New Mexico Public Education Department

Special Education Bureau

POLICIES AND PROCEDURES FOR THE PROVISION OF SPECIAL EDUCATION SERVICES FOR STUDENTS WITH DISABILITIES AND GIFTED STUDENTS

Chapter 1. – CHILD FIND / INTERVENTIONS

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Chapter 1. – CHILD FIND / INTERVENTIONS

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Chapter 1. – CHILD FIND / INTERVENTIONS

I. CHILD FIND RESPONSIBILITIES

Authority: 34 CFR §300.111 Child find.

(a) General.

(1) The NMPED ensures that--

(i) All children with disabilities residing in New Mexico, 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; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(b) Use of term developmental delay.

The following provisions apply with respect to implementing the child find requirements of this section:

(1) The NMPED has adopted a definition of developmental delay under §300.8(b).

(2) The NMPED will not require La Academia de Esperanza Charter School (LADE), an Albuquerque Public Schools authorized charter school, to adopt and use the term developmental delay for any children within its jurisdiction.

(3) If LADE uses the term developmental delay for children described in §300.8(b), LADE will conform to both the State's definition of that term and to the age range that has been adopted by the NMPED.
(See I. B. for the LADE's decision on developmentally delayed)

(c) Other children in child find. Child find also will include--

(1) 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; and

(2) Highly mobile children, including migrant children.

Authority: 34 CFR §300.19 Homeless children.

Homeless children has the meaning given the term homeless children and youths in section 725 (42 U.S.C. §11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. §11431 *et. seq.* The *cm will comply with Child Find requirements for these students.

The LADE will appoint a surrogate parent (*Chapter 2.-Procedural Safeguards)* for an unaccompanied homeless child. A homeless child includes an individual who lacks a fixed, regular, and adequate nighttime residence or includes:

- children and youth 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;
- 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 42 U.S.C. §11302(a)(2)(C));
- children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- migratory children (as such term is defined in 20 U.S.C. §6399) who qualify as homeless for the purposes of this part because the children are living in circumstances described above.

A. Child Find - General Requirements

Authority: NMAC 6.31.2.10 IDENTIFICATION

A. Child Find. The LADE shall adopt and implement policies and procedures to ensure that all children with disabilities who reside within the agency's educational jurisdiction, including children with disabilities attending private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, detention and correctional facilities, children who are schooled at home, highly mobile children, children who reside on Indian reservations, and children who are advancing from grade to grade, regardless of the severity of their disability, and who are in need of special education and related services, are located, evaluated and identified in compliance with all applicable requirements of 34 CFR

§§300.111, 300.131, 300.301-306 and these or other department rules and standards. For preschool children, child find screenings shall serve as interventions under Subsection B of 6.31.2.10 NMAC.

LADE will disseminate information to the community (including private schools, residential treatment centers, day treatment centers, hospitals, mental health institutions, detention and correctional facilities) concerning services offered to all individuals with disabilities and maintain records of efforts that may include:

1. *Providing information regarding availability of screenings and other services through the local newspaper, the school tax office mailings, brochures, and other print media;*
2. *Participating in a network of public information dissemination to assist with locating highly mobile and migrant children, which includes contacting other agencies, day care facilities, community public locations such as doctor offices, hospitals, laundry facilities, and facilities providing services to students with disabilities;*
3. *Providing Child Find information to local private schools and discussing with private school officials regarding the SAT process;*
4. *Referring individuals ages 0-3 to a local Early Childhood Intervention (ECI) program for evaluation -which is the Department of Health's Family Infant Toddler (FIT) Program;*
5. *Identifying and referring individuals with disabilities who may or may not be in school and who may need Special Education and related services using a properly constituted student assistance team (SAT);*
6. *Continuing to document persons who are currently receiving needed Special Education and related services and who are not currently receiving needed Special Education and related services;*
7. *Reviewing this process on a yearly basis, updating staff about on-going "Child Find" activities implemented in the community;*
8. *Maintaining confidentiality of all personally identifiable information used and collected in this system in the same manner that Special Education records are maintained;*
9. *Maintaining documentation of all Child Find activities including the dates of each activity and the results of each activity; and*
10. *Training appropriate staff for maintaining the documentation of all Child Find activities including students in private schools, religious schools and home schools located in LADE.*
11. *Annual screening will be performed by qualified LADE personnel and may include:*
    - *general health screening, including social/behavioral health*
    - *vision screening performed to verify indicators of loss of sight, acuity, or other possible vision related problems;*
    - *hearing screening to verify any hearing risk indicators;*
    - *speech and language screening to verify problems in the formulation or articulation of speech or any delay in the development of language;*
    - *preschool screening which typically includes vision, hearing, cognition, motor, speech-language, and health components to verify developmental delays;*
    - *screening for home language*
    - *academic screening for school age children to determine the significance of academic delays; and*
    - *screening for secondary level students who are at-risk of dropping out, or who have dropped out, to verify that the reasons for dropping out are not related to a previously undetected disability.*

All screenings and evaluations resulting from child find activities are free to parents, including parents of home-schooled students and parents of students who attend private school by parent choice.

B. Child Find - Developmentally Delayed

Authority: NMAC 6.31.2.7 DEFINITIONS B. (4.) *(See also Chapter 4)*

For the local schools' Policy and Procedure document, please choose one below:

Insert: *The *cm does use the term developmental delay and more information is located in Chapters 3-4.*

(OR)

Insert: *The *cm does not use the term developmental delay.*

Authority: NMAC §6.31.2.10 IDENTIFICATION AND ELIGIBILITY DETERMINATIONS

F. Eligibility determinations.

(2) Optional use of developmentally delayed classification for children aged 3 through 9.

(a) The developmentally delayed classification may be used at the option of individual local education agencies but may only be used for children who do not qualify for special education under any other disability category.

(b) Children who are classified as developmentally delayed must be reevaluated during the school year in which they turn 9 and will no longer be eligible in this category when they become 10. A student who does not qualify under any other available category at age 10 will no longer be eligible for special education and related services. §6.31.2.10 NMAC. *(More information on disabilities may be found in Chapter 4)*

C. Child Find - Parentally-Placed In Private Schools

Authority: 34 CFR §300.131 Child find for parentally-placed private school children with disabilities.

(a) General. LADE will locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§300.111 and 300.201.

(b) Child find design. The child find process is designed to ensure--

(1) The equitable participation of parentally-placed private school children; and

(2) An accurate count of those children.

(c) Activities. In carrying out the requirements of this section, LADE, or, if applicable, the NMPED, will undertake activities similar to the activities undertaken for the agency's public school children.

(d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if LEA has met its obligation under §300.133. *(Private school expenditures - Chapter 6 of this document)*

(e) Completion period. The child find process will be completed in a time period comparable to that for other students attending public schools in the

(f) LADE consistent with §300.301. *(Initial Evaluations-Chapter 3 of this document)* (Authority: 20 U.S.C. §1412(a)(10)(A)(ii))

(g) Out-of-state children. Each LEA in which private, including religious, elementary schools and secondary schools are located will, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.

Authority: §300.134 Consultation regarding parentally-placed private school children with disabilities.

To ensure timely and meaningful consultation, the LADE or, if appropriate, the NMPED, will 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 following:

(a) Child Find. The child find process, including--

(1) How parentally-placed private school children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and private school officials will be informed of the process.

(For more information on students placed in private schools, see Chapter 6. LRE)

Authority: §300.140 Due process complaints and State complaints. ***(See Chapter 2.-Procedural Safeguards)***

(a) Due process not applicable, except for Child Find.

(b) Child Find complaints—to be filed with the LEA in which the private school is located.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES

L. Children in private schools

(1) Children enrolled by parents in private schools or facilities.

(c) Each LEA must locate, identify and evaluate all children with disabilities who are enrolled by their parents in private schools, including religious elementary schools and secondary schools located in the education jurisdiction of the LEA, in accordance with 34 CFR §§300.131 and 300.111.

(3) Children placed in or referred to private schools or facilities by New Mexico public non-educational agencies. For a qualified student or school-age person in need of special education placed in a private school or facility by a New Mexico public non-educational agency with custody or control of the qualified student or school-age person or by a New Mexico court of competent jurisdiction, the school district in which the facility is located shall be responsible for the planning and delivery of special education and related services, unless the qualified student's or school-age person's resident school district has an agreement with the facility to provide such services. The district must make reasonable efforts to involve the qualified student or school-age person's resident school district in the IEP process.

D. Child Find - Gifted Students

LADE is responsible for finding gifted children who meet the criteria for services and have a demonstrated need and providing appropriate services with the exceptions listed below.

Authority: NMAC 6.31.2.12 GIFTED CHILDREN EDUCATIONAL SERVICES

F. Applicability of rules to gifted children.

(1) All definitions, policies, procedures, assurances, procedural safeguards and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the educational jurisdiction of each local school district, including children in charter schools within the district, **except**:

(a) the requirements of 6.31.2.8 NMAC through 6.31.2.10 NMAC;

(b) Subsections J, K and L of 6.31.2.11 NMAC regarding child find, evaluations and services for private school children with disabilities, children with disabilities in state-supported educational programs, children with disabilities in detention and correctional facilities and children with disabilities who are schooled at home;

(c) the requirements of 34 CFR §§300.530-300.536, Subsection I of 6.31.2.13 NMAC and 6.11.2.11 NMAC regarding disciplinary changes of placement for children with disabilities; and

(d) the requirements of 34 CFR §§300.43, 300.320(b) and 6.31.2.11(G)(2) regarding transition planning. Students identified as gifted must meet the requirements at Subsection B of 22-13-1.1 NMSA 1978, which is the next step plan for students without disabilities.

Authority: NMSA 1978 §22-13-6.1 Gifted children; determination.

In determining whether a child is gifted, the multidisciplinary team shall consider diagnostic or other evidence of the child's:

(1) creativity or divergent-thinking ability;
(2) critical thinking or problem solving ability;
(3) intelligence; and
(4) achievement.

Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN

A. Gifted child defined. As used in 6.31.2.12 NMAC, "gifted child" means a school-age person as defined in Section 22-13-6(D) NMSA 1978 whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking meets the eligibility criteria in 6.31.2.12 NMAC and for whom a properly constituted IEP team determines that special education services are required to meet the child's educational needs.

B. Qualifying areas defined.

(1) "Intellectual ability" means a score two standard deviations above the mean as defined by the test author on a properly administered intelligence measure. The test administrator must also consider the standard error of measure (SEM) in the determination of whether or not criteria have been met in this area.

(2) "Subject matter aptitude/achievement" means superior academic performance on a total subject area score on a standardized measure, or as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.

(3) "Creativity/divergent thinking" means outstanding performance on a test of creativity/ divergent thinking, or in creativity/divergent thinking as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.

(4) "Problem-solving/critical thinking" means outstanding performance on a test of problem solving/ critical thinking, or in problem-solving/critical thinking as documented by information from other sources as specified in Paragraph (2) of Subsection B of 6.31.2.12 NMAC.
(5) For students with "factors" as specified in Paragraph (2) of Subsection E of 6.31.2.12 NMAC, the impact of these factors shall be documented and alternative methods will be used to determine the student's eligibility.

C. Evaluation procedures for gifted children.
(1) LADE must establish a child find procedure that includes a screening and referral process for students in public school who may be gifted.
(2) Analysis of data. The identification of a student as gifted shall include documentation and analysis of data from multiple sources for subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking including:
(a) standardized measures, as specified in Subsection B of 6.31.2.12 NMAC, and
(b) information regarding the child's abilities from other sources, such as collections of work, audio/ visual tapes, judgment of work by qualified individuals knowledgeable about the child's performance (e.g., artists, musicians, poets and historians, etc.), interviews, or observations.
(3) The child's ability shall be assessed in all four areas specified in Subsection B of 6.31.2.12 NMAC.

CI. Standard method for identification. *(See Chapter 3 – Evaluation)*

CII. Alternative method for identification. *(See Chapter 3 – Evaluation)*

CHILD FIND - STUDENT ASSISTANCE TEAM (SAT) – GIFTED STUDENTS

Immediately after a student is referred to the student assistance team (SAT), it is important to begin collecting information regarding the student's cultural, linguistic, and socioeconomic background. When the student is referred to the SAT, suggestions should be made for intervention strategies that will address the area of potential giftedness. These may include, but are not limited to the following:

- ability grouping
- accelerating the curriculum
- multi-age grouping
- subject acceleration
- independent study
- peer teaching
- mentoring by older students or adults
- enrichment within the regular general educational setting

The SAT should monitor and document the interventions tried and the outcomes. It should be recognized that even when interventions are successful, it may be necessary for the identification process to continue in order for individual student needs to be fully met. The goal of the support team is to ensure that the individual needs of the student are met and not to restrict access to gifted programming. If a need for further service is indicated, a referral should be made with all data collected to this point passed on to the evaluation team.

The SAT committee may use a characteristics checklist provided by the NMPED. This checklist exists in order to discover factors that may influence classroom performance or test scores of gifted students. It does not weigh for or against qualification, but aids the Student Assistance Team (SAT) in making good judgments about how to proceed with the evaluation process. The checklist, instructions, scoring and interpretations may be found at the NMPED website: http://www.ped.state.nm.us/seo/gifted/Gifted.Students.With.Factors.pdf

Quantitative data from this checklist should be combined with qualitative data for consideration by the SAT in determining whether or not a student referred for gifted services would be considered to have "factors." If there are "factors" that are determined to be significant through the use of this instrument and other qualitative data, the student would be referred by the SAT to the team administering the alternative protocol that has been approved by the Public Education Department/Special Education Bureau and adopted by the district/charter school for screening and evaluation.

In addition, the SAT may refer to the following resource: Gifted: Technical Assistance & Training Resource Document through the NMPED web site, http://www.ped.state.nm.us/seo/gifted/gifted.pdf

CHILD FIND - GIFTED IN SPECIAL POPULATIONS:

Gifted children can be found in all populations. The SAT must be aware of the criteria for all populations. In some instances, a child's true abilities are not recognized and that child may not be receiving appropriate educational services. The New Mexico State Department of Education's criteria for gifted students attempt to address the underrepresentation in gifted programs for four populations. These populations included those students with: Cultural differences, linguistic differences, lower socioeconomic status, and disabling conditions. Other special populations also need consideration. Listed below are some groups of gifted children who have unique educational needs.

Young Gifted Children

Young children ages 3 through 8 have been recognized as one of several subpopulations of gifted children who are underserved. Early identification and appropriate education are particularly critical as a means of nurturing potential. Research supports special instruction for young children designed to address their capacity for learning and social/emotional vulnerability. A collaborative approach between families and school personnel should address identification, curriculum planning, and evaluation.

Gifted Underachiever

Students who are gifted may be underachievers. These students, although scoring high on standardized measures, often fail to achieve in much of their everyday course work. The causes and manifestations of underachievement are varied. These students should not be precluded from identification and/or participation in gifted programming as a result of their underachievement in the regular classroom. Recent research demonstrates the importance of two factors in the reversal of underachievement:

- teacher concern for participation in the student's success
- student involvement in a project in some area of interest

Gifted Girls

As gifted girls progress through their school years, they tend to become less confident and less willing to believe in their abilities. Research indicates that girls start out equal or superior to boys on tests of ability and achievement in the elementary grades but gradually begin to fall behind, especially in science and math at the junior high and high school levels and in all areas at the college and post college levels. Special programs may need to be developed to support this population.

Highly Gifted

Students identified as highly gifted have needs that may require programs and services beyond the general gifted programs. These students need to be comfortable with themselves and their unique abilities. The discrepancy between their cognitive ability and chronological age may contribute to significant social-emotional difficulties. Additionally, the differences between these students and their age peers frequently cause isolation. Schools have a responsibility to design services that address both academic and social-emotional needs of this population.

(For more information see also Chapter 3 Evaluation, Chapter 4 Gifted, and Chapter 5 - IEP)

II. CHILD FIND - AGES

§300.101 Free appropriate public education (FAPE). *(See also Chapter 8 General Administration)*

(b) FAPE for children beginning at age 3.

(1) The NMPED ensures that—

(i) FAPE is available to each eligible child residing in New Mexico beginning no later than the child's third birthday; and

(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with §300.323(b).

(2) If a child's third birthday occurs during the summer, the child's IEP Team will determine the date when services under the IEP or IFSP will begin.

Authority: NMSA 1978 Sec. 22-13-5 Special education.

LADE will provide special education and related services appropriate to meet the needs of all children requiring special education and related services. The *cm will provide services for three-year-old and four-year-old preschool children with disabilities, unless the parent or guardian chooses not to enroll his child. A child with a

disability who enrolls in the public school's preschool program and who has his third birthday during a school year may receive special education and related services from the beginning of that school year. Services for students age three through twenty-one 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 state board and 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.

Authority: NMAC 6.31.2.7 DEFINITIONS:

B. The following terms shall have the following meanings for purposes of these rules.
   (2) "Child with a disability" means a child who meets all requirements of 34 CFR §300.8 and who:
      (a) is aged 3 through 21 or will turn 3 at any time during the school year;
      (b) has been evaluated in accordance with 34 CFR §§300.304-300.311 and any additional requirements of these or other public education department rules and standards and as having one or more of the disabilities specified in 34 CFR §300.8 including intellectual disability, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, orthopedic impairment, autism, traumatic brain injury, and other health impairment, a specific learning disability, deaf blindness, or being developmentally delayed as defined in paragraph (4) below; and who has not received a high school diploma; and
      (c) at the discretion of each local educational agency and subject to the additional requirements of Paragraph (2) of Subsection F of 6.31.2.10 NMAC, the term "child with a disability" may include a child aged 3 through 9 who is evaluated as being developmentally delayed and who, because of that condition, needs special education and related services. *(See section I. B. Developmentally Delayed in this Chapter: 1. Child Find / Interventions)*
   (4) "Developmentally delayed" means a child aged 3 through 9 or who will turn 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 30 per cent 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. Use of the developmentally delayed option by individual local educational agencies is subject to the further requirements of Paragraph (2) of Subsection F of 6.31.2.10 NMAC. Local education agencies must use appropriate diagnostic instruments and procedures to ensure that the child qualifies as a child with a developmental delay in accordance with the definition in this paragraph. *(See also Chapter 2 and 3)*

III. MEMBERSHIP OF THE STUDENT ASSISTANCE TEAM (SAT)

The SAT is made up of a core group of regular education staff that anchors the team. Core members must have good communication skills and a solid working knowledge about a variety of supports (types of interventions, educational and community resources, programs, etc.). The SAT members should also be aware of the schools Educational Plan for Student Success (EPSS) action plan. For the Technical Assistance Manual for SAT please see the NMPED website: http://www.ped.state.nm.us/sat3tier/sat3tierModelComplete.pdf#pagemode=bookmarks

Core team members may vary by school, but should include at minimum:

- administration,
- regular education, and
- specialists and/or resource areas.
- the person who referred the student (whether educator or parent) or brought up a concern joins the team.
- every effort should be made to include the parent (or the family member serving as the "parent") and, if appropriate, the student on the team.

In addition, specialists, such as speech therapists, special education teachers, bilingual education teachers, reading teachers, nurses, or social workers can bring valuable needed perspectives and ideas to the team. A varying number of other individuals may serve on the team, depending on the types of concerns and expertise needed. Principals may want to appoint individuals yearly to the SAT on a rotating basis so that the responsibilities are shared among the staff. For example, the core group of regular education staff may be the school principal, one or

two classroom teachers, and a school counselor. Those who serve on the core team must be willing to commit the time and effort needed to produce the desired results.

TRAINING

All staff will be trained in the basic operations of the SAT, but the core members must have a good understanding of the purpose and process. Annual training in SAT procedures will be provided. Core members will also receive skill training in:

- selection of instructional and behavioral interventions,
- social services,
- the EPSS, community resources, and
- disproportionality of students in special education based on race/ethnicity *(See Chapter 8. General Administration)*

Authority: NMSA 1978 22-2C-6. Remediation programs; promotion policies; restriction

A. Remediation programs, academic improvement programs and promotion policies shall be aligned with alternative school-district-determined assessment results and requirements of the assessment and accountability program

B. Local school boards shall approve school district-developed remediation programs and academic improvement programs to provide special instructional assistance to students in grades one through eight who fail to attain adequate yearly progress. The cost of remediation programs and academic improvement programs shall be borne by the school district. Remediation programs and academic improvement programs shall be incorporated into the school district's educational plan for student success and filed with the department

J. For the purposes of this section:

(4) "student assistance team" means a group consisting of a student's:

(a) teacher;
(b) school counselor;
(c) school administrator; and
(d) parent.

IV. STUDENT ASSISTANCE TEAM (SAT) / INTERVENTIONS

Authority: 34 CFR §300.302 Screening for instructional purposes is not evaluation.
The schools SAT may determine a screening is appropriate for a particular student. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not be considered to be an evaluation for eligibility for special education and related services.

A. SAT – Purpose And Mission *See also: Student Assistance Team Manual at the NMPED web site:* http://www.ped.state.nm.us/qab/downloads/sat/file2.pdf

The Student Assistance Team (SAT) is a school-based group of people whose purpose is to provide additional Tier II support to students who are experiencing difficulties that are preventing them from benefiting from general education, because they are either performing below or above expectations. By "catching" these students in the child study phase, the SAT may not only help the student be able to remain and succeed in the general education program, but also reduce unnecessary referrals to special education. The SAT's mission is to approach and arrive at appropriate solutions to problems in the school environment through a cooperative team effort.

Although the team may make referrals to special education and other special programs, the SAT is not part of the special education process, but rather a general education responsibility. The SAT addresses problems found through general screening or those brought up as concerns by parents, teachers, or other staff. The SAT designs interventions for those students who show need for individual consideration. Further, the SAT suggests interventions and focuses on student strengths that may alleviate or resolve the situation prior to referral for a multidisciplinary evaluation. In many cases, the SAT is able to assist students who need interventions in order to succeed, but who are not necessarily disabled and therefore do not qualify for special education or Section 504 accommodations. Simply put, the SAT is a "support group" for the regular education teachers and students who need it.

Authority: NMSA 1978 Section 22-1-1.2 Legislative findings and purpose – diverse multicultural population

New Mexico has a diverse, multicultural population and "no education system can be sufficient for the education of all children unless it is founded on the sound principle that every child can learn and succeed…." Further, "…the key to student success in New Mexico is to have a multicultural education system that…holds teachers, students, schools, school districts and the state accountable…." The legislation requires that "…students who do not meet or exceed expectations will be given individual attention and assistance through extended learning programs and individualized tutoring…[and that] public schools make adequate yearly progress (AYP) toward educational excellence."

Authority: NMSA 1978 Section 22-2C-6 Remediation programs.

LADE is responsible to develop remediation and academic improvement programs to provide special instructional assistance to students who fail to attain AYP.

- For students completing grades one through seven, an academic improvement plan is to be developed by the SAT and is to include time lines and monitoring methods designed to ensure progress toward overcoming academic deficiencies.
- At the end of grade eight, the SAT must develop an academic improvement plan that delineates the specific deficiencies and prescribes specific remediation designed to enable the student to succeed in high school.
- In addition to remediation, the SAT is responsible for ensuring that promotion and retention policies are followed and placement in an alternative program for those students who fail to make AYP for two successive school years is recommended.

  Some possible local programs the SAT may discuss include, but are not limited to:
  - *Title I, Part A School Wide Program;*
  - *Title I, Part A Targeted Assistance Program;*
  - *Title I, Part B Even Start Family Literacy Program;*
  - *Title I, Part B reading First program;*
  - *Title I, Part B Early Reading First program;*
  - *Title I, Part C Education of Migratory Children program;*
  - *Title I, Part D Neglected, Delinquent or At-Risk Youth programs;*
  - *Title I, Part F comprehensive School Reform programs;*
  - *Title IV, Part A Safe and Drug-Free Schools and Communities programs;*
  - *Indian Education;*
  - *Bilingual Education;*
  - *504 Accommodation;*
  - *Community Agencies and Local Supports*

B. Three–Tiered Model: Response to Intervention (RtI)

Authority: NMAC 6.29.1.9 IDENTIFICATION

D. Student intervention system (e.g., SAT, RtI, PBS). The school and district shall follow a three-tier model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning or behavior.

(1) In Tier I, the school and district shall ensure that adequate universal screening in the areas of general health and well-being, language proficiency status and academic levels of proficiency has been completed for each student enrolled. If through universal screening, a referral from a parent, a school staff member or other information available to a school or district suggests that a particular student needs educational support for learning or behavior, then the student shall be referred to the SAT for consideration of interventions at the Tier II level.

(2) In Tier II, a properly-constituted SAT at each school, which includes the student's parents and the student (as appropriate), shall conduct the student study process and consider, implement and document the effectiveness of appropriate research-based interventions utilizing curriculum-based measures. In addition, the SAT shall address culture and acculturation, socioeconomic status, possible lack of appropriate instruction in reading or math, teaching and learning styles and instructional delivery mechanisms in order to rule out other possible causes of the student's educational difficulties. When it is determined that a student has an obvious disability or a serious and urgent problem, the SAT shall address the student's needs promptly on an individualized basis, which may include a referral for a multi-

disciplinary evaluation to determine possible eligibility for special education and related services consistent with the requirements of Subsections D-F of 6.31.2.10 NMAC and federal regulations at 34 CFR Sec. 300.300.

(3) In Tier III, a student has been identified as a student with disability and deemed eligible for special education and related services, and an IEP is developed by a properly-constituted team, pursuant to Subsection B of 6.31.2.11 NMAC and federal regulations at 34 CFR Sec. 300.321.

LADE will follow the guidance provided in the NMPED document titled: The Student Assistance Team (SAT) and the Three Tier Model of Student Intervention – A Guidance and Resource Manual for New Mexico's Response to Intervention (RtI) Framework. The three-tiered response to intervention model is the process that Student Assistance Teams (SATs) in New Mexico must adhere to in order to successfully meet the needs of all students. This three-tiered model of student intervention is required in current state regulations at NMAC 6.29.1.9(D)(1,2,3). In addition, the EPSS will provide structured guidance to the district as we strive to serve all students. See: http://www.ped.state.nm.us/sat3tier/sat3tierModelComplete.pdf

TIER I—General Screening and Quality Instruction

Tier I provides primary intervention in the form of general screening and quality classroom instruction to all students. The majority (80–90%) of school-aged students will respond successfully to quality instruction in the regular education classroom at this level. A teacher may recognize that a student is either struggling to learn the standard curriculum, working beyond the standard curriculum, or having difficulty maintaining appropriate behavior in the regular education classroom. At that point, the teacher tries classroom-based interventions. In some cases, a student will demonstrate little or no positive response to the teacher's informal interventions or, general screening procedures will indicate a need. At that point, the student is referred to Tier II.

TIER II—Child Study Process

Tier II is designed to provide secondary intervention through early identification and assistance for a small percentage (5–10%) of students who are performing above or below standards in academics and/or behavior. Interventions for these students either are provided as targeted individual interventions in one or more areas, such as through a SAT Intervention Plan designed by the Student Assistance Team (SAT) as described in the manual, or through a specialized school program that includes small group instruction. Tier II interventions are provided in addition to the quality instruction provided in Tier I. The interventions are designed to prevent or alleviate challenges a student may be facing. These interventions may be short-term or they may continue for an entire school year. The ultimate goal is to assist the student in succeeding within the regular education setting with the standard curriculum. In spite of a school's best efforts at delivering quality Tier I instruction and Tier II interventions, a few students may not demonstrate a significant and positive response to intervention. In those cases, those students may move to Tier III.

TIER III—Multidisciplinary Evaluation

Students referred to Tier III require a multidisciplinary evaluation to determine their need for services at this level. Tier III serves a very small percentage of students (1–5%) who demonstrate a need for an individualized program to accommodate their learning or behavioral needs. Special education teachers, related service providers, and regular education teachers provide Tier III interventions consisting of specially designed instruction and supplementary aids and services. Tier III interventions are provided to a student through an Individualized Education Program (IEP). The goal of Tier III is for the student to be successfully involved in and progress in the general education curriculum, and achieve the goals in his or her IEP.

*LADE will provide **annual training** to staff on the Policies and Procedures of this Chapter 1. Child Find /Interventions. In addition, the following is provided to school staff annually:*

1. *Clear information on when the SAT meetings are conducted*
2. *Clear information on where the SAT meetings are conducted*
3. *Name of the person responsible for scheduling/conducting the SAT meetings*
4. *SAT members will have access to printed copies of the numerous technical assistance documents provided on the NMPED website including but not limited to:*
   - *SAT Manual*
   - *Gifted: Technical Assistance Manual*

- *Response to Intervention (RtI)*
- *Nondiscriminatory Assessment of Culturally and Linguistically Diverse Students*
- *Facilitating Transitions for Children and Families*

5. *Clear information on where the staff may locate the printed copies of the technical assistance documents listed above.*
6. *Training on the SAT forms required for each student discussed at the SAT meeting:*
   - *Notice of and Invitation to SAT meeting*
   - *SAT Referral Packet (clear teacher documentation on monitoring of strategies)*
   - *Student Observation(s)*
   - *SAT Meeting Summary(ies)*
   - *SAT Intervention Plan*
   - *SAT Intervention Progress Report(s) and Follow-Up*
   - *Academic Improvement Plan (if appropriate)*
   - *Culturally and Linguistically Diverse assessment (if appropriate)*

Authority: NMAC 6.31.2.10 IDENTIFICATION
D. Evaluations and reevaluations
(1) Initial evaluations.
(b) Request for initial evaluation. Consistent with the consent requirement in 34 CFR §300.300, either the parent of a child or LADE may initiate a request for an initial evaluation to determine if the child is a child with a disability.

DI. **Scientific, Research-Based Instruction**

The SAT on each school campus will ensure access to the general curriculum as described below:

Authority: Public Law 108-446 IDEA Part A "General Provisions" — Sec. 601
(c) Findings – Congress finds the following:
(5) Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by –
(A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible;
(E) supporting high quality, intensive pre-service preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices,;
(F) providing incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and early intervening services to reduce the need to label children as disabled in order to address the learning and behavioral needs of such children.

(For more information on early intervening services, see Chapter 8.- General Administration)

Prior to a referral to Special Education, the SAT must determine if the student has received instruction and interventions that are scientific and research based. In order for the SAT to determine this, the 6 components below from the Scientific, Research-based Instruction and Intervention Checklist can be used to evaluate research evidence. This evidence might be the information that is provided by a publisher or program developer, or, it might be an article about an educational practice. The more questions that can be answered with "yes," the more likely it is that the evidence is scientifically based.

1. Relevance
   - Does the evidence provided by the researchers or developers address a question that is important to your needs?
   - Do the developers provide evidence that the research they claim supports their product or program links to and flows from relevant theory and theory-based research?
   - Do the research procedures, analyses, and findings support the researchers/"developers" claims?
2. Rigor

- If the researchers or developers claim a causal relationship between the intervention (product, service, program) and an outcome measure such as student achievement, did they include a control or comparison group in the study, in addition to the experimental group?
- Were the study participants (usually students or teachers or schools) randomly selected and/or randomly assigned to experimental versus control/comparison groups?
- Is sufficient information provided to determine whether the research design, instruments, and procedures are appropriate for answering the research questions posed by the researchers/developers?
- Were the research instruments and procedures applied with consistency, accuracy, and for the purpose intended by the developers of the instruments and procedures?

3. Systematic Approach
   - Was the research conducted using carefully planned, logical steps?
4. Objectivity
   - Did someone other than the publisher or developer conduct the research attesting to the products or programs effectiveness? If not, was the research conducted by the publisher/developer submitted to review by an independent, expert panel?
5. Replicability
   - With the information provided, could the same researchers likely repeat the study and obtain the same or highly similar results?
   - With the information provided, could other researchers likely replicate the study's methodology and obtain the same or highly similar results?
6. Data Analyses and Interpretation
   - Does the research evidence provided include data or data summaries?
   - Are significance levels and effect sizes reported?
   - Are the conclusions drawn by the researchers/developers clearly supported by the data?

For more information and technical assistance see The Student Assistance Team (SAT) and the Three Tier Model of Student Intervention – A Guidance and Resource Manual for New Mexico's Response to Intervention (RtI) Framework. http://www.ped.state.nm.us/sat3tier/sat3tierModelComplete.pdf

D. Educational Plan For Student Success (EPSS)

Authority: NMAC 6.29.1.8 Implementation: Educational Plan for Student Success (EPSS)

A. District responsibilities for the EPSS. The EPSS is a strategic improvement plan that is written or revised based on trend data and the academic achievement of the school and district. Each district is required to develop, implement, monitor and evaluate the plan on an annual basis. Additionally, the district shall ensure that a site-level EPSS is developed by each school within the district and by each charter school for which the district is the chartering agency. State-chartered charter schools shall develop a site-level EPSS. Districts with fewer than 600 students may write only one EPSS for the entire district; however, a district with a school in or receiving a school improvement status classification is not eligible for this option. The EPSS shall be guided by the following four questions:
   (1) What is the current level of performance compared with the annual measurable objectives (AMOs)? This requires a review of student performance data using SBA trends, short-cycle assessments and other assessments used at local sites.
   (2) Where does the district or charter school need to be, compared with the AMOs? This requires a review of overall goals/target areas (performance indicators).
   (3) How will the district or charter school achieve its stated goals/target areas? This requires development of strategies and activities for improvement.
   (4) How does the district or charter school know it is meeting short-term and annual goals? This requires a review of short-cycle and SBA data.

Each school's SAT committee members will provide valuable information to the site-level EPSS action plan. Through data analysis of student needs as reviewed by the SAT for intervention and support, suggestions for strategies and activities to improve academic achievement can be provided to the EPSS committee.

V. REFERRALS FOR SPECIAL EDUCATION EVALUATION

Authority: 34 CFR §300.301 Initial evaluations.

(b) Request for initial evaluation. Consistent with the consent requirements in §300.300, either a parent of a child, or a staff person with LADE, may initiate a request for an initial evaluation to determine if the child is a child with a disability.

Authority: 34 CFR §300.309 Determining the existence of a specific learning disability.

(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group will consider, as part of the evaluation described in §§300.304 through 300.306, data that demonstrates that—

(1) Prior to, or as a part of the referral process, the child was provided appropriate instruction delivered by qualified personnel; and

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

All referrals for evaluation to the special education department will go through the SAT process in order to document appropriate interventions and strategies. In the case of a Child Find student who is clearly a student with a disability and is in need of special education services, the SAT may refer to the Special Education Eligibility Determination Team (EDT) for evaluation. All procedural safeguards including Notice and Consent for Evaluation must be provided to the parent or adult student as described in Chapter 2. Procedural Safeguards.

VI. TIMELINE – REFERRAL TO EVALUATION

Authority: 34 CFR §300.301 Initial evaluations.

(a) General. The local education agency will 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 under this part.

(b) Request for initial evaluation. Consistent with the consent requirements in §300.300, either a parent of a child, or LEA, may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(c) Procedures for initial evaluation. The initial evaluation—

(1) (i) Will be conducted within 60 days of receiving parental consent for the evaluation;

(2) Will consist of procedures—

(i) To determine if the child is a child with a disability under §300.8; and

(ii) To determine the educational needs of the child.

(d) Exception. The timeframe described in paragraph I(1) of this section shall not apply to LADE if—

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

(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph I(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under §300.8.

(e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS

D. Evaluations and reevaluations

(1) Initial evaluations

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

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

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

(e) The exception to the 60 day time frame in Item (ii) of Subparagraph (d) of Paragraph (1) of Subsection D of 6.31.2.10 NMAC applies only if the subsequent public agency is making sufficient progress to

ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

VII. SPECIAL EDUCATION DEPARTMENT RESPONSIBILITIES

A. SAT Referral Packet – Data Collected

34 CFR §300.309 Determining the existence of a specific learning disability.

(c) LADE must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in §300.306(1)(1)--

§300.301 Initial evaluations.

(ci) General.

(cii) Request for initial evaluation. Consistent with the consent requirements in §300.300, either a parent of a child, or the *cm, may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(c) Procedures for initial evaluation. The initial evaluation—

(1) (i) Must be conducted within 60 days of receiving parental consent for the evaluation; or

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS

D. Evaluations and reevaluations

(1) Initial evaluations

(c) Procedures for initial evaluation.

(iii) LADE shall maintain a record of the receipt, processing and disposition of any referral for an individualized evaluation. All appropriate evaluation data, including complete SAT file documentation and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the eligibility determination team.

(iv) A parent may request an initial special education evaluation at any time during the SAT process. If LADE agrees with the parent that the child may be a child who is eligible for special education services, LADE must evaluate the child. If LADE declines the parent's request for an evaluation, LADE must issue prior written notice in accordance with 34CRF Sec. 300.503. The parent can challenge this decision by requesting a due process hearing.

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS - D. Notice requirements and F. Parental consent

You will find Notice and Consent for Evaluation in Chapter 2 Procedural Safeguards.

You will find the Invitation to the IEP meeting in Chapter 5 - IEP and Chapter 2 - Procedural Safeguards.

LADE diagnosticians will complete the required Procedural Safeguards notice Parent and Student Rights in Special Education, provide Notice of Evaluation and obtain parental Consent for Evaluation using necessary forms that incorporate all of the federal and state requirements.

B. Multidisciplinary Team or Eligibility Determination Team Evaluation Conducted

The professional group (including input from the parent) will review the evaluation as described in Chapter 3 - Evaluation and Chapter 4 – Disabilities/Gifted. When the LADE evaluation team has determined the child is a child with a disability and an IEP Team meeting is needed, the parent will be invited to attend an IEP meeting using appropriate forms addressing required federal and state elements. Based on the evaluation, the child may have been determined to be a gifted student and need an IEP Team meeting to determine appropriate special education services.

C. IEP Meeting Scheduled

LADE will provide a written parent invitation to the IEP meeting when the group has determined the child is a child with a disability and an IEP meeting is needed. The meeting will be arranged at a mutually agreeable time. The school principal / special education director will designate the person responsible for scheduling the IEP meeting with the parent and other required members. The specific requirements for the invitation to the IEP meeting are found in Chapter 2 Procedural Safeguards. Required members are found in Chapter 5 – IEP.

D. Timeline from Evaluation to IEP Meeting:

Authority: 34CFR §300.323 When IEPs must be in effect.

(c) Initial IEPs; provision of services. The *cm ensures that—

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

(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

*As soon as possible is defined by LADE to be **within 5 school days** of the IEP meeting, the student will be receiving required services as determined by the IEP Team.*

See also Chapter 5 – IEP

E. Transfers from Outside the District – already in Special Education

For students who are new to LADE and have received special education services in the student's previous school district, regular SAT referral procedures are bypassed. Procedures to be followed are included in Chapter 5. – IEP within the Transfer section.

VIII. REFERRALS FOR SPECIFIC AREAS:

Any evaluation of an existing special education student is NOT a referral and does not include the SAT committee. Any evaluation of an existing special education student is a reevaluation and should follow all requirements of §300.305 found in Chapter 3-Evaluations.

A. Adapted Physical Education

The SAT may include a request for a physical education evaluation upon initial referral. However, students already receiving special education services will have an IEP Team or the EDT make a request for an adapted / special PE evaluation to determine if specially designed physical education is required for the student.

Authority: 34 CFR §300.108 Physical education.

The NMPED ensures that LADE will comply with the following:

(a) General. Physical education services, specially designed if necessary, will be made available to every child with a disability receiving FAPE, unless LADE enrolls children without disabilities and does not provide PE to children without disabilities in the same grades.

(b) Regular physical education. Each child with a disability will be afforded the opportunity to participate in the regular physical education program available to non-disabled children unless—

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's IEP.

(c) Special physical education. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child will provide the services directly or make arrangements for those services to be provided through other public or private programs.

(d) Education in separate facilities. If LADE is responsible for the education of a child with a disability who is enrolled in a separate facility, the child will receive appropriate physical education services in compliance with this section.

[Authority: 20 U.S.C. §1412(a)(5)(A)]

B. Assistive Technology Team

The SAT is not necessary for the assistive technology consideration. The need for assistive technology will be considered in each full and individual evaluation conducted by the special education department. *(For more information see also FIE Chapter 3 and IEP Chapter 5)*

Authority: 34 CFR §300.105 Assistive technology.

(a) LADE must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's—

(1) Special education under §300.36;

(2) Related services under §300.34; or

(3) Supplementary aids and services under §§300.38 and 300.114(a)(2)(ii).

(b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE. (Authority: 20 U.S.C. §§1412(a)(1), 1412(a)(12)(B)(i))

C. Behavioral Concerns

When a student is referred to the SAT for a problem behavior, the administrator will first determine the status of the student:

1. Is the student functioning in the regular education environment without any identified exceptionality and being referred for behavior issues only? If so, the SAT team will meet and addresses the problem(s).
2. Is the student being referred for possibly needing special education and related services? The SAT can use the FBA to help determine if the problem behavior is related to an exceptionality. If the student meets eligibility requirements to receive special education or related services, the FBA and BIP developed by the SAT will become part of the student's IEP. The Section 504 team or the Student Assistance Team (SAT) is responsible for conducting the FBA and developing the BIP for students who do not qualify as eligible for special education under the IDEA.
3. Is the student already identified as having an exceptionality and an IEP or is the student receiving services under Section 504? In these cases, if the behavior is related to the exceptionality, the planning for the FBA must be done within the framework of the IEP meeting for students who qualify for special education under the IDEA. The IEP team develops or revises a BIP to address the behavior.
   For further information and sample forms use the NMPED technical assistance manual titled Addressing Student Behavior: A Guide for Educators found on the website:
   http://www.ped.state.nm.us/RtI/dl10/Addressing%20Student%20Behavior%20Guide%202010.pdf

Most teachers recognize that many classroom discipline problems can be resolved by consistently applying standard management strategies. Strategies proven to be effective include but are not limited to:

- teaching students how to comply with well-defined classroom rules,
- providing students more structure in lessons,
- making strategic seating assignments, and
- posting a class schedule.

These proactive procedures can sometimes even alleviate the need for teachers to learn about other solutions to the problems they face through student assistance or intervention assistance teams. Regardless of the source of this information, school personnel generally should introduce one or more standard strategies before seeking to initiate the more complex, and often time-consuming, process of FBA. A formal assessment and SAT referral to special education is usually reserved for serious, recurring problems that do not readily respond to intervention strategies, or classroom management techniques and impede a student's learning, or are ongoing.

D. Early Childhood

The SAT committee is not responsible for child find or referrals for this population of students.

1. Birth to 3 years – Family Infant Toddler (FIT) Program

Authority: 34 CFR §300.25 Infant or toddler with a disability.
Infant or toddler with a disability-

(a) Means an individual under three years of age who needs early intervention services because the individual—
- **(1) Is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or**
- **(2) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and**

(b) May also include, at the State's discretion—
- **(1) At-risk infants and toddlers; and**
- **(2) Children with disabilities who are eligible for services under section 619 and who previously received services under Part C of the Act until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under Part C of the Act serving such children shall include--**
  - **(i) An educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and**
  - **(ii) A written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under Part C of the Act or participate in preschool programs under section 619. (Authority: 20 U.S.C. §§1401(16) and 1432(5))**

Family Infant Toddler (FIT) Program

The Family Infant Toddler (FIT) Program at the Department of Health is the lead agency for early intervention services under the Individuals with Disabilities Education Act (Part C).

LADE will work with the Department of Health's Family Infant Toddler (FIT) Program to refer families who have concerns about the development of their young child (birth to three) and who could benefit from early intervention services For more information see the website:
http://archive.nmhealth.org/ddsd/nmfit/Referral/Referral.htm

If there are concerns about how an infant or toddler is developing, LADE shall help refer the family to the local FIT Program provider agency. Upon referral a Family service coordinator will meet with the family and share information about the FIT Program, and listen to family's concerns, hopes and needs related to their child's development. The family service coordinator will arrange for a comprehensive developmental evaluation to determine if the child is eligible. If determined to be eligible under the FIT Program criteria the family service coordinator will help the team, including the family, develop an Individualized Family Service Plan (IFSP). The IFSP will establish outcomes, strategies and the services to be provided to support the family to promote their child's development.

In addition, refer to the NMPED and NMDH guidance document for transition from Early Intervention to other services and supports titled: Facilitating Transitions for Children and Families in New Mexico.
http://www.ped.state.nm.us/seo/preschool/ta.parts.i.ii.suppl.pdf

Also: Preschool Programs for Children with Disabilities and the 90 Day Transition Conference: A Guidance Document located at the website: http://www.ped.state.nm.us/seo/preschool/90.day.transition.guidance.doc

2. At 3 years of age – Preschool Program for Children with Disabilities

Authority: 34 CFR §300.124 Transition of children from the Part C program to preschool programs.
The NMPED ensures that--

(a) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act;

(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with §300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with §300.101(b); and

(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.

Authority: 34 CFR §300.323 When IEPs must be in effect. *(see Chapter 5. - IEP)*

(a) General. At the beginning of each school year, LADE will have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.

(b) IEP or IFSP for children aged three through five.

(1) In the case of a child with a disability aged three through five (or, at the discretion of the NMPED, a two-year-old child with a disability who will turn age three during the school year), the IEP Team will consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is--

(i) Consistent with NMPED policy; and

(ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (b)(1) of this section, LADE will--

(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; *(use the New Mexico FIT program IFSP documents as LADE explains the difference to parents - http://www.health.state.nm.us/ddsd//fit/otherdoc.html) and*

(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

Authority: 34 CFR §300.24 Individualized family service plan.

Individualized family service plan or IFSP has the meaning given the term in section 636 of the Act.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

A. Preschool programs for children aged 2 through 5

(5) In particular:

(a) LADEsurveys Part C programs within its educational jurisdiction in its child find efforts to identify children who will be eligible to enter the LEA's Part B preschool program in future years.

(b) LADE promotes 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 LADE Part B preschool program.

(c) The LADE establishes and implements 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.

(d) The LADE assists parents in becoming their child's advocates as the child makes the transition through systems.

(e) The LADE participates in transition planning conferences arranged by the designated Part C lead agency no less than 90 days prior to the anticipated transition or the child's third birthday, whichever occurs first, to facilitate informed choices for all families.

(f) The LADE designates a team including parents and qualified professionals to review existing evaluation data for each child entering the LADE preschool program in compliance with 34

CFR §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.

(g) LADE 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.

(h) In compliance with 34 CFR §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.

(i) LADE 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.

Culturally and Linguistically Diverse: For Preschool Children who are Culturally and Linguistically Diverse see Limited English Proficient section G**.** *The LADE diagnostician assigned to the Family Infant Toddler (FIT) Program is responsible for working closely with the Special Education Director to implement these procedures and keep documentation of the process.*

90 Day Conference

A Transition Conference must be convened at least 90 days prior to the anticipated date of transition from the FIT Program but no later than 90 days prior to the child's third birthday. The LADE will participate in this conference. At the 90 day conference, the following activities will occur:

a) Review with parents the program options for their child (including preschool special education services; Head Start; NMSBVI; NMSD; child care and other community services).
b) With parental consent, transfer records (including evaluation and assessment information and current IFSP).
c) Decide what other activities need to be completed before the child moves into the new service setting (including enrollment; immunizations; transportation issues, medical needs etc.).
d) Review current evaluation and assessment information. Decide if any further evaluations are needed to determine eligibility prior to transition.
e) Schedule IEP meeting date (at least 15 days before first day services are to be provided) if the child will transition into preschool special education.
f) Help family to decide where their child will transition to and when.
g) Decide if there is a need for post transition follow-up (including service coordination, consultation with new staff).
h) Decide how to evaluate whether the transition process was smooth and effective.

E. Homebound Instructional Services

The SAT may include a request for an evaluation upon initial referral for homebound services. However, students already receiving special education services will receive a request for homebound services from the IEP committee. (For more information see also Chapter 3. - Evaluation and Chapter 5. - IEP and Chapter 6. - LRE)

F. Limited English Proficient (LEP) Culturally and Linguistically Diverse (CLD)

(For more information see also Full and Individual Evaluation (FIE) Chapter 3)

Authority: 34 CFR §300.306 Determination of eligibility.

(b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part-

(1) If the determinant factor for that determination is--

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA); *(for ESEA see Chapter 3.- Evaluation)*

(ii) Lack of instruction in math; or

(iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria under §300.8(a).

Authority: NMAC §6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS

E. Procedural requirements for the assessment and evaluation of culturally and linguistically diverse children.

(3) LADE must consider information about a child's language proficiency in determining how to conduct the evaluation of the child to prevent misidentification. A child may not be determined to be a child with a disability if the determinant factor for that eligibility determination is limited English proficiency. Comparing academic achievement results of grade level peers at LADE with similar cultural and linguistic backgrounds should guide this determination process and ensure that the child is exhibiting the characteristics of a disability and not merely language difference in accordance with 34 CFR §300.306(b)(1).

SAT Procedures for Culturally and Linguistically Diverse (CLD) Students.

It is essential for the SAT to consider the following information before making a referral for an evaluation, unless the student has an obvious disability or a serious and urgent problem:

Compiled **socio-cultural information** should suggest that socio-cultural factors are not contributing significantly to the suspected learning/behavior problem. This information may include, but is not limited to the following factors:

- Family's socio-economic status
- Level of parental education
- Experiential background (e.g., customs/celebrations, religious background, etc.)
- Length of residency in the United States (this information should include generational level of residency in the U.S. for both student and parents)
- Time spent attending an American school
- Family and student's mobility
- Birthplace of student
- Extent of sustained involvement with society or family outside of the U.S.A.
- Family composition (e.g., single-parent families, blended families, etc.)
- Ethnic identity from the student's perspective

Parent involvement and input—refers to the gathering of educational, linguistic, and cultural background information from the parents. Modes of gathering pertinent and critical student history directly from parents may include, but are not limited to, these:

- Information gathered through both formal and informal interviews
- Face-to-face discussions with parents are critical in conducting highly informative interviews
- Rating scales (including acculturation, behavioral, adaptive behavior rating scales, etc.)
- Parent observational information
- Medical history, including prenatal, birth, postnatal, milestones, and developmental information. The medical history should also include details regarding medical diagnosis, high fevers, accidents, injuries, hospitalization, etc.

Targeted interventions determined appropriate by the SAT are implemented, including appropriate multilingual instructional supports, but have not resulted in sufficient student progress. The intervention process, which is part of the Three-Tier SAT requirements in New Mexico, may include, but is not limited to, these actions:

1. Confirming the length of time spent in a highly qualified multilingual instructional setting, which may include research of the type of multilingual program where the student has been receiving educational services
2. Substantiating continuity of appropriate educational program through an appropriate length of time
3. Obtaining information pertaining to the type(s) of interventions being used in the regular classroom setting, and considering the outcome(s) of these interventions and whether they have yielded a positive or negative educational impact
4. Ensuring that appropriate multilingual instruction, such as appropriate teaching methodologies, has been implemented over time (e.g., Sheltered English, ESL instruction, dual language and maintenance programming, etc.)
5. Ensuring that instructionally sound teaching strategies designed for multilingual learners have been implemented for an appropriate length of time

6. Conducting a review of educational records and history, which includes school attendance records, grades, type(s) of instructional modes, and, possibly, early exit from multilingual programs

All **intervention information** is accurately documented and organized by the SAT for evaluation reference including these components:

1. The review of records prior to evaluation should include preliminary or initial oral language acquisition screening
2. Home Language Survey and follow-up interview with educational stakeholders concerning language proficiency
3. Review of educational record
4. Vision and hearing screenings
5. Medical history
6. Academic/behavioral concerns in regards to educational, social, and linguistic development
7. Instructional interventions attempted
8. Documented parental contacts/conferences which should include shared information in regards to schools' concern about student's academic, social, and developmental history

The SAT, and subsequently the evaluation team, must consider and address the interactions between cultural and sociolinguistic factors and a suspected disability. Many learning and behavior problems that appear to be indicative of a disabling condition may actually be the manifestation of cultural, acculturation, or sociolinguistic differences. The factors below, initially proposed by Catherine Collier, should be considered prior to referral to Tier Three of the SAT model. The foundation of appropriate assessment of students who are CLD is built upon the analysis of these key socio-cultural factors:

- Cultural and linguistic background
- Experiential background
- The stage and pattern of acculturation
- Patterns of sociolinguistic development
- Cognitive learning styles (1998)

LEP – CLD Preschool Children - Decision Making "To Refer or Not to Refer"

Two basic rules of thumb shape decisions regarding the need to refer young children to special education. They are:

- If diversity or deficit is determined to be present, they should be addressed first, prior to formal referral for special education evaluation.
- If learning/developmental difficulties persist after diversity and deficit have been addressed, formal referral for special education evaluation should be initiated.

Note: The following considerations must be addressed by early childhood Student Assistance Team members to ensure that CLD preschool children are properly referred for special education evaluation.

Family

- Priorities, strengths, and concerns for their child have been identified.
- General cultural values, beliefs, and practices have been identified.
- Language use in the home and community has been identified.
- Exposure and use of first (L1) and second language (L2) has been described.

Child

- World view assessed (Is the child demonstrating cultural values, behaviors and language abilities different from that of his/her parents?)
- Language dominance identified.
- Exposure and use of first (L1) and second language (L2) has been described.
- Developmental strengths, emerging skills, and needs identified (screening, parent report, observation, etc.).

Considerations of Learning Difficulties (From Barrera, I., 1995)

- Loss of competence and self-confidence stemming from shaming and unfamiliarity with communicative strategies, behaviors and expectations within an early childhood setting.
- Limited English Proficiency.
- Diversity in funds of knowledge (Culturally Specific Learning).

Early Developmental Opportunities (Adapted from Barrera, I., 1995)

- There is consistent positive emotional support from one or more adults within the home/family setting.
- Regular opportunities to play however that is defined by a group.
- There are opportunities for safe exploration of the child's surrounding environment.
- Positive mentoring interactions with adults, siblings, and other individuals for the purpose of teaching about future roles and responsibilities are evident.
- Freedom form overwhelming trauma.

Poverty (From Barrera, I., 1995)

- Evidence of family income.
- Family size compared to income.
- Educational levels of parents.
- Occupation of parents.
- Participation in school lunch program.
- Evidence of need for outside assistance (e.g., welfare assistance)
- Stability of living conditions (e.g., mobility, change in caregivers)
- Degree of access to extended family and larger community.

Note: If it is determined by the early childhood referral team that one, or a combination of the previously mentioned variables and considerations, is the primary reason for concern, the Student Assistance Team members must look for other family/child supports in the community.

G. New Mexico School for the Blind and Visually Impaired (NMSBVI)

The SAT will not make referrals to the NMSBVI.

Students with visual impairments that impact their education may be eligible for NMSVI Outreach or other services. A student can be referred by an agency or by LADE, or by a physician, parent or guardian. When the referral is by a physician, parent or guardian, LADE will be notified and asked to become part of the referral process. A joint powers agreement is reached between the local district/agency and NMSBVI, and an itinerate teacher is assigned to the student and does an assessment. If it is determined the student has a visual impairment that impacts his/her education, LADE will organize a team to make an individualized education plan for the student. That plan determines what kind of and how much service, if any, the student should receive from NMSBVI.

H. New Mexico School for the Deaf (NMSD)

The SAT will not make referrals to the NMSD.

Children and youth who are enrolled in public school programs, their families and their educational teams are eligible for the New Mexico School for the Deaf outreach and other services. LADE will make recommendations based on the IEP committee and current evaluations. When the referral is by a physician, parent or guardian, LADE will be notified and asked to become part of the referral process. Some services from the NMSD include certified teachers of the Deaf and Hard of Hearing providing assistance to schools, comprehensive student evaluations conducted by staff fluent in the student's mode of communication, certified in their areas of expertise and experienced in evaluating students who are Deaf or Hard of Hearing. LADE will make recommendations based on the IEP committee and current evaluations.

I. Occupational Therapy and / or Physical Therapy

The SAT may include a request for an OT/PT evaluation upon initial referral to special education. However, students already receiving special education services will receive a request for an OT/PT evaluation from the EDT or the IEP Team.

J. Private / Nonpublic Schools *(See also Chapter 6)*

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES

L. Children in private schools or facilities

(1) Children enrolled by parents in private schools or facilities.

(c) LADEwill locate, identify and evaluate all children with disabilities who are enrolled by their parents in private schools, including religious elementary schools and secondary schools located in the education jurisdiction of LADE, in accordance with 34 CFR §§300.131 and 300.111.

(2) Children placed in or referred to private schools or facilities by New Mexico public agencies. Each public agency shall ensure that a child with a disability who is placed in or referred to a private school or facility by the agency as a means of providing special education and related services is provided services in compliance with the requirements of 34 CFR §§300.146 and 300.147. Such a child has all the rights of a child with a disability who is served by a public agency.

(3) Children placed in or referred to private schools or facilities by New Mexico public non-educational agencies. For a qualified student or school-age person in need of special education placed in a private school or facility by a New Mexico public non-educational agency with custody or control of the qualified student or school-age person or by a New Mexico court of competent jurisdiction, the school district in which the facility is located shall be responsible for the planning and delivery of special education and related services, unless the qualified student's or school-age person's resident school district has an agreement with the facility to provide such services. The district must make reasonable efforts to involve the qualified student or school-age person's resident school district in the IEP process.

(4) Children placed in or referred to private schools or facilities by public non-educational agencies other than New Mexico public agencies. A school district in which a private school or facility is located shall not be considered the resident school district of a school-age person if residency is based solely on the school-age person's enrollment at the facility and the school-age person would not otherwise be considered a resident of the state.

(5) Children placed in private schools or facilities by parents when FAPE is at issue. The responsibility of a local educational agency to pay for the cost of education for a child with a disability who is placed in a private school or facility such as residential treatment centers, day treatment centers, hospitals or mental health institutions, by parents who allege that the LEA failed to offer FAPE is governed by the requirements of 34 CFR §300.148. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of Subsection I of 6.31.2.13 NMAC.

(6) If not otherwise governed by this rule, the department will determine which school district is responsible for the cost of educating a qualified student in need of special education who has been placed in a private school or facility outside the qualified student's resident school district in accordance with the following procedures.

(a) The receiving school district must notify the SEB of the department in writing no later than thirty (30) days after the receiving school district receives notice of the placement. The notice, as described on the department's website, must include: name of student, date of birth of student, date of placement, information regarding the qualified student's resident school district, documentation of placement, including student's IEP, cost of placement, and any other information deemed relevant by the SEB. The receiving school district must provide a copy of the notice to the district identified as the student's resident district.

(b) The district identified as the student's resident district may provide any additional information it deems relevant. Such additional information must be provided no later than 15 days after the resident district receives its copy of the notice described in Subparagraph (a) of this paragraph.

(c) No later than 60 days after its receipt of the notice described in Subparagraph (a) of this paragraph, the SEB will issue its determination as to which school district is responsible for the cost of educating the student, together with the amount of any reasonable reimbursement owed to the receiving school district. The SEB may extend the 60- day timeline for good cause.

(7) The department will assign a unique student identifier for school-age persons who have service plans, including those who are not residents of the state but who are attending private residential treatment facilities in the state.
(8) Children schooled at home. Each LEA shall locate, evaluate and determine the eligibility of children with disabilities who are schooled at home pursuant to Section 22-2-2(H) NMSA 1978.
[§6.31.2.11 NMAC - Rp, §6.31.2.11 NMAC, 6/29/07; A, 12/31/09]

For students who have been placed by their parents in private/nonpublic schools, the following applies:

1. Child Find is a screening process of basic tests administered to or procedures used for all children in a school, grade, or class to identify those children who are potentially in need of special education and related services.
2. A student is not automatically eligible for services under the IDEA as a result of having been identified through the Child Find process. The student will be a part of the SAT process and intervention strategies will be documented as a part of the referral process. Students identified as warranting further consideration for special education or related services must then undergo (with parental consent) the initial evaluation described in Section 2.
3. The regulations do not require that educational agencies test all students for whom evaluations are requested. The LEA will conduct an evaluation when it suspects that the student has a disability and needs special education and related services as a result. Consequently, if the LEA has no reasonable basis for suspecting that the student has such a disability, it may refuse to conduct an evaluation. Nonetheless, the district will investigate thoroughly the possible existence of a disability before refusing to evaluate, particularly when the request comes from parents of a student who is not progressing well in school.
4. If LADE refuses the request for evaluation, then the parents must be so notified in writing. This notice must include an explanation of the basis for the refusal and the procedural safeguards available (that is, the right to request a due process hearing) to contest the refusal. An explanation of the procedural safeguards under the IDEA and of the due process hearing procedure can be found in the New Mexico *Parent and Student Rights in Special Education* document.
5. If a parentally-placed private school student is evaluated and found in need of special education or related services, then a meeting with the parent and the private school will occur so that the district can make a formal, written offer for placement and special education services within the district's public schools. If the parents reject the district's offer, then the district will explain its Private School Services Plan that it is required by federal law to provide to private school students with disabilities. However, the law provides that these students are not entitled to the same special education and related services they would receive if enrolled in the public school. 34 CFR § 300.137

When a student placed by his/her parents in private/nonpublic school, has been referred for special education evaluation, all requirements concerning referral, evaluation, and determination of eligibility will be followed by LADE.

K. Related Services

Authority: 34 CFR § 300.8 Child with a disability.

(a) General.

(1) Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2) (i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(ii) If, consistent with §300.38(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(See also Chapter 5 Related Services)

L. Residential Services

The IEP committee will determine what if any services cannot be provided by the *cm. All requirements for placement in the least restrictive environment will be followed by the IEP team.

Authority: 6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:
B. Public agency funding and staffing.

(3) Placement of students in private residential treatment centers, or other out of home treatment or habilitation programs, by the IEP team or by a due process decision. In no event shall a child with an IEP be allowed to remain in an out of home treatment or habilitation program for more than 10 days without receiving special education and related services. The school district in which the qualified student or school-age person lives, whether in-state or out-of-state, is responsible for the educational, nonmedical care and room and board costs of that placement.

(a) Agreements between the resident school district of the qualified student or school-age person and a private residential treatment center must be on the form posted on the department's website or on a form otherwise approved by the department and must be reviewed and approved by the secretary of public education.

(b) Agreements must provide for:

(i) student evaluations and eligibility;

(ii) an educational program for each qualified student or school-age person that meets state standards for such programs, except that teachers employed by private schools are not required to be highly qualified;

(iii) the provision of special education and related services in conformance with an IEP that meets the requirements of federal and state law and applicable regulations and rules;

(iv) adequate classroom or other physical space that allows the school district to provide an appropriate education;

(v) a detailed description of the costs for the placement; and

(vi) an acknowledgement of the authority of the local school board and the department to conduct on-site evaluations of programs and student progress to ensure that state standards are met.

(4) Placement of students in public residential treatment centers, or other out of home treatment or habilitation programs, by the IEP team or by a due process decision. The sending school shall be responsible for the provision of special education and related services. In no event shall a child with an IEP be allowed to remain in an out of home treatment or habilitation program for more than 10 days without receiving special education and related services.

(For more information on Public Agency Responsibility, see also Chapter 6 and 8)

M. Speech and Language Services

34 CFR § 300.8 Child with a disability.

(a) General.

(1) Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2) (i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(b) ***See*** *Chapter 4. – Disabilities / Exceptionalities*

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(11) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, language impairment, or a voice impairment, that adversely affects a child's educational performance.

In New Mexico, speech and/or language impairments are those disorders that adversely affect a student's educational performance by interfering with or limiting the student's "ability to receive, send, process, and comprehend concepts or verbal, nonverbal, and graphic symbol systems." Speech and language impairments may be exhibited as disorders ranging from mild to severe and may be developmental or acquired. A speech-language impairment is to be differentiated from a speech-language difference which may be due to bilingualism, dialectical or cultural differences in language use, or being non-English dominant. A communication difference/dialect is a variation of a communication system used by a group of individuals that reflects and is determined by shared regional, social, or cultural/ethnic factors and should not be considered a disorder of speech or language.

Careful consideration must be given by the SAT committee that the student's speech or language is not a communication difference. Those students will not be eligible for special education in the area of speech or language.