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 3. – FULL AND INDIVIDUAL EVALUATION

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Chapter 3. - FULL AND INDIVIDUAL EVALUATION
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Chapter 3. - FULL AND INDIVIDUAL EVALUATION

I. TIMELINES

A. Timeline for Initial Evaluations

Authority: 34 CFR §300.301 Initial evaluations.

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

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

(ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and

(2) Must 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.

(ci) Exception. The timeframe described in paragraph (c)(1) of this section shall not apply to La Academia De Esperanza Charter School (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 (c)(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.

(cii) 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, EVALUATION AND ELIGIBILITY DETERMINATIONS

D. Evaluations and reevaluations

(1) Initial evaluations

(c) Procedures for initial evaluation.

(i) The initial evaluation must be conducted within 60 calendar days of receiving parental consent for evaluation.

(ii) LADE must follow evaluation procedures in compliance with applicable requirements of 34 CFR Sec. 300.304 and other department rules and standards to determine: (1) if the child is a child with a disability under 34 CFR §300.8; and (2) if the child requires special education and related services to benefit from their education program.

(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 (EDT).

(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, LADEmust evaluate the child. If LADE declines the parent's request for an evaluation, LADE must issue prior written notice in accordance with 34 CFR §300.503. The parent can challenge this decision by requesting a due process hearing.

(ci) 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.

(cii) 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.

(f) The Eligibility Determination Team (EDT) including the parent and child, if appropriate, must meet to determine if the child is a child with a disability and requires an IEP upon completion of the initial evaluation.

B. Timeline for Re-evaluations

§300.303 Reevaluations.

(a) General. LADE must ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311 *(located in Chapter 3.- Evaluation)*

(1) If LADE determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child's parent or teacher requests a reevaluation.

(b) Limitation. A reevaluation conducted under paragraph (a) of this section--

(1) May occur not more than once a year, unless the parent and LADE agree otherwise; and

(2) Must occur at least once every 3 years, unless the parent and LADE agree that a reevaluation is unnecessary.

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS

D. (2) Reevaluations

(a) LADE must ensure that a reevaluation of each child is conducted at least once every three years, unless the parent and LADE agree that a reevaluation is unnecessary, and is in compliance with the requirements of 34 CFR §§300.303-300.311, and any other applicable department rules and standards.

(b) Reevaluations may be conducted more often if:

(i) the LEA determines the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(ii) the child's parent or teacher requests a reevaluation.

(c) Reevaluations may not occur more than once a year, unless the parent and LADE agree otherwise.

DI. EVALUATION PROCEDURES

§300.122 Evaluation.

Children with disabilities must be evaluated in accordance with §§300.300 through 300.311 of subpart D of this part. *(All requirements are found in this Chapter 3. of the Policies and Procedures.)*

§300.304 Evaluation procedures.

(a) Notice. LADE will provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures LADE proposes to conduct. *(see Chapter 2 for Notice and Consent, including consent for certain psychological evaluations.)*

(b) Conduct of evaluation. In conducting the evaluation, LADE will --

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining--

(i) Whether the child is a child with a disability under §300.8; and

(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(c) Other evaluation procedures. The *cm must ensure that--

(1) Assessments and other evaluation materials used to assess a child under this part--

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

The native language information may be found in the student's cumulative folder which includes LADE's enrollment information. Upon enrollment, parents complete the home language portion which states the language most frequently spoken by the parents in the student's home. If a language other than English is spoken in the home, careful consideration must be given to the environmental and cultural impact. Also, language evaluations determining the student's dominant language both expressively and receptively is considered.

(iii) Are used for the purposes for which the assessments or measures are valid and reliable;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same academic year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §300.301 (d)(2) and (e), to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

For additional information see the New Mexico Technical Evaluation and Assessment Manual (NMTEAM) revised July 2011 located at: http://www.ped.state.nm.us/SEB/technical/NMTeamManual.pdf

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS

D. Evaluations and reevaluations

(2) (d) Procedures for conducting evaluations and reevaluations:

(i) LADE must provide **notice** to the parents of a child with a disability that describes any **evaluation procedures** LADE proposes to conduct in compliance with 34 CFR §300.503;

(ii) The initial evaluation (if appropriate) and any reevaluations must begin with a review of existing information by a group that includes the parents, the other members of a child's IEP team and other qualified professionals, as appropriate, to determine what further evaluations and information are needed to address the question in 34 CFR §300.305(a)(2). Pursuant to 34 CFR §300.305(b), the group may conduct its review without a meeting.

(iii) If it is determined that a child requires an individualized evaluation or reevaluation LADE is required to follow the procedures established by the New Mexico PED.

(iv) LADE must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child, including information provided by the child's family that may assist in determining if the child is a child with a disability, the content of

the child's IEP including information related to assisting the child to be involved and progress in the general education curriculum or for a preschool child to participate in appropriate activities.

(e) LADE shall maintain a record of the receipt, processing, and disposition of any referral for an individualized reevaluation. Reevaluation shall be completed on or before the three year anniversary date. All appropriate reevaluation data and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the EDT or IEP team.

(f) The parents of a child with a disability who disagree with an evaluation obtained by LADE have the right to obtain an independent educational evaluation of the child at public expense pursuant to 34 CFR §300.502. (*See Chapter 2 Procedural Safeguards*)

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS

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

(1) LADE must ensure that tests and other evaluation materials used to assess children are selected, provided and administered so as not to be discriminatory on a racial or cultural basis and are provided and administered in the child's native language or other mode of communication, such as American sign language, and in the form most likely to yield accurate information, on what the child knows and can do academically, developmentally and functionally, unless it is clearly not feasible to select, provide or administer pursuant to 34 CFR §300.304(c)(1).

(2) LADE must ensure that selected assessments and measures are valid and reliable and are administered in accordance with instructions provided by the assessment producer and are administered by trained and knowledgeable personnel.

(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 with 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).

(4) LADE must ensure that the child is assessed in all areas related to the suspected disability.

(5) Policies for LADE selection of assessment instruments include:

(a) assessment and evaluation materials that are tailored to assess specific areas of educational need; and

(b) assessments that are selected ensure that results accurately reflect the child's aptitude or achievement level.

The Special Education Director maintains a current list of appropriate standardized assessment instruments used by LADE.

(6) Districts in New Mexico shall devote particular attention to the foregoing requirements in light of the state's cultural and linguistic diversity. Persons assessing culturally or linguistically diverse children shall consult appropriate professional standards to ensure that their evaluations are not discriminatory and should include appropriate references to such standards and concerns in their written reports.

For more specific procedures see also the Chapter 4 – Disabilities / Exceptionalities.
Also, for more guidelines and information, see the NMPED TEAM manual:
http://www.ped.state.nm.us/SEB/technical/NMTeamManual.pdf

III. INITIAL EVALUATIONS

§300.15 Evaluation. Evaluation means procedures used in accordance with §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

§300.301 Initial evaluations.

(a) General. The *cm must 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 the *cm, may initiate a request for an initial evaluation to determine if the child is a child with a disability.

§300.305 Additional requirements for evaluations and reevaluations.

(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must--

(1) Review existing evaluation data on the child, including—

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based local or State assessments, and classroom-based observations; and

(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--

(i) Whether the child is a child with a disability, as defined in §300.8, and the educational needs of the child; or

(ii) The present levels of academic achievement and related developmental needs of the child;

(iii) (A) Whether the child needs special education and related services; or

(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

(b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.

(c) Source of data. LADE must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS

D. Evaluations and reevaluations

(1) Initial evaluations.

(a) LADE must conduct a full and individual initial evaluation, at no cost to the parent, and in compliance with requirements of 34 CFR §§300.305 and 300.306 and other department rules and standards before the initial provision of special education and related services to a child with a disability.

(f) The EDT including the parent and child, if appropriate, must meet to determine if the child is a child with a disability and requires an IEP upon completion of the initial evaluation.

§300.302 Screening for instructional purposes is not evaluation.

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. (Authority: 20 U.S.C. 1414(a)(1)(E))

IV. RE-EVALUATIONS

§300.305 Additional requirements for evaluations and reevaluations.

(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must--

(1) Review existing evaluation data on the child, including—

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based local or State assessments, and classroom-based observations; and

(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--

(i) (A) Whether the child is a child with a disability, as defined in §300.8, and the educational needs of the child; or

(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

(ii) The present levels of academic achievement and related developmental needs of the child;

(iii) (A) Whether the child needs special education and related services; or

(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

(b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.

(c) Source of data. LADE must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

(d) Requirements if additional data are not needed.

(1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, LADE must notify the child's parents of—-

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.

(2) LADE is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.

CHANGE OF PLACEMENT

§300.305 Additional requirements for evaluations and reevaluations.

(e) Evaluations before change in placement.

(1) Except as provided in paragraph (e)(2) of this section, LADE must evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.

(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, LADE must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

(f) DETERMINATION OF ELIGIBILITY – Eligibility Determination Team (EDT)

§300.306 Determination of eligibility.

(a) General. Upon completion of the administration of assessments and other evaluation measures-

(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and

(2) The *cm provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(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); *See below.*

(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).

From above (section 1208 of ESEA – NCLB) are the Reading components meeting explicit and systematic instruction in:

a. phonemic awareness;
b. phonics;
c. vocabulary development;
d. reading fluency, including oral reading skills; and
e. reading comprehension strategies.

(c) Procedures for determining eligibility and educational need.

(1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, LADE must--

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, as well as recommendations about the child's physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all of these sources is documented and carefully considered.

(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§300.320 through 300.324.

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS

F. Eligibility determinations

(1) General rules regarding eligibility determinations

(a) Upon completing the administration of tests and other evaluation materials, a group of qualified professionals and the parent of the child must determine whether the child is a child with a disability, as defined in 34 CFR §300.8 and Paragraph (2) of Subsection B of 6.31.2.7 NMAC. The determination shall be made in compliance with all applicable requirements of 34 CFR §300.306 and these or other department rules and standards and, for a child suspected of having a specific learning disability, in compliance with the additional procedures of 34 CFR §§300.307-300.311 and these or other department rules, policies and standards.

(b) LADE must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

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. *(More information on disabilities may be found in Chapter 4.)*

VI. ADDITIONAL PROCEDURES FOR IDENTIFYING CHILDREN WITH SPECIFIC LEARNING DISABILITIES

A. Specific Learning Disabilities - General / Criteria

§300.307 Specific learning disabilities.

(a) General. The NMPED adopted, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8 (c)(10). In addition, the criteria adopted by the NMPED-

(1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability as defined in §300.8 (c)(10); *(See Chapter 4. – Disabilities / Exceptionalities)*

(2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and

(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability as defined in §300.8 (c)(10).

(b) Consistency with New Mexico PED criteria. LADE must use the NMPED criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability. *(For details please see below and Chapter 4. – Disabilities / Exceptionalities)*

Authority: NMAC 6.31.2.10(C)

C. Criteria for identifying children with perceived specific learning disabilities.

(1) Each public agency must use the three tiered model of student intervention for students suspected of having a perceived specific learning disability, consistent with the department rules, policies and standards for children who are being referred for evaluation due to a suspected disability under the specific learning disability category in compliance with 34 CFR §300.307.

(a) The public agency must, subject to Subparagraph (d) of this paragraph, require that the group established under 34 CFR §§300.306(a)(1) and 300.308 for the purpose of determining eligibility of students suspected of having a specific learning disability, consider data obtained during implementation of Tiers I and II in making an eligibility determination.

(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 must consider, as part of the evaluation required in 34 CFR §§300.304 through 300.306:

(i) data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(ii) 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.

(c) The documentation of the determination of eligibility, as required by 34 CFR §300.306(c)(1), must meet the requirements of 34 CFR §300.311, including:

(i) a statement of the basis for making the determination and an assurance that the determination has been made in accordance with 34 CFR §300.306(c)(1); and

(ii) a statement whether the child does not achieve adequately for the child's age or to meet state approved grade-level standards consistent with 34 CFR §300.309(a)(1); and

(iii) a statement whether the child does not make sufficient progress to meet age or grade-level standards consistent with 34 CFR §300.309(a)(2)(i), or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards or intellectual development consistent with 34 CFR §300.309(a)(2)(ii); and

(iv) if the child has participated in a process that assesses the child's response to scientific, research-based intervention: a statement of the instructional strategies used and the student-centered data collected; documentation that the child's parents were notified about the state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; strategies for increasing the child's rate of learning; and the parents' right to request an evaluation.

(d) A parent may request an initial special education evaluation at any time during the public agency's implementation of Tiers I and II of the three-tier model of student intervention. If the public agency agrees with the parent that the child may be a child who is eligible for special education services, the public agency must evaluate the child. If the public agency declines the parent's request for an evaluation, the public agency must issue prior written notice in accordance with 34 CFR §300.503. The parent can challenge this decision by requesting a due process hearing.

(2) Preschool children suspected of having a specific learning disability must be evaluated in accordance with Subparagraph (f) of Paragraph (5) of Subsection A of 6.31.2.11 NMAC and 34 CFR §§300.300 through 300.305, which may include the severe discrepancy model.

(3) Public agencies must implement the dual discrepancy model in kindergarten through third grade utilizing the student assistance team and the three-tier model of student intervention as defined and described in the

New Mexico Technical Evaluation and Assessment Manual (New Mexico T.E.A.M.). Data on initial evaluations for perceived learning disabilities in grades K-3 must be submitted to the department through the student teacher accountability reporting system (STARS).

(4) In identifying children with specific learning disabilities in grades 4 through 12, the public agency may use the dual discrepancy model as defined and described in the New Mexico Technical Evaluation and Assessment Manual (New Mexico T.E.A.M.) or the severe discrepancy model as defined and described in New Mexico T.E.A.M.

B. Eligibility Determination Team (EDT) Required for SLD

§300.308 Additional group members.

The determination of whether a child suspected of having a specific learning disability is a child with a disability, as defined in §300.8, must be made by the child's parents and a team of qualified professionals, which must include--

(a) (1) The child's regular teacher; or

(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified by the New Mexico PED to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

The qualified group of individuals (including the parent) will meet to review the Full and Individual Evaluation (FIE) and determine if the child is a child with a specific learning disability and if there is an educational need for the student to be eligible for special education services.

C. Determining Existence of SLD

§300.309 Determining the existence of a specific learning disability.

(a) The group described in §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if-

(1) The child does not achieve adequately for the child's age or to meet New Mexico approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:

(i) Oral expression.

(ii) Listening comprehension.

(iii) Written expression.

(iv) Basic reading skill.

(v) Reading fluency skills.

(vi) Reading comprehension.

(vii) Mathematics calculation.

(viii) Mathematics problem solving.

(2) (i) The child does not make sufficient progress to meet age or New Mexico approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or

(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with §§300.304 and 300.305; and

(3) The group determines that its findings under paragraph (a)(1) and (2) of this section are not primarily the result of--

(i) A visual, hearing, or motor disability;

(ii) Mental retardation;

(iii) Emotional disturbance;

(iv) Cultural factors; or

(v) Environmental or economic disadvantage.

(vi) Limited English proficiency.

(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 must consider, as part of the evaluation described in §§300.304 through 300.306--

(1) Data that demonstrate that prior to, or as a part of the referral process, the child was provided appropriate instruction in regular education settings, 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.

(c) The ~~[district]~~ 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)--

(1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and

(2) Whenever a child is referred for an evaluation.

Referenced above: section 1111(b)(8)(D) and (E) of the ESEA (No Child Left Behind) refers to the Academic Standards, Academic Assessments and Accountability Requirements.

D. Observation

§300.310 Observation.

(a) LADE must ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty.

(b) The group described in §300.306(a)(1), in determining whether a child has a specific learning disability, must decide to—

(1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

(2) Have at least one member of the group described in §300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with §300.300(a), is obtained.

(c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

E. Written Report for SLD

§300.311 Specific documentation for the eligibility determination.

(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required by §300.306(a)(2), must include a statement of--

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c)(1);

(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

(4) The educationally relevant medical findings, if any;

(5) Whether --

(i) The child does not achieve adequately for the child's age or to meet New Mexico approved grade-level standards consistent with §300.309(a)(1); and

(ii) (A) The child does not make sufficient progress to meet age or New Mexico approved grade-level standards consistent with §300.309(a)(2)(i); or

(B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, New Mexico approved grade-level standards or intellectual development consistent with §300.309(a)(2)(ii).

(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation, emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention--

(i) The instructional strategies used and the student-centered data collected;

(ii) The documentation that the child's parents were notified about—

(A) The New Mexico's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

(B) Strategies for increasing the child's rate of learning; and

(C) The parents' right to request an evaluation.

(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

VII. EVALUATION REPORTS

A written evaluation report for any disability or eligibility for related services will include all of the requirements listed above in §300.311 Written Report (a – b). In addition, specific requirements for each specific disability category found in Chapter 4-Disability Criteria will also be documented in the written evaluation report.

§300.306 Determination of eligibility. *(For more information see Chapter 4 – Disabilities/Exceptionalities)*

(a) General. Upon completion of the administration of assessments and other evaluation measures -

(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and

(2) The *cm provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

The parent is provided a completed copy of the written evaluation report at the time of the Eligibility Determination Team Meeting.

Disclosures:

New Mexico regulations governing the educational assessment of culturally and linguistically diverse children stipulate, "Persons assessing culturally or linguistically diverse children shall consult appropriate professional standards to ensure that their evaluations are not impermissibly discriminatory and should include appropriate references to such standards and concerns in their written reports" [6.31.2 NMAC].

New Mexico regulations governing comprehensive developmental evaluations of infants and toddlers stipulate what should be contained within a report's results and recommendations (developmental functioning, participation in family/community life, eligibility recommendations, recommendations for approaches and strategies) but do not specify required disclosures regarding procedures and tools [7.30.8.10E(6) NMAC].

IDEA Part B regulations governing evaluation procedures stipulate "If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report" [§300.532, (c)(2)]. Part B regulations governing evaluation of children suspected of having a learning disability stipulate that the team's documentation must include the basis for making the determination [§300.543 (a),(b)].

Authority: NMSA 1978 28-16A-18 Developmental Disabilities Early Childhood Evaluation System

The NMPED shall have a timely, comprehensive, multidisciplinary system for evaluating infants, toddlers and preschool-age children suspected of having developmental delays. Diagnostic evaluations for infants and toddlers shall address family service needs and shall include training capabilities to educate community providers and parents in the understanding and application of the evaluations. This diagnostic evaluation system shall be jointly provided through a coordinated system by the children's medical services bureau of the public health division or the developmental disabilities division of the department, the University of New Mexico's developmental disabilities team and the New Mexico department of public education.

A. Written Assessment Report for Early Childhood (Birth – 3 and Preschool) *(See also p. 24)*

A report is a written and legal accounting of the assessment processes and procedures. It brings together all information and supplies interpretations of findings. The report functions as a reference for specific intervention and program decisions. It is through the report that assessment teams communicate their understanding of children's strengths, needs, and supports in a way that is useful to families and their service providers as they make intervention and program decisions.

The criteria for the written report are grouped by report sections and discussed in the following pages:
1. Background Information,
2. Procedures and Tools,
3. Findings
4. Conclusions and Next Steps.

1. Background Information

Who is the child?

- **Characteristics -** likes and dislikes, personality, self-regulation, social interaction, temperament, uniqueness.
- **Demographics -** age, sex, family composition (parents, guardians, siblings, etc.); birth order.
- **Developmental/learning history -** learning preference/style, milestone accomplishments, needs for specific structure or cues, play, summary of previous assessment results.
- **History of concerns -** how family's concern/question developed, duration of concern, situations in which concern is displayed.
- **Physical status -** appearance, birth history, growth, health status, hearing and vision, medical history, medicine, nutrition and eating.
- **Typical day -** activities and routines, coping with routines and change in routines, opportunities for interactions with age peers and learning activities.
- **Special circumstances -** extended hospital stays, medical diagnoses, impact of medical conditions on routines, current/previous program eligibility and participation.

Who is the child's family?

Family history - family routines, occupational information, significant medical history, length of time in the community, where the family lived previously.

Family resources - child care, community programs, early intervention participation, extended family, Head Start.

Special circumstances -

- Cultural/language differences: picture of language in the home, translation needs, language dominance, acculturation, values and beliefs important to the family.
- Economic issues: housing or other financial hardships that the family believes are important to include; current SSI or Medicaid status if appropriate.
- Environmental issues: custody, foster care, high mobility, social service monitoring that affects the family's participation or child's performance.

What prompted the assessment?

- **Family concerns -** concerns about the child, the progress of intervention, daily participation in activities.
- **Family questions -** questions about the child's skills or abilities, progress in therapy or intervention, the child's needs.
- **Family priorities -** goals and dreams the family has for the child, priorities about intervention or therapy, priorities concerning schedules.
- **Referral questions -** questions from teachers, daycare providers, or other program personnel; questions from other agencies (e.g., doctors, social workers, insurance personnel); questions resulting from additional assessment requests.

Special problems with this section:

This section of the report can become lengthy, especially when a child has an extensive medical or intervention history. This is also a section where jargon and technical language can be overwhelming in relation to medical or

diagnostic concerns. This is a section that can easily become judgmental or opinionated. Be mindful of duplications, speculation, determining causes, or opinions.

2. Procedures and Tools:

How was this information gathered?

- **Description of tools -** names of published tools, brief description of unpublished tools, identification of sources of information (family members, caregivers, early interventionists, teachers, bilingual educators, other assessment professionals), how assessment purposes related to choices of procedures and tools.
- **Procedures -** team members and their roles, including the family's chosen role; situational circumstances including where, when, how long, how often, and persons present; unusual circumstances that might affect findings and interpretations (e.g., noise, intrusions, novelty of evaluation setting, translation difficulties).
- **General accommodations -** descriptions of methods used to address child's unique characteristics and needs including adaptive strategies (alternative response mode, frequent breaks, large print, and texture enhanced materials), alterations to any standardized procedure, cultural considerations, interpreters or translations needed, language used in assessment, rapport-building procedures.

Disclosures:

New Mexico IDEA Part B regulations governing evaluation procedures stipulate certain disclosures are made. Include any required deviation as specified in this Chapter 2. Full and Individual Evaluation.

3. Findings

What are the child's abilities?

- **Concrete comparisons -** current to previous performance; specific examples of what is typical or what would be expected next; test scores reported as range with explanation of the meaning and examples of skills present.
- **Integrated developmental description -** all areas of concern (family questions, report purposes); progress in areas no longer of concern; specific examples illustrating skill or ability; focused on strengths and needs; difficulties in one developmental area and their influence on performance in another area.
- **Family and professional interpretations -** how child attends, plays with peers and toys, reacts in structured vs. unstructured situations; quality and representativeness of child's responses.
- **Limitations of evaluation/assessment -** problems the assessment team experienced in establishing and maintaining rapport, obtaining an adequate sample of abilities and behaviors (across domains, instruments, settings, time); accommodating the child's unique cultural, linguistic, or response capacities; problems encountered that affect the validity of the assessment information.

What factors affect performance?

- **Cultural/linguistic differences:** culturally-linked developmental expectations, exposure to learning activities, materials, and play experiences; family-child interaction styles; linguistic skills and proficiency in first and second language; language use and exposure across natural settings and conversational partners
- **Environmental factors:** adult expectations, environmental supports (instruction, routines, schedules, structure), physical layout
- **Family context (at family's discretion):** unique knowledge, resources, and experiences that enhance development; self-identified needs for information and support; beliefs, preferences, and values regarding child-rearing, development, learning
- **Health/sensory capacities:** interaction of health, medical conditions, or medicines with developmental performance
- **Personality:** interaction of coping style, learning style, likes and dislikes, state, temperament with developmental performance

Problems reporting:

This is also an area where technical language and jargon can be a problem. It is professional and acceptable to report scores, but be sure you state them in clear terms with an explanation of what they mean or do not mean. Problems that affect the quality of the assessment process also affect the findings. Young children are not accomplished test takers and often react to formal assessment situations in ways that do not reveal their capacities. Children who have not been exposed to the materials used in the assessment process may show more interest in the

materials themselves than in accomplishing an assessment tasks. Children who are shy around adult strangers may react with silence to a last minute change in interpreters. This reactivity can be a major contributor to contradictory data. When these or other challenges occur, you need to disclose them and show how they may have affected the results. Keep in mind that problems with the assessment process affect the validity of the assessment information, not the validity of the child's responses, capacities, or behaviors.

4. Conclusions and Next Steps

What do these findings mean?

- **Child performance -** comments addressing consistent patterns; the relationship of the patterns to unique characteristics and circumstances (e.g., cultural and linguistic background, experiences, learning style, personality); relationship of patterns to possible environmental demands; scaffolding approaches that support performance (e.g., types of assistance, material preferences, task accommodations); comments relating patterns to questions arising from previous IEPs, IFSPs, or service provider concerns.
- **Family priorities -** comments relating to family concerns, questions, and priorities; explanations of any diagnostic information; family's interpretations of the child's pattern of strengths and needs.
- **Other consumers' needs -** explanation to accompany health or medical conditions diagnosed as part of the assessment; eligibility recommendations accompanied by explanation of child's level of functioning in relation to meeting criteria for categories of eligibility; consider appendices to the report for reporting to agencies that require test scores or diagnostic labels (e.g., SSI, DD Waiver).

What are the next steps?

- **At home activities -** concrete suggestions that you tailor to the family (e.g., address family priorities, build on family suggestions and ideas, are sensitive to family routines, culture, and community); suggestions that fit within family's time, interests, and preferences.
- **Intervention suggestions -** recommendations with specific examples that provide a starting place for developing IEP goals and IFSP outcomes, creating domain-specific instructional activities, integrating intervention within natural environments and naturally occurring events, incorporating special considerations into instructional programs (e.g., accommodating activity level, using Spanish in instruction).
- **Services that might be helpful -** additional assessments that might clarify unresolved questions, follow-up with family pediatrician, programs that families might want to consider (e.g., early intervention, Head Start, Parents As Teachers, public preschool, WIC, etc.), specific services (e.g., assistive technology, occupational therapy); clear linkages between service recommendations and outcomes for the child and family.

<u>Do not include with this section:</u>

- **Conclusive determinations about eligibility:** unilateral statements about eligibility or declarations that child qualifies for early intervention or special education, statements about meeting eligibility criteria that are not based on data
- **Inappropriate conclusions:** interpretations that are not supported by information presented in the report, long-range theorizing or prognoses; opinions of others who are not part of the team unless clearly stated; scores or rankings (they are findings)
- **Insensitive suggestions:** recommendations that are impractical, expensive, or uncomfortable for families; suggestions that require large time commitments or are overwhelming in number; generic (canned) suggestions; suggestions that are so broad or vague that they cannot be translated to ordinary situations and activities
- **Labeling:** diagnosis (when that is part of the assessment) that labels a health, medical or physical condition without explanation of the underlying difficulties unique to the child or the relationship to child's learning and development
- **Overly-prescribed recommendations:** recommendations for a specific program, curriculum, or person; listing of services without reference to activities related to child needs; suggestions that are so narrow that they only apply to one situation

B. Culturally and Linguistically Diverse Report Writing

Cultural and linguistic information should be present throughout the report. This serves as a reminder for the evaluator, as well as assist in the assessment schemata through which individuals will base the measures used and their diagnostic impressions. Thus, current diagnostic and school psychology students are trained to place the information in three places within the report.

1. The **first** place it is identified is in the background information, and/or behavior observations or interview portions. Their impressions based on the information regarding acculturation and linguistic abilities are reported for the first time. Specific examples should be shared to further validate one's impressions. It is also mentioned in these portions of the report in such a manner so the reader will realize where the impressions came from.
2. The second **place** it is recommended to place the information is before the assessment results and interpretation is presented. This involves a report of the validity of the results of the measures utilized based on cultural and linguistic information.
3. The **third** place there should be mention of cultural and linguistic factors is in the summary and recommendations portions. In this way, a reader can read almost any portion of the report and the cultural and linguistic information is present.

Recommendations

Too many times, evaluators do not include functional types of recommendations that were obtained from the assessment for school staff and the family. Provide several recommendations on language, language instruction, culture, and interventions regarding cultural issues. This entails an understanding of second language acquisition models, appropriate language instruction models, and cultural issues that may need to be addressed in counseling.

C. Related Services Written Reports

Any request for a related service must be made through the SAT upon initial referral or through the Eligibility Determination Team (EDT) or IEP meeting. If the related service provider is not in attendance at the planning meeting where the review of existing evaluation data is completed, every effort is made by the evaluation representative to collaborate with the related service provider. Also, the evaluation representative is responsible for notifying the appropriate related service provider that an assessment has been requested.

§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, an 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.

(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.

§300.34 Related services.

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

includes school health services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the IEP of the child, social work services in schools, and parent counseling and training.

(b) Exception; services that apply to children with surgically implanted devices, including cochlear implants.

(1) Related services do not include a medical device that is surgically implanted, the optimization of device functioning (e.g., mapping), maintenance of the device, or the replacement of that device.

(2) Nothing in paragraph (b)(1) of this section—

(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.

(ii) Limits the responsibility of LADE to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in §300.113(b).

(c) Individual related services terms defined. The terms used in this definition are defined as follows:

(1) Audiology includes--

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

Counseling services are provided to assist a child with a disability to benefit from special education. Parent counseling and training includes assisting parents in understanding the special needs of their child; providing information about child development; and helping parents acquire the skills necessary to allow them to support the implementation of their child's IEP or IFSP.

(3) Early identification and assessment of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) Interpreting services includes—

(i) The following when used with respect to children who are deaf or hard of hearing: oral transliteration services, cued language transliteration services, and sign language transliteration and interpreting services and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and

(ii) Special interpreting services for children who are deaf-blind.

(5) Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(6) Occupational therapy means--

(i) Services provided by a qualified occupational therapist; and

(ii) Includes--

(A) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(C) Preventing, through early intervention, initial or further impairment or loss of function.

The primary function of occupational and physical therapy is to directly assist the student to benefit from instruction. Occupational and physical therapy services will be provided when a disability adversely affects the educational performance. The therapist will aid the student to develop, increase, improve, and maintain skills that are prerequisites for the student to function within his/her educational environment.
Medical Requirement: In the case of physical and occupational therapy, services for students shall be prescribed by a physician for consideration by the IEP committee.

Discontinuation Of Occupational and/or Physical Therapy Services Will Occur:

- *Upon IEP Team discussion of current evaluation and recommendation that OT/PT services are not required due to one of the following:*
- *The student has accomplished the goals targeted in the IEP (Individual Educational Program);*
- *The student has achieved the maximum benefit from occupational and/or physical therapy;*
- *The student's physical dysfunction does not negatively affect his/her educational program;*
- *The student maintains progress and no evidence of change is seen;*
- *There is no current OT/PT MEDICAL REFERRAL FORM; or*
- *The intervention will not impact the educational success of the student.*

(7) Orientation and mobility services—
- **(i) Means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and**
- **(ii) Includes teaching students the following, as appropriate:**
  - **(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);**
  - **(B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;**
  - **(C) To understand and use remaining vision and distance low vision aids; and**
  - **(D) Other concepts, techniques, and tools.**

(8) (i) Parent counseling and training means assisting parents in understanding the special needs of their child;
- **(ii) Providing parents with information about child development; and**
- **(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.**

(9) Physical therapy means services provided by a qualified physical therapist. *(See also Occupational Therapy(6) for Discontinuation.)*

(10) Psychological services includes--
- **(i) Administering psychological and educational tests, and other assessment procedures;**
- **(ii) Interpreting assessment results;**
- **(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;**
- **(iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;**
- **(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and**
- **(vi) Assisting in developing positive behavioral intervention strategies.**

Prior to requesting a psychological evaluation, school personnel should be able to document previous educational efforts and strategies and the results of those efforts through the SAT. The SAT documented discussion should include participation in, or consideration for, other programs within LADE. Further, an intellectual and academic evaluation must be completed.

Psychological services may be requested through the SAT meetings or a Multidisciplinary evaluation planning committee. If a psychological evaluation is requested in an IEP meeting, the diagnostician will report the request if the psychological staff is not present at the IEP meeting.

(11) Recreation includes--
- **(i) Assessment of leisure function;**
- **(ii) Therapeutic recreation services;**
- **(iii) Recreation programs in schools and community agencies; and**
- **(iv) Leisure education.**

(12) Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

(13) School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

Services are provided to eligible students with disabilities based on IEP Committee decision. These services are in addition to those routinely available to all students and may include the following:

a. screening and referral for health needs;
b. monitoring medication needed by students during school hours;
c. consultation with physicians, parents, and staff regarding effects of medication, and emergency care training for staff and parents;
d. counseling students with disabilities and their families concerning health care practices and services; and
e. assistance with catheter, tube feeding and other school health service procedures.

(14) Social work services in schools includes–
- **(i) Preparing a social or developmental history on a child with a disability;**
- **(ii) Group and individual counseling with the child and family;**
- **(iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;**
- **(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and**
- **(v) Assisting in developing positive behavioral intervention strategies.**

(15) Speech-language pathology services includes--
- **(i) Identification of children with speech or language impairments;**
- **(ii) Diagnosis and appraisal of specific speech or language impairments;**
- **(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;**
- **(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and**
- **(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.**

See also Chapter 4. Disabilities / Exceptionalities

(16) Transportation includes--
- **(i) Travel to and from school and between schools;**

(ii) Travel in and around school buildings; and
(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

Local Transportation Rules
LADE's rules govern special education bus students unless designated otherwise by an IEP Committee. Violation of school bus rules and regulations may result in restrictions. The student will follow local guidelines unless the IEP committee recommendations are different. Special education transportation procedures include the following:

a. It is the responsibility of the parent to have the student ready for the bus each day.
b. It is the responsibility of the parent to notify the Transportation Department of any change of address.
c. If the student is to be transported to or from a place other than home, parent submits to the Transportation Department the student's name and address, and the person's name and address who will assume responsibility for the child.
d. Card files are maintained on all students; therefore, if home or work numbers change, parents must notify the local campus, the Special Education Department, and the Transportation Department.
e. If the student will not be riding the bus for more than a day, parent contacts the Transportation Department in advance so that the driver can be notified.

You may also refer to the PED website for transportation information for parents:
http://www.ped.state.nm.us/seo/library/transguide.pdf

§300.139 Location of services and transportation. (see also Chapter 5. Instructional Arrangements)
(a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.
(b) Transportation.
(1) General.
(i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation--
(A) From the child's school or the child's home to a site other than the private school; and
(B) From the service site to the private school, or to the child's home, depending on the timing of the services.
(ii) LEAs are not required to provide transportation from the child's home to the private school.
(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of §300.133.
(§300.133 Expenditures for parentally-placed students)

Authority: NMSA 1978 Sec. 22-16-6. Reimbursement of parents or guardians.
LADE's school board may, subject to regulations adopted by the state board [department], provide per capita or per mile reimbursement to a parent or guardian in cases where regular school bus transportation is impractical because of distance, road conditions or sparseness of population or in cases where the local school board has authorized a parent to receive reimbursement for travel costs incurred by having a child attend a school outside the child's attendance zone.

VIII. EVALUATION OF LANGUAGE, PHYSICAL, SOCIOLOGICAL, AND OTHER CONDITIONS.

Areas reviewed in the written evaluation report include, but are not limited to, the following:

A. Language Dominance
The evaluation team will first determine the student's dominant language - most proficient method of communication (expressively and receptively). The student's dominant language is the language in which the student is most proficient. This determination may be made by formal or informal evaluation. Evaluation instruments must be administered in the student's dominant language (native language or other mode of communication unless it is clearly not feasible to do so). If the primary language of the home is not English, the student will be evaluated in his/her dominant language. Documentation will be Oral Language Proficiency scores

or a description of procedures used to ensure the student was evaluated in his/her dominant language when the examiner is not proficient in that language. Where no bilingual examiner is available, an interpreter may be used as long as this is allowed in the test protocol. Interpreters must be adequately trained.

B. Language Proficiency

The evaluation team must determine the student's most proficient method of communication. The language proficiency information must indicate the student's skill in understanding and using both receptive and expressive domains, such as oral and written language, reading comprehension, and listening comprehension, when appropriate. Proficiency in both English and the other language(s) must be addressed for Limited English Proficient (LEP) students. See also the section on culturally and linguistically diverse children.

C. Physical

The evaluation of an individual's physical factors (including health, vision, hearing, and psycho-motor abilities) must consist of an examination of physical conditions that directly affect the student's ability to profit from the educational process. A general medical examination will be required only when specified by eligibility criteria or when abnormal physical factors have been identified as part of the evaluation of physical factors. The health information collected during the SAT process will be sufficient if a complete medical examination is not required by specific eligibility criteria and if there are no indications of need for further physical evaluation.

D. Emotional/Behavioral

The evaluation of an individual's emotional and behavioral factors will consist of formally or informally identifying those characteristics manifested in in-school or out-of-school behavior, or both, which may influence learning. The evaluation will include behaviors relative to the disability that may affect educational placement, programming, or discipline. Adaptive behavior of all students must be considered to some degree. Formal measures are required only when establishing a diagnosis of mental retardation.

E. Sociological

The evaluation of an individual's sociological variables must consist of identifying the child's family and community environmental situation influencing learning and behavioral patterns. Students will not be eligible for special education if the only deficiencies identified are directly attributable to a different cultural lifestyle or to the student not having had educational opportunities.

F. Intellectual

The evaluation of an individual's intellectual functioning must include an evaluation of verbal ability and performance. Intellectual functioning should be the last factor assessed, since the student's performance in this area should be analyzed and interpreted in light of all the other data. While the adaptive behavior of all students must be considered to some degree, formal measures of adaptive behavior will be required only when a student is being assessed for mental retardation. Intelligence must always be addressed. An informal evaluation of intelligence may be used to determine intellectual functioning as a part of eligibility for:

1. *visual impairment, deaf-blindness,*
2. *orthopedic impairment, other health impairment*
3. *speech impairment (if speech impaired is the only exceptionality).*

Some examples of informal evaluation include: group administered tests, achievement test results, teacher observations, adaptive behavior, grades, etc.

IX. EVALUATION OF LEARNING COMPETENCIES

(Present Levels of Academic Achievement and Functional Performance)

Authority: 34 CFR §300.320 Definition of individualized education program.

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--

(1) A statement of the child's present levels of academic achievement and functional performance, including--

(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

Under the IDEA and New Mexico regulations, the IEP of a student with an exceptionality must contain a statement of the student's present levels of academic achievement and functional performance, including how the exceptionality affects the student's involvement and progress in the general curriculum; or for preschool children, as appropriate, how the child's disability affects his or her participation in appropriate activities. This part of the assessment is the blueprint for the whole IEP document. The present levels of academic achievement and functional performance was formerly referred to as PLEP (Present Levels of Educational Performance).

The information for the present levels of academic achievement and functional performance should be:

- Current -- based on recent data, observation, and evaluation such as district-wide and New Mexico State Standards testing
- Relevant -- related to how the student's disability affects his or her education
- Specific -- described as precisely as possible
- Objective -- unbiased and from a variety of sources, such as formal observations, work samples, input from teachers, parents, service providers, formal and informal assessments and tests
- Measurable -- conclusions from assessments, test scores, and other quantifiable data

The evaluation will include:

A. criterion-referenced or curriculum-referenced assessments designed to aid in the development of the student's goals and objectives; (include information from any district-wide and New Mexico State Standards testing, benchmarks, etc.)

B. information about the student's strengths and weaknesses; and

C. the specific accommodations, methods and/or materials required by the student to achieve and maintain satisfactory progress in the general curriculum, including those that can only be provided through special education services, and those adaptations necessary for the student's progress in general classes and other special and compensatory education programs.

At the IEP Team annual review meetings, the teacher(s) will provide this current information as they develop new goals for the student, and if appropriate, goals and objectives.

X. ASSISTIVE TECHNOLOGY DEVICES AND SERVICES

Each student assessed for determination of a disability will be considered for assistive technology needs.

§300.5 Assistive technology device. Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.
Examples of low and high assistive technology: Pencil grips/splints; Manual/power wheelchair, wheelchair lifts, cane; Eyeglasses, large print, Braille software; Voice-recognition/voice synthesis, computer software; Van modifications; Hearing aids, assistive listening devices; Telephone communication devices; Large oversized computer displays; Information technology accessibility; etc.

§300.6 Assistive technology service. Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes-

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

§300.105 Assistive technology; proper functioning of hearing aids.

(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.

For more information see the New Mexico Technology Assistance Program (NMTAP) website at: http://www.nmtap.com

Assistive Bank of Loan Equipment Device Loan Program (ABLE)

ABLE offers people with disabilities and their assisting special education personnel, DVR Counselors, One Stop Navigators, and case managers the opportunity to try out an assistive device prior to purchase. If the IEP Team at LADE determines a student may be in need of a specific type of technology, the IEP Team may determine it is appropriate to contact the New Mexico Technology Assistance Program (NMTAP) to discuss a loan of the device.

Procedures

In order to evaluate/assess assistive technology (AT) before purchasing it, the New Mexico Public School students are required to have a teacher(s) and or therapist(s) involved. The NMTAP requires:

- Signed Application / Parent Consent to Release Information Form
- Current IEP that mentions A.T. needs

For more information on Assistive Technology Programs see the website: http://www.nmtap.com

XI. SPECIAL PROVISIONS

Any area assessed below requires pre-planning and review of existing evaluation data by the student's IEP Team or the request may have come from the initial referral.

A. Adapted Physical Education

§300.108 Physical education.

The NMPED ensures that public agencies in New Mexico comply with the following:

(a) General. Physical education services, specially designed if necessary, must 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 must be afforded the opportunity to participate in the regular physical education program available to nondisabled 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 must provide the services directly or make arrangements for those services to be provided through other public or private programs.

(d) Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.

Physical Education services, specially designed where necessary, will be provided as an integral part of the educational program of each student with disabilities. The IEP committee should consider three options when making decisions about the physical education needs of students with disabilities. These decisions must be based on a special physical education evaluation. The special PE evaluation will provide the IEP Team with the following information:

a. identification of student's problems
b. identification of areas of competencies

Adapted physical education evaluations will be administered by appropriately trained physical education or special education personnel. A written report should be completed to address the student's physical strengths and weaknesses and recommendations for specific services to be considered by the IEP Team.

B. Early Childhood

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 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 New Mexico 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))

If the evaluation team cannot test these students in accordance with the guidelines listed under the individual evaluation section of this procedure manual, the team must document the rationale for deviating from the standard procedure, as well as state modifications used, and present the results of the evaluation. The written report will specify the nature and extent of the disability. The educational evaluation of such a student may be limited to competency-based or criterion-referenced measures. Any outside evaluations conducted by other agencies will also be considered.

For more information, see the NMPED website document: Early Identification of Culturally and Linguistically Diverse Children (Aged 0-5) found at: http://www.ped.state.nm.us/seo/library/earlyidmini.pdf

Authority: NMAC 7.30.8.10(G) Eligibility Determination
(6) The child must be determined eligible under one of the following categories.
(a) Developmental delay: a delay of 25% or more, after correction for prematurity, in one or more of the following areas of development: cognitive; communication; physical/motor; social or emotional; adaptive;
(i) 25% delay shall be documented utilizing the tool(s) approved by the FIT program;
(ii) if the FIT program approved tool does not indicate a 25% delay, a domain-specific tool may be used to establish eligibility if the score is 1.5 standard deviations below the mean or greater;

(iii) informed clinical opinion in accordance with this rule may be used if a clear developmental level cannot be gained through the use of the approved tool(s) or domain-specific tools; or when there are inconsistencies in the child's performance or inconsistencies in the results of the evaluation; and shall be documented as "significant atypical development".
(b) Established condition: a diagnosed physical, mental, or neurobiological condition that has a high probability of resulting in developmental delay. The established condition shall be diagnosed by a health care provider and documentation shall be kept on file. Established conditions include the following:
(c) Biological or medical risk for developmental delay: a diagnosed physical, mental, or neurobiological condition. The biological or medical risk condition shall be diagnosed by a health care provider and documentation shall be kept on file.
(d) Environmental risk for developmental delay: a presence of adverse family factors in the child's environment that increases the risk for developmental delay in children. Eligibility determination shall be made using the tool approved by the FIT program.

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. Age 3 - 5 years – Preschool Program for Children with Disabilities

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:
A. Preschool programs for children aged 3 through 5:
(1) LADE shall ensure that a free appropriate public education is available for each preschool child with a disability within its educational jurisdiction no later than the child's third birthday and that an individualized education program (IEP) under Part B or an individual family services plan (IFSP) under Part C of the IDEA is in effect by that date in compliance with 34 CFR §§300.101, 300.124 and 300.323(b).
(2) If a child turns three (3) at any time during the school year and is determined to be eligible under Part B, the child may enroll in a Part B preschool program when the child turns three (3) if the parent so chooses, whether or not the child has previously been receiving Part C services.
(3) To ensure effective transitioning from IDEA Part C programs to IDEA Part B programs, each public agency must conduct a full and individual initial comprehensive evaluation, at no cost to the parent, and in compliance with requirements of 34 CFR §§300.300, 300.301, 300.302, 300.304 and 300.305 and other

department rules and standards before the initial provision of Part B special education and related services to a child with a disability.

(a) The initial comprehensive evaluation process shall be conducted in all areas of suspected disability.

(b) The Part B eligibility determination team shall review current assessments and shall determine the additional data and assessments needed for the comprehensive evaluation. Current assessments are defined as assessments, other than medical assessments, conducted no more than six months prior to the date of the meeting of the Part B eligibility determination team.

(c) The Part B eligibility determination team must consider educationally relevant medical assessments as part of the review of existing evaluation data. The determination of eligibility may not be made solely on the basis of medical assessments. If the team considers medical assessments conducted more than six months prior to the date of the meeting, the team must document the appropriateness of considering such medical assessments.

(4) LADE shall develop and implement appropriate policies and procedures to ensure a smooth and effective transition from Part C to Part B programs for preschool children with disabilities within the agency's educational jurisdiction, in compliance with 34 CFR §300.124. Each LEA and other public agencies, as appropriate, shall make reasonable efforts to establish productive working relations with local Part C programs and, when given reasonable notice, shall participate in the ninety-day transition planning conferences arranged by local Part C providers.

(5) In particular:

(a) Each LEA shall survey 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) Each LEA shall promote parent and family involvement in transition planning with Part C programs, community programs and related services providers at least six months before the child is eligible to enter the LEA's Part B preschool program.

(c) Each LEA shall establish and implement 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) Each LEA shall assist parents in becoming their child's advocates as the child makes the transition through systems.

(e) Each LEA shall participate 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) Each LEA shall designate a team including parents and qualified professionals to review existing evaluation data for each child entering the LEA's preschool program in compliance with 34 CFR Sec. 300.305, and based on that review to identify what additional data, if any, are needed to determine the child's eligibility for Part B services or develop an appropriate program in a manner that is consistent with Paragraph (3) of Subsection A of this section. The notice of procedural safeguards shall be given to the parents as provided in Paragraph (3) of Subsection D of 6.31.2.13 NMAC.

(g) The IFSP, IEP, or IFSP-IEP will be developed by a team constituted in compliance with 34 CFR §300.321 that includes parents. For children transitioning from Part C programs to Part B programs, the team must also include one or more early intervention providers who are knowledgeable about the child. "Early intervention providers" are defined as Part C service coordinators or other representatives of the Part C system.

(h) For each child transitioning from a Part C program to a Part B preschool program, the [district] shall initiate a meeting to develop the eligible child's IFSP, IEP or IFSP-IEP, in accordance with 34 CFR §300.124. The IFSP, IEP or IFSP must be developed and implemented no later than the child's third birthday, consistent with 34 CFR §300.101(b)

(i) 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. Each public agency must engage in appropriate planning with the Part C lead agency so that the eligible child will be prepared to receive Part B special education and related services when the IEP team determines that the services under the IEP or IFSP will begin.

(ii) Each district 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.

The district diagnostician assigned to the Family Infant Toddler (FIT) Program is responsible for working closely with the Special Education Director to implement these procedures NMAC 6.31.2.11 A. and keep documentation of the process, timelines, annual parent training offerings, etc.
For information on the written report, see VII. Written Evaluation Reports in this Chapter.

C. Functional Behavioral Assessment

A Functional Behavioral Assessment (FBA) may be completed outside of the initial evaluation or the 3-year reevaluation. During an IEP meeting, if behavior is identified as a special factor that needs to be addressed, the FBA may be completed and a BIP developed which becomes a component of the student's IEP. If the IEP Team decides to gather more information than already exists in the student's records, prior parental consent is needed (as for any initial evaluation or reevaluation). An FBA is completed when a student's behavior interferes with the student's learning or that of other students in the classroom. Include the student's general education teacher(s) in gathering the information below in order to develop the BIP. For further information, use the NMPED document titled Addressing Student Behavior: A Guide for Educators found on the website:
http://www.ped.state.nm.us/seo/discipline/guide.htm

Conducting an FBA
Below is a summary of the stages involved in a method of conducting an FBA. They are discussed in detail in the NMPED Guide:

- Describe and define the target behavior in specific, concrete terms;
- Collect information on possible functions of the target behavior;
  **Use direct and indirect measures of behavior and check accuracy of behavior measurement
- Categorize behavior—is it linked to a skill deficit or a performance deficit?
- Analyze information to form a hypothesis (conjecture or presumed function);
- Devise interventions and/or develop a BIP.

Keep in mind that a FBA is usually the first of a two-pronged approach to addressing student problem behavior. Conducting an FBA lays the foundation for developing a Behavioral Intervention Plan (BIP). In reviewing existing data, the team may determine that more information is needed before an effective plan can be designed. Note that, if the team decides to gather more information than already exists in the records, prior written Notice of Evaluation and parental consent is needed (as for any initial evaluation or reevaluation).

An FBA is an assessment that examines the student's behavior and addresses the relationship between a behavior and the relevant factors that may be interfering with the student's or others' learning. The purpose of an FBA is to identify problematic behaviors and the circumstances under which they occur, so an effective intervention plan can be designed. From the baseline information gathered in an FBA, the IEP team develops and implements a Behavioral Intervention Plan, which describes positive interventions and/or accommodations designed to address the reasons the target behavior is happening and strategies for redirecting it.

A Recommended "Best Practice"
Though not required until a student has been suspended for 10 school days, conducting a FBA for any persistent or problematic behavior is strongly recommended by LADE.

Functional Behavior Assessment (FBA) — Conducting a Functional Behavior Assessment is required after a student has been suspended for 10 school days in a school year. It is highly recommended that a FBA be conducted when behavior interferes with the student's learning or that of others. This assessment is done to gather data, analyze behavior, and hypothesize why it is occurring. The form requires that information is collected from a variety of sources, using both prior and new data. Information about behavior may be gathered from school records, parents, interviews, classroom observations, and other sources. The FBA attempts to determine if there are specific circumstances or triggers that occur just prior to the problematic behavior and what reinforcement typically follows it. From this information, the IEP team determines what strategies, positive supports, or interventions are needed—from setting annual goals with supporting short term objectives or benchmarks within the IEP, to developing a separate Behavior Intervention Plan. In reviewing existing data, the team may determine that more information is

needed before an effective plan can be designed. If the team decides to gather more information than already exists in the records, prior parental consent is needed (as for any initial evaluation or reevaluation).

D. Gifted Children

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

D. 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 Sec. 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) The district must establish a child find procedure that includes a screening and referral process for students in public school who may be gifted. *(See Chapter 1. – Child Find)*
   (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 6.31.2.1 NMAC.

D. Standard method for identification. Under the standard method for identification, students will be evaluated in the areas of intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking. A student who meets the criteria established in Subsection B of 6.31.2.12 for intellectual ability and also meets the criteria in one or more of the other areas will qualify for consideration of service. A properly constituted IEP team, including someone who has knowledge of gifted education, will determine if special education services are required to meet the child's educational needs.

E. Alternative method for identification.
   (1) A district may apply to the public education department to utilize an alternative protocol for all students. Eligibility of a student will then be determined by a properly administered and collected, department

approved alternative protocol designed to evaluate a student's intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving /critical thinking.

(2) If an accurate assessment of a child's ability may be affected by factors including cultural background, linguistic background, socioeconomic status or disability condition(s), an alternative protocol as described in Paragraph (1) of Subsection E of 6.31.2.12 NMAC will be used in all districts to determine the student's eligibility. The impact of these factors shall be documented by the person(s) administering the alternative protocol.

(3) The student assistance team (SAT) process requirements will not apply to students who meet the criteria established by the alternative protocols. When a student's overall demonstrated abilities are very superior (as defined by the alternative protocol author), a properly constituted IEP team, including someone who has knowledge of gifted education, will determine if special education services are required to meet the child's educational needs.

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.

(2) Assuming appropriate evaluations, a child may properly be determined to be both gifted and a child with a disability and be entitled to a free appropriate public education for both reasons. The rules in this section 6.31.2.12 NMAC apply only to gifted children.

(3) Nothing in these rules shall preclude a school district or a charter school within a district from offering additional gifted programs for children who fail to meet the eligibility criteria. However, the NMPED shall only provide funds under Section 22-8-21 NMSA 1978 for department approved gifted programs for those students who meet the established criteria.

For more information, please refer to the Gifted Education: Technical Assistance and Training Resource Document found at the NMPED website: http://www.ped.state.nm.us/seo/gifted/gifted.pdf

Special Education Diagnostic Evaluation

Students referred for evaluation as potentially gifted should be fully evaluated with an individual standardized IQ measure and other measures of achievement, critical thinking, and creativity. Best practices would indicate that a student be evaluated in all four areas to get a complete student profile. To accurately evaluate the impact that such factors as cultural background, linguistic background, socioeconomic status and disability conditions have upon a student's performance/assessment, it is essential to have a complete student profile.

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.

Eligibility Determination Team (EDT)
This team has the responsibility for determining whether students may be eligible to receive gifted services under the provisions of state regulations. To make this determination, the team considers all information about individual students on a 'case by case' basis. Full documentation must be maintained for every student, verifying very superior intelligence and at least outstanding performance in one other area of achievement, creativity, or critical thinking. When considering the question of eligibility, it is essential that the team consider the impact that "factors" may have had upon the formal assessment of cognitive ability. Factors may include:

- evidence of multiple indicators of cultural diversity
- evidence of multiple indicators of linguistic difference
- evidence of multiple indicators of socioeconomic disadvantage
- documentation of a disabling condition

E. Homebound or Hospitalized

All students referred for consideration as homebound or hospital need evaluation information that describes the student's functioning in the following areas: health, vision, hearing, social emotional status, general intelligence, academic performance, communication, and motor abilities, so the IEP committee can determine eligibility for special education.

In making eligibility and placement decisions, the IEP Team must consider a physician's information. However, the physician's note/information is not the sole determining factor in the committee's decision making process. Students with emotional / behavioral concerns should not be considered for placement on homebound without a psychological evaluation current within one year. If placed on homebound, the IEP must determine a plan for return to the school, including a timeline with date to review progress by the IEP Team prior to the annual review date.

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

§300.27 Limited English proficient. Limited English proficient has the meaning given the term in section 9101 (25) of the ESEA – Elementary and Secondary Education Act – No Child Left Behind.

The Formal Evaluation Process
The next step is to develop rapport and conduct an interview. From the results of the interview and information gathered on language proficiency, the examiner can determine what language the assessment should be conducted, and along with the referral question, determine the assessment instruments to assist in the provision of the most useful information for the Individualized Education Plan (IEP) committee. In addition, the information on acculturation, which is gathered through the interview and the results from the language proficiency/dominance, will assist in an appropriate interpretation of the formal and informal test results.

For assistance to assure that every step of a culturally competent assessment is followed, see the following:
NMPED website for preschool students: http://www.ped.state.nm.us/seo/assessment/preschool_cld.pdf
NMPED website for school age students: http://www.ped.state.nm.us/seo/assessment/ta.pdf

Understanding Language and Language Acquisition
For culturally and linguistically diverse (CLD) children who have been referred to special education programs for possible developmental delays, or academic/behavioral/speech concerns, the critical issue evaluators most often face is to distinguish a language difference from a language disorder (Roseberry-Mckibbin, 1995).

To understand language acquisition, begin with a conceptualization of the process of language acquisition:

- It takes an individual 2-3 years to acquire what is referred to as social language. This is known as Basic Interpersonal Communication Skills (BICS). Cummins (1984)
- It takes 5-7 years for an individual to acquire language skills needed for academic success, known as Cognitive Academic Language Proficiency (CALP). Yansen & Shulman, 1996

Many times, BICS and CALP are not considered when a student is referred for special education evaluation by the SAT. The teacher may think that because the student is communicating with others on the playground (social language) but does not experience academic success, the student may have a learning disability and is then referred for testing. This is not always the case and careful evaluation is necessary.

The Use of Translators/Interpreters

Translators/interpreters should not only be trained and certified/licensed, they should have knowledge of special education terminology. If certified translators/interpreters are not available, bilingual school personnel should be trained specifically on how to translate during consultation activities, interviews, SAT meetings, evaluations, IEP meetings, etc. Evaluators should meet with the translator to discuss:

* the process of the activity.
* topics relevant to the roles of interpreters/translators, which include professional conduct (i.e., confidentiality, professional behavior, and dual roles).
* the assessment procedures, such as the objective measures, interviews, and projectives that will be used.
* terminology, so that the translators can become familiarized with the terms that will be used.
* language and cultural differences that may surface during the activity, as well as the importance of complete translation during the session.

The translator should be given ample time to review and translate any written and/or test materials. In addition, each translation session should be followed up with a debriefing to discuss the activity and address any issues.

The Interview

Whether a school psychologist, diagnostician, or speech and language pathologist is involved, the interview is an essential part of the assessment process. In the analysis of evaluations for the pre-school study and review of other evaluations for three year evaluations, this essential tool is often underutilized. Sattler (1995) refers to the interview as one of the four pillars of assessment. The following goals of the interview are adapted from Takushi & Uomoto (2000, p. 51):

* Establishing a rapport;
* Clearly defining the referral question;
* Assessing the student's strengths (academic, personal, family, school resources);
* Gathering background, cultural and linguistic information; and
* Developing a tentative hypothesis of concerns and determining assessment instruments and techniques would be most useful.

If accurate evaluations and diagnosis are to occur, there is a need for growth in awareness of CLD issues by school personnel who interview students and parents. Interviews are the place in which evaluators need to begin "hypothesis testing" of their impressions of what the issues are to assess. The hypotheses are then validated through formal and informal measures. Following are recommendations:

1. school personnel must consider the worldview of the student, and how this may interact with the worldview of the evaluator.
2. acknowledge the barriers the examinee may face as the interview proceeds. For example, questions may be misunderstood and/or answers to questions could be limited or misperceived, if the examinee, or family member, has limited proficiency in English.
3. examiner decreases the cultural and linguistic obstacles such that the information from the interview becomes useful. Suggestions for working with populations of a different culture and language include:
    - studying the culture, language, and traditions of other groups;
    - learning about your own stereotypes and prejudices;
    - seeing the strengths and coping mechanisms of other groups;
    - appreciating the interviewee's viewpoint and showing a willingness to accept a perspective other than your own;
    - recognizing when group membership differences may be intruding on the communication process;
    - finding ways to circumvent potential difficulties;
    - monitoring verbal and nonverbal communications; and
    - establishing trust by allowing the interviewee to perceive that you possess expert knowledge, are a person who can be relied on, and are a person who has good intentions toward him or her. (Sattler, 1988, p. 42)

The interview should then be seen as the backbone of the evaluation. In other words, the rest of the assessment should be a validation of the information gathered from the student, parent, and teacher. Use of multiple sources is

not only an IDEA requirement, but multiple sources assist in determining whether the same strengths and weaknesses are seen at home and at school.

Assessment Instruments
A culturally competent assessment does not imply that a standard battery of assessment is appropriate for specific populations. There are differences within each group. By this we mean just because two students are Native American, does not mean that they have the same level of English proficiency or that they have had the same types of experiences and have acculturated to the same traits. Thus, individual instruments to assess cognition, academic achievement, language development, processing, etc., depend on the examiner's knowledge of what the various assessments measure, the norms of the measures, and the implications of the results. Again, we need to consider the referral question and the results of the interview.

Assessment Results and Report Writing
Cultural and linguistic information should be present throughout the report. This serves as a reminder for the evaluator, as well as assist in the assessment schemata through which individuals will base the measures used and their diagnostic impressions. Thus, current diagnostic and school psychology students are trained to place the information in three places within the report.

- The **first** place it is identified is in the background information, and/or behavior observations or interview portions. Their impressions based on the information regarding acculturation and linguistic abilities are reported for the first time. Specific examples should be shared to further validate one's impressions. It is also mentioned in these portions of the report in such a manner so the reader will realize where the impressions came from.
- The **second** place it is recommended to place the information is before the assessment results and interpretation is presented. This involves a report of the validity of the results of the measures utilized based on cultural and linguistic information.
- The **third** place there should be mention of cultural and linguistic factors is in the summary and recommendations portions. In this way, a reader can read almost any portion of the report and the cultural and linguistic information is present.

Recommendations
Too many times, evaluators do not include functional types of recommendations that were obtained from the assessment for school staff and the family. Provide several recommendations on language, language instruction, culture, and interventions regarding cultural issues. This entails an understanding of second language acquisition models, appropriate language instruction models, and cultural issues that may need to be addressed in counseling.

G. Vocational Evaluation

Special education staff will collect vocational evaluation data when appropriate. As the IEP Team begins discussion and planning for entry into the high school curriculum and discusses the graduation options of the student, vocational evaluation may be determined appropriate.

Functional Vocational Evaluation.
The IEP committee will consider any recommendations as a result of Transition Planning. Transition services are a coordinated set of activities for a student with a disability that include, if appropriate, a functional vocational evaluation. If the IEP Team recommends this, a qualified professional will conduct the evaluation.

1. *The evaluation will include, but not be limited to, observation in vocational settings, interview with teacher and parents, and other evaluations of student aptitude and interest, as appropriate.*
2. *Results of the evaluation, including strengths and weaknesses, will be addressed in a written report maintained in the eligibility file.*

XII. APPRAISAL PERSONNEL *(See also Personnel in Chapter 8- General Administration)*

§300.156 Personnel qualifications.

(a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

(b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--

(1) Are consistent with any State approved or State recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

(2) Ensure that related services personnel who deliver services in their discipline or profession--

(i) Meet the requirements of paragraph (b)(1) of this section; and

(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

(c) For remaining portion, *see Administrative Chapter 8 of this document*

PERSONNEL RESPONSIBILITIES:

Educational Diagnostician:

1. *administers intellectual and academic/developmental evaluations;*
2. *administers evaluations of learning competencies for initial evaluations and re-evaluations;*
3. *participates in EDT evaluations for autistic, learning disabled, and multiple disability referrals;*
4. *assists in evaluation of vocational skills and needs;*
5. *may serve on the SAT or 504 Committee on assigned campus; and*
6. *interprets evaluation data orally and in a written report to the IEP Team.*

School Psychologist:

1. *administers psychological screenings and evaluations;*
2. *participates in EDT evaluations for autistic referrals;*
3. *develops behavior intervention plans and consults with staff as needed;*
4. *participates on IEP Team as needed; and*
5. *may serve on SAT or 504 Committee on assigned campus, as appropriate.*

Speech/Language Pathologist:

1. *administers evaluations for all speech-impaired referrals;*
2. *screens or evaluates SAT referrals for oral expression and listening comprehension, upon request;*
3. *screens referrals, as appropriate, upon request;*
4. *participates in the EDT evaluations for autistic referrals, when appropriate; and*
5. *may serve on the SAT or 504 Committee on assigned campus.*

Adapted P.E. teacher:

1. *administers screening/evaluation for possible adapted/ specialized physical education services, and*
2. *completes a written report with recommendations.*

Auditory Impairments (AI) – Deaf Educator:

Evaluation and services for students with auditory impairments will be provided by appropriately qualified personnel. Personnel from the New Mexico School for the Deaf or other appropriate personnel may be used as needed.

Visual Impairments (VI):

Evaluations and services for students with visual impairments will be conducted by appropriately qualified school personnel, or other appropriate agency personnel from the New Mexico School for the Blind and Visually Impaired.

Special Education Teachers:

Annually assess student competencies for updating the student's IEP. This will include the review of progress on the New Mexico State Assessment. Consideration of any benchmark tests will be used as well. This could also be an informal criterion/curriculum based evaluation, etc. Information for the three year re-evaluation will be provided to the diagnostician and / or EDT for inclusion in the written eligibility report.

Related Services Personnel

Occupational Therapist/Physical Therapist:

1. *administers screening and evaluation for possible OT/PT services, and*
2. *assures annual medical release is obtained for continuation of services.*

Interpreter / Translator

1. *assists with parent/student translations in SAT meetings,*
2. *assists with evaluations, and*
2. *assists in IEP Team meetings.*