is informed of those changes. (34 C.F.R. § 300.324(a)(4)(ii))

IEP Team Membership and Participants

The IEP Team Meeting Participants page of the IEP shall reflect the members of the IEP Team who were present and participated in the IEP Team meeting, and shall further provide the necessary documentation that the IEP Team meeting was duly constituted. The names of the

IEP Team meeting participants shall be typed as well as their participation reflected by their signature. The signature page shall be scanned into SIS.

Parents shall be invited to attend the IEP Team meeting using either the Parent Invitation to EDT/IEP Team Meeting form or the Parent Invitation to EDT/IEP Team Meeting for Transition form, as appropriate. Efforts to convince the parent to participate in an IEP Team meeting shall be documented via the events function of SIS.

If someone other than school official with a legitimate educational interest is invited to attend the meeting, Albuquerque Public Schools shall give notice and obtain parental consent to release confidential information, prior to the meeting, from the parent since confidential student information is shared during an IEP Team meeting, using the Notice for Consent to Release Confidential Information form.

Each IEP Team meeting shall be duly constituted, as follows:

The parents of the child;

- A representative of the public agency;
- Not less than one regular education teacher if the child is, or may be, participating in the regular education environment;
- Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- An individual who can interpret the instructional implications of evaluation results (who may be one of the other members of the team);
- The child, whenever appropriate, including if a purpose of the meeting will be the consideration of postsecondary goals for the child and the transition services needed to assist the child in reaching those goals; and
- When transition services will be considered, to the extent appropriate and with consent of the parent or adult student, a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(34 C.F.R. § 300.321(a))

A required member of an IEP Team shall comply with the “IEP Excusal of Members” administrative procedure if they will be absent for any part or all of an IEP Team meeting.

At the discretion of the parent or Albuquerque Public Schools, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate, may be invited to the IEP Team meeting. The determination of the knowledge or special expertise of the individual shall be made by the party (parents or Albuquerque Public Schools) who invited the individual to be a member of the IEP Team. (34 C.F.R. § 300.321(b) (6))

Albuquerque Public Schools shall invite an appropriate related service provider to attend an IEP Team meeting if the IEP Team is considering proposing related services, a change in related services, or discontinuation of related services; or obtain the related service provider’s input through other means.

Albuquerque Public Schools shall be responsible for determining the specific personnel to fill the roles for the required participants at the IEP Team meeting. For example, if the child has more than one regular education teacher, Albuquerque Public Schools will determine which regular education teacher will fill the role of regular education teacher at the IEP Team meeting. A parent shall not have a legal right to require other members of the IEP Team (e.g., the child's other regular education teacher(s)) to attend an IEP Team meeting. Therefore, if a parent/legal guardian invites other Albuquerque Public Schools personnel who are not designated by Albuquerque Public Schools to be on the IEP Team (including persons with knowledge or special expertise other than a required member), they are not required to attend. (71 Fed. Reg. 46674 (August 14, 2006)) If Albuquerque Public Schools personnel who are not designated by Albuquerque Public Schools to be on the IEP team choose to attend an IEP they shall be required to follow all appropriate leave policies and procedural directives for the time they are absent due to participation in the IEP.

Parents of the Child

Albuquerque Public Schools shall ensure parent participation in the IEP Team meeting including by providing the parent with a Parent Invitation to EDT/IEP Team Meeting form. If the IEP Team will discuss transition, Albuquerque Public Schools shall ensure parent participation in the IEP Team meeting by providing the parent with a Parent Invitation to EDT/IEP Team Meeting for Transition form. Efforts to convince the parent to participate in an IEP Team meeting shall be documented via the Student Contact Log of Synergy.

An IEP Team meeting may be conducted without a parent only when Albuquerque Public Schools is unable to convince a parent to participate in an IEP Team meeting. (71 Fed. Reg. 46679 (August 14, 2006))

Albuquerque Public School Representative

The principal, assistant principal, diagnostician, IEP specialist, and/or head teacher may serve as the Albuquerque Public School representative in an IEP Team meeting since these individuals have been determined by Albuquerque Public Schools to meet the following IDEA requirements:

- Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of the child;
- Is knowledgeable about the general curriculum; and
- Is knowledgeable about the availability of school district resources.

The individual assigned to serve as the Albuquerque Public Schools representative in an IEP Team meeting shall have the authority to commit Albuquerque Public Schools resources and shall be able to ensure that whatever services are described in the IEP will be provided. Albuquerque Public Schools recognizes that the principal, assistant principal, diagnostician, IEP specialist, or head teacher serving as the Albuquerque Public Schools representative in an IEP

Team meeting has the authority to commit Albuquerque Public Schools resources. (71 Fed. Reg. 46671 (August 14, 2006))

Regular Education Teacher

If the child has more than one regular education teacher, Albuquerque Public Schools shall determine which particular teacher or teachers are a member of the IEP Team. The regular education teacher must be a teacher of the child, unless the child does not have a regular education teacher. (71 Fed. Reg. 46670 (August 14, 2006))

Special Education Teacher/Provider of the Child

The special education teacher or provider shall be a special education teacher or provider of the child, unless the child has not been receiving special education services. If the child has more than one special education teacher or provider, Albuquerque Public Schools shall determine which particular teacher or teachers is a member of the IEP Team. The special education teacher or provider who is a member of the child's IEP Team may be the person who is, or will be, responsible for implementing the IEP. For example, if the child's disability is a speech impairment, the special education teacher or special education provider could be the speech language pathologist. (71 Fed. Reg. 46670 (August 14, 2006))

Individual Who Can Interpret the Instructional Implications of Evaluation Results

The individual who can interpret the instructional implications of evaluation results may be one of the other members of the IEP Team. If an IEP Team member is serving in this dual capacity, that member shall designate his/her dual capacity by recording his/her name on the IEP Team Meeting Participants page next to each of his or her roles. (34 C.F.R. § 300.321(a)(5))

Generally, a special education teacher, IEP specialist, diagnostician, or speech language pathologist is qualified to interpret the instructional implications of evaluation results.

"An individual who is qualified to conduct a particular assessment may not necessarily have the skills or knowledge to assist the IEP Team in determining the special education, related services, and other supports that are necessary for the child to receive FAPE." (71 Fed. Reg. 46670 (August 14, 2006))

Therefore, an individual who is qualified to interpret the instructional implications of evaluation results does not have to be qualified to conduct the underlying diagnostic assessments.

Child with a Disability

Generally, a child with a disability should attend the IEP Team meeting if the parent decides that it is appropriate for the child to do so. If possible, Albuquerque Public Schools and the parent may discuss the appropriateness of the child's participation before a decision is made, in order to help the parent determine whether or not the child's attendance would be helpful in

developing the IEP or directly beneficial to the child, or both. (71 Fed. Reg. 46671 (August 14, 2006))

Albuquerque Public Schools shall invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the post-secondary goals for the child and the transition services needed to assist the child in reaching those goals, regardless of whether the child has reached the age of majority. (34 C.F.R. § 300.321(b)(1))

However, until the child reaches the age of majority under New Mexico law, unless the rights of the parent to act for the child are extinguished or otherwise limited, only the parent has the authority to make educational decisions for the child under the IDEA, including whether the child should attend an IEP Team meeting. (71 Fed. Reg. 46671 (August 14, 2006))

Outside Agencies and Transition Services Participants

If Albuquerque Public Schools wishes to invite officials from an outside agency, Albuquerque Public Schools shall obtain parental consent, as set forth in the Albuquerque Public Schools "Consent" administrative procedure, for the individual to participate in the IEP Team meeting because confidential information about the child from the child's education records would be shared at the meeting. (71 Fed. Reg. 46669 (August 14, 2006))

Albuquerque Public Schools shall invite an outside agency, or agencies, as appropriate, to an IEP Team meeting during which transition services for the student will be discussed. In determining whether to invite an outside agency to an IEP Team meeting, Albuquerque Public Schools may consider such factors as whether a purpose of the IEP Team meeting will be the consideration of the post-secondary goals for the child and the transition services needed to assist the child in reaching those goals; and whether there is a participating agency likely to be responsible for providing or paying for the child's transition services. The decision of whether it would be appropriate to invite outside agencies rests with Albuquerque Public Schools and the parents or the child who has reached the age of majority, provided that the parents or the child who has reached the age of majority consents to the invitation. If the parent, or the child who has reached the age of majority, refuses to consent, Albuquerque Public Schools shall not invite a representative of that agency to attend the child's IEP Team meeting. (OSEP Letter to Caplan (March 17, 2008); OSEP Letter to Gray (March 17, 2008); 34 CFR §300.320(b); 71 Fed. Reg. 46672 (August 14, 2006))

Legal Cross Ref.:

New Mexico Technical Evaluation and Assistance Manual: Determining Eligibility for IDEA Part B Special Education Services <

<https://webnew.ped.state.nm.us/wp-content/uploads/2018/02/NM-TEAM-Technical-Evaluation-and-Assessment-Manual.pdf>>

71 Fed. Reg. 46669

71 Fed. Reg. 46670

71 Fed. Reg. 46671

71 Fed. Reg. 46672

71 Fed. Reg. 46674
71 Fed. Reg. 46679
34 CFR §300.320
34 C.F.R. § 300.321

Administrative Procedure Cross Ref.:
Consent

Effective: February 15, 2023

6B - EXCUSAL OF IEP TEAM MEMBERS

The IEP Team shall follow all applicable district policies and administrative procedures in regard to IEP Team membership. The IEP Team Meeting Participants page of the IEP reflects the signatures of the members of the IEP Team who were present and participated in the meeting, and further provides the necessary documentation that the IEP Team meeting was duly constituted.

A required member, also known as a member who is subject to excusal requirements, of an IEP Team shall comply with the provisions of this administrative procedure if they will be absent for any part or all of an IEP Team meeting. Albuquerque Public Schools shall document its compliance with these procedures through the IEP Attendance form.

The IEP Input form shall be used by the regular education teacher for providing written input submitted to the IEP Team and the parent prior to the meeting. If the student is an elementary school student, the elementary level version shall be used. If the student is a middle or high school student, the secondary-level version shall be used.

In Albuquerque Public Schools, the person who serves as the Albuquerque Public Schools representative in the IEP Team meeting in question shall be the individual who has the authority to “agree” or “consent” to an excusal of a required member on behalf of Albuquerque Public Schools. (71 Fed. Reg. 46676 (August 14, 2006))

Discretionary Members Not Subject to Excusal Requirements

If more than one of the above-required members within a particular category is in attendance at the IEP Team meeting, the excusal requirements of parental consent or agreement do not apply to the additional member. For example, if there are two regular education teachers at the IEP Team meeting, as long as one of the regular education teachers stays for the entire duration of the meeting, the other regular education teacher can be excused at any time without parental agreement or consent. (34 C.F.R. § 300.321(e) (1))

Similarly, the excusal requirements of parental agreement or consent do not apply to an individual who is invited to attend the IEP Team meeting at the discretion of the parent or the district. (71 Fed. Reg. 46675 (August 14, 2006))

If one of these individuals is not present, or cannot stay for the entire meeting, the IEP Team meeting may proceed without the member.

Required Members Subject to the Excusal Requirements Who May be Excused under these Administrative Procedures

For an IEP Team meeting to be duly constituted, the following IEP Team members shall be present during the entire IEP Team meeting unless excused in accordance with the IDEA:

- Not less than one regular education teacher if the child is, or may be, participating in the regular education environment; and
- Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child.

(34 C.F.R. § 300.321(a))

Excusal from an IEP Team meeting of the above-required members refers to releasing the required member from attending the entire meeting, or granting the required member permission to leave before the meeting has ended. The criteria for excusal shall be fully satisfied even when the member is seeking permission to leave during the meeting. If the criteria for excusal set forth below are not satisfied, then the IEP Team meeting shall not proceed without the required member.

Required Members Who May Not Be Excused Under these Administrative Procedures

An Albuquerque Public Schools' representative and an individual who can interpret the instructional implications of evaluation results (who may be one of the other members of the committee) also are required members; and therefore, shall be present during the entire IEP Team meeting. The Albuquerque Public Schools' representative may be the principal, assistant principal, diagnostician, IEP specialist or head teacher. See the "IEP Membership" administrative procedure. Albuquerque Public Schools shall not permit the Albuquerque Public Schools' representative or the individual who can interpret the instructional implications of evaluation results (who may be one of the other members of the committee) to be excused from the IEP Team meeting. If an Albuquerque Public Schools' representative and an individual who can interpret the instructional implications of evaluation results are not present, then the IEP Team meeting shall not proceed without the required member.

Types of Excusal

There are two different types of excusal. The first type of excusal (34 C.F.R. § 300.321(e) (1)) requires parental agreement; the other type of excusal (34 C.F.R. § 300.321(e) (2)) requires parental consent. Albuquerque Public Schools shall not eliminate the different procedures for the different types of excusals because the IDEA clearly differentiates between circumstances in which parental consent is required and when an agreement is required to excuse an IEP Team member from attending an IEP Team meeting. (34 C.F.R. § 300.321(e)(1) and (e)(2); 71 Fed. Reg. 46673 (August 14, 2006))

Excusal of required IEP Team members shall not occur on a routine basis. "Allowing IEP Team members to be excused from attending an IEP Team meeting is intended to provide additional flexibility to parents in scheduling IEP Team meetings and to avoid delays in holding an IEP Team meeting when an IEP Team member cannot attend due to a scheduling conflict." (71 Fed. Reg. 46673 (August 14, 2006))

Type 1: Excusal for Which Parent Agreement is Required

When an IEP Team member's area of the curriculum or related services is not being modified or discussed, the required member (regular education teacher, special education teacher or provider of the child) may be excused from all or a portion of the meeting if the following criteria are met:

- Albuquerque Public Schools' representative and parent agree that the member's attendance is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting; and
- The agreement is in writing.

(34 C.F.R. § 300.321(e) (1))

The law affords Albuquerque Public Schools wide latitude with respect to the content of the agreement. Albuquerque Public Schools shall utilize the IEP Attendance form to assure that the criteria for this type of excusal have been met. (71 Fed. Reg. 46674 (August 14, 2006))

Type 2: Excusal for Which Parent Consent is Required

When an IEP Team member's area of the curriculum or related services is being modified or discussed, the required member (regular education teacher, special education teacher or provider of the child) may be excused from all or a portion of the meeting if the following criteria are met:

- Albuquerque Public Schools representative and parent consent to the excusal;
- The parent's consent is in writing and satisfies the requirements of informed consent; and
- The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(34 C.F.R. § 300.321(e) (2))

Albuquerque Public Schools shall acquire the parental consent for the excusal of a member who is subject to excusal requirements. The consent shall satisfy the IDEA requirements of informed consent. This means that Albuquerque Public Schools shall "provide the parent with appropriate and sufficient information to ensure that the parent fully understands that the parent is consenting to excuse an IEP Team member from attending an IEP Team meeting in which the member's area of the curriculum or related services is being changed or discussed and that if the parent does not consent the IEP Team meeting must be held with that IEP Team member in attendance." (71 Fed. Reg. 46674 (August 14, 2006))

Albuquerque Public Schools shall utilize the IEP Attendance form for obtaining the parent's consent for an excusal.

In order to be excused from the meeting in whole or in part, the member shall submit to the parent and the IEP Team written input into the development of the IEP prior to the meeting. The regular education teacher shall complete and provide the IEP Input form to the IEP Team members including the parent in advance of the meeting if he/she is excused. The special education teacher or provider of the child is expected to give the IEP Team members including the parent his/her draft IEP generated in Synergy in advance of the meeting if he/she is excused.

Excused members shall document the fact that the parent and the IEP Team were provided written input in advance of the IEP Team meeting and that documentation shall be presented to the Albuquerque Public Schools representative before the IEP Team meeting begins.

Timelines

The U.S. Department of Education has declined to regulate the timelines for obtaining parental agreement or consent for the excusal of a member because IDEA does not specify how far in advance of an IEP Team meeting a parent shall be notified of the district's request to excuse a member from attending an IEP Team meeting. IDEA also does not specify when a parent must sign a written agreement or provide consent to excuse an IEP Team member.

Legal Cross Ref.:

71 Fed. Reg. 46673

71 Fed. Reg. 46675

71 Fed. Reg. 46676

34 C.F.R. § 300.321

Administrative Procedure Cross Ref.:

Consent

Effective: February 15, 2023

6C - SPECIAL FACTORS

Considerations while Developing an IEP In developing an IEP for a child with a disability, the IEP Team shall:

- In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
- Consider the communication needs of the child;
- In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
- In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

- In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
- Consider whether the child needs assistive technology devices and services.

(34 C.F.R. § 300.324(a) (2))

Consideration of Special Factors Documentation

The Consideration of Special Factors section (page 1 of the IEP) shall provide the necessary documentation that the IEP Team considered the special factors when developing the child's IEP.

For children with limited English proficiency, the IEP Team further shall document its consideration of special factors on the Alternative Language Services (ALS) Considerations form.

For children who are deaf or hard of hearing, the IEP Team further shall document its consideration of special factors on the Considerations for a Student Who is Deaf or Hard of Hearing form.

For children who are blind or visually impaired, the IEP Team further shall document its consideration of special factors on the Considerations for a Student Who is Blind or Visually Impaired form.

With respect to the special factor of assistive technology, if the IEP Team determines that the student requires assistive technology devices and services (by checking "yes" to the Special Factors question regarding the need for assistive technology), the IEP Team shall document its determinations on the Assistive Technology Consideration Guide for IEP Teams form and include this document as part of the IEP.

With respect to the special factor of behavior, Albuquerque Public Schools shall consider the NMPED Guidance Document Addressing Student Behavior: A Guide for Educators (revised September 2005), to the extent such guidance is consistent with the IDEA and its implementing regulations, state statutes and regulations, and does not impose a requirement that is not otherwise imposed by federal and/or state law.

If, as part of its consideration of special factors, the IEP Team determines that additional evaluation is needed, the applicable supplemental forms shall be completed.

Behavior

In the case of a child whose behavior impedes the child's learning or that of others, the IEP Team shall consider the use of positive behavioral interventions and supports, and other

strategies, to address that behavior including, as appropriate, by conducting a functional behavioral assessment (FBA) and developing a behavior intervention plan (BIP).

Albuquerque Public Schools strongly encourages IEP Teams to conduct FBAs and integrate BIPs into the IEPs for students who exhibit problem behaviors well before the behaviors result in proposed disciplinary actions for which FBAs and BIPs are required under the federal regulations. (6.31.2.11(F) (1) NMAC)

The child's unique needs shall be paramount importance in determining what behavioral interventions and supports, or behavioral management strategies, are appropriate for a child with a disability and shall be included in the child's IEP. Therefore, FBAs are an ongoing process. (OSEP Letter to Anonymous (March 17, 2008))

The focus of the special factor of behavior shall be on interventions and strategies, not assessments, to address the needs of a child whose behavior impedes the child's learning or that of others. Therefore, while conducting an FBA typically precedes developing positive behavioral intervention strategies, the IEP Team determines, as part of its consideration, whether an FBA is necessary to develop interventions and strategies to address the child's behavior. (71 Fed. Reg. 46683 (August 14, 2006))

Communication Needs of the Child

For each child with a disability, the IEP Team shall consider the communication needs of the child. (34 C.F.R. § 300.324(a) (2) (IV))

For a child with limited English proficiency, the IEP Team shall consider and address, as appropriate, the child's inability to speak or understand English. Albuquerque Public Schools does provide both alternative language services and special education to students who need them. (OCR Memorandum to Senior Staff (September 27, 1991))

Children who are Blind or Visually Impaired

Instruction in Braille shall be provided unless the IEP Team determines that instruction in Braille or the use of Braille is not appropriate for the child. In making this determination, the IEP Team shall consider an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille). IDEA does not require a clinical low vision evaluation. Whether a clinical low vision evaluation is conducted is a decision that shall be made by the child's IEP Team. These considerations are documented on the Considerations for a Student who is Blind or Visually Impaired form. The resulting decisions shall be integrated in the IEP as appropriate. (71 Fed. Reg. 46683-46684 (August 14, 2006))

Children who are Deaf or Hard of Hearing

For a child who is deaf or hard of hearing, the IEP Team shall consider the child's language and communication needs, opportunities for direct communications with peers and professional

personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode. These considerations shall be documented on the Considerations for a Student who is Deaf or Hard of Hearing form. The resulting decisions shall be integrated in the IEP as appropriate. (34 C.F.R. § 300.324(a)(2)(iv))

Assistive Technology Devices and Services

With respect to the special factor of assistive technology, the IEP Team shall document its consideration on the Assistive Technology Consideration Guide for IEP Teams form (as part of the IEP).

The IEP Team shall determine whether a child needs an assistive technology device or assistive technology service in order to receive FAPE. Assistive technology may be required as a part of the child's special education, related services, or supplementary aids and services. The IEP Team shall comply with the "IEP Special Education and Related Services" administrative procedure and the "IEP Supplementary Aids and Services" administrative procedure. (71 Fed. Reg. 46547 (August 14, 2006); 34 C.F.R. § 300.105(a))

This determination regarding whether a child needs assistive technology may be made based on existing evaluation data. However, the IEP Team may also propose a reevaluation, including an assistive technology evaluation, if necessary to determine the child's need for assistive technology devices and services as part of FAPE.

When an IEP Team proposes to conduct an assistive technology evaluation, the following forms must be completed:

- Parent Prior Written Notice of Reevaluation;
- Consent for Multidisciplinary Special Education Evaluation; and
- Assistive Technology Evaluation Referral Form.

The IEP shall include a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child. This shall include any assistive technology devices and services determined by the IEP Team to be needed by the child in order for the child to receive a FAPE. (71 Fed. Reg. 46685 (August 14, 2006))

Related services shall not include a medical device that is surgically implanted (including those used for breathing and nutrition), the optimization of that device's functioning (e.g. mapping), maintenance of that device, or the replacement of that device. (34 C.F.R. §300.34(b)(1); 71 Fed. Reg. 46547 (August 14, 2006))

When an IEP Team determines a child requires access to an assistive technology device in a non-school setting in order to receive a FAPE, Albuquerque Public Schools shall allow the device to go with the child to the non-school setting, including the child's home if necessary. (Appendix A to IDEA 1997 Regulations, 34 C.F.R. Part 300, Question 35)

Children with Autism Spectrum Disorders

The eleven strategies below shall be considered by the IEP team in developing the IEP for a child with autism spectrum disorders (ASD) eligible for special education services under 34 CFR Sec. 300.8(c)(1):

- extended educational programming;
- daily schedules reflecting minimal unstructured time and reflecting active engagement in learning activities;
- in-home and community-based training or viable alternatives to such training that assist the student with acquisition of social or behavioral skills;
- positive behavior support strategies based on relevant information;
- futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments;
- parent or family training and support, provided by qualified personnel with experience in ASD;
- suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social or behavioral progress based on the child's developmental and learning level and that encourages work towards individual independence;
- communication interventions, including communication modes and functions that enhance effective communication across settings;
- social skills supports and strategies based on social skills assessment or curriculum and provided across settings;
- professional educator and staff support; and
- teaching strategies based on peer reviewed, research-based practices for students with ASD.

The IEP team shall document consideration of the strategies. These considerations shall be documented on the Autism Considerations form. The strategies must be based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed to provide FAPE, addressed in the IEP.

Legal Cross Ref.:

71 Fed. Reg. 46547

71 Fed. Reg. 46683

71 Fed. Reg. 46684

71 Fed. Reg. 46685

34 C.F.R. §300.34

34 C.F.R. § 300.105

34 CFR §300.300

34 C.F.R. § 300.324

6.31.2.11 NMAC

[Addressing Student Behavior: A Guide for Educators](#)

Appendix A to IDEA 1997 Regulations, 34 C.F.R. Part 300, Question 35

Administrative Procedure Cross Ref.:

Special Education and Related Services

Supplementary Aids and Services

Effective: February 15, 2023

6D - STUDENT PROFILE

The Student Profile section of the IEP shall reflect the IEP Team's consideration of information necessary for the development of an IEP. In developing each child's IEP, the IEP Team shall consider: The strengths of the child; The concerns of the parents for enhancing the education of the child; The results of the initial or most recent evaluation of the child; and The academic, developmental, and functional needs of the child. (34 C.F.R. § 300.324(a) (1))

Legal Cross Ref.:

34 C.F.R. § 300.324

Effective: February 15, 2023

6E - TRANSITION SERVICES

Albuquerque Public Schools shall integrate transition planning into the IEP process. The Transition Services section of the IEP includes the results of transition assessment, the student's post-secondary goals and course of study, and coordinated set of activities. However, transition services also shall be incorporated throughout the IEP including in the annual goals, special education and related services. (6.31.2.11(G) (2) NMAC)

Albuquerque Public Schools believes that appropriate post-secondary transition planning for children with disabilities is essential. (6.31.2.11(G) (2) NMAC)

When Transition Must Be Addressed as Part of the IEP

Transition services shall be addressed by the IEP Team beginning not later than the first IEP to be in effect when the child turns fourteen (14), or younger if determined appropriate by the IEP Team, and updated annually, thereafter. (34 C.F.R. § 300.320(b); 6.31.2.11(G) (3) NMAC)

Post-Secondary Goals

The IEP shall include appropriate measurable post-secondary goals based upon age appropriate transition assessments related to:

- Training;
- Education;
- Employment; and
- Where appropriate, independent living skills.

(34 C.F.R. § 300.320(b) (1); 6.31.2.11(G) (3) (a) NMAC)

"The only area in which post-secondary goals are not required in the IEP is in the area of independent living skills. Goals in the area of independent living are required only if appropriate.

It is up to the child's IEP Team to determine whether IEP goals related to the development of independent living skills are appropriate and necessary for the child to receive FAPE." (71 Fed. Reg. 46668 (August 14, 2006))

The IDEA does not provide an exception for the requirement to include employment goals in the IEP based on the nature of the child's disability; and OSEP does not have the authority to waive this statutory requirement. Therefore, the determination of what postsecondary goals to include on a child's IEP must be individualized and may not be based on whether the child has a severe medical condition and developmental needs. (OSEP Letter to Heath (August 21, 2009))

The student's IEP must include coordinated and measurable annual IEP goals and transition services that will reasonably enable the student to meet the post-secondary goals documented in the Transition Services section of the IEP.

"Regarding postsecondary goals related to training and education, the IDEA and its implementing regulations do not define the terms "training" and "education." However, the areas of training and education can reasonably be interpreted as overlapping in certain instances. In determining whether postsecondary goals in the areas of training and education overlap, the IEP Team must consider the unique needs of each individual student with a disability in light of his or her plans after leaving high school. If the IEP Team determines that separate postsecondary goals in the areas of training and education would not result in the need for distinct skills for the student after leaving high school, the IEP Team can combine the training and education goals of the student into one or more postsecondary goals addressing those areas." Questions and Answers On Individualized Education Programs (IEPs), Evaluations, and Reevaluations (OSERS, Revised September 2011).

Transition Services

The IEP shall include the transition services (including courses of study) needed to assist the child in reaching the child's post-secondary goals. (34 C.F.R. § 300.320(b) (2)) Please refer to the "Definitions" subsection of these administrative procedures for additional information on what transition services include.

Transition services for children with disabilities may be:

- Special education, if provided as specially designed instruction; or
- A related service, if required to assist a child with a disability to benefit from special education.

(34 C.F.R. § 300.43(b); 6.31.2.11(G) (2) (d) NMAC)

Notifying the Student of Rights That Will Transfer at Age of Majority

The IEP shall include a statement that the child has been informed of the child's rights under the IDEA that will transfer to the child on reaching the age of majority. Through Synergy, the IEP for each child with a disability in Albuquerque Public Schools automatically provides the following statement for all students age fourteen (14) and older:

When you turn 18, all of the rights described in the Parent and Child Rights in Special Education: Procedural Safeguards Notice document will transfer to you. You will be responsible for signing consent forms and accepting or refusing services offered during your IEP Team meetings. However, your parent (or guardian) will continue to receive Prior Written Notices of Actions proposed or rejected.

(6.31.2.11(G) (3) (c) NMAC)

Aging Out

Students eligible for special education services are entitled to a FAPE through age twenty-one (21). If a student turns twenty-two (22) during the school year, the student shall be allowed to complete the school year. If a student turns twenty-two (22) prior to the first day of the school year, the student shall no longer eligible to receive special education services. (6.29.1.9(J) (13) (o) NMAC; 6.31.2.11(G) (6) NMAC)

Legal Cross Ref.:

34 C.F.R. § 300.43

34 C.F.R. § 300.320

6.29.1.9 NMAC

6.31.2.11 NMAC

Administrative Procedure Cross Ref.:

Graduation Planning

Effective: February 15, 2023

6F - GRADUATION PLANNING

Graduation plans shall be a part of all IEPs as follows:

- By the end of eighth grade, or by the time the student turns fourteen (14) years of age, and concurrent with the development of the student's transition plan in accordance with federal regulations;
- When a student returns to a school after an extended absence, and if an IEP program of study may have been developed but needs to be reviewed; or
- When evaluations warrant the need for a modified program of study at any time after development of an initial graduation plan.

6.29.1.9(J)(13)(m) NMAC.

Graduation plans shall be a part of all IEPs and annual reviews, and shall follow the student in all educational settings. 6.29.1.9(J)(13)(m) NMAC.

The graduation plan shall be integrated into the transition planning and services. 6.31.2.11(G)(1) NMAC

Graduation plans shall include:

- The course of study;
- Projected date of graduation; and
- if the child is not on target for the graduation plan, the strategies and responsibilities of the public agency, child, and family shall be identified in the IEP.

6.31.2.11(G)(1)(a) NMAC.

All IEPs shall provide a description of how the student's progress toward meeting annual goals and graduation requirements will be measured, and at what intervals progress will be reported to parents or guardians. 6.29.1.9(J)(13)(a) NMAC.

The IEP team shall document on the IEP the student's progress toward earning required graduation credits and passing the current graduation examination. 6.29.1.9(J)(13)(e) NMAC

Graduation options for children with disabilities shall align with state standards and benchmarks when appropriate. 6.31.2.11(G)(1)(b) NMAC and 6.29.1.9(J) (13) NMAC.

All IEP Team discussion points and decisions identified related to graduation, including the identification of the student's program of study and any student or parent proposals accepted or rejected by the IEP Team (if the student has not reached the age of majority), shall be documented on the student's IEP and in the Prior Written Notice (PWN) of proposed action. 6.29.1.9(J)(13)(b) NMAC.

Graduation Options

A student may be awarded a diploma using any of the following programs of study:

- A standard program of study;
- A modified; or
- An ability program of study (for students who have significant cognitive disabilities or severe mental health issues).

Departures from the standard program of study for students receiving special education services and supports shall be considered by the IEP Team in the above order of the options.

Each option is further described in 6.29.1.9(J)(13)(b) NMAC. For additional guidance, see NMPED's [Graduation Options for Students with Disabilities Technical Assistance Manual](#) (Revised January 2021).

Graduation Examination

Students graduating on the standard program of study shall meet the state's minimum requirements on all sections of the graduation examination. IEP teams shall document a plan of action on the IEP and the PWN to be carried out by both the student and the district or charter school, to ensure that the student will pass all sections of the graduation examination.

6.29.1.9(J) (13)(g) NMAC.

A student on the modified program of study shall take the current state standards-based assessments required for high school students, under standard administration or with state-approved accommodations as determined by the SEA. Once the student has attempted the state required high school assessments, the student shall achieve a level of competency pre-determined by the student's IEP team on the current state-approved demonstration of competency options for graduation. 6.29.1.9(J) (13)(b)(ii) NMAC.

A student on the ability program of study shall take either the current state standards-based assessments required for high school students, under standard administration or with state-approved accommodations, or the state-approved alternate assessment. Once the student has participated in the state-required high school assessments, the student shall achieve a level of competency pre-determined by the student's IEP team on the current state-approved demonstration of competency options for graduation and meet all other graduation requirements established by the IEP team. 6.29.1.9(J) (13)(b)(ii) NMAC.

For students on the modified program of study or the ability program of study to establish a level of proficiency on the current graduation examination or the state-approved alternate assessment, the IEP Team shall:

- Review the student's performance on the first attempt, and establish a targeted proficiency on all sections that are below the state's minimum requirement;
- For those students who meet participation criteria for the New Mexico alternate assessment, set targeted levels of proficiency based upon previous performance on the test;
- If the student has previously been administered the New Mexico alternate assessment and has achieved an advanced level of overall performance, arrange for the student to participate in the general graduation examination, and identify appropriate accommodations that the student may require; and
- Document the targeted levels of proficiency on the IEP and the PWN, outlining the plan of action to be taken by both the student and APS to ensure that the student will meet the targeted levels of proficiency.

6.29.1.9(J)(13)(h) NMAC.

APS may submit a written request for a waiver to the Secretary of Education in cases where a student has medical or mental health issues that may result in regression or that negatively influence the student's ability to achieve targeted levels of proficiency. The written request shall be signed by the superintendent and must include documentation of the medical or mental health issues. 6.29.1.9(J)(13)(h) NMAC

Changes in Programs of Study

Any modified program of study may depart from a standard program of study only so far as is necessary to meet an individual student's educational needs as determined by the IEP team. 6.29.1.9(J)(13)(i)(iii) NMAC.

The IEP team **shall not** change the program of study for a student entering the final year of high school (not the cohort with which the student entered high school) from the standard program of

study to the modified program of study, nor from the modified program of study to the ability program of study, after the 20th school day of the final year of high school. 6.29.1.9(J)(13)(i)(iii) NMAC.

IEP teams *may* change a student's program of study from the ability program of study to the modified program of study, or from the modified program of study to the standard program of study, if:

- the student meets the graduation requirements of that program of study; and
- if the change is made and documented appropriately in a revised IEP and PWN by a properly constituted IEP team in a properly convened meeting.

6.29.1.9(J)(13)(i)(iii) NMAC.

Albuquerque Public Schools shall document changes from the standard program of study on the Prior Written Notice. 6.29.1.9(j)(13)(i)(ii) NMAC. When making changes from the standard program of study, the IEP Team shall:

- Identify the reasons for changing the student's program of study;
- Provide parents with clear concise explanations of the modified or ability programs of study;
- Notify the parents and student of the potential consequences that may limit the student's postsecondary options; and
- Make required changes to the IEP and course of study, to ensure that the student meets the requirements of that program of study.

6.29.1.9(J)(13)(i)(ii) NMAC.

Determining Completion of a Planned Program of Study

The IEP Team shall determine whether the student has completed a planned program of study based on the student's strengths, interests, preferences, identified educational and functional needs, and long-term educational or occupational goals, making the student eligible to receive either a diploma or a conditional certificate of transition. 6.29.1.9(J)(13)(a) NMAC.

A student shall be awarded a diploma upon completion of a planned program of study.

6.29.1.9(J)(13)(b) NMAC.

Requests for waiver of the physical education graduation requirement must be submitted to the Secretary of Education in accordance with the requirements of 6.29.1.9(J)(12) NMAC. Such requests may be submitted by the local superintendent or charter school administrator (as applicable) or the student.

At the exit IEP Team meeting, the IEP Team shall:

- Review the student's transition plan;
- Confirm and document that all state and district requirements for graduation under the final IEP have been satisfied;
- Have a building administrator who has knowledge about the student be a member of this IEP Team;

- Have the building administrator, who is a member of the IEP Team sign specifically to verify and accept completed graduation plans, goals and objectives; and
- Ensure that the student has current and relevant evaluations, reports or other documentation necessary to support a smooth and effective transition to post-secondary services, including arranging for any necessary information to be provided at no cost to the student or parents.

6.29.1.9(J)(13)(o) NMAC.

When a student with an IEP graduates with a high school diploma or reaches the maximum age for special education services, the student shall be presented with a summary of student's academic achievement and functional performance ("Summary of Performance"), which shall include recommendations on how to assist the student in meeting post-secondary goals .

6.29.1.9(J)(13)(f) NMAC

Each high school shall submit a list of students who will receive a diploma through a career readiness or ability program of study to the APS superintendent, using the students' identification numbers. This list shall be totaled and submitted to the APS' Board of Education. This information shall be treated as confidential in accordance with the FERPA.

6.29.1.9(J)(13)(b)(i) NMAC.

Students with disabilities who graduate from high school with a regular diploma through the standard program of study are no longer entitled to FAPE or continued receipt of special education and related services. 6.29.1.9(J)(13)(o) NMAC.

Any special education student who obtains a diploma through the modified or ability programs of study may choose to exit high school after receiving the diploma but continues to have an entitlement to FAPE. A student may elect to resume their high school education at their school district of residence until student either meets the requirements to obtain a diploma through the standard program of study or until the end of the academic year in which the student becomes 22 years of age. 6.29.1.9(J)(13)(d) NMAC.

All diplomas awarded by APS or one of its locally-authorized charter schools shall be identical in appearance, content and effect, except that symbols or notations may be added to students' diplomas to reflect official school honors or awards earned by students. 6.29.1.9(J)(13)(q) NMAC.

At least one year prior to a student's anticipated graduation, if the student is to receive a regular high school diploma, both the parent/guardian and the student shall receive written notification that eligibility for APS Special Education services ends following the granting of the diploma. The parent/guardian or student may request an IEP meeting to review the recommendation that the student receive a high school diploma and graduate.

Conditional Certificate of Transition

A conditional certificate of transition shall permit the student to participate in graduation activities. 6.29.1.9(J)(13)(a) NMAC. If a student receives a conditional certificate of transition,

the student shall then return to the program specified in the IEP to complete the student's secondary program and meet the requirements for a diploma. (6.29.1.9(J) (13) (a) NMAC)

A student who receives special education services may be granted a conditional certificate of transition in the form of a continuing or transition IEP if the following criteria have been met:

- the IEP team provides sufficient documentation and justification that the issuance of a conditional certificate of transition for an individual student is warranted;
- prior to the student's projected graduation date, the IEP team provides a PWN stating that the student will receive a conditional certificate of transition;
- the district or charter school ensures that a conditional certificate of transition is not a program of study and does not end the student's right to a FAPE;
- the district or charter school ensures that a conditional certificate of transition entitles a student who has attended four years or more of high school to participate in graduation activities, and requires that the student continue receiving special education supports and services needed to obtain the high school diploma;
- the district or charter school ensures that, prior to receiving a conditional certificate of transition, the student has a continuing or transition IEP;
- the student's continuing or transition IEP outlines measures, resources, and specific responsibilities for both the student and the district or charter school to ensure that the student receives a diploma.

6.29.1.9(J)(13)(j) NMAC.

A student who receives a certificate of transition but does not return to complete the program of study as outlined in the continuing or transition IEP **will not** be considered a dropout.

6.29.1.9(J)(13)(k) NMAC.

A student who receives a conditional certificate of transition is eligible to continue receiving special education services until receipt of a diploma or until the end of the academic year in which the student becomes twenty-two (22) years of age. 6.29.1.9(J) (13) (l) NMAC.

Prior to the student's receipt of a conditional certificate of transition or graduation with a diploma obtained through the modified or ability programs of study, APS must issue a prior written notice indicating that the student continues to be entitled to receive FAPE until either student meets the requirements to obtain a diploma through the standard program of study or until the end of the academic year in which the student becomes 22 years of age. 6.31.2.11(G)(1)(d) NMAC.

Legal Cross Ref.:

6.29.1.9 NMAC

6.31.2.11 NMAC

Effective: February 15, 2023

Revised: August 3, 2023

6G - PRESENT LEVELS OF ACADEMIC ACHIEVEMENT AND FUNCTIONAL PERFORMANCE, ANNUAL GOALS AND MEASURING PROGRESS

The Present Levels of Academic Achievement and Functional Performance section of the IEP calls for a statement of the child's present levels of performance, which serves as the baseline data for the annual goal, and a statement of the measurable annual goal and short-term objectives if applicable. This section also provides for a description of how progress on the goals will be measured and when periodic reports will be provided.

The Progress Documentation section of the IEP addresses how often progress shall be reported to the parents.

Present Levels of Academic Achievement and Functional Performance

The IEP shall include a statement of the child's present levels of academic achievement and functional performance, including:

- How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
- For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.

(34 C.F.R. § 300.320(a) (1))

Every IEP shall include a statement about both the child's "academic achievement" and "functional performance." (71 Fed. Reg. 46662 (August 14, 2006))

The statement of a child's present levels of performance that includes how the child's disability affects the child's involvement and progress in the general education curriculum shall directly correspond with the requirement that the IEP include measurable annual goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum. (71 Fed. Reg. 46662 (August 14, 2006))

Regarding the requirement that the IEP for preschool children include a statement of present levels of performance including how the disability affects the child's participation in "appropriate" activities: Generally, the word "appropriate" is used to mean suitable or fitting for a particular person, condition, occasion, or place. (71 Fed. Reg. 46661 (August 14, 2006))

Annual Goals

An IEP shall include both academic and functional goals. The IEP shall include a statement of measurable annual goals, including academic and functional goals designed to:

- Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
- Meet each of the child's other educational needs that result from the child's disability.

(34 C.F.R. § 300.320(a)(3) and 71 Fed. Reg. 46662 (August 14, 2006))

The goals shall be written in a manner that they can be "objectively monitored and measured." (71 Fed. Reg. 46664 (August 14, 2006))

Objectives or Benchmarks

For children with disabilities who take alternate assessments aligned to alternate achievement standards, the IEP shall include a description of benchmarks or short-term objectives. (34 C.F.R. § 300.320(a)(2)(ii))

Benchmarks or short-term objectives are no longer required for all children with disabilities, only those children who take the alternate assessment in the years that they take the alternate assessment. (71 Fed. Reg. 46663 (August 14, 2006))

Measuring Progress

The IEP shall include a description of:

- How the child's progress toward meeting the annual goals will be measured; and
- When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided to the parent.

(34 C.F.R. § 300.320(a)(2)(ii))

The Progress Documentation section of the IEP addresses how often progress shall be reported to the parents. The manner and format for reporting progress on goals shall be reflected on the Present Levels of Academic Achievement and Functional Performance, as well as, the Annual Goal page(s) of the IEP.

For the provision of special education and related services using various methodologies, both employees and contracted providers shall consistently and accurately reflect services delivered and progress made regarding the IEP goals of students.

IDEA does not require report cards or quarterly report cards. Report cards and quarterly report cards are used as examples of when periodic reports on the child's progress toward meeting the annual goals might be provided. (71 Fed. Reg. 46664 (August 14, 2006))

The manner and format for reporting progress on the goals shall be reflected on the Present Levels of Academic Achievement and Functional Performance and Annual Goals pages of the IEP.

Legal Cross Ref.:

34 C.F.R. § 300.320

71 Fed. Reg. 46662

71 Fed. Reg. 46663

71 Fed. Reg. 46664

Effective: February 15, 2023

The IEP shall include a statement of the special education and related services to be provided to the child, or on behalf of the child. The Summary of Services section of the IEP shall include the special education and related services to be provided to the child.

When conducting an initial evaluation or a reevaluation of a child with a disability, the evaluation shall be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. The IEP Team shall consider the results of the initial or most recent evaluation of the child. Special education and related services shall be based on evaluation data. If existing evaluation data is insufficient to determine the special education and related services needs, the IEP Team may propose a reevaluation. (34 C.F.R. § 300.304(c)(6) and 34 C.F.R. § 300.324(a)(1)(iii))

Special Education

Special education means "specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability." (34 C.F.R. § 300.39(a))

Specially designed instruction means adapting, as appropriate to the needs of a child with a disability, the content, methodology, or delivery of instruction —

- To address the unique needs of the child that result from the child's disability; and
- To ensure access of the child to the general curriculum, so that the child can meet the educational standards of Albuquerque Public Schools that apply to all children.

(34 C.F.R. § 300.39(b)(3))

Special education may include specially designed instruction in physical education, travel training, and vocational education. (34 C.F.R. §§ 300.39(a)(1)(ii) and 300.39(a)(2)(ii), (iii))

Speech-language pathology services may be considered as part of special education rather than a related service if the following standards are met:

- The service is provided to a child who has received appropriate tier I universal screening before being properly evaluated under the IDEA;
- The IEP Team that makes the eligibility determination finds that the child has a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance;
- The speech language pathology service consists of specially designed instruction that is provided to enable the child to have access to the general curriculum and meet the educational standards of the public agency that apply to all children; and
- The service is provided at no cost to the parents under a properly developed IEP.

(6.31.2.7(B)(19)(b) NMAC; 34 C.F.R. § 300.39(a)(2)(i))

Related Services

“Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.” (34 C.F.R. § 300.34(a))

The list of related services in IDEA is not exhaustive and may include other developmental, corrective, or supportive services if they are required to assist a child with a disability to benefit from special education. (71 Fed. Reg. 46569 (August 14, 2006))

Related services shall be included in a child’s IEP only when the IEP Team determines that such service is required to assist the child to benefit from special education. This includes those services necessary to enable the child to reach, enter, or exit the school and remain at school during the day. (Irving Independent School District v. Tatro, 468 U.S. 883 (1984) and 71 Fed. Reg. 46569 (August 14, 2006))

Related services may include the following:

- Monitoring and maintaining medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school.
 - Such services shall be included in the child’s IEP as related services if they can be provided by someone who has been trained to provide the service and are not the type of services that can only be provided by a licensed physician. (34 C.F.R. § 300.34(b)(2)(ii); 71 Fed. Reg. 46571 (August 14, 2006); and Cedar Rapids Community School District v. Garret F., 526 U.S. 66 (1999))
- Ensuring that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. (34 C.F.R. § 300.113(a))
- The routine checking of an external component of a surgically implanted device to make sure it is functioning properly. (34 C.F.R. § 300.34(b)(2)(iii) and §300.113(b)(1))

Exclusions of Related Services

Related services shall not include the following:

- Medical services (i.e., services provided by a licensed physician) except for diagnostic or evaluation purposes. (34 C.F.R. §§ 300.34(a) and 300.34(b)(5); Cedar Rapids Community School District v. Garret F., 526 U.S. 66 (1999))
- A medical device that is surgically implanted, the optimization of that device’s functioning (e.g. mapping), maintenance of that device, or the replacement of that device. (34 C.F.R. § 300.34(b)(1))

- The post-surgical maintenance, programming, or replacement of a medical device that has been surgically implanted (or of an external component of the surgically implanted medical device). (34 C.F.R. § 300.113(b)(2))
 - “Mapping” and “optimization” refer to adjusting the electrical stimulation levels provided by the cochlear implant that is necessary for long-term post-surgical follow-up of a cochlear implant. Although the cochlear implant must be properly mapped in order for the child to hear well in school, the mapping does not have to be done in school or during the school day in order for it to be effective. Mapping a cochlear implant, or even the costs associated with mapping, such as transportation costs and insurance co-payments were not intended by Congress to be the responsibility of a school district. These services and costs are incidental to a particular course of treatment chosen by the child’s parents to maximize the child’s functioning, and are not necessary to ensure that the child is provided access to education, regardless of the child’s disability, including maintaining health and safety while in school. (71 Fed. Reg. 46569-46570 (August 14, 2006))
 - The exclusion of mapping as a related service is not intended to deny a child with a disability assistive technology (e.g., FM system); proper classroom acoustical modifications; educational support services (e.g., educational interpreters); or routine checking to determine if the external component of a surgically implanted device is turned on and working.
 - The exclusion of mapping as a related service shall not preclude a child with a cochlear implant from receiving the related services (e.g., speech and language services) that are necessary for the child to benefit from special education services.
 - Albuquerque Public Schools recognizes that a child with a cochlear implant may still require related services, such as speech and language therapy, to process spoken language just as other children with hearing loss who use hearing aids may need those services and are entitled to them under the Act if they are required for the child to benefit from special education. (71 Fed. Reg. 46570 (August 14, 2006))

Peer-Reviewed Research to the Extent Practicable

The special education and related services shall be based on peer-reviewed research to the extent practicable. (34 C.F.R. § 300.320(a)(4))

The phrase “to the extent practicable,” as used in this context, generally means that services and supports should be based on peer-reviewed research to the extent that it is possible, given the availability of peer-reviewed research.” (71 Fed. Reg. 46665 (August 14, 2006))

In Albuquerque Public Schools, school personnel shall select and use methods that research has shown to be effective, to the extent that methods based on peer-reviewed research are available. However, IEP Teams shall not be required to include a focused discussion on research-based methods. (71 Fed. Reg. 46665 (August 14, 2006))

Albuquerque Public Schools shall train their special education teachers to provide appropriate specialized reading instruction for students with dyslexia who have been identified as eligible for special education services. (6.31.2.9(B)(8)(b) NMAC)

“There is nothing in the Act that requires an IEP to include specific instructional methodologies...The Department’s longstanding position on including instructional methodologies in a child’s IEP is that it is an IEP Team’s decision. Therefore, if an IEP Team determines that specific instructional methods are necessary for the child to receive FAPE, the instructional methods may be addressed in the IEP.” (71 Fed. Reg. 46665 (August 14, 2006))

Initiation, Frequency, Location and Duration of Special Education and Related Services

With regard to the special education and related services listed in the IEP, the IEP shall include:

- The initiation date;
- Frequency;
- Location; and
- Duration.

(34 C.F.R. § 300.320(a)(7))

The responsibility for determining specific levels of services shall rest with the IEP Team. (OSEP Letter to Anonymous (December 26, 1990))

The meaning of the term ‘duration’ may vary, depending on such things as the needs of the child, the service being provided, and the particular format used in an IEP, and how the child’s day and IEP are structured. (71 Fed. Reg. 46667 (August 14, 2006))

The IEP shall include information about the amount of services that will be provided to the child, so that the level of Albuquerque Public Schools’ commitment of resources will be clear to parents and other IEP Team members. (71 Fed. Reg. 46667 (August 14, 2006))

The amount of time to be committed to each of the various services to be provided shall be appropriate to the specific service, and clearly stated in the IEP in a manner that can be understood by all involved in the development and implementation of the IEP. (71 Fed. Reg. 46667 (August 14, 2006))

Albuquerque Public Schools shall include the exact number of minutes or hours to be provided for each session of each related services (e.g. 30 minutes/week) to be provided for services in most IEPs to meet the requirement that the level of Albuquerque Public Schools’ commitment of resources be clear. However, Albuquerque Public Schools recognizes that there may be special circumstances where the amount of time for each session of related services may vary in order to meet the needs of an individual student and there is nothing in the IDEA that would bar such an arrangement in an IEP. (OSEP Letter to Matthews (January 7, 2010))

Statements that related services shall be provided “as appropriate” fail to adequately specify the level of related services Albuquerque Public Schools is committed to provide. (O’Toole v. Olathe Dist. Schs., 144 F.3d 692 (10 th Cir. 1998))

Albuquerque Public Schools shall not permit the use of "minimums" or any other statement of frequency and duration that does not actually reflect the needs of the child. The individual needs of the child as reflected in evaluation data, and not administrative reasons shall drive IEP Team decision-making. The services specified in the IEP shall reflect what the child actually needs, and must not be understated with an expectation that the provider will exceed the amount specified on the IEP. The IEP Team shall include the actual amount of service needed by a child on the IEP to ensure that the child receives all required services.

Although it may be appropriate in some cases for a child to receive both direct and indirect consultant services, because there is a significant difference between direct and indirect consultant services, the IEP Team shall specify the amount of direct and indirect consultant services to be provided to the child. (Board of Educ. of the City Sch. Dist. of the City of Buffalo, 29 IDELR 739 (SEA NY 1998))

The location where special education and related services will be provided to a child may influence decisions about the nature and amount of these services and when they should be provided to a child. For example, the IEP team may decide that the appropriate place for the related service may be the regular classroom, so that the child does not have to choose between a needed service and the regular educational program." (Congressional Committee Report (1997 Reauthorization of the IDEA))

Legal Cross Ref.:

34 C.F.R. § 300.34

34 C.F.R. § 300.39

34 C.F.R. § 300.113

34 C.F.R. § 300.304

34 C.F.R. § 300.320

34 C.F.R. § 300.324

71 Fed. Reg. 46665

71 Fed. Reg. 46667

71 Fed. Reg. 46569

71 Fed. Reg. 46570

71 Fed. Reg. 46571

Board of Educ. of the City Sch. Dist. of the City of Buffalo, 29 IDELR 739 (SEA NY 1998)

Cedar Rapids Community School District v. Garret F., 526 U.S. 66 (1999)

Irving Independent School District v. Tatro, 468 U.S. 883 (1984)

O'Toole v. Olathe Dist. Schs., 144 F.3d 692 (10th Cir. 1998))

Congressional Committee Report (1997 Reauthorization of the IDEA).

OSEP Letter to Anonymous (December 26, 1990)

[OSEP Letter to Matthews \(January 7, 2010\)](#)

6.31.2.7 NMAC

Administrative Procedure Cross Ref.:

Full and Individual Evaluation

Effective: February 15, 2023

6I - SUPPLEMENTARY AIDS AND SERVICES

The IEP shall include a statement of the supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child. (34 C.F.R. § 300.320(a)(4))

The supplementary aids and services must be based on peer-reviewed research to the extent practicable. (34 C.F.R. § 300.320(a)(4))

The phrase 'to the extent practicable,' as used in this context, generally means that services and supports should be based on peer-reviewed research to the extent that it is possible, given the availability of peer-reviewed research. (71 Fed. Reg. 46665 (August 14, 2006))

In Albuquerque Public Schools, school personnel shall select and use methods that research has shown to be effective, to the extent that methods based on peer-reviewed research are available. However, IEP Teams shall not be required to include a focused discussion on research-based methods. (71 Fed. Reg. 46665 (August 14, 2006))

Legal Cross Ref.:

34 C.F.R. § 300.42

34 C.F.R. § 300.320

71 Fed. Reg. 46665

Administrative Procedure Cross Ref.:

Special Education and Related Services

Effective: February 15, 2023

6J - STATE- AND DISTRICT-WIDE ASSESSMENTS

The Supplementary Aids and Services section of the IEP, under the heading "Participation in Mandated District and State Testing" documents the IEP Team decision-making concerning how the child shall participate in mandated state- and district-wide assessments. (6.31.2.11(E) NMAC)

The IEP Team shall not decide whether a child with a disability will participate in a state- or district-wide assessment, but how the child will participate. All students are required to be included in state and district-wide assessments.

A child with a disability in New Mexico may participate in statewide assessments as follows:

- In the appropriate general assessment in the same manner as their nondisabled peers; this may include the use of adaptations that are deemed appropriate for all students by the PED;
- In the appropriate general assessment with appropriate accommodations that are allowable by the assessment directions and standards in administration if necessary;

Albuquerque Public Schools shall use the current guidance from the PED about accommodations as specified in the student's IEP; or

- In alternate assessments for the small number of students with significant cognitive disabilities for whom alternate assessments are appropriate under the PED's established participation criteria.

(6.31.2.11(E) NMAC)

The IEP shall include a statement of any individual appropriate accommodations that are allowable by the assessment directions and standards that are necessary to measure the academic achievement and functional performance of the child on state- and district-wide assessments. (34 C.F.R. §300.320(a)(6)(i))

If the IEP Team determines that the child will take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, the IEP Team shall include a statement of why:

- The child cannot participate in the regular assessment; and
- The particular alternate assessment selected is appropriate for the child.

(34 C.F.R. §300.320(a)(6)(ii))

For students with significant cognitive disabilities for whom alternate assessments are appropriate under the PED's established participation criteria, the IEP Team shall consider and document that the student may be eligible for participation in an alternate assessment based on alternate achievement standards. (6.31.2.11(E) NMAC)

The provision of state guidelines is required by the IDEA. 20 U.S.C. § 1412(a)(16). The New Mexico rules require school districts to use the current guidance from the department about accommodations as specified in the student's IEP. (6.31.2.11(E)(2) NMAC)

Legal Cross Ref.:

34 C.F.R. §300.320

6.31.2.11 NMAC

Administrative Procedure Cross Ref.:

Supplementary Aids and Services

Effective: February 15, 2023

6K - EXTENDED SCHOOL YEAR (ESY) SERVICES

Albuquerque Public Schools ensures that ESY services are available as necessary to provide FAPE. ESY services may be provided only if a child's IEP Team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child. (34 C.F.R. § 300.106(a)(1-2))

Albuquerque Public Schools shall not:

- Limit ESY to particular categories of disability; or

- Unilaterally limit the type, amount, or duration of those services. (34 C.F.R. § 300.106(a)(3))

The requirement to provide ESY services to children with disabilities who require such services in order to receive FAPE reflects a longstanding interpretation of IDEA by the courts and the U.S. Department of Education. (71 Fed. Reg. 46582 (August 14, 2006))

The right of an individual child with a disability to receive ESY services is based on that child's entitlement to FAPE. Some children with disabilities may not receive a FAPE unless they receive necessary services during times when other children both disabled and non-disabled, normally would not be served. (71 Fed. Reg. 46582 (August 14, 2006))

Albuquerque Public Schools' shall ensure that children with disabilities who require ESY services in order to receive FAPE have the necessary services available to them, and that individualized determinations about each disabled child's need for ESY services are made through the IEP process. (71 Fed. Reg. 46582 (August 14, 2006))

"[I]f a child will experience severe or substantial regression during the summer months in the absence of a summer program, the [child with a disability] may be entitled to year-round services. The issue is whether the benefits accrued to the child during the regular school year will be significantly jeopardized if he is not provided an educational program during the summer months." *Alamo Heights v. State Board of Education*, 790 F.2d 1153 (5 th Cir. 1986)(adopted by the Tenth Circuit in *Johnson v. Bixby Independent Sch. Dist. No. 4*, 921 F.2d 1022, 1028 (10 th Cir. 1990)).

Albuquerque Public School special education teachers and providers of the child shall collect on an ongoing basis regression-recoupment data, including at a minimum at the end of the school year (for baseline purposes) and during the first eight weeks of the beginning of the school year. "The analysis of whether the child's level of achievement would be jeopardized by a summer break in his or her structured educational programming should proceed by applying not only retrospective data, such as past regression and rate of recoupment, but also should include predictive data, based on the opinion of professionals in consultation with the child's parents as well as circumstantial considerations of the child's individual situation at home and in his or her neighborhood and community." *Johnson v. Bixby Independent Sch. Dist. No. 4*, 921 F.2d 1022, 1028 (10 th Cir. 1990).

"Typically, ESY services are provided during the summer months. However, there is nothing in IDEA that would limit a public agency from providing ESY services to a child with a disability during times other than the summer, such as before and after regular school hours or during school vacations, if the IEP Team determines that the child requires ESY services during those time periods in order to receive FAPE. The regulations give the IEP Team the flexibility to determine when ESY services are appropriate, depending on the circumstances of the individual child." (71 Fed. Reg. 46582 (August 14, 2006))

Legal Cross Ref.:
34 C.F.R. § 300.106

71 Fed. Reg. 46582

Alamo Heights v. State Board of Education, 790 F.2d 1153 (5th Cir. 1986)(adopted by the Tenth Circuit in Johnson v. Bixby Independent Sch. Dist. No. 4, 921 F.2d 1022, 1028 (10th Cir. 1990))
Johnson v. Bixby Independent Sch. Dist. No. 4, 921 F.2d 1022, 1028 (10th Cir. 1990)

Administrative Procedure Cross Ref.:

Present Levels of Performance and Annual Goals

Effective: February 15, 2023

7 - LEAST RESTRICTIVE ENVIRONMENT

The Least Restrictive Environment section of the IEP provides the necessary documentation that the IEP Team determined placement in the least restrictive environment according to the IDEA requirements and this administrative procedure.

In Albuquerque Public Schools, “to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” (20 U.S.C. §1412(a)(5)(A); also, 34 C.F.R. §300.114(a)(2))

Full Continuum of Services

Albuquerque Public Schools shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. (34 C.F.R. '300.115(a))

Albuquerque Public Schools' continuum includes:

- Instruction in regular classes;
- Provision for supplementary services such as resource room or itinerant instruction, to be provided in conjunction with regular class placement;
- Instruction in special classes;
- Instruction in special schools;
- Home instruction; and
- Instruction in hospitals and institutions.

(34 C.F.R. §300.115(b))

There is no requirement that each of the placements on the continuum be utilized. Instead, Albuquerque Public Schools shall ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled; and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with

the use of supplementary aids and services cannot be achieved satisfactorily. (OSEP Redacted Letter (March 30, 2009))

Placement Decisions

Placement decisions for children with disabilities shall be made on an individual basis, based on the unique needs of each child, by the IEP Team. (34 CFR § 300.116(a)(1))

Using the IEP Team process, Albuquerque Public Schools shall ensure that:

- The placement decision, including for a preschool age child, is made by the IEP Team in conformity with the least restrictive environment provisions of the IDEA;
- The child's placement is determined at least annually;
- The child's placement is based on the child's IEP;
- In selecting the LRE, consideration is given to any potential harmful effects on the child or on the quality of services that he or she needs; and
- A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

(34 C.F.R. §300.116)

The IEP shall include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

- To advance appropriately toward attaining the annual goals;
- To be involved in and make progress in the general curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
- To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section.

(34 C.F.R. §300.320(a)(4))

The IEP shall include an explanation of the extent, if any, to which the child will not participate with nondisabled children in:

- The regular class;
- The general curriculum; and
- Extracurricular and nonacademic activities.

(34 C.F.R. ' 300.320(a)(5))

Least Restrictive Environment Standard

The Tenth Circuit in *L.B. and J.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966 (10 th Cir. 2004), adopted the standard (two-part test) and factors articulated in *Daniel R.R. v. SBOE*, 874 F.2d 1036 (5th Cir. 1989).

Standard (Two-Part Test):

- Ask whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily.

- If the answer is “no,” and the school intends to provide special education or to remove the child from regular education, ask whether the school has mainstreamed the child to the maximum extent appropriate.

Factors to consider:

- Has the district taken steps to accommodate the child with disabilities in regular education?
- Were these efforts sufficient or token?
- Will the child receive an educational benefit from regular education?
- What will be the child's overall educational experience in the mainstreamed environment, balancing the benefits of regular and special education?
- What effect does the disabled child's presence have on the regular classroom environment?

Site Selection

Albuquerque Public Schools shall ensure that each child’s placement is as close as possible to the child’s home. (34 C.F.R. §300.116(b)(3))

In Albuquerque Public Schools, unless the IEP of a child with a disability requires some other arrangement, the child shall be educated in the school that he/she would attend if nondisabled. (34 C.F.R. §300.116(c))

A child with a disability shall be educated in the school he/she would attend if not disabled (i.e., the neighborhood school), unless the child's IEP requires placement elsewhere. If the IEP requires placement elsewhere, then, in deciding where the appropriate placement is, geographical proximity to home is relevant, and the child shall be placed as close to home as possible. There shall be a preference for education in the neighborhood school. However, the Tenth Circuit has rejected the notion that the IDEA encompasses a presumption of neighborhood schooling. (Murray v. Montrose County, 51 F.3d 921 (10 th Cir. 1995))

Equal Educational Opportunity

Albuquerque Public Schools shall take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child’s IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities. (34 C.F.R. §300.107(a))

Albuquerque Public Schools shall ensure that each child with a disability has the supplementary aids and services determined by the IEP Team to be appropriate and necessary for the child to participate in nonacademic settings. (34 C.F.R. §300.117)

In providing or arranging for the provision of nonacademic and extracurricular services and activities, Albuquerque Public Schools shall ensure that each child with a disability has an equal opportunity to participate with nondisabled children in those services and activities subject to the

rules that are applicable to all Albuquerque Public School students. These services and activities may include:

- Meals;
- Recess periods;
- Counseling services;
- Athletics;
- Transportation;
- Health Services;
- Recreational activities;
- Special interest groups or clubs sponsored by Albuquerque Public Schools;
- Referrals to agencies that provide assistance to individuals with disabilities; and
- Employment of students, including both employment by Albuquerque Public Schools and assistance in making outside employment available.

(34 C.F.R. §§ 300.117; 300.107(b))

Legal Cross Ref.:

20 U.S.C. §1412

34 C.F.R. §300.107

34 C.F.R. §300.114

34 CFR § 300.116

34 C.F.R. §300.117

34 C.F.R. §300.320

The Tenth Circuit in *L.B. and J.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966 (10th Cir. 2004)
Murray v. Montrose County, 51 F.3d 921 (10th Cir. 1995)

[OSEP Redacted Letter \(March 30, 2009\)](#)

Administrative Procedure Cross Ref.:

Special Education and Related Services

Supplementary Aids and Services

Effective: February 15, 2023

8 - DISCIPLINE OF STUDENTS WITH DISABILITIES/BEHAVIOR

The Manifestation Determination Review form is used for conducting a manifestation determination review before a disciplinary change of placement.

In the disciplinary context, the Functional Behavioral Assessment form is used to conduct a functional behavioral assessment (FBA) when the student's misconduct is a manifestation of the child's disability; or as appropriate, when the misconduct is not a manifestation of the child's disability.

In the disciplinary context, the Behavior Intervention Plan form is used to develop a behavior intervention plan (BIP) when the student's misconduct is a manifestation of the child's disability; or if appropriate, when the misconduct is not a manifestation of the child's disability.

Authority of District Personnel

(See 34 CFR §300.530)

Case-by-Case Determination

District personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with a disability who violates a school code of student conduct.

General Discipline

To the extent that they also take such action for children without disabilities, district personnel may, for not more than ten (10) school days in a row, remove a child with a disability who violates a code of student conduct from his/her current placement to an appropriate interim alternative educational setting, another setting, or suspension.

District personnel may also impose additional removals of the child of not more than ten (10) school days in a row in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement. Please refer to the “Change of Placement Because of Disciplinary Removals” section of this administrative procedure for more information.

Once a child with a disability has been removed from his/her current placement for a total of ten (10) school days in the same school year, Albuquerque Public Schools shall, during any subsequent days of removal in that school year, provide services to the extent required below in this administrative procedure.

Additional Authority

If the behavior that violated the student code of conduct was not a manifestation of the child’s disability and the disciplinary change of placement would exceed ten (10) school days in a row, district personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described in the “Services” section of this administrative procedure. The child’s IEP Team shall determine the interim alternative educational setting for such services.

Services

When Albuquerque Public Schools provides services to a child without a disability who has been removed from his/her current placement for ten (10) school days or less in that school year, Albuquerque Public Schools also shall provide services to a child with a disability. These services may be provided in an interim alternative educational setting.

However, when Albuquerque Public Schools does not provide services to a child without a disability who has been removed from his/her current placement for ten (10) school days or less in that school year, Albuquerque Public Schools shall not be required to provide services to a child with a disability.

A child with a disability who is removed from the child's current placement for more than ten (10) school days and the behavior is not a manifestation of the child's disability or who is removed under special circumstances shall:

- Continue to receive educational services (FAPE), so as to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP; and
- Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not happen again.

Please refer to the "Manifestation Determination" and "Special Circumstances" section of this administrative procedure for additional information.

After a child with a disability has been removed from his/her current placement for ten (10) school days in that same school year, and if the current removal is for ten (10) school days in a row or less and if the removal is not a change of placement, than school personnel, in consultation with at least one of the child's teachers, shall determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

If the removal is a change of placement, the child's IEP Team shall determine the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP. Please refer to the "Change of Placement Because of Disciplinary Removals" section of this administrative procedure for additional information.

Manifestation Determination

Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is for ten (10) school days in a row or less and not a change of placement), Albuquerque Public Schools, the parent, and other relevant members of the IEP Team (as determined by the parent and district) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parent to determine:

- If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- If the conduct in question was the direct result of the district's failure to implement the child's IEP.

If Albuquerque Public Schools, the parent, and other relevant members of the child's IEP Team determine that either of those conditions was met, the conduct shall be determined to be a manifestation of the child's disability.

If Albuquerque Public Schools, the parent, and other relevant members of the child's IEP Team determine that the conduct in question was the direct result of the district's failure to implement the IEP, Albuquerque Public Schools shall take immediate action to remedy those deficiencies.

Determination that Behavior was a Manifestation of the Child's Disability

If Albuquerque Public Schools, the parent, and other relevant members of the child's IEP Team determine that the conduct in question was a manifestation of the child's disability, the IEP Team shall either:

- Conduct a functional behavioral assessment, unless Albuquerque Public Schools had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
- If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.

Except as described below in the "Special Circumstances" section of this administrative procedure, Albuquerque Public Schools shall return the child to the placement from which the child was removed, unless the parent and Albuquerque Public Schools agree to a change of placement as part of the modification of the behavioral intervention plan.

Special Circumstances

Whether or not the behavior was a manifestation of the child's disability, district personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for not more than forty-five (45) school days, if the child:

- Carries a weapon to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the New Mexico Public Education Department or Albuquerque Public Schools;
- Knowingly has or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the New Mexico Public Education Department or Albuquerque Public Schools; or
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the New Mexico Public Education Department or Albuquerque Public Schools.

Change of Placement Because of Disciplinary Removals

A removal of a child with a disability from the child's current educational placement is a change of placement if:

- The removal is for more than 10 school days in a row; or
- The child has been subjected to a series of removals that constitute a pattern because:
 - The series of removals total more than 10 school days in a school year;

- The child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and
- Of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

(34 CFR §300.536)

Whether a pattern of removals constitutes a change of placement shall be determined on a case-by-case basis by Albuquerque Public Schools and, if challenged, shall be subject to review through due process and judicial proceedings.

Notification of a Change of Placement

On the date Albuquerque Public Schools makes the decision to make a removal that is a change of placement of a child because of a violation of a code of student conduct, Albuquerque Public Schools shall notify the parent of that decision, and provide the parent with a procedural safeguards notice.

Determination of Setting

The IEP Team determines the interim alternative educational setting for removals that are changes of placement, and removals in the “Additional Authority” and “Special Circumstances” sections of this administrative procedure. (34 CFR § 300.531)

Appeals of Discipline Decisions

General

The parent may file a due process complaint to request a due process hearing if the parent disagrees with:

- Any decision regarding an IEP placement made under these discipline provisions; or
- The manifestation determination described above.

Albuquerque Public Schools may file a due process complaint to request a due process hearing if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

Placement during Appeals

When, as described above, the parent or the district files a due process complaint related to disciplinary matters, the child shall (unless the parent and Albuquerque Public Schools agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described in “Authority of School Personnel” section of this administrative procedure, whichever occurs first. (34 CFR §300.533)

Protections for Children Not Yet Eligible for Special Education and Related Services

General

If the child has not been determined eligible for special education and related services and violates a code of student conduct, but Albuquerque Public Schools had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that the child was a child with a disability, then the child may assert any of the protections described in this administrative procedure. (34 CFR §300.534)

Basis of Knowledge for Disciplinary Matters

Albuquerque Public Schools shall be deemed to have knowledge that the child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

- The parent expressed concern in writing to supervisory or administrative personnel of Albuquerque Public Schools, or to the child's teacher that the child is in need of special education and related services;
- The parent requested an evaluation related to eligibility for special education and related services under Part B of IDEA; or
- The child's teacher or other Albuquerque Public Schools personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to Albuquerque Public Schools' director of Special Education or to other supervisory personnel of Albuquerque Public Schools.

Exception

Albuquerque Public Schools shall not be deemed to have such knowledge if:

- The parent has not allowed an evaluation of the child or has refused special education services; or
- The child has been evaluated and determined to not be a child with a disability under Part B of IDEA.

Conditions that apply if there is no Basis of Knowledge

If prior to taking disciplinary measures against the child, Albuquerque Public Schools does not have knowledge that the child is a child with a disability, as described in the "Basis of Knowledge for Disciplinary Matters" and "Exception" subsections of this administrative procedure, the child may be subjected to the disciplinary measures that are applied to children without disabilities who engage in comparable behaviors.

However, if a request is made for an evaluation of the child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner.

Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which may include suspension or expulsion without educational services.

If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by Albuquerque Public Schools, and information provided by the parent, Albuquerque Public Schools shall provide special education and related services in accordance with Part B of IDEA, including the disciplinary requirements described in this administrative procedure.

Referral to and Action by Law Enforcement and Judicial Authorities

Part B of IDEA and this administrative procedure shall not:

- Prohibit Albuquerque Public Schools from reporting a crime committed by a child with a disability to appropriate authorities; or
- Prevent state and local law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child with a disability.

(34 CFR §300.535)

Transmittal of Records

If Albuquerque Public Schools reports a crime committed by a child with a disability, Albuquerque Public Schools: Shall seek consent from the parents to transmit copies of the child's special education and disciplinary records If consent is granted, shall transmit copies of the child's special education and disciplinary records for consideration by the authorities to whom the agency reports the crime.

Legal Cross Ref.:

34 CFR § 300.531

34 CFR § 300.532

34 CFR §300.533

34 CFR §300.534

34 CFR §300.535

34 CFR §300.536

Administrative Procedure Cross Ref.:

Independent Educational Evaluation

Effective: February 15, 2023