New Mexico
State

**OMB NO. 1820-0030**

**Expires: 01/31/2026**

# ANNUAL STATE APPLICATION UNDER PART B OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AS AMENDED IN 2004 FOR FEDERAL FISCAL YEAR 2023

**CFDA No. 84.027A and 84.173A**

**ED FORM No. 9055**

**UNITED STATES DEPARTMENT OF EDUCATION**
**OFFICE OF SPECIAL EDUCATION PROGRAMS**

**Washington, DC 20202-2600**

**Public Burden Statement**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a currently valid OMB control number. The valid OMB control number for this collection is 1820-0030. Public reporting burden for this collection of information is estimated to average 14 hours per responses, and an average of 25 additional hours for responses reporting data related to significant disproportionality in a given year, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain or retain a benefit under 20 U.S.C. 1411 and 1419. If you have comments or concerns regarding the status of your individual submission of this form, please contact Jennifer Simpson at Jennifer.Simpson@ed.gov or at the Office of Special Education and Rehabilitative Services US Department of Education, 400 Maryland Avenue SW, Washington, DC 20202.

Respondents are required to submit information for Sections I-IV of the Annual State Application in order to receive a grant under Section(s) 611 and/or 619 of the Individuals with Disabilities Education Act. Respondents are required to provide the data in Section V pursuant to IDEA section 618(a)(3), which provides the Secretary authority to collect annual data on any information that may be required by the Secretary and 34 CFR §300.647(b)(7), which requires States to report all risk ratio thresholds, minimum cell sizes, minimum n-sizes, standards for measuring reasonable progress if the State uses the "reasonable progress" flexibility in 34 CFR §300.647(d)(2), and the rationales for each, to the Department.

# Section I

## A. Submission Statement for Part B of IDEA

Please select 1 or 2 below. Check 3 if appropriate.

_X__ 1. The State provides assurances that it has in effect policies and procedures to meet all eligibility requirements of Part B of the Act as found in PL 108-446, the Individuals with Disabilities Education Act and applicable regulations (IDEA). The State is able to meet all assurances found in Section II.A. of this Application.

_____ 2. The State cannot provide assurances for all eligibility requirements of Part B of the Act as found in PL 108-446. The State has determined that it is unable to make the assurances that are checked as 'No' in Section II.A. However, the State assures that throughout the period of this grant award the State will operate consistent with all requirements of IDEA in PL 108-446 and applicable regulations. The State will make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of the IDEA, as amended, as soon as possible, and not later than June 30, 2024. The State has included the date by which it expects to complete necessary changes associated with assurances marked 'No'. (Refer to Assurances found in Section II.A.)

Optional:

_____ 3. The State is submitting modifications to State policies and procedures previously submitted to the Department. These modifications are: (1) deemed necessary by the State, for example when the State revises applicable State law or regulations; (2) required by the Secretary because there is a new interpretation of the Act or regulations by a Federal court or the State's highest court; and/or (3) because of an official finding of noncompliance with Federal law or regulations.

## B. Conditional Approval for Current Grant Year

**If the State received conditional approval for the current grant year, check the appropriate statement(s) below:**

**1. Conditional Approval Related to Assurances in Section II.A.:**

_____ a. Section II.A. provides documentation of completion of all issues identified in the FFY 2022 conditional approval letter.

_____ b. As noted in Section II.A., the State has not completed all issues identified in the FFY 2022 conditional approval letter.

2. **Conditional Approval Related to Other Issues:**

_____ a. The State previously submitted documentation of completion of all issues identified in the FFY 2022 conditional approval letter.

_____ b. The State is attaching documentation of completion of all issues identified in the FFY 2022 conditional approval letter. *(Attach documentation showing completion of all issues.)*

_____ c. The State has not completed all issues identified in the FFY 2022 conditional approval letter. *(Attach documentation showing completion of any issues and a list of items not yet completed.)*

# Section II

## A. Assurances Related to Policies and Procedures

The State makes the following assurances that it has policies and procedures in place as required by Part B of the Individuals with Disabilities Education Act. (20 U.S.C. 1411-1419; 34 CFR §§300.100-300.174)

| **Yes** *(Assurance is given Place a check as applicable.)* | **No** *(Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)* *Enter date(s) as applicable* | **Assurances Related to Policies and Procedures** |
|---|---|---|
| X | | 1. A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled, in accordance with 20 U.S.C. 1412(a)(1); 34 CFR §§300.101-300.108. |
| X | | 2. The State has established a goal of providing a full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal. (20 U.S.C. 1412(a)(2); 34 CFR §§300.109-300.110) |
| X | | 3. All children with disabilities residing in the State, including children with disabilities who are homeless or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services in accordance with 20 U.S.C. 1412(a)(3); 34 CFR §300.111. |
| X | | 4. An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with 34 CFR §§300.320 through 300.324, except as provided in §§300.300(b)(3) and 300.300(b)(4). (20 U.S.C. 1412(a)(4); 34 CFR §300.112) |
| X | | 5. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be |

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| | | | achieved satisfactorily in accordance with 20 U.S.C. 1412(a)(5)(A)-(B); 34 CFR §§300.114-300.120. |
| X | | 6. | Children with disabilities and their parents are afforded the procedural safeguards required by 34 CFR §§300.500 through 300.536 and in accordance with 20 U.S.C. 1412(a)(6); 34 CFR §300.121. |
| X | | 7. | Children with disabilities are evaluated in accordance with 34 CFR §§300.300 through 300.311. (20 U.S.C. 1412(a)(7); 34 CFR §300.122) |
| X | | 8. | Agencies in the State comply with 34 CFR §§300.610 through 300.626 (relating to the confidentiality of records and information). (20 U.S.C. 1412(a)(8); 34 CFR §300.123) |
| X | | 9. | Children participating in early intervention programs assisted under Part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9). By the third birthday of such a child, an individualized education program or, if consistent with 34 CFR §300.323(b) and section 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10). (20 U.S.C. 1412(a)(9); 34 CFR §300.124) |
| X | | 10. | Agencies in the State, and the SEA if applicable, comply with the requirements of 34 CFR §§300.130 through 300.148 (relating to responsibilities for children in private schools), including that to the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the requirements found in 34 CFR §§300.130 through 300.148 unless the Secretary has arranged for services to those children under subsection (f) [By pass]. (20 U.S.C. 1412(a)(10); 34 CFR §§300.129-300.148) |
| X | | 11. | The State educational agency is responsible for ensuring that the requirements of Part B are met including the requirements of 34 CFR §§300.113, 300.149, 300.150 through 300.153, and 300.175 and 300.176 and that the State monitors and enforces the requirements of Part B in accordance with 34 CFR §§300.600-300.602 and 300.606-300.608. (20 U.S.C. 1412(a)(11); 34 CFR §300.149) |
| X | | 12. | The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (b) of 34 CFR §300.154 and the State educational agency, in order to ensure that all services described in paragraph (b)(1)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during |

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| | | | the pendency of any dispute under §300.154(a)(3). Such agreement or mechanism shall meet the requirements found in 20 U.S.C. 1412(a)(12)(A)-(C); 34 CFR §300.154. |
| X | | 13. | The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing. (20 U.S.C. 1412(a)(13); 34 CFR §300.155) |
| X | | 14. | The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities as noted in 20 U.S.C. 1412(a)(14)(A)-(E), as amended by the Every Student Succeeds Act; 34 CFR §300.156. |
| X | | 15. | The State has established goals for the performance of children with disabilities in the State that meet the requirements found in 20 U.S.C. 1412(a)(15)(A)-(C), as amended by the Every Student Succeeds Act; 34 CFR §300.157. |
| X | | 16. | All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs as noted in 20 U.S.C. 1412(a)(16)(A)-(E); as amended by the Every Student Succeeds Act; 34 CFR §300.160. |
| X | | 17. | Funds paid to a State under this part will be expended in accordance with all the provisions of Part B including 20 U.S.C. 1412(a)(17)(A)-(C); 34 CFR §300.162. |
| X | | 18. | The State will not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year, unless a waiver is granted, in accordance with 20 U.S.C. 1412(a)(18)(A)-(D); 34 CFR §§300.163 through 300.164. |
| X | | 19. | Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities. (20 U.S.C. 1412(a)(19); 34 CFR §300.165) |
| X | | 20. | In complying with 34 CFR §§300.162 and 300.163, a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or inflation. (20 U.S.C. 1412(a)(20); 34 CFR §300.166) |
| X | | 21. | The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education |

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| | | and related services for children with disabilities in the State as found in 20 U.S.C. 1412(a)(21)(A)-(D); 34 CFR §§300.167-300.169. |
| X | | 22. The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities in accordance with 20 U.S.C. 1412(a)(22)(A)-(B); 34 CFR §300.170. |
| X | | 23a. The State adopts the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Accessibility Standard in the Federal Register in accordance with 20 U.S.C. 1412(a)(23)(A) and (D); 34 CFR §300.172. |
| | | 23b. *(Note: Check either "23b.1" or "23b.2" whichever applies.* |
| X | | 23b.1 The State educational agency coordinates with the National Instructional Materials Access Center and not later than 12/03/06 the SEA as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials enters into a written contract with the publisher of the print instructional materials to:<br>• require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center, electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or<br>• purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats. (20 U.S.C. 1412(a)(23)(C); 34 CFR §300.172) |
| | | 23b.2 The State educational agency has chosen not to coordinate with the National Instructional Materials Access Center but assures that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. (20 U.S.C. 1412(a)(23)(B); 34 CFR §300.172) |
| X | | 24. The State has in effect, consistent with the purposes of the IDEA and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in 34 CFR §300.8. (20 U.S.C 1412(a)(24); 34 CFR §300.173) |
| X | | 25. The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 812(c)) as a condition of attending school, receiving an evaluation under 34 CFR §§300.300 through 300.311, or receiving services under the IDEA as described in 20 U.S.C. 1412(a)(25)(A)-(B); 34 CFR §300.174. |

## B. Other Assurances

The State also makes the following assurances:

| Yes | Other Assurances |
|---|---|
| X | 1. The State shall distribute any funds the State does not reserve under 20 U.S.C. 1411(e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 613 for use in accordance with this part as provided for in 20 U.S.C. 1411(f)(1)-(3); 34 CFR §300.705. |
| X | 2. The State shall provide data to the Secretary on any information that may be required by the Secretary. (20 U.S.C. 1418(a)(3); 34 CFR §§300.640-300.645.) |
| X | 3. The State, local educational agencies, and educational service agencies shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds. (34 CFR §76.702) |
| X | 4. As applicable, the assurance in OMB Standard Form 424B (Assurances for Non-Construction Programs), relating to legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood insurance; environmental standards; wild and scenic river systems; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and general agreement to comply with all Federal laws, executive orders and regulations. |

## C. Certifications

The State is providing the following certifications:

| Yes | Certifications |
|---|---|
| X | 1. The State certifies that ED Form 80-0013, *Certification Regarding Lobbying*, is on file with the Secretary of Education.<br><br>With respect to the *Certification Regarding Lobbying,* the State recertifies that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; that the State shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 CFR Part 82, Appendix B); and that the State Agency shall require the full certification, as set forth in 34 CFR Part 82, Appendix A, in the award documents for all sub awards at all tiers. |
| X | 2. The State certifies that the arrangements to establish responsibility for services pursuant to 20 U.S.C. 1412(a)(12)(A)-(C); 34 CFR §300.154 (or 20 U.S.C. 1412(a)(12)(A)); 34 CFR §300.154(a) are current. This certification must be received prior to the expenditure of any funds reserved by the State under 20 U.S.C. 1411(e)(1); 34 CFR §300.171. |

## D. Statement

I certify that the State of New Mexico can make the assurances checked as 'yes' in Section II.A. and II.B. and the certifications required in Section II.C. of this application. These provisions meet the requirements of Part B of the Individuals with Disabilities Education Act (IDEA) as found in PL 108-446 and the implementing regulations. The State will operate its IDEA Part B program in accordance with all of the required assurances and certifications.

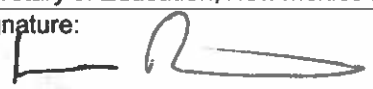
If any assurances have been checked 'no', I certify that the State will operate throughout the period of this grant award consistent with the requirements of the IDEA ,as found in PL 108-446 and any applicable regulations, and will make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of the IDEA, as amended, as soon as possible, and not later than June 30, 2024. (34 CFR § 76.104)

I, the undersigned authorized official of the

New Mexico, New Mexico Public Education Department

*(Name of State and official name of State agency)*

am designated by the Governor of this State to submit this application for FFY 2023 funds under Part B of the IDEA.

| |
|---|
| Printed/Typed Name of Authorized Representative of the<br><br>State: Arsenio Romero, Ph.D. |
| Title of Authorized Representative of the State:<br><br>Secretary of Education, New Mexico Public Education Department |
| Signature:  |
| Date:<br>3/16/23 |

## Section III

### Description of Use of Funds Under Part B of the Individuals with Disabilities Education Act—20 U.S.C. 1411(e)(5); 34 CFR § 300.171

States must provide the Description of Use of Funds by completing and submitting the Excel Interactive Spreadsheet with the FFY 2023 Application.

Describe how the amount retained by the State educational agency under 20 U.S.C. 1411(e)(1) will be used to meet the following activities under Part B. (20 U.S.C. 1411(e)(1)-(3), (6) and (7).) The Department annually identifies for States the maximum amounts that a State may retain under Section 1411(e)(1) and (2).[1] The dollar amounts **listed in the Excel Interactive Spreadsheet** by the State for administration and for other State activities should add up to less or equal to the dollar amount provided to the State by the Department for each of these activities.

**Enter whole dollar amounts (do not enter cents) in appropriate cells on the State's Excel Interactive Worksheet. The Excel Interactive Spreadsheet must be submitted as part of the State's application.**

| Describe the process used to get input from LEAs regarding the distribution of amounts among activities described in the Excel Interactive Spreadsheet to meet State priorities. (20 U.S.C. 1411(e)(5)(B); 34 CFR § 300.704) |
|---|

[1]Each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under this section for fiscal year 2004 or $800,000 (adjusted in accordance with 20 U.S.C. 1411(e)(1)(B)), whichever is greater; and each outlying area may reserve for each fiscal year not more than 5 percent of the amount the outlying area receives under 20 U.S.C. 1411(b)(1) for the fiscal year or $35,000, whichever is greater.

For each fiscal year beginning with fiscal year 2005, the Secretary shall cumulatively adjust: 1) the maximum amount the State was eligible to reserve for State administration under this part for fiscal year 2004; and 2) $800,000, by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

## New Mexico FFY 2023

**REGULAR AWARD AMOUNT Est.** $108,973,168

**TOTAL AWARD AMOUNT** $108,973,168

**ADMINISTRATION**

| | Sec. | |
|---|---|---|
| Maximum Available for Administration. | III | $2,441,394 |
| How much do you want to set aside for Administration in dollars? | | $2,441,394 **OK** |

**You must distribute, in whole dollars, the amount you want to set aside for Administration among the following activities:**

For the purpose of administering IDEA Part B including Preschool Grants under 20 U.S.C. 1419, a High Cost Fund, and the coordination of activities under Part B with, and providing technical assistance to, other programs that provide services to children with disabilities. (Note: These funds may be used for Administering but not Financing a High Cost Fund)

a. $2,441,394

For the administration of Part C of IDEA, if the SEA is the Lead Agency for the State under Part C.

b. $0

You may set aside a portion of your Administration funds resulting from inflation for the following 4 Other State-Level Activities. Additional funds for these purposes may also be set aside under Other State-Level Activities. Based on the amount that you propose to set aside for Administration, the maximum amount of Administration funds that you may use for these 4 activities is:

**$928,596**

For support and direct services, including technical assistance, personnel preparation, and professional development and training.

c. $0

To assist local educational agencies in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities.

d. $0

To assist local educational agencies in meeting personnel shortages.

e. $0

To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.

f. $0

Subtotal, Administration funds used for Other State-Level Activities $0 **OK**

$0

If you receive a Preschool Grant under 20 U.S.C. 1419, you may use Administration funds, along with other funds, to develop and implement a State policy jointly with the lead agency under Part C and the SEA to provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C to children with disabilities who are eligible for services under the Preschool Grant program and who previously received services under Part C until such children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.

$0

g. $0

The total of details for your Administration set-aside is $2,441,394 **OK**

**OTHER STATE-LEVEL ACTIVITIES**

If you propose to set aside more than $850,000 for Administration and you DO wish to use funds for a High Cost Fund, the maximum amount that you may use for Other State-Level Activities is:

$12,592,121

Of the amount you set aside for Other State-Level Activities at least 10% must be used for the High Cost Fund.

If you propose to set aside more than $850,000 for Administration and you DO NOT wish to use funds for a High Cost Fund, the maximum amount that you may use for Other State-Level Activities is:

$11,268,097

If you propose to set aside $850,000 or less for Administration and you DO wish to use funds for a High Cost Fund, the maximum amount that you may use for Other State-Level Activities is:

$13,221,727

Of the amount you set aside for Other State-Level Activities at least 10% must be used for the High Cost Fund.

If you propose to set aside $850,000 or less for Administration and you DO NOT wish to use funds for a High Cost Fund, the maximum amount that you may use for Other State-Level Activities is:

$11,962,515

**Do you wish to use funds for a High Cost Fund? (Yes or No)** **Yes**

Based on the amount that you intend to set aside for Administration, the size of your total award, and your decision **TO** use set aside funds to support a High Cost Fund, the maximum that you may use for Other State-Level Activities is: $12,592,121

**How much do you want to set aside for Other State-Level Activities?** $12,592,121 **OK**

**You must distribute the amount you want to set aside for Other State-Level Activities the following activities. You can distribute amounts in any order you wish. The total balance remaining to be distributed at any time appears in red.**

**How much do you want to use for the High Cost Fund?** $1,259,212 **OK**

**You must use at least $1,259,212**

**Required Activities:** $0 More needs to be distributed.

| | | | |
|---|---|---|---|
| For monitoring, enforcement, and complaint investigation. (You must use at least $1 for this purpose) | h. | $316,298 | |
| To establish and implement the mediation process required by 20 U.S.C. 1415(e), including providing for the cost of mediators and support personnel. (You must use at least $1 for this purpose) | i. | $534,478 | $0 More needs to be distributed. |

**Optional Authorized Activities:** $0 More needs to be distributed.

| | | | |
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| For support and direct services, including technical assistance, personnel preparation, and professional development and training | j. | $4,250,087 | |
| To assist local educational agencies in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities. | k. | $387,824 | $0 More needs to be distributed. |
| To assist local educational agencies in meeting personnel shortages. | l. | $301,768 | $0 More needs to be distributed. |
| To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities. | m. | $1,107,037 | $0 More needs to be distributed. |
| To support paperwork reduction activities, including expanding the use of technology in the IEP process. | n. | $232,672 | $0 More needs to be distributed. |
| To improve the use of technology in the classroom by children with disabilities to enhance learning. | o. | $0 | $0 More needs to be distributed. |
| To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities. | p. | $1,000,000 | $0 More needs to be distributed. |
| Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of children with disabilities to postsecondary activities. | q. | $333,522 | $0 More needs to be distributed. |
| Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools. | r. | $197,923 | $0 More needs to be distributed. |
| To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with Sections 1111(b) and 1201 of the Elementary and Secondary Education Act of 1965. | s. | $717,366 | $0 More needs to be distributed. |
| To provide technical assistance to schools and LEAs, and direct services, including direct student services described in section 1003A(c)(3) of the ESEA to children with disabilities, to schools or LEAs implementing comprehensive support and improvement activities or targeted support and improvement activities under section 1111(d) of the ESEA on the basis of consistent underperformance of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement based on the challenging academic standards described in section 1111(b)(1) of the ESEA. | t. | $1,953,934 | $0 More needs to be distributed. |

The total of details for your Other State-Level Activities set-aside is $12,592,121 **OK**

You are almost done.
If you are using money for a High Cost Fund. You must report how much you will use for each of the following two activities. You reported that you would use **$1,259,212**

| | | | |
|---|---|---|---|
| To establish and make disbursements from the high cost fund to local educational agencies in accordance with 20 U.S.C. 1411(e)(3) during the first and succeeding fiscal years of the high cost fund. | u. | $1,259,212 | |
| To support innovative and effective ways of cost sharing by the State, by an LEA, or among a consortium of LEAs, as determined by the State in coordination with representatives from LEAs, subject to 20 U.S.C. 1411(e)(3)(B)(ii) (Amount may not be more than 5% of the amount reserved for the LEA Risk Pool.) | v. | $0 | |
| Establishment of High Cost Fund (20 U.S.C. 1411(e)(3)(B)(i) - A State shall not use any of the funds the State reserves pursuant to 20 U.S.C. 1411(e)(3)(A)(i), but may use the funds the State reserves under 20 U.S.C. 1411(e)(1), to establish and support the high cost fund. | | | |

Subtotal, High Cost Fund $1,259,212 **OK**

## Section IV

### State Administration

Section 608(a) of the IDEA requires each State that receives funds under this title to:

(1) ensure that any State rules, regulations, and policies relating to this title conform to the purposes of this title;

(2) identify in writing to local educational agencies located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by this title and Federal regulations; and

(3) minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under this title.

States must attach to this application a list identifying any rule, regulation, or policy that is State-imposed (not required by IDEA or Federal regulations). If there are no such State-imposed rules, regulations, or policies, please so indicate. In addition, the State is required to inform local educational agencies in writing of such State-imposed rules, regulations or policies. (20 U.S.C. 1407(a); 34 CFR § 300.199)

State-imposed Rules (not required by IDEA or Federal Regulations)

6.31.2 NMAC--CHILDREN WITH DISABILITIES/GIFTED CHILDREN

Definitions

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| 6.31.7(B)(3) | Developmentally Delayed (defined) |
| 6.31.2.7(B)(5) | Dyslexia (defined) |
| 6.31.2.7(B)(6) | Educational Jurisdiction (defined) |
| 6.31.2.7(B)(8) | General Education Curriculum (defined) |
| 6.31.2.7(B)(15) | Parent (defined to includes requirement for children in state protective services agency and when foster parents can be considered parents). |
| 6.31.2.7(B)(18) | SAT (Student Assistance Team) (defined) |
| 6.31.2.7(B)(20)(b) | Special Education (includes state standards for when speech-language services are considered special education). |
| 6.31.2.7(B)(20)(d) | Special Education (requires that student/staff caseloads for special education meet state standards in 6.29.1.9 NMAC). |

6.31.2.7(B)(21) State-supported Educational Program (defined)

6.31.2.7(C) (1) Facilitated IEP Meeting (defined)

6.31.2.7(C)(2) Mediation (defined)

6.31.2.7(E)(3) Transmit (defined)

6.31.2.7(F)(1) Qualified Student (defined)

6.31.2.7(F)(2) School-age Person (defined)

Public Agency Responsibilities

6.31.2.9(B)(2) The public agency with primary responsibility for ensuring that FAPE is available to a child with a disability on the date set by the department for a child count or other report shall include that child in its report for that date. Public agencies with shared or successive responsibilities for serving a particular child during a single fiscal year are required to

negotiate equitable arrangements through joint powers agreements or memorandums of understanding or interstate agreements for sharing the funding and other resources available for that child. Such agreements shall include provisions with regard to resolving disputes between the parties to the agreement.

6.31.2.9(B)(3) Placement of students in private residential treatment centers, or other out of home treatment or habilitation programs, by the IEP team, or by a due process decision. In no event shall a child with an IEP be allowed to remain in an out of home treatment or habilitation program for more than 10 days without receiving special education and related

services. The school district in which the qualified student or school-age person lives, whether in-state or out-of-state, is responsible for the educational, nonmedical care and room and board costs of that placement. The sending school shall be responsible for the provision of special education and related services.

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

(b) Agreements shall provide for:
  (i) student evaluations and eligibility;
  (ii) an educational program for each qualified student or school-age person that meets state standards for such programs, except that teachers employed by private schools are not required to be highly qualified;

(iii) the provision of special education and related services in conformance with an IEP that meets the requirements of federal and state law and applicable rules;
(iv) adequate classroom or other physical space that allows the school district to provide an appropriate education;
(v) a detailed description of the costs for the placement; and
(vi) an acknowledgement of the authority of the local school board and the department to conduct on-site evaluations of programs and student progress to ensure that state standards are met.

6.31.2.9(B)(9)(b) Each public agency and charter school shall train their school administrators and teachers who teach reading to implement appropriate research-based reading interventions prior to referring the student for a special education evaluation and shall train their special education teachers to provide appropriate specialized reading instruction

for students with dyslexia who have been identified as eligible for special education services.

6.31.2.9(C)(5) IDEA applications and assurances. Each New Mexico public agency that desires to receive IDEA flow-through funds shall file an annual application with the department in the form prescribed by the department. Each application shall: … pursuant to Subsection C of Section 22-8-11 NMSA 1978, the department shall not approve and certify an operating budget of any school district or state-chartered charter school that fails to demonstrate that parental involvement in the process was solicited.

## Identification, Evaluations and Eligibility Determinations

6.31.2.10(B) The public agency shall follow the multi-layered system of supports as a proactive system for early intervention for students who demonstrate a need for educational support for learning. This support shall be provided regardless of whether a student has been referred for a full and individual evaluation for special education and related services or has been identified as eligible for special education.

6.31.2.10(D)(2) The request for initial evaluation or reevaluation by a parent may be made in writing or orally to any licensed personnel of the school in which the student attends. A parental request for a full and individual evaluation shall be forwarded or communicated to the school or district special education director or a school or district administrator as soon as possible after it is received.

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| 6.31.2.10(D)(3) | The public agency shall respond to a parental request for initial evaluation or reevaluation to the public agency no later than 15 school days from the receipt of the request. If a parent request for an evaluation or reevaluation is received within 15 school days before the start of a scheduled period in which student attendance is not required for at least 14 calendar days, the public agency shall respond no later than 30 calendar days from the date of the request. |
| 6.31.2.10(D)(5) | When the public agency makes a referral for an evaluation without a parental request, the public agency shall provide prior written notice that proposes to conduct the requested evaluation or reevaluation, providing a copy of the procedural safeguards notice to parents, and seek parental consent for the evaluation no later than 15 school days from the referral. If a referral for an evaluation or reevaluation is made within 15 school days before the start of a scheduled period in which student attendance is not required for at least 14 calendar days, the public agency shall request parental consent no later than 30 calendar days from the date of the referral. |
| 6.31.2.10(F)(1) | Public agencies are required to maintain a record of the receipt, processing, and disposition of any referral for an evaluation; all appropriate evaluation data, including complete SAT file documentation, Multi-layered system of supports data and summary reports from individuals evaluating student shall be reported in writing for presentation to the eligibility determination team. |
| 6.31.2.10(G)(1) | Each public agency shall ensure that the child is evaluated in all areas related to the suspected disability and shall ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs, regardless of whether they are commonly linked to the disability category in which the child has been classified. |
| 6.31.2.10(G)(3) | The public agency shall provide the parents with a written report of the evaluation or reevaluation at least two calendar days before the eligibility determination team meeting. |
| 6.31.2.10(H) | Public agencies required to devote particular attention to requirements for assessment of culturally and linguistically diverse students in light of state's cultural and linguistic diversity. |

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| 6.31.2.10(J)(1) | Upon completing the full and individual evaluation and written evaluation report, the public agency shall convene a meeting of the eligibility determination team, which shall include the parent and a group of qualified professionals, within 15 school days to determine whether the child is a child with a disability and requires special education and related services. If an individual evaluation is completed during a scheduled period in which student attendance is not required for at least 14 calendar days, the public agency shall convene both a meeting of the eligibility determination team and (if the child is determined eligible) a meeting of the IEP team to develop or revise the child's IEP no later than 15 school days from the first day when student attendance resumes. |
| 6.31.2.10(J)(2)(a) | Developmentally delayed classification may be used for special education eligibility at the discretion of the individual LEAs but may only be used for children who do not qualify under any other disability category. |
| 6.31.2.10(J)(2)(b) | Children who are classified as developmentally delayed shall be reevaluated during the school year in which they turn 9. |
| 6.31.2.10(K)(1) | Each public agency shall use the multi-layered system of supports for students suspected of having a 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. |
| 6.31.2.10(K)(1)(a) | The public agency shall require that the eligibility determination team, consider data obtained during implementation of the multi-layered system of supports in making an eligibility determination. |
| 6.31.2.10(K)(3) | Public agencies shall use the dual discrepancy model to identify children with specific learning disabilities in kindergarten through grade 12 as described in the New Mexico technical evaluation and assessment manual. When using this model, public agencies shall utilize information provided, in part, by the student assistance team, as well as data and information obtained through the use of the multi-layered system of supports. |

## Educational Services for Children with Disabilities

## Preschool programs for children aged three through five

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| 6.31.2.11(A)(3)(b) | For transition from IDEA-Part C to IDEA-Part Bb, Part B eligibility team shall review current assessments and shall determine additional data and assessments needed for the comprehensive evaluation. Current assessments are defined as assessments, other than medical assessments, conducted no more than six months prior to the date of the Part B eligibility determination team. |

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| 6.31.2.11(A)(3(c) | For transition from IDEA-Part C to IDEA-Part Bb, Part B eligibility team, Part B eligibility determination team shall consider educationally relevant medical assessments as part of the review of existing evaluation data. |
| 6.31.2.11(G)(2) | Transition services for students age 14 -21. |
| 6.31.2.11(G)(2) | Required develop of measurable post-secondary goals beginning not later than the first IEP to be in effect when the child turns 14, or younger, if determined appropriate by the IEP team, and updated annually thereafter. |
| 6.31.2.11(G)(6) | If a student turns 22 during the school year, that student shall be allowed to complete the school year and shall continue to receive special education and related services during that school year. If the student turns 22 prior to the first day of the school year, the student is no longer eligible to receive special education and related services. |

## Children in state-supported educational programs

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| 6.31.2.11(J)(1)(b) | Each public agency shall ensure that a child with a disability who is being considered for placement in a state-supported educational program by another public agency has all the rights of a child with a disability who is served by any other public agency, including being provided special education and related services (1) in conformance with an IEP; (ii) at no cost to the child's parents; and (iii) at a school of facility that is accredited by NMPED or licensed by the New Mexico Department of Health. |
| 6.31.2.11(J)(c) | With informed parent consent pursuant to 34 CFR 300.300 and pursuant to procedures in 34 CFR 300.304, the state-supported program may conduct additional evaluations and gather additional information as it considers necessary to assist the IEP team in making the placement decision; The referring public agency and the state-supported educational program shall be jointly responsible for developing IEPs and ensure that the child receives a FAPE |

6.6.31.2.11(J)(1)(d) Responsibility for services for children placed in or referred to state-supported programs shall be defined by a jointly agreed upon IEP or other written agreement between the referring public agency and state-supported program.

6.31.2.11(J)(1)(e) At least annually, the referring public agency, the state-supported educational program, and the parent shall jointly review the child's IEP and revise it as the joint IEP team deems appropriate.

6.31.2.11(J)(2) A state-supported educational program that accepts a child with a disability at the request of a parent or upon the request or order of a non-educational public authority, and without inviting the public agency that has primary responsibility for serving the child to participate in the IEP process, assumes all responsibility for ensuring the provision of FAPE. The child's LEA or another public agency with educational jurisdiction may agree to share the responsibility pursuant to a joint IEP or other written agreement between the state-supported program, the other public agency and, if appropriate, the parent.

## Children at the New Mexico School for the Deaf (NMSD)

6.31.2.11(K)(1) NMSD is a state educational agency established to provide educational services to persons who are 21 years of age or younger on the first day of school, who are deaf or hard of hearing, and who may have one or more other disabilities. The school serves as a special school on the continuum of placement options. The school serves students who require specialized or intensive educational services or services related to hearing impairment or deafness. The school is not intended to serve:

(a) students whose needs are appropriately addressed in a group home or hospital setting or in a residential treatment facility; or
(b) students whose primary ongoing needs are related to a severe or profound emotional, behavioral, or cognitive disability.

6.31.2.11(K)(2) To be eligible to receive free services from NMSD, a student shall have a hearing loss as determined by an audiological evaluation and be a resident of New Mexico.

6.31.2.11(K)(3) The student's resident school district shall conduct child find, pursuant to 34 CFR Sec. 300.111 and Subsection A of 6.31.2.10 NMAC.

6.31.2.11(K)(4) In addition to the requirements of identification, evaluations, and eligibility determinations of students with disabilities pursuant to

6.31.2.10 NMAC and 34 CFR Secs. 300.100 through 300.230 and 300.300

through 300.328, if a student's resident school district finds, has reason to know, or receives documentation that a student is deaf, has a hearing impairment, or is deafblind, the following criteria shall apply:

(a) the resident school district shall convene the initial IEP team meeting;

(b) the IEP team shall include members specified in Paragraph (11) of Subsection B of 6.31.2.7 NMAC, including staff from the NMSD if invited by the parent or the resident school district pursuant 34 CFR Sec. 300.321(a)(6);

(c) the resident school district shall provide the parents of the student with information on the continuum of alternative placements, including the alternative placements listed in the definition of special education under 34 CFR Sec. 300.39 (instruction in regular classrooms, special classes, special schools, home instruction, and instruction in hospitals and institutions); and supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with regular class placement;

(d) in addition to the requirements of Subsection B of 6.31.2.11 NMAC, the IEP team shall be tasked with:

  (i) determining if the student has a hearing disability, which impacts the student's ability to access education, ability to develop language or communication, social emotional development, and/or overall development; and

  (ii) determining the student's placement in the least restrictive environment, in compliance with 34 CFR Secs. 300.114 through 300.120 and Subsection C of 6.31.2.11 NMAC, which for the student may be an environment specifically designed for deaf and hard of hearing children, and whether this is the most appropriate setting in providing educational services and supports to meet the student's IEP.

(e) the student's placement, whether in the resident school district, NMSD, or other educational entity, is the entity that shall have full responsibility for FAPE and all services defined in the student's IEP unless the resident school district and NMSD agree to share services, responsibilities, and costs pursuant to 34 CFR Sec. 300.103; and

(f) the composition of the IEP team after a student's placement and service determinations shall:

  (i) include a representative from the resident school district at the request of the parent, NMSD, or the resident school district if the final placement for the student is at NMSD; and

(ii) include a representative from NMSD at the request of the parent, the resident school district, or NMSD if the final placement for the student is at the resident school district or other educational entity.

## Children at the New Mexico School for the Blind and Visually Impaired (NMSBVI)

6.31.2.11(L)(1) NMSBVI is a state educational agency established to provide educational services for students who are 21 years of age or younger on the first day of school and who have a diagnosed visual impairment and who may have one or more other disabilities. The school serves as a special school on the continuum of placement options. The school serves students who require specialized or intensive educational services or services related to the visual impairment or blindness and those who need extensive training related to the expanded core curriculum for blind and visually impaired students. NMSBVI provides comprehensive services on a day or residential basis. The school is not intended to serve:

(a) students whose needs are appropriately addressed in a group home or hospital setting or in a residential treatment facility; or
(b) students whose primary ongoing needs are related to a severe or profound emotional or behavioral disability.

6.31.2.11(L)(2) To be eligible to receive free services from the NMSBVI, a student shall have a visual impairment or blindness as determined by a medical eye exam and be a resident of New Mexico.

6.31.2.11(L)(3) The student's resident school district shall conduct child find, pursuant to 34 CFR Sec. 300.111 and Subsection A of 6.31.2.10 NMAC.

6.31.2.11(L)(4) In addition to the requirements of identification, evaluations, and eligibility determinations of students with disabilities pursuant to

6.31.2.10 NMAC and 34 CFR Secs. 300.100 through 300.230 and 300.300

through 300.328, if a student's resident school district finds, has reason to know, or receives documentation that a student is blind, has a visual impairment, or is deafblind, the following criteria shall apply:

(a) the resident school district shall convene the initial IEP team meeting;
(b) the IEP team shall include members specified in Paragraph (11) of Subsection B of 6.31.2.7 NMAC, including staff from NMSBVI if invited by the parent or the resident school district pursuant 34 CFR Sec. 300.321(a)(6);
(c) the resident school district shall provide the parents of the student with information on the continuum of alternative placements, including the alternative placements listed in the

definition of special education under 34 CFR Sec. 300.39 (instruction in regular classrooms, special classes, special schools, home instruction, and instruction in hospitals and institutions); and supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with regular class placement;

(d) in addition to the requirements of Subsection B of 6.31.2.11 NMAC, the IEP team shall be tasked with:

(i) determining if the student has a visual disability, which impacts the student's ability to access education, ability to develop language or communication, social emotional development, and/or overall development; and

(ii) determining the student's placement in the least restrictive environment, in compliance with 34 CFR Secs. 300.114 through 300.120 and Subsection C of 6.31.2.11 NMAC, which for the student may be an environment specifically designed for blind or visually impaired children, and whether this is the most appropriate setting in providing educational services and supports to meet the student's IEP.

(e) the student's placement, whether in the resident school district, NMSBVI, or other educational entity, is the entity that shall have full responsibility for FAPE and all services defined in the student's IEP unless the resident school district and NMSBVI agree to share services, responsibilities, and costs pursuant to 34 CFR Sec. 300.103; and

(f) the composition of the IEP team after a student's placement and service determinations shall:

(i) include a representative from the resident school district at the request of the parent, NMSD, or the resident school district if the final placement for the student is at NMSBVI; and

(ii) include a representative from NMSBVI at the request of the parent, the resident school district, or NMSBVI if the final placement for the student is at the resident school district or other educational entity.

## Children in detention and correctional facilities

6.31.2.11(M)(2) Juvenile or adult detention or correctional facilities shall take reasonable steps to obtain needed educational records from a child's last known school or educational facility within two business days, as required under Section 22-13-33 NMSA 1978, of the child arriving at the juvenile or correctional facility.

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| 6.31.2.11(M)(2)(b) | To assist juvenile correctional facilities in providing FAPE for children entering the facility during the summer months, school districts shall provide summer emergency contact information of a person who has access to special education records, to the state's directors in the juvenile justice services division of the children, youth, and family department. |
| 6.31.2.11(M)(3) | A detention or correctional facility that is unable to obtain adequate records from other public agencies, the child or the parents within the required two business days, as required under Section 22-13-33 NMSA 1978, after the child arrives at the facility, shall evaluate the child who is known or suspected to be a child with a disability as provided in Subsection F of 6.31.2.10 NMAC and develop an IEP for an eligible child without undue delay. |
| 6.31.2.11(M)(6) | The local school district in which a detention or correctional facility is located (that is not served by a state-supported educational program) shall be responsible for ensuring that FAPE is made available to eligible children in that facility. A child's LEA of residence or another public agency with educational jurisdiction may agree to share the responsibility pursuant to a written agreement between or among the public agencies involved. |
| 6.31.2.11(K)(2)(b) | Provides LEA summer emergency contact for purposes of providing records for children entering juvenile correction facilities during summer months |

## Additional Rights of Parents, Students and Public Agencies

### Conflict Management and Resolution

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| 6.31.2.13(G)(2)(c)(i) | Once a [state-level] complaint has been filed, the parties may agree to convene a FIEP meeting or mediation as described under Paragraph (3) of Subsection H of 6.31.2.13 NMAC. |

## State complaint procedures

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| 6.31.21 3(H)(3)(a) | Parties to a state-level complaint may choose to convene a FIEP meeting or mediation. To do so, the public agency shall (and the parent may) notify the SED of the department in writing within one business day of reaching their decision to jointly request one of these ADR options. A FIEP meeting or mediation shall be completed not later than 14 days after the assignment of the IEP facilitator or mediator by the SED, unless a brief extension is granted by the SED based on exceptional |

circumstances. Each session in the FIEP or mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the complaint.

6.31.2.13(H)(3)(b)(iii) If a mediated agreement involves IEP-related issues, the agreement shall state that the public agency will subsequently convene an IEP meeting to inform the student's service providers of their responsibilities under that agreement, and revise the student's IEP accordingly.

6.31.2.13(H)(3)(b)(iv) The mediator shall transmit a copy of the written mediation agreement to each party within seven days of the meeting at which the agreement was concluded. A mediation agreement involving a claim or issue that later goes to a due process hearing may be received in evidence if the hearing officer rules that part or all of the agreement is relevant to one or more IDEA issues that are properly before the hearing officer for decision.

6.31 .213(H)(6) Complaints against the department. If the complaint concerns a violation by the department and: is submitted in writing to the secretary of education; is signed by the complainant or a designated representative; includes a statement that the department has violated a requirement of an applicable state or federal law or rule; contains a statement of facts on which the allegation of violation is based, and otherwise meets the requirements of Paragraph (2) of Subsection H of 6.31.2.13 NMAC, the secretary of education or designee shall appoint an impartial person or impartial persons to conduct an investigation.

## Due process hearings

6.31.2.13(I)(7)(a)(vi) …further, if the resolution session participants reach agreement on any IEP-related matters, the binding agreement shall state that the public agency will subsequently convene an IEP meeting to inform the student's service providers of their responsibilities under that agreement and revise the student's IEP accordingly.

6.31.2.13(I)(7)(b) FIEP meeting; mediation. Parties to a due process hearing may choose to convene a FIEP meeting or mediation instead of a resolution session. To do so, the party filing the request for the hearing shall (and the responding party may) notify the hearing officer in writing within one business day of the parties' decision to jointly request one of these options. A FIEP meeting or mediation shall be completed not later than 14 days after the assignment of the IEP facilitator or mediator by the SED, unless, upon joint request by the parties, an extension is granted by the hearing officer. Each session in the FIEP or mediation process shall be

scheduled in a timely manner and shall be held in a location that is convenient to the parties to the hearing.

6.31.2.13(I)(8) Hearing officer responsibility and authority. Hearing officers shall conduct proceedings under these rules with due regard for the costs and other burdens of due process proceedings for public agencies, parents, and students. In that regard, hearing officers shall strive to maintain a reasonable balance between affording parties a fair opportunity to vindicate their IDEA rights and the financial and human costs of the proceedings to all concerned. Accordingly, each hearing officer shall exercise such control over the parties, proceedings, and the hearing officer's own practices as the hearing officer deems appropriate to further those ends under the circumstances of each case. In particular, and without limiting the generality of the foregoing, the hearing officer, at the request of a party or upon the hearing officer's own initiative and after the parties have had a reasonable opportunity to express their views on disputed issues: …

(f) shall not permit non-attorneys to represent parties at due process hearings.

6.31.2.13(I)(9) Duties of the hearing officer. … The hearing officer shall:

(b) schedule an initial prehearing conference within 14 days of commencement of the timeline for a due process hearing or as soon as reasonably practicable in an expedited case pursuant to Paragraph (12) of Subsection I of 6.31.2.13 NMAC;

6.31.2.13(I)(10) Withdrawal of request for hearing. A party may unilaterally withdraw a request for due process at any time before a decision is issued. A written withdrawal that is transmitted to the hearing officer, and the other party at least two business days before a scheduled hearing, shall be without prejudice to the party's right to file a later request on the same claims, which shall ordinarily be assigned to the same hearing officer. A withdrawal that is transmitted or communicated within two business days of the scheduled hearing shall ordinarily be with prejudice to the party's right to file a later request on the same claims unless the hearing officer orders otherwise for good cause shown. A withdrawal that is entered during or after the hearing but before a decision is issued shall be with prejudice. In any event, the hearing officer shall enter an appropriate order of dismissal.

6.31.21.13(I)(11) Prehearing procedures. Unless extended by the hearing officer at the request of a party, within 14 days of the commencement of the timeline

for a due process hearing and as soon as is reasonably practicable in an expedited case, the hearing officer shall conduct an initial prehearing conference with the parent and the public agency to:

(a) identify the issues (disputed claims and defenses) to be decided at the hearing and the relief sought;
(b) establish the hearing officer's jurisdiction over IDEA and gifted issues;
(c) determine the status of the resolution session, FIEP meeting, or mediation between the parties and determine whether an additional prehearing conference will be necessary as a result;
(d) review the hearing rights of both parties, as set forth in Paragraphs (15) and (16) of Subsection I of 6.31.2.13 NMAC, including reasonable accommodations to address an individual's need for an interpreter at public expense;
(e) review the procedures for conducting the hearing;
(f) set a date, time, and place for the hearing that is reasonably convenient to the parents and child involved; the hearing officer shall have discretion to determine the length of the hearing, taking into consideration the issues presented;
(g) determine whether the child who is the subject of the hearing will be present and whether the hearing will be open to the public;
(h) set the date by which any documentary evidence intended to be used at the hearing by the parties shall be exchanged; the hearing officer shall further inform the parties that, not less than five business days before a regular hearing or, if the hearing officer so directs, not less than two business days before an expedited hearing, each party shall disclose to the other party all evaluations completed by that date and recommendations based on the evaluations that the party intends to use at the hearing; the hearing officer may bar any party that fails to disclose such documentary evidence, evaluation(s), or recommendation(s) by the deadline from introducing the evidence at the hearing without the consent of the other party;
(i) as appropriate, determine the current educational placement of the child pursuant to Paragraph (26) of Subsection I of 6.31.2.13 NMAC;
(j) exchange lists of witnesses and, as appropriate, entertain a request from a party to issue an administrative order compelling the attendance of a witness or witnesses at the hearing;
(k) address other relevant issues and motions; and
(l) determine the method for having a written, or at the option of the parent, electronic verbatim record of the hearing; the public

agency shall be responsible for arranging for the verbatim record of the hearing; and

(m) the hearing officer shall transmit to the parties and the SED of the department a written summary of the prehearing conference; the summary shall include, but not be limited to, the date, time, and place of the hearing, any prehearing decisions, and any orders from the hearing officer.

6.31.21.13(I)(13) In order to limit testimony at the hearing to only those factual matters which remain in dispute between the parties, on or before 10 days before the date of the hearing, each party shall submit a statement of proposed stipulated facts to the opposing party. On or before five days before the date of the hearing, the parties shall submit a joint statement of stipulated facts to the hearing officer. All agreed-upon stipulated facts shall be deemed admitted, and evidence shall not be permitted for the purpose of establishing these facts.

6.31.2.13(I)(17)(a) The party requesting the due process hearing shall not be allowed to raise issues at the hearing that were not raised in the request for a due process hearing (including an amended request, if such amendment was previously permitted) filed under Paragraph (5) of Subsection I of

6.31.2.13 NMAC, unless the other party agrees otherwise.

6.31.2.13(I)(17((b) Timeline for requesting hearing. A parent or public agency shall request an impartial due process hearing within two years of the date that the parent or public agency knew or should have known about the alleged action that forms the basis of the due process request.

6.31.2.13I)(18)(c) The parties shall decide whether to convene a resolution session, FIEP meeting, or mediation before the commencement of an expedited hearing in accordance with Paragraph (8) of Subsection I of 6.31.2.13 NMAC and are encouraged to utilize one of these preliminary meeting options. However, in the case of an expedited hearing, agreement by the parties to convene a resolution session, FIEP meeting, or mediation shall not result in the suspension or extension of the timeline for the hearing stated under Subparagraph (a) of Paragraph (19) of Subsection I of

6.31.2.13 NMAC.

6.31.2.13(I)(18)(e) The hearing officer may shorten the timeline for the exchange of proposed stipulated facts between the parties as the hearing officer deems necessary and appropriate given the circumstances of a particular case. The hearing officer may also shorten the timeline for providing

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| | agreed-upon stipulated facts to the hearing officer to two school days before the hearing. |
| 6.31.2.13(I)(22) | Expenses of the hearing. The public agency shall be responsible for paying administrative costs associated with a hearing, including the hearing officer's fees and expenses and expenses related to the preparation and copying of the verbatim record, its transmission to the SED, and any further expenses for preparing the complete record of the proceedings for filing with a reviewing federal or state court in a civil action. |
| 6.31.2.13(I)(23)(a) | Any party aggrieved by the decision of a hearing officer in an IDEA matter has the right to bring a civil action in a state or federal district court pursuant to 20 USC Sec. 1415(i) and 34 CFR Sec. 300.516. Any civil action shall be filed within 30 days of the receipt of the hearing officer's decision by the appealing party. |
| 6.31.2.13(I)(23)(b) | A party aggrieved by the decision of a hearing officer in a matter relating solely to the identification, evaluation, or educational placement of or services to a child who needs or may need gifted services may bring a civil action in a state court of appropriate jurisdiction within 30 days of receipt of the hearing officer's decision by the appealing party. |
| 6.31.2.13(I)(24)(b) | Any action for attorney fees shall be filed within 30 days of the receipt of the last administrative decision. |
| 6.31.2.13(I)(24)(d) | Hearing officers are not authorized to award attorney fees. 6.31.2.13(I)(24)(e) |
| | Attorney fees are not recoverable for actions or proceedings involving |
| | services to gifted children or other claims based solely on state law. |
| 6.31.2.13(K) | Transfer of parental rights to student at age 18 |
| 6.31.2.13(K)(2) | Pursuant to 34 CFR Sec. 300.320(c), each annual IEP review for a child who is age 14 or older shall include a discussion of the rights that will transfer when the child turns age 18 and, as appropriate, a discussion of the parents' plans for obtaining a guardian before that time. The IEP of a child who is age 14 or older shall include a statement that the child and the parent have been informed of the rights that will transfer to the child at age 18. |
| 6.31.2.13(L) | Confidentiality of information |
| 6.31.2.13(L)(3)(a) | Pursuant to 34 CFR Sec. 99.31(a)(2), an educational agency may transfer child records without parental consent when requested by another educational agency in which a child seeks or intends to enroll as long as |

the sending educational agency has included the proper notification that it will do so in its required annual FERPA notice to children and

parents. In view of the importance of uninterrupted educational services to children with disabilities, each New Mexico public agency is hereby directed to include such language in its annual FERPA notice and to ensure that it promptly honors each proper request for records from an educational agency that has become responsible for serving a child with a disability.

6.31.2.13(L)(3)(b) State-supported educational programs and the educational programs of juvenile or adult detention or correctional facilities are educational agencies for purposes of the Family Educational Rights and Privacy Act (FERPA) and are entitled to request and receive educational records on children with disabilities on the same basis as local school districts. Public agencies shall promptly honor requests for records to assist such programs in providing appropriate services to children within their educational jurisdiction.

6.31.2.13(L) (5)(b) If the parents do not request the destruction of personally identifiable information about their children, the public agency may retain that information permanently. In either event, a permanent record of a student's name, address, phone number, grades, attendance

record, classes attended, grade level completed, and year completed may be maintained without time limitation. Additional information that is not related to the student's IDEA services may be maintained if

allowed under 34 CFR Part 99.Personally identifiable information.

6.31 .2.13(L)(6)(b) Pursuant to 1.20.2.102 NMAC, the public agency shall notify the parents that the public agency shall retain specific information for five years to include

(i) most recent IEP;
(ii) most recent 2 years of child progress reports or referral form;
(iii) related services reports;
(iv) summary of academic achievement and functional performance;
(v) parent communication;
(vi) public agency community action;
(vii) writing sample; and
(viii) staff reports on behavior.

Computation of time

6.31.2.13(M)(1) In computing any period of time prescribed or allowed by 6.31.2.13 NMAC, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday in which case the last day shall be the next business day.

As used in this rule, “legal holiday” includes any day designated as a state holiday.

6.31.2.13(M)(2) Notwithstanding Paragraph (1) of this subsection, if the due date of a decision referenced in Subsection H of 6.31.2.13 NMAC falls on a Saturday, a Sunday, or a legal holiday, the decision will be due on the previous business day.

6.31.2.13(M)(3) Notwithstanding Paragraph (1) of this subsection, if the due date of a decision referenced in Subsection I of 6.31.2.13 NMAC falls on a Saturday, a Sunday, or a legal holiday, the decision shall be mailed no later than the actual due date. A decision is considered “mailed” when addressed, stamped, and placed in a United States postal service mailbox. If a parent exercises the option of receiving the decision

electronically, the decision is “mailed” when transmitted electronically.

## 6.29.1 NMAC—STANDARDS FOR EXCELLENCE

### Procedural Requirements

6.29.1.9(H)(5) Students receiving special education services integrated into a regular classroom for any part of the day shall be counted in the calculation of class load averages. Students receiving special education services not integrated into the regular classroom shall not be counted in the calculation of class load averages. Only classroom teachers charged with responsibility for the regular classroom instructional program shall be counted in determining average class loads. In elementary schools offering only one grade level, average class loads may be calculated by averaging appropriate grade levels between schools in the school district.

### Student/staff caseloads in gifted and special education.

6.29.1.9(I)(1) The student/staff caseload shall not exceed 35:1 for a special education teacher and 60:1 for a speech-language pathologist for special education services or speech-only services, in which properly licensed special education teachers or speech-language pathologists travel from class to class or school to school, providing services to students with disabilities whose individualized education programs (IEPs) require a minimal

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| | amount of special education. (A minimal amount of special education services shall not exceed 10 percent of the school day/week.) |
| 6.29.1.9(I)(2) | The student/staff caseload shall not exceed 24:1 for a special education teacher and 35:1 for a speech-language pathologist for special education services or speech-only services which properly-licensed special education teachers or speech-language pathologists provide to students with disabilities whose IEPs require a moderate amount of special education. (A moderate amount of special education services shall be less than 50 percent of the school day.) |
| 6.29.1.9(I)(3) | The student/staff caseload shall not exceed 15:1 for special education services in which properly licensed special education teachers provide services to students with disabilities whose IEPs require an extensive amount of special education for a portion of the school day as appropriate to implement the plan. (An extensive amount of special education services shall be provided 50 percent or more of the school day.) |
| 6.29.1.9(I)(4) | The student/staff caseload shall not exceed 8:1 for special education services in which a properly licensed professional provides services to students with disabilities whose IEPs require a maximum amount of special education. (A maximum amount of special education services shall be provided in an amount approaching a full school day.) |
| 6.29.1.9(I)5) | The student/adult caseload shall not exceed 4:1 for center-based special education services in which one of the adults in the program is a properly licensed professional providing three- and four-year old children with the amount of special education needed to implement each child's IEP. |
| 6.29.1.9(I)(6) | The student/adult caseload shall not exceed 2:1 for center-based special education services in which three- and four-year old children have profound educational needs. |
| 6.29.1.9(I)(7) | Adequate student/staff caseloads shall be provided to appropriately address needs identified in the IEPs. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to students with disabilities under Part B of IDEA. |
| 6.29.1.9(I)(8) | If the student/staff caseload ratio exceeds the standards provided above, a request for waiver shall be submitted to the department for review and approval by the secretary |

## Graduation Requirements

6.29.1.9(K)(2) The next step plan. Each student shall complete a next step plan for each high school year. For students with individualized education programs (IEPs), the transition plan substitutes for the next step plan.

6.29.1.9(I)(12) Excuses from physical education. The physical education graduation requirement may be waived by the secretary, based upon a request by the local superintendent or charter school administrator with documentation from a licensed medical doctor, osteopath,

certified nurse practitioner with prescriptive authority or chiropractor, that the student has a permanent or chronic condition that does not permit physical activity. Such requests shall be submitted using the department's *physical education waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and, for each student for whom the waiver is requested: name, school and year of student graduation, district affirmation that it possesses required medical documentation, name and email address of school principal and rationale for the request. A student receiving special education supports and services pursuant to the IDEA or Section 504 of the federal Rehabilitation Act may also be eligible to request this waiver, when appropriate medical documentation is provided in the IEP.

6.29.1.9(K)(13) Graduation requirements for issuance of a conditional certificate of transition for students with an IEP. The development of a program of study and the granting of a diploma, or use of a conditional certificate of transition in the form of a continuing or transition individualized educational program (IEP) for students receiving special education services, includes the following governing principles:

(a) The IEP team is responsible for determining whether the student has completed a planned program of study based on the student's strengths, interests, preferences, identified educational and functional needs and long-term educational or occupational goals, making the student eligible to receive either a diploma or a conditional certificate of transition. A conditional certificate of transition allows the student to participate in graduation activities. If a student receives a conditional certificate of transition, the student shall then return to the program specified

in the IEP to complete the student's secondary program and meet the requirements for a diploma. In addition, all IEPs shall provide a description of how the student's progress toward meeting annual goals and graduation requirements will be measured, and at what intervals progress will be reported to parents or guardians. A student shall be awarded a diploma upon completion of a planned program of study that meets the requirements of paragraph (b).

(b) A student may be awarded a diploma (Section 22-13-1.1 NMSA 1978) using any of the following programs of study described in (i) through (iii). All IEP team discussion points and decisions identified herein, including the identification of the student's program of study and any student or parent proposals accepted or rejected by the IEP team (if the student has not reached the age of majority), shall be documented on the student's IEP and in the prior written notice (PWN) of proposed action.

(i) A standard program of study is based upon meeting or exceeding all requirements for graduation based on the New Mexico standards for excellence (Subsection [~~J~~] K of 6.29.1.9 NMAC) with or without reasonable accommodations of delivery and assessment methods. In addition, a student shall pass all sections of the current state graduation examination(s) administered pursuant to Section 22-13-1.1(I) NMSA 1978 under standard administration or with state-approved accommodations, and shall meet all other standard graduation requirements of the district.

(ii) A career readiness alternative program of study is developed to provide relevance and is based on a student's career interest as it relates to one of the career clusters, with or without reasonable accommodations of delivery and assessment methods. In addition, a student shall take the current state graduation examination(s) administered pursuant to Subsection K of Section 22-13-1.1 NMSA 1978, under standard administration or with state-approved accommodations as determined by the SEA. Once the student has attempted the state graduation examination and is unable to meet the minimum requirements on all sections of the assessments and achieve a level of competency, the IEP team can set the minimum passing scores. The student shall earn at least

the minimum number of credits required by the district or charter school for graduation through standard or alternative courses that address the employability and career development standards with benchmarks and performance standards, as determined by the IEP

team. Course work shall include a minimum of four units of career development opportunities and learning experiences that may include any of the following: career readiness and vocational course work, work experience, community-based instruction, student service learning, job shadowing, mentoring or entrepreneurships related to the student's occupational choices. Credits for work experience shall be related to the program of study that the school offers and specific to the district's ability to offer work experience or community-based instruction credits. The student shall achieve competency in all areas of the employability and career development standards with benchmarks and performance standards, as determined by the IEP team and the student's interest as it relates to the career clusters. The program of study shall address the New Mexico content standards with benchmarks and performance standards in other subject areas as appropriate.

(iii) An ability program of study was developed for students who have a significant cognitive disability or severe mental health issues. The IEP goals and functional curriculum course work shall be based on the New Mexico standards with benchmarks and performance standards and employability and career development standards with benchmarks and performance standards. Students in this program of study shall earn the minimum number of credits or be provided equivalent educational opportunities required by the district or charter school, with course work individualized to meet the unique needs of the student through support of the IEP. In addition, a student shall take either the current state graduation examination(s) administered pursuant to Subsection K of Section 22-13-1.1 NMSA 1978, under standard administration or with state-approved accommodations, or the state-approved alternate assessment. The student shall achieve a level of competency pre-determined by the student's IEP team on the current graduation examination or the state-approved alternate assessment, and meet all

other graduation requirements established by the IEP team.

(c) The new requirements for the career readiness and ability pathways become effective beginning with students graduating in 2009.

(d) By the end of the eighth grade, each student's IEP shall contain a proposed individual program of study for grades nine through twelve. The program of study shall identify by name all course options the student may take and shall align with the student's long-range measurable post-secondary goals and transition services to facilitate a smooth transition to high school and beyond. This program of study shall be reviewed on an annual basis and adjusted to address the student's strengths, interests, preferences and areas of identified educational and functional needs. The IEP team shall document on the IEP the student's progress toward earning required graduation credits and passing the current graduation examination.

(e) A district or charter school shall provide each student, who has an IEP and who graduates or reaches the maximum age for special education services, a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting post-secondary goals.

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

(g) To establish a level of proficiency on the current graduation examination or the state-approved alternate assessment for students on a career readiness program of study or ability program of study, IEP teams shall review the student's performance on the first attempt, and establish a targeted proficiency on all sections that are below the state's minimum requirement. For those students who meet participation criteria for the New Mexico alternate assessment, IEP teams shall set targeted levels of proficiency based upon previous performance on the test. If the student has previously been administered the New Mexico alternate assessment and has achieved an advanced level of overall performance, the IEP team shall arrange for the student to participate in the general graduation examination, and shall identify appropriate accommodations that the student may require. IEP teams shall document the targeted levels of

proficiency on the IEP and the PWN, outlining the plan of action to be taken by both the student and the district or charter school to ensure that the student will meet the targeted levels of proficiency. Districts or charter schools may submit a written request for a waiver to the secretary in cases where a student has medical or mental health issues that may result in regression or that negatively influence the student's ability to achieve targeted levels of proficiency. The written request shall be signed by the superintendent or charter school administrator and shall include documentation of the medical or mental health issue

(h) Changes in programs of study.

(i) Departures from the standard program of study for students receiving special education services and supports shall be considered in the order of the options listed in Subparagraph (b) of Paragraph (13) of Subsection K of 6.29.1.9 NMAC. Any modified program of study may depart from a standard program of study only so far as is necessary to meet an individual student's educational needs as determined by the IEP team. Districts and charter schools are obligated to meet the requirements of IDEA to provide students with IEPs on any one of the three programs of study, and access to the general curriculum in the least restrictive environment. When an alternative program of study is developed, a building administrator or designee who has knowledge about the student shall be a member of the IEP team.

(ii) Districts and charter schools shall document changes from the standard program of study on the PWN. IEP teams shall identify the reasons for changing the student's program of study, shall provide parents with clear concise explanations of the career readiness or ability programs of study, shall notify parents and students of the potential consequences that may limit the student's post-secondary options, and shall make required changes to the IEP and course of study, to ensure that the student meets the requirements of that program of study.

(iii) The IEP team shall not change the program of study for a student entering the final year of high school (not the cohort with which the student entered high school) from the standard program of study to the career readiness program of study, nor from the career readiness program of study to the ability program of study, after the 20th school day of the final year of high school. IEP teams may change a student's program of study from the ability

program of study to the career readiness program of study, or from the career readiness program of study to the standard program of study, if the student meets the graduation requirements of that program of study and if the change is made and documented appropriately in a revised IEP and PWN by a properly constituted IEP team in a properly convened meeting.

(j) A student who receives special education services may be granted a conditional certificate of transition in the form of a continuing or transition IEP when:

(i) the IEP team provides sufficient documentation and justification that the issuance of a conditional certificate of transition for an individual student is warranted;

(ii) prior to the student's projected graduation date, the IEP team provides a PWN stating that the student will receive a conditional certificate of transition;

(iii) the district or charter school ensures that a conditional certificate of transition is not a program of study and does not end the student's right to a FAPE;

(iv) the district or charter school ensures that a conditional certificate of transition entitles a student who has attended four years or more of high school to participate in graduation activities, and requires that the student continue receiving special education supports and services needed to obtain the high school diploma;

(v) the district or charter school ensures that, prior to receiving a conditional certificate of transition, the student has a continuing or transition IEP; (vi) the student's continuing or transition IEP outlines measures, resources and specific responsibilities for both the student and the district or charter school to ensure that the student receives a diploma.

**(j)** A student who does not return to complete the program of study as outlined in the continuing or transition IEP will be considered as a dropout

**(k)** A student who receives a conditional certificate of transition is eligible to continue receiving special education services until receipt of a diploma or until the end of the academic year in which the student becomes 22 years of age.

**(l)** Graduation plans shall be a part of all IEPs:

**(i)** by the end of eighth grade, or by the time the student turns 14 years of age, and concurrent with the development of the student's transition plan in accordance with federal regulations at 34 CFR 300.320;

**(ii)** when a student returns to a school after an extended absence, and if an IEP program of study may have been developed but needs to be reviewed; or

**(iii)** when evaluations warrant the need for a modified program of study at any time after development of an initial graduation plan.

**(m)** Graduation plans shall be a part of all of all IEPs and annual reviews, and shall follow the student in all educational settings. Receiving institutions that fall under the department's jurisdiction will recognize these graduation plans, subject to revision by new IEP teams, if appropriate to meet a student's changing needs.

**(n)** At the exit IEP meeting, the team shall review the student's transition plan, and shall confirm and document that all state and district requirements for graduation under the final IEP have been satisfied. A building administrator who has knowledge about the student shall be a member of this team, and shall sign specifically to verify and accept completed graduation plans, goals and objectives pursuant to (i) - (iii) of Subparagraph (b) of Paragraph (13) of Subsection K of 6.29.1.9 NMAC, or plans for a conditional certificate of transition with a continuing or transition IEP, pursuant to Subparagraph (i) of Paragraph (13) of Subsection K of

6.29.1.9 NMAC. The IEP team shall ensure that the student has current and relevant evaluations, reports or other documentation necessary to support a smooth and effective transition to post- secondary services for a student who will graduate on one of the three programs of study. The school shall arrange for any necessary information to be provided at no cost to the students or parents. The school shall submit a list of students who will receive the diploma through a career readiness or ability program of study to the local superintendent or charter school administrator, using the students' identification numbers. This list shall be totaled and submitted to the local school board or governing body of a charter school. This information shall be treated as confidential in accordance with the FERPA.

**(o)** Students eligible for special education services are entitled to a FAPE through age 21. If a student turns 22 during the school year, the student shall be allowed to complete the school year. If a student becomes 22 prior to the first day of the school year, the student is no longer eligible to receive special education services.

**(p)** The receipt of a diploma terminates the service eligibility of students with special education needs.

**(q)** All diplomas awarded by a school district or charter school shall be identical in appearance, content and effect, except that

symbols or notations may be added to individual students' diplomas to reflect official school honors or awards earned by students.

6.29.1.11(B)(9) Allowing waiver request from health education requirements for special education students in grades 9-12 if reasonable accommodation not possible

## 6.11.2 NMAC—RIGHTS AND RESPONSIBILITIES OF THE PUBLIC SCHOOL AND PUBLIC SCHOOL STUDENTS

### Enforcing rules of conduct

6.11.2.10(E) In accordance with Section 22-5-4.12 NMSA 1978, each school shall establish requirements for the use of restraint and seclusion techniques.

(1) Schools shall establish policies and procedures, as approved by the local school board or governing body, for the use of restraint and seclusion techniques. Schools shall review such policies and procedures on a triennial basis, before submitting the school safety plan.

(a) A school may permit the use of restraint or seclusion techniques on any student only if the student's behavior presents an imminent danger of serious physical harm to the student or others and only if less restrictive interventions appear insufficient to mitigate the imminent danger of serious physical harm. Less restrictive interventions include de-escalation strategies, positive behavioral intervention supports, or other comparable behavior management techniques.

(b) The restraint or seclusion techniques shall be used only by school employees who are trained in de-escalation strategies, positive behavioral intervention supports, and the safe and effective use of restraint and seclusion techniques, unless an emergency does not allow sufficient time to summon those trained school employees.

(c) The restraint or seclusion techniques shall not impede the student's ability to breathe or speak, shall be in proportion to a student's age and physical condition, and shall end when the student's behavior no longer presents an imminent danger of serious physical harm to the student or others.

(d) If a restraint or seclusion technique is used on a student, trained and authorized school employees shall maintain

continuous visual observation and monitoring of the student while the restraint or seclusion technique is in use.

(2) In accordance with Section 22-5-4.12 NMSA 1978, schools shall establish policies and procedures for the use of restraint and seclusion techniques in a school safety plan.

(a) A school safety plan, pursuant to requirements of Paragraph (7) of Subsection D of 6.12.6.8 NMAC, shall include the following minimum requirements:

(i) The school safety plan shall not be specific to any individual student; and

(ii) The school safety planning team shall include at least one administrator, one educator, and one special education expert and may include a counselor or social worker, nurse, and school resource officer or security staff. The school safety planning team shall include personnel who are trained as designated school personnel restraint and seclusion.

(b) A school safety plan, pursuant to requirements of Paragraph (7) of Subsection D of 6.12.6.8 NMAC, shall be submitted to the department on a triennial basis, on a schedule determined by the department. The department will provide local education agencies notice of a deadline to submit a school safety plan 90 days prior to the due date.

(3) Policies and procedures for the use of restraint and seclusion techniques shall require and describe appropriate training for designated school personnel.

(a) School districts and charter schools shall provide training for designated school personnel regarding de-escalation strategies, positive behavioral intervention supports, or other comparable behavior management techniques and the use of restraint or seclusion techniques. Designated school personnel shall attend training at least every two years or complete a certification course, exam, or other comparable demonstration of competency that provides evidence that the individual has up-to-date knowledge of proper restraint and seclusion techniques.

(b) In the event that new designated school personnel are identified within the school after the provision of the training, certification course, exam, or other comparable demonstration of competency, the school district or charter school shall ensure that a training or other competency demonstration is provided to new designated school personnel within 60 days of being designated.

(4) Policies regarding restraint or seclusion shall consider school district support and strategies for school employees to successfully reintegrate a student who has been restrained or secluded back into the school or classroom environment.

(5) Schools shall implement the following review procedures for incidents in which restraint or seclusion techniques are used.

(a) If a student has been restrained or secluded two or more times within 30 calendar days, the school shall review strategies used to address the student's behavior and determine whether the student needs a functional behavior assessment or referral to a student assistance team, behavioral intervention plan team, or, if a student has an individualized education program, a referral to the student's individualized education program team.

(b) If a student has been restrained or secluded two or more times within 30 calendar days, the student's individualized education program team, behavioral intervention plan team, or student assistance team shall meet within two weeks of each subsequent use to provide recommendations for avoiding future incidents requiring the use of restraint or seclusion.

(c) The review shall include whether school personnel involved in the incidents were trained in the use of de-escalation strategies, positive behavioral intervention supports, or restraint and seclusion techniques. Additionally, the review shall consider whether the individual who restrained or secluded a student needs additional training.

(d) To improve internal practices relative to incidents of restraint or seclusion, schools shall conduct an annual review and analysis of all incidents in which restraint or seclusion techniques were used, including the number of incidents, the type of incident, personnel involved, the need for additional training, and student demographics.

(6) Schools shall establish documentation and reporting procedures pursuant to the requirements listed in Section 22-5-4.12 NMSA 1978. In addition, schools shall provide written or oral assurance of secure storage and access to written documentation in accordance with this rule, 20 USC. Section 1232(g), 34 CFR Part 99, the Family Educational Rights and Privacy Act, and any other applicable federal or state laws or rules governing the privacy of such documents.

(a) A school employee shall provide the student's parent with written or oral notice on the same day the incident

occurred, unless circumstances prevent same-day notification. If notice is not provided on the same day of the incident, notice shall be given within 24 hours after the incident.

(b) Within a reasonable time following the incident, no longer than two school days, a school employee shall provide the student's parent with written documentation that includes information about any persons, locations, or activities that may have triggered the behavior, if known, and specific information about the behavior and its precursors, the type of restraint or seclusion technique used, and the duration of its use.

(c) Schools shall report to the department, through the department's data collection and reporting system, the following information on a timeline and reporting frequency established by the department:

(i) all instances in which a restraint or seclusion technique is used;

(ii) all instances in which law enforcement is summoned instead of using a restraint or seclusion techniques;

(iii) the names of the students and school personnel involved in an incident in which restraint or seclusion was used; and

(iv) if a student was restrained, the type of restraint, including mechanical restraint or physical restraint, that was used.

(d) If a school summons law enforcement instead of using a restraint or seclusion technique on a student, the school shall comply with the reporting, documentation, and review procedures established pursuant to this rule and Section 22-5-4.12 NMSA 1978.

6.11.2.10(I)(3) Program prescriptions. A student with a disability's individualized education program (IEP), under the Individuals with Disabilities Education Improvement Act (IDEA), need not affirmatively authorize disciplinary actions which are not otherwise in conflict with this rule. However, the IEP team may prescribe or prohibit specified disciplinary measures for an individual student with a disability by including appropriate provisions in the student's IEP. Administrative authorities shall adhere to any such provisions contained in a student with a disability's IEP, except that an IEP team may not prohibit the initiation of proceedings for long-term

suspension or expulsion which are conducted in accordance with this rule.

## 6.41.4 NMAC—STANDARDS FOR PROVIDING TRANSPORTATION FOR ELIGIBLE STUDENTS

### Community, parent and staff involvement

6.41.4.8(A)(5) [Each LEA shall:] approve a policy concerning transportation as a related service for a student with an IEP as the IEP requires. The transportation administrator or designee, or transportation service provider shall be afforded the opportunity to participate in the development of the IEP as it relates to transportation;

6.41.4.8(A)(7) [Each LEA shall:] approve disciplinary procedures including an appeal process applicable to students with an IEP being transported. The procedures shall comply with all applicable federal and state law and department regulation governing students with disabilities. Information regarding disciplinary procedures shall be provided to parents, students, and IEP teams;

(a) disciplinary procedures for a student with an IEP shall be specified in the student's IEP;

(b) the procedures shall include the process for emergency removal of a student with an IEP from a school bus;

(i) if emergency removal of a student is necessary, the driver shall report the incident or behavior to the transportation administrator within 24 hours of the incident; and

(ii) the transportation administrator shall report each incident or behavior in writing to the LEA's special education director within 24 hours of receiving the driver's report;

(c) nothing contained herein or in local school board policy shall prevent the emergency removal of any student from a vehicle if the student endangers or reasonably appears to endanger the health, welfare, or safety of themselves, any other student, teacher, or employee; and

(d) suspension of transportation service for a student with an IEP for more than ten cumulative days requires a change in transportation service in that student's IEP

6.41.4.8(A)(8) [Each LEA shall:] adopt and approve policies in specialized areas affected by federal regulations, state law, and new legislative initiatives related to school transportation

## Student Services

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| 6.41.4.8(B)(2) | [Each LEA shall adopt:] a comparable travel time policy that shall:<br>(a) ensure that transportation time for a student with an IEP is comparable to transportation time provided to neighborhood students who do not have an IEP;<br>(b) consider the least distance from a student with an IEP's home to the school site as compared to the least distance from the homes of neighborhood students who do not have an IEP to the school site;<br>(c) consider the time for other transportation services identified in the IEP. Any variance from the comparable travel time policy shall be determined on a case-by-case basis by the IEP team and shall be clearly stated in the IEP |
| 6.41.4.8(B)(3) | a policy regarding the transportation of specialized personnel, such as licensed nurses and special education assistants, or other designated persons; |
| 6.41.4.8(B)(4) | a policy regarding the transportation of animals that accompany a student with an IEP and shall ensure that the certification, training, and immunization requirements for the animal are completed and current; |
| 6.41.4.8(B)(5) | a policy outlining acceptable procedures for medicine transport. The policy shall include the designated place for transport and the personnel authorized to administer medication during transport when necessary; |

## Responsibilities of the LEA

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| 6.41.4.9(A)(3) | The LEA shall direct drivers, school bus assistants, and substitute school bus assistants on meeting all transportation requirements of students' IEPs. |
| 6.41.4.9(A)(7) | The LEA shall provide to transportation service providers and drivers vital emergency information for all students with an IEP or special medical conditions. All vital emergency information shall be treated as a confidential record as provided by law. |
| 6.41.4.9(C)(2)(e) | Student evacuation drills or adequate alternate instruction as provided in Paragraph (4) of Subsection C of 6.41.4.9 NMAC for to-and-from transportation services in a school bus shall exempt students when they are limited in their capability to participate. |

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| 6.41.4.9(C)(3)(d) | Student evacuation drills or adequate alternate instruction as provided in Paragraph (4) of Subsection C of 6.41.4.9 NMAC for to-and-from transportation services in an SUV shall exempt students when they are limited in their capability to participate. |
| 6.41.4.9(D)(4) | The LEA shall comply with local board of education policy regarding the number of days allowed to re-configure a school bus route when a student's IEP has been modified and requires an adjustment to the student's transportation. |
| 6.41.4.9(D)(5) | The LEA shall establish a policy for the minimum time required for the school bus driver to wait for a student with an IEP who is receiving transportation as a related service to arrive at the school bus stop to be picked up. The policy shall also include information regarding the unloading of that student when returning the student to their school bus stop when a parent or guardian is not present to receive the student. |

## Identification of transportation of students with disabilities

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| 6.41.4.9(G)(2) | When modifications to standard transportation are necessary, transportation personnel shall be afforded the opportunity to participate in the development of the IEP. The IEP document shall clearly state the transportation needs or modification or both identified by the IEP team and, if applicable, transportation personnel. If circumstances require changes in services, any team member may request that the team reconvene to consider the student's transportation needs. |

## Provisions for transportation of students with disabilities

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| 6.41.4.9(H)(1) | In providing transportation as a related service to a student with an IEP, the LEA shall ensure:<br>(a) all alternatives are considered if, due to serious health or safety considerations, an IEP team determines that a student with an IEP cannot be transported with neighborhood peers who are not disabled;<br>(b) time transporting a student with an IEP is comparable to that provided for non-disabled neighborhood peers, unless otherwise specified in the student's IEP;<br>(c) access to and from the designated pickup and drop-off point; and<br>(d) access to other educational and related services specified in the student's IEP. |
| 6.41.4.9(H)(2) | Confidentiality of IEP and student medical information shall apply when transportation as a related service is provided to a student with an IEP. |

## Student Behavior

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| 6.41.4.9(L)(2) | If an incident or behavior occurs involving a student with an IEP, the driver shall report each incident or behavior to the transportation administrator within 24 hours of the incident. Provisions for removal and reinstatement of transportation services for students with disabilities shall be specified in the LEA's policies and in the student's IEP. Any change in transportation as a related service must be made through the IEP process, and the procedural safeguards specified in department regulations shall apply. The transportation administrator shall report<br><br>each incident or behavior within 24 hours of receiving the driver's report to the LEA's special education director or appropriate administrator. The incident or behavior shall be addressed by the student's IEP team. |

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# Section V

## A. Maintenance of State Financial Support

Pursuant to the authority established in IDEA section 618(a)(3), each applicant for funds under section 611 must provide the following State fiscal data with a certification of its accuracy by the State budget office or an authorized representative thereof. Amounts should be shown in whole dollars and are for the State fiscal year (SFY). States may meet the maintenance of State financial support (MFS) requirement in IDEA section 612(a)(18) and 34 CFR § 300.163 on either a total or per capita basis. In order to complete Section V.A. of the Application, States must provide in whole dollars the total amount of State financial support made available for special education and related services for children with disabilities during SFYs 2021 and 2022. However, if a State met the MFS requirement on a per capita basis, it **must** complete the first chart and then may also complete the second chart by providing, in whole dollars, the amount of State financial support made available for special education and related services per child with a disability during SFYs 2021 and 2022.

**Total Amount of State Financial Support Made Available for Special Education and Related Services for Children with Disabilities**

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|---|---|
| **SFY 2021** | $536,344,438.59 |
| **SFY 2022** | $563,624,050.92 |

**Per capita amount of State Financial Support Made Available for Special Education and Related Services for Children with Disabilities**

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|---|---|
| **SFY 2021** | |
| **SFY 2022** | |

Wayne Propst

State Budget Officer or Authorized Representative (Printed Name)

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Wayne Propst
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Signature of State Budget Officer or Authorized Representative

3/2/2023

Date

## B. Significant Disproportionality

In accordance with 34 CFR § 300.647(b)(7), each State must report all risk ratio thresholds, minimum cell sizes, minimum n-sizes, standards for measuring reasonable progress if the State uses the "reasonable progress" flexibility in 34 CFR § 300.647(d)(2), and the rationales for each, to the Department. Under § 300.647(b)(7), rationales for minimum cell sizes that exceed 10 and minimum n-sizes that exceed 30 must include a detailed explanation of why the numbers chosen are reasonable and how they ensure that the State is appropriately analyzing and identifying LEAs with significant disproportionality based on race and ethnicity, in the identification, placement, or discipline of children with disabilities. Additionally, pursuant to the authority established in IDEA section 618(a)(3), each applicant must also provide the number of years of data it uses in making annual determinations of significant disproportionality. Each applicant must provide this information by completing and submitting the Significant Disproportionality Reporting Form.

All States completed and submitted the **Significant Disproportionality Reporting** Form with their FFY 2020 IDEA Part B application. After the initial submission of the Form, a State will only be required to submit the Form with any future annual IDEA Part B State applications if the State modifies its risk ratio thresholds, minimum cell sizes, minimum n-sizes, standards for measuring reasonable progress, and rationales for each, or the number of years of data used in making annual determinations of significant disproportionality.

If your State has revised its Significant Disproportionality procedures or has any questions regarding Section V.B. of the grant application, please contact your OSEP State Lead before the Application due date.

NOTE: NO CHANGES TO SIGNIFICANT DISPROPORTIONALITY