

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

Chapter 4. - DISABILITIES – EXCEPTIONALITIES

Chapter 4. Adopted Pursuant to Board Policy: Special Education
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Chapter 4. - DISABILITIES – EXCEPTIONALITIES
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Chapter 4. - DISABILITIES – EXCEPTIONALITIES

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provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary...."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 PED.

DISABILITIES - Requirements

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.

I. AUTISM SPECTRUM DISORDER

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

...

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

- (1) (i) Autism** means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.
- (ii)** Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.
- (b)** A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

“In New Mexico, all disabilities within the three Autism Spectrum Disorder (ASD) categories [Autistic Disorder (DSM 299.0), Asperger’s Disorder (299.80), and Pervasive Developmental Disorder Not Otherwise Specified (DSM 299.80)] may be eligible for special education services under the autism category as long as the student also demonstrates a need for special education services. In New Mexico, an operational definition of ASD has been quantified using the Diagnostic Statistical Manual IV (DSM-IV).” *NM TEAM*, p. 10 (April 2007).

The Hondo Valley Public School District will ensure that a child suspected of having autism and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent. The group will comply with the evaluation procedures set out in Chapter 3 of the Hondo Valley Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having autism, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM, pp. 18-23, will be considered and followed as appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for autism and whether, by reason of autism, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.

The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of autism. This worksheet (ASD Reproducible Forms—Appendix H) is “highly recommended” in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals.

II. DEAF - BLINDNESS

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

...

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

...

(2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

The Hondo Valley Public School District will ensure that a child suspected of having deaf-blindness and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent, including any educationally necessary evaluation conducted by a licensed physician to determine the child's medically-related disability that results in the child's need for special education and related services. The group will comply with the evaluation procedures set out in Chapter 3 of the Hondo Valley Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having deaf-blindness, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM, pp. 30-35, will be considered and followed as appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for deaf-blindness and whether, by reason of deaf-blindness, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.

The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of deaf-blindness. This worksheet (D-B Reproducible Forms—Appendix H) is “highly recommended” in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals.

III. DEAF OR HARD OF HEARING

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

...

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

...

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

...

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

“In New Mexico, the term ‘hard of hearing’ is used instead of ‘hearing impaired.’ This distinction is made in order to indicate a developmental/linguistic, rather than a pathological, perspective. Deaf or hard of hearing can mean mild through profound, bilateral or unilateral, sensorineural or conductive, permanent or fluctuating hearing loss, with or without amplification, as documented in a comprehensive audiological evaluation administered by a licensed audiologist.” *NM TEAM*, p. 38 (April 2007).

The Hondo Valley Public School District will ensure that a child suspected of being deaf or hard of hearing and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent, including any educationally necessary evaluation conducted by a licensed physician to determine the child's medically-related disability that results in the child's need for special education and related services. The group will comply with the evaluation procedures set out in Chapter 3 of the Hondo Valley Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of being deaf or hard of hearing, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM, pp. 41-45, will be considered and followed as appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for deaf or hard of hearing and whether, by reason of the child's deafness or being hard of hearing, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.

The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of deaf or hard of hearing. This worksheet (D- HoH Reproducible Forms—Appendix H) is “highly recommended” in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals.

IV. DEVELOPMENTAL DELAY

The Hondo Valley Public School District does use the term developmental delay.

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

...

- (b) Children aged three through nine experiencing developmental delays.** Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, at the discretion of the NMPED and the Hondo Valley Public School District and in accordance with §300.111(b), include a child--
- (1) Who is experiencing developmental delays, as defined by the NMPED and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and**
 - (2) Who, by reason thereof, needs special education and related services.**

Authority: NMAC 6.31.2.7 DEFINITIONS:

...

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

...

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

Authority: NMAC 6.31.2.10 IDENTIFICATION...AND ELIGIBILITY DETERMINATIONS

...

F. Eligibility determinations

...

- (2) Optional use of developmentally delayed classification for children aged 3 through 9**
- (a) The developmentally delayed classification may be used at the option of individual local education agencies but may only be used for children who do not qualify for special education under any other disability category.**
 - (b) Children who are classified as developmentally delayed must be reevaluated during the school year in which they turn 9 and will no longer be eligible in this category when they become 10. A student who does not qualify under any other available category at age 10 will no longer be eligible for special education and related services.**

The Hondo Valley Public School District will ensure that a child suspected of being developmentally delayed and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent, including any educationally necessary evaluation conducted by a licensed physician to determine the child’s medically-related disability that results in the child’s need for special education and related services. The group will comply with the evaluation procedures set out in Chapter 3 of the Hondo Valley Public School District Procedures for the Provision of Special Education Services.

When designing and conducting an initial evaluation or reevaluation for an individual child suspected of being developmentally delayed, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM, pp. 54-57, will be considered and followed as appropriate given the characteristics and needs of

the individual child. However, with respect to the developmentally delayed category, the NM TEAM has not been fully updated to comply with the current State rules. Under NMAC 6.31.2.7, the child must have “documented delays in development which are at least two standard deviations below the mean on a standardized test instrument or 30 per cent below chronological age; and who in the professional judgment of the IEP team and one or more qualified evaluators needs special education and related services in at least one of the ... five areas....” The former State rules provided that the child must have “documented delays ...; or who in the professional judgment of the IEP team and one or more qualified evaluators needs special education or related services in at least one of the ... five areas....” Use of “or” rather than “and” could lead to misidentification and over-identification. To the extent that NM TEAM conflicts with the current State rules, the Hondo Valley Public School District will comply with the current State rules.

The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for developmentally delayed, and whether, by reason of the child’s developmental delay, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.

Children who are classified as developmentally delayed must be reevaluated during the school year in which they turn 9 and will no longer be eligible in this category when they become 10. A student who does not qualify under any other available category at age 10 will no longer be eligible for special education and related services.

*The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of developmentally delayed. This worksheet (DD Reproducible Forms—Appendix H) is “highly recommended” in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals **except to the extent that the worksheet conflicts with the current State rules in its use of “or” rather than “and” when referring to professional judgment and when referring to related services.***

V. EMOTIONAL DISTURBANCE

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

...

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

...

- (4) (i) **Emotional disturbance** means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
 - (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
 - (C) Inappropriate types of behavior or feelings under normal circumstances.
 - (D) A general pervasive mood of unhappiness or depression.
 - (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
- (ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

“The initial eligibility determination under the category of emotional disturbance at the MDT must include the participation of a New Mexico licensed psychologist.” *NM TEAM*, p. 64 (April 2006).

The Hondo Valley Public School District will ensure that a child suspected of having an emotional disturbance and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent. The group will comply with the evaluation procedures set out in Chapter 3 of the Hondo Valley Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having an emotional disturbance, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM, pp. 64-67, will be considered and followed as appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for an emotional disturbance and whether, by reason of the child's emotional disturbance, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.

The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of emotional disturbance. This worksheet (ED Reproducible Forms—Appendix H) is “highly recommended” in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals.

VI. MENTAL RETARDATION

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

...

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

...

(6) Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

“In New Mexico, mental retardation refers to a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. This disability originates before age 18. The following five assumptions, provided by the American Association on Mental Retardation (AAMR), are essential to the application of this definition:

1. Limitations in present functioning must be considered within the context of community environments typical of the individual's age peers and culture.
2. Valid assessment considers cultural and linguistic diversity as well as differences in communication, sensory, motor, and behavioral factors.
3. Within an individual, limitations often coexist with strengths.
4. An important purpose of describing limitations is to develop a profile of needed supports.
5. With appropriate personalized supports over a sustained period, the life functioning of the person with mental retardation generally will improve. (AAMR, 2002).” *NM TEAM*, pp. 70-71 (April 2007).

The Hondo Valley Public School District will ensure that a child suspected of having mental retardation and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent. The group will comply with the evaluation procedures set out in Chapter 3 of the Hondo Valley Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having mental retardation, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM, pp. 73-77, will be considered and followed as appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for mental retardation and whether, by reason of the child's mental retardation, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.

The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of mental retardation. This worksheet (MR Reproducible Forms—Appendix H) is “highly recommended” in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals.

VII. MULTIPLE DISABILITIES

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

...

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

...

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

“In New Mexico, this means that the category of multiple disabilities is an extremely low-incidence category that involves complex, inseparable interactions between two or more disabilities and is characterized by the need for extensive or pervasive intensities of educational supports. Therefore, it is neither generally possible nor appropriate to designate the disabilities within this category as primary and secondary.” *NM TEAM*, pp. 81 (April 2007).

The Hondo Valley Public School District will ensure that a child suspected of having multiple disabilities and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent, including any educationally necessary evaluation conducted by a licensed physician to determine the child’s medically-related disability that results in the child’s need for special education and related services. The group will comply with the evaluation procedures set out in Chapter 3 of the Hondo Valley Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having multiple disabilities, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM, pp. 84-87, will be considered and followed as appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for multiple disabilities and whether, by reason of the child’s multiple disabilities, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.

The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of multiple disabilities. This worksheet (MD Reproducible Forms—Appendix H) is “highly recommended” in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals.

VIII. ORTHOPEDIC IMPAIRMENT

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

...

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

...

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

“In New Mexico, this definition can be clarified by understanding that an orthopedic impairment involves a chronic physical or structural limitation of the skeleton, joints, muscles, and/or fascia. This may cause impaired ability to use, move, or control the arms, legs, hands, feet, head, neck and/or trunk resulting in difficulty in the performance of gross-motor and/or fine-motor activities. Disabilities may be congenital or acquired anomalies, excluding traumatic brain injury.” *NM TEAM*, p. 90 (April 2006).

The Hondo Valley Public School District will ensure that a child suspected of having an orthopedic impairment and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent, including any educationally necessary evaluation conducted by a licensed physician to determine the child's medically-related disability that results in the child's need for special education and related services. The group will comply with the evaluation procedures set out in Chapter 3 of the Hondo Valley Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having an orthopedic impairment, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM, pp. 94-96, will be considered and followed as appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for an orthopedic impairment and whether, by reason of the child's orthopedic impairment, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.

The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of orthopedic impairment. This worksheet (OI Reproducible Forms—Appendix H) is “highly recommended” in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals. Additionally, the NM TEAM contains a sample physical examination form for orthopedic impairment and a sample individualized health management plan to be completed by a school nurse. The Hondo Valley Public School District will ensure that an initial evaluation for an orthopedic impairment includes evaluation information from a physician and input from a school nurse.

IX. OTHER HEALTH IMPAIRMENT

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

...

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

...

(9) Other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that--

- (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia and Tourette syndrome; and
- (ii) Adversely affects a child's educational performance.

“The list of acute or chronic health conditions in the definition of other health impairment is not exhaustive, but rather provides examples of problems that children have that could make them eligible for special education and related services under the category of other health impairment.” 71 Fed. Reg. 46550 (August 14, 2006).

“Part B does not necessarily require a school district to conduct a medical evaluation for the purpose of determining whether a child has ADD. If a public agency believes that a medical evaluation by a licensed physician is needed as part of the evaluation to determine whether a child suspected of having ADD meets the eligibility criteria of the OHI category, or any other disability category under Part B, the school district must ensure that this evaluation is conducted at no cost to the parents.” *OSEP Letter to Williams* (March 14, 1994).

“If the school district believes that there are other effective methods for determining whether a child suspected of having ADD meets the eligibility requirements of the OHI category, or any other disability category under Part B, then it would be permissible to use qualified personnel other than a licensed physician to conduct the evaluation as long as all of the protections in evaluation procedures ... are met.” *OSEP Letter to Williams* (March 14, 1994).

“New Mexico has not clearly delineated who is qualified to make an educational diagnosis of ADD/ADHD in our licensure competencies. According to the NM TEAM, it is necessary to have a documented diagnosis of ADD or ADHD. There is no modifier which states whether that diagnosis, in this case, is medical or educational. The intent of the NM TEAM was not to prohibit evaluation teams, if appropriately qualified, or medical personnel from making diagnoses of ADD or ADHD. Of course, the diagnosis itself is insufficient to consider overall eligibility; the MDT must also consider whether or not the disability is having an adverse affect on the student’s educational performance and whether the student needs special education services.” *NM TEAM FAQs Document – Appendix I* (April 2007).

“In New Mexico, the other health impairment category includes impairments that are typically physical, physiological, and/or neurological in nature. Some students with isolated mental health issues may be eligible under the Emotional Disturbance category. **The mere presence of a DSM-IV diagnosis does not make a student automatically eligible under the IDEA.** Students with a medical diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) or Attention Deficit Disorder (ADD) may be considered as eligible under this category if the MDT also determines that their educational performance is adversely affected. A student with a medical Fetal Alcohol Syndrome (FAS) diagnosis may also be included under this category if the MDT also determines that his or her educational performance is adversely affected.” *NM TEAM*, pp. 100-101 (April 2007).

The Hondo Valley Public School District will ensure that a child suspected of having an other health impairment and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent, including any educationally necessary evaluation conducted by a licensed physician to determine the child’s medically-related disability that results in the child’s need for special education and related services. The group will comply with the evaluation procedures set out in Chapter 3 of the Hondo Valley Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having an other health impairment, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM, pp. 103-106, will

be considered and followed as appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for an other health impairment and whether, by reason of the child's other health impairment, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.

The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of other health impairment. This worksheet (OHI Reproducible Forms—Appendix H) is “highly recommended” in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals.

X. SPECIFIC LEARNING DISABILITY

Authority: 34 CFR §300.8 Child with a disability.

...

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

...

(10) **Specific learning disability.**

- (i) **General.** Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.
- (ii) **Disorders not included.** Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

Authority: 34 CFR §300.307 Specific learning disabilities.

- (a) **General.** A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8 (c)(10). In addition, the criteria adopted by the State—
- (1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability as defined in §300.8 (c)(10);
 - (2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and
 - (3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability as defined in §300.8 (c)(10).
- (b) **Consistency with State criteria.** The Hondo Valley Public School District will use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS

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

- (1) Each public agency must use the three tiered model of student intervention for students suspected of having a perceived specific learning disability, consistent with the department rules, policies and standards for children who are being referred for evaluation due to a suspected disability under the specific learning disability category in compliance with 34 CFR Sec. 300.307.
- (a) The public agency must, subject to Subparagraph (d) of this paragraph, require that the group established under 34 CFR Secs. 300.306(a)(1) and 300.308 for the purpose of determining eligibility of students suspected of having a specific learning disability, consider data obtained during implementation of tiers 1 and 2 in making an eligibility determination.
- ...
- (d) A parent may request an initial special education evaluation at any time during the public agency's implementation of tiers 1 and 2 of the three-tier model of student intervention. If the public agency agrees with the parent that the child may be a child who is eligible for special education services, the public agency must evaluate the child. If the public agency declines the parent's request for an evaluation, the public agency must issue prior written notice in accordance with 34 CFR Sec. 300.503. The parent can challenge this decision by requesting a due process hearing.
- (2) Preschool children suspected of having a specific learning disability must be evaluated in accordance with Subparagraph (f) of Paragraph (4) of Subsection A of 6.31.2.11 NMAC and 34 CFR Secs. 300.300 through 300.305, which may include the severe discrepancy model.
- (3) Public agencies must implement the dual discrepancy model in kindergarten through third grade utilizing the student assistance team and the three-tier model of student intervention as defined and described in the New Mexico Technical Evaluation and Assessment Manual (New Mexico T.E.A.M.). Data on initial evaluations for perceived learning disabilities in grades K-3 must be submitted to the department through

the student teacher accountability reporting system (STARS).

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

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

1. The student demonstrates significant academic underachievement, qualified by a pattern of strengths and weaknesses in performance and/or achievement, despite sustained, high-quality, scientific, research-based instruction and intervention.
2. There is evidence of basic neurological processing deficit.
3. The nature of the disability is heterogeneous (inter/intra individual).
4. The student’s challenges are not caused by exclusionary factors.” *NM TEAM*, pp.109-110 (April 2007).

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 School District 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 School District 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.

A. Group of Qualified Professionals Required for SLD

Authority: 34 CFR §300.308 Additional group members.

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

- (a) (1) The child's regular teacher; or
- (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or
- (3) For a child of less than school age, an individual qualified by the New Mexico PED to teach a child of his or her age; and
- (b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

“We believe this [flexibility under §300.308(b)] allows decisions about the specific qualifications of the members to be made at the local level, so that the composition of the group may vary depending on the nature of the child's suspected disability, the expertise of local staff, and other relevant factors. For example, for a child suspected of having an SLD in the area of reading, it might be important to include a reading specialist as part of the eligibility group. However, for a child suspected of having an SLD in the area of listening comprehension, it might be appropriate for the group to include a speech-language pathologist with expertise in auditory processing disorders.” 71 Fed. Reg. 46650 (August 14, 2006).

The Hondo Valley Public School District will ensure that a child suspected of having a specific learning disability and needing special education services will be evaluated by a group of qualified professionals.

B. Observation

Authority: 34 CFR §300.310 Observation.

- (a) The Hondo Valley Public School District will ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.
- (b) The group described in §300.306(a)(1), in determining whether a child has a specific learning disability, must decide to—
 - (1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
 - (2) Have at least one member of the group described in §300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with §300.300(a), is obtained.
- (c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

“The person conducting the observation should be a member of the eligibility group because information from the observation will be used in making the eligibility determination. If information is available from an observation conducted as part of routine classroom instruction that is important for the eligibility group to consider, the eligibility group should include the person who conducted that routine classroom [observation]. This will eliminate redundant observations and save time and resources. Parental consent is not required for observations conducted as part of routine classroom instruction and monitoring of the child's performance before the child is referred for an evaluation....Parental consent is required for observations conducted after the child is suspected of having a disability and is referred for an evaluation.” 71 Fed. Reg. 46659 (August 14, 2006).

The Hondo Valley Public School District will ensure that an evaluation for a possible specific learning disability includes an observation. The group of qualified professionals will determine whether to use an observation done prior to referral or to conduct an observation after the child has been referred and parental consent is obtained.

C. Achievement Deficits in One or More Specified Areas

Authority: 34 CFR §300.309 Determining the existence of a specific learning disability.

- (a) The group described in §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if-
- (1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:
 - (i) Oral expression.
 - (ii) Listening comprehension.
 - (iii) Written expression.
 - (iv) Basic reading skill.
 - (v) Reading fluency skills.
 - (vi) Reading comprehension.
 - (vii) Mathematics calculation.
 - (viii) Mathematics problem solving.
- ...

The Hondo Valley Public School District will ensure that the group of qualified professionals appropriately assesses the child's academic achievement.

D. Dual Discrepancy Model

Authority: NMAC 6.31.2.7 DEFINITIONS

B.....

- (5) "Dual discrepancy" means the child does not achieve adequately for the child's age or to meet grade-level standards established in Standards for Excellence (Chapter 29 of Title 6 of the NMAC); and
- (a) does not make sufficient progress to meet age or grade-level standards; or
 - (b) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards or intellectual development

Authority: 34 CFR §300.309 Determining the existence of a specific learning disability.

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

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:

...

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

(3) Public agencies must implement the dual discrepancy model in kindergarten through third grade utilizing the student assistance team and the three-tier model of student intervention as defined and described in the New Mexico Technical Evaluation and Assessment Manual (New Mexico T.E.A.M.). Data on initial evaluations for perceived learning disabilities in grades K-3 must be submitted to the department through the student teacher accountability reporting system (STARS).

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

When utilizing the dual discrepancy model, pending the revision of the 2007 NM TEAM, the Hondo Valley Public Schools will ensure that the group of qualified professionals complies with the requirements of 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; 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.

E. Severe Discrepancy Model

Authority: 34 CFR §300.309 Determining the existence of a specific learning disability.

(a)...

(2) ...

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

...

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:

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

...

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

- “1. The student demonstrates a severe discrepancy, of at least 1.5 standard deviations when considering co-normed assessments. If the assessments are not co-normed, and only when the assessments are not co-normed, considering the regression table found in Appendix G, which accounts for the standard error of measure of the difference between the child’s predicted achievement level and actual achievement in the area(s) of concern.
2. The student’s standards-based achievement results are both below the average range and support the discrepancy in the area(s) of concern.” *NM TEAM*, p.121 (April 2007).

“There is a substantial research base summarized in several recent consensus reports [citations omitted] that does not support the hypothesis that a discrepancy model by itself can differentiate children with disabilities and children with general low achievement.” 71 Fed. Reg. 46650 (August 14, 2006).

“Intellectual development is included in §300.309(a)(2)(ii) as one of three standards of comparison, along with age and State-approved grade-level standards. The reference to ‘intellectual development’ in this provision means that the child exhibits a pattern of strengths and weaknesses in performance relative to a standard of intellectual development such as commonly measured by IQ tests. Use of the term is consistent with the discretion provided in the Act in allowing the continued use of discrepancy models.” 71 Fed. Reg. 46651 (August 14, 2006).

When utilizing the significant discrepancy model, the Hondo Valley Public School District will ensure that the group of qualified professionals complies with the requirements of NM TEAM and the evaluation procedures set out in Chapter 3 of the Hondo Valley Public School District Procedures for the Provision of Special Education Services when evaluating a child for a possible learning disability.

F. Exclusionary Factors

Authority: 34 CFR §300.309 Determining the existence of a specific learning disability.

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

...

- (3) The group determines that its findings under paragraph (a)(1) and (2) of this section are not primarily the result of--
- (i) A visual, hearing, or motor disability;
 - (ii) Mental retardation;
 - (iii) Emotional disturbance;
 - (iv) Cultural factors;
 - (v) Environmental or economic disadvantage; or
 - (vi) Limited English proficiency.

“The identification of the effect of cultural factors on a child’s performance is a judgment made by the eligibility group based on multiple sources of information, including the home environment, language proficiency, and other contextual factors gathered in the evaluation.” 71 Fed. Reg. 46655 (August 14, 2006).

The Hondo Valley Public School District will ensure that the group of qualified professionals eliminate all exclusionary factors before the group of qualified professionals and the parent reach the conclusion that the child is a child with a specific learning disability.

G. Determinant Factor Analysis for a Specific Learning Disability

Authority: 34 CFR §300.309 Determining the existence of a specific learning disability.

...

- (b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§300.304 through 300.306--
- (1) Data that demonstrate that prior to, or as a part of the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
 - (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:

...

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

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

...

- (b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation required in 34 CFR Secs. 300.304 through 300.306:
 - (i) data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
 - (ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

“Eligibility is contingent on the ability of the LEA to provide appropriate instruction. Determining the basis of low achievement when a child has been given appropriate instruction is the responsibility of the eligibility group.” 71 Fed. Reg. 46656 (August 14, 2006).

“As part of the evaluation, the eligibility group must consider whether the child received appropriate instruction from qualified personnel. For children who attend private schools or charter schools or who are home schooled, it may be necessary to obtain information from parents and teachers about the curricula used and the child’s progress with various teaching strategies. The eligibility group also may need to use information from current classroom-

based assessments or classroom observations. On the basis of the available information, the eligibility group may identify other information that is needed to determine whether the child's low achievement is due to a disability, and not primarily the result of lack of appropriate instruction. The requirements for special education eligibility or the expectations for the quality of teachers or instructional programs are not affected, and do not differ, by the location or venue of a child's instruction." 71 Fed. Reg. 46656 (August 14, 2006).

What is important is that the group making the eligibility decision has the information that it needs to rule out that the child's underachievement is a result of a lack of appropriate instruction. That could include evidence that the child was provided appropriate instruction either before, or as a part of, the referral process. 71 Fed. Reg. 46656 (August 14, 2006).

The Hondo Valley Public School District will ensure that a child evaluated for a possible specific learning disability is not determined to be a child with a disability if the child's low achievement is a result of lack of appropriate instruction in reading, lack of appropriate instruction in math, or limited English proficiency.

H. Written Report for SLD

Authority: 34 CFR §300.311 Specific documentation for the eligibility determination.

- (a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required by §300.306(a)(2), must include a statement of--
- (1) Whether the child has a specific learning disability;
 - (2) The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c)(1);
 - (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
 - (4) The educationally relevant medical findings, if any;
 - (5) Whether --
 - (i) The child does not achieve adequately for the child's age or to meet New Mexico approved grade-level standards consistent with §300.309(a)(1); and
 - (ii) (A) The child does not make sufficient progress to meet age or New Mexico approved grade-level standards consistent with §300.309(a)(2)(i); or
(B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, New Mexico approved grade-level standards or intellectual development consistent with §300.309(a)(2)(ii).
 - (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation, emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
 - (7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention--
 - (i) The instructional strategies used and the student-centered data collected;
 - (ii) The documentation that the child's parents were notified about—
 - (A) New Mexico's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
 - (B) Strategies for increasing the child's rate of learning; and
 - (C) The parents' right to request an evaluation.
- (b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

Authority: NMAC 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:

...

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

(1) ...

...

- (c)** The documentation of the determination of eligibility, as required by 34 CFR Sec. 300.306(c)(1), must meet the requirements of 34 CFR Sec. 300.311, including:
- (i)** a statement of the basis for making the determination and an assurance that the determination has been made in accordance with 34 CFR Sec. 300.306(c)(1); and
 - (ii)** a statement whether the child does not achieve adequately for the child's age or to meet state-approved grade-level standards consistent with 34 CFR Sec. 300.309(a)(1); and
 - (iii)** a statement whether the child does not make sufficient progress to meet age or grade-level standards consistent with 34 CFR Sec. 300.309(a)(2)(i), or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards or intellectual development consistent with 34 CFR Sec. 300.309(a)(2)(ii); and
 - (iv)** if the child has participated in a process that assesses the child's response to scientific, research-based intervention: a statement of the instructional strategies used and the student-centered data collected; documentation that the child's parents were notified about the state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; strategies for increasing the child's rate of learning; and the parents' right to request an evaluation.

The Hondo Valley Public School District will ensure that the written evaluation report prepared by the group of qualified professionals for a possible learning disability contains all of the requisite documentation. The report will address whether the child meets or continues to meet the specific eligibility criteria for a specific learning disability and whether, by reason of the child's specific learning disability, the child needs or continues to need special education and related services.

XI. SPEECH - LANGUAGE IMPAIRMENT

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

...

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

...

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

Authority: NMAC 6.31.2.7 DEFINITIONS:

...

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

...

(a) As authorized by 34 CFR Sec. 300.8(a)(2)(ii) and 300.39(a)(2)(i), “special education” in New Mexico may include speech-language pathology services.

(b) Speech-language pathology services must meet the following standards to be considered special education:

(i) the service is provided to a child who has received appropriate tier I universal screening under Subsection D of 6.29.1.9 NMAC as it may be amended from time to time, before being properly evaluated under 34 CFR Secs. 300.301-300.306 and Subsection D of 6.31.2.10 NMAC;

(ii) the IEP team that makes the eligibility determination finds that the child has a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance; and

(iii) the speech language pathology service consists of specially designed instruction that is provided to enable the child to have access to the general curriculum and meet the educational standards of the public agency that apply to all children; and

(iv) the service is provided at no cost to the parents under a properly developed IEP that meets the requirements of Subsection B of 6.31.2.11 NMAC.

(c) If all of the above standards are met, the service will be considered as special education rather than a related service.

“In New Mexico, speech and/or language impairments are those disorders that adversely affect a student's educational performance by interfering with or limiting the student's ‘ability to receive, send, process, and comprehend concepts or verbal, nonverbal, and graphic symbol systems.’” *NM TEAM*, p. 128 (April 2007).

The Hondo Valley Public School District will ensure that a child suspected of having a speech or language impairment and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent. The group will comply with the evaluation procedures set out in Chapter 3 of the Hondo Valley Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a speech or language impairment, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM, pp. 132-137, will be considered and followed as appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for a speech or language impairment and whether, by reason of the child's speech or language impairment, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.

The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of speech or language impairment. This worksheet (SLI Reproducible Forms—Appendix H) is “highly recommended” in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals.

XII. TRAUMATIC BRAIN INJURY

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

...

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

...

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

The Hondo Valley Public School District will ensure that a child suspected of having a traumatic brain injury and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent, including any educationally necessary evaluation conducted by a licensed physician to determine the child's medically-related disability that results in the child's need for special education and related services. The group will comply with the evaluation procedures set out in Chapter 3 of the Hondo Valley Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a traumatic brain injury, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM, pp. 144-148, will be considered and followed as appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for a traumatic brain injury and whether, by reason of the child's traumatic brain injury, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.

The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of traumatic brain injury. This worksheet (TBI Reproducible Forms—Appendix H) is "highly recommended" in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals.

XIII. VISUAL IMPAIRMENT, INCLUDING BLINDNESS

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

...

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

...

(13) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

“In New Mexico, the term ‘visual impairment’ means a visual anomaly which has been diagnosed by an eye specialist, and which is so severe that, even after medical and conventional optical intervention, the student is unable to benefit fully from educational experiences within the regular education setting without special education services designed to meet the needs of the individual student.” *NM TEAM*, p. 152 (April 2007).

The Hondo Valley Public School District will ensure that a child suspected of having a visual impairment including blindness and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent, including any educationally necessary evaluation conducted by a licensed physician to determine the child's medically-related disability that results in the child's need for special education and related services. The group will comply with the evaluation procedures set out in Chapter 3 of the Hondo Valley Public School District Procedures for the Provision of Special Education Services. When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a visual impairment including blindness, the Highly Recommended and Potential Additional components of an evaluation, as set forth in NM TEAM, pp. 155-159, will be considered and followed as appropriate given the characteristics and needs of the individual child. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for a visual impairment including blindness and whether, by reason of the child's visual impairment, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services under the IDEA.

The NM TEAM contains an Initial Evaluation Worksheet for use in making an eligibility determination under the category of visual impairment including blindness. This worksheet (VI-B Reproducible Forms—Appendix H) is “highly recommended” in the NM TEAM, and will be considered and utilized as appropriate by the group of qualified professionals.

Additionally, the NM TEAM contains a sample eye examination form to be completed by a physician. The Hondo Valley Public School District will ensure that an initial evaluation for a visual impairment including blindness includes evaluation information from a physician. The NM TEAM contains a sample authorization for disclosure of protected health information form to allow for the release of information from the child's physician.

XIV. GIFTED CHILDREN

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

...

- D. In determining whether a child is gifted, the multidisciplinary team shall consider diagnostic or other evidence of the child's:
- (1) creativity or divergent-thinking ability;
 - (2) critical thinking or problem solving ability;
 - (3) intelligence; and
 - (4) achievement.

Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN:

- A. Gifted child defined. As used in 6.31.2.12 NMAC, "gifted child" means a school-age person as defined in Sec. 22-13-6(D) NMSA 1978 whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking meets the eligibility criteria in 6.31.2.12 NMAC and for whom a properly constituted IEP team determines that special education services are required to meet the child's educational needs.
- B. Qualifying areas defined.
- (1) "Intellectual ability" means a score two standard deviations above the mean as defined by the test author on a properly administered intelligence measure. The test administrator must also consider the standard error of measure (SEM) in the determination of whether or not criteria have been met in this area.
 - (2) "Subject matter aptitude/achievement" means superior academic performance on a total subject area score on a standardized measure, or as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.
 - (3) "Creativity/divergent thinking" means outstanding performance on a test of creativity/divergent thinking, or in creativity/divergent thinking as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.
 - (4) "Problem-solving/critical thinking" means outstanding performance on a test of problem-solving/critical thinking, or in problem-solving/critical thinking as documented by information from other sources as specified in Paragraph (2) of Subsection B of 6.31.2.12 NMAC.
 - (5) For students with "factors" as specified in Paragraph (2) of Subsection E of 6.31.2.12 NMAC, the impact of these factors shall be documented and alternative methods will be used to determine the student's eligibility.
- C. Evaluation procedures for gifted children.
- ...
- (2) Analysis of data. The identification of a student as gifted shall include documentation and analysis of data from multiple sources for subject matter aptitude/achievement, creativity/divergent thinking, and problem-solving/critical thinking including:
 - (a) standardized measures, as specified in Subsection B of 6.31.2.12 NMAC, and
 - (b) information regarding the child's abilities from other sources, such as collections of work, audio/visual tapes, judgment of work by qualified individuals knowledgeable about the child's performance (e.g., artists, musicians, poets and historians, etc.), interviews, or observations.
 - (3) The child's ability shall be assessed in all four areas specified in Subsection B of 6.31.2.12 NMAC.
- D. Standard method for identification. Under the standard method for identification, students will be evaluated in the areas of intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking. A student who meets the criteria established in Subsection B of 6.31.2.12 for intellectual ability and also meets the criteria in one or more of the other areas will qualify for consideration of service. A properly constituted IEP team, including someone who has knowledge of gifted education, will determine if special education services are required to meet the child's educational needs.
- E. Alternative method for identification.
- (1) A district may apply to the public education department to utilize an alternative protocol for all students. Eligibility of a student will then be determined by a properly administered and collected, department approved alternative protocol designed to evaluate a student's intellectual ability,

subject matter aptitude/achievement, creativity/divergent thinking, and problem solving /critical thinking.

- (2) If an accurate assessment of a child's ability may be affected by factors including cultural background, linguistic background, socioeconomic status or disability condition(s), an alternative protocol as described in Paragraph (1) of Subsection E of 6.31.2.12 NMAC will be used in all districts to determine the student's eligibility. The impact of these factors shall be documented by the person(s) administering the alternative protocol.**
- (3) The student assistance team (SAT) process requirements will not apply to students who meet the criteria established by the alternative protocols. When a student's overall demonstrated abilities are very superior (as defined by the alternative protocol author), a properly constituted IEP team, including someone who has knowledge of gifted education, will determine if special education services are required to meet the child's educational needs.**

F. Applicability of rules to gifted children.

...

- (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.**

The NMPED has issued a guidance document titled, "Gifted Education Technical Assistance and Training Resource Document" (September 2000), available through the NMPED website: <http://www.ped.state.nm.us/seo/gifted/gifted.pdf>. The guidance document addresses identification as gifted. 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 Hondo Valley Public School District will ensure that a child suspected of being gifted and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent. The group will comply with the evaluation procedures set out in Chapter 3 of the Hondo Valley Public School District Procedures for the Provision of Special Education Services. The report prepared by the group of qualified professionals will address whether the child meets or continues to meet the specific eligibility criteria for giftedness and whether, by reason of the child's giftedness, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent will determine whether the child is eligible for special education services as a gifted child.