

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

**Chapter 3. – FULL AND INDIVIDUAL EVALUATION**

Chapter 3. Adopted Pursuant to Board Policy: Special Education  
Effective Date of Procedures: May 19, 2008

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

*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provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary...."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 NMPED provides guidance to local educational agencies. To the extent that the NMPED'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 NMPED.*

### I. TIMELINES

#### A. Timeline for Initial Evaluations

**Authority: 34 CFR §300.301 Initial evaluations.**

(a) **General.** The Hondo Valley Public School District will conduct a full and individual initial evaluation, in accordance with §§300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

...

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

- (1) (i) Must be conducted within 60 days of receiving parental consent for the evaluation; or
- (ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and

(2) Must consist of procedures--

- (i) To determine if the child is a child with a disability under §300.8; and
- (ii) To determine the educational needs of the child.

(d) **Exception.** The timeframe described in paragraph (c)(1) of this section shall not apply to Hondo Valley Public School District if--

- (1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
- (2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under §300.8.

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

**Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS**

...

**D. Evaluations and reevaluations**

(1) **Initial evaluations**

(a) The Hondo Valley Public School District will conduct a full and individual initial evaluation, at no cost to the parent, and in compliance with requirements of 34 CFR Secs. 300.305 and 300.306 and other department rules and standards before the initial provision of special education and related services to a child with a disability.

...

(c) **Procedures for initial evaluation.**

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

- (ii) **The Hondo Valley Public School District will follow evaluation procedures in compliance with applicable requirements of 34 CFR Sec. 300.304 and other department rules and standards to determine: (1) if the child is a child with a disability under 34 CFR Sec. 300.8; and (2) if the child requires special education and related services to benefit from their education program.**
- (iii) **The Hondo Valley Public School District will maintain a record of the receipt, processing and disposition of any referral for an individualized evaluation. All appropriate evaluation data, including complete SAT file documentation and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the multi-disciplinary team or IEP team.**
- (d) **Exception to the 60 day time frame. The requirements of this subsection do not apply:**
  - (i) **if the parent of a child repeatedly fails or refuses to produce the child for the evaluation; or**
  - (ii) **if the child enrolls in a school of another LEA after the 60 day time frame in this subsection has begun, and prior to a determination by the child’s previous public agency as to whether the child is a child with a disability under 34 CFR Sec. 300.8.**
- (e) **The exception to the 60 day time frame in Item (ii) of Subparagraph (d) of Paragraph (1) of Subsection D of 6.31.2.10 NMAC applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.**
- (f) **The multi-disciplinary team including the parent and child, if appropriate, must meet to determine if the child is a child with a disability and requires an IEP upon completion of the initial evaluation.**

“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).

“If a parent who revoked consent for special education and related services later requests that his or her child be re-enrolled in special education, an LEA must treat this request as a request for an initial evaluation under § 300.301 (rather than a reevaluation under § 300.303).” 73 Fed. 73015 (December 1, 2008).

“The 60-day timeframe begins when the public agency receives the consent for evaluation.” 71 Fed. Reg. 46636 (August 14, 2006).

“We believe it is important that it is understood that the 60-day or State-established timeframe does not apply when a child transfers from one school to another school in the same public agency. When a child transfers from one school to another school in the same public agency, we expect that an initial evaluation will be conducted within 60 days of receiving parental consent for the evaluation, or within the State-established timeframe.” 71 Fed. Reg. 46638 (August 14, 2006).

Regarding the exception for transfer students: “We do not believe it is necessary to define the phrase ‘sufficient progress’ because the meaning will vary depending on the specific circumstances in each case. As one commenter noted, there may be legitimate reasons for not completing the evaluation within the 60-day timeframe, such as differences in assessment instruments used in the previous and new public agencies, and the length of time between a child leaving one school and enrolling in the next school. Therefore, we believe that whether a new public agency is making sufficient progress to ensure prompt completion of an evaluation is best left to the discretion of State and local officials and parents to determine.” 71 Fed. Reg. 46638 (August 14, 2006).

“Before determining that a child has a specific learning disability, §300.309(b) requires that the evaluation team consider data that demonstrate that prior to, or as part of the referral process, the child received appropriate instruction in regular education settings and that data-based documentation of repeated assessments of achievement during instruction was provided to the child’s parents. If the child has not made adequate progress under these conditions after an appropriate period of time, the final regulations further require that the public agency refer the child for an evaluation to determine if special education and related services are needed. Under the final regulations, the child’s parents and the team of qualified professionals, described in §300.306(a)(1), are permitted to extend the

evaluation timelines described in §§ 300.301 through 300.303 by mutual written agreement.” 71 Fed. Reg. 46750 (August 14, 2006). *(For more information, see Chapter 1 Child Find.)*

*The Hondo Valley Public School District will comply with the 60-day timeline for initial evaluations, and will report its compliance through the Student Teacher Accountability Reporting System (STARS) on the Special Education Events Template.*

*In the event of a delay, the Hondo Valley Public School District will report the range of days beyond the timeline when the evaluation was completed and any reasons for delays in STARS on the Special Education Events Template, "Non Compliance Reasons." The Hondo Valley Public School District will use valid STARS Code Sets available on the NMPED website at <http://www.ped.state.nm.us/stars/documentation.html>. The Hondo Valley Public School District will monitor and take appropriate action to address noncompliance.*

*The exceptions to the 60-day timeline (if the parent of a child repeatedly fails or refuses to produce the child for evaluation; or if the child enrolls in a school of the Hondo Valley Public School District after the 60-day timeline begins and prior to a determination by the child's previous LEA as to whether the child is a child with a disability) are recorded in STARS, on the Special Education Events Template, "Noncompliance Reasons."*

## **B. Timeline for Reevaluations**

### **Authority: 34 CFR §300.303 Reevaluations.**

- (a) **General.** The Hondo Valley Public School District will ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311—
- (1) If the Hondo Valley Public School District determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
  - (2) If the child's parent or teacher requests a reevaluation.
- (b) **Limitation.** A reevaluation conducted under paragraph (a) of this section--
- (1) May occur not more than once a year, unless the parent and the Hondo Valley Public School District agree otherwise; and
  - (2) Must occur at least once every 3 years, unless the parent and the Hondo Valley Public School District agree that a reevaluation is unnecessary.

### **Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS**

...  
D.

...

#### (2) Reevaluations

- (a) Each LEA must ensure that a reevaluation of each child is conducted at least once every three years, unless the parent and the Hondo Valley Public School District agree that a reevaluation is unnecessary, and is in compliance with the requirements of 34 CFR Secs. 300.303-300.311, and any other applicable department rules and standards.
- (b) Reevaluations may be conducted more often if:
  - (i) the LEA determines the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
  - (ii) the child's parent or teacher requests a reevaluation.
- (c) Reevaluations may not occur more than once a year, unless the parent and Hondo Valley Public School District agree otherwise.

“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.” 71 Fed. Reg. 46640 (August 14, 2006).

“[A] reevaluation cannot be conditioned on the parent providing a reason for requesting a reevaluation.” 71 Fed. Reg. 46640 (August 14, 2006).

“If a parent requests a reevaluation and the public agency disagrees that a reevaluation is needed, the public agency must provide prior written notice to the parent, consistent with § 300.503, that explains, among other things, why the agency refuses to conduct the reevaluation and the parent’s right to contest the agency’s decision through mediation or a due process hearing.” 71 Fed. Reg. 46640 (August 14, 2006).

“We believe that in reaching an agreement that a reevaluation is unnecessary, as provided for in § 300.303(b), the parent and public agency will discuss the advantages and disadvantages of conducting a reevaluation, as well as what effect a reevaluation might have on the child’s educational program. Therefore, we do not agree with the commenter that additional procedural safeguards are necessary to ensure that parents who agree that a reevaluation is unnecessary are aware of the implications of their decision.” 71 Fed. Reg. 46641 (August 14, 2006).

“The review of existing data is part of the reevaluation process. Section 300.305(a), consistent with section 614(c)(1) of the Act, is clear that, as part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, must review existing evaluation data, and on the basis of that review, and input from the child’s parents, identify what additional data, if any, are needed to determine whether the child continues to have a disability, and the educational needs of the child. Therefore, the opportunity for a parent and the public agency to agree that a reevaluation is unnecessary occurs before a reevaluation begins.” 71 Fed. Reg. 46641 (August 14, 2006).

*The Hondo Valley Public School District will conduct timely reevaluations as required by the IDEA. The Hondo Valley Public School District will document agreements that a reevaluation is unnecessary.*

**Authority: 34 CFR §300.305 Additional requirements for evaluations and reevaluations.**

**(e) Evaluations before change in placement.**

- (1) Except as provided in paragraph (e)(2) of this section, the Hondo Valley Public School District will evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.
- (2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child’s eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.
- (3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, the Hondo Valley Public School District will provide the child with a summary of the child’s academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child’s postsecondary goals.

**Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:**

...

**G. Graduation planning and post-secondary transitions**

...

- (5) For a child whose eligibility terminates due to graduation from secondary school with a regular diploma or due to reaching his twenty-second birthday, the Hondo Valley Public School District will provide the child with a summary of the child’s academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child’s post-secondary goals pursuant to 34 CFR Sec. 300.305(e)(3).

“We do not believe that the regulations should require public agencies to conduct evaluations for children to meet the entrance or eligibility requirements of another institution or agency because to do so would impose a significant cost on public agencies that is not required by the Act. While the requirements for secondary transition are intended to help parents and schools assist children with disabilities transition beyond high school, section 614(c)(5) in the Act does not require a public agency to assess a child with a disability to determine the child’s eligibility to be considered a child with a disability in another agency, such as a vocational rehabilitation program, or a college or

other postsecondary setting. The Act also does not require LEAs to provide the postsecondary services that may be included in the summary of the child's academic achievement and functional performance. We believe it would impose costs on public agencies not contemplated by the Act to include such requirements in the regulations." 71 Fed. Reg. 46644 (August 14, 2006).

*The Hondo Valley Public School District will prepare a Summary of Performance as required by the IDEA for each child with a disability prior to the child's eligibility terminating due to graduation with a regular high school diploma or due to exceeding age eligibility for FAPE. The Summary of Performance takes the place of a reevaluation.*

*A template Summary of Performance was developed by the National Transition Documentation Summit © 2005 based on the initial work of Stan Shaw, Carol Kochhar-Bryant, Margo Izzo, Ken Benedict, and David Parker. It reflects the contributions and suggestions of numerous stakeholders in professional organizations, school districts and universities, particularly the Connecticut Interagency Transition Task Force. It is available to be freely copied or adapted for educational purposes. The model template has been developed in collaboration with the Council for Exceptional Children's Division on Career Development and Transition (DCDT), Division on Learning Disabilities (DLD), the Council on Educational Diagnostic Services (CEDS), Learning Disability Association (LDA), the Higher Education Consortium for Special Education (HECSE), and the Council for Learning Disabilities (CLD). It is located at: [http://www.taalliance.org/conference/materials/Thursday\\_Carol\\_Pam.doc](http://www.taalliance.org/conference/materials/Thursday_Carol_Pam.doc).*

## **II. REVIEW OF EXISTING EVALUATION DATA (REED)**

**Authority: 34 CFR §300.305 Additional requirements for evaluations and reevaluations.**

- (a) **Review of existing evaluation data.** As part of an **initial** evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must--
- (1) Review existing evaluation data on the child, including—
    - (i) Evaluations and information provided by the parents of the child;
    - (ii) Current classroom-based local or State assessments, and classroom-based observations; and
    - (iii) Observations by teachers and related services providers; and
  - (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—
    - (i) (A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or
    - (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;
    - (ii) The present levels of academic achievement and related developmental needs of the child;
    - (iii) (A) Whether the child needs special education and related services; or
    - (B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and
    - (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.
- (b) **Conduct of review.** The group described in paragraph (a) of this section may conduct its review without a meeting.
- (c) **Source of data.** The Hondo Valley Public School District will administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.
- (d) **Requirements if additional data are not needed.**
- (1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the Hondo Valley Public School District will notify the child's parents of—
    - (i) That determination and the reasons for the determination; and
    - (ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.

**(2) The Hondo Valley Public School District is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.**

**Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS**

...  
**D. Evaluations and reevaluations**

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

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

“The phrase, ‘qualified professionals, as appropriate’ is used to provide flexibility for public agencies to include other professionals who may not be a part of the child’s IEP Team in the group that determines if additional data are needed to make an eligibility determination and determine the child’s educational needs. We believe that public agencies should have flexibility in determining how to define ‘qualified professionals’ and we do not believe a definition should be included in the regulations.” 71 Fed. Reg. 46644 (August 14, 2006).

“If a parent who revoked consent for special education and related services later requests that his or her child be re-enrolled in special education, an LEA must treat this request as a request for an initial evaluation under § 300.301 (rather than a reevaluation under § 300.303). However, depending on the data available, a new evaluation may not always be required. An initial evaluation, under § 300.305, requires a review of existing evaluation data that includes classroom based, local, or State assessments, and classroom based observations by teachers and related services providers. On the basis of that review and input from the child’s parents, the IEP Team and other qualified professionals must identify what additional data, if any, are needed to determine whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child. Therefore, a public agency may not always have to expend resources on a ‘new’ initial evaluation.” 73 Fed. 73015 (December 1, 2008).

“Based on the review of existing evaluation data, and input from the child's parents, the IEP Team and other qualified professionals, as appropriate, must determine whether additional data are needed to determine whether the child continues to be a child with a disability, and the educational needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child continues to need special education; and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum. 34 CFR §300.305(a)(2). If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of: (i) that determination and the reasons for the determination; and (ii) the right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs. 34 CFR §300.305(d)(1). Under these circumstances, the public agency is not required to conduct an assessment unless requested to do so by the child's parents. 34 CFR §300.305(d)(2). If the parents do not request an assessment, then the review of existing data may constitute the reevaluation.” OSEP Letter to Anonymous (Feb. 6, 2007).

“[T]he review of existing data is part of the reevaluation process... The reevaluation commences with the review of existing data.... [T]he public agency is not required to obtain parental consent before reviewing existing data as part of an evaluation or a reevaluation.” OSEP Letter to Anonymous (Feb. 6, 2007).

*The Hondo Valley Public School District will conduct a review of existing evaluation data (REED) prior to an initial evaluation, if appropriate, and prior to any reevaluation. The REED determines the scope of the evaluation.*

### **III. EVALUATION PROCEDURES**

**Authority: 34 CFR §300.15 Evaluation.** Evaluation means procedures used in accordance with §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

**Authority: 34 CFR §300.8 Child with a disability.**

**(a) General.**

- (1) **Child with a disability** means a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.
- (2) (i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.  
(ii) If, consistent with §300.38(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

**Authority: 34 CFR §300.34 Related services.**

- (a) **General.** **Related services** means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also includes school health services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the IEP of the child, social work services in schools, and parent counseling and training.

**Authority: 34 CFR §300.122 Evaluation.**

Children with disabilities must be evaluated in accordance with §§300.300 through 300.311 of subpart D of this part.

**Authority: 34 CFR §300.304 Evaluation procedures.**

...

- (b) **Conduct of evaluation.** In conducting the evaluation, the Hondo Valley Public School District will --
- (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining--
    - (i) Whether the child is a child with a disability under §300.8; and
    - (ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
  - (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
  - (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- (c) **Other evaluation procedures.** The Hondo Valley Public School District will ensure that--
- (1) Assessments and other evaluation materials used to assess a child under this part--
    - (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

- (ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
  - (iii) Are used for the purposes for which the assessments or measures are valid and reliable;
  - (iv) Are administered by trained and knowledgeable personnel; and
  - (v) Are administered in accordance with any instructions provided by the producer of the assessments.
- (2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
  - (3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
  - (4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
  - (5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same academic year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §300.301 (d)(2) and (e), to ensure prompt completion of full evaluations.
  - (6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
  - (7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

**Authority: NMAC 6.31.2.7 DEFINITIONS:**

...

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

...

- (2) "Child with a disability" means a child who meets all requirements of 34 CFR Sec. 300.8 and who:
  - (a) is aged 3 through 21 or will turn 3 at any time during the school year;
  - (b) has been evaluated in accordance with 34 CFR Secs. 300.304-300.311 and any additional requirements of these or other public education department rules and standards and as having one or more of the disabilities specified in 34 CFR Sec. 300.8 including mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, orthopedic impairment, autism, traumatic brain injury, and other health impairment, a specific learning disability, deaf blindness, or being developmentally delayed as defined in paragraph (4) below; and who has not received a high school diploma; and
  - (c) at the discretion of each local educational agency and subject to the additional requirements of **Paragraph 2 of Subsection F of 6.31.2.10 NMAC**, the term "child with a disability" may include a child aged 3 through 9 who is evaluated as being developmentally delayed and who, because of that condition, needs special education and related services.

**Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN:**

...

**F. Applicability of rules to gifted children.**

...

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

**Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS**

...

**D. Evaluations and reevaluations**

...

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

...

- (iv) The Hondo Valley Public School District will use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child, including information provided by the child’s family that may assist in determining if the child is a child with a disability, the content of the child’s IEP including information related to assisting the child to be involved and progress in the general education curriculum or for a preschool child to participate in appropriate activities.**
- (e) The Hondo Valley Public School District will maintain a record of the receipt, processing, and disposition of any referral for an individualized reevaluation. Reevaluation shall be completed on or before the three year anniversary date. All appropriate reevaluation data and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the multi-disciplinary team or IEP team.**

**Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS**

...

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

- (1) The Hondo Valley Public School District will ensure that tests and other evaluation materials used to assess children are selected, provided and administered so as not to be discriminatory on a racial or cultural basis and are provided and administered in the child’s native language or other mode of communication, such as American sign language, and in the form most likely to yield accurate information, on what the child knows and can do academically, developmentally and functionally, unless it is clearly not feasible to select, provide or administer pursuant to 34 CFR Sec. 300.304(c)(1).**
- (2) The Hondo Valley Public School District will ensure that selected assessments and measures are valid and reliable and are administered in accordance with instructions provided by the assessment producer and are administered by trained and knowledgeable personnel.**
- (3) The Hondo Valley Public School District will consider information about a child’s language proficiency in determining how to conduct the evaluation of the child to prevent misidentification. A child may not be determined to be a child with a disability if the determinant factor for that eligibility determination is limited English proficiency. Comparing academic achievement results with grade level peers in the Hondo Valley Public School District with similar cultural and linguistic backgrounds should guide this determination process and ensure that the child is exhibiting the characteristics of a disability and not merely language difference in accordance with 34 CFR Sec. 300.306(b)(1).**
- (4) The Hondo Valley Public School District will ensure that the child is assessed in all areas related to the suspected disability.**
- (5) Policies for Hondo Valley Public School District selection of assessment instruments include:**
  - (a) assessment and evaluation materials that are tailored to assess specific areas of educational need; and**
  - (b) assessments that are selected ensure that results accurately reflect the child’s aptitude or achievement level.**
- (6) The Hondo Valley Public School District will devote particular attention to the foregoing requirements in light of the state’s cultural and linguistic diversity. Persons assessing culturally or linguistically diverse children shall consult appropriate professional standards to ensure that their evaluations are not discriminatory and should include appropriate references to such standards and concerns in their written reports.**

“Section 300.304(c)(4) requires the public agency to ensure that the child is assessed in all areas related to the suspected disability. This could include, if appropriate, health, vision, hearing, social and emotional status, general

intelligence, academic performance, communicative status, and motor abilities. This is not an exhaustive list of areas that must be assessed. Decisions regarding the areas to be assessed are determined by the suspected needs of the child. If a child's behavior or physical status is of concern, evaluations addressing these areas must be conducted." 71 Fed. Reg. 46643 (August 14, 2006).

"As stated by several commenters, it is standard test administration practice to include in the evaluation report the extent to which an assessment varied from standard conditions, including the language or other mode of communication that was used in assessing a child. It is, therefore, unnecessary to include this requirement in the regulations." 71 Fed. Reg. 46643 (August 14, 2006).

*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 child for purposes of providing and administering assessments and other evaluation materials in the child's native language or other mode of communication and in the form most likely to yield accurate information.*

The NMPED has issued a guidance document titled, "New Mexico Technical Evaluation and Assistance Manual: Determining Eligibility for IDEA Part B Special Education Services" ("NM TEAM") (April 2006), available through the NMPED website: [http://www.ped.state.nm.us/seo/technical\\_assistance/NMTeamManual62907.pdf](http://www.ped.state.nm.us/seo/technical_assistance/NMTeamManual62907.pdf). The NM TEAM presents a sustained effort to standardize evaluation and assessment procedures and eligibility criteria in every IDEA disability category across the state. LEAs are expected to attend to the recommendations that it establishes. In the specific learning disability category, these expectations set official NMPED eligibility policy, which LEAs are now required to adhere to under the Final Regulations of the IDEA 2004. 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, "New Mexico Technical Evaluation and Assistance Manual: Determining Eligibility for IDEA Part B Special Education Services" ("NM TEAM") (April 2006), available through the NMPED website: <http://www.ped.state.nm.us/SEB/technical/index.html>. The NM TEAM presents a sustained effort to standardize evaluation and assessment procedures and eligibility criteria in every IDEA disability category across the state. LEAs are expected to attend to the recommendations that it establishes. The Hondo Valley Public Schools, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

*In the specific learning disability category, NM TEAM expectations set official NMPED eligibility policy, which LEAs are now required to adhere to under the Final Regulations of the IDEA 2004. The Hondo Valley Public Schools will ensure that the group complies with the requirements of NM TEAM and the evaluation procedures set out in Chapter 3 of the Hondo Valley Public Schools Procedures for the Provision of Special Education Services when evaluating a child for a possible learning disability. The evaluation will be at no cost to the parent. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a suspected learning disability using the severe discrepancy model, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM, pp. 120-123, will be considered and followed as appropriate given the characteristics and needs of the individual child. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a suspected learning disability using the dual discrepancy model, pending revision of the 2007n NM Team, pp. 114-12 of NM Team will be replaced with the following NMPED guidelines: SLD Worksheet Updated; Student Assistance Team & Three Tier Model of Student Intervention; Short Cycle Assessment Data Memorandum; Short Cycle Dual Discrepancy Model Assessment Scores, Fall 2009. These guidelines will be considered and followed as appropriate given the characteristics and needs of the individual child. Upon completion of the evaluation, the group of qualified professionals and the parent determine whether the child is eligible for special education services under the IDEA.*

#### IV. DETERMINATION OF ELIGIBILITY – MULTIDISCIPLINARY TEAM

**Authority: 34 CFR §300.306 Determination of eligibility.**

- (a) General. Upon completion of the administration of assessments and other evaluation measures--
  - (1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and
  - (2) The Hondo Valley Public School District will provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.
- (b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part--
  - (1) If the determinant factor for that determination is--
    - (i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);
    - (ii) Lack of appropriate instruction in math; or
    - (iii) Limited English proficiency; and
  - (2) If the child does not otherwise meet the eligibility criteria under §300.8(a).
- (c) Procedures for determining eligibility and educational need.
  - (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, the Hondo Valley Public School District will--
    - (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, as well as recommendations about the child's physical condition, social or cultural background, and adaptive behavior; and
    - (ii) Ensure that information obtained from all of these sources is documented and carefully considered.
  - (2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§300.320 through 300.324.

**Authority: 20 U.S.C. §6368(3).**

The term "essential components of reading instruction" means explicit and systematic instruction in—

- (A) phonemic awareness;
- (B) phonics;
- (C) vocabulary development;
- (D) reading fluency, including oral reading skills; and
- (E) reading comprehension strategies.

**Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATION AND ELIGIBILITY DETERMINATIONS**

...

**D. Evaluations and reevaluations**

**(1) Initial evaluations.**

...

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

...

**F. Eligibility determinations**

**(1) General rules regarding eligibility determinations**

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

**specific learning disability, in compliance with the additional procedures of 34 CFR Secs. 300.307-300.311 and these or other department rules, policies and standards.**

**(b) The Hondo Valley Public School District will provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.**

“Section 300.323(c) is a longstanding requirement that a meeting be held to develop the child’s IEP within 30 days of determining that a child needs special education and related services. We decline, however, to specify the timeframe from referral for evaluation to parental consent, or the timeframe from the completion of an evaluation to the determination of eligibility, as we are not in a position to determine the maximum number of days that should apply to these periods in all circumstances.” 71 Fed. Reg. 46637 (August 14, 2006).

“[W]e believe it would be inappropriate to specify the timeframe from the completion of an evaluation to the determination of eligibility when there is no specific statutory basis to do so. The Department has long held that eligibility decisions should be made within a reasonable period of time following the completion of an evaluation.” 71 Fed. Reg. 46728 (August 14, 2006).

“The Act does not establish a timeline for providing a copy of the evaluation report or the documentation of determination of eligibility to the parents and we do not believe that a specific timeline should be included in the regulations because this is a matter that is best left to State and local discretion. It is, however, important to ensure that parents have the information they need to participate meaningfully in IEP Team meetings, which may include reviewing their child’s records. Section 300.613(a) requires a public agency to comply with a parent request to inspect and review existing education records, including an evaluation report, without unnecessary delay and before any meeting regarding an IEP, and in no case more than 45 days after the request has been made. This includes the right to a response from the public agency to reasonable requests for explanations and interpretations of records, consistent with § 300.613(b)(1). While it would be appropriate for parents to review documents related to the determination of eligibility prior to the eligibility determination, there is no requirement that eligibility be determined at an IEP Team meeting and it would not be appropriate for a public agency to provide documentation of the determination of eligibility prior to discussing a child’s eligibility for special education and related services with the parent. Section 300.306(a)(1) and section 614(b)(4)(A) of the Act require that a group of qualified professionals and the parent determine whether the child is a child with a disability. Therefore, providing documentation of the eligibility determination to a parent prior to a discussion with the parent regarding the child’s eligibility would indicate that the public agency made its determination without including the parent and possibly, qualified professionals, in the decision.” 71 Fed. Reg. 46645 (August 14, 2006).

“Whether a child has received ‘appropriate instruction’ is appropriately left to State and local officials to determine. While information regarding the quality of instruction a child received in the past may be helpful in determining whether a child is eligible for special education services, it is not essential. Schools, however, must ensure that the determinant factor in deciding that a child is a child with a disability is not a lack of appropriate instruction in reading and math.” 71 Fed. Reg. 46646 (August 14, 2006).

“The change from ‘team members’ to ‘group members’ was made in the 1999 regulations to distinguish this group from the IEP Team, because the team of qualified professionals and the parent in §300.306(a)(1) that makes the eligibility determination does not necessarily have the same members as an IEP Team. In some States, this group of professionals may have the same individuals as the IEP Team, but in other States, this is not the case.” 71 Fed. Reg. 46649 (August 14, 2006).

“The eligibility group should work toward consensus, but under §300.306, the public agency has the ultimate responsibility to determine whether the child is a child with a disability. Parents and school personnel are encouraged to work together in making the eligibility determination. If the parent disagrees with the public agency’s determination, under §300.503, the public agency must provide the parent with prior written notice and the parent’s right to seek resolution of any disagreement through an impartial due process hearing, consistent with the requirements in §300.503 and section 615(b)(3) of the Act.” 71 Fed. Reg. 46661 (August 14, 2006).

“If a public agency believes a child is no longer a child with a disability then, as required in § 300.305(e), a public agency must evaluate the child before making that determination. If the parent disagrees with the eligibility

determination, then the parent may challenge the decision using the due process procedures in section 615 of the Act.” 73 Fed. 73016 (December 1, 2008).

“Section 300.300(b)(4) allows a parent to revoke consent for the continued provision of special education and related services and does not trigger an LEA’s obligation to conduct an evaluation for a child that is receiving services before determining that a child is no longer a child with a disability. If a parent revokes consent for the continued provision of special education and related services for his or her child, the public agency is not determining that the child is no longer a child with a disability as contemplated by section 614(c)(5) of the Act and § 300.305(e). Instead, the public agency is discontinuing the provision of special education and related services pursuant to the decision of the parent and there is no obligation for the LEA to evaluate the child.” 73 Fed. 73015 (December 1, 2008).

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*In the specific learning disability category, NM TEAM expectations set official NMPED eligibility policy, which LEAs are now required to adhere to under the Final Regulations of the IDEA 2004. The \*\*\* will ensure that the group complies with the requirements of NM TEAM and the evaluation procedures set out in Chapter 3 of the \*\*\* Procedures for the Provision of Special Education Services when evaluating a child for a possible learning disability. The evaluation will be at no cost to the parent. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a suspected learning disability using the severe discrepancy model, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM, pp. 120-123, will be considered and followed as appropriate given the characteristics and needs of the individual child. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a suspected learning disability using the dual discrepancy model, pending revision of the 2007n NM Team, pp. 114-12 of NM Team will be replaced with the following NMPED guidelines: SLD Worksheet Updated; Student Assistance Team & Three Tier Model of Student Intervention; Short Cycle Assessment Data Memorandum; Short Cycle Dual Discrepancy Model Assessment Scores, Fall 2009. These guidelines will be considered and followed as appropriate given the characteristics and needs of the individual child. Upon completion of the evaluation, the group of qualified professionals and the parent determine whether the child is eligible for special education services under the IDEA.*

## **V. APPRAISAL PERSONNEL**

**Authority: 34 CFR §§300.156 Personnel qualifications.**

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

*The NMPED has issued a guidance document titled, “New Mexico Technical Evaluation and Assistance Manual: Determining Eligibility for IDEA Part B Special Education Services” (“NM TEAM”) (April 2006), available through the NMPED website: <http://www.ped.state.nm.us/SEB/technical/index.html>. The NM TEAM presents a sustained effort to standardize evaluation and assessment procedures and eligibility criteria in every IDEA disability category across the state. LEAs are expected to attend to the recommendations that it establishes. The \*\*\*, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

*In the specific learning disability category, NM TEAM expectations set official NMPED eligibility policy, which LEAs are now required to adhere to under the Final Regulations of the IDEA 2004. The \*\*\* will ensure that the group complies with the requirements of NM TEAM and the evaluation procedures set out in Chapter 3 of the \*\*\**

*Procedures for the Provision of Special Education Services when evaluating a child for a possible learning disability. The evaluation will be at no cost to the parent. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a suspected learning disability using the severe discrepancy model, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM, pp. 120-123, will be considered and followed as appropriate given the characteristics and needs of the individual child. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a suspected learning disability using the dual discrepancy model, pending revision of the 2007n NM Team, pp. 114-12 of NM Team will be replaced with the following NMPED guidelines: SLD Worksheet Updated; Student Assistance Team & Three Tier Model of Student Intervention; Short Cycle Assessment Data Memorandum; Short Cycle Dual Discrepancy Model Assessment Scores, Fall 2009. These guidelines will be considered and followed as appropriate given the characteristics and needs of the individual child. Upon completion of the evaluation, the group of qualified professionals and the parent determine whether the child is eligible for special education services under the IDEA.*

*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.*