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 4. - DISABILITIES – EXCEPTIONALITIES

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Chapter 4. - DISABILITIES – EXCEPTIONALITIES
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Chapter 4. - DISABILITIES – EXCEPTIONALITIES

DISABILITIES - Requirements

§300.8 Child with a disability.

(a) General.

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

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

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

(b) Children aged 3-9 *(found in this section Developmental Delay)*

(c) Definitions of disability terms *(found in this section)*

Authority: NMAC 6.31.2.7 DEFINITIONS:

B. The following terms shall have the following meanings for purposes of these rules.

(2) "Child with a disability" means a child who meets all requirements of 34 CFR §300.8 and who:

(a) is aged 3 through 21 or will turn 3 at any time during the school year;

(b) has been evaluated in accordance with 34 CFR §§300.304-300.311 and any additional requirements of these or other public education department rules and standards as having one or more of the disabilities specified in 34 CFR §300.8, including intellectual disability, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, orthopedic impairment, autism, traumatic brain injury, and other health impairment, a specific learning disability, deaf-blindness, or being developmentally delayed as defined in paragraph (4) below; and who has not received a high school diploma; and

(c) at the discretion of each local educational agency and subject to the additional requirements of Paragraph (2) of Subsection F of 6.31.2.10 NMAC, the term "child with a disability" may include a child age 3 through 9 who is evaluated as being developmentally delayed and who, because of that condition, needs special education and related services.

(4) "Developmentally delayed" means a child aged 3 through 9 or who will turn 3 at any time during the school year: with documented delays in development which are at least two standard deviations below the mean on a standardized test instrument or 30 per cent below chronological age; and who in the professional judgment of the IEP team and one or more qualified evaluators needs special education and related services in at least one of the following five areas: communication development, cognitive development, physical development, social or emotional development or adaptive development. Use of the developmentally delayed option by individual local educational agencies is subject to the further requirements of Paragraph (2) of Subsection F of 6.31.2.10 NMAC. Local education agencies must use appropriate diagnostic instruments and

procedures to ensure that the child qualifies as a child with a developmental delay in accordance with the definition in this paragraph. *LADE's procedures for age 3-9 are specified on page 3 of Chapter 1 - Child Find and in this Chapter.)*

LADE will follow additional guidance provided in the New Mexico Technical Evaluation and Assessment Manual (NM-TEAM) Revised June 2007 located at: http://www.ped.state.nm.us/SEB/technical/NMTeamManual.pdf

I. AUTISM SPECTRUM DISORDER

§300.8 Child with a disability.

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

(1) (i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.

(iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

In New Mexico, all disabilities within the three Autism Spectrum Disorder (ASD) categories listed below may be eligible for special education services under the autism category as long as the student also demonstrates a need for special education services.

A. Autistic Disorder

B. Asperger's Disorder

C. Pervasive Developmental Disorder Not Otherwise Specified

An operational definition of ASD has been quantified using the *Diagnostic Statistical Manual IV* (DSM-IV). The following three categories and criteria provide valuable descriptive information for evaluators as they attempt to address ASD in school settings. However, the evaluation team must be mindful of the fact that they are making an **educational**, not a medical, determination.

A. Autistic Disorder

To make an educational determination that a child has an Autistic Disorder, a total of six or more items from the three lists below must be present. At least two must be from the first list, and one each from the second and third lists.

1. Qualitative impairment in social interaction, as manifested by at least *two* of the following characteristics:
   a. Marked impairment in the use of multiple nonverbal behaviors, such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction
   b. Failure to develop peer relationships appropriate to developmental level
   c. A lack of spontaneous pursuit of shared enjoyment, interests, or achievements with other people (e.g., demonstrating a lack of showing, bringing, or pointing out objects of interest to others)
   d. A lack of social or emotional reciprocity

2. Qualitative impairment in communication as manifested by at least *one* of the following characteristics:
    a. Delay in, or total lack of, development of spoken language (not accompanied by an attempt to compensate through alternative models of communication, such as gesture or mime)
    b. In individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others
    c. Stereotyped and repetitive use of language or idiosyncratic language
    d. Lack of varied spontaneous make-believe play or social and imitative play appropriate to developmental level

3. Restrictive repetitive and stereotyped patterns of behavior, interests, and activities as manifested by at least *one* of the following characteristics:
    a. Encompassing reoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus
    b. Apparently inflexible adherence to specific, nonfunctional routines or rituals
    c. Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping, twisting, or complex whole-body movements)
    d. Persistent preoccupation with parts of objects

In addition to the traits described above, Autistic Disorder is also characterized by two other factors. Delays or abnormal functioning in at least ***one*** of the following areas, with onset prior to age 3:
- social interaction
- language as used in social communication
- symbolic or imaginative play

The disturbance is not better accounted for by Rett's Disorder or Childhood Disintegrative Disorder. *If Rett's Disorder or Childhood Disintegrative Disorder are suspected, parents should be encouraged to promptly consult a medical professional.*

Rett's Disorder (299.80)
In order to differentiate between Autistic Disorder and Rett's Disorder, the following conditions must be addressed. Rett's Disorder includes ***all*** of the following:
1. Apparently normal prenatal and perinatal development
2. Apparently normal psychomotor development through the first 5 months after birth
3. Normal head circumference at birth

Onset of all of the following ***after*** the period of normal development:
1. Deceleration of head growth between ages 5 and 48 months
2. Loss of previously acquired purposeful hand skills between 5 and 30 months with the subsequent development of stereotyped hand movements (e.g., hand wringing or hand washing)
3. Loss of social engagement early in the course (although often social interaction develops later)
4. Appearance of poorly coordinated gait or trunk movements
5. Severely impaired expressive and receptive language development with severe psychomotor retardation

Childhood Disintegrative Disorder (299.10)
In order to differentiate between Autistic Disorder and Childhood Disintegrative Disorder, the following conditions must be addressed. Childhood Disintegrative Disorder includes:
Apparently normal development for at least the first 2 years ***after*** birth as manifested by the presence of age-appropriate verbal and nonverbal communication, social relationships, play, and adaptive behavior.

Clinically significant loss of previously acquired skills before age 10 in at least ***two*** of the following areas:

1. Expressive or receptive language
2. Social skills or adaptive behavior
3. Bowel or bladder control
4. Play
5. Motor Skills

Abnormalities of functioning in at least ***two*** of the following areas:

1. Qualitative impairment in social interaction (e.g., impairment in nonverbal behaviors, failure to develop peer relationships, lack of social or emotional reciprocity).
2. Qualitative impairment in communication (e.g., delay or lack of spoken language, inability to initiate or sustain conversation, stereotyped and repetitive)
3. Restricted, repetitive, and stereotyped patterns of behavior, interest, and activities including motor stereotypes and mannerisms.

The disturbance is not better accounted for by another specific Pervasive Developmental Disorder or by Schizophrenia.

2. Asperger's Disorder

To make an educational determination that a child has Asperger's Disorder, consider these characteristics. Qualitative impairment in social interaction, as manifested by at least ***two*** of the following traits:

1. Marked impairment in the use of multiple nonverbal behaviors, such as eye-to-eye gaze, facial expression, body posture, and gestures to regulate social interaction
2. Failure to develop peer relationships that are appropriate to developmental level
3. Lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (e.g., lack of showing, bringing or pointing out objects of interest to other people)
4. Lack of social or emotional reciprocity

Restricted, repetitive, and stereotyped patterns of behaviors, interests and activities, as manifested by at least ***one*** of the following characteristics:

1. Encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal in either intensity or focus
2. Apparent inflexible adherence to specific nonfunctional routines or rituals
3. Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole body movements)
4. Persistent preoccupation with parts of objects

The disturbance causes clinically significant impairment in social, occupational or other important areas of functioning.

There is no clinically significant general delay in language (e.g., single words used by age 2 years, communicative phrases used by age 3).

There is no clinically significant delay in cognitive development or in the development of age-appropriate self help skills, adaptive behavior (other than in social interaction,) and curiosity about the environment in childhood.

Criteria are not met for another specific Pervasive Developmental Disorder or for Schizophrenia.

3. Pervasive Developmental Disorder Not Otherwise Specified (Including Atypical Autism)

This category should be used when there is a severe and pervasive impairment in the development of reciprocal social interaction associated with impairments in **either** verbal or nonverbal communication skills or with the presence of stereotyped behavior, interests, and activities—but the criteria are not met

for a specific Pervasive Developmental Disorder, Schizophrenia, Schizotypal Personality Disorder, or Avoidant Personality Disorder. For example, this category includes "atypical autism" presentations that do not meet the criteria for Autistic Disorder because of late age of onset, atypical symptomatology, subthreshold symptomatology, or all of these.

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of autism:

A. The team must review and/or complete the following evaluations and/or assessments:

- complete SAT file documentation
- direct observations
- language proficiency assessment
- assessment of cognitive/intellectual abilities
- academic achievement assessments
- adaptive behavior assessment
- speech/language/communication assessment
- occupational therapy evaluation
- social skills assessment
- autism spectrum disorder assessment
- parent interview

These assessments and evaluation data must demonstrate that the student is a student with a disability according to the requirements of the IDEA listed above.

B. The questions below should be answered to help the EDT with the determination of a student's eligibility for special education and related services.

1. Has the EDT eliminated the possibility that the student's educational performance is adversely affected primarily because the child has an emotional disturbance?
   ☐ YES ☐ NO
   On the written report, specify Rationale and Documentation.
   If answered NO, the student is not eligible under the autism category.
2. Significant speech-language impairments are a part of ASD. Has the EDT addressed the possibility that a speech-language impairment might best describe the student's disability?
   ☐ YES ☐ NO
   On the written report, specify Rationale and Documentation.
   If answered NO, the student is not eligible under the autism category.
3. Has the EDT eliminated the possibility that lack of appropriate instruction in reading or math, or limited English proficiency is a determinant factor?
   ☐ YES ☐ NO
   On the written report, specify Rationale and Documentation.
   If answered NO, the student is not eligible under the autism category.
4. Has the EDT determined that these assessments and evaluation data demonstrate that the student is a student with ASD according to the requirements listed above?
   ☐ YES ☐ NO
   On the written report, specify Rationale and Documentation.
   If answered NO, the student is not eligible under the autism category.

C. The student must also demonstrate a need for special education. Ask these questions:

Question 1. ☐ YES ☐ NO

Can adaptations be made in the regular education program to support both the student's access to the

general education curriculum and his/her ability to meet the standards that apply to all students? (Consider adaptation of content, methodology, and/or delivery of instruction)
If answered *YES*, refer student back to the SAT.
If answered *NO*, provide rationale and documentation and proceed to question two.
On the written report, specify Rationale and Documentation.

Question 2. ☐ YES ☐ NO
Are there additions or accommodations that the student needs that cannot be provided through general education?
If answered *YES*, provide rationale and documentation and complete EDT eligibility determination process.
On the written report, specify Rationale and Documentation.

The team of professionals completing the evaluation process for autism will include a psychologist, a speech/language pathologist, a diagnostician, and any other professional, as appropriate. The parent is also a required member of the eligibility determination team.

II. DEAF - BLINDNESS

§300.8 Child with a disability.
(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:
(2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

To receive special education or related services, a student must meet the eligibility criteria below:
1. The student meets the requirements of the deaf-blindness definition.
2. Lack of appropriate instruction in reading or math, or limited English proficiency is not a determinant factor.
3. The student demonstrates a need for special education services.

Since few formal assessments have been standardized with students who are deaf-blind, the evaluation team relies heavily on informal, individually planned assessment information for evaluation and program planning.

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of deaf-blind:

1. Review and consider the **complete SAT file** documentation

2. Conduct a current, comprehensive **audiological evaluation** to determine unaided and aided hearing levels and other audiological measures deemed necessary by a licensed audiologist to determine degree and type of hearing loss.

3. Obtain an **eye examination** conducted by a licensed eye specialist, such as an ophthalmologist or an optometrist, to determine the presence of an eye condition. A written report (see Appendix H) must be on file that includes the diagnosis of the eye condition, visual acuity, and recommendations in regard to using prescription lenses.

4. Do a **functional vision evaluation** to provide information regarding the amount and efficiency of the student's use of vision in an educational setting. This must include:
   - observation of visual responses; screening tests of visual abilities; observations by family and teachers; self-report of visual abilities (when appropriate)
   - observation of accommodations in classroom methods, materials, and environment (including lighting, time of day, location in the classroom, etc.).
   - assessment by teacher(s) of the visually impaired or those with specific training in this area.

5. Give a **speech/language/communication assessment** to acquire information regarding the student's communication. In order to choose appropriate tests and procedures, the evaluator must first determine which language, or communication system(s) the child uses. The assessment should include a description of the intelligibility of all systems used.
   The communication evaluation for deaf-blind should focus on three areas:
   - Identifying the child's communicative strengths and weaknesses;
   - Comparing the child's communication skills to those of other students the same age with normal hearing abilities;
   - Assessment of receptive and expressive language content (semantics), form (morphology/syntax), and function (pragmatics) should include both standardized and non-standardized descriptive measures;
   - Assessment of oral/peripheral structure and function, articulation/ phonology, voice and prosody, when appropriate, should be conducted. The communication/language evaluation may include an augmentative/alternative assessment.

6. A **learning media assessment** must be conducted by teacher(s) of the visually impaired or those with specific training in this area. "Learning media" are defined as the materials or methods that a student uses for reading and writing as well as the sensory channels utilized to access information.

7. The **assessment of cognitive/intellectual abilities** will provide meaningful information on the student's capacity to learn, level of concept development, and method of processing information.
   - The examiner will need to consider the results of the student's **functional vision evaluation, hearing evaluation, learning media assessment, and speech/language/communication assessment** and may wish to consult with a person(s) who is trained in the education of students who are deaf/hard of hearing and visually impaired regarding choice of test instruments and any modifications in the methods, materials, and environment that might enhance the assessment.
   - If formal evaluation is not feasible, an assessment of adaptive behaviors will be necessary in order to gather information regarding the student's cognitive abilities.

8. An **individual academic achievement assessment** must provide information as to how the student functions in the areas of reading, written language, mathematics and will provide a measure of the student's strengths, weaknesses, and mastery of skills.
   - The examiner will need to consider the results of the student's **functional vision evaluation, hearing evaluation, learning media assessment, and speech/ language/ communication assessment** and may wish to consult with a person who is trained in the education of students who are deaf/hard of hearing and visually impaired regarding choice of test instruments and any modifications in the methods, materials, and environment that might enhance the assessment.
   - If formal evaluation is not feasible, assessments of functional skills will be necessary in order to gather information about the student's present levels of performance.

Potential additional components of an initial evaluation, as determined by the evaluation team:
1. Assessment of motor skills
2. Adaptive behavior assessment

3. Assessment of the student's orientation and mobility skills
4. Assessment of student's social-emotional development
5. Assistive Technology evaluation
6. Functional Vocational evaluation

III. DEAF OR HARD OF HEARING

§300.8 Child with a disability.

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

(3) Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.

(5) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

§300.113 Routine checking of hearing aids and external components of surgically implanted medical devices.

(a) Hearing aids. Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

(b) External components of surgically implanted medical devices.

(1) Subject to paragraph (b)(2) of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.

(2) For a child with a surgically implanted medical device who is receiving special education and related services under this part, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

In New Mexico, the term "hard of hearing" is used instead of "hearing impaired." This distinction is made in order to indicate a developmental/linguistic, rather than a pathological, perspective.

Deaf or hard of hearing can mean:

- mild through profound,
- bilateral or unilateral,
- sensorineural or conductive,
- permanent or fluctuating hearing loss, with or without amplification, as documented in a comprehensive audiological evaluation administered by a licensed audiologist.

What educational impact does this disability typically have on students?

Students who are deaf or hard of hearing do not have full, or in some cases any, auditory access to expressive and receptive language through which the majority of information is presented and obtained in educational settings. Many families in New Mexico are bi-and even tri-lingual with Spanish or a Native American language being the predominant language at home, thus adding to the complexity of assessing and educating students who are deaf or hard of hearing.

The lack of development of early and appropriate communication skills may lead to academic achievement deficits, social communication deficits, and, potentially, vocational limitations. Supporting such development requires the earliest possible exposure to communication and language. Research validates the importance of early and meaningful "natural" communication as a crucial stepping-stone for

the full development of language and English skills. Depending on the individual child, "natural" communication may include a variety of communication modes, systems and languages, including American Sign Language (ASL), various forms of manually coded English, and spoken language. In addition, a child who is exposed to appropriate early communication is more apt to reach important cognitive and developmental milestones in the first few years of life. (New Mexico Task Force, 2003)

Factors such as etiology, age of onset, amount of residual hearing, cultural and language background, multiplicity of disabilities, communication skills, language environment, and cognitive ability affect the language proficiency of a student, who is deaf or hard of hearing, has or may acquire. This may impact his or her ability to learn language visually through sign language or auditory through speech, utilize amplification or assistive hearing technology, develop concepts, maximize his or her learning potential, and be an active participant in his/her educational environment.

How is an initial evaluation done?

The evaluation team makes use of an **interpreter** as needed. Formal assessments done using an interpreter require special consideration. Professionals conducting evaluations using an interpreter must take the following steps:

- Determine prior to the evaluation whether the child has sufficient language skills to use an interpreter and is at a developmental level that is adequate for understanding the role of the interpreter.
- Make a reasonable effort to use a Registry of Interpreters for the Deaf (RID) **certified interpreter** for any diagnostic assessment or evaluation that is done to determine eligibility for services.
- Meet with the interpreter prior to the testing to review the language of the test and determine how the interpreter will present the instructions and questions in a manner that is both consistent with the test standardization and comprehensible to the child.

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of deaf or hard of hearing:

1. Review and consideration of the **complete SAT file** documentation. Because hearing loss places an increased demand on visual functioning, give special attention to **vision screening records**.

2. Conduct a current, comprehensive **audiological evaluation** to assess unaided and aided hearing levels, and auditory skills developmental level and other audiological measures deemed necessary by a licensed audiologist to determine degree and type of hearing loss and functional use of hearing.

3. Give a **speech/language/communication assessment** to acquire information about the student in the following areas:
   - Identifying the student's language strengths and weaknesses
   - Comparing the student's language and communication level with his or her potential
   - Comparing the student's language skills with those of other students the same age who have a similar degree of hearing loss
   - Comparing the student's language skills to those of other students the same age who are hearing

   In order to choose appropriate tests and procedures, the evaluator must first determine which language, or communication system(s) the student uses. The evaluator must be competent and trained in evaluating the student's language and/or communication system(s). The assessment should include a description of the intelligibility of all systems used.

   Assessment of students who are deaf should include standardized measures that are normed for students with hearing loss. Measures whose norm group is composed of students who are hearing may also be used if they are appropriate for the student's level of communicative functioning. In the latter case, scores should be used with caution and primarily for descriptive purposes. Assessment of

oral/peripheral structure and function, articulation/ phonology, voice and prosody, as appropriate, should be conducted.

4. The **assessment of cognitive/intellectual abilities** provides meaningful information on the student's capacity to learn, level of concept development, and method of processing information. The assessment must be composed of at least the core test battery, as defined by the test author.

   The examiner will need to consider the results of the student's **audiological evaluation** and **speech/language/communication evaluation** and may wish to consult with a person who is trained in the education of students who are deaf or hard of hearing regarding choice of test instruments and any modifications in the methods, materials, and environment that might enhance the assessment.

5. An **individual academic achievement assessment** provides information as to how the student functions in the areas of reading, written language, mathematics and offers a measure of the student's strengths, weaknesses, and mastery of skills.

   The examiner will need to consider the results of the student's **audiological evaluation** and **speech/language/communication evaluation** and, as above, may wish to consult with a person trained in the education of deaf or hard of hearing students.

   When considering students who are hard of hearing, a professional certified in the education of students with hearing impairments should be assigned to assist in:
   1. *determining appropriate areas of evaluation;*
   2. *developing or determining appropriate evaluation techniques;*
   3. *conducting evaluations when appropriate; and*
   4. *interpreting data to ensure consideration and understanding of the educational, psychological, and social implications of the disability.*

   Birth – 2 years / Deaf-Blind:
   When considering students from birth through age two who have hearing impairments, or students who are deaf-blind, a teacher of infants who have auditory impairments or a teacher of students who are deaf-blind, as appropriate, may perform the evaluation specified above.

To receive special education or related services, a student must meet the eligibility criteria below:
1. The student meets the requirements of the deaf-blindness definition.
2. Lack of appropriate instruction in reading or math, or limited English proficiency is not a determining factor.
3. The student demonstrates a need for special education services.

IV. DEVELOPMENTAL DELAY

§300.8 Child with a disability.

(b) Children aged three through nine experiencing developmental delays. Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, at the discretion of the NMPED and LADE and in accordance with §300.111(b), include a child--

(1) Who is experiencing developmental delays, as defined by the NMPED and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(2) Who, by reason thereof, needs special education and related services.

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.

Authority: NMAC 6.31.2.7 DEFINITIONS B. (4.) *(see also Chapter 3)*

For the local school's Policy and Procedure document, we ask that the school choose one option below:

Insert: *The [school] **uses** the term developmental delay; more information is located in Chapter 2 and 3.*

(OR)

Insert: *The [school] **does not** use the term developmental delay.*

Authority: NMAC 6.31.2.7 DEFINITIONS:

B. The following terms shall have the following meanings for purposes of these rules.

(4) **"Developmentally delayed"** means a child aged 3 through 9 or who will turn 3 at any time during the school year:

- with documented delays in development which are at least two standard deviations below the mean on a standardized test instrument or 30 per cent below chronological age; and
- who in the professional judgment of the IEP team and one or more qualified evaluators needs special education and related services in at least one of the following five areas:

  * communication development,
  * cognitive development,
  * physical development,
  * social or emotional development or
  * adaptive development.

Use of the developmentally delayed option by individual local educational agencies is subject to the further requirements of Paragraph 2 of Subsection F of 6.31.2.10 NMAC. Local education agencies must use appropriate diagnostic instruments and procedures to ensure that the child qualifies as a child with a developmental delay in accordance with the definition in this paragraph.

A. Birth to 3 years: Family Infant Toddler (FIT) Program Eligibility Requirements:

http://www.health.state.nm.us/ddsd//fit/eligibil.html

In New Mexico children from birth to three may be eligible for early intervention services under one of the following eligibility categories:

1. **Developmental Delay:** a discrepancy of 25% or more between chronological age and developmental age, after correction for prematurity, in one or more of the following areas of development:

Cognitive Skills - such as thinking, learning, reasoning and problem solving
Communication Skills - such as understanding and using words and gestures
Physical/Motor - (including vision and hearing) such as movement and health
Social or Emotional - such as feelings, getting along with others and relationships
Adaptive or Self Help Skills - such as bathing, feeding, dressing and toileting

2. **Established Condition:** a diagnosed physical, mental, or neurobiological condition which has a high probability of resulting in developmental delay. A delay in development may or may not be present at the time of diagnosis. There are a number of medical conditions that are considered to be established conditions and therefore make a child eligible under this category.

3. **Biological or Medical Risk for Developmental Delay:** means the presence of early medical conditions which are known to produce developmental delays in some children. The determination of the presence of a biological/medical risk condition(s) shall be diagnosed by a physician or primary health care provider. There are a number of medical conditions that are considered to place the child at risk for developmental delays and therefore make a child eligible under this category.

4. **Environmental Risk for Developmental Delay:** means the presence of physical, social and/or economic factors in the environment which pose a substantial threat to development. The determination of the presence of eligible environmental risk factors must be established by a multi-agency team. Eligibility is determined by a team with representation from two or more agencies who have knowledge of the child and family. Examples of environmental risk conditions include but are not limited to: substance abuse; domestic violence; abuse and neglect and caregiver with a developmental disability or serious mental illness.

B. Age 3 through 9 years:

What educational impact does this disability typically have on students?
Students with a developmental delay in one of the areas listed below have a disability that adversely affects their involvement and progress in the general curriculum or their participation in developmentally appropriate activities. The impact of the disability must be manifested in one or more of the following five domains:

- physical development--fine and gross motor, such as writing, cutting, coloring, running, jumping, moving, etc.
- cognitive development--conceptual development, creativity, thinking, reasoning, problem-solving
- communication development--expressive and receptive language use, articulation, voice, fluency, etc.
- social or emotional development--expressing feelings under normal circumstances, interaction, ability to establish interpersonal relationships, responses to social expectations, sharing, etc.
- adaptive development--conceptual, social, and practical skills, such as toileting, dressing, eating, self-care, etc.

Each of these children is an individual with a unique configuration of strengths, challenges, and temperament characteristics. Assessment is complicated by a myriad of unique development issues and typical fluctuations in terms of performance skills. Multiple transitions between and among multiple settings affect the student's performance skills, as well. Collaboration in the development of educational programs is difficult, as there are many different professionals involved. Evaluation teams must keep in mind that "at risk" behaviors do not necessarily equate to a developmental delay.

What comprises an initial evaluation?

Evaluation considerations for students with developmental delays are particularly complex, and **unique evaluation issues** must be addressed. In part, *professional judgment* enters into the team's consideration of a child's qualifications for eligibility. Professional judgment is described further in this section.

Evaluation teams must keep in mind, as they make decisions in this evaluation process, that one of the intended functions of the developmental delay category is to provide children and students with access to appropriate service early enough to maximize development with early intervention. The category of developmental delay may be an appropriate determination when the evaluation team is unable to make an appropriate disability determination under any other category, as long as the evaluation is conducted within the expectations established by NMPED *Assessment Technical Assistance Document*.

To identify children/students with developmental delays, a holistic view of their development in all areas must be formulated and supported by observations, narratives, and assessment data supplied by evaluation team members. To obtain a holistic view, a range of data sources that compose a complete body of evidence must be collected. Families and various agencies will be involved in this process.

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of developmental delay:

1. For pre-school children, consider the comprehensive **early childhood referral** package. For school-age students, review and consider the **complete SAT file** documentation.
2. Do an **investigation and analysis** of developmental/educational, medical, family, and social history.
3. Give a **language proficiency assessment** to provide information regarding the student's level of Cognitive Academic Language Proficiency (CALP) and understanding, level of acculturation, and cultural considerations; and a level of Basic Interpersonal and Social Communication Skills (BICS), which assists with the selection of appropriate assessment tools. This is critical for students with more than one language modality.
4. Give an individually administered **assessment of adaptive behavior** to provide information regarding conceptual, social, and practical skills. The assessment must utilize a standardized instrument(s) that is normalized on the general population, including persons with and without disabilities.
5. Do an **analysis** of current standardized and/or non-standardized developmental/educational data and performance.
6. **Review** existing evaluation data.
7. Conduct formal and/or informal **observations** by different members of the evaluation team (which includes parents/caregivers). To determine developmental/educational functioning, these observations must be performed in multiple settings, both structured and unstructured.
8. Conduct **interviews** of parents, caregivers, and students to determine student preferences, individual strengths and needs, family assets and needs, and any potential additional concerns.
9. If formal evaluation is not feasible, **assessments of functional skills** will be necessary in order to gather information about the student's present levels of performance.

Additional components of an initial evaluation should be determined based on evaluation teams' considerations related to eliminating other disability categories as potential options. The team may also make recommendations to establish which domain (or domains) of the disability is impacted—physical, cognitive, communication, social, emotional, and/or adaptive development.
To receive special education or related services, a student must meet the eligibility criteria:

1. Lack of *appropriate* instruction in reading or math, or limited English proficiency is not a determinant factor.
2. The child does not meet eligibility requirements for any other IDEA disability category.
3. The child has documented delays in development which are at least two standard deviations or 30 percent below chronological age.
4. One or more qualified evaluators may use *professional judgment* to determine that he or she needs special education services in at least one of the following five areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development.
5. The disability must have an adverse affect on the child's developmentally appropriate activities or educational performance respectively.

LADE will follow the NMPED **professional judgment requirements** clarified in the *Technical Assistance Document for the Category of Developmentally Delayed and Use of Professional Judgment* manual. The NMPED must emphasize that *the use of professional judgment for eligibility decisions is not an individual decision, it is a team decision*. The use of professional judgment alone to qualify a student for special education or related services will be insufficient since the other above listed eligibility criteria must also be met. These requirements are adapted from the American Association on Intellectual disability (AAMR).

Purpose of Professional Judgment
The overall purpose of professional judgment is to ensure that the team uses their professional expertise to interpret the array of evaluation data and determine eligibility on an individual basis. Professional judgment is a special type of judgment rooted in a high level of professional expertise and experience; it emerges directly from extensive data. It is based on the professionals' explicit training, direct experience with those with whom the professionals are working, and specific knowledge of the person and the person's environment (Schalock & Luckasson, 2005).

In the evaluation and eligibility determination process, professional judgment should be used for every decision from the formation of the eligibility determination team through the formal eligibility determination decision, including selection of assessment materials, identification of evaluators, interpretation of test results, etc. Professional judgment provides the foundation for the entire eligibility determination process. The use of professional judgment enhances the precision, accuracy, and integrity of the professionals' decision in that case (Schalock & Luckasson, 2005).

Even through professional judgment is inherent in all aspects of the evaluation process, there are times that professionals will need to rely more heavily on their professional judgment because of the individual child's characteristics and circumstances.

Models of Professional Judgment
Two models for professional judgment are offered below. The first model focuses specifically on the use of professional judgment in the eligibility determination process (Bagnato, Smith-Jones, Matesa, & McKeating-Esterle, 2006). This model "attempted to isolate what mattered most in terms of accurate decision making using clinical judgment as an assessment practice and procedure."

The second model examines professional judgment strategies across both assessment and intervention (Shalock & Luckasson, 2005). Professional judgment is characterized by being: systematic (i.e., organized, sequential, and logical), formal (i.e., explicit and reasoned), and transparent (i.e., apparent and communicated clearly).

Cautions Regarding the Use of Professional Judgment
Professional judgment should not be thought of as a justification for abbreviated evaluations, a vehicle for stereotypes or prejudices, a substitute for insufficiently explored questions, an excuse for incomplete or missing data, or a way to solve political problems (Schalock & Luckasson, 2005). When making an eligibility determination decision, the team must follow the regulations in IDEA (2004) and professional judgment must be used within the context of the evaluation findings.

Key Components of Professional Judgment in the Eligibility Determination Process
(Adapted from Bagnato, Smith-Jones, Matesa, & McKeating-Esterle, 2006)

Preparation
• Define the behavior(s) or academic concerns constituting the focus of evaluation.
• Identify the methods and procedures needed to obtain assessment data.

Information Gathering
• Obtain the assessment data using multiple methods and procedures.
• Gather the assessment information across multiple settings and individuals (i.e., professionals, parent(s), and child).

Decision Making
• Analyze and aggregate all of the assessment data from the different tools, people, and settings, using a team-based approach.
• Reach consensus on eligibility determination based on evaluation information

Competent Professional Judgment: Six Strategies
(Adapted from Schalock & Luckasson, 2005)

1. Conduct a thorough social history that focuses on the individual's strengths and limitations, and provides a context for formulating hypotheses about the individual's present and future behaviors.
2. Align data and its collection to the critical question(s) by working with the eligibility determination team to clearly articulate the referral question(s) and to identify the most appropriate data collection methods to answer those questions.
3. Apply broad-based assessment strategies that include standardized and non-standardized measures from a variety of sources across settings.
4. Implement intervention best practices to provide appropriate instruction to children before, during, and after the evaluation and eligibility determination process.
5. Plan, implement, and evaluate supports throughout the evaluation and eligibility determination process to include supports to participate in academic and non-academic activities.
6. Reflect cultural competence and diversity by collecting information about the child's home environment and/or language, examining the relationship between the child's environment and possible disability, using evaluators who are knowledgeable about and sensitive to the child's cultural and linguistic background, and ensure that the evaluation and eligibility determination decision are implemented consistent with legal and ethical guidelines.

V. EMOTIONAL DISTURBANCE

§300.8 Child with a disability.

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

(4) (i) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

The Office of Special Education Programs (OSEP) has clarified that a generally acceptable definition of "a long period of time" is a range of from two to nine months, assuming preliminary interventions have been implemented and proven ineffective during that period (*Letter to Anonymous*, 231 IDELR 247, OSEP 1989).

Neither the IDEA statute, nor its regulations at 34 CFR §300.7 (c)(4)(i), define the requirement that a student's qualifying behavior manifest itself "to a marked degree." OSEP takes the position that it generally refers to the frequency, duration, or intensity of a student's emotionally disturbed behavior in comparison to the behavior of peers, and can be indicative of either degree or acuity or pervasiveness (*Letter to Anonymous*, 213 IDELR 247, OSEP 1989).

Attempts have been made to elicit clarification from federal agencies such as OSEP, regarding contentious points in the ED definition. For instance, when asked, "What constitutes educational performance?" OSEP replied in a policy letter dated September 14, 1990, that *educational performance must be determined on an individual basis and should include non-academic as well as academic standards as determined by standardized measures.* The letter concluded that the *measurement of 'educational performance' for children with IEPs will be different for each child and must be limited to each child's unique educational needs. Therefore, this Office, as of this time, has not developed a single definition of the term 'educational performance.'* (*Letter to Lybarger*, 17 IDELR 54, OSEP 1990)

In New Mexico, Emotional Disturbance is a condition exhibiting *one or more* of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

- an inability to learn which cannot be explained by intellectual, sensory, or other health factors
- an inability to build or maintain satisfactory interpersonal relationships with peers and teachers
- inappropriate types of behavior or feelings under normal circumstances
- a general pervasive mood of unhappiness or depression
- a tendency to develop physical symptoms or fears associated with personal or school problems

The term does not apply to children who are socially maladjusted unless it is determined that they (also) have an emotional disturbance. The term does not apply to students experiencing sociolinguistic stress,

acculturational stress, or any other situational challenges, unless it is determined that they (also) have an emotional disturbance. "Socially maladjusted" remains a concept for which there is currently no universally accepted definition. If an evaluator recommends excluding a child from eligibility as not having an emotional disturbance and being socially maladjusted, the evaluator should assure that a scientifically-based conceptual framework for defining and assessing social maladjustment is used and documented.

What educational impact does this disability typically have on students?
Emotional disturbance affects both male and female students. Care should be taken to assure that all children with this disability receive appropriate referrals, evaluations, and services. Male students with emotional disturbance frequently demonstrate an adverse relationship with the educational environment and present externalizing behavior patterns that may include numerous discipline referrals for defiance of authority and disruptive behavior, low grades, and poor attendance. Female students with emotional disturbance frequently present more internalizing behavior patterns that may include withdrawal, depression, and irritability. Externalizing behaviors generally are more readily identified. Internalizing behaviors, however, may also indicate a need for special education and related services that is just as critical for the student. The disruptiveness of a behavior must neither dictate nor obscure a student's diagnosis and needs.

The initial eligibility determination under the category of emotional disturbance at the EDT must include the participation of a New Mexico licensed psychologist. The following components are adapted from National Association of School Psychologists recommendations (McConaughy, et. al., 2003).

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of emotionally disturbed:

1. Review and consider the **complete SAT file** documentation. The team must consider a student's cultural/ experiential background plus level of acculturative stress and/or identity issues that may affect his or her ability to function appropriately within the school environment, but are not the result of emotional disturbance.
2. Conduct a **language proficiency assessment** to provide information regarding the student's level of Cognitive Academic Language Proficiency (CALP) and understanding, level of acculturation, and cultural considerations; and level of Basic Interpersonal and Social Communication Skills (BICS), which assists with the selection of appropriate assessment tools. This is critical for students with more than one language modality.
3. Conduct an **assessment of cognitive/intellectual abilities** to get meaningful information on the student's capacity to learn, level of concept development, and method of processing information.
4. Use **individual academic achievement assessments** to provide information about how the student functions in the areas of reading, written language, and mathematics and offer a measure of the student's strengths, weaknesses, and mastery of skills.
5. Give a **speech/language/communication assessment** to achieve a more accurate diagnosis, by gathering information that helps the team consider the complex interrelationships between communication disorders and emotional and behavioral disorders. Communication problems and emotional difficulties are not mutually exclusive; therefore, the EDT must be concerned with the degree of contribution of each on a student's functioning. Because many psychological assessment tools are language based, it is also important that the S/L evaluation provide information regarding the student's language development and communication skills. (JSHD, 1990)
6. Use a **psychological evaluation** to acquire insights into and information about a student's personal characteristics and psychological functioning related to the student's educational performance.
7. Employ the use of broad-band **behavior rating scales/checklists** to collect data about frequency and intensity of behaviors (internalizing or externalizing) considered deviant.

8. Use multiple **behavioral observations** in structured and unstructured school settings, supplemented by information from other settings if available, will be used to compare the type and frequency of the behaviors noted with those of the student's peer group.
9. **Interview** educational stakeholders to bring to light information about the student in the areas of learning styles, general health (etiologies), interpersonal relationships, social skills, and emotional functioning, and contributions of co-morbidity.

Potential additional components of an initial evaluation, as determined by the evaluation team:
1. A functional behavioral assessment to provide specific information about a student's targeted behavioral functioning in school in various settings and time frames
2. A physical examination

To receive special education or related services, a student must meet the eligibility criteria:
1. The student meets the requirements of the emotional disturbance definition.
2. Lack of appropriate instruction in reading or math, or limited English proficiency is not a determinant factor.
3. The student demonstrates a need for special education services.

VI. INTELLECTUAL DISABILITY

§300.8 Child with a disability.

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

(6) Intellectual Disability means significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

In New Mexico, intellectual disability refers to a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. This disability originates before age 18. The following five assumptions, provided by the American Association on Intellectual disability (AAMR), are essential to the application of this definition:
1. Limitations in present functioning must be considered within the context of community environments typical of the individual's age peers and culture.
2. Valid assessment considers cultural and linguistic diversity as well as differences in communication, sensory, motor, and behavioral factors.
3. Within an individual, limitations often coexist with strengths.
4. An important purpose of describing limitations is to develop a profile of needed supports.
5. With appropriate personalized supports over a sustained period, the life functioning of the person with intellectual disability generally will improve. (AAMR, 2002)

What educational impact does this disability typically have on students?
Students with intellectual disability have the capacity to learn, to develop, and to grow. With supports, these citizens can become contributing and full participants in society. Appropriate educational services assist these students as they strive to accomplish this vision.

As with all education, differentiating instruction to meet individual needs is the starting point for successful learning. Throughout their child's education, parents are an integral part of the planning and teaching team. In teaching students with mental retardation, it is important to consider their valued membership in their learning communities and society and their goals for adult life. Pedagogical considerations may include the following:

- Students with intellectual disability should be included to the maximum extent appropriate with their school peers in the regular education classroom in order to ensure access to the general curriculum;
- Teach skills that students will use frequently in such a way that students can generalize the skills in multiple settings;
- Select interventions and strategies that are research-based, data driven, and systematically evaluated for effectiveness; and,
- Align instruction for students with intellectual disability to grade-level academic expectations. Nationwide data are showing that students with cognitive disabilities are learning more than ever before as they begin to be held to higher academic standards and have access to the general curriculum.

Students with intellectual disability need the same basic opportunities that all people need for development. These include education, career preparation, health services, recreational/leisure opportunities, and social opportunities. In addition, students with intellectual disability may need individualized supports. Such supports may include educational programs that differentiate instruction, support inclusion in the regular classroom, academics, develop and implement transition plans, and provide opportunities to prepare for independent living and competitive employment.

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of emotionally disturbed:

1. Review and consider the **complete SAT file** documentation.
2. Do an **investigation and analysis** of developmental/educational, medical, family, and social history.
3. Conduct formal and/or informal **observations** in multiple settings, both structured and unstructured.
4. Give a **language proficiency assessment** to provide information regarding the student's level of Cognitive Academic Language Proficiency (CALP) and understanding, level of acculturation, and cultural considerations; and a level of Basic Interpersonal and Social Communication Skills (BICS), which assists with the selection of appropriate assessment tools. This is critical for students with more than one language modality.
5. Give an individually administered **assessment of cognitive/ intellectual abilities** to provide meaningful information on the student's reasoning, planning, problem-solving skills, abstract thinking ability, comprehension of complex ideas, learning fluency, and ability to learn from experience. Intellectual functioning is best represented by IQ scores when obtained from appropriate assessment instruments, consistent with the five AAMR assumptions essential to the application of the definition.
6. Give an individually administered **assessment of adaptive behavior** to provide information regarding conceptual, social, and practical skills. The assessment must utilize a standardized instrument(s) that is normed on the general population, including persons with and without disabilities.
7. Provide **documentation** of manifestation of the disability before the age of 18.
8. Conduct an **individual academic achievement assessment** to provide information as to how the student functions in the areas of reading, written language, mathematics and offers a measure of the student's strengths, weaknesses, and mastery of skills.

Potential additional components of an initial evaluation, as determined by the evaluation team:
1. Speech/language/communication evaluation
2. Functional Behavioral Assessment
3. Motor assessment
4. Assistive technology evaluation
5. Transition assessment

To receive special education or related services, a student must meet the eligibility criteria:

1. The student has a valid overall IQ score that is a standard score of 70 or below, considering standard error of measurement.
2. The student has a valid adaptive behavior score that is at least two standard deviations below the mean in conceptual, social, or practical skills, or an overall score that includes those components.
3. The student's cognitive disability existed before the age of 18.
4. The disability must have an adverse affect on educational performance.
5. Lack of appropriate instruction in reading or math, or limited English proficiency is not a determinant factor.
6. Student demonstrates a need for special education services.

VII. MULTIPLE DISABILITIES

§300.8 Child with a disability.

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

(7) Multiple disabilities means concomitant impairments (such as intellectual disability-blindness, intellectual disability orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities do not include deaf-blindness.

In New Mexico, this means that the category of multiple disabilities is an extremely low-incidence category that involves complex, inseparable interactions between two or more disabilities and is characterized by the need for extensive or pervasive intensities of educational supports. Therefore, it is neither generally possible nor appropriate to designate the disabilities within this category as primary and secondary.

What educational impact does this disability typically have on students?

Early intervention programs, preschool, and educational programs with the appropriate support services are important to students with multiple disabilities. Family members, educators, and related service providers are all members of the team that may provide supports and/or services, along with others, as needed for each individual. Assistive technology, such as computers and augmentative/ alternative communication devices and techniques may provide valuable instructional assistance in the educational programs for these students.

In discussing multiple disabilities, it is important to gain a perspective about the interacting factors in multiple impairments. Each disability does not act in isolation and should therefore not be managed in isolation. In order to effectively address the considerable needs of individuals with multiple disabilities, educational programs need to incorporate a variety of components, including academic instruction that is tied to the New Mexico Content Standards and Benchmarks and/or the Expanded Performance Standards, language and/or communication development, social/emotional development, functional skill development (i.e., self-help skills) and vocational skill development. Related services will typically be provided during the natural routine of the school and community, rather than having the student removed from class for isolated therapy. Goal development and service delivery will require systematic coordination among related service providers, educators, and parents, facilitated through regularly scheduled meetings.

The classroom environment must take into consideration the student's access to the general curriculum and participation with age-group peers. Adaptive aids and equipment may enable students to increase their range of functioning and accessibility. The use of computers, augmentative/alternative

communication systems, head sticks, and adaptive switches are some examples of the technological devices that enable students with sensory and additional disabilities to participate more fully in integrated settings.

What comprises an initial evaluation?

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of multiple disabilities:

1. Review and consider the **complete SAT file** documentation.
2. Do an **investigation and analysis** of developmental/educational, medical, family, and social history.
3. Do an **analysis** of current standardized and non-standardized academic data and performance.
4. Have multiple educational stakeholders conduct **observations** in multiple settings, both structured and unstructured environments, to determine academic and social functioning.
5. Conduct **interviews** of parents, caregivers, and students to determine student preferences, individual strengths and needs, family assets and needs, and any potential additional concerns.

Potential additional components should be determined by the evaluation team based upon the concomitant disabilities and the guidance provided in this manual that is specific to those areas of suspected disability. Thus, no specific potential additional evaluation components are listed here.

To receive special education or related services, a student must meet the eligibility criteria. The evaluation team must do the following:
1. Establish to the greatest extent possible according to the relevant eligibility criteria, two or more complex, inseparably interacting disabilities that cannot be designated as primary or secondary.
2. Document the need for extensive and/or pervasive intensities of educational support.
3. Exclude eligibility based upon deaf-blindness alone.
4. Conclude that lack of appropriate instruction in reading or math, or limited English proficiency is not a determinant factor.
5. Determine that there is a need for special education and related services.

VIII. ORTHOPEDIC IMPAIRMENT

§300.8 Child with a disability.

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

(8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

In New Mexico, this definition can be clarified by understanding that an orthopedic impairment involves a chronic physical or structural limitation of the skeleton, joints, muscles, and/or fascia. This may cause impaired ability to use, move, or control the arms, legs, hands, feet, head, neck and/or trunk resulting in difficulty in the performance of gross-motor and/or fine-motor activities. Disabilities may be congenital or acquired anomalies, excluding traumatic brain injury. A congenital anomaly refers to a condition which is present at birth. Examples include, but are not limited to, deformities, dislocation, abnormal position and/or rotation of the bones, or absence of limbs or bones. Club foot, hip dysplasia, and achondroplasia may be the result of congenital deformities. Scoliosis may be congenital or acquired. Polio, rheumatoid

arthritis, muscular dystrophy, and osteogenesis imperfecta are examples of orthopedic impairments caused by disease. Other causes of orthopedic impairments might include those occurring as a result of severe burns or physical trauma. The determination of whether an orthopedic impairment is "severe" should be made in consultation with a neuromotor specialist (occupational therapist or physical therapist) and the school nurse. All available medical records and educational evaluation information should be reviewed. The severity of an orthopedic impairment should be analyzed according to the impact on educational performance. Educational performance is adversely affected when the student is unable to perform necessary skills as a result of the orthopedic impairment even when appropriate adaptations in the general education setting have been provided. Educational performance related to orthopedic impairments may include the student's ability to:

- access the general education curriculum
- participate in general education classrooms
- safely negotiate throughout the school campus
- utilize school resources (e.g., playground equipment, cafeteria, science labs, media centers, restrooms, etc.)
- participate in physical education activities

What educational impact does this disability typically have on students?
Orthopedic impairments can significantly impact a student's ability to function at school. These can be divided into five factors: neuromotor, language, individual, psychological, and learning environment.

NEUROMOTOR FACTORS**:** Limited functional use of extremities (arms, hands, legs, and feet) may result in such problems as the inability to use standard writing tools, turn pages of a book, explore the school environment, or participate in activities that require fine-tuned movements. Postural, mobility, and endurance issues may restrict participation in activities and movement from one location to another. They may also affect the student's ability to sit in a chair or at the lunch table.

LANGUAGE FACTORS: Students who have concomitant speech/language impairments may be affected academically by being unable to fully communicate their ideas, needs, and desires. These issues may also affect the student's ability to ask for clarification or fully participate in educational and social activities.

INDIVIDUAL FACTORS**:** Students may have other issues as part of their orthopedic impairments that affect educational performance. These issues may include pain and discomfort, fatigue and endurance limitations, and the effects of medications and absenteeism.

PSYCHOLOGICAL FACTORS: Students with orthopedic impairments may demonstrate psychological and/or social/emotional difficulties. Academic performance may be affected by lack of motivation, learned helplessness, and/or depression.

LEARNING ENVIRONMENT FACTORS: Students with orthopedic impairments are often stereotyped as having cognitive impairments. This perception may inappropriately limit educational expectations for the student and may also contribute negatively to the psychological factors described above.

What comprises an initial evaluation?
The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of orthopedic impairment:

1. Review and consider the **complete SAT file** documentation.
2. Document **medical diagnosis** of a chronic orthopedic impairment.
3. Have a **functional neuromotor assessment** completed by OT/PT to provide information about the quality of the student's self-help skills, mobility, posture, range of motion, strength, endurance, fine

and gross motor skills, sensorimotor, and balance. The report should also include information that addresses the student's potential need for adaptive equipment, environmental adaptations, and/or assistive technology.
4. Administer individually an **academic achievement assessment** to acquire information about how the student functions in the areas of reading/literacy, written language, mathematics, and listening skills (when appropriate), and to provide a measure of the student's strengths, weaknesses, and mastery of skills.

Potential additional components of an initial evaluation, as determined by the evaluation team:
1. Assessment of cognitive/intellectual abilities
2. Speech/language/communication evaluation
3. Functional Behavioral Assessment
4. Assistive technology evaluation

To receive special education or related services, a student must meet the eligibility criteria:
1. The student meets the requirements of the orthopedic impairment definition, as described above.
2. Lack of appropriate instruction in reading or math, or limited English proficiency is not a determinant factor.
3. The student demonstrates a need for special education services.

IX. OTHER HEALTH IMPAIRMENT

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

(9) Other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that--
(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia and Tourette syndrome; and
(ii) Adversely affects a child's educational performance.

In New Mexico, the other health impairment category includes impairments that are typically physical, physiological, and/or neurological in nature. Some students with isolated mental health issues may be eligible under the Emotional Disturbance category. **The mere presence of a DSM-IV diagnosis does not make a student automatically eligible under the IDEA.** Students with a medical diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) or Attention Deficit Disorder (ADD) may be considered as eligible under this category if the EDT also determines that their educational performance is adversely affected. A student with a medical Fetal Alcohol Syndrome (FAS) diagnosis may also be included under this category if the EDT also determines that his or her educational performance is adversely affected.

What comprises an initial evaluation?
The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of other health impairment:

1. Review and consider the **complete SAT file** documentation.
2. Do an **analysis** of current standardized and non-standardized academic data and performance.

3. Document a **diagnosis** of a chronic or acute physical, physiological, or neurological impairment that results in limited strength, vitality, and/or alertness.
4. Give an individually administered **assessment of cognitive/intellectual abilities** to provide meaningful information on the student's capacity to learn and his or her level of concept development and method of processing information.
5. Conduct an **individual academic achievement assessment** to provide information about how the student functions in the areas of reading, written language, mathematics and offers a measure of the student's strengths, weaknesses, and mastery of skills.
6. If the referral concern being considered is attention, focus, and/or hyperactivity, use a **behavior rating scale/checklist** obtained from at least two different observers in different settings.

Potential additional components of an initial evaluation, as determined by the evaluation team:
1. Speech/language/communication evaluation
2. Motor assessment
3. Assistive technology evaluation

To receive special education or related services, a student must meet the eligibility criteria:
1. Lack of appropriate instruction in reading or math, or limited English proficiency is not a determinant factor.
2. The student has a documented chronic or acute physical, physiological, or neurological impairment that results in limited strength, vitality, and/or alertness.
3. The disability must have an adverse affect on the student's educational performance.
4. Student demonstrates a need for special education services.

X. SPECIFIC LEARNING DISABILITY

§300.8 Child with a disability.

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

(10) Specific learning disability.

(i) General. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

Authority: NMAC 6.29.1.9 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:

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

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

educational support for learning or behavior, then the student shall be referred to the SAT for consideration of interventions at the Tier II level.

(2) In Tier III, a properly-constituted SAT at each school, which includes the student's parents and the student (as appropriate), shall conduct the student study process and consider, implement and document the effectiveness of appropriate research-based interventions utilizing curriculum-based measures. In addition, the SAT shall address culture and acculturation, socioeconomic status, possible lack of appropriate instruction in reading or math, teaching and learning styles and instructional delivery mechanisms in order to rule out other possible causes of the student's educational difficulties. When it is determined that a student has an obvious disability or a serious and urgent problem, the SAT shall address the student's needs promptly on an individualized basis, which may include a referral for a multi-disciplinary evaluation to determine possible eligibility for special education and related services consistent with the requirements of Subsections D-F of 6.31.2.10 NMAC and federal regulations at 34 CFR §300.300.

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

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:

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) LADE 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 1 and 2 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 1 and 2 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 Sec. 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) Districts 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 4-12, the [district] 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.

In New Mexico, a specific learning disability is a disability rooted in a neurological processing deficit (e.g., auditory processing, memory, processing speed, phonological processing, visual/perceptual processing, etc.) and results in significant academic underachievement following sustained, high-quality, scientific, research based instruction and intervention. A specific learning disability is unique to the individual and is not the result of exclusionary factors. In order to identify a specific learning disability, the following four elements must be supported:

1. The student demonstrates significant academic underachievement, qualified by a pattern of strengths and weaknesses in performance and/or achievement, despite sustained, high-quality, scientific, research-based instruction and intervention.
2. There is evidence of basic neurological processing deficit.
3. The nature of the disability is heterogeneous (inter/intra individual).
4. The student's challenges are not caused by exclusionary factors.

Student Assistance Teams (SATs), evaluation teams, and Eligibility Determination Teams (EDTs) must systematically document strong connections to the factors listed above through standards-based measurements, work samples, anecdotal information (particularly in the area of significant academic underachievement following sustained, high quality instruction and intervention), and relevant teaching-learning observational information. Specific learning disability identification and eligibility may be manifested in the following areas:

- oral expression
- listening comprehension
- written expression
- basic reading skill
- reading comprehension
- mathematics calculation
- mathematics reasoning

Specific learning disabilities are not the result of:

- lack of appropriate instruction in reading
- lack of appropriate instruction in math
- limited English proficiency
- visual, hearing, or motor disability
- mental retardation
- emotional disturbance
- cultural factors
- environmental or economic disadvantage

"Cultural factors" and "environmental or economic disadvantage" are interpreted in New Mexico as limited access to sustained resources that are necessary prerequisites for typical development and growth. The disadvantage may also be the result of systematic trauma to an entire cultural group (unified by ethnicity, religion, gender, socioeconomic background, beliefs, values, styles, and/or practices) that negatively impacts the learning of students in the group, possibly for several generations.

The NMPED recognizes that there may be an overlap between the specific learning disability category and the speech-language impairment category in the area of language. Oral expression and listening comprehension are academic areas and should be treated as such in the evaluation process. The information provided through a speech-language evaluation may support the presence of a learning disability.

In addition, eligibility determinations under the category of SLD may require the use of professional judgment in situations where assessment and evaluation information is not reliable. If the EDT employs the use of professional judgment in the eligibility determination process, it must meet the following expectations (adapted from Luckasson, Schalock 2005):

Purpose of Professional Judgment
The overall purpose of professional judgment is to ensure best practices. The use of professional judgment in a particular case enhances the precision, accuracy, and integrity of the professionals' decision in that case.

Definition of Professional Judgment
Professional judgment is a special type of judgment rooted in a high level of professional expertise and experience; it emerges directly from extensive data. It is based on the professionals' explicit training, direct experience with those with whom the professionals are working, and specific knowledge of the person and the person's environment. Competent professional judgment is based upon the specific strategies highlighted in the box below. Professional judgment is characterized by being: *systematic* (i.e., organized, sequential, and logical), *formal* (i.e., explicit and reasoned), and *transparent* (i.e., apparent and communicated clearly).

Competent Professional Judgment: Six Strategies

1. Conducting a thorough social history
2. Aligning data and its collection to the critical question(s) at hand
3. Applying broad-based assessment strategies
4. Implementing intervention best practices
5. Planning, implementing, and evaluating supports
6. Reflecting cultural competence and diversity

*LADE Eligibility Determination Teams have two options when making eligibility determinations at all grade levels. Described on the following pages are both **Option 1 and Option 2** for identification of students with specific learning disabilities. LADE has chosen to follow **Option 1** for identification of students with specific learning disabilities.*

Learning Disability Evaluation

In New Mexico, specific evaluation data systems and processes for the alternative learning disability identification model, called the *Dual Discrepancy* evaluation model, are in the process of being developed and refined at the State and local levels. As the severe discrepancy model has been shown to delay the implementation of appropriate pedagogical interventions in the early elementary years, being called the "wait to fail model," the NMPED requires, that LADE implement the dual discrepancy model in kindergarten through third grade.

This model is based upon the instructional response to intervention process that generates the student achievement data needed to make the calculations required.

The NMPED has appropriate legal ground on which to require the use of the dual discrepancy model, provided by §300.307 (b), "A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability." Additional guidance can be found in the Discussion section for §300.307(b) of the Final Regulations, page 46646.

OPTION 1: Dual Discrepancy and the Three-Tiered Model of Student Intervention

To successfully make an appropriate eligibility determination under the specific learning disability category, Eligibility Determination Teams must understand the criteria that serve as eligibility requirements under this model (listed below). The concept of dual discrepancy is addressed in the *Identification of Learning Disabilities: Research to Practice* (Gresham, 2002). A dual discrepancy exists when the student both performs below the level evidenced by grade-level peers and also shows a learning rate substantially below that of grade-level peers.

In New Mexico, the dual discrepancy criteria are defined as:

1. A difference of 1.5 standard deviations between a student's mean standards based assessment scores and that of all grade-level classmates in the district.
2. A difference of 1.5 standard deviations between the student's standards-based assessment slope of improvement and that of grade-level classmates in the district. (Adapted from Gresham, 2002)

Eligibility Determination Teams must be careful to make a clear determination that the difficulties that a student is facing are not solely related to a *language difference* when making eligibility determinations. The dual discrepancy profile established above may indeed fit a student who is simply struggling to learn a second language. *Evaluation teams must carefully document that they have distinguished between a language difference and a language disability as a necessary step in this evaluation process.*

Eligibility Determination Teams that employ the RtI model must also carefully differentiate between skill (acquisition) deficits and performance (motivational) deficits. Skill deficits refer to the absence of an academic skill in a student's repertoire ("can't do" problems), whereas performance deficits describe a lack of motivation to perform a given academic skill ("won't do" problems). A reasonable mode in which to make this determination is to provide reinforcers during assessment conditions. If the student is able to complete the task with targeted reinforcement, then the problem is a performance deficit. RtI, in its application for eligibility determinations, is solely aimed at finding skill deficits.

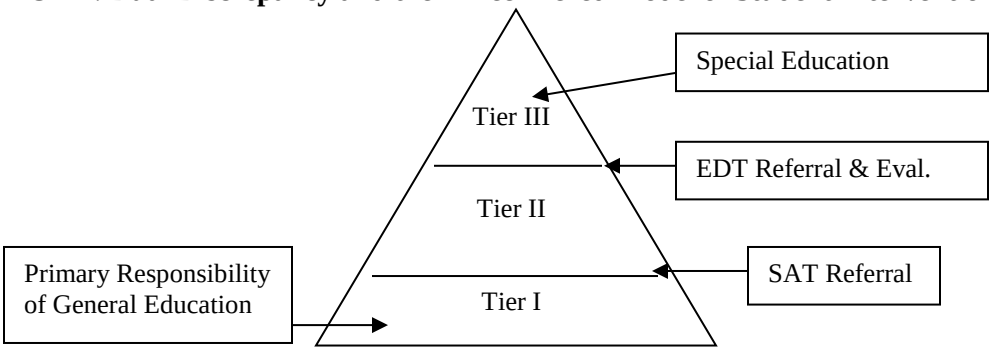
Standards-Based Assessment (SBA) involves the assessment of how well a student is meeting New Mexico's Standards for Excellence, which includes content standards, performance standards, and benchmarks. Components of a cohesive SBA system must be aligned to New Mexico's Standards for Excellence and may include test results from the New Mexico Standards-Based Assessments (NMSBA), ongoing progress monitoring tools such as the short-cycle assessments required by the NMPED's Educational Plan for Student Success (EPSS) system, district-wide standards-based assessments, and curriculum-based measures. An SBA system, in its application to the SLD eligibility determination process, must look at academic skill areas, such as reading, writing, and mathematics. An SBA system is thus based on both formative and summative assessments that are administered frequently and on a yearly basis. Assembling the ongoing data on a chart and/or graph tracks student success and allows for direct comparison in a standardized manner to district-wide, grade level classmates.

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of specific learning disability:

1. Review and consideration of the **complete SAT file** documentation
2. **Investigation and analysis** of academic, medical, family, and social history
3. **Interview(s)** of parents/caregivers and students (as appropriate) to determine student preferences, individual and family strengths and needs, and any potential additional concerns
4. **Additional observation** completed by a diagnostic evaluator or the evaluator's designee in a setting relevant to the area of suspected disability
5. A **language proficiency assessment** to provide information regarding the student's level of Cognitive Academic Language Proficiency (CALP) and understanding, level of acculturation, and cultural considerations, and level of Basic Interpersonal and Social Communication Skills (BICS), which will assist with the selection of appropriate assessment tools. This is critical for students with more than one language modality.
6. **Documentation that standards-based assessments** have been implemented reflecting the student's significant underachievement following documented, sustained, high quality, scientific, research-based intervention.
7. An individually administered **assessment of cognitive/intellectual abilities** to collect meaningful information on the student's capacity to learn, level of concept development, and method of processing information. The assessment must be composed of at least the core test battery, as defined by the test author. Under the RtI model, the results from the assessment of cognitive/intellectual abilities should be utilized solely to determine the level of the student's cognitive functioning. It is not to be used for making discrepancy determinations.
8. Individually administered **academic achievement assessment** in academic area(s) of suspected disability.
9. An **assessment of processing skills** to get information regarding potential processing deficits in the areas of auditory processing, memory, processing speed, phonological processing, visual/perceptual processing, etc.

Potential additional components of an initial evaluation, as determined by the evaluation team:
1. Mental health evaluation
2. Speech/language/communication evaluation
3. OT/PT evaluation

OPTION 1: **Dual Discrepancy and the Three-Tiered Model of Student Intervention**



Tier I —*Primary Intervention* is high-quality, whole-group, research-based general instruction delivered by qualified personnel, combined with general screening processes. For example, instruction must include those features that research has shown to be critical for early reading, literacy, and numeracy. The vast majority of students will respond to this intervention level. At Tier I, primary intervention is a function of general education (classroom teacher and paraprofessionals); therefore, general education staff would be responsible for leading and/or facilitating any discussions regarding student progress at the primary intervention level.

Tier II —*Secondary Intervention* is scientific, research-based intervention.
It is targeted, small-group, or individual instruction in specific deficit areas. The environment becomes more intensive and restrictive. At Tier II, secondary intervention remains a function of general education (classroom teacher, paraprofessionals, and established SAT); however, the SAT may include representatives from special education on an as-needed basis functioning solely as resources and not as evaluation specialists. General education staff members are responsible for implementing the scientific, research-based interventions and leading any discussion of the student's progress based on standards-based assessments at this level. It is entirely appropriate and possible that the SAT would choose to run through multiple cycles of secondary intervention in an effort to meet the needs of students in the general education classroom. This would particularly be appropriate if a student is making progress and the team continues to gather to fine tune instructional strategies to allow for greater success.

Multi-Disciplinary Evaluation is the fine line between Tier II and Tier III. The student is referred for a multi-disciplinary evaluation after the SAT has determined that the student has received sustained, high quality instruction in the regular education classroom with scientific, research-based interventions, which have been implemented with fidelity and are specific to the area(s) of deficit but that have not resulted in significant improvement. Parental Rights under the IDEA are in effect upon referral for evaluation. The Eligibility Determination Team's evaluation leads to one of two possible conclusions, based upon the eligibility determination requirements established in this manual:

1. Not eligible: Student is referred back to Tier II (Secondary Intervention) to consider new data and other possible interventions.
2. Eligible: Student moves into Tier III (Tertiary Intervention). The IEP process begins.

Tier III —*Tertiary Intervention* is individualized supports that are beyond the scope of general education, including, but not limited to, instruction and intervention through the delivery of special education and related services, as appropriate.
Response to Intervention (RtI) is a strand that runs through the Three-Tiered model. It is explained in detail in the NMPED's *Technical Assistance Manual: The Student Assistance Team and the Three-Tiered Model of Student Intervention*. RtI places supplemental requirements, such as scientific,

research-based instruction and intervention, on the Three-Tiered model that supports its use as an evaluation tool. The foundations that reinforce this model need further elaboration to provide for successful application of the model. The following eight features of RtI are adapted from the National Research Council on Learning Disabilities (NRCLD). They are the principles that form the foundation for RtI in New Mexico:

1. *High-quality classroom instruction*. Students receive high quality, research-based instruction in their general education setting. Before students are singled out for specific assistance, the typical classroom instruction must be of high quality. This quality can be assessed by comparing students' learning rates and achievement in different classrooms at the same grade level.
2. *Research-based instruction.* General education's classroom practices and curriculum vary in their efficacy. Thus, ensuring that the practices and curriculum have demonstrated their validity is important. Instruction must include those features that research has shown to be critical for early reading, literacy, and numeracy. If not, one cannot be confident that students' limited gains are independent of the classroom experiences.
3. *Classroom Performance*. General education instructors and staff assume an active role in student assessment in the general education curriculum. This feature emphasizes the important role of the classroom staff in designing and completing student assessments rather than relying solely on externally developed tests (e.g. NMSBA, etc.).
4. *General Screening*. School staff conducts general screening of academics and behavior. This feature focuses on specific criteria for judging the learning and achievement of all students, not only in academics, but also in related behaviors (e.g., class attendance, tardiness, truancy, suspensions, and disciplinary actions). Those criteria are applied in determining which students need closer monitoring and/or intervention.
5. *Continuous Progress Monitoring*. In RtI models, one expects students' classroom progress to be monitored and documented continuously. In this way, staff can readily identify those learners who are not meeting the benchmarks or other expected standards. Standards-based assessment is useful in this role. Progress monitoring tools should be evidence-based and predictive of end-of-year performance. The data-based results of these progress monitoring systems must be provided to parents. In New Mexico, the short-cycle assessments recommended as part of the Educational Plan for Student Success (EPSS) may be utilized to attend to this requirement in part, provided that the short-cycle assessments are ongoing, aligned with the New Mexico Content Standards, are scientific and research-based, and inform curricular decisions.
6. *Scientific, research-based interventions*. When students' general screening results or progress-monitoring results indicate a deficit, an appropriate instructional intervention is developed and implemented at Tier II of the SAT. School staff members are expected to implement specific scientific, research-based interventions to address the student's difficulties. These scientific, research-based interventions are implemented in a time period that can last up to 18 weeks in length and are designed to increase the intensity of the learner's instructional experience. The intervention cycle at Tier II can be repeated when the SAT chooses a different intervention or refines the implementation of an existing intervention.
7. *Progress monitoring during interventions*. School staff members use progress-monitoring data to determine the effectiveness of specific interventions and to make any changes as needed. Carefully defined data are collected, perhaps daily, to provide a cumulative record of the learner's response to intervention.
8. *Fidelity Measures*. While the interventions are designed, implemented, and assessed for their learner effectiveness, fidelity measures verify that the intervention was implemented as intended and with consistency.
   In New Mexico, instructional leaders other than the classroom teacher (e.g., principals, education specialists, etc.) have a critical role in completing fidelity measures. This is a requirement that may be

met through the "Progressive Documentation" process that drives Professional Development Plans at the building level. (Adapted from Mellard, 2004)

LEAs that determine their SAT systems are not functioning in a manner that is consistent with the guidance established in the NMPED's *Technical Assistance Manual: The Student Assistance Team and the Three-Tiered Model of Student Intervention,* should seek training assistance related to targeted area(s) of need in order to develop a model that can be successfully implemented.

To receive special education or related services, a student must meet the eligibility criteria:

1. The student demonstrates significant underachievement, based upon ability. Dual discrepancy is denoted by having a difference of 1.5 standard deviations between *both* the student's mean standards based assessment *scores* and *slope of improvement* (growth) measured against those of grade-level students in the LEA's area(s) of concern.
2. Standards-based achievement results are both below the average range and support the dual discrepancy in the area(s) of concern.
3. The student was provided with high-quality, scientific research-based instruction and intervention by qualified personnel in regular education settings.
4. Learning difficulties are not the result of lack of appropriate instruction in reading, lack of appropriate instruction in math, limited English proficiency, visual, hearing, or motor disability, mental retardation, emotional disturbance, cultural factors, or environmental or economic disadvantage.
5. Student demonstrates a need for special education services

OPTION 2: SEVERE DISCREPANCY

If LADE chooses to utilize a **severe discrepancy model** in evaluating a student for eligibility in the specific learning disability category, LADE will adhere to the following requirements.

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of specific learning disability:

1. Review and consideration of the **complete SAT file** documentation
2. **Investigation and analysis** of academic, medical, family, and social history
3. **Interview(s)** of parents/caregivers and students (as appropriate) to determine student preferences, individual and family strengths and needs, and any potential additional concerns
4. **Additional observation** completed by a diagnostic evaluator or the evaluator's designee in a setting relevant to the area of suspected disability
5. A **language proficiency assessment** to provide information regarding the student's level of Cognitive Academic Language Proficiency (CALP) and understanding, level of acculturation, and cultural considerations, and level of Basic Interpersonal and Social Communication Skills (BICS), which will assist with the selection of appropriate assessment tools. This is critical for students with more than one language modality.
6. An individually administered **assessment of cognitive/intellectual abilities** to collect meaningful information on the student's capacity to learn, level of concept development, and method of processing information. The assessment must be composed of at least the core test battery, as defined by the test author.
7. An **individual academic achievement assessment** to provide information about how the student functions in the areas of oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning and to provide a measure of the student's strengths, weaknesses, and mastery of skills.

8. An **assessment of processing skills** to get information regarding potential processing deficits in the areas of auditory processing, memory, processing speed, phonological processing, visual/perceptual processing, etc.

Potential additional components of an initial evaluation, as determined by the evaluation team:
1. Mental health evaluation
2. Speech/language/communication evaluation
3. OT/PT evaluation

To receive special education or related services, a student must meet these eligibility criteria:
1. The student demonstrates a severe discrepancy, of at least **1.5 standard deviations** when considering co-normed assessments, or, if the assessments are not co-normed, considering the regression table found in **Appendix G** of the NMTEAM Manual, and the standard error of measure of the difference between cognitive ability and achievement in the area(s) of concern.
2. The student's standards-based achievement results are both below the average range and support the discrepancy in the area(s) of concern.
3. The student was provided with high-quality, scientific, research-based instruction and intervention by qualified personnel in regular education settings.
4. Learning difficulties are not the result of lack of appropriate instruction in reading, lack of appropriate instruction in math, limited English proficiency, visual, hearing, or motor disability, mental retardation, emotional disturbance, cultural factors, or environmental or economic disadvantage.
5. Student demonstrates a need for special education services.

XI. SPEECH - LANGUAGE IMPAIRMENT

§300.8 Child with a disability.

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

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

§300.34 Related services.

(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.

In New Mexico, speech and/or language impairments are those disorders that adversely affect a student's educational performance by interfering with or limiting the student's "ability to receive, send, process, and comprehend concepts or verbal, nonverbal, and graphic symbol systems." Speech and language impairments may be exhibited as disorders ranging from mild to severe and may be developmental or acquired. A speech-language impairment is to be differentiated from a speech-language difference which may be due to bilingualism, dialectical or cultural differences in language use, or being non-English dominant. A communication difference/dialect is a variation of a communication system used by a group of individuals that reflects and is determined by shared regional, social, or cultural/ethnic factors and

should not be considered a disorder of speech or language. The following language is adapted from the American Speech-Language Hearing Association (ASHA).

SPEECH DISORDERS (adapted from ASHA 1993)
An Articulation Disorder is the atypical production of speech sounds characterized by substitutions, omissions, additions, or distortions that may interfere with intelligibility and which adversely affects communication between the student and the listener. It may include the inability to use the oral mechanism for speech, as well as the reception and processing of phonemes (speech sounds) at a level below average for the student's chronological age or developmental level.

A Fluency Disorder is an interruption in the flow of speaking characterized by atypical rate, rhythm, and repetitions of sounds, syllables, words, and phrases which adversely affects communication between the student and the listener. This may be accompanied by excessive tension, struggle, behavior, and/or secondary mannerisms.

A Voice Disorder is characterized by the abnormal production and/or absences of vocal quality, pitch, loudness, resonance, and/or duration which is inappropriate for a student's age and/or gender and which adversely affects communication between the student and the listener.

Language Disorders (adapted from ASHA 1993)
Language Impairment is impairment in the ability to comprehend, process, or produce language in the areas of form, content, or use. The disorder may involve:

- the **form** of language (*phonology*—the sound system of a language and the rules that govern the sound combinations; *morphology*—the rule system that governs the structure of words and the construction of word forms; *syntax*—the rule system governing the order and combination of words to form sentences, and the relationships among the elements within a sentence);
- the **content** of language (*semantics*—the system that governs the meaning of words and sentences; content also refers to the environment in which a communicative act is occurring, as well as the relationship of the communication partners); and,
- the **use** of language (*pragmatics*—the system that combines the above language components in functional and socially appropriate communication).

In addition to the complete SAT documentation file, the Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of language disorders:

1. Language
    - Case history
    - Functional communication, i.e., interviews, observations, checklists/scales
    - Educational status
        a. review of classroom performance
        b. analysis of oral/written samples within the classroom
        c. observation/anecdotal records
    - Standardized and non-standardized assessments of receptive and expressive language in the areas of content (semantics), form (morphology and syntax), and use (pragmatics)
        a. Standard scores yielded by standardized assessments must be statistically significant, i.e., below the average range, as defined by the test author.
        b. Methods of non-standardized assessment may include, but are not limited to, reviewing: classroom work samples, language samples, curriculum-based assessment, oral/written narratives, dynamic assessment, criterion-referenced measures.

Note: When the results of standardized and non-standardized measures are discrepant, a weight of evidence from multiple descriptive measures must support the existence of a speech-language impairment.

- Academic achievement assessment. Depending upon individual needs, this may consist of standardized individual achievement tests, curriculum based measures, criterion-referenced tests, dynamic assessment, and/or portfolio assessment.

Potential additional components of an initial evaluation for language disorders, as determined by the evaluation team:

1. Cognitive/intellectual abilities assessment
2. Assistive technology assessment
3. Motor skills assessment
4. Audiological evaluation
5. Psychological evaluation

Speech Disorders

In addition to the complete SAT documentation file, the Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of speech disorders:

1. Articulation Disorder
   - Case history
   - Functional communication, i.e., interviews, observations.
   - Educational status, i.e., review of classroom performance.
   - Stimulability assessment
   - Conversational intelligibility assessment
   - Oral mechanism/oral motor exam
   - Standardized and/or non-standardized inventory(ies) of speech sounds/phonological processes
2. Voice
   - Case history
   - Functional communication, i.e., interviews, observations.
   - Educational status, i.e., review of classroom performance.
   - Conversational intelligibility assessment
   - Oral mechanism/oral motor exam
   - Measures of and/or qualitative descriptions of quality, resonance, pitch, and volume
     Note: A voice evaluation by an SLP may begin in the absence of diagnostic medical information regarding the complaint. However, further dispositions regarding therapy should be deferred until it is available (ASHA 2001). A referral to a medical specialist may be appropriate.
3. Fluency
   - Case history
   - Test of fluency or a clinical evaluation of stuttering severity
   - Functional communication, i.e., interviews, observations, checklists/scales
   - Educational status, i.e., review of classroom performance
   - A speech sample, noting:
     a. extent of fluency/nonfluency
     b. types and frequencies of primary and secondary stuttering behaviors
     c. fluency/nonfluency across speaking situations
   - Speech rate
   - Observations of oral, laryngeal, and respiratory behaviors
   - Oral mechanism/oral motor exam

- Qualitative description of non-measurable aspects of fluency (i.e., coping behaviors, such as circumlocution, starter devices, postponement tactics, or attempts to disguise stuttering and emotional reactions)

Potential additional components of an initial evaluation for speech disorders, as determined by the evaluation team:

1. Assistive technology assessment
2. Motor skills assessment
3. Audiological evaluation
4. Psychological evaluation

Finally, **for BOTH speech and language disorders**, to receive special education services, a student must meet the eligibility criteria:

1. The student has a speech-language impairment and is not merely exhibiting a language difference.
2. Lack of appropriate instruction in reading or math, or limited English proficiency is not a determinant factor.
3. A different disability, such as autism, mental retardation, or a specific learning disability in the area of oral language/listening comprehension does not best describe the student's primary disability.
4. The student demonstrates a need for special education services.

XII. TRAUMATIC BRAIN INJURY

§300.8 Child with a disability.

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

(12) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

What educational impact does this disability typically have on students?

While the majority of students with TBI are able to return to school, their educational and emotional needs are likely to be very different from how they were prior to the injury. Although students with TBI may seem to function much like children born with other handicapping conditions, it is important to recognize that the sudden onset of a severe disability resulting from trauma creates a very different context. Students with brain injuries can often remember how they were before the trauma, which can result in a constellation of emotional and psychosocial problems not usually present in children with congenital disabilities.

Complications related to malingering or motivation may also be factors worthy of consideration. Further, the trauma impacts family, friends, and professionals who recall what the child was like prior to injury and who have difficulty in shifting and adjusting goals and expectations.

Students who experience a traumatic brain injury may exhibit a wide variety of deficits, such as executive functioning, speech and language, visual-motor, and behavior. Decisions regarding evaluation, placement,

and educational programming must, for this reason, take individual differences into account. Therefore, careful planning for school re-entry (including establishing linkages between the trauma center/rehabilitation hospital and the special education team at the school) is extremely important in meeting the needs of the student. It will be important to determine if the child needs to relearn material previously known. Supervision may be needed (e.g., between the classroom and restroom) as the student may have difficulty with orientation. Teachers should also be aware that, because the student's short-term memory may be impaired, what appears to have been learned may be forgotten later in the day. To work constructively with students with TBI, educators may need to adjust instruction to provide for efficient classroom learning. The following list highlights a few key areas that could be addressed:

- Provide repetition and consistency.
- Demonstrate new tasks, state instructions, and provide examples to illustrate ideas and concepts.
- Avoid figurative language.
- Reinforce lengthening periods of attention to appropriate tasks.
- Probe skill acquisition frequently and provide repeated practice.
- Teach compensatory strategies for increasing memory.
- Be prepared for students' reduced stamina and increased fatigue and provide rest breaks as needed.
- Keep the environment as distraction-free as possible.

What comprises an initial evaluation?

The evaluation for TBI must address functioning in terms of cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem-solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing, and speech. In order to address these areas, the following documentation, assessments, and/or evaluations must be reviewed and/or conducted.

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of traumatic brain injury:

1. Review and consideration of the **complete SAT file** documentation
2. **Medical or historical documentation of a TBI**, including premorbid functioning, if available
3. A **speech/language/communication assessment**—
   Assessment should be guided by (a) questions about the student's contextual and functional use of language, and (b) questions about the impact of verbal and cognitive deficits on communicative functioning. Rather than a fixed battery of tests, assessment needs to include observations of the student in a variety of settings and contexts that sample the type of environmental stimulation encountered under natural conditions. The highly organized nature of formal testing may minimize post-traumatic communication deficits by partially compensating for initiation deficits, sequencing difficulties, slow rate of information processing, or problems inhibiting behavior. (Russell, 1993)
4. An **assessment of cognitive/intellectual abilities** can offer meaningful information about the student's capacity to learn, level of concept development, and method of processing information. The evaluation process should be adapted based on knowledge gained from the medical or historical information provided, as well as information gathered from the speech/language/communication assessment.
5. An **individual academic achievement assessment** offers information about how the student functions in the areas of reading, written language, and mathematics, and will provide a measure of the student's strengths, weaknesses, and mastery of skills. As with a cognitive/intellectual ability assessment, the evaluation process should be adapted based on knowledge gained from the medical or historical information provided, as well as information gathered from the speech/language/communication assessment.
6. A **motor skills assessment** brings forth information regarding fine and gross motor abilities, range of movement, sensory and perceptual skills.
7. An **adaptive behavior assessment** offers information about functioning prior to the injury.

Potential additional components of an initial evaluation, as determined by the evaluation team:
1. Assistive technology assessment
2. A neuropsychological evaluation/consult may provide information regarding neurological/behavioral functioning, socio-emotional skills, educational impact, and potential instructional adaptations or accommodations.

To receive special education or related services, a student must meet the eligibility criteria:
1. The student has medical or historical documentation of a TBI.
2. Lack of appropriate instruction in reading or math, or limited English proficiency is not a determinant factor.
3. The student demonstrates a need for special education services.

XIII. VISUAL IMPAIRMENT

§300.8 Child with a disability.

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

(13) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.
(Authority: 20 U.S.C. §1401(3); 1401(30))

In New Mexico, the term "visual impairment" means a visual anomaly which has been diagnosed by an eye specialist, and which is so severe that, even after medical and conventional optical intervention, the student is unable to benefit fully from educational experiences within the regular education setting without special education services designed to meet the needs of the individual student.

What educational impact does this disability typically have on students?
Although students with visual impairments display a wide range of intellectual abilities and interests, there are some unique needs that are common to most students. A visual impairment will often interfere with the student's development of visual concepts, and the student may need to be explicitly taught the concepts which a sighted student may grasp through incidental learning. The development of listening skills and auditory comprehension is especially important because the student may rely on auditory and tactile input for learning. A visual impairment may affect the student's observation of behavior in social situations and participation in recreational activities, so the student may need explicit instruction and support to facilitate the development of age appropriate social-emotional skills. Because the visual input that both motivates a student to explore and provides environmental feedback may not available, students may need support in developing motor skills. Instruction in orientation and mobility skills is essential to ensure that the student becomes independent and is able to move safely within the environment. A student with a visual impairment may need to learn special techniques to be able to function independently in the areas of self care and domestic skills, such as food preparation and taking care of clothing.

A visual impairment may also affect the student's ability to access instruction in the classroom visually and may necessitate either instruction in Braille and the provision of tactile materials, or the provision of modified materials which allow the student to access instruction, such as large print or books on tape. Instruction in other areas of the curriculum may also need to be modified by providing tactile materials and adapting the presentation of the lesson to maximize experiential learning and verbal descriptions. Access to specialized technology, such as screen reading software and electronic Braille note takers, may be required to allow the student to produce written work and to use a computer independently.

When provided with explicit instruction in the specialized techniques needed to be independent, modified materials, and accessible technology, most students with a visual impairment will be able to participate at the same level as a sighted student with similar abilities and aptitudes. Areas of specialized instruction could include Braille, orientation and mobility, and technology use.

Accommodations and modifications that may be effective are Braille or large print materials, tactile graphs or maps, manipulatives for math or science, talking calculators, magnifiers, abacuses, and verbal descriptions of activities or environmental information. For students who are partially sighted, lighting appropriate to the visual condition should be considered.

The Eligibility Determination Team (EDT) will use the information that follows for an initial evaluation in making an eligibility determination under the category of visual impairment:

1. Review and consideration of **complete SAT file** documentation.
2. Documentation of the presence of an eye condition based on an **eye examination** by a licensed eye specialist (i.e., ophthalmologist or optometrist). A written report must be on file that includes the diagnosis of the eye condition, visual acuity, and recommendations in regard to the wearing of prescription lenses. (A sample form is available in Appendix H.) Documentation must be provided that indicates that the visual impairment affects the student's ability to access the general education curriculum, or for preschoolers, affects their ability to participate in appropriate classroom activities.
3. A **functional visual examination** to determine the amount and efficiency of the student's functional use of vision in an educational setting. This must include observations of visual responses; screening tests of visual abilities; observation by family and teacher; self-report of visual abilities (when appropriate); and observation of accommodations in classroom methods, materials, and environment. This assessment must be conducted by teacher(s) of the visually impaired or those with specific training in this area.
4. A **learning media assessment** conducted by teacher(s) of the visually impaired or those with specific training in this area. "Learning media" are defined as the materials or methods that a student uses for reading and writing as well as the sensory channels utilized to access information.
5. An individually administered **assessment of cognitive/intellectual abilities** to provide meaningful information on the student's capacity to learn, level of concept development, and method of processing information. *The examiner will need to consider the results of the student's **functional vision evaluation and learning media assessment** and may wish to consult with a person who is trained in the education of students with visual impairments regarding choice of test instruments and any modifications in the methods, materials, and environment that might enhance the assessment.*
6. An **individual academic achievement assessment** to provide information about how the student functions in the areas of reading, written language, and mathematics, and to offer a measure of the student's strengths, weaknesses, and mastery of skills.
   Note: For the assessments of cognitive/intellectual abilities and academic achievement above, the examiner will need to consider the results of the student's functional vision evaluation and learning media assessment and may wish to consult with a person who is trained in the education of students with visual impairments regarding choice of test instruments and any modifications in the methods, materials, and environment that might enhance the assessment.

Potential additional components of an initial evaluation, as determined by the evaluation team:
1. An orientation and mobility assessment conducted by a licensed orientation and mobility specialist determines the student's skills levels in moving purposefully, efficiently, and safely in the home, school, and community environment.
2. An assessment of social and emotional skills and behaviors may be needed if there are concerns in this area.

3. An assessment of fine and gross motor and functional skills may be necessary if there are concerns in this area.

To receive special education or related services, a student must meet the eligibility criteria:
1. There is a diagnosis of a visual impairment, including blindness.
2. Lack of appropriate instruction in reading or math, or limited English proficiency is not a determinant factor.
3. The student demonstrates a need for special education services.

XIV. Discontinuation of Services

Discontinuation of services is based on the IEP committee's decisions that the student has mastered the goals and objectives, there is no longer an educational need, and the student no longer qualifies as a student with a disability based on current evaluation information. In rare cases, there may be a medical reason for the parent to request discontinuation of services temporarily or permanently. LADE will continue to offer a free appropriate public education (FAPE) to an eligible student with a disability as required by the IDEA regulations.

Autism Spectrum Disorder

Students with ASD should be considered for discontinuation of services when they demonstrate the ability to function independently, access and perform adequately in the general curriculum, and no longer demonstrate a need for special education services. Monitoring of social skills, behavior, communication, current levels of academic performance, and independence may continue to be necessary. Any student whose special education services are discontinued should promptly be referred to the SAT at his or her school to ensure that the student is supported in this important transition period.

Deaf-Blindness

Students with deaf-blindness should be considered for discontinuation of services when they demonstrate the ability to function independently, access and perform adequately in the general curriculum, and no longer demonstrate a need for special education services. Any student whose special education services are discontinued should promptly be referred to the SAT at his or her school to ensure that the student is supported in this important transition period.

Deaf or Hard of Hearing

Students who are deaf or hard of hearing can be considered for discontinuation of services when they demonstrate the ability to function independently and access direct and incidental communication needed for instruction. In addition, students should be able access and perform adequately in the general curriculum and no longer demonstrate a need for special education services. Any student whose special education services are discontinued must be referred to the SAT at his or her school to ensure that the student is supported in this important transition period.

Developmental Delay

In the school year in which the student turns age 9, he or she must be reevaluated in order to determine eligibility for any other IDEA disability category. Initial evaluation requirements must be met for the EDT to make this eligibility determination. If a student is not eligible, he or she must be referred to the SAT to ensure that appropriate supports are not simply dropped or discontinued. Students with a developmental delay should be considered for discontinuation of services when they demonstrate the ability to function independently and access direct and incidental communication needed for instruction. In addition, students should be able to access and perform adequately in the general curriculum and no longer demonstrate a need for special education services. Any student

whose special education services are discontinued must be referred to the SAT at his or her school to ensure that the student is supported in this important transition period.

Emotional Disturbance
Students with an emotional disturbance should be considered for discontinuation of services when they demonstrate the ability to function independently, access and perform adequately in the general curriculum, and no longer demonstrate a need for special education services. Monitoring of social skills, behavior, communication, current levels of academic performance, and independence may continue to be necessary. Any student whose special education services are discontinued should promptly be referred to the SAT at his or her school to ensure that the student is supported in this important transition period.

Intellectual Disability
Students with an intellectual disability will likely continue to need special education and/or related services throughout their school tenure. With appropriate special education supports, the student's functioning will generally improve. Avoid prematurely discontinuing special education supports and services. The intensity of the supports may simply need to be adapted. However, students should be considered for an exit plan if they demonstrate the ability to independently access the general curriculum and no longer demonstrate a need for special education services. Students whose special education services are discontinued should be referred to the SAT at the school in which he or she resides. This will ensure that necessary services and supports are not simply dropped or discontinued as the student makes this important transition.

Multiple Disabilities
Students with multiple disabilities will likely continue to need special education and/or related services throughout their school tenure. With appropriate special education supports, the student's functioning will generally improve. Avoid prematurely discontinuing special education supports and services. The intensity of the supports may simply need to be adapted. However, students should be considered for an exit plan if they demonstrate the ability to independently access the general curriculum and no longer demonstrate a need for special education services. Students may still require continued support in academic areas and in the form of adaptations to ensure continued access to the general curriculum. Students whose special education services are discontinued should be referred to the SAT at the school in which he or she resides. This will ensure that necessary services and supports are not simply dropped or discontinued as the student makes this important transition.

Orthopedic Impairment
Discontinuation of special education services for students with orthopedic impairments can be considered when a student demonstrates the ability to access the general education curriculum with adaptations that are available in the general education classroom and no longer demonstrates a need for specially designed instruction and related services. Students who have orthopedic impairments may make significant progress in terms of their medical program, technological support(s), and academic programs that help to alleviate their educational concerns.
Any student whose special education services are discontinued must be referred to the SAT at his or her school to ensure that the student is supported in this important transition period.

Other Health Impairment
Discontinuation of special education services for students with a health impairment can be considered when the student demonstrates the ability to access the general education curriculum with adaptations that are available in the general education classroom and no longer demonstrates a need for specially designed instruction and related services. Students who have a health impairment may make significant progress in terms of their medical program, technological support(s), and academic

programs that help to alleviate their educational concerns. Any student whose special education services are discontinued must be referred to the SAT at his or her school to ensure that the student is supported in this important transition period.

Specific Learning Disability
Students with specific learning disabilities should be considered for discontinuation of services when they demonstrate the ability to function independently, access and perform adequately in the general curriculum, and no longer demonstrate a need for special education services. Monitoring of social skills, behavior, communication, current levels of academic performance, and independence may continue to be necessary. Any student whose special education services are discontinued should promptly be referred to the SAT at his or her school to ensure that the student is supported in this important transition period.

Speech - Language Impairment
Students with speech-language impairments can be considered for discontinuation of services only when they demonstrate the ability to function independently, access and perform adequately in the general curriculum, and no longer demonstrate a need for special education services. Any student whose special education services are discontinued must be referred to the SAT at his or her school to ensure that the student is supported in this important transition period.
Discontinuation criteria for speech-language services that may be addressed:
1) All speech and language objectives have been met and continued speech and/or language services are not warranted; or
2) Medical, dental, or social circumstances warrant discontinuation of services on a temporary or permanent basis.

Traumatic Brain Injury
Students with traumatic brain injuries should be considered for discontinuation of services only when they demonstrate the ability to function independently, access and perform adequately in the general curriculum, and no longer demonstrate a need for special education services. Monitoring of social skills, behavior, communication, current levels of academic performance, and independence may continue to be necessary. Any student whose special education services are discontinued should promptly be referred to the SAT at his or her school to ensure that the student is supported in this important transition period.

Visual Impairment, including Blindness
Students with visual impairments including blindness can be considered for discontinuation of services only when they demonstrate the ability to function independently, access and perform adequately in the general curriculum, and no longer demonstrate a need for special education services. Any student whose special education services are discontinued should promptly be referred to the SAT at his or her school to ensure that the student is supported in this important transition period.

Gifted Students - Exiting
Gifted students may exit the gifted program upon request by the parent.

XV. Gifted Students - Requirements

Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN:
A. Gifted child defined. As used in 6.31.2.12 NMAC, "gifted child" means a school-age person as defined in Section 22-13-6(D) NMSA 1978**,** whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking, meets the

eligibility criteria in 6.31.2.12 NMAC and for whom a properly constituted IEP team determines that special education services are required to meet the child's educational needs.

B. Qualifying areas defined.
   (1) "Intellectual ability" means a score two standard deviations above the mean as defined by the test author on a properly administered intelligence measure. The test administrator must also consider the standard error of measure (SEM) in the determination of whether or not criteria have been met in this area.
   (2) "Subject matter aptitude/achievement" means superior academic performance on a total subject area score on a standardized measure, or as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.
   (3) "Creativity/divergent thinking" means outstanding performance on a test of creativity/ divergent thinking, or in creativity/divergent thinking as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.
   (4) "Problem-solving/critical thinking" means outstanding performance on a test of problem solving/ critical thinking, or in problem-solving/critical thinking as documented by information from other sources as specified in Paragraph (2) of Subsection B of 6.31.2.12 NMAC.
   (5) For students with "factors" as specified in Paragraph (2) of Subsection E of 6.31.2.12 NMAC, the impact of these factors shall be documented and alternative methods will be used to determine the student's eligibility.

C. Evaluation procedures for gifted children.
   (1) Child Find (*Located in Chapter 1. – Child Find/Interventions of the Policies and Procedures)*
   (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, historians, etc.), interviews or observations.
   (3) The child's ability shall be assessed in all four areas specified in Subsection B of 6.31.2.12 NMAC.

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

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

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 §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 state 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 on areas below, 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

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

STUDENT IDENTIFICATION: Recommendations from the National Association for Gifted Children (NAGC) Regarding Student Identification: Guiding Principles and Minimum Standards

Guiding Principles

1. A comprehensive and cohesive process for student information will be coordinated in order to determine eligibility for gifted education services.
   - 1.0 Information regarding the characteristics of gifted students in areas served by the [district] will be annually disseminated to all appropriate staff members.
   - 1.1 All students comprise the initial screening pool of potential recipients of gifted education services.
   - 1.2 Nominations for services will be accepted by the SAT from any source (e.g., teachers, parents, community members, peers, etc.)
   - 1.3 Parents will be provided information regarding an understanding of giftedness and student characteristics.

   More information on these Guiding Principles is located in Chapter 1. Child Find.
2. Instruments used for student assessment to determine eligibility for gifted education services will measure diverse abilities, talents, strengths, and needs in order to provide students an opportunity to demonstrate any strengths.
   - 2.0 Assessment instruments will measure the capabilities of students with provisions for the language in which the student is most fluent, when available.
   - 2.1 Assessment will be culturally fair.
   - 2.2 The purpose(s) of student assessments will be consistently articulated across all grade levels.
   - 2.3 Student assessments will be sensitive to the current stage of talent development.
3. A student assessment profile of individual strengths and needs will be developed to plan appropriate interventions.
   - 3.0 An assessment profile will be developed for each child to evaluate eligibility for gifted education programming services.

3.1 An assessment profile will reflect the unique learning characteristics and potential and performance levels.

4. All student identification procedures and instruments are based on current theory and research.
   4.0 No single assessment instrument or its results will deny student eligibility for gifted programming services.
   4.1 All assessment instruments will provide evidence of reliability and validity for the intended purposes and target students.
5. Written procedures for student identification include provisions for notice of evaluation, informed consent, student retention, student reassessment, student exiting, and appeals procedures.
   5.0 District gifted programming guidelines contain specific procedures for student assessment at least once during the elementary, middle, secondary levels.
   5.1 District guidelines provide specific procedures for student retention and exiting as well as guidelines for parent appeals.

LADE will refer to the Gifted Education: Technical Assistance and Training Resource Document located on the NMPED website: http://www.ped.state.nm.us/seo/gifted/gifted.pdf

This Technical Assistance document is updated and provides more information and support in the areas below:

1. Screening Instruments for:
   - Achievement,
   - Intellectual ability, and
   - Other abilities or strengths.
2. Distinguishing characteristics of gifted student's skill areas are divided into four categories and described in great detail:

   Four categories:
   - Traditional Characteristics
   - Characteristics of Culturally/Linguistically Diverse Gifted Students
   - Characteristics of Low Socio-Economic Gifted Students
   - Characteristics of Gifted Students with a Disability

   Skill areas include: basic skills, verbal skills, reading ability, observational skills, problem solving, persistence, curiosity, creativity, risk taking, humor, maturity, independence, emotionality, social skills, leadership, broad interests, and focused interests.
3. Checklist - characteristics of gifted students with factors
   - 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 team in making good judgments about how to proceed with the process.
   - The checklist is adapted from: E. Nielsen, APS Gifted Task Force (1999) in New Mexico State Department of Education – Special Education Office (2000) *Technical Assistance and Training Document for Gifted Education.*
4. Indicators of Giftedness
5. Characteristics and Concomitant Problems
6. Special Populations