

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

Chapter 5 - INDIVIDUALIZED EDUCATION PROGRAM (IEP)

Chapter 5. Adopted Pursuant to Board Policy: Special Education
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Chapter 5 - INDIVIDUALIZED EDUCATION PROGRAM (IEP)
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Chapter 5 INDIVIDUALIZED EDUCATION PROGRAM (IEP)

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provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary...."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

I. REQUIREMENT OF AN IEP

Authority: 34 CFR §300.112 Individualized education programs (IEP).

The State must ensure that an IEP, or an IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with §§300.320 through 300.324, except as provided in §300.300(b)(3)(ii).

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

...

B. Individualized education programs (IEPs).

...

- (3) Except as provided in 34 CFR Sec. 300.324(a)(4), each IEP shall include the signature and position of each member of the IEP team and other participants in the IEP meeting to document their attendance. Written notice of actions proposed or refused by the Hondo Valley Public School District will also be provided in compliance with 34 CFR Sec. 300.503 and Paragraph (2) of Subsection D of 6.31.2.13 NMAC and shall be provided at the close of the IEP meeting. Informed written parental consent must also be obtained for actions for which consent is required under 34 CFR Sec. 300.300 and Subsection F of 6.31.2.13 NMAC. An amended IEP does not take the place of the annual IEP conducted pursuant to CFR Sec. 300.324(a)(4) which requires that members of a child's IEP team must be informed of any changes made to the IEP without a meeting.

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

The NMPED has also developed a model IEP form along with a guide to developing quality IEPs, available through the NMPED website at: <http://www.ped.state.nm.us/seo/iep/index.htm>.

The Hondo Valley Public School District uses a localized IEP form that contains all of the required elements consistent with the U.S. Department of Education form. Additionally, the Hondo Valley Public School District, by reference in these procedures, and through staff development (as appropriate), will inform appropriate personnel of the NMPED guide to developing quality IEPs.

The NMPED has issued a guidance document titled, "Technical Assistance Manual for Gifted Education in New Mexico" (December 2007, marked "DRAFT"), available through the NMPED website at: <http://www.ped.state.nm.us/Humanities/Gifted/dl08/TechnicalAssistanceTotalPackage.pdf#pagemode=bookmarks>. Chapter 4 addresses the gifted individualized education plan development. 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.

A. Requirement of an IEP Team Meeting

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

...

(c) Initial IEPs; provision of services. The Hondo Valley Public School District will ensure that--

- (1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services....**

Authority: 34 CFR §300.324 Development, review, and revision of IEP.

(a) Development of IEP—

...

- (5) Consolidation of IEP Team meetings. To the extent possible, the Hondo Valley Public School District will encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.**

...

(b) Review and revision of IEPs.

- (1) General. The Hondo Valley Public School District will ensure that, subject to paragraph (b)(2) and (b)(3) of this section, the IEP Team--**
 - (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and**
 - (ii) Revises the IEP, as appropriate, to address--**
 - (A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;**
 - (B) The results of any reevaluation conducted under §300.303;**
 - (C) Information about the child provided to, or by, the parents, as described under §300.305(a)(2);**
 - (D) The child's anticipated needs; or**
 - (E) Other matters.**

...

(c) Failure to meet transition objectives—

- (1) Participating agency failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with §300.320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.**

Authority: 34 CFR §300.116 Placements.

In determining the educational placement of a child with a disability, including a preschool child with a disability, the Hondo Valley Public School District will ensure that--

...

(b) The child's placement--

- (1) Is determined at least annually....**

In order to ensure timely IEP Team meetings, the Hondo Valley Public School District has systems in place to track timelines for the initial IEP Team meeting and the annual IEP Team meeting. The Hondo Valley Public School District will begin its planning and preparation for an IEP Team meeting (including notice to the parent) early enough to ensure a timely meeting.

B. Transfer Students

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

...

- (e) IEPs for children who transfer public agencies in the same State. If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either--
 - (1) Adopts the child's IEP from the previous public agency; or
 - (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324.
- (f) IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency--
 - (1) Conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new public agency); and
 - (2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§300.320 through 300.324.
- (g) Transmittal of records. To facilitate the transition for a child described in paragraphs (d) and (f) of this section --
 - (1) The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and
 - (2) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

...

H. Transfers and transmittals. When IEPs must be in effect.

- (1) IEPs for children who transfer public agencies in the same state. If a child with a disability (who had an IEP that was in effect in a previous public agency in New Mexico) transfers to Hondo Valley Public School District, and enrolls in Hondo Valley Public School District within the same school year the Hondo Valley Public School District will provide FAPE to the child. The IEP must include services comparable to those described in the child's IEP from the previous public agency, until the new public agency either:
 - (a) adopts and implements the child's IEP from the previous public agency; or
 - (b) develops and implements a new IEP that meets the applicable requirements in 34 CFR Secs. 300.320 through 300.324.
- (2) IEPs for children who transfer from another state. If a child with a disability (who had an IEP that was in effect in a previous public agency in another state) transfers to a public agency in New Mexico, and enrolls in a new school within the same school year, the new public agency must provide the child with FAPE. The IEP must include services comparable to those described in the child's IEP from the previous agency, until the new public agency:
 - (a) conducts an evaluation pursuant to 34 CFR Secs. 300.304 through 300.306 (if determined to be necessary by the new public agency); and

- (b) develops and implements a new IEP, if appropriate, that meets the applicable requirements in 34 CFR Secs. 300.320 through 300.324.
- (3) Transmittal records. To facilitate the transition for a child described in Paragraphs (1) and (2) of this section:
 - (a) the new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled; and
 - (b) the previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

...

K. Children in detention and correctional facilities.

- (1) If a child with a disability is placed in a juvenile or adult detention or correctional facility, the facility must provide the child with FAPE after the facility learns that the child had been eligible for special education and related services in the last educational placement prior to incarceration or otherwise determines that the child is eligible.
- (2) Juvenile or adult detention or correctional facilities must take reasonable steps to promptly obtain needed educational records from a child's last known school or educational facility. Record requests and transfers are subject to the regulations under the Family Educational Rights and Privacy Act (FERPA) at 34 CFR Part 99 and the provisions of Paragraph (3) of Subsection L of 6.31.2.13 NMAC. The educational program of a juvenile or adult detention or correctional facility is an educational agency for purposes of the FERPA.
 - (a) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the records request from the juvenile correctional facilities.
 - (b) To assist juvenile correctional facilities in providing FAPE for children entering the facility during the summer months, districts must provide summer emergency contact information of a person who has access to special education records, to the state's superintendent of juvenile justice services division of the children, youth and family department.
- (3) A detention or correctional facility that is unable to obtain adequate records from other agencies, the child or the parents within a reasonable time after the child arrives at the facility, shall evaluate the child who is known or suspected to be a child with a disability as provided in Subsection F of 6.31.2.10 NMAC and develop an IEP for an eligible child without undue delay.
- (4) FAPE for eligible students in juvenile or adult detention or correctional facilities shall be made available in programs that are suited to the security requirements of each facility and eligible student. The provisions of 34 CFR Sec. 300.324(d) apply to IEPs for students with disabilities who are convicted as adults under state law and incarcerated in adult prisons.
- (5) A state-supported educational program that serves a juvenile or adult detention or correctional facility shall be responsible for ensuring that FAPE is provided to eligible children in that facility.
- (6) The local school district in which a detention or correctional facility is located (that is not served by a state-supported educational program) shall be responsible for ensuring that FAPE is made available to eligible children in that facility. A child's LEA of residence or another public agency with educational jurisdiction may agree to share the responsibility pursuant to a written agreement between or among the agencies involved.
- (7) Children with disabilities who are detained or incarcerated in detention or correctional facilities are wards of the state and may have surrogate parents appointed pursuant to 34 CFR Sec. 300.519 and Subsection J of 6.31.2.13 NMAC to protect their IDEA rights while in state custody.
- (8) The public agency that administers the educational program in a juvenile or adult detention or correctional facility shall ensure that surrogate parents are appointed in cases where no parent as defined in 34 CFR Sec. 300.30(a) and Paragraph (14) of Subsection B of 6.31.2.7 NMAC is reasonably available or willing to make the educational decisions required for children with disabilities who are housed in that facility.
- (9) Children placed in juvenile or adult detention or correctional facilities must be provided learning opportunities and instruction that meet the state standards with benchmarks.

“We do not believe it is necessary to define ‘comparable services’ in these regulations because the Department interprets ‘comparable’ to have the plain meaning of the word, which is ‘similar’ or ‘equivalent.’ Therefore, when used with respect to a child who transfers to a new public agency from a previous public agency in the same State (or from another State), ‘comparable’ services means services that are ‘similar’ or ‘equivalent’ to those that were described in the child’s IEP from the previous public agency, as determined by the child’s newly designated IEP Team in the new public agency.” 71 Fed. Reg. 46681 (August 14, 2006).

As part of its enrollment procedures, parents are asked whether their child was receiving special education services from the previous school district. When the Hondo Valley Public School District learns that a child had an IEP in effect in a previous school district, the Hondo Valley Public School District will take steps to ensure a seamless transition, including by promptly requesting records from the previous school district and providing services that are comparable to the services the child was receiving from the previous school district until such time as the Hondo Valley Public School District develops and implements a new IEP. The Hondo Valley Public School District will also conduct a review of existing evaluation data to determine whether the child needs a reevaluation. When the Hondo Valley Public School District learns that a child with a disability has transferred to another public school, the Hondo Valley Public School District will take reasonable steps to promptly respond to a request for records from the public school in which the child has enrolled.

C. What the IEP Team Must Consider When Developing an IEP

Authority: 34 CFR §300.324 Development, review, and revision of IEP

- (a) Development of IEP—(1) General. In developing each child’s IEP, the IEP Team must consider —
- (i) The strengths of the child;
 - (ii) The concerns of the parents for enhancing the education of their child;
 - (iii) The results of the initial or most recent evaluation of the child; and
 - (iv) The academic, developmental, and functional needs of the child.

The Hondo Valley Public School District recognizes that the core of the IDEA is the cooperative process that it establishes between parents and schools. Parents are given a large measure of participation at every stage of the process. The Hondo Valley Public School District will ensure that the IEP Team gathers appropriate information upon which to base development of an IEP, including information from the parents.

D. Amendment of an IEP without a Meeting

Authority: 34 CFR §300.324 Development, review, and revision of IEP

- (a) Development of IEP—

...

(4) Agreement.

- (i) In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the Hondo Valley Public School District may agree not to convene an IEP meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.
- (ii) If changes are made to the child’s IEP in accordance with paragraph (a)(4)(i) of this section, the Hondo Valley Public School District will ensure that the child’s IEP Team is informed of those changes.

...

- (6) Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting or, as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

...

B. Individualized education programs (IEPs)

...

(4) Agreement to modify IEP meeting requirement.

- (a) In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent of a child with a disability and the Hondo Valley Public School District may agree not to convene an IEP team meeting for the purposes of making those changes and instead may develop a written document to amend or modify the child's current IEP.
- (b) If changes are made to the child's IEP in accordance with subparagraph (4)(a) of this paragraph, the Hondo Valley Public School District will ensure that the child's IEP team is informed of those changes.

"Section 614(d)(3)(D) of the Act does not require the agreement between the parent and the public agency to be in writing. In addition, the parent is not required to provide *consent*, as defined in §300.9, to amend the IEP without an IEP Team meeting. However, it would be prudent for the public agency to document the terms of the agreement in writing, in the event that questions arise at a later time. Of course, changes to the child's IEP would have to be in writing." 71 Fed. Reg. 46685 (August 14, 2006).

"Section 300.324(a)(4), consistent with section 614(d)(3)(D) of the Act, permits the public agency and the parent to agree to amend the child's IEP without an IEP Team meeting. If the parent needs further information about the proposed change or believes that a discussion with the IEP Team is necessary before deciding to change the IEP, the parent does not have to agree to the public agency's request to amend the IEP without an IEP Team meeting." 71 Fed. Reg. 46685 (August 14, 2006).

"We do not believe that it is necessary to regulate on the timeframe within which a public agency must make the IEP accessible to the service providers responsible for implementing the changes, or otherwise notify them of the changes, as this will vary depending on the circumstances (e.g., whether the changes are minor or major changes) and is, therefore, best left to State and local public agency officials to determine." 71 Fed. Reg. 46686 (August 14, 2006).

After the annual IEP Team meeting has been held for a school year, the Hondo Valley Public School District does permit amendments to the IEP without an IEP Team meeting if the parent and school agree. However, amendments without a meeting after the annual IEP Team meeting are NOT permitted for the following actions of an IEP Team:

- *A change in eligibility;*
- *A decision to terminate eligibility for special education services (including through graduation);*
- *A change in placement; or*
- *A manifestation determination.*

Members of the IEP Team and any other school officials responsible for implementing the child's IEP will be informed of the amendments.

II. MEMBERSHIP OF THE IEP TEAM

Authority: 34 CFR §300.321 IEP Team.

- (a) **General.** The Hondo Valley Public School District will ensure that the IEP Team for each child with a disability includes--
 - (1) The parents of the child;
 - (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
 - (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
 - (4) A representative of the Hondo Valley Public School District who -
 - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - (ii) Is knowledgeable about the general education curriculum; and
 - (iii) Is knowledgeable about the availability of resources of the Hondo Valley Public School District.
 - (5) An individual who can interpret the instructional implications of evaluation results, who may be a

- member of the team described in paragraphs (a)(2) through (a)(6) of this section;
- (6) At the discretion of the parent or the Hondo Valley Public School District, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
 - (7) Whenever appropriate, the child with a disability.
- (b) Transition services participants.
 - (1) In accordance with paragraph (a)(7) of this section, the Hondo Valley Public School District will invite a child with a disability to attend the child's IEP meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under §300.320(b).
 - (2) If the child does not attend the IEP Team meeting, the Hondo Valley Public School District will take other steps to ensure that the child's preferences and interests are considered.
 - (3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the Hondo Valley Public School District will invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.
 - (c) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or Hondo Valley Public School District) who invited the individual to be a member of the IEP Team.
 - (d) Designating a Hondo Valley Public School District representative. The Hondo Valley Public School District may designate a Hondo Valley Public School District member of the IEP Team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.
 - (e) IEP Team attendance.
 - (1) A member of the IEP Team described in paragraph (a)(2) through (a)(5) of §300.321, is not required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the Hondo Valley Public School District agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
 - (2) A member of the IEP Team described in (e)(1) may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if--
 - (i) The parent, in writing, and the Hondo Valley Public School District consent to the excusal; and
 - (ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.
 - (f) Initial IEP Team meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

Authority: 34 CFR §300.324 Development, review, and revision of IEP

(a) Development of IEP—

...

- (3) Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child, including the determination of—
 - (i) Appropriate positive behavioral interventions and supports and other strategies for the child; and
 - (ii) Supplementary aids and services, program modifications, and support for school personnel consistent with §300.320(a)(4).

(b) Review and revision of IEPs—

...

- (3) Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph §300.324(a)(3) of this section, participate in the review and revision of the IEP of the child.

Authority: 34 CFR §300.327 Educational placements.

Consistent with §300.501(c), the Hondo Valley Public School District will ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

Authority: 34 CFR §300.328 Alternative means of meeting participation.

When conducting IEP Team meetings and placement meetings pursuant to this subpart, and Subpart E of this part, and carrying out administrative matters under section 615 of the Act (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and the Hondo Valley Public School District may agree to use alternative means of meeting participation, such as video conferences and conference calls.

Authority: NMAC 6.29.1.9 [Standards for Excellence] PROCEDURAL REQUIREMENTS

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J. Graduation Requirements:

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(9) Receipt of diploma or certificate: Governing principles that will guide the development, program of study, and the granting of a diploma or use of a certificate with a follow-up plan of action in the form of an IEP for students with disabilities receiving special education services are as follows:

...

(d) Departures from the standard program of study for students receiving special education must be considered in the order of the options listed in Subparagraph (b) of Paragraph (9) of Subsection J of 6.30.2.10 NMAC. Any modified program of study may depart from a standard program only as far as is necessary to meet an individual student's educational needs as determined by the IEP team. A building administrator or designee who has knowledge about the student must be a member of the team when an alternative program of study is developed.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

...

B. Individualized education programs (IEPs).

...

(2) Each IEP or amendment shall be developed at a properly convened IEP meeting for which the Hondo Valley Public School District has provided the parent and, as appropriate, the child, with proper advance notice pursuant to 34 CFR Sec. 300.322 and Paragraph (1) of Subsection D of 6.31.2.13 NMAC and at which the parent and, as appropriate, the child have been afforded the opportunity to participate as members of the IEP team pursuant to 34 CFR Secs. 300.321, 300.322 and 300.501(b) and (c) and Subsection C of 6.31.2.13 NMAC.

“Section 614(d)(1)(C) of the Act allows a parent of a child with a disability and the LEA to agree that the attendance of an IEP Team member at an IEP Team meeting, in whole or in part, is not necessary under certain conditions. Allowing IEP Team members to be excused from attending an IEP Team meeting is intended to provide additional flexibility to parents in scheduling IEP Team meetings and to avoid delays in holding an IEP Team meeting when an IEP Team member cannot attend due to a scheduling conflict.” 71 Fed. Reg. 46673 (August 14, 2006).

“We cannot eliminate the different procedures for different types of excusals because section 614(d)(1)(C) of the Act clearly differentiates between circumstances in which parental consent is required and when an agreement is required to excuse an IEP member from attending an IEP Team meeting.” 71 Fed. Reg. 46673 (August 14, 2006).

“When an IEP Team member's area is not being modified or discussed, §300.321(e)(1), consistent with section 614(d)(1)(C) of the Act, provides that the member may be excused from the meeting if the parent and LEA agree in writing that the member's attendance is not necessary. We believe it is important to give public agencies and parents wide latitude about the content of the agreement and, therefore, decline to regulate on the specific information that an LEA must provide in a written agreement to excuse an IEP Team member from attending the IEP Team meeting when the member's area of the curriculum or related services is not being modified or discussed.” 71 Fed. Reg. 46674 (August 14, 2006).

“When an IEP Team member’s area is being modified or discussed, §300.321(e)(2), consistent with section 614(d)(1)(C)(ii) of the Act, requires the LEA and the parent to provide written informed consent. Consistent with §300.9, consent means that the parent has been fully informed in his or her native language, or other mode of communication, and understands that the granting of consent is voluntary and may be revoked at any time. The LEA must, therefore, provide the parent with appropriate and sufficient information to ensure that the parent fully understands that the parent is consenting to excuse an IEP Team member from attending an IEP Team meeting in which the member’s area of the curriculum or related services is being changed or discussed and that if the parent does not consent the IEP Team meeting must be held with that IEP Team member in attendance.” 71 Fed. Reg. 46674 (August 14, 2006).

“With regard to the recommendation that the notice state that the parent has a legal right to require an IEP Team member to participate in an IEP Team meeting, it is important to emphasize that it is the public agency that determines the specific personnel to fill the roles for the public agency’s required participants at the IEP Team meeting. A parent does not have a legal right to require other members of the IEP Team to attend an IEP Team meeting. Therefore, if a parent invites other public agency personnel who are not designated by the LEA to be on the IEP Team, they are not required to attend.” 71 Fed. Reg. 46674 (August 14, 2006).

“We do not believe it is necessary to require consent or a written agreement between the parent and the public agency to excuse individuals who are invited to attend IEP Team meetings at the discretion of the parent or the public agency because such individuals are not required members of an IEP Team.” 71 Fed. Reg. 46675 (August 14, 2006).

The Hondo Valley Public School District will ensure that each IEP Team meeting is duly constituted. The Hondo Valley Public School District recognizes the uniquely valuable contributions of each IEP Team member. Therefore, the Hondo Valley Public School District will not agree to routinely excuse IEP Team members. When a required member is unable to attend an IEP Team meeting, the Hondo Valley Public School District will carefully consider, based on the individual needs of the child and the issues that need to be addressed at the IEP Team meeting, whether it makes sense to offer to hold the IEP Team meeting without a particular IEP Team member in attendance or whether it would be better to reschedule the meeting so that person could attend and participate in the discussion. Parents will not be pressured into agreeing to an excusal. When a member is excused, the Hondo Valley Public School District will ensure that all criteria have been met.

III. CONSIDERATION OF SPECIAL FACTORS

A. Behavior

Authority: 34 CFR §300.324 Development, review, and revision of IEP.

(a) Development of IEP—

...

(2) Consideration of special factors. The IEP Team must—

(i) In the case of a child whose behavior impedes the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

...

F. Behavior management and discipline.

(1) Behavioral planning in the IEP. Pursuant to 34 CFR Sec. 300.324(a)(2)(i), the IEP team for a child with a disability whose behavior impedes his or her learning or that of others shall consider, if appropriate, strategies to address that behavior, including the development of behavioral goals and objectives and the use of positive

behavioral interventions, strategies and supports to be used in pursuit of those goals and objectives. Public agencies are strongly encouraged to conduct functional behavioral assessments (FBAs) and integrate behavioral intervention plans (BIPs) into the IEPs for students who exhibit problem behaviors well before the behaviors result in proposed disciplinary actions for which FBAs and BIPs are required under the federal regulations.

“Section 300.324(a)(2)(i) follows the specific language in section 614(d)(3)(B)(i) of the Act and focuses on interventions and strategies, not assessments, to address the needs of a child whose behavior impedes the child’s learning or that of others. Therefore, while conducting a functional behavioral assessment typically precedes developing positive behavioral intervention strategies, we do not believe it is appropriate to include this language in § 300.324(a)(2)(i).” 71 Fed. Reg. 46683 (August 14, 2006).

The NMPED has issued a guidance document titled, “Addressing Student Behavior: A Guide for Educators” (last updated November 7, 2007), available through the NMPED website at: <http://www.ped.state.nm.us/seo/discipline/guide.htm>. The guide includes sample forms for a functional behavioral assessment (FBA) and a behavior intervention plan (BIP). 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 conduct a functional behavioral assessment (FBA) as needed to address the behavioral concerns of a child whose behavior interferes with learning and as required in the disciplinary context.

*The NMPED has issued a guidance document titled, “Technical Assistance Manual for Gifted Education in New Mexico” (August 2008), available through the NMPED website at: <http://www.ped.state.nm.us/Humanities/Gifted/index.html>. Chapter 3 addresses the social emotional issues of gifted children. The ***, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

*“Time-out reflects a continuum of behavior management techniques that are designed to address inappropriate or negative student behavior resulting from over-stimulating or challenging classroom situations. This continuum begins with minimally intrusive or restrictive strategies that can be implemented within the classroom setting. The continuum then progresses to more restrictive strategies that may involve the physical separation of a student from his or her classmates, **for a brief amount of time**, in order to enable the student to regroup and **return to the classroom setting.**” From NMPED memorandum, “Use of Time-Out Rooms as a Behavioral Intervention” (August 7, 2003).*

B. Language and Communication Needs

Authority: 34 CFR §300.324 Development, review, and revision of IEP.

(a) Development of IEP—

...

(2) Consideration of special factors. The IEP Team must—

...

- (v) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode....

The Hondo Valley Public School District will ensure that the IEP Team addresses the language and communication needs of each child with a disability regardless of the category of disability.

C. For Children with Limited English Proficiency

Authority: 34 CFR §300.324 Development, review, and revision of IEP.

(a) Development of IEP—

...

(2) Consideration of special factors. The IEP Team must—

...

(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP....

The Hondo Valley Public School District will ensure that the IEP Team addresses the language and communication needs of each child with limited English proficiency, as those needs relate to the child's IEP.

D. For Children Who Are Blind or Visually Impaired

Authority: 34 CFR §300.324 Development, review, and revision of IEP.

(a) Development of IEP—

...

(2) Consideration of special factors. The IEP Team must—

...

(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child....

For a child who is blind or visually impaired, the Hondo Valley Public School District will ensure that, based upon consideration of an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, the IEP Team determines whether instruction in Braille or the use of Braille is appropriate for the child. If Braille is appropriate, the Hondo Valley Public School District will ensure that the IEP provides for instruction in Braille or the use of Braille, as appropriate.

E. Assistive Technology Needs

Authority: 34 CFR §300.324 Development, review, and revision of IEP.

(a) Development of IEP—

...

(2) Consideration of special factors. The IEP Team must—

...

(iv) Consider whether the child needs assistive technology devices and services.

Authority: 34 CFR §300.5 Assistive technology device.

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the

functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of that device.

Authority: 34 CFR §300.6 Assistive technology service.

Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes-

- (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
- (f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

Authority: 34 CFR §300.105 Assistive technology.

- (a) The Hondo Valley Public School District will ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's--
 - (1) Special education under §300.36;
 - (2) Related services under §300.34; or
 - (3) Supplementary aids and services under §§300.38 and 300.114(a)(2)(ii).
- (b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE.

The Hondo Valley Public School District will ensure that the IEP Team addresses whether each child with a disability needs assistive technology devices and/or services. If the IEP Team determines that a child needs assistive technology devices and/or services, the devices and/or services will be incorporated in the child's IEP as supplementary aids and services, special education, and/or related services, as appropriate.

IV. CONTENT OF THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)

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

- (a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--

...

- (d) Construction. Nothing in this section shall be construed to require--
 - (1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or
 - (2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP. (Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6))

Authority: 34 CFR §300.324 Development, review, and revision of IEP

...

- (d) Children with disabilities in adult prisons.
 - (1) Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

- (i) The requirements contained in §300.160 and §300.320(a)(6) (relating to participation of children with disabilities in general assessments).
 - (ii) The requirements in §300.320(b) (relating to transition planning and transition services), do not apply with respect to the children whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.
- (2) Modifications of IEP or placement.
- (i) Subject to paragraph (c)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.
 - (ii) The requirements of §§300.320 (relating to IEPs), and 300.112 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

...

B. Individualized education programs (IEPs).

- (1) Except as provided in 34 CFR Secs. 300.130-300.144 for children enrolled by their parents in private schools, the Hondo Valley Public School District (1) will develop, implement, review and revise an IEP in compliance with all applicable requirements of 34 CFR Secs. 300.320-300.328 and these or other department rules and standards for each child with a disability (within its educational jurisdiction); and (2) will ensure that an IEP is developed, implemented, reviewed and revised in compliance with all applicable requirements of 34 CFR Sec. 300.320-300.328, and these or other department rules and standards for each child with a disability who is placed in or referred to a private school or facility by the Hondo Valley Public School District.

In an effort to ensure an understandable IEP, the Hondo Valley Public School District will avoid redundancy in the IEP. The IEP Team is not required to include information under one component of a child's IEP that is already contained under another component of the child's IEP. The IEP and Prior Written Notice shall be read as a whole.

A. Present Levels of Academic Achievement and Functional Performance

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

- (a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--
- (1) A statement of the child's present levels of academic achievement and functional performance, including--
 - (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
 - (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities....

“Several commenters asked the U.S. Department of Education to state that not every IEP must include a statement about the child’s ‘functional performance’ and ‘functional goals.’ The U.S. Department of Education pointed out that the language is in the statute, and therefore, cannot be omitted. Thus the IEP must always include a statement of ‘the child’s present levels of academic achievement and functional performance.’” 71 Fed. Reg. 46662 (August 14, 2006).

“It is not necessary to include a definition of ‘functional’ in these regulations because we believe it is a term that is generally understood to refer to skills or activities that are not considered academic or related to a child’s academic achievement. Instead, ‘functional’ is often used in the context of routine activities of everyday living.” 71 Fed. Reg. 4661 (August 14, 2006).

The Hondo Valley Public School District will ensure that the IEP for every child with a disability includes a statement of the child's functional and academic performance.

B. Measurable Annual Goals

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

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--

...

- (2) (i) A statement of measurable annual goals, including academic and functional goals designed to--
- (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
 - (B) Meet each of the child's other educational needs that result from the child's disability;
- (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives....

“[The Act] requires an IEP to include benchmarks or short term objectives for children with disabilities who take an alternate assessment aligned to alternate achievement standards. This would apply to preschool children and children with disabilities in kindergarten through grade two only if these children are assessed in a State or districtwide assessment program and the State has opted to develop an alternate assessment based on alternate achievement standards.” 71 Fed. Reg. 46663 (August 14, 2006).

“The Act does not require goals to be written for each specific discipline...” 71 Fed. Reg. 4662 (August 14, 2006).

“For example, if the IEP Team has determined that a student needs speech and language therapy services as a component of FAPE, the IEP must include goals and objectives that address the student's need to develop and/or improve communication-related skills. It would not be necessary, however, to label the goals and objectives as ‘speech therapy’ goals and objectives. Therefore, if the IEP includes goals and objectives which appropriately address the student's need to develop communication-related skills, no additional or separate ‘therapy’ goals and objectives would be required.” OSEP *Letter to Hayden* (Oct. 3, 1994).

The Hondo Valley Public School District will ensure that the IEP for every child with a disability includes functional and academic measurable annual goals. The Hondo Valley Public School District will further ensure that the IEP of a child who takes the NM Alternate Assessment includes benchmarks or short-term objectives. The Hondo Valley Public School District encourages an integrated IEP, rather than goals for each specific discipline.

C. Measuring and Reporting Progress

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

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--

...

- (3) A description of--
- (i) How the child’s progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
 - (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided....

“The Act does not require goals...to have outcomes and measures on a specific assessment tool.” 71 Fed. Reg. 46662 (August 14, 2006).

“Report cards and quarterly report cards are used as examples in 300.320(a)(3) of when periodic reports on the child’s progress toward meeting the annual goals might be provided. The specific times that progress reports are to be provided to parents and the specific manner and format in which a child’s progress toward meeting the annual goals is reported is best left to State and local officials to determine.” 71 Fed. Reg. 46664 (August 14, 2006).

The Hondo Valley Public School District will ensure that the IEP Team determines for each individual child how progress toward meeting the annual goals will be measured, and when parents will be provided with periodic reports of the child’s progress. The Hondo Valley Public School District will maintain copies of the progress reports provided to parents in the student’s special education file.

D. Statement of Special Education, Related Services, Supplementary Aids and Services

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

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--

...

(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child--

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

...

(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

Authority: 34 CFR §300.42 Supplementary aids and services.

Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.114 through 300.116.

Authority: 34 CFR §300.39 Special education.

(a) General.

(1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

...

(b) Individual special education terms defined. The terms in this definition are defined as follows:

...

(3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

(i) To address the unique needs of the child that result from the child’s disability; and

(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

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.
- (b) **Exception;** services that apply to children with surgically implanted devices, including cochlear implants.
 - (1) Related services do not include a medical device that is surgically implanted, the optimization of device functioning (e.g., mapping), maintenance of the device, or the replacement of that device.
 - (2) **Nothing in paragraph (b)(1) of this section—**
 - (i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE;
 - (ii) Limits the responsibility of the Hondo Valley Public School District to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or
 - (iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in §300.113(b).

Authority: 34 CFR §300.107 Nonacademic services.

The State must ensure the following:

- (a) The Hondo Valley Public School District will take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

Authority: 34 CFR §300.117 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §300.107, the Hondo Valley Public School District will ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child. The Hondo Valley Public School District will ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

Authority: 34 CFR §300.106 Extended school year services.

- (a) **General.**
 - (1) The Hondo Valley Public School District will ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.
 - (2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with §§300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.
 - (3) In implementing the requirements of this section, the Hondo Valley Public School District will not--
 - (i) Limit extended school year services to particular categories of disability; or
 - (ii) Unilaterally limit the type, amount, or duration of those services.
- (b) **Definition.** As used in this section, the term extended school year services means special education and related services that--
 - (1) Are provided to a child with a disability--
 - (i) Beyond the normal school year of the Hondo Valley Public School District;
 - (ii) In accordance with the child's IEP; and
 - (iii) At no cost to the parents of the child; and

(2) Meet the standards of the NMPED.

“We decline to require all IEP Team meetings to include a focused discussion on research-based methods or require public agencies to provide prior written notice when an IEP Team refuses to provide documentation of research-based methods, as we believe such requirements are unnecessary and would be overly burdensome.” 71 Fed. Reg. 46665 (August 14, 2006).

“States, school districts, and school personnel must, therefore, select and use methods that research has shown to be effective, to the extent that methods based on peer-reviewed research are available. This does not mean that the service with the greatest body of research is the service necessarily required for a child to receive FAPE. Likewise, there is nothing in the Act to suggest that the failure of a public agency to provide services based on peer-reviewed research would automatically result in a denial of FAPE.” 71 Fed. Reg. 46665 (August 14, 2006).

“There is nothing in the Act that requires an IEP to include specific instructional methodologies...The Department’s longstanding position on including instructional methodologies in a child’s IEP is that it is an IEP Team’s decision. Therefore, if an IEP Team determines that specific instructional methods are necessary for the child to receive FAPE, the instructional methods may be addressed in the IEP.” 71 Fed. Reg. 46665 (August 14, 2006).

“The analysis of whether the child’s level of achievement would be jeopardized by a summer break in his or her structured educational programming should proceed by applying not only retrospective data, such as past regression and rate of recoument, but also should include predictive data, based on the opinion of professionals in consultation with the child’s parents as well as circumstantial considerations of the child’s individual situation at home and in his or her neighborhood and community.” *Johnson v. Bixby Independent Sch. Dist. No. 4*, 921 F.2d 1022, 1028 (10th Cir. 1990).

Is the amount of minutes and hours a specific service is given required to be made a part of each child's IEP? "Although Part B does afford State and local educational authorities some discretion in this area, public agencies must ensure that the amount of services is stated in a manner that is appropriate to the specific service and clear to all who are involved in the development and implementation of the child's IEP. The statement of the amount of service must be sufficiently specific to reflect the commitment of agency resources to the particular service to ensure that the child's IEP addresses the child's identified educational needs. Therefore, it would be inconsistent with Federal requirements for States and school districts to have a practice of using ranges of time to express the agency's level of commitment to a particular special educational or related service since a child's IEP would not contain the specific amount of time committed for that service." OSEP *Letter to Akron* (1990).

The NMPED has issued a memorandum containing guidance regarding the “Role of Related Service Providers” (August 22, 2002), available through the NMPED website at: <http://www.ped.state.nm.us/seo/library/guidance/memor.pdf>. The Hondo Valley Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance.

The Hondo Valley Public School District will ensure that the amount of services is stated in a manner that is appropriate to the specific service and clear to all who are involved in the development and implementation of the child's IEP. The NMPED has issued a memorandum containing guidance regarding “Frequency of Services Stated on an IEP” (September 8, 2004), available through the NMPED website at: <http://www.ped.state.nm.us/seo/guide/stars.guide.service.level.pdf>. The Hondo Valley Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance.

The NMPED has issued a guidance document titled, “Guidelines for Calculating Service Levels” (June 2006), available through the NMPED website at: <http://www.ped.state.nm.us/seo/guide/stars.guide.service.level.pdf>. 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 posted on its website a guidance document developed by the Mountain Plains Regional Resource

Center titled, “Primer on the Provision of Extended School Year Services for Parents and Educators” (2006), available through the NMPED website at: <http://www.ped.state.nm.us/seo/parents/ESY%20Services%20Doc%202006%20JC%20cb.pdf>. 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, “An Overview of Special Education Transportation: A Primer for Parents and Educators” (2003), available through the NMPED website at: <http://www.ped.state.nm.us/seo/library/transguide.pdf>. 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, “Technical Assistance and Training Document for Gifted Education” (September 2000), available through the NMPED website: <http://www.ped.state.nm.us/seo/gifted/gifted.pdf>. 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.

E. Participation in State and Districtwide Assessment

Authority: 34 CFR § 300.160 Participation in assessments. (new – effective May 9, 2007.)

- (a) **General.** The NMPED must ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.
- (b) **Accommodation guidelines.**
 - (1) The NMPED (or, in the case of a district-wide assessment, the Hondo Valley Public School District) must develop guidelines for the provision of appropriate accommodations.
 - (2) The NMPED’s (or, in the case of a district-wide assessment, the Hondo Valley Public School District’s) guidelines must—
 - (i) Identify only those accommodations for each assessment that do not invalidate the score; and
 - (ii) Instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.
- (c) **Alternate assessments.**
 - (1) The NMPED (or, in the case of a district-wide assessment, the Hondo Valley Public School District) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in paragraph (a) of this section.
 - (2) For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in paragraph (c)(1) of this section must provide for alternate assessments that—
 - (i) Are aligned with the State’s challenging academic content standards and challenging student academic achievement standards;
 - (ii) If the State has adopted modified academic achievement standards permitted in 34 CFR 200.1(e), measure the achievement of children with disabilities meeting the State’s criteria under § 200.1(e)(2) against those standards; and

- (iii) If the State has adopted alternate academic achievement standards permitted in 34 CFR 200.1(d), measure the achievement of children with the most significant cognitive disabilities against those standards.
- (d) **Explanation to IEP Teams.** The NMPED (or in the case of a district-wide assessment, the Hondo Valley Public School District) must provide IEP Teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of State or local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).
- (e) **Inform parents.** The NMPED (or in the case of a district-wide assessment, the Hondo Valley Public School District) must ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards are informed that their child's achievement will be measured based on alternate or modified academic achievement standards.
- (f) **Reports.** The NMPED (or, in the case of a district-wide assessment, the Hondo Valley Public School District) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:
 - (1) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.
 - (2) The number of children with disabilities, if any, participating in alternate assessments based on grade level academic achievement standards.
 - (3) The number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards.
 - (4) The number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards.
 - (5) Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards, and alternate assessments based on alternate academic achievement standards if—
 - (i) The number of children participating in those assessments is sufficient to yield statistically reliable information; and
 - (ii) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.
- (g) **Universal design.** The NMPED (or, in the case of a district-wide assessment, an Hondo Valley Public School District) must, to the extent possible, use universal design principles in developing and administering any assessments under this section.

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

- (a) **General.** As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--
 - ...
 - (6) (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and
 - (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why--
 - (A) The child cannot participate in the regular assessment; and
 - (B) The particular alternate assessment selected is appropriate for the child....

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

...

- E. Participation in statewide and district-wide assessments. The Hondo Valley Public School District and other public agencies when applicable will include all children with disabilities in all statewide and district-wide assessment programs. The Hondo Valley Public School District will collect and report performance results in compliance with the requirements of 34 CFR Sec. 300.157 and Sec. 1111(h) of the Elementary and Secondary Education Act, and any additional requirements established by the department. Students with disabilities may participate:
- (1) in the appropriate general assessment in the same manner as their nondisabled peers; this may include the use of adaptations that are deemed appropriate for all students by the department; or
 - (2) in the appropriate general assessment with appropriate accommodations in administration if necessary; Hondo Valley Public School District will use the current guidance from the department about accommodations as specified in the student's IEP; or
 - (3) in alternate assessments for the small number of students for whom alternate assessments are appropriate under the department's established participation criteria; the IEP team must agree and document that the student is eligible for participation in an alternate assessment based on alternate achievement standards according to 34 CFR Sec. 300.320(a)(6).

The Hondo Valley Public School District IEP team will follow NMPED guidelines when determining how a child will participate in the New Mexico Statewide Assessment Program including how to select allowable accommodations and decide whether a child with a disability meets the criteria to be assessed based on modified or alternate academic achievement standards. The Hondo Valley Public School District will use the most current forms and follow the most current guidance of the NMPED.

F. Transition Services and Transfer of Rights at Age of Majority

1. Transition Services

Authority: 34 CFR §300.43 Transition services.

- (a) Transition services means a coordinated set of activities for a child with a disability that--
- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
 - (2) Is based on the individual child's needs, taking into account the child's strengths, preferences and interests; and includes--
 - (i) Instruction;
 - (ii) Related services;
 - (iii) Community experiences;
 - (iv) The development of employment and other post-school adult living objectives; and
 - (v) If appropriate, acquisition of daily living skills and functional vocational evaluation.
- (b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

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

...

- (b) Transition services. Beginning not later than the first IEP to be in effect when the child turns [14 in New Mexico], or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include—
- (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
 - (2) The transition services (including courses of study) needed to assist the child in reaching those goals.
- (c) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the

child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under § 300.520.

Authority: 34 CFR §300.324 Development, review, and revision of IEP

...
(c) Failure to meet transition objectives—

...
(2) Construction. Nothing in this part relieves any participating agency, including the New Mexico PED vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN:

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

(1) All definitions, policies, procedures, assurances, procedural safeguards and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the educational jurisdiction of each local school district, including children in charter schools within the district, except:

...
(d) the requirements of 34 CFR Secs. 300.43, 300.320(b) and 6.31.2.11(G)(2) regarding transition planning. Students identified as gifted must meet the requirements at Subsection B of 22-13-1.1 NMSA 1978, which is the next step plan for students without disabilities.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

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

...
(2) Appropriate post-secondary transition planning for children with disabilities is essential. The Hondo Valley Public School District will integrate transition planning into the IEP process pursuant to 34 CFR Secs. 300.320(b), 300.324(c) and will establish and implement appropriate policies, procedures, programs and services to promote successful post-secondary transitions for children with disabilities. Transition services for students 14-21 include the following.

- (a) Transition services are a coordinated set of activities for a child with a disability that emphasizes special education and related services designed to meet unique needs and prepare them for future education, employment and independent living.
- (b) Transition services are designed to be within a results oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation.
- (c) Transition services must be based on the individual child's needs, taking into account the child's strengths, preferences and interests and includes:
 - (i) instruction;
 - (ii) related services;
 - (iii) community experiences;
 - (iv) the development of employment and other post-school adult living objectives; and
 - (v) when appropriate, acquisition of daily living skills and the provision of a functional vocational evaluation.
- (d) Transition services for children with disabilities may be considered special education, if provided as individually designed instruction, aligned with the state standards with benchmarks, or related service, if required to assist a child with a disability to benefit from special education as provided in 34 CFR Sec. 300.43.

- (3) State rules require the development of measurable post-school goals beginning not later than the first IEP to be in effect when the child turns 14, or younger, if determined appropriate by the IEP team, and updated annually thereafter. Pursuant to 34 CFR Sec. 300.320(b), the IEP must include:
 - (a) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and where appropriate, independent living skills;
 - (b) the transition services (including courses of study) needed to assist the child in reaching those goals; and
 - (c) a statement that the child has been informed of the child’s rights under this title, if any, that will transfer to the child on reaching the age of majority.
- (4) Measurable post school goals refer to goals the child seeks to achieve after high school graduation. The goals themselves must be measurable while the child is still in high school. In addition, the nature of these goals will be different depending on the needs, abilities and wishes of each individual child.

“We do not believe it is necessary to change the definition of transition services because the definition is written broadly to include a range of services, including vocational and career training that are needed to meet the individual needs of a child with a disability. The definition clearly states that decisions regarding transition services must be made on the basis of the child’s individual needs, taking into account the child’s strengths, preferences, and interests. As with all special education and related services, the student’s IEP Team determines the transition services that are needed to provide FAPE to a child with a disability based on the needs of the child, not on the disability category or severity of the disability. We do not believe further clarification is necessary.” 71 Fed. Reg. 46579 (August 14, 2006).

“[T]he only area in which postsecondary goals are not required in the IEP is in the area of independent living skills. Goals in the area of independent living are required only if appropriate. It is up to the child’s IEP Team to determine whether IEP goals related to the development of independent living skills are appropriate and necessary for the child to receive FAPE.” 71 Fed. Reg. 46668 (August 14, 2006).

The Hondo Valley Public School District will ensure that the IEP Team complies with the IDEA transition provisions beginning no later than the first IEP to be in effect when the child turns 14, or younger if appropriate, and updated annually thereafter.

2. Graduation Planning

Authority: 34 CFR §300.102 Limitation--exception to FAPE for certain ages.

- (a) General. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:
 - ...
 - (3) (i) Children with disabilities who have graduated from high school with a regular high school diploma.
 - (ii) The exception in paragraph (a)(3)(i) of this section does not apply to students who have graduated but have not been awarded a regular high school diploma.
 - (iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503.
 - (iv) As used in paragraphs (a)(3)(i) through (a)(3)(iii) for this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State’s academic standards, such as a certificate or a general educational development credential (GED).

Authority: NMAC 6.29.1.9 [Standards for Excellence] PROCEDURAL REQUIREMENTS

...
J. Graduation Requirements:

- ...
(13) Graduation requirements for issuance of a conditional certificate of transition for students with an IEP. The development of a program of study and the granting of a diploma, or use of a conditional certificate

of transition in the form of a continuing or transition individualized educational program (IEP) for students receiving special education services, includes the following governing principles:

- (a) The IEP team is responsible for determining whether the student has completed a planned program of study based on the student's strengths, interests, preferences, identified educational and functional needs and long-term educational or occupational goals, making the student eligible to receive either a diploma or a conditional certificate of transition. A conditional certificate of transition allows the student to participate in graduation activities. If a student receives a conditional certificate of transition, the student shall then return to the program specified in the IEP to complete the student's secondary program and meet the requirements for a diploma. In addition, all IEPs shall provide a description of how the student's progress toward meeting annual goals and graduation requirements will be measured, and at what intervals progress will be reported to parents or guardians. A student shall be awarded a diploma upon completion of a planned program of study that meets the requirements of paragraph (b).
- (b) A student may be awarded a diploma (Section 22-13-1.1 NMSA 1978) using any of the following programs of study described in (i) through (iii). All IEP team discussion points and decisions identified herein, including the identification of the student's program of study and any student or parent proposals accepted or rejected by the IEP team (if the student has not reached the age of majority), shall be documented on the student's IEP and in the prior written notice (PWN) of proposed action.
 - (i) A standard program of study is based upon meeting or exceeding all requirements for graduation based on the New Mexico standards for excellence (Subsection J of 6.29.1.9 NMAC) with or without reasonable accommodations of delivery and assessment methods. In addition, a student shall pass all sections of the current state graduation examination(s) administered pursuant to Section 22-13-1.1(I) NMSA 1978 under standard administration or with state-approved accommodations, and shall meet all other standard graduation requirements of the ***.
 - (ii) A career readiness alternative program of study is developed to provide relevance and is based on a student's career interest as it relates to one of the career clusters, with or without reasonable accommodations of delivery and assessment methods. In addition, a student shall take the current state graduation examination(s) administered pursuant to Section 22-13-1.1(K) NMSA 1978, under standard administration or with state-approved accommodations, and achieve a level of competency pre-determined by the student's IEP team; the student shall earn at least the minimum number of credits required by the *** for graduation through standard or alternative courses that address the employability and career development standards with benchmarks and performance standards, as determined by the IEP team. Course work shall include a minimum of four units of career development opportunities and learning experiences that may include any of the following: career readiness and vocational course work, work experience, community-based instruction, student service learning, job shadowing, mentoring or entrepreneurships related to the student's occupational choices. Credits for work experience shall be related to the program of study that the school offers and specific to the ***'s ability to offer work experience or community-based instruction credits. The student shall achieve competency in all areas of the employability and career development standards with benchmarks and performance standards, as determined by the IEP team and the student's interest as it relates to the career clusters. The program of study shall address the New Mexico content standards with benchmarks and performance standards in other subject areas as appropriate.
 - (iii) An ability program of study was developed for students who have a significant cognitive disability or severe mental health issues. The IEP goals and functional curriculum course work shall be based on the New Mexico standards with benchmarks and performance standards and employability and career development standards with benchmarks and performance standards. Students in this program of study shall earn the minimum number of credits or be provided equivalent educational opportunities required by the ***, with course work individualized to meet the unique needs of the student through support of the IEP. In addition, a student shall take either the current state graduation examination(s) administered pursuant to Section 22-13-1.1(K) NMSA 1978, under standard administration or with state-approved accommodations, or the state-approved alternate assessment. The student shall achieve a level of competency pre-determined by the student's IEP team on the current graduation examination or the state-

- approved alternate assessment, and meet all other graduation requirements established by the IEP team.
- (c) The new requirements for the career readiness and ability pathways become effective beginning with students graduating in 2009.
 - (d) By the end of the eighth grade, each student's IEP shall contain a proposed individual program of study for grades nine through twelve. The program of study shall identify by name all course options the student may take and shall align with the student's long-range measurable post-secondary goals and transition services to facilitate a smooth transition to high school and beyond. This program of study shall be reviewed on an annual basis and adjusted to address the student's strengths, interests, preferences and areas of identified educational and functional needs. The IEP team shall document on the IEP the student's progress toward earning required graduation credits and passing the current graduation examination.
 - (e) *** will provide each student, who has an IEP and who graduates or reaches the maximum age for special education services, a summary of the student's academic achievement and functional performance, which will include recommendations on how to assist the student in meeting post-secondary goals.
 - (f) Students graduating on the standard program of study shall meet the state's minimum requirements on all sections of the graduation examination. IEP teams shall document a plan of action on the IEP and the PWN to be carried out by both the student and the ***, to ensure that the student will pass all sections of the graduation examination.
 - (g) To establish a level of proficiency on the current graduation examination or the state-approved alternate assessment for students on a career readiness program of study or ability program of study, IEP teams shall review the student's performance on the first attempt, and establish a targeted proficiency on all sections that are below the state's minimum requirement. For those students who meet participation criteria for the New Mexico alternate assessment, IEP teams shall set targeted levels of proficiency based upon previous performance on the test. If the student has previously been administered the New Mexico alternate assessment and has achieved an advanced level of overall performance, the IEP team shall arrange for the student to participate in the general graduation examination, and shall identify appropriate accommodations that the student may require. IEP teams shall document the targeted levels of proficiency on the IEP and the PWN, outlining the plan of action to be taken by both the student and the *** to ensure that the student will meet the targeted levels of proficiency. *** may submit a written request for a waiver to the secretary in cases where a student has medical or mental health issues that may result in regression or that negatively influence the student's ability to achieve targeted levels of proficiency. The written request shall be signed by the *** superintendent and shall include documentation of the medical or mental health issues.
 - (h) Changes in programs of study.
 - (i) Departures from the standard program of study for students receiving special education services and supports shall be considered in the order of the options listed in Subparagraph (b) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC. Any modified program of study may depart from a standard program of study only so far as is necessary to meet an individual student's educational needs as determined by the IEP team. *** is obligated to meet the requirements of IDEA to provide students with IEPs on any one of the three programs of study, and access to the general curriculum in the least restrictive environment. When an alternative program of study is developed, a building administrator or designee who has knowledge about the student shall be a member of the IEP team
 - (ii) The *** will document changes from the standard program of study on the PWN. IEP teams shall identify the reasons for changing the student's program of study, shall provide parents with clear concise explanations of the career readiness or ability programs of study, shall notify parents and students of the potential consequences that may limit the student's post-secondary options, and shall make required changes to the IEP and course of study, to ensure that the student meets the requirements of that program of study.
 - (iii) The IEP team shall not change the program of study for a student entering the final year of high school from the standard program of study to the career readiness program of study, nor from the career readiness program of study to the ability program of study, after the 20th school day of the final year of high school. IEP teams may change a student's program of study from the ability program of study to the career readiness program of study, or from the career readiness

- program of study to the standard program of study, if the student meets the graduation requirements of that program of study and if the change is made and documented appropriately in a revised IEP and PWN by a properly constituted IEP team in a properly convened meeting.
- (iv) Beginning with students entering the 10th grade, the *** will maintain an accurate accounting of graduation programs of study for students with IEPs. The *** will ensure that 80% or more of students with IEPs are in the standard program of study, no more than 10 - 15% of students with IEPs shall graduate in the career readiness program of study, and no more than 1- 3% of students with IEPs shall graduate in the ability program of study. If *** exceeds the above maximum percentages *** shall submit a request for a waiver regarding each student affected. The request for waiver shall include the district name, the high school name, a list of all students on the alternate program of study exceeding the maximum percentage (including student demographics, unique student identifiers and the justification for changing each student's program of study). The waiver request shall be signed and submitted by the superintendent or charter school administrator to the secretary.
 - (i) A student who receives special education services may be granted a conditional certificate of transition in the form of a continuing or transition IEP when:
 - (i) the IEP team provides sufficient documentation and justification that the issuance of a conditional certificate of transition for an individual student is warranted;
 - (ii) prior to the student's projected graduation date, the IEP team provides a PWN stating that the student will receive a conditional certificate of transition;
 - (iii) the *** ensures that a conditional certificate of transition is not a program of study and does not end the student's right to a FAPE;
 - (iv) the *** ensures that a conditional certificate of transition entitles a student who has attended four years or more of high school to participate in graduation activities, and requires that the student continue receiving special education supports and services needed to obtain the high school diploma;
 - (v) the *** ensures that, prior to receiving a conditional certificate of transition, the student has a continuing or transition IEP;
 - (vi) the student's continuing or transition IEP outlines measures, resources and specific responsibilities for both the student and the *** to ensure that the student receives a diploma.
 - (j) A student who does not return to complete the program of study as outlined in the continuing or transition IEP will be considered as a dropout.
 - (k) A student who receives a conditional certificate of transition is eligible to continue receiving special education services until receipt of a diploma or until the end of the academic year in which the student becomes 22 years of age.
 - (l) Graduation plans shall be a part of all IEPs:
 - (i) by the end of eighth grade, or by the time the student turns 14 years of age, and concurrent with the development of the student's transition plan in accordance with federal regulations at 34 CFR 300.320;
 - (ii) when a student returns to a school after an extended absence, and if an IEP program of study may have been developed but needs to be reviewed; or
 - (iii) when evaluations warrant the need for a modified program of study at any time after development of an initial graduation plan.
 - (m) Graduation plans shall be a part of all of all IEPs and annual reviews, and shall follow the student in all educational settings. Receiving institutions that fall under the department's jurisdiction will recognize these graduation plans, subject to revision by new IEP teams, if appropriate to meet a student's changing needs.
 - (n) At the exit IEP meeting, the team shall review the student's transition plan, and shall confirm and document that all state and *** requirements for graduation under the final IEP have been satisfied. A building administrator who has knowledge about the student shall be a member of this team, and shall sign specifically to verify and accept completed graduation plans, goals and objectives pursuant to (i) - (iii) of Subparagraph (b) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC, or plans for a conditional certificate of transition with a continuing or transition IEP, pursuant to Subparagraph (i) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC. The IEP team shall ensure that the student has current and relevant evaluations, reports or other documentation necessary to support a smooth and effective transition to post-secondary services for a student who will graduate on one of the three

programs of study. The school shall arrange for any necessary information to be provided at no cost to the students or parents. The school shall submit a list of students who will receive the diploma through a career readiness or ability program of study to the local superintendent or charter school administrator, using the students' identification numbers. This list shall be totalled and submitted to the local school board or governing body of a charter school. This information shall be treated as confidential in accordance with the FERPA.

- (o) Students eligible for special education services are entitled to a FAPE through age 21. If a student turns 22 during the school year, the student shall be allowed to complete the school year. If a student becomes 22 prior to the first day of the school year, the student is no longer eligible to receive special education services.
- (p) The receipt of a diploma terminates the service eligibility of students with special education needs.
- (q) All diplomas awarded by *** shall be identical in appearance, content and effect, except that symbols or notations may be added to individual students' diplomas to reflect official school honors or awards earned by students.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

...

G. Graduation planning and post-secondary transitions

- (1) The IEP for each child with a disability in grades 8 through 12 is developed, implemented and monitored in compliance with all applicable requirements of the department's Standards for Excellence, (Chapter 29 of Title 6 of NMAC), and these or other department rules and standards. The graduation plan shall be integrated into the transition planning and services provided in compliance with 34 CFR Secs. 300.320(b), 300.324(c).
 - (a) Graduation plans must include the course of study, projected date of graduation and if the child is not on target for the graduation plan, the strategies and responsibilities of the Hondo Valley Public School District, child and family must be identified in the IEP.
 - (b) Graduation options for children with disabilities at Paragraph (9) of Subsection J of 6.30.2.10 NMAC must align with state standards with benchmarks when appropriate.
 - (c) An alternative degree that does not fully align with the state's academic standards, such as a certificate or general educational development credential (GED), does not end a child's right to FAPE pursuant to 34 CFR Sec. 300.102(a)(3).

The Hondo Valley Public School District will ensure that the IEP Team timely conducts graduation planning and addresses all IDEA and State requirements for graduation.

The NMPED has issued a guidance document titled, "Pathways to the Diploma: Graduation Options for Students with Disabilities." (Fall 2005), available through the NMPED website at: <http://www.ped.state.nm.us/seo/transition/tam.pathways.to.diploma.pdf>. 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.

3. Transfer of Rights at Age of Majority

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

...

K. Transfer of parental rights to students at age 18

- (2) Pursuant to 34 CFR Sec. 300.320(c), each annual IEP review for a child who is 16 or older must include a discussion of the rights that will transfer when the child turns 18 and, as appropriate, a discussion of the parents' plans for obtaining a guardian before that time. The IEP of a child who is 14 or older must include a statement that the child and the parent have been informed of the rights that will transfer to the child at age 18.

The Hondo Valley Public School District will ensure that the IEP Team timely complies with the requirements for transfer of rights at age of majority.

V. IEP IMPLEMENTATION

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

(a) General. At the beginning of each school year, the Hondo Valley Public School District will have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.

...

(d) Accessibility of child's IEP to teachers and others. The Hondo Valley Public School District will ensure that—

- (1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service provider who is responsible for its implementation; and
- (2) Each teacher and provider described in paragraph (d)(1) of this section is informed of –
 - (i) His or her specific responsibilities related to implementing the child's IEP; and
 - (ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

“Section 300.323(d) requires that the child's IEP be accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation. The purpose of this requirement is to ensure that teachers and providers understand their specific responsibilities for implementing an IEP, including any accommodations or supports that may be needed. We agree with the commenters' recommendation and believe retaining current §300.342(b)(3)(i) and (b)(3)(ii) is necessary to ensure proper implementation of the child's IEP and the provision of FAPE to the child. However, the mechanism that the public agency uses to inform each teacher or provider of his or her responsibilities is best left to the discretion of the public agency.” 71 Fed. Reg. 46681 (August 14, 2006).

Through timely IEP development, coordination and planning, the Hondo Valley Public School District will ensure that IEPs are in effect for each child with a disability at the beginning of the school year, and that teachers and other service providers are informed of their responsibilities for implementation of an IEP. Having teachers and other service providers sign receipt for the IEP, or applicable portions of the IEP, is one way the Hondo Valley Public School District assures receipt.

VI. PARENTALLY-PLACED PRIVATE SCHOOL CHILDREN

Authority: 34 CFR §300.130 Definition of parentally-placed private school children with disabilities.

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in §300.13 or secondary school in §300.36, other than children with disabilities covered under §§300.145 through 300.147.

Authority: 34 CFR §300.132 Provision of services for parentally-placed private school children with disabilities—basic requirement.

- (a) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with §300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§300.190 through 300.198.
- (b) Services plan for parentally-placed private school children with disabilities. In accordance with paragraph (a) of this section and §§300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part.

- (c) Record keeping. Each LEA will maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under §§300.130 through 300.144:
- (1) The number of children evaluated;
 - (2) The number of children determined to be children with disabilities; and
 - (3) The number of children served.

Authority: 34 CFR §300.137 Equitable services determined.

- (a) No individual right to special education and related services. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.
- (b) Decisions.
- (1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§300.130 through 300.144 must be made in accordance with paragraph (c) of this section and §300.134(c).
 - (2) The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.
- (c) Services plan for each child served under §§300.130 through 300.144. If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must—
- (1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with §300.138(b); and
 - (2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

Authority: 34 CFR §300.138 Equitable services provided.

- (a) General.
- ...
- (2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.
- (b) Services provided in accordance with a services plan.
- (1) Each parentally-placed private school child with a disability who has been designated to receive services under §300.132 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in §§300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.
 - (2) The services plan must, to the extent appropriate—
 - (i) Meet the requirements of §300.320, or for a child ages three through five, meet the requirements of §300.323(b) with respect to the services provided; and
 - (ii) Be developed, reviewed, and revised consistent with §§300.321 through 300.324.
- (c) Provision of equitable services.
- ...
- (2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

Authority: 34 CFR §300.139 Location of services and transportation.

- ...
- (b) Transportation—
- (1) General.
 - (i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation—
 - (A) From the child's school or the child's home to a site other than the private school; and
 - (B) From the service site to the private school, or to the child's home, depending on the timing of the services.
 - (ii) LEAs are not required to provide transportation from the child's home to the private school.

- (2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of § 300.133.

Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN:

F. Applicability of rules to gifted children.

- (1) All definitions, policies, procedures, assurances, procedural safeguards and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the educational jurisdiction of each local school district, including children in charter schools within the district, except:

- (b) Subsections J, K and L of 6.31.2.11 NMAC regarding child find, evaluations and services for private school children with disabilities, children with disabilities in state-supported educational programs, children with disabilities in detention and correctional facilities and children with disabilities who are schooled at home;

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES

L. Children in private schools

- (1) Children enrolled by parents in private schools or facilities.
- (a) Parentally placed private school children with disabilities means children with disabilities enrolled by their parents in private schools, including religious schools or facilities, such as residential treatment centers, day treatment centers, hospitals, mental health institutions, other than children with disabilities who are covered under 34 CFR Secs. 300.145 through 300.147.
- (d) Each public agency must develop a “service plan” that describes the special education and related services the LEA will provide to a parentally placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 34 CFR Sec. 300.132 and that is developed and implemented in accordance with 34 CFR Secs. 300.137 through 300.139. The provision applies only to private schools and not to private facilities where an IEP must be in place.
- (f) No parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Pursuant to 34 CFR Sec. 300.137, the LEA must make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities.

The NMPED has issued a memorandum containing guidance regarding “IDEA 2004: 20 U.S.C. Sec. 1412(a)(10)(A)(B)(C)—Children in Private Schools” (November 14, 2005), available through the NMPED website at: <http://www.ped.state.nm.us/seo/guide/Private.School.Memo.111405.pdf>. The Hondo Valley Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance.

The U.S. Department of Education has issued a guidance document titled, “Questions and Answers On Serving Children with Disabilities Placed By Their Parents at Private Schools” (March 2006), available through the U.S. Department of Education website <http://www.ed.gov/policy/speced/guid/idea/faq-parent-placed.doc>. The guidance document provides detailed responses to frequently asked questions, and provides a clear explanation of the Hondo Valley Public School District’s duty to parentally-placed private school children. 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.