

**Hondo Valley Public School District
PROCEDURES
FOR THE
PROVISION OF
SPECIAL EDUCATION SERVICES
FOR
STUDENTS WITH DISABILITIES AND GIFTED STUDENTS**

Chapter 2. - PROCEDURAL SAFEGUARDS

Chapter 2. Adopted Pursuant to Board Policy: Special Education
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Chapter 2. - PROCEDURAL SAFEGUARDS
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Chapter 2 - PROCEDURAL SAFEGUARDS

The Hondo Valley Public School District recognizes the Public Education Department's rulemaking authority (established by the Public Education Department Act) as follows: "The secretary may make and adopt such reasonable and procedural rules as may be necessary to carry out the duties of the department and its divisions... Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary..." (NMSA 1978 §9-24-8(D)).

In addition to making and adopting rules, the PED provides guidance to local educational agencies. To the extent that the PED's guidance is consistent with the IDEA (and its implementing federal regulations and state statutes and rules), and does not impose a requirement that is not otherwise imposed by the IDEA (and its implementing federal regulations and state statutes and rules) without specific notice under 34 C.F.R. §300.299(a)(2), the Hondo Valley Public School District will follow the guidance of the PED.

I. PROCEDURAL SAFEGUARDS NOTICE

Authority: 34 CFR §300.504 Procedural safeguards notice.

- (a) **General.** A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only 1 time a school year, except that a copy also must be given to the parents--
- (1) Upon initial referral or parent request for evaluation;
 - (2) Upon receipt of the first State complaint under §§300.151 through 300.153 or a due process complaint under §300.507 in a school year; and
 - (3) In accordance with the discipline procedures in 300.530(h); and
 - (4) Upon request by a parent.
- (b) **Internet Web site.** The Hondo Valley Public School District may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.
- (c) **Contents.** The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §300.148, §§300.151 through 300.153, §300.300, §§300.502 through 300.503, §§300.505 through 300.518, §300.520, §§300.530 through 300.536, and §§300.610 through 300.625 relating to-
- (1) Independent educational evaluations;
 - (2) Prior written notice;
 - (3) Parental consent;
 - (4) Access to education records;
 - (5) Opportunity to present and resolve complaints through the due process complaint or State complaint procedures, including--
 - (i) The time period in which to file a complaint;
 - (ii) The opportunity for the agency to resolve the complaint; and
 - (iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
 - (6) The availability of mediation;
 - (7) The child's placement during the pendency of any due process complaint;
 - (8) Procedures for students who are subject to placement in an interim alternative educational setting;
 - (9) Requirements for unilateral placement by parents of children in private schools at public expense;
 - (10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
 - (11) State-level appeals (if applicable in that State);
 - (12) Civil actions, including the time period in which to file those actions; and
 - (13) Attorneys' fees.

- (d) **Notice in understandable language.** The notice required under paragraph (a) of this section must meet the requirements of §300.503(c).

Authority: 34 CFR §300.29 Native language.

- (a) **Native language**, when used with respect to an individual who is limited English proficient, means the following:
- (1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.
 - (2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.
- (b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

Authority: NMAC 6.31.2.13 Additional Rights of Parents, Students and Public Agencies

...

D. Notice requirements

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- (3) **Notice of procedural safeguards.** A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, only one time a school year, except that a copy must be given to the parents,
- (a) upon initial referral for evaluation;
 - (b) upon receipt of the first state complaint under 34 CFR Secs. 300.151-300.153;
 - (c) upon receipt of the first due process complaint under 34 CFR Sec. 300.507 of the school year;
 - (d) in accordance with the discipline procedures in 34 CFR Sec. 300.530(h); and
 - (e) upon request of the parents. The notice must meet all requirements of 34 CFR Sec. 300.504, including the requirement to inform the parents of their obligation under 34 CFR Sec. 300.148 to notify the Hondo Valley Public School District if they intend to enroll the child in a private school or facility and seek reimbursement from the Hondo Valley Public School District. The Hondo Valley Public School District may place a current copy of the procedural safeguards notice on its internet website if a website exists.
- E. Communications in understandable language.** Pursuant to 34 CFR Secs. 300.9(a), 300.322(e), 300.503(c) and 300.504(d), the Hondo Valley Public School District will communicate with parents in understandable language, including the parent's native language or other mode of communication, unless it is clearly not feasible to do so, if necessary for understanding, in IEP meetings, in written notices and in obtaining consent where consent is required.

The native language information may be found in the student's cumulative folder as part of the enrollment information. Upon enrollment, parents complete the home language portion which indicates the language normally used by the parents and the language normally used by the child in the home. If necessary, additional information will be gathered to determine the native language of the parent for purposes of providing notice to the parent in the parent's native language.

A current copy of the "Parent and Child Rights in Special Education Procedural Safeguards Notice" is available through the NMPED website: <http://www.ped.state.nm.us/seo/library/parentrights.pdf> (English version) and <http://www.ped.state.nm.us/seo/library/Spanish.Parentrights.pdf> (Spanish version). The Hondo Valley Public School District will provide the "Parent and Child Rights in Special Education Procedural Safeguards Notice" at least one time per year and when one of the situations above occurs. The annual procedural safeguards notice will be given at the annual IEP Team meeting of the child, or following the meeting if the parent does not attend. The IDEA does not require that the parent document in writing that the parent received the procedural safeguards notice. However, the IEP will be one way that the Hondo Valley Public School District documents that the required procedural safeguards notices have been sent.

II. PRIOR WRITTEN NOTICE

Authority: 34 CFR §300.503 Prior notice by the public agency; content of notice.

- (a) Notice. Written notice that meets the requirements of paragraph (b) of this section will be given to the parents of a child with a disability a reasonable time before the Hondo Valley Public School District--
- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
 - (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
- (b) Content of notice. The notice required under paragraph (a) of this section must include--
- (1) A description of the action proposed or refused by the agency;
 - (2) An explanation of why the agency proposes or refuses to take the action;
 - (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
 - (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
 - (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;
 - (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
 - (7) A description of other factors that are relevant to the agency's proposal or refusal.
- (c) Notice in understandable language.
- (1) The notice required under paragraph (a) of this section must be--
 - (i) Written in language understandable to the general public; and
 - (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
 - (2) If the native language or other mode of communication of the parent is not a written language, the Hondo Valley Public School District will take steps to ensure--
 - (i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
 - (ii) That the parent understands the content of the notice; and
 - (iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

Authority: 34 CFR §300.304 Evaluation procedures.

- (a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the agency proposes to conduct.

Authority: 34 CFR §300.505 Electronic mail.

A parent of a child with a disability may elect to receive notices required by §§300.503 [Prior notice by the public agency; content of notice], 300.504 [Procedural safeguards notice], and 300.508 [Due process complaint] by an electronic mail communication, if the Hondo Valley Public School District makes that option available.

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS

...

D. Evaluations and reevaluations

....
(2)

...

(d) Procedures for conducting evaluations and reevaluations:

- (i) the Hondo Valley Public School District will provide notice to the parents of a child with a disability that describes any evaluation procedures the agency proposes to conduct in compliance with 34 CFR Sec. 300.503....

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...

D. Notice requirements.

...

(2) Notice of agency actions proposed or refused. The Hondo Valley Public School District will give written notice that meets the requirements of 34 CFR Sec. 300.503 to the parents of a child with a disability a reasonable time before the Hondo Valley Public School District proposes or refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child. If the notice relates to a proposed action that also requires parental consent under 34 CFR Sec. 300.300, the agency may give notice at the same time it requests parental consent.

E. Communications in understandable language. Pursuant to 34 CFR Secs. 300.9(a), 300.322(e), 300.503(c) and 300.504(d), the Hondo Valley Public School District will communicate with parents in understandable language, including the parent's native language or other mode of communication, unless it is clearly not feasible to do so, if necessary for understanding, in IEP meetings, in written notices and in obtaining consent where consent is required.

"Section 300.503(a) incorporates section 615(b)(3) of the Act and requires a public agency to provide parents with written notice that meets the requirements in § 300.503(b) a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. We do not believe that it is necessary to substitute a specific timeline to clarify what is meant by the requirement that the notice be provided within a reasonable period of time, because we are not aware of significant problems in the timing of prior written notices. In addition, prior written notice is provided in a wide variety of circumstances for which any one timeline would be too rigid and, in many cases, might prove unworkable." 71 Fed. Reg. 46691 (August 14, 2006).

"Providing prior written notice in advance of meetings could suggest, in some circumstances, that the public agency's proposal was improperly arrived at before the meeting and without parent input. Therefore, we are not changing §300.503 to require the prior written notice to be provided prior to an IEP Team meeting." 71 Fed. Reg. 46691 (August 14, 2006).

"There is nothing in the Act or these regulations that would prohibit a public agency from using the IEP as part of the prior written notice so long as the document(s) the parent receives meet all the requirements in § 300.503." 71 Fed. Reg. 46691 (August 14, 2006).

"It is not necessary to explain in the regulations that prior written notice can be provided at the same time as parental consent is requested, because parental consent cannot be obtained without the requisite prior written notice. The removal of this regulatory provision, however, is not intended to prohibit a public agency from giving prior written notice at the same time that parental consent is sought, should the agency choose to do so." 71 Fed. Reg. 46691 (August 14, 2006).

"Concerning the comment about ensuring that the parent receives the time and information needed to make informed decisions regarding their child's continued need for services, a public agency cannot discontinue services [following revocation of consent] until prior written notice consistent with § 300.503 has been provided to the parents. Therefore, we expect public agencies to promptly respond to receipt of written revocation of consent by providing prior written notice to the parents under § 300.503." 73 Fed. 73008 (December 1, 2008).

"Once a public agency receives a parent's written revocation of consent for a child's receipt of special education and related services, the public agency, under §300.503, must provide prior written notice to the parent regarding the change in educational placement and services that will result from the revocation of consent." 73 Fed. 73008 (December 1, 2008).

"Concerning the comment about ensuring that the parent receives the time and information needed to make informed decisions regarding their child's continued need for services, a public agency cannot discontinue services [following revocation of consent] until prior written notice consistent with § 300.503 has been provided to the

parents. Therefore, we expect public agencies to promptly respond to receipt of written revocation of consent by providing prior written notice to the parents under § 300.503.” 73 Fed. 73008 (December 1, 2008).

The Hondo Valley Public School District declines to adopt a rigid and potentially unworkable timeline for prior written notice.

In the 2004 reauthorization of the IDEA, the Congress required the U.S. Department of Education to publish and widely disseminate "model forms" that are "consistent with the requirements of [Part B of the IDEA]" and "sufficient to meet those requirements." Specifically, the reauthorization required the Department to develop a form for prior written notice. The Department has, consistent with the instructions from the Congress, developed a form for prior written notice to assist States and school districts in understanding the content that Part B requires. The content of the form is based upon the requirements set forth in the final Part B regulations. The form developed by the U.S. Department of Education is available through the U.S. Department of Education's website: <http://idea.ed.gov/static/modelForms>.

The NM PED has developed a model form for prior written notice of the proposed actions of an IEP Team, available through the NMPED website: <http://www.ped.state.nm.us/seo/iep/2008secondaryIEP.doc>.

The Hondo Valley Public School District will provide prior written notice of the proposed actions of an IEP Team following the IEP Team meeting, and will also provide prior written notice as required by the IDEA including whenever the Hondo Valley Public School District proposes or refuses to evaluate a student. The Hondo Valley Public School District is not required to use the format or specific language reflected in the U.S. Department of Education model form for prior written notice; however, the prior written notice provided to the parent by Hondo Valley Public School District will be consistent with the IDEA and sufficient to meet its requirements.

The native language information may be found in the student's cumulative folder as part of the enrollment information. If necessary, additional information will be gathered to determine the native language of the parent for purposes of providing prior written notice to the parent in the parent's native language.

The Hondo Valley Public School District does not make available to parents the option of receiving notices by electronic mail.

III. CONSENT

Authority: 34 CFR §300.9 Consent.

Consent means that--

- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;**
- (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and**
- (c) (1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.**
 - (2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).**
 - (3) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.**

Authority: 34 CFR §300.300 Parental consent.

...

(d) Other consent requirements.

- (1) Parental consent is not required before -**
 - (i) Reviewing existing data as part of an evaluation or a reevaluation; or**
 - (ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.**
- (2) In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.**
- (3) The Hondo Valley Public School District does not use a parent's refusal to consent to one service or activity under paragraphs (a) and (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.**

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...

F. Parental consent.

- (1) Informed parental consent as defined in 34 CFR Sec. 300.9 must be obtained in compliance with 34 CFR Sec. 300.300 before**
 - (a) conducting an initial evaluation or reevaluation; and**
 - (b) initial provision of special education and related services to a child with a disability. Consent for initial evaluation must not be construed as consent for initial provision of special education and related services. If parental consent is not provided for the initial evaluation or the parent fails to respond to a request to provide consent, the Hondo Valley Public School District may, but is not required to, pursue the initial evaluation of the child by utilizing the due process and mediation procedures in Subsection I of 6.31.2.13 NMAC.**
- (2) Pursuant to 34 CFR Sec. 300.300(d)(1), parental consent is not required before (a) reviewing existing data as part of an evaluation or a reevaluation; or (b) administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.**

...

- (5) Pursuant to 34 CFR Sec. 300.300(d)(3), the Hondo Valley Public School District does not use a parent's refusal to consent to one service or activity for which consent is required to deny the parent or child any other service, benefit or activity of the Hondo Valley Public School District, except as required by 34 CFR Part 300.**

The native language information may be found in the student's cumulative folder as part of the enrollment information. If necessary, additional information will be gathered to determine the native language of the parent for purposes of providing prior written notice to the parent in the parent's native language.

A. Reasonable Efforts

Authority: 34 CFR §300.300 Parental consent.

...

(d) Other consent requirements.

- (5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in §300.322(d).**

Authority: 34 CFR §300.322(d) Parental consent.

...

(d) ...the public agency must keep records...such as—

- (1) Detailed records of telephone calls made or attempted and the results of those calls;**

- (2) Copies of correspondence sent to the parents and any responses received; and
- (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

“As a matter of practice, public agencies begin the process of obtaining parental consent by identifying the parent and contacting the parent by phone or through written correspondence, or speaking to the parent in parent-teacher conferences.” 71 Fed. Reg. 46629 (August 14, 2006).

“If a surrogate parent already has been appointed because the public agency, after reasonable efforts, could not locate a parent, the public agency would not have to again attempt to contact other individuals meeting the definition of parent in § 300.30 to seek consent.” 71 Fed. Reg. 46631 (August 14, 2006).

“We do not believe it is necessary or appropriate to require a public agency to maintain additional documentation, beyond that required in new §300.300(d)(5), of a parent's refusal to provide consent for initial services or to prescribe where this documentation must be obtained or maintained. Public agencies understand the importance of properly documenting a parent's refusal to consent to the initial provision of special education and related services and are in the best position to determine any additional documentation that is necessary and where to obtain and maintain such documentation.” 71 Fed. Reg. 46633-46634 (August 14, 2006).

The Hondo Valley Public School District will use reasonable efforts to obtain parental consent. The Hondo Valley Public School District will document its efforts to obtain parental consent, and maintain such documentation in the child's special education file]. The level of effort shall be appropriate to the situation. The actions of the Hondo Valley Public School District when seeking parental consent will reflect genuine effort and will include more than one effort or means.

B. Consent for Initial Evaluation

Authority: 34 CFR §300.300 Parental consent.

(a) Parental consent for initial evaluation.

- (1) (i) If the Hondo Valley Public School District is proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8, the Hondo Valley Public School District will after providing notice consistent with §§300.503 and 300.504 [prior written notice and procedural safeguards notice], obtain informed consent from the parent of the child before conducting the evaluation.
- (ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.
- (iii) The Hondo Valley Public School District will make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.
- (2) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the Hondo Valley Public School District is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if--
 - (i) Despite reasonable efforts to do so, the Hondo Valley Public School District cannot discover the whereabouts of the parent of the child;
 - (ii) The rights of the parents of the child have been terminated in accordance with New Mexico law; or
 - (iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with New Mexico law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.
- (3) (i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the Hondo Valley Public School District may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under §300.506 or the due process

procedures under §§300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.

- (ii) The Hondo Valley Public School District does not violate its obligation under §§300.111 and 300.301 through §§300.311 if it declines to pursue the evaluation.

...

(d) Other consent requirements.

...

- (4) (i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the Hondo Valley Public School District will not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of the section); and

- (ii) The Hondo Valley Public School District is not required to consider the child as eligible for services under §§300.132 through 300.144.

“New § 300.300(a)(2) (proposed § 300.300(a)(2)(ii)) permits the public agency to proceed with the child’s initial evaluation without first obtaining the requisite parental consent only in the circumstances detailed in § 300.300(a)(2). Therefore, when one or more of the circumstances in § 300.300(a)(2) are met and a surrogate has not yet been appointed, the public agency need not postpone the child’s evaluation to await the appointment of a surrogate. This is appropriate because in situations involving requests for initial evaluations, in most cases a surrogate parent has not yet been appointed and delaying an initial evaluation until after a surrogate is appointed and has given consent may not be in the best interests of the child.” 71 Fed. Reg. 46631 (August 14, 2006).

“Consistent with the Department’s position that public agencies should use their consent override procedures only in rare circumstances, § 300.300(a)(3) clarifies that a public agency is not required to pursue an initial evaluation of a child suspected of having a disability if the parent does not provide consent for the initial evaluation. State and local educational agency authorities are in the best position to determine whether, in a particular case, an initial evaluation should be pursued.” 71 Fed. Reg. 46632 (August 14, 2006).

“An initial evaluation of a child is the first complete assessment of a child to determine if the child has a disability under the Act, and the nature and extent of special education and related services required. Once a child has been fully evaluated, a decision has been rendered that a child is eligible for services under the Act, and the required services have been determined, any subsequent evaluation of a child would constitute a reevaluation. In the example provided by the commenter, the second evaluation would be considered a reevaluation.” 71 Fed. Reg. 46640 (August 14, 2006).

The Hondo Valley Public School District will not conduct an initial evaluation without consent except as otherwise provided by the IDEA. The decision to use the consent override procedures is made by the Hondo Valley Public School District on a case by case basis.

C. Consent for Services

Authority: 34 CFR §300.300 Parental consent.

...

(b) Parental consent for services.

- (1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.
- (2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.
- (3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency—
 - (i) May not use the procedures in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

- (ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and
- (iii) Is not required to convene an IEP Team meeting or develop an IEP under §§ 300.320 and 300.324 for the child.

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...

F. Parental consent.

...

- (3) Pursuant to 34 CFR Sec. 300.300(b), if the parents of a child with a disability refuse consent for the initial provision of special education and related services, the Hondo Valley Public School District will not use the due process and mediation procedures in Subsection I of 6.31.2.13 NMAC in order to obtain agreement or a ruling that the services may be provided to the child. If the parent refuses consent or fails to respond to a request to provide consent for the initial provision of special education and related services, the Hondo Valley Public School District will not be considered to be in violation of the requirement to make FAPE available to the child and is not required to convene an IEP team meeting or develop an IEP under 34 CFR Secs. 300.320 and 300.324. All provisions of 34 CFR Sec. 300.300 must be followed with respect to parental consent.

“We believe it is appropriate to use the phrase, ‘initial provision of services’ in §300.300(a)(1)(ii), rather than the statutory phrase ‘consent for placement for receipt of special education and related services,’ in section 614(a)(1)(D)(i) of the Act to clarify that consent does not need to be sought every time a particular service is provided to the child. In addition, the distinction between consent for an initial evaluation and consent for initial services is more clearly conveyed in § 300.300(a)(1)(ii) than in the statutory language, and is consistent with the Department’s longstanding position that ‘placement’ refers to the provision of special education services, rather than a specific place, such as a specific classroom or specific school.” 71 Fed. Reg. 46640 (August 14, 2006).

“We believe § 300.300(b) is clear that the ‘initial provision of services’ means the first time a parent is offered special education and related services after the child has been evaluated in accordance with the procedures in §§ 300.301 through 300.311, and has been determined to be a child with a disability, as defined in § 300.8.” 71 Fed. Reg. 46633 (August 14, 2006).

“New 300.300(b)(4)(ii) ...follows the specific language in section 614(a)(1)(D)(ii)(III)(bb) of the Act and reflects the new provision in the Act that relieves public agencies of any potential liability for failure to convene an IEP Team meeting or develop an IEP for a child whose parents have refused consent or failed to respond to a request for consent to the initial provision of special education and related services. It does not, however, prevent a public agency from convening an IEP Team meeting and developing an IEP for a child as a means of informing the parent about the services that would be provided with the parent’s consent.” 71 Fed. Reg. 46634 (August 14, 2006).

“We understand the commenters’ concern that a parent of a child with a disability who refuses to consent to the provision of special education and related services may not fully understand the extent of the special education and related services their child would receive without the development of an IEP for their child. However, we do not view the consent provisions of the Act as creating the right of parents to consent to each specific special education and related service that their child receives. Instead, we believe that parents have the right to consent to the initial provision of special education and related services. ‘Fully informed,’ in this context, means that a parent has been given an explanation of what special education and related services are and the types of services that might be found to be needed for their child, rather than the exact program of services that would be included in an IEP.” 71 Fed. Reg. 46634 (August 14, 2006).

The Hondo Valley Public School District will not conduct an initial evaluation without consent except as otherwise provided by the IDEA. The Hondo Valley Public School District understands that the consent override procedures are not available when a parent refuses to consent to the initial provision of special education and related services (or fails to respond to a request for consent to the initial provision of special education and related services). The

Hondo Valley Public School District will ensure that the parent has been given an explanation of what special education and related services are and the type of services that might be found to be needed for their child. When a parent refuses to consent to the initial provision of special education and related services, the Hondo Valley Public School District will refer the child to the SAT for individual consideration.

D. Revocation of Consent for Services

Authority: 34 CFR §300.300 Parental consent.

...

(b) Parental consent for services.

...

(4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency—

(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with § 300.503 before ceasing the provision of special education and related services;

(ii) May not use the procedures in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and

(iv) Is not required to convene an IEP Team meeting or develop an IEP under §§ 300.320 and 300.324 for the child for further provision of special education and related services.

Authority: NMAC 6.31.2.13(F)(6) ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:

...

F. Parental consent

...

(6) Pursuant to 34 CFR Sec. 300.300(b)(4), parents may revoke consent for the continued provision of all special education and related services for their child. The revocation of consent must be in writing. After providing prior written notice in accordance with 34 CFR Sec. 300.503, the public agency must cease the provision of special education and related services for that child. The public agency may not use the due process and mediation procedures in Subsection I of 6.31.2.13 NMAC in order to obtain agreement or a ruling that services may be provided to the child. The public agency will not be considered to be in violation of the requirement to make FAPE available to the child once consent has been revoked. The public agency will also not be required to convene an IEP team meeting or develop an IEP for the child for further provision of special education and related services.

“[When a parent revokes consent for the provision of special education and related services], while a public agency may inquire as to why a parent is revoking consent for special education and related services, a public agency may not require a parent to provide an explanation, either orally or in writing, prior to ceasing the provision of special education and related services.” 73 Fed. 73008 (December 1, 2008).

“Section 300.300(b)(4) allows a parent at any time after the initial provision of special education and related services to revoke consent for the continued provision of special education and related services to their child in their entirety. Under § 300.300(b)(1), parental consent is for the initial provision of special education and related services generally, not for a particular service or services. Once a public agency receives a parental revocation of consent, in writing, for all special education and related services for a child and provides prior written notice in accordance with § 300.503, the public agency must, within a reasonable time, discontinue all special education and related services to

the child. In this circumstance, the public agency may not use the procedures in subpart E of these regulations, including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516, to obtain agreement or a ruling that the services may be provided to the child.” 73 Fed. Reg. 73011 (December 1, 2008).

“In situations where a parent disagrees with the provision of a particular special education or related service and the parent and public agency agree that the child would be provided with FAPE if the child did not receive that service, the public agency should remove the service from the child’s IEP and would not have a basis for using the procedures in subpart E to require that the service be provided to the child. If, however, the parent and public agency disagree about whether the child would be provided with FAPE if the child did not receive a particular special education or related service, the parent may use the due process procedures in subpart E of these regulations to obtain a ruling that the service with which the parent disagrees is not appropriate for their child. Additionally, under the regulations in § 300.300(d)(2), States are free to create additional parental consent rights, such as requiring parental consent for particular services, or allowing parents to revoke consent for particular services, but in those cases, the State must ensure that each public agency in the State has effective procedures to ensure that the parents’ exercise of these rights does not result in a failure to provide FAPE to the child.” 73 Fed. Reg. 73011 (December 1, 2008).

“It is inappropriate for school personnel to encourage a parent to revoke consent for special education and related services.” 73 Fed. Reg. 73014 (December 1, 2008).

“Once a parent revokes consent for a child to receive special education and related services, the child is considered a general education student and will be considered a general education student under the ESEA. . . . the child will not have an IEP; therefore, the State will no longer be required under the IDEA to provide accommodations that were previously included in the child’s IEP. 73 Fed. Reg. 73011 (December 1, 2008).

“Students who are no longer receiving special education and related services due to the revocation of parental consent to the continued provision of special education and related services will be subject to the LEA’s discipline procedures without the discipline protections provided in the Act. . . . We expect that parents will consider possible consequences of discipline procedures when making the decision to revoke consent for the provision of special education and related services.” 73 Fed. Reg. 73013 (December 1, 2008).

“Once a parent revokes consent for special education and related services under § 300.300(b), the child is a general education student. Consequently, the child may be placed in any classroom where other general education students are placed. If a child whose parent has revoked consent is placed in a classroom that is co-taught by a general education teacher and a special education teacher, then that child is placed in the classroom as a general education student and should be treated the same as all other general education students in that classroom.” 73 Fed. Reg. 73013 (December 1, 2008).

E. Consent for Reevaluation

Authority: 34 CFR §300.300 Parental consent.

...

(c) Parental consent for reevaluations.

- (1) Subject to paragraph (c)(2) of this section, the Hondo Valley Public School District**
 - (i) Will obtain informed parental consent, in accordance with §300.300(a)(1), prior to conducting any reevaluation of a child with a disability.**
 - (ii) If the parent refuses to consent to the reevaluation the Hondo Valley Public School District may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.**
 - (iii) The Hondo Valley Public School District does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.**
- (2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the Hondo Valley Public School District can demonstrate that--**

- (i) It made reasonable efforts to obtain such consent; and
- (ii) The child's parent has failed to respond.

...

(d) Other consent requirements.

...

- (4) (i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the Hondo Valley Public School District does not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of the section); and
- (ii) The Hondo Valley Public School District is not required to consider the child as eligible for services under §§300.132 through 300.144.

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...

F. Parental consent.

...

- (4) Pursuant to 34 CFR Sec. 300.300(c)(2), informed parental consent need not be obtained for reevaluation if the Hondo Valley Public School District can demonstrate that it has taken reasonable measures to obtain that consent by using procedures consistent with those in 34 CFR Sec. 300.322(d) and the child's parent has failed to respond.

The Hondo Valley Public School District will not conduct a reevaluation without consent except when the Hondo Valley Public School District can demonstrate that it has made reasonable efforts to obtain such consent and the child's parent has failed to respond to a request for consent. When the Hondo Valley Public School District has made reasonable efforts to obtain such consent and the child's parent has failed to respond to a request for consent, the Hondo Valley Public School District will conduct a reevaluation of the child except in the case of a home schooled or parentally-placed private schooled child. When a parent refuses to consent, the decision to use the consent override procedures is made by the Hondo Valley Public School District on a case by case basis.

F. Consent for Use of Medicaid or Other Public Benefits or Insurance or Private Insurance

Authority: 34 CFR §300.154. Methods of ensuring services.

(d) Children with disabilities who are covered by public benefits or insurance.

- (1) The Hondo Valley Public School District may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.
- (2) With regard to services required to provide FAPE to an eligible child under this part, the Hondo Valley Public School District--
 - (i) Will not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;
 - (ii) Will not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay;
 - (iii) Will not use a child's benefits under a public benefits or insurance program if that use would--
 - (A) Decrease available lifetime coverage or any other insured benefit;
 - (B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;
 - (C) Increase premiums or lead to the discontinuation of benefits or insurance; or

- (D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and
- (iv) (A) Will obtain parental consent consistent with §300.9 each time that access to public benefits or insurance is sought; and
 - (B) Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the Hondo Valley Public School District of its responsibility to ensure that all required services are provided at no cost to the parents.
- (e) Children with disabilities who are covered by private insurance.
 - (1) With regard to services required to provide FAPE to an eligible child under this part, the Hondo Valley Public School District may access the parents' private insurance proceeds only if the parents provide consent consistent with § 300.9.
 - (2) Each time the Hondo Valley Public School District proposes to access the parents' private insurance proceeds, the agency will—
 - (i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and
 - (ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

OSEP Memorandum 07-10 to State Directors of Special Education (May 3, 2007):

The Office of Special Education Programs (OSEP) has received many requests for clarification regarding interpretation of the requirement at 34 CFR §300.154(d)(2)(iv)(A) of the final Part B regulations implementing the Individuals with Disabilities Education Act of 2004 (IDEA). This regulation requires that, with regard to services required to provide a free appropriate public education (FAPE) under Part B, the public agency must obtain parental consent, consistent with 34 CFR §300.9, each time that access to public benefits or insurance is sought.

In this context, "parental consent" means –

- The parent has been fully informed of all information relevant to the activity for which the consent is sought, in his or her native language or other mode of communication;
- The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records that will be released and to whom;
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and
- If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent is given and before it is revoked).

OSEP believes that permitting a public agency to obtain parental consent for a specified amount of services for a specified period of time would be sufficient to enable parents to make an informed decision as to whether to provide consent for a public agency to access their or their child's public benefits or other public insurance.

This consent may be obtained one time for the specific services, and duration of services identified in a child's individualized education program (IEP), and a local educational agency (LEA) would not be required to obtain a separate consent each time a Medicaid agency or other public insurer or public program is billed for the provision of required services. For example, if it is known that a child is to receive three hours per week of occupational therapy (OT) for 36 weeks, parents could be asked to give consent to the public agency's billing of the parent's public benefits or insurance for 108 hours of service for the 36-week period. (The amount billed would depend on the amount of OT service that was actually provided.) While this type of consent may be obtained at an IEP meeting, it could also be obtained at some point after the IEP is developed.

However, if the public agency seeks to use the child's or parents' public benefits or public insurance to pay for additional hours of service (due to the IEP being revised or extended) or the public agency is charging

different amounts for such services, and would like to access the child's or parents' benefits or insurance for those costs, the public agency must obtain parental consent, covering the additional amount of service or costs to be charged to the child's or parents' public benefits or public insurance. The Part B provisions in 34 CFR §300.154(d)(2) are intended to ensure that the parent is fully informed of a public agency's proposed access of the child's or parents' benefits under a public benefits or public insurance program and provide written parental consent prior to the public agency's access to those public benefits or public insurance.

If parental consent is given directly to another agency, such as the State Medicaid agency, the LEA does not have to independently obtain a separate parental consent, as long as the parental consent provided to the other agency meets the requirements of 34 CFR §§300.9 and 300.154(d). The public agency seeking parental consent to access public benefits or public insurance programs is also obligated, under 34 CFR §300.154(d)(2)(iv), to notify the parent that the parent's refusal to allow access to their public benefits or public insurance does not relieve the public agency of its responsibility to ensure that all required FAPE services are provided at no cost to the parent. If another agency obtains the parental consent required by 34 CFR §§300.9 and 300.154(d)(2), the LEA must maintain a copy of the parental consent to both demonstrate its compliance under Part B of the IDEA and to ensure that it is available for the parent or child to review.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA.

The Hondo Valley Public School District will not use Medicaid or other public benefits or insurance or private insurance without consent.

G. Consent for Individualized Family Service Plan (IFSP)

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

...

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

- (1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is--**
 - (i) Consistent with State policy; and**
 - (ii) Agreed to by the agency and the child's parents.**
- (2) In implementing the requirements of paragraph (b)(1) of this section, the Hondo Valley Public School District will--**
 - (i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and**
 - (ii) If the parents choose an IFSP, obtain written informed consent from the parents.**

The Hondo Valley Public School District will develop an IFSP rather than an IEP only if the parent chooses an IFSP and consents to using the IFSP. The NM Department of Health has developed model IFSP forms available through the Department of Health website: <http://www.health.state.nm.us/ddsd/fit/otherdoc.htm>.

IV. PARENT PARTICIPATION IN MEETINGS

Authority: 34 CFR §300.501 Opportunity to examine records; Parent participation in meetings.

...

- (b) Parent participation in meetings.**
 - (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to--**
 - (i) The identification, evaluation, and educational placement of the child; and**
 - (ii) The provision of FAPE to the child.**
 - (2) The Hondo Valley Public School District will provide notice consistent with §300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.**
 - (3) A meeting does not include informal or unscheduled conversations involving Hondo Valley Public School District personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that Hondo Valley Public School District personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.**
- (c) Parent involvement in placement decisions.**
 - (1) The Hondo Valley Public School District will ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.**
 - (2) In implementing the requirements of paragraph (c)(1) of this section, the Hondo Valley Public School District will use procedures consistent with the procedures described in §300.322(a) through (b)(1).**
 - (3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the Hondo Valley Public School District will use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.**
 - (4) A placement decision may be made by a group without the involvement of a parent, if the Hondo Valley Public School District is unable to obtain the parent's participation in the decision. In this case, the Hondo Valley Public School District will have a record of its attempt to ensure their involvement.**

Authority: 34 CFR §300.322 Parent Participation.

- (a) The Hondo Valley Public School District responsibility—general. The Hondo Valley Public School District will take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including--**
 - (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and**
 - (2) Scheduling the meeting at a mutually agreed on time and place.**
- (b) Information provided to parents.**
 - (1) The notice required under paragraph (a)(1) of this section must--**
 - (i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and**
 - (ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).**
 - (2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must--**
 - (i) Indicate--**
 - (A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and**
 - (B) That the agency will invite the student; and**
 - (ii) Identify any other agency that will be invited to send a representative.**
- (c) Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the Hondo Valley Public School District will use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328 (related to alternative means of meeting**

participation).

- (d) **Conducting an IEP Team meeting without a parent in attendance.** A meeting may be conducted without a parent in attendance if the Hondo Valley Public School District is unable to convince the parents that they should attend. In this case, the Hondo Valley Public School District will keep a record of its attempts to arrange a mutually agreed on time and place such as:
 - (1) Detailed records of telephone calls made or attempted and the results of those calls;
 - (2) Copies of correspondence sent to the parents and any responses received; and
 - (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- (e) **Use of interpreters or other action, as appropriate.** The Hondo Valley Public School District will take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
- (f) **Parent copy of child's IEP.** The Hondo Valley Public School District will give the parent a copy of the child's IEP at no cost to the parent.

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...

- C. **Parent and student participation in meetings.** The Hondo Valley Public School District will afford the parents of a child with a disability and, as appropriate, the child, an opportunity to participate in meetings with respect to the identification, evaluation and educational placement or the provision of FAPE to the child, in compliance with 34 CFR Secs. 300.322, 300.501(b) and (c), and any other applicable requirements of these or other department rules and standards.
- D. **Notice requirements.**
 - (1) **Notice of meetings.** The Hondo Valley Public School District will provide the parents of a child with a disability with advance written notice that complies with 34 CFR Sec. 300.322 for IEP meetings and any other meetings in which the parent has a right to participate pursuant to 34 CFR Sec. 300.501.

“Section 300.322(a) already requires each public agency to take steps to ensure that one or both parents are present at each meeting, including notifying parents of the meeting early enough to ensure that they have an opportunity to attend, and scheduling the meeting at a mutually agreed on time and place. We believe that these requirements are sufficient to ensure that parents are provided the opportunity to participate in meetings. We also believe that State and local officials are in the best position to determine how far in advance parents must be notified of a meeting, as this will vary based on a number of factors, including, for example, the distance parents typically have to travel to the meeting location and the availability of childcare.” 71 Fed. Reg. 46678 (August 14, 2006).

The Hondo Valley Public School District will use reasonable efforts to ensure that one or both parents are present at each IEP Team meeting including by providing an adequate amount of advanced notice of the meeting and by being responsive to the parents' scheduling needs so that the meeting is held at a mutually agreed on time and place. The invitation will be provided to the parents early enough so that the parents have sufficient time to make the necessary arrangements to be able to attend. The Hondo Valley Public School District uses five days advanced notice as a guide. However, the amount of advanced notice and level of effort shall be appropriate to the situation. The goal of the Hondo Valley Public School District is to convince the parents to attend the IEP Team meeting, and the actions of the Hondo Valley Public School District will be consistent with the goal. The Hondo Valley Public School District will document its efforts to ensure that one or both parents are present at the meeting, and maintain such documentation in the child's special education file. The Hondo Valley Public School District will encourage and arrange alternative forms of participation if the parent is unable to attend. If the parent is unable to attend or participate through an alternative means (such as telephone conference), the Hondo Valley Public School District will provide the parent with a Prior Written Notice of Proposed Actions and a copy of the IEP.

V. PROHIBITION ON MANDATORY MEDICATION

Authority: 34 CFR §300.174 Prohibition on mandatory medication.

- (a) **General.** The NMPED must prohibit State and Hondo Valley Public School District personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under §§300.300 through 300.311, or receiving services under this part.
- (b) **Rule of construction.** Nothing in paragraph (a) of this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under §300.111 (related to child find).

The New Mexico Secretary of Education has issued a memorandum regarding the prohibition on mandatory medication dated October 7, 2005, available through the NMPED website: <http://www.ped.state.nm.us/seo/guide/medication.memo.100705.pdf>. The Hondo Valley Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this memorandum.

VI. TRANSFER OF RIGHTS AT AGE 18

Authority: 34 CFR § 300.520 Transfer of parental rights at age of majority.

- (a) **General.** A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)—
 - (1)(i) The Hondo Valley Public School District will provide any notice required by this part to both the child and the parents; and
 - (ii) All rights accorded to parents under Part B of the Act transfer to the child;
 - (2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and
 - (3) Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the child and the parents of the transfer of rights.

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

...

- (c) **Transfer of rights at age of majority.** Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under § 300.520.

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...

K. Transfer of parental rights to students at age 18

- (1) Pursuant to Secs. 12-2A-3 and 28-6-1 NMSA 1978, a person's age of majority begins on the first instant of his or her 18th birthday and a person who has reached the age of majority is an adult for all purposes not otherwise limited by state law. A guardianship proceeding under the probate code is the only way an adult in New Mexico can legally be determined to be incompetent and have the right to make his or her own decisions taken away. Public agencies and their IEP teams are not empowered to make such determinations under New Mexico law. Accordingly, pursuant to 34 CFR Sec. 300.520, when a child with a disability reaches age 18 and does not have a court-appointed general guardian, limited guardian or other person who has been authorized by a court to make educational decisions on the student's behalf or who has not signed a power of attorney as provided under New Mexico law:

- (a) the Hondo Valley Public School District will provide any notices required by 34 CFR Part 300 to the child and the parents;
 - (b) all other rights accorded to parents under Part B of the IDEA, New Mexico law or department rules and standards transfer to the child; and
 - (c) the Hondo Valley Public School District will notify the individual and the parents of the transfer of rights.
- (2) Pursuant to 34 CFR Sec. 300.320(c), each annual IEP review for a child who is 14 or older must include a discussion of the rights that will transfer when the child turns 18 and, as appropriate, a discussion of the parents' plans for obtaining a guardian before that time. The IEP of a child who is 14 or older must include a statement that the child and the parent have been informed of the rights that will transfer to the child at age 18.

The Hondo Valley Public School District follows all of the procedural requirements concerning transfer of rights at age of majority. The Hondo Valley Public School District affords all of the procedural safeguards to the adult student when rights transfer. When rights transfer, the parent continues to receive all the requisite notices, a right shared by both the adult student and the parent.

VII. CONFIDENTIALITY OF STUDENT INFORMATION

Authority: 34 CFR §300.610 Confidentiality.

The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by the NMPED and Hondo Valley Public School District pursuant to Part B of the Act, and consistent with §§300.611 through 300.627.

Authority: 34 CFR §300.611 Definitions.

As used in §§300.611 through 300.625--

- (a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- (b) Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).
- (c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.

Authority: §300.32 Personally identifiable.

Personally identifiable means information that contains--

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

Authority: 34 CFR §300.123 Confidentiality of personally identifiable information.

The State must have policies and procedures in effect to ensure that public agencies in the State comply with §§300.610 through 300.626 related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act.

Authority: 34 CFR §300.612 Notice to parents.

- (a) The NMPED must give notice that is adequate to fully inform parents about the requirements of §300.123 [Confidentiality of personally identifiable information], including--
 - (1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

- (2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
 - (3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
 - (4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.
- (b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

Authority: 34 CFR §300.613 Access rights.

- (a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §300.507 or §§300.530 through 300.532, or resolution session pursuant to §300.510, and in no case more than 45 days after the request has been made.
- (b) The right to inspect and review education records under this section includes--
 - (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
 - (2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
 - (3) The right to have a representative of the parent inspect and review the records.
- (c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

Authority: 34 CFR §300.614 Record of access.

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Authority: 34 CFR §300.615 Records on more than one child.

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

Authority: 34 CFR §300.616 List of types and locations of information.

The Hondo Valley Public School District will provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

Authority: 34 CFR §300.617 Fees.

- (a) The Hondo Valley Public School District may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.
- (b) A participating agency may not charge a fee to search for or to retrieve information under this part.

Authority: 34 CFR §300.618 Amendment of records at parent's request.

- (a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the Hondo Valley Public School District that maintains the information to amend the information.
- (b) The Hondo Valley Public School District will decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

- (c) If the Hondo Valley Public School District decides to refuse to amend the information in accordance with the request, it will inform the parent of the refusal and advise the parent of the right to a hearing under §300.619.

Authority: 34 CFR §300.619 Opportunity for a hearing.

The Hondo Valley Public School District will, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

Authority: 34 CFR §300.620 Result of hearing.

- (a) If, as a result of the hearing, the Hondo Valley Public School District decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it will amend the information accordingly and so inform the parent in writing.
- (b) If, as a result of the hearing, the Hondo Valley Public School District decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it will inform the parent of the parent's right to place in the records the Hondo Valley Public School District maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.
- (c) Any explanation placed in the records of the child under this section will--
- (1) Be maintained by the Hondo Valley Public School District as part of the records of the child as long as the record or contested portion is maintained by the Hondo Valley Public School District; and
 - (2) If the records of the child or the contested portion is disclosed by the Hondo Valley Public School District to any party, the explanation will also be disclosed to the party.

Authority: 34 CFR §300.621 Hearing procedures.

A hearing held under §300.619 must be conducted according to the procedures under 34 CFR 99.22 [FERPA regulation].

Authority: 34 CFR §300.622 Consent.

- (a) Parental consent will be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b)(1) of this section unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99 [FERPA regulations].
- (b) (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.
- (2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying the transition services in accordance with 300.321(b)(3).
- (3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

Authority: 34 CFR §300.535 Referral to and action by law enforcement and judicial authorities.

- (a) Rule of construction. Nothing in this part prohibits the Hondo Valley Public School District from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.
- (b) Transmittal of records.
- (1) The Hondo Valley Public School District reporting a crime committed by a child with a disability will ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.
 - (2) The Hondo Valley Public School District reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

Authority: 34 CFR §300.623 Safeguards.

- (a) The Hondo Valley Public School District will protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
- (b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.
- (c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.123 and 34 CFR part 99 [FERPA regulations].
- (d) The Hondo Valley Public School District will maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

Authority: 34 CFR §300.624 Destruction of information.

- (a) The Hondo Valley Public School District will inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.
- (b) The information will be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

See also, NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...

L. Confidentiality of information

The Hondo Valley Public School District has a Board policy ensuring compliance with FERPA. The Hondo Valley Public School District will follow Board policy including with regard to assuring the following rights:

- *The right to inspect and review the child's education records within 45 days of the day the Hondo Valley Public School District receives a request for access. Parents should submit to the custodian of records written request that identifies the record(s) they wish to inspect. The Hondo Valley Public School District will make arrangements for access and notify the parent of the time and place where the records may be inspected.*
- *The right to request the amendment of the child's education records that the parent believes are inaccurate or misleading. Parents or eligible students may ask the Hondo Valley Public School District to amend a record that they believe is inaccurate or misleading. They should write the custodian of records, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading. If the Hondo Valley Public School District decides not to amend the record as requested by the parent or eligible student, the Hondo Valley Public School District will notify the parent of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent when notified of the right to a hearing.*
- *The right to consent to disclosures of personally identifiable information contained in the child's education records, except to the extent that FERPA authorizes disclosure without consent. One exception, which permits disclosure without consent, is disclosure to school officials with legitimate educational interests. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility. Upon request, the Hondo Valley Public School District discloses education records without consent to officials of another school district in which a child seeks or intends to enroll.*
- *The right to file a complaint with the U.S. Department of Education concerning alleged failures by the School to comply with the requirements of FERPA. The name and address of the Office that administers FERPA are:*
Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-5901

The director of special education is custodian of the special education file for students currently enrolled at the assigned school. The director of special education is the custodian of records of the special education file of students who have withdrawn or graduated.

The Hondo Valley Public School District will provide notice when records are no longer needed. The parent may seek destruction of the records once they are no longer needed. The information must be destroyed at the request of the parents or, at their option the records must be given to the parents. When informing parents about their rights to destruction of personally identifiable records, the Hondo Valley Public School District advises them that the records may be needed by the child or the parents for social security benefits and other purposes.

VIII. PARENT INCLUDING FOSTER AND SURROGATE PARENTS

Authority: 34 CFR §300.30 Parent.

(a) Parent means--

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

- (b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.**
- (2) If a judicial decree or order identifies a specific person or persons under paragraph (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section.**

Authority: 34 CFR §300.45 Ward of the State.

- (a) General. Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is--**
- (1) A foster child;**
 - (2) A ward of the State; or**
 - (3) In the custody of a public child welfare agency.**
- (b) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in §300.30.**

Authority: 34 CFR §300.519 Surrogate parents.

- (a) General. The Hondo Valley Public School District will ensure that the rights of a child are protected when--**
- (1) No parent (as defined in §300.30) can be identified;**
 - (2) The Hondo Valley Public School District, after reasonable efforts, cannot locate a parent;**
 - (3) The child is a ward of the State under the laws of New Mexico; or**
 - (4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).**
- (b) Duties of Hondo Valley Public School District. The duties of the Hondo Valley Public School District under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This will include a method--**
- (1) For determining whether a child needs a surrogate parent; and**

- (2) For assigning a surrogate parent to the child.
- (c) **Wards of the State.** In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child’s case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.
- (d) **Criteria for selection of surrogate parents.**
 - (1) The Hondo Valley Public School District may select a surrogate parent in any way permitted under State law.
 - (2) The Hondo Valley Public School District will ensure that a person selected as a surrogate parent--
 - (i) Is not an employee of the NMPED, the Hondo Valley Public School District, or any other agency that is involved in the education or care of the child;
 - (ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
 - (iii) Has knowledge and skills that ensure adequate representation of the child.
- (e) **Non-employee requirement; compensation.** A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.
- (f) **Unaccompanied homeless youth.** In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates without regard to paragraph (d)(2)(i) of this section, until a surrogate can be appointed that meets all of the requirements of paragraph (d) of this section.
- (g) **Surrogate parent responsibilities.** The surrogate parent may represent the child in all matters relating to-
 - (1) The identification, evaluation, and educational placement of the child; and
 - (2) The provision of FAPE to the child.
- (h) **NMPED responsibility.** The NMPED must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after Hondo Valley Public School District determines that the child needs a surrogate.

Authority: NMAC 6.31.2.7 DEFINITIONS:

...

B. Terms.

...

- (14) “Parent” includes, in addition to the persons specified in 34 CFR Sec. 300.30, a child with a disability who has reached age 18 and for whom there is no court-appointed general guardian, limited guardian or other court-appointed person who has legal custody or has otherwise been authorized by a court to make educational decisions on the child’s behalf as provided in Subsection K of 6.31.2.13 NMAC. Pursuant to 34 CFR Sec. 300.519 and department policy, a foster parent of a child with a disability may act as a parent under Part B of the IDEA if: (i) the foster parent or the state children, youth and families department (CYFD) provides appropriate documentation to establish that CYFD has legal custody and has designated the person in question as the child’s foster parent; and (ii) the foster parent is willing to make the educational decisions required of parents under the IDEA; and has no interest that would conflict with the interests of the child. A foster parent who does not qualify under the above requirements but who meets all requirements for a surrogate parent under 34 CFR Sec. 300.519 may be appointed as a surrogate if the public agency responsible for making the appointment deems such action appropriate. (See Subsection J of 6.31.2.13 NMAC.)

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...

J. Surrogate parents and foster parents

- (1) The Hondo Valley Public School District will ensure that a qualified surrogate parent is appointed in compliance with 34 CFR Sec. 300.519 when needed to protect the rights of a child with a disability who is within the agency’s educational jurisdiction. A surrogate parent need not be appointed if a

person who qualifies as a parent under 34 CFR Sec. 300.30(b) and Paragraph (13) of Subsection B of 6.31.2.7 NMAC can be identified.

- (2) A foster parent who meets all requirements of 34 CFR Sec. 300.30 may be treated as the child's parent pursuant to that regulation. A foster parent who does not meet those requirements but meets all requirements of 34 CFR Sec. 300.519 may be appointed as a surrogate parent if Hondo Valley Public School District who is responsible for the appointment deems such action appropriate.
- (3) Pursuant to 34 CFR Sec. 300.519, a surrogate parent may represent the child in all matters relating to the identification, evaluation and educational placement of the child and the provision of FAPE to the child.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES

...

K. Children in detention and correctional facilities.

...

- (7) Children with disabilities who are detained or incarcerated in detention or correctional facilities are wards of the state and may have surrogate parents appointed pursuant to 34 CFR Sec. 300.519 and Subsection J of 6.31.2.13 NMAC to protect their IDEA rights while in state custody.
- (8) The public agency that administers the educational program in a juvenile or adult detention or correctional facility shall ensure that surrogate parents are appointed in cases where no parent as defined in 34 CFR Sec. 300.30(a) and Paragraph (14) of Subsection B of 6.31.2.7 NMAC is reasonably available or willing to make the educational decisions required for children with disabilities who are housed in that facility.

“The phrase ‘attempting to act as a parent’ is generally meant to refer to situations in which an individual attempts to assume the responsibilities of a parent under the Act. An individual may ‘attempt to act as a parent’ under the Act in many situations; for example, if an individual provides consent for an evaluation or reevaluation, or attends an IEP Team meeting as the child’s parent. We do not believe it is necessary or possible to include in these regulations the numerous situations in which an individual may ‘attempt to act as a parent.’” 71 Fed. Reg. 46567 (August 14, 2004).

“A private agency that contracts with a public agency for the education or care of the child, in essence, works for the public agency, and therefore, could not act as a parent under the Act.” 71 Fed. Reg. 46568 (August 14, 2004).

The Hondo Valley Public School District will timely identify the need for a surrogate parent and appoint a surrogate parent who meets the IDEA criteria. The Hondo Valley Public School District does not compensate individuals for acting as surrogate parents.

IX. INDEPENDENT EDUCATIONAL EVALUATION (IEE)

Authority: 34 CFR §300.502 Independent educational evaluation.

(a) General.

- (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.
- (2) The Hondo Valley Public School District will provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.
- (3) For the purposes of this subpart--
 - (i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the Hondo Valley Public School District responsible for the education of the child in question; and
 - (ii) Public expense means that the Hondo Valley Public School District either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §300.103.

(b) Parent right to evaluation at public expense.

- (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the Hondo Valley Public School District, subject to the conditions in paragraphs (b)(2) through (4) of this section.
 - (2) If a parent requests an independent educational evaluation at public expense, the Hondo Valley Public School District, will, without unnecessary delay, either--
 - (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or
 - (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.
 - (3) If the Hondo Valley Public School District files a due process complaint notice to request a hearing and the final decision is that the Hondo Valley Public School District's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.
 - (4) If a parent requests an independent educational evaluation, the Hondo Valley Public School District may ask for the parent's reason why he or she objects to the public evaluation. However, the Hondo Valley Public School District will not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.
 - (5) A parent is entitled to only one independent educational evaluation at public expense each time the Hondo Valley Public School District conducts an evaluation with which the parent disagrees.
- (c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the Hondo Valley Public School District an evaluation obtained at private expense, the results of the evaluation--
- (1) Will be considered by the Hondo Valley Public School District, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and
 - (2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.
- (d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.
- (e) Agency criteria.
- (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the Hondo Valley Public School District uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.
 - (2) Except for the criteria described in paragraph (e)(1) of this section, the Hondo Valley Public School District may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS

...

D. Evaluations and reevaluations

...

- (2) ... (f) The parents of a child with a disability who disagree with an evaluation obtained by the Hondo Valley Public School District have the right to obtain an independent educational evaluation of the child at public expense pursuant to 34 CFR Sec. 300.502.

“Consistent with applicable agency criteria, it would be appropriate for a public agency to require an IEE examiner to hold, or be eligible to hold, a particular license when a public agency requires the same licensure for personnel who conduct the same types of evaluations for the agency. In contrast, it would be inconsistent with a parent’s right to an IEE for a public agency to require all evaluators to be licensed, if only individuals employed by a public agency may obtain a license.” 71 Fed. Reg. 46689 (August 14, 2006).

A parent may request an IEE at public expense if the parent disagrees with an evaluation obtained by the Hondo Valley Public School District. When a parent requests an IEE at public expense, the Hondo Valley Public School District must, without unnecessary delay, either:

- initiate a due process hearing to show that its evaluation is appropriate; or*
- ensure that an IEE is provided at public expense, unless the district demonstrates at a hearing that the evaluation obtained by the parent did not meet district criteria.*

The Hondo Valley Public School District may ask but may not require the parent to state the reasons for the disagreement. A hearing officer or a court may find that there was no underlying disagreement with the evaluation, and therefore there is no entitlement to a publicly funded IEE.

The Hondo Valley Public School District will notify the parent of its decision to either pay for the IEE or request a due process hearing.

Parents are encouraged to contact the director of special education prior to obtaining an IEE to obtain approval and assistance in ensuring that the criteria are met. Parents may also make their request known by informing the IEP Team in an IEP Team meeting. The Hondo Valley Public School District representative of the IEP Team should promptly notify the director of special education of the parent's request. Parents who obtain an IEE and later seek reimbursement risk a finding by a hearing officer that the IEE did not meet Hondo Valley Public School District criteria.

Information on where an IEE at public expense may be obtained will be provided to the parent of a child with a disability upon request for an IEE. Only one IEE may be reimbursed for each evaluation obtained by the Hondo Valley Public School District. This would include the three-year reevaluation or reevaluations conducted more frequently. If the Hondo Valley Public School District has not conducted an evaluation, the parent does not have a right to an IEE at public expense.

The right of a parent to obtain an IEE is triggered if the parent disagrees with a Hondo Valley Public School District initiated evaluation. Therefore, if a parent refuses to consent to a proposed Hondo Valley Public School District evaluation, then an IEE at public expense would not be available since there would no Hondo Valley Public School District evaluation with which the parent can disagree.

The IEP Team will consider any IEE, whether publicly or privately funded, that meets the Hondo Valley Public School District's criteria.

A. Qualifications of the Evaluator

The following are the same criteria applied to Hondo Valley Public School District evaluator(s):

- 1. A list of individuals who are qualified to conduct an IEE is available from the director of special education upon request. The list may not be exhaustive. Therefore, parents are free to select whomever they choose to perform the IEE so long as the evaluator meets the District's criteria.*
- 2. The evaluator conducting an IEE of a child with a disability at public expense must be located within a 200-mile radius of the District.*
- 3. Evaluators must possess current NM licensure/certification. The components of an evaluation must be administered, reviewed, and/or gathered by personnel licensed by the State of New Mexico and/or the NMPED to complete or collect each of the components respectively. For instance, individualized assessments of cognitive/intellectual ability must be administered by NMPED-licensed Educational Diagnosticians or New Mexico licensed Psychologists. See Appendix E of the NM TEAM for licensure requirements.*
- 4. Evaluators must be trained and qualified to administer the specific tests and other evaluation*

materials in conformance with the instructions provided by the producer.

B. Evaluation Criteria

The following are the same requirements of a Hondo Valley Public School District evaluation:

- 1. Evaluations must comply with all requirements specified in State and federal law.*
- 2. The evaluation must be completed a reasonable time after the Hondo Valley Public School District approves the IEE.*
- 3. The report must address the Hondo Valley Public School District's format (which will be provided directly to the evaluator) for evaluation and eligibility. The report must comply with all requirements of State and federal law.*
- 4. The Hondo Valley Public School District criteria applicable for Hondo Valley Public School District evaluations as described in Chapter 3 and Chapter 4 of these procedures must be followed for the IEE.*
- 5. The independent evaluator is requested to furnish an original, typed evaluation report to the Hondo Valley Public School District in advance of an IEP Team meeting where the report will be considered by the student's IEP Team.*
- 6. The report must include an original signature, title of all evaluation personnel involved in the evaluation, licensures/certifications of each evaluator, including license/certification numbers.*
- 7. Protocols must be available for review.*

C. Cost Criteria

- 1. The Hondo Valley Public School District will pay a fee for an IEE that allows a parent to choose from among qualified professionals in the area.*
- 2. The Hondo Valley Public School District will not pay unreasonably excessive fees. An unreasonably excessive fee is one that is 10% above the prevailing rate in the area for the specific test or type of evaluation as established by Medicaid/Medicare..*
- 3. When service providers have a sliding scale fee based on parent income, the Hondo Valley Public School District will pay the amount charged to the parent.*
- 4. Travel costs for examiners will not exceed Hondo Valley Public School District rates for travel as established by New Mexico State guidelines or Hondo Valley Public School District policy (if Hondo Valley Public School District policy is at a higher rate than the State). The Hondo Valley Public School District will not cash advance any travel costs.*

D. Procedures to be Followed by Parents Requesting an IEE at Public Expense and Obtaining Payment/Reimbursement

1. *Parents obtaining an IEE without following Hondo Valley Public School District criteria and these procedures risk non-payment. The following procedures are designed to ensure an IEE that meets Hondo Valley Public School District criteria and safeguard against non-payment.*
2. *Parents are encouraged to provide the name and address of the evaluator in advance of the IEE to enable the Hondo Valley Public School District to:*
 - a. *Check the evaluator's certification/licensure, and*
 - b. *Contract directly with the evaluator.*
3. *If the parent selects an evaluator that is not on the Hondo Valley Public School District's list of qualified evaluators, the parent is encouraged to submit the name and vitae of the evaluator to the director of special education in advance of obtaining the IEE in order that the Hondo Valley Public School District may notify the parent regarding whether the evaluator is qualified to perform the IEE.*
4. *Payment will be made directly to the evaluator upon receipt of an IEE that meets Hondo Valley Public School District criteria.*
5. *In the event that a parent pursues an IEE independently, an original billing statement must be submitted to the Hondo Valley Public School District and all criteria must be met, including the receipt of a written report by the independent evaluator that meets Hondo Valley Public School District criteria, prior to direct payment or reimbursement.*
6. *If a parent feels that an IEE that falls outside of the Hondo Valley Public School District's criteria is justified by the child's unique circumstances, the parent must request a waiver of the criteria with a description of the unique circumstances that justify an IEE that does not fall within the Hondo Valley Public School District's criteria. The Hondo Valley Public School District will consider any such request.*
7. *Upon receipt of an IEE that does not meet Hondo Valley Public School District criteria including cost criteria, the Hondo Valley Public School District reserves the right to request a due process hearing to demonstrate that the IEE obtained by the parent did not meet Hondo Valley Public School District criteria.*

X. CONFLICT RESOLUTION AT THE LOWEST POSSIBLE LEVEL

The Senate Committee for the reauthorization of IDEA in 2004 expressed that “the goal of these new provisions is fairness: to be sure that a district is aware of a problem and has a chance to resolve it in a less formal manner before having to spend the time and resources for a due process hearing.” S.Rep. No. 108-105, at 39.

“As part of the bargain of providing children with educational rights and parents with procedural safeguards to protect those rights, Congress required that parents turn first to the statute's administrative framework to resolve any conflicts they had with the school's educational services.’ *Cudjoe ex rel. Cudjoe*, 297 F.3d 1058, 1064 (10th Cir. 2002). We have interpreted the IDEA's exhaustion requirements broadly, noting Congress' clear intention to allow those with experience in educating the nation's disabled children ‘at least the first crack at formulating a plan to overcome the consequences of educational shortfalls.’ *Id.* at 1065.” *Ellenberg v. NMMI*, 478 F.3d 1262 (10th Cir. 2007).

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...

G. Conflict management and resolution

- (1) The Hondo Valley Public School District seeks to establish and maintain productive working relationships with the parents of each child the agency serves and to deal constructively with disagreements. Toward that end, the each public agency is strongly encouraged to provide appropriate training for staff and parents in skills and techniques of conflict prevention and management and dispute resolution, and to utilize an informal dispute resolution method as set forth under Subparagraph (a) of Paragraph (2) of Subsection G of 6.31.2.13 NMAC to resolve disagreements at the local level whenever practicable.
- (2) Spectrum of dispute resolution options. To facilitate dispute prevention as well as swift, early conflict resolution whenever possible, the department and the Hondo Valley Public School District ensures that the following range of dispute resolution options is available to parents and Hondo Valley Public School District personnel.
 - (a) Informal dispute resolution option. If a disagreement arises between parents and the Hondo Valley Public School District over a student's IEP or educational program, either the parents or the Hondo Valley Public School District may convene a new IEP meeting at any time to attempt to resolve their differences at the local level, without state-level intervention.
 - (b) Third-party assisted intervention. The special education bureau (SEB) of the department will ensure that mediation is available to parents and public agencies who request such third-party assisted intervention before filing a state-level complaint or a request for a due process hearing. The SEB will honor a request for mediation that:
 - (i) is in writing;
 - (ii) is submitted to the SEB;
 - (iii) is a mutual request signed by both parties or their designated representatives;
 - (iv) includes a statement of the matter(s) in dispute and a description of any previous attempts to resolve these matters at the local level; and
 - (v) any request that does not contain all of these elements will be declined, with an explanation for the SEB's decision and further guidance, as appropriate.

Authority: NMAC 6.31.2.7 DEFINITIONS:

...

- C. Definitions related to dispute resolution. The following terms are listed in the order that reflects a continuum of dispute resolution options and shall have the following meanings for the purposes of these rules.

...

- (3) "Mediation" means a meeting or series of meetings that utilizes an independent, state-approved, state-funded, trained mediator to assist parties to reconcile disputed matters related to a student's IEP or other educational, non-IEP-related issues.

The Hondo Valley Public School District will work with parents to resolve conflict at the lowest possible level.

XI. STATE-LEVEL COMPLAINT PROCEDURES

Authority: NMAC 6.31.2.7 DEFINITIONS:

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- C. Definitions related to dispute resolution. The following terms are listed in the order that reflects a continuum of dispute resolution options and shall have the following meanings for the purposes of these rules.

- (1) "Complaint assistance IEP (CAIEP) meeting" means an IEP meeting that is facilitated by the representative of the Hondo Valley Public School District who directs special education programs within the Hondo Valley Public School District, and who has decision-making authority on behalf of such agency.
- (2) "Facilitated IEP (FIEP) meeting" means an IEP meeting that utilizes an independent, state approved, state-funded, trained facilitator as an IEP facilitator to assist the IEP team to communicate openly and effectively, in order to resolve conflicts related to a student's IEP.

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...

G. Conflict management and resolution

...

- (2) **Spectrum of dispute resolution options.** To facilitate dispute prevention as well as swift, early conflict resolution whenever possible, the department and the Hondo Valley Public School District ensures that the following range of dispute resolution options is available to parents and Hondo Valley Public School District personnel.

...

(c) **Formal dispute resolution.**

- (i) A state-level complaint may be filed with the SEB of the department by the parents of a child, or by another individual or organization on behalf of a child, as described under Subparagraph (a) of Paragraph (2) of Subsection H of 6.31.2.13 NMAC. Once a complaint has been filed, the responding public agency must offer in writing to convene a CAIEP meeting with the parents(s) and other relevant members of the IEP team to address any IEP-related issues raised in the complaint. The parent may accept or decline this offer, or the parties may agree to convene a FIEP meeting or mediation instead, as described under Paragraph (3) of Subsection H of 6.31.2.13 NMAC.

...

H. State complaint procedures

- (1) **Scope.** This Subsection H of 6.31.2.13 NMAC prescribes procedures to be used in filing and processing complaints alleging the failure of the department or the Hondo Valley Public School District to comply with state or federal laws or regulations governing programs for children with disabilities under the IDEA or with state statutes or regulations governing educational services for gifted children.

(2) **Requirements for complaints.**

- (a) The SEB of the department shall accept and investigate complaints from organizations or individuals that raise issues within the scope of this procedure as defined in the preceding Paragraph (1) of Subsection H of 6.31.2.13 NMAC. The complaint must:

- (i) be in writing;
- (ii) be submitted to the SEB (or to the secretary of education, in the case of a complaint against the department);
- (iii) be signed by the complainant or a designated representative and have the complainant's contact information; (iv) include a statement that the department or the Hondo Valley Public School District has violated a requirement of an applicable state or federal law or regulation; and (v) contain a statement of the facts on which the allegation of violation is based, and a description of any efforts the complainant has made to resolve the complaint issue(s) with the Hondo Valley Public School District (for a complaint against the Hondo Valley Public School District). Any complaint that does not contain each of these elements will be declined, with an explanation for the SEB's decision and further guidance, as appropriate.

- (b) If the complaint alleges violations with respect to a specific child, the complaint must include the information required by 34 CFR Sec. 300.153(b)(4).

- (c) The party filing the complaint must forward a copy of the complaint to Hondo Valley Public School District serving the child at the same time the party files the complaint with the SEB of the department.

- (d) Pursuant to 34 CFR Sec. 300.153(c), the complaint must allege a violation that occurred not more than one year before the date the complaint is received by the SEB in accordance with Subparagraph (a) of Paragraph (2) of Subsection H of 6.31.2.13 NMSAC.

(3) **Preliminary meeting.**

- (a) **CAIEP meeting.** Upon receipt of a complaint that meets the requirements of Subparagraph (a) of Paragraph (2) of Subsection H of 6.31.2.13 NMAC, the SEB of the department shall acknowledge receipt of the complaint in writing and notify the public agency against which the violation has been alleged. Once a state level complaint has been filed, the Hondo Valley Public School District will offer in writing to convene a CAIEP meeting to address IEP related issues

- raised in the complaint. The parent(s) may accept or decline this offer, or the parties may agree in writing instead to convene a FIEP meeting or mediation, as described in Subparagraph (b) of Paragraph (3) of Subsection H of 6.31.2.13 NMAC. The Hondo Valley Public School District will (and the parent(s) may) notify the SEB within one business day of agreeing to convene (or not to convene) one of these alternative dispute resolution (ADR) options. If the parties agree to convene a CAIEP meeting, as described at Paragraph D(1) of 6.31.2.7 NMAC, the following requirements apply:
- (i) it must take place within 14 days of the date of the SEB's receipt of the complaint;
 - (ii) it must include the relevant members of the IEP team who have specific knowledge of the facts identified in the complaint; and
 - (iii) it may not include an attorney of the Hondo Valley Public School District unless the parent is accompanied by an attorney.
- (b) **FIEP meeting; mediation.** Parties to a state-level complaint may choose to convene a FIEP meeting or mediation instead of a CAIEP meeting. To do so, the Hondo Valley Public School District will (and the parent may) notify the SEB of the department in writing within 1 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 SEB, unless a brief extension is granted by the SEB based on exceptional circumstances. Each session in the FIEP or mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the complaint.
- (c) **Mediation requirements.** If the parties choose to use mediation, the following requirements apply.
- (i) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.
 - (ii) Any mediated agreement must state that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. Any such agreement must also be signed by both the parent and a representative of the Hondo Valley Public School District who has the authority to bind such agency, and shall be enforceable in any state court of competent jurisdiction or in a district court of the United States.
 - (iii) If a mediated agreement involves IEP-related issues, the agreement must state that the Hondo Valley Public School District 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.
 - (iv) The mediator shall transmit a copy of the written mediation agreement to each party within 7 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.
 - (v) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
 - (vi) Any other requirement provided in 34 CFR Sec. 300.506(b) that is not otherwise provided herein.
- (4) **Complaints and due process hearings on the same issues.** Pursuant to 34 CFR Sec. 300.152(c).
- (a) The SEB of the department shall set aside any part of a written complaint that is also the subject of a due process hearing under Subsection I of 6.31.2.13 NMAC until the conclusion of the hearing and any civil action. Any issue in the complaint that is not a part of the due process hearing or civil action will be resolved by the SEB as provided in Subsection H of 6.31.2.13 NMAC.
 - (b) If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the SEB must inform the complainant to that effect.
 - (c) A complaint alleging the Hondo Valley Public School District's failure to implement a due process decision will be resolved by the SEB as provided in this Subsection H of 6.31.2.13 NMAC.
- (5) **Complaints against public agencies.**

- (a) **Impartial review.** Upon receipt of a complaint that meets the requirements of Paragraph (2) of Subsection H of 6.31.2.13 NMAC above, the SEB of the department shall:
 - (i) undertake an impartial investigation which shall include complete review of all documentation presented and may include an independent on-site investigation, if determined necessary by the SEB;
 - (ii) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
 - (iii) provide the Hondo Valley Public School District with the opportunity to respond to the allegations in the complaint; and
 - (iv) review all relevant information and make an independent determination as to whether the Hondo Valley Public School District is violating a requirement of an applicable state or federal statute or regulation.
- (b) **Decision.** A written decision which includes findings of fact, conclusions, and the reasons for the decision and which addresses each allegation in the complaint shall be issued by the SEB and mailed to the parties within sixty (60) days of receipt of the written complaint, regardless of whether or not the parties agree to convene a CAIEP meeting, a FIEP meeting, or mediation. Such decision shall further include procedures for effective implementation of the final decision, if needed, including technical assistance, negotiations, and if corrective action is required, such action shall be designated and shall include the timeline for correction and the possible consequences for continued noncompliance.
- (c) **Failure or refusal to comply.** If the Hondo Valley Public School District fails or refuses to comply with the applicable law or regulations, and if the noncompliance or refusal to comply cannot be corrected or avoided by informal means, compliance may be effected by the department by any means authorized by state or federal laws or regulations. The department shall retain jurisdiction over the issue of noncompliance with the law or regulations and shall retain jurisdiction over the implementation of any corrective action required.

...

- (7) **Extension of time limit.** An extension of the time limit under Subparagraph (b) of Paragraph (5) or Subparagraph (b) of Paragraph (6) of this Subsection H of 6.31.2.13 NMAC shall be permitted by the SEB of the department only if exceptional circumstances exist with respect to a particular complaint or if the parent or any other party filing a complaint and the public agency involved agree to extend the time to engage in mediation or a CAIEP or FIEP meeting.
- (8) **Conflicts with federal laws or regulations.** If any federal law or regulation governing any federal program subject to this regulation affords procedural rights to a complainant which exceed those set forth in Subsection H of 6.31.2.13 NMAC for complaints within the scope of these rules, such statutory or regulatory right(s) shall be afforded to the complainant. In acknowledging receipt of such a complaint, the SEB shall set forth the procedures applicable to that complaint.

I. Due Process Hearings.

...

- (22) **Rule of construction.** Nothing in this Subsection I shall be construed to affect the right of a parent to file a complaint with the SEB of the department, as described under Subsection H of 6.31.2.13 NMAC.

Authority: 34 CFR §300.136 Compliance.

- (a) **General.** A private school official has the right to submit a complaint to the SEA that the LEA—
 - (1) Did not engage in consultation that was meaningful and timely; or
 - (2) Did not give due consideration to the views of the private school official.
- (b) **Procedure.**
 - (1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and
 - (2) The LEA must forward the appropriate documentation to the SEA.
 - (3) (i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and
 - (ii) The SEA must forward the appropriate documentation to the Secretary.

The NMPED has developed a model form for use when filing a State-level complaint, available through the NMPED website: <http://www.ped.state.nm.us/seo/dispute/SPED%20Complaint%20Form.doc>.

A current copy of the “Parent and Child Rights in Special Education Procedural Safeguards Notice” is available through the NMPED website: <http://www.ped.state.nm.us/seo/library/parentrights.pdf> (English version) and <http://www.ped.state.nm.us/seo/library/Spanish.Parentrights.pdf> (Spanish version). The Hondo Valley Public School District will provide the “Parent and Child Rights in Special Education Procedural Safeguards Notice” at least one time per year and upon receipt of a State-level complaint filed by a parent.

The NMPED has issued a guidance document titled, “Complaint Assistance IEP Meeting Fact Sheet” (February 2006), available through the NMPED website: <http://www.ped.state.nm.us/seo/dispute/CAIEP.Fact.Sheet.pdf>. A parent can contact the Hondo Valley Public School District special education director to request a CAIEP meeting as an alternative form of dispute resolution whether or not the parent has filed a State-level complaint. When a parent files a State-level complaint, the Hondo Valley Public School District will offer to convene a CAIEP meeting. The Hondo Valley Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.

The NMPED has issued a guidance document titled, “The Facilitated IEP Meeting Fact Sheet” (February 2006), available through the NMPED website: http://www.ped.state.nm.us/seo/dispute/iep_meeting.pdf. A parent can contact the Hondo Valley Public School District special education director to request a FIEP meeting as an alternative form of dispute resolution whether or not the parent has filed a State-level complaint. Both the Hondo Valley Public School District and parent must agree to engage in this process. When a parent files a State-level complaint, the Hondo Valley Public School District and parent may choose to convene a FIEP meeting instead of a CAIEP meeting. The Hondo Valley Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.

The NMPED has issued a guidance document titled, “Special Education Mediation Fact Sheet” (February 2006), available through the NMPED website: http://www.ped.state.nm.us/seo/dispute/iep_meeting.pdf. Either the Hondo Valley Public School District or the parent can request mediation as an alternative form of dispute resolution by contacting the NMPED’s Special Education Bureau and asking to speak to the ADR Coordinator to obtain a Request for Mediation form. Both the Hondo Valley Public School District and parent must agree to engage in mediation. When a parent files a State-level complaint, the Hondo Valley Public School District and parent may choose to participate in mediation instead of a CAIEP meeting. The Hondo Valley Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.

XII. DUE PROCESS HEARINGS

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...

G. Conflict management and resolution

...

- (2) **Spectrum of dispute resolution options.** To facilitate dispute prevention as well as swift, early conflict resolution whenever possible, the department and the Hondo Valley Public School District ensures that the following range of dispute resolution options is available to parents and Hondo Valley Public School District personnel.

...

(c) Formal dispute resolution.

- (ii) A request for a due process hearing may be filed by parents or their authorized representative, or by the Hondo Valley Public School District, as described under Paragraph

(5) of Subsection I of 6.31.2.13 NMAC. A resolution session between the parties must be convened by the Hondo Valley Public School District following a request for a due process hearing, unless the parties agree in writing to waive that option or to convene a FIEP meeting or mediation instead, as described under Paragraph (8) of Subsection I of 6.31.2.13 NMAC.

...

I. Due process hearings

- (1) **Scope.** This Subsection I of 6.31.2.13 NMAC establishes procedures governing impartial due process hearings for the following types of cases:
 - (a) requests for due process in IDEA cases governed by 34 CFR Secs. 300.506-300.518 and 300.530-300.532; and
 - (b) claims for gifted services.
- (2) **Definitions.** In addition to terms defined in 34 CFR Part 300 and 6.31.2.7 NMAC, the following definitions apply to this Subsection I of 6.31.2.13 NMAC.
 - (a) "Expedited hearing" means a hearing that is available on request by a parent or Hondo Valley Public School District under 34 CFR Secs. 300.532(c) and is subject to the requirements of 34 CFR Sec. 300.532(c).
 - (b) "Gifted services" means special education services to gifted children as defined in Subsection A of 6.31.2.12 NMAC.
 - (c) "Summary due process hearing" means a hearing designed to proceed more quickly and incur less expense than a standard due process hearing, as explained under Paragraph (15) of Subsection I of 6.31.2.13 NMAC.
 - (d) "Transmit" means to mail, transmit by electronic mail or telecopier (facsimile machine) or hand deliver a written notice or other document and obtain written proof of delivery by one of the following means:
 - (i) an electronic mail system's confirmation of a completed transmission to an e-mail address that is shown to be valid for the individual to whom the transmission was sent;
 - (ii) a telecopier machine's confirmation of a completed transmission to a number which is shown to be valid for the individual to whom the transmission was sent;
 - (iii) a receipt from a commercial or government carrier showing to whom the article was delivered and the date of delivery;
 - (iv) a written receipt signed by the secretary of education or designee showing to whom the article was hand-delivered and the date delivered; or
 - (v) a due process final decision to any party not represented by counsel in a due process hearing by the U.S. postal service, certified mail, return receipt requested, showing to whom the article was delivered and the date of delivery.

...

- (28) **Computation of time.** In computing any period of time prescribed or allowed by Subsection I of 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. As used in this rule, "legal holiday" includes any day designated as a state holiday.

Authority: 34 CFR §300.140 Due process complaints and State complaints.

- (a) **Due process not applicable, except for child find.**
 - (1) Except as provided in paragraph (b) of this section, the procedures in §§ 300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of §§ 300.132 through 300.139, including the provision of services indicated on the child's services plan.
- (b) **Child find complaints—to be filed with the LEA in which the private school is located.**
 - (1) The procedures in §§ 300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in § 300.131, including the requirements in §§ 300.300 through 300.311.
 - (2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of this section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA.

(c) State complaints.

- (1) Any complaint that an SEA or LEA has failed to meet the requirements in §§ 300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in §§ 300.151 through 300.153.
- (2) A complaint filed by a private school official under § 300.136(a) must be filed with the SEA in accordance with the procedures in § 300.136(b).

A current copy of the “Parent and Child Rights in Special Education Procedural Safeguards Notice” is available through the NMPED website: <http://www.ped.state.nm.us/seo/library/parentrights.pdf> (English version) and <http://www.ped.state.nm.us/seo/library/Spanish.Parentrights.pdf> (Spanish version). The Hondo Valley Public School District will provide the parent a “Parent and Child Rights in Special Education Procedural Safeguards Notice” at least one time per year and upon receipt of a request for a due process hearing filed by a parent.

A. Timeline for Requesting a Due Process Hearing

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...
I. Due Process Hearings.

- ...
- (19)...(b) Timeline for requesting hearing. A parent or agency shall request an impartial due process hearing within two years of the date that the parent or agency knew or should have known about the alleged action that forms the basis of the due process request.
 - (c) Exceptions to the timeline. The timeline described in Subparagraph (b) of Paragraph (19) of Subsection I of 6.31.2.13 NMAC above shall not apply to a parent if the parent was prevented from requesting the hearing due to:
 - (i) specific misrepresentations by the Hondo Valley Public School District that it had resolved the problem that forms the basis of the due process request; or
 - (ii) the Hondo Valley Public School District's withholding of information from the parent that was required under this part to be provided to the parent.

The Hondo Valley Public School District will provide the parent a “Parent and Child Rights in Special Education Procedural Safeguards Notice” at least one time per year and upon receipt of a request for a due process hearing filed by a parent. The “Parent and Child Rights in Special Education Procedural Safeguards Notice” informs parents that the request for due process hearing must be filed within two years of the date that the parent knew or should have known about the problem.

B. Student Status during Proceedings

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...
I. Due Process Hearings.

- ...
- (27) Child's status during proceedings.
 - (a) Except as provided in 34 CFR Sec. 300.533 and Paragraph (4) of Subsection I of 6.31.2.13 NMAC, and unless the Hondo Valley Public School District and the parents of the child agree otherwise, during the pendency of any administrative or judicial proceeding regarding an IDEA due process request, the child involved must remain in his or her current educational placement. Disagreements over the identification of the current educational placement which the parties cannot resolve by agreement shall be resolved by the hearing officer as necessary.
 - (b) If the case involves an application for initial admission to Hondo Valley Public School District, the child, with the consent of the parents, must be placed in the Hondo Valley Public School District until the completion of all the proceedings.

- (c) If a hearing officer agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the Hondo Valley Public School District and the parents for purposes of Subparagraph (a) of Paragraph (27) of Subsection I of 6.31.2.13 NMAC.

...

Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES

...

J. Appeal

- (1) The parent of a student with a disability who disagrees with any decision regarding the placement or the manifestation determination under this section, or an administrative authority that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to Subsection I of 6.31.2.13 NMAC.
- (3) When an appeal under this subsection has been made by either the parent or the administrative authority, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in Subsections B or E of this section, whichever ever occurs first, unless the parent and the administrative authority agree otherwise.

The Hondo Valley Public School District will ensure that the child remains in the stay-put placement during the pendency of the proceedings, unless the Hondo Valley Public School District and the parent agree otherwise.

C. Request for a Due Process Hearing

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...

I. Due Process Hearings.

...

- (3) Bases for requesting hearing. A parent or Hondo Valley Public School District may initiate an impartial due process hearing on the following matters:
 - (a) the Hondo Valley Public School District proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child;
 - (b) the Hondo Valley Public School District refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child;
 - (c) the Hondo Valley Public School District proposes or refuses to initiate or change the identification, evaluation or educational placement of, or services to, a child who needs or may need gifted services;
 - (d) an IDEA due process hearing provides a forum for reviewing the appropriateness of decisions regarding the identification, evaluation, placement or provision of a free appropriate public education for a particular child with a disability by the Hondo Valley Public School District that is or may be responsible under state law for developing and implementing the child's IEP or ensuring that a FAPE is made available to the child; the IDEA does not authorize due process hearing officers to consider claims asserting that the department should be required to provide direct services to a child with a disability pursuant to 20 USC Sec. 1413(g)(1) and 34 CFR Sec. 300.227 because the responsible public agency is unable to establish and maintain appropriate programs of FAPE, or that the department has failed to adequately perform its duty of general supervision over educational programs for children with disabilities in New Mexico; accordingly, a due process hearing is not the proper forum for consideration of such claims and the department will decline to refer such claims against it to a hearing officer; such claims may be presented through the state-level complaint procedure under Subsection H of 6.31.2.13 NMAC above.
- (4) Bases for requesting expedited hearing.

- (a) Pursuant to 34 CFR Sec. 300.532 and 20 USC Sec. 1415(k)(3), a parent may request an expedited hearing to review any decision regarding placement or a manifestation determination under 34 CFR Secs. 300.530-300.531.
- (b) Pursuant to 34 CFR Sec. 300.532(c) and 20 USC Sec. 1415(k)(3), the Hondo Valley Public School District may request an expedited hearing if it believes that maintaining the current placement of a child is substantially likely to result in injury to the child or others.
- (5) Request for hearing. A parent requesting a due process hearing shall transmit written notice of the request to the Hondo Valley Public School District whose actions are in question and to the SEB of the department. The Hondo Valley Public School District, if requesting a due process hearing, shall transmit written notice of the request to the parent(s) and to the SEB of the department. The written request shall state with specificity the nature of the dispute and shall include:
 - (a) the name of the child;
 - (b) the address of the residence of the child (or available contact information in the case of a homeless child);
 - (c) the name of the school the child is attending;
 - (d) the name of the public agency, if known;
 - (e) the name, address and telephone number(s) of the party making the request (or available contact information in the case of a homeless party) and, if the party is represented by an attorney or advocate, the name, address and telephone number(s) of the attorney or advocate;
 - (f) a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem;
 - (g) a description of efforts the parties have made to resolve their dispute at the local level before filing a request for due process; and
 - (h) a proposed resolution of the problem to the extent known and available to the party requesting the hearing at the time;
 - (i) a request for an expedited hearing must also include a statement of facts sufficient to show that a requesting parent or the Hondo Valley Public School District is entitled to an expedited hearing under 34 CFR Sec. 300.532(c) or 20 USC Sec. 1415(k)(3);
 - (j) a request for a hearing must be in writing and signed and dated by the parent or the authorized Hondo Valley Public School District representative; an oral request made by a parent who is unable to communicate by writing shall be reduced to writing by the Hondo Valley Public School District and signed by the parent;
 - (k) a request for hearing filed by or on behalf of a party who is represented by an attorney shall include a sufficient statement authorizing the representation; a written statement on a client's behalf that is signed by an attorney who is subject to discipline by the New Mexico supreme court for a misrepresentation shall constitute a sufficient authorization; and
 - (l) a party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of this paragraph....

Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES

J. Appeal.

- (1) The parent of a student with a disability who disagrees with any decision regarding the placement or the manifestation determination under this section, or an administrative authority that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to Subsection I of 6.31.2.13 NMAC.
- (2) A hearing officer who hears a matter under Paragraph (1) of Subsection J of 6.11.2.11 NMAC, has the authority provided in 34 CFR Sec. 300.532(b).
- (3) When an appeal under this subsection has been made by either the parent or the administrative authority, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in Subsections B or E of this section, which ever occurs first, unless the parent and the administrative authority agree otherwise.

The Hondo Valley Public School District will provide the parent a "Parent and Child Rights in Special Education

Procedural Safeguards Notice” at least one time per year and upon receipt of a request for a due process hearing filed by a parent. The “Parent and Child Rights in Special Education Procedural Safeguards Notice” informs parents of what must be included in a request for due process hearing. The NMPED has developed a model form for use when filing a due process hearing request, available through the NMPED website: <http://www.ped.state.nm.us/seo/dispute/Due%20Process%20Hearing%20Form%202007%20lock.doc>

D. Response to a Request for a Due Process Hearing (including Prior Written Notice and Notice of Insufficiency)

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...

I. Due Process Hearings.

...

(6) Response to request for hearing.

- (a) A request for a hearing shall be deemed to be sufficient unless the party receiving the notice of request notifies the hearing officer and the other party in writing that the receiving party believes the request has not met the requirements of Paragraph (5) of Subsection I of 6.31.2.13 NMAC.**
- (b) Hondo Valley Public School District response.**
 - (i) In general. If the Hondo Valley Public School District has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process hearing request, the Hondo Valley Public School District shall, within 10 days of its receipt of the request, send to the parent a response that meets the requirements of 34 CFR Sec. 300.508(e) and 20 USC Sec. 1415(c)(2)(B)(i). This requirement presents an additional opportunity for parties to clarify and potentially resolve their dispute(s).**
 - (ii) Sufficiency. A response filed by the Hondo Valley Public School District pursuant to (i) of Subparagraph (b) of Paragraph (6) shall not be construed to preclude the Hondo Valley Public School District from asserting that the parent's due process hearing request was insufficient where appropriate.**
- (c) Other party response. Except as provided in Subparagraph (b) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC above, the non-complaining party shall, within 10 days of its receipt of the request for due process, send to the requesting party a response that specifically addresses the issues raised in the hearing request. This requirement also presents an opportunity to clarify and potentially resolve disputed issues between the parties.**
- (d) A party against whom a due process hearing request is filed shall have a maximum of 15 days after receiving the request to provide written notification to the hearing officer of insufficiency under Subparagraph (a) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC. The 15 day timeline for the Hondo Valley Public School District to convene a resolution session under Paragraph (8) of Subsection I of 6.31.2.13 NMAC below runs at the same time as the 15 day timeline for filing notice of insufficiency.**

“If the party receiving the due process complaint notice believes the complaint is insufficient, the hearing officer determines the sufficiency of the complaint. There is no requirement that the party who alleges that a notice is insufficient state in writing the basis for the belief.” 71 Fed. Reg. 46698 (August 14, 2006).

When the Hondo Valley Public School District receives a request for due process hearing, the Hondo Valley Public School District will timely provide the parent with a prior written notice regarding the subject matter contained in the parent's due process hearing request, if the Hondo Valley Public School District has not already done so. The Hondo Valley Public School District will provide prior written notice even in the event that the Hondo Valley Public School District believes the due process hearing request is insufficient. If the Hondo Valley Public School District believes the due process hearing request is insufficient, the Hondo Valley Public School District will timely notify the hearing officer.

E. Hearing Officer Ruling on Notice of Insufficiency

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...

I. Due Process Hearings.

...

(6) Response to request for hearing.

...

- (e) Determination.** Within five days of receipt of a notice of insufficiency under Subparagraph (d) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC above, the hearing officer shall make a determination on the face of the due process request of whether it meets the requirements of Paragraph (5) of Subsection I of 6.31.2.13 NMAC, and shall immediately notify the parties in writing of such determination.

“If the hearing officer determines that the notice is not sufficient, the hearing officer’s decision will identify how the notice is insufficient, so that the filing party can amend the notice, if appropriate.” 71 Fed. Reg. 46698 (August 14, 2006).

F. Amended Due Process Hearing Request

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...

I. Due Process Hearings.

...

(6) Response to request for hearing.

...

- (f) Amended due process request.** A party may amend its due process request only if:
- (i) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to Paragraph (8) of Subsection I of 6.31.2.13 NMAC; or**
 - (ii) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.**
- (g) Applicable timeline.** The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under Paragraph (8) of Subsection I of 6.31.2.13 NMAC.

“If the complaint is determined to be insufficient and is not amended, the complaint could be dismissed.” 71 Fed. Reg. 46698 (August 14, 2006).

“This process ensures that the parties involved understand and agree on the nature of the complaint before the hearing begins.” 71 Fed. Reg. 46698 (August 14, 2006).

“It is up to hearing officers to determine whether a specific complaint is within the allowable timeline, including whether an amended complaint relates to a previous complaint.” 71 Fed. Reg. 46698 (August 14, 2006).

The Hondo Valley Public School District may seek dismissal of a due process hearing complaint if the parent’s request is insufficient and is not properly or timely remedied through an amendment.

G. Resolution Session/Resolution Period

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...
I. Due Process Hearings.

...
(8) Preliminary meeting

- (a) Resolution session.** Before the opportunity for an impartial due process hearing under Paragraphs (3) or (4) of Subsection I of 6.31.2.13 NMAC above, the Hondo Valley Public School District will convene a resolution session with the parents and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process request, unless the parents and the Hondo Valley Public School District agree in writing to waive such a meeting, or agree to use the FIEP or mediation process instead. The resolution session:
- (i) will occur within 15 days of the respondent's receipt of a request for due process;**
 - (ii) will include a representative of the Hondo Valley Public School District who has decision-making authority on behalf of that agency;**
 - (iii) will not include an attorney of the Hondo Valley Public School District unless the parent is accompanied by an attorney; and**
 - (iv) will provide an opportunity for the parents of the child and the Hondo Valley Public School District to discuss the disputed issue(s) and the facts that form the basis of the dispute, in order to attempt to resolve the dispute;**
 - (v) if the parties desire to have their discussions in the resolution session remain confidential, they may agree in writing to maintain the confidentiality of all discussions and that such discussions can not later be used as evidence in the due process hearing or any other proceeding; and**
 - (vi) if an agreement is reached following a resolution session, the parties shall execute a legally binding agreement that is signed by both the parent and a representative of the agency who has the authority to bind that agency, and which is enforceable in any state court of competent jurisdiction or in a district court of the United States; if the parties execute an agreement pursuant to a resolution session, a party may void this agreement within three business days of the agreement's execution; further, if the resolution session participants reach agreement on any IEP-related matters, the binding agreement must state that the Hondo Valley Public School District 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.**
- (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 must (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 SEB, unless, upon joint request by the parties, an extension is granted by the hearing officer. Each session in the FIEP or mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the hearing. The requirements for mediation, as set forth at Subparagraph (c) of Paragraph (3) of Subsection H of 6.31.2.13 NMAC, apply to mediation in this context, as well.
- (c) Applicable timelines.**
- (i) If the parties agree to convene a resolution session, the applicable timelines for the due process hearing shall be suspended for up to 30 days from the date the due process request was received by the SEB (except in the case of an expedited hearing), and the meeting shall proceed according to the requirements set forth under Subparagraph (a) of Paragraph (8) of Subsection I of 6.31.2.13 NMAC above.**
 - (ii) If the parties agree to convene a FIEP meeting or mediation, the Hondo Valley Public School District will contact the person or entity identified by the SEB to arrange for mediation or a FIEP meeting, as appropriate. Except for expedited hearings, the parties to the FIEP meeting or mediation process may jointly request that the hearing officer grant a specific**

extension of time for the prehearing conference and for completion of the hearing beyond the 20 school day period for issuance of the hearing decision. The hearing officer may grant such extensions in a regular case but may not exceed the 45 day deadline in an expedited case.

- (iii) If the parties agree to waive all preliminary meeting options and proceed with the due process hearing, the hearing officer shall send written notification to the parties that the applicable timelines for the due process hearing procedure shall commence as of the date of that notice. The hearing officer shall thereafter proceed with the prehearing procedures, as set forth under Paragraph (12) of Subsection I of 6.31.2.13 NMAC.
- (d) **Resolution.** Upon resolution of the dispute, the party who requested the due process hearing shall transmit a written notice informing the hearing officer and the SEB that the matter has been resolved and withdrawing the request for hearing. The hearing officer shall transmit an appropriate order of dismissal to the parties and the SEB.
- (e) **Hearing.** If the parties convene a resolution session and they have not resolved the disputed issue(s) within 30 days of the receipt of the due process request by the SEB in a non-expedited case, the Hondo Valley Public School District will (and the parents may) notify the hearing officer in writing within one business day of reaching this outcome. The hearing officer shall then promptly notify the parties in writing that the due process hearing shall proceed and all applicable timelines for a hearing under this part shall commence as of the date of such notice.
- (f) Further adjustments to the timelines may be made as provided in 34 CFR Sec. 300.510(b) and (c).
- (g) The resolution of disputes by mutual agreement is strongly encouraged and nothing in these rules shall be interpreted as prohibiting the parties from engaging in settlement discussions at any time before, during or after an ADR meeting, a due process hearing or a civil action.

“We do not believe it is necessary to require an LEA to notify the parent within five days of receiving a due process complaint about the LEA’s intention to convene or waive the resolution process. An LEA that wishes to engage in a resolution meeting will need to contact the parent to arrange the meeting soon after the due process complaint is received in order to ensure that the resolution meeting is held within 15 days.” 71 Fed. Reg. 46700 (August 14, 2006).

“We urge LEAs and parents to act cooperatively in determining who will attend the resolution meeting, as a resolution meeting is unlikely to result in any resolution of the dispute if the parties cannot even agree on who should attend. The parties should keep in mind that the resolution process offers a valuable chance to resolve disputes before expending what can be considerable time and money in due process hearings. We decline to regulate further on how to resolve disputes about who should attend these meetings in the absence of information about specific problems in the process.” 71 Fed. Reg. 46701 (August 14, 2006).

“There is no authority in the Act for an LEA to permit a court-appointed advocate to attend the resolution meeting in place of a parent, unless the public agency has appointed that individual as a surrogate parent in accordance with § 300.519, or the agency determines that the person is a person acting in the place of the biological or adoptive parent of the child in accordance with § 300.30(a)(4).” 71 Fed. Reg. 46701 (August 14, 2006).

“In situations where an LEA convenes a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint, and the parent fails to participate in the resolution meeting, the LEA would need to continue to make diligent efforts throughout the remainder of the 30-day resolution period to convince the parent to participate in the resolution meeting. If, however, at the end of the 30-day resolution period, the LEA is still unable to convince the parent to participate in the resolution meeting, we believe that an LEA should be able to seek intervention by a hearing officer to dismiss the complaint.” 71 Fed. Reg. 46702 (August 14, 2006).

The Hondo Valley Public School District will provide the parent a “Parent and Child Rights in Special Education Procedural Safeguards Notice” at least one time per year and upon receipt of a request for a due process hearing filed by a parent. The “Parent and Child Rights in Special Education Procedural Safeguards Notice” informs parents of the requirement of a resolution session. The Hondo Valley Public School District will contact the parent

to arrange a resolution session within the required timeframe, unless the parties agree in writing to waive the resolution session. The Hondo Valley Public School District and the parent may also agree to participate in a FIEP meeting or mediation instead of a resolution session. The Hondo Valley Public School District may seek dismissal of a due process hearing complaint if the parent refuses to participate in a resolution session and the Hondo Valley Public School District has not agreed to waive the resolution session.

H. Summary Due Process Hearing Procedures (Alternative to Due Process Hearing)

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...

I. Due Process Hearings.

...

- (15) Summary due process hearing. These summary due process hearing procedures are designed to afford parents and public agencies an alternative, voluntary dispute resolution process that requires less time and expense than a traditional due process hearing. The use of summary due process hearing procedures shall not alter the requirement that the Hondo Valley Public School District convene a resolution session within 15 days of its receipt of the request for the hearing, unless the parties agree to waive that option in writing or choose to use a FIEP meeting or mediation instead.
- (a) Any party requesting a due process hearing may request that the dispute be assigned to a summary due process hearing track. A request for a summary due process hearing may be submitted simultaneously with the request for due process hearing, at the prehearing scheduling conference, or at a later time by agreement of all parties.
 - (b) Any party opposing a request for summary due process shall state its objection within 5 days of the date of receipt of the request for a summary due process hearing. The summary due process hearing option is voluntary. If a party timely states its opposition to this option, the matter will be placed on a traditional due process hearing track.
 - (c) 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.
 - (d) On or before 5 days before the summary due process hearing, each party shall produce to the opposing party and to the hearing officer a copy of all documents that the party seeks to introduce into evidence at the hearing and identify all witnesses that the party intends to call to testify at the hearing.
 - (e) Each party shall have one half (1/2) day to present its case. In the event that extensive cross examination, arguments or other factors impede a party's ability to complete its case in one half day, the hearing officer shall have discretion to extend the time for the hearing, as needed.
 - (f) The hearing officer shall issue a decision to the parties within 7 days of the completion of the summary due process hearing.
 - (g) Except as modified herein, the procedural rules and procedures applicable to due process hearings as stated in Subsection I of 6.31.2.13 NMAC shall also apply to summary due process hearings.

The summary due process hearing option is voluntary.

I. Prehearing Procedures

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...

I. Due Process Hearings.

...

- (12) 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 Hondo Valley Public School District 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 (16) and (17) of Subsection I of 6.31.2.13 NMAC below, 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 must be exchanged; the hearing officer shall further inform the parties that, not less than 5 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 (27) of Subsection I of 6.31.2.13 NMAC below;
 - (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 Hondo Valley Public School District is responsible for arranging for the verbatim record of the hearing; and
 - (m) the hearing officer shall transmit to the parties and the SEB 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.
- (13) Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.
- (14) 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.

“We do not believe it is necessary to regulate further on the other pre-hearing issues and decisions mentioned by the commenters because we believe that States should have considerable latitude in determining appropriate procedural rules for due process hearings as long as they are not inconsistent with the basic elements of due process hearings and rights of the parties set out in the Act and these regulations. The specific application of those procedures to particular cases generally should be left to the discretion of hearing officers who have the knowledge and ability to conduct hearings in accordance with standard legal practice. There is nothing in the Act or these regulations that would prohibit a hearing officer from making determinations on procedural matters not addressed in the Act so long as such determinations are made in a manner that is consistent with a parent’s or a public agency’s right to a timely due process hearing.” 71 Fed. Reg. 46704 (August 14, 2006).

The Hondo Valley Public School District will participate in pre-hearing conferences and will comply with scheduling and other pre-hearing orders of the hearing officer.

J. Due Process Hearing Procedures

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...

I. Due Process Hearings.

...

(16) Any party to a hearing has the right to:

- (a) be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- (b) present evidence and confront, cross-examine and compel the attendance of witnesses;
- (c) prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before a regular hearing or, if the hearing officer so directs in the prehearing summary, at least two business days before an expedited hearing;
- (d) obtain a written, or, at the option of the parents, electronic verbatim record of the hearing; and
- (e) obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(17) Parents involved in hearings also have the right to:

- (a) have the child who is the subject of the hearing present; and
- (b) open the hearing to the public.

(18) The record of the hearing and the findings of fact and decisions described above must be provided at no cost to the parents.

(19) Limitations on the hearing.

- (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.

...

(20) Rules for expedited hearings. The rules in Paragraphs (4) through (19) of Subsection I of 6.31.2.13 NMAC shall apply to expedited due process hearings with the following exceptions.

- (a) The SEB of the department and the hearing officer shall ensure that a hearing is held within 20 school days of the date the request for hearing is received by the SEB, and a written decision is reached within 10 school days of the completion of the hearing, without exceptions or extensions, and thereafter mailed to the parties.
- (b) The hearing officer shall seek to hold the hearing and issue a decision as soon as is reasonably practicable within the time limit described in Subparagraph (a) of Paragraph (20) of Subsection I of 6.31.2.13 NMAC above, and shall expedite the proceedings with due regard for any progress in a resolution session, FIEP meeting or mediation, the parties' need for adequate time to prepare and the hearing officer's need for time to review the evidence and prepare a decision after the hearing.
- (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 (20) of Subsection I of 6.31.2.13 NMAC above. The timeline for resolution sessions provided in 34 CFR Sec. 300.532(c)(3) shall be observed.
- (d) Subparagraph (a) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC relating to sufficiency of the request for the expedited due process hearing does not apply to expedited hearings.**
- (e) The hearing officer may shorten the 15 day timeline for providing notice of insufficiency of a request for an expedited due process hearing to 10 school days.

- (f) The hearing officer may shorten the timeline for the exchange of proposed stipulated facts between the parties as he deems necessary and appropriate given the circumstances of a particular case. The hearing officer may also shorten the timeline for providing agreed-upon stipulated facts to the hearing officer to two school days before the hearing.
- (g) Decisions in expedited due process hearings are final, unless a party brings a civil action as provided in Paragraph (25) of Subsection I of 6.31.2.13 NMAC below.

The Hondo Valley Public School District will provide the parent a "Parent and Child Rights in Special Education Procedural Safeguards Notice" at least one time per year and upon receipt of a request for a due process hearing filed by a parent. The "Parent and Child Rights in Special Education Procedural Safeguards Notice" informs parents of the basics of a due process hearing.

K. Decision of the Hearing Officer

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

... I. Due Process Hearings.

**...
(11) 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.

**...
(21) Decision of the hearing officer.**

- (a) In general. Subject to Subparagraph (b) of Paragraph (21) of Subsection I of 6.31.2.13 NMAC below, a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (FAPE).
- (b) Procedural issues. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies:
 - (i) impeded the child's right to a FAPE;
 - (ii) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student; or
 - (iii) caused a deprivation of educational benefits.
- (c) Rule of construction. Nothing in this paragraph shall be construed to preclude a hearing officer from ordering the Hondo Valley Public School District to comply with procedural requirements under this section.

**...
(23) Modification of final decision.** Clerical mistakes in final decisions, orders or parts of the record and errors therein arising from oversight or omission may be corrected by the hearing officer at any time on the hearing officer's own initiative or on the request of any party and after such notice, if any, as the hearing officer orders. Such mistakes may be corrected after a civil action has been brought pursuant to Paragraph (25) of Subsection I of 6.31.2.13 NMAC below only with leave of the state or federal district court presiding over the civil action.

The Hondo Valley Public School District will comply with a final decision of a hearing officer, unless otherwise ordered by a court.

L. Children Enrolled by Their Parents in Private Schools When FAPE Is at Issue

Authority: 34 CFR §300.148 Placement of children by parents when FAPE is at issue.

- (a) General.** This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§300.131 through 300.144.
- (b) Disagreements about FAPE.** Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§300.504 through 300.520.
- (c) Reimbursement for private school placement.** If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.
- (d) Limitation on reimbursement.** The cost of reimbursement described in paragraph (c) of this section may be reduced or denied—
 - (1) If—**
 - (i)** At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
 - (ii)** At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;
 - (2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in § 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or**
 - (3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.**
- (e) Exception.** Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement—
 - (1) Must not be reduced or denied for failure to provide the notice if—**
 - (i)** The school prevented the parents from providing the notice;
 - (ii)** The parents had not received notice, pursuant to § 300.504, of the notice requirement in paragraph (d)(1) of this section; or
 - (iii)** Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and
 - (2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if—**
 - (i)** The parents are not literate or cannot write in English; or
 - (ii)** Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.

The Hondo Valley Public School District will provide the parent a “Parent and Child Rights in Special Education Procedural Safeguards Notice” at least one time per year and upon receipt of a request for a due process hearing filed by a parent. The “Parent and Child Rights in Special Education Procedural Safeguards Notice” informs parents of the basics of a due process hearing.

M. Expenses of the Due Process Hearing and Attorney's Fees

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...
I. Due Process Hearings.

...
(24) Expenses of the hearing. The Hondo Valley Public School District 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 SEB, 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. Each party to a hearing shall be responsible for its own legal fees or other costs, subject to Paragraph (26) of Subsection I of 6.31.2.13 NMAC below.

...
(26) Attorney fees.

- (a) In any action or proceeding brought under 20 USC Sec. 1415, the court, in its discretion and subject to the further provisions of 20 USC Sec. 1415(i) and 34 CFR Sec. 300.517, may award reasonable attorney fees as part of the costs to:**
- (i) the parent of a child with a disability who is a prevailing party;**
 - (ii) a prevailing public agency against the attorney of a parent who files a request for due process or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or**
 - (iii) a prevailing public agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.**
- (b) Any action for attorney fees must be filed within 30 days of the receipt of the last administrative decision.**
- (c) Opportunity to resolve due process complaints.** A meeting conducted pursuant to Subparagraph (a) of Paragraph (8) of Subsection I of 6.31.2.13 NMAC shall not be considered:
- (i) a meeting convened as a result of an administrative hearing or judicial action; or**
 - (ii) an administrative hearing or judicial action for purposes of this paragraph.**
- (d) Hearing officers are not authorized to award attorney fees.**
- (e) Attorney fees are not recoverable for actions or proceedings involving services to gifted children or other claims based solely on state law.**

The Hondo Valley Public School District will pay expenses of a hearing as required to do so. The Hondo Valley Public School District will provide the parent a "Parent and Child Rights in Special Education Procedural Safeguards Notice" at least one time per year and upon receipt of a request for a due process hearing filed by a parent. The "Parent and Child Rights in Special Education Procedural Safeguards Notice" informs parents generally of the circumstances under which a prevailing parent may recover attorney's fees from a school district and a prevailing school district may recover attorney's fees from the parent.

XIII. CIVIL ACTION

Authority: NMAC 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

...
I. Due Process Hearings.

...
(25) Civil action.

- (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 must be filed within 30 days of the receipt of the hearing officer's decision by the appealing party.**
- (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.**

The Hondo Valley Public School District will provide the parent a “Parent and Child Rights in Special Education Procedural Safeguards Notice” at least one time per year and upon receipt of a request for a due process hearing filed by a parent. The “Parent and Child Rights in Special Education Procedural Safeguards Notice” informs parents of the timelines for appealing the decision of a hearing officer.