CAPITAN MUNICIPAL SCHOOLS

Handbook of Special Education Procedures

Updated May 2018

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SUBPART A—GENERAL		
PURPOSES AND APPLICABILITY		
	6.31.2.14 NMAC. RULES OF CONSTRUCTION: A. U.S. department of education interpretations. The U.S. department of education's (USDE) interpretations of the provisions of 34 CFR Part 300 as set forth in its Analysis of Comments and Changes to Part 300 at 71 Federal Register 46547-46753 (August 14, 2006), and other interpretations that are published or announced by the USDE in the federal register are recognized as the federal government's official positions regarding the requirements of the IDEA. Such interpretations shall be followed by the department to the extent that they do not conflict with express provisions of the IDEA or case law from the federal courts. B. Uniform Statute and Rule Construction Act. The Uniform Statute and Rule Construction Act, Secs. 12-2A-1 through 20 NMSA 1978, applies to the interpretation of 6.31.2 NMAC except to the extent that these rules incorporate permissible variations under the New Mexico version of the Uniform Statute and Rule Construction Act. References in 6.31.2 NMAC to state or federal laws, rules or regulations are intended to incorporate future amendments unless a provision in these rules is irreconcilable with a future amendment under the standards of the Uniform Statute and Rule Construction Act. C. Conflicts with state or federal laws or regulations. If any state law, a state rule or regulation adopted by the department or a federal law or regulation grants greater rights to an individual or agency than these rules provide, the provision(s) granting greater rights shall control to the extent necessary to avoid a conflict.	CAPITAN MUNICIPAL SCHOOLS Board Policy along with this Handbook of Procedures constitute the Policies and Procedures of CAPITAN MUNICIPAL SCHOOLS which are designed to be consistent with the State policies and procedures developed pursuant to the IDEA. The NMPED also provides guidance to local educational agencies in implementing the IDEA. To the extent that the NMPED's guidance is consistent with the IDEA and does not impose a requirement that is not otherwise imposed by the IDEA without the specific notice required under 34 C.F.R. §300.299(a)(2), CAPITAN MUNICIPAL SCHOOLS will follow the guidance of the NMPED. CAPITAN MUNICIPAL SCHOOLS Special Education Handbook of Procedures is not be for the purpose of creating a requirement that is not otherwise imposed by the IDEA (and its implementing federal regulations, state statutes and rules) and shall not be construed to create a higher standard. This Handbook of Procedures developed by the Superintendent or at the Superintendent's direction shall be posted on CAPITAN MUNICIPAL SCHOOLS's website. CAPITAN MUNICIPAL SCHOOLS Special Education Handbook of Procedures should be interpreted consistent with the IDEA. CAPITAN MUNICIPAL SCHOOLS Special Education Handbook of Procedures is reviewed and updated, as needed, on at least an annual basis. CAPITAN MUNICIPAL SCHOOLS will make timely changes to policies and procedures in response to IDEA amendments, regulatory or rule changes, changes to State policy, or new legal interpretation as are necessary to bring CAPITAN MUNICIPAL SCHOOLS into compliance with the requirements of IDEA.

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§ 300.1 Purposes.		
The purposes of this part are— (a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; (b) To ensure that the rights of children with disabilities and their parents are protected; (c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and (d) To assess and ensure the effectiveness of efforts to educate children with disabilities. (Authority: 20 U.S.C. 1400(d))	**6.31.2.2 NMAC. SCOPE:** The requirements of these rules are binding on each New Mexico public agency that has direct or delegated authority to provide special education and related services, regardless of whether that agency is receiving funds under the Individuals with Disabilities Education Improvement Act of 2004 and regardless of whether it provides special education and related services directly, by contract or through other arrangements such as referrals by the agency to private schools or facilities. Each public agency is responsible for ensuring that all rights and protections under these rules are afforded to children referred to or placed in private schools or facilities including residential treatment centers, day treatment centers, hospitals, or mental health institutions by that public agency. **6.31.2.6 NMAC. OBJECTIVE:** The following rule is promulgated to assist New Mexico public agencies in appropriately identifying and providing educational services for children with disabilities and gifted children. The purposes of this rule is (a) to ensure that all children with disabilities and gifted children have available a free appropriate public education which includes special education and related services to meet their unique needs; (b) to ensure that the rights of children with disabilities and gifted children and their parents are protected; (c) to assist public agencies to provide for the education of all children with disabilities and gifted children; and (d) to evaluate and ensure the effectiveness of efforts to educate those children.	CAPITAN MUNICIPAL SCHOOLS maintains systems to ensure that all children with disabilities residing in the District, including children with disabilities attending non-public schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and provided a free appropriate public education (FAPE). CAPITAN MUNICIPAL SCHOOLS maintains systems to ensure that children with disabilities and their parents are afforded the procedural safeguards required under the IDEA (and its implementing federal regulations, state statutes and rules) including with respect to the confidentiality of records and personally identifiable information.

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§ 300.2 Applicability of this part to State and local agencies.		
(a) *States.* This part applies to each State that *receives* payments under Part B of the Act, as *defined* in § 300.4. (b) Public *agencies within the State.* The provisions of this part— (1) Apply to all political subdivisions of the State that are involved in the education of children with disabilities, including: (i) The State educational agency (SEA). (ii) Local educational agencies (LEAs), educational service agencies (ESAs), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA. (iii) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for children with deafness or children with blindness). (iv) State and local juvenile and adult correctional facilities; and (2) Are binding on each public agency in the State that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Act. (c) *Private schools and facilities.* Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities— (1) Referred to or placed in private schools and facilities by that public agency; or (2) Placed in private schools by their parents under the provisions of §300.148.	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** J. Children in state-supported educational programs. (1) Children placed or referred by other public agencies. (a) Applicability. The rules in this Paragraph (1) of Subsection J apply to children with disabilities who are being considered for placement in a state-supported educational program or facility by another public agency as a means of providing special education and related services. (b) Responsibility. Each public agency shall ensure that a child with a disability who is being considered for placement in a state-supported educational program by another public agency has all the rights of a related services: (i) in conformance with an IEP; (ii) at no cost to the child's parents; and (iii) at a school or facility that is accredited by the department or licensed by the New Mexico department of health. (c) Service delivery. With informed parent consent pursuant to 34 CFR Sec. 300.300 and Subsection F of 6.31.2.13 NMAC, and pursuant to the procedures in 34 CFR Sec. 300.304 and Subsection D of 6.31.2.10 NMAC, the state-supported program may conduct such additional evaluations and gather such additional information as it considers necessary to assist the IEP team in making the placement decision. The referring public agency and the receiving state-supported educational program shall be jointly responsible for developing IEPs and ensuring that the child receives a free appropriate public education.	In New Mexico, there are two state-supported educational programs that were created for the express purpose of meeting the needs of students with disabilities in the State. The New Mexico School for the Blind and Visually Impaired (NMSBVI) is a specialized school which provides residential, academic, support, early childhood programs, summer camps and outreach services to the blind and visually impaired students of New Mexico. NMSBVI is an entirely special education school. Today, the main campus is still located on the original site in Alamogordo with an Early Childhood Program and Outreach Program housed in Albuquerque, New Mexico. More information is available on the NMSBVI website. With a long history of serving children and youth who are deaf or hard of hearing, the New Mexico School for the Deaf (NMSD) offers the following programs to the state: ■ Preschools and kindergartens - comprehensive and stimulating learning environments for young children ■ Academics - grades 1 through 12, which encompass traditional and elective subjects with a special emphasis on language and literacy development ■ Student Life - a wide range of residential, educational and recreational after-school activities, such as athletics, clubs and life skills development ■ Step*Hi - statewide, family-centered, early intervention services for babies, toddlers and young children ■ Outreach - statewide information and educational support to public schools serving children and youth who are deaf or hard of hearing

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(Authority: 20 U.S.C. 1412)	(d) Joint IEPs and interagency agreements. Responsibility for services for children placed in or referred to state-supported educational programs shall be defined by a jointly agreed upon IEP or other written agreement between the referring public agency and the state-supported program. (e) Annual review. At least annually, the referring public agency, the state-supported educational program and the parent shall jointly review the child's IEP and revise it as the joint IEP team deems appropriate. (2) Children enrolled in state-supported educational programs by parents or other public authorities. A state-supported educational program that accepts a child with a disability at the request of a parent or upon the request or order of a noneducational public authority, and without appropriate participation by the public agency that has primary responsibility for serving the child, assumes all responsibility for ensuring the provision of FAPE. The child's LEA or another public agency with educational jurisdiction may agree to share the responsibility pursuant to a joint IEP or other written agreement between the state-supported program, the other agency and, if appropriate, the parent. **6.31.2.11 NMAC. 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. ...	■ Summer Program - a place where NMSD and non-NMSD students who are deaf or hard of hearing, and in grades 3 – 12, come together in fun, adventurous, academic and non-academic ways More information is available on the NMSD website.

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	(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. … L. Children in private schools or facilities. ... (6) If not otherwise governed by this rule, the department will determine which school district is responsible for the cost of educating a qualified student in need of special education who has been placed in a private school or facility outside the qualified student's resident school district in accordance with the following procedures. (a) The receiving school district must notify the SEB of the department in writing no later than thirty (30) days after the receiving school district receives notice of the placement. The notice, as described on the department's website, must include: name of student, date of birth of student, date of placement, information regarding the qualified student's resident school district, documentation of placement, including student's IEP, cost of placement, and any other information deemed relevant by the SEB. The receiving school district must provide a copy of the notice to the district identified as the student's resident district. (b) The district identified as the student's resident	

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	district may provide any additional information it deems relevant. Such additional information must be provided no later than 15 days after the resident district receives its copy of the notice described in Subparagraph (a) of this paragraph. (c) No later than 60 days after its receipt of the notice described in Subparagraph (a) of this paragraph, the SEB will issue its determination as to which school district is responsible for the cost of educating the student, together with the amount of any reasonable reimbursement owed to the receiving school district. The SEB may extend the 60 day timeline for good cause.	

Definitions Used in This Part		
	6.31.2.7 NMAC DEFINITIONS: A. Terms defined by federal laws and regulations. All terms defined in the following federal laws and regulations and any other federally defined terms that are incorporated there by reference are incorporated here for purposes of these rules. (1) The Individuals with Disabilities Education Improvement Act of 2004 (IDEA), 20 USC Secs. 1401 and following. (2) The IDEA regulations at 34 CFR Part 300 (governing Part B programs for school-aged children with disabilities), 34 CFR Part 301 (governing programs for preschool children with disabilities). (3) Pursuant to the paperwork reduction provisions of IDEA 20 USC Sec. 1408, all definitions, with the exception of those found in Subsection B of 6.31.2.7 below, contained in the IDEA Parts 300 and 301 at 34 CFR Secs. 300.1 through 300.45, will be adopted by reference.	CAPITAN MUNICIPAL SCHOOLS utilizes the definitions in the IDEA, its implementing federal regulations, state statutes and rules. CAPITAN MUNICIPAL SCHOOLS, by reference in these procedures, and through staff development (as appropriate), shall ensure that personnel are knowledgeable regarding these definitions, and the standards and criteria established through these definitions.

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	NMSA 1978, § 22-5-4.12 (2017) [H.B. 75]. Limiting the Use Of Restraint And Seclusion In Schools; Providing for Notice To Parents … I. For the purposes of this section [H.B. 75]: (1) "first responder" means a person based outside of a school who functions within the emergency medical services system and who is dispatched to a school to provide initial emergency aid; (2) "mechanical restraint" means the use of any device or material attached or adjacent to the student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove, but "mechanical restraint" does not include mechanical supports or protective devices; (3) "physical restraint" means the use of physical force without the use of any device or material that restricts the free movement of all or a portion of a student's body, but "physical restraint" does not include physical escort; (4) "restraint" when not otherwise modified means mechanical or physical restraint; and (5) "seclusion" means the involuntary confinement of a student alone in a room from which egress is prevented. "Seclusion" does not mean the use of a voluntary behavior management technique, including a timeout location, as part of a student's education plan, individual safety plan, behavioral plan or individualized education program that involves the student's separation from a larger group for purposes of calming."	

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§ 300.4 Act.		
Act means the Individuals with Disabilities Education Act, as amended. (Authority: 20 U.S.C. 1400(a))	**6.31.2.7 NMAC DEFINITIONS:** B. The following terms shall have the following meanings for purposes of these rules. … (12) The **"IDEA"** means the federal Individuals with Disabilities Education Improvement Act of 2004, 20 USC Secs. 1401 and following, including future amendments.	

§ 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 such device. (Authority: 20 U.S.C. 1401(1))		The definition of *assistive technology device* does not list specific devices, nor would it be practical or possible to include an exhaustive list of assistive technology devices. However, medical devices that are surgically implanted, including those used for breathing, nutrition, and other bodily functions, are excluded from the definition of an *assistive technology device* in section 602(1)(B) of the Act. The exclusion applicable to a medical device that is surgically implanted includes both the implanted component of the device, as well as its external components. (See 71 Fed. Reg. 46547 (August 14, 2006))

§ 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		

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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: 20 U.S.C. 1401(2))		
"CFR". (Not defined in federal regulations; see New Mexico Rules).	**6.31.2.7 NMAC. DEFINITIONS:** B. The following terms shall have the following meanings for purposes of these rules. (1) **"CFR"** means the code of federal regulations, including future amendments.	

§ 300.7 Charter school.		
Charter school has the meaning given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 *et seq.* (ESEA). (Authority: 20 U.S.C. 7221i(1))		

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§ 300.8 Child with a disability.		
(a) *General.* (1) *Child with a disability* means a child evaluated in accordance with §§ 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. (2) (i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§ 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part. (ii) If, consistent with § 300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section. (b) *Children aged three through nine experiencing developmental delays. Child with a disability* for	**6.31.2.7 NMAC. DEFINITIONS:** B. The following terms shall have the following meanings for purposes of these rules. … (2) **"Child with a disability"** means a child who meets all requirements of 34 CFR Sec. 300.8 and who: (a) is aged 3 through 21 or will turn 3 at any time during the school year; (b) has been evaluated in accordance with 34 CFR Secs. 300.304-300.311 and any additional requirements of these or other public education department rules and standards and as having one or more of the disabilities specified in 34 CFR Sec. 300.8 including intellectual disability, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, orthopedic impairment, autism, traumatic brain injury, and other health impairment, a specific learning disability, deaf-blindness, or being developmentally delayed as defined in paragraph (4) below; and who has not received a high school diploma; and (c) at the discretion of each local educational agency and subject to the additional requirements of Paragraph (2) of Subsection F of 6.31.2.10 NMAC, the term "child with a disability" may include a child aged 3 through 9 who is evaluated as being developmentally delayed and who, because of that condition, needs special education and related services.	The NMPED has issued a guidance document titled, New Mexico Technical Evaluation and Assistance Manual: Determining Eligibility for IDEA Part B Special Education Services (NM TEAM, January 2017), available through the NMPED website. For each eligibility category, the Initial Evaluation section in the NM TEAM (January 2017) outlines the assessments, observations, and data that CAPITAN MUNICIPAL SCHOOLS expects the evaluation team to gather throughout the initial evaluation process. This section includes: Highly Recommended Components and Potential Additional Components. The Highly Recommended Components are those components that CAPITAN MUNICIPAL SCHOOLS considers most critical for making an eligibility determination under a specific eligibility category. The Potential Additional Components are those that evaluation teams will most commonly identify as other areas of need for a particular child when considering a specific category. However, CAPITAN MUNICIPAL SCHOOLS reminds evaluation teams that these two lists are not all-inclusive. Each evaluation is unique and should reflect the specific child's needs as identified by the evaluation team. In addition, CAPITAN MUNICIPAL SCHOOLS reminds evaluation teams that in some cases, standardized measures may not provide the most accurate representation of a child's abilities or there may not be an appropriate standardized measure for the area being assessed. In these cases, evaluation teams may find that it is necessary to use alternative methods to obtain the data that they need. CAPITAN MUNICIPAL SCHOOLS expect these decisions and their underlying rationale to be clearly documented. With rare exception, CAPITAN MUNICIPAL SCHOOLS expects the evaluation team to include all of the elements outlined

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Federal Regulations	New Mexico Rules	Procedures
children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in §300.111(b), include a child— (1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (2) Who, by reason thereof, needs special education and related services. (c) Definitions of disability terms. The *terms* used in this definition of a child with a disability are defined as follows: (1) (i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.	**6.31.2.7 NMAC. DEFINITIONS:** B. The following terms shall have the following meanings for purposes of these rules. … (4) **"Developmentally delayed"** means a child aged 3 through 9 or who will turn 3 at any time during the school year: with documented delays in development which are at least two standard deviations below the mean on a standardized test instrument or 30 per cent below chronological age; and who in the professional judgment of the IEP team and one or more qualified evaluators needs special education and related services in at least one of the following five areas: communication development, cognitive development, physical development, social or emotional development or adaptive development. Use of the developmentally delayed option by individual local educational agencies is subject to the further requirements of Paragraph 2 of Subsection F of 6.31.2.10 NMAC. Local education agencies must use appropriate diagnostic instruments and procedures to ensure that the child qualifies as a child with a developmental delay in accordance with the definition in this paragraph. **6.31.2.7 NMAC. DEFINITIONS:** B. The following terms shall have the following meanings for purposes of these rules. … (5) **"Dual discrepancy"** means the child does not achieve adequately for the child's age or to meet grade-level standards established in Standards for Excellence (Chapter 29 of Title 6 of the NMAC); and (a) does not make sufficient progress to meet age or grade-level standards; or	under Highly Recommended Components and to also consider the Potential Additional Components, as appropriate for each individual child. CAPITAN MUNICIPAL SCHOOLS expects a team to document any deviation from these guidelines. (See NM TEAM, January 2017) The report prepared by the group of qualified professionals will address whether the child meets or, in the case of a reevaluation, continues to meet the specific eligibility criteria for the disability or disabilities being evaluated and whether, by reason of the disability or disabilities, the child needs or continues to need special education and related services. Upon completion of the evaluation, the group of qualified professionals and the parent ("the Eligibility Determination Team") will determine whether the child is eligible for special education services under the IDEA. The NM TEAM (January 2017) contains Initial and Reevaluation Eligibility Determination Forms at the end of each disability category section to guide the Eligibility Determination Team in making an eligibility determination under each of the disability categories. CAPITAN MUNICIPAL SCHOOLS's Eligibility Determination Team will consider and utilize, as appropriate, the information within these forms including the series of questions. (See NM TEAM, January 2017) <u>Developmental Delay</u> CAPITAN MUNICIPAL SCHOOLS does use the term developmental delay (DD). An initial evaluation for DD may include (highly recommended): for preschool-aged children, reviewing existing screening data and/or any previously conducted evaluation data and for school-aged children, reviewing and considering complete SAT file documentation and existing evaluation data; gathering and analyzing developmental/educational, medical, family, and social history, including an interview with the parent(s)/guardian(s); completing direct observations across multiple settings and times; administering and analyzing assessment of

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(iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied. (2) *Deaf-blindness* means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness. (3) *Deafness* means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance. (4) (i) *Emotional disturbance* means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors. (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers. (C) Inappropriate types of behavior or feelings under normal circumstances. (D) A general pervasive mood of unhappiness or depression.	(b) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards or intellectual development. (6) **"Dyslexia"** means a condition of neurological origin that is characterized by difficulty with accurate or fluent word recognition and by poor spelling and decoding abilities, which characteristics typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction and may result in problems in reading comprehension and reduced reading experience that may impede the growth of vocabulary and background knowledge. **NMSA 1978, § 22-13-6 (2010):** E. "Dyslexia" means a condition of neurological origin that is characterized by difficulty with accurate or fluent word recognition and by poor spelling and decoding abilities, which characteristics typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction and may result in problems in reading comprehension and reduced reading experience that may impede the growth of vocabulary and background knowledge. **6.31.2.7 NMAC. DEFINITIONS:** B. The following terms shall have the following meanings for purposes of these rules. … (19) …	developmental skills in areas of suspected disability, including one or more of the following: motor skills assessment, assessment of cognitive abilities, speech/language/communication assessment, social/emotional assessment, adaptive behavior information, including the areas of conceptual, social, and practical skills; conducting an assessment of pre-academic skills and/or academic achievement skills; completing multiple direct observations across both structured and unstructured settings and at various times; and when an evaluation in any area is unable to be completed using standardized measures, using alternative methods of obtaining data to gather information about the child's present levels of performance. A child with a disability who only needs a related service and not special education is not eligible under IDEA, and is not eligible to receive related services. (See NM TEAM, January 2017) for potential additional components and reevaluation guidance.) <u>Autism</u> In New Mexico, an operational definition of autism has been developed using a medical model from the Diagnostic and Statistical Manual of Mental Disorders-Fifth Edition (DSM-5), with Autism Spectrum Disorder classified under the autism eligibility category for purposes of determining eligibility under Individuals with Disabilities Education Act (IDEA). This broad DSM-5 category and criteria provides valuable descriptive information for evaluators as they attempt to address autism in school settings. However, it is not necessary for an EDT to determine that the child meets the DSM-5 criteria in order to be found eligible for special education and related services under the eligibility category of autism. In addition, CAPITAN MUNICIPAL SCHOOLS expects the evaluation team to be mindful of the fact that they are making an educational, not a medical, determination and that children must also demonstrate a need for special education services in order to be eligible for services under the eligibility category of autism under IDEA (2004). (See NM TEAM, January 2017)

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(E) A tendency to develop physical symptoms or fears associated with personal or school problems. (ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section. (5) *Hearing impairment* means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section. (6) *Intellectual disability* means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance (7) *Multiple disabilities* means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness. (8) *Orthopedic impairment* means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis,	(b) Speech-language pathology services must meet the following standards to be considered special education: (i) the service is provided to a child who has received appropriate tier I universal screening under Subsection D of 6.29.1.9 NMAC as it may be amended from time to time, before being properly evaluated under 34 CFR Secs. 300.301-300.306 and Subsection D of 6.31.2.10 NMAC; (ii) the IEP team that makes the eligibility determination finds that the child has a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance; and (iii) the speech language pathology service consists of specially designed instruction that is provided to enable the child to have access to the general curriculum and meet the educational standards of the public agency that apply to all children; and (iv) the service is provided at no cost to the parents under a properly developed IEP that meets the requirements of Subsection B of 6.31.2.11 NMAC.	An initial evaluation for autism may include (highly recommended): for preschool-aged children, reviewing existing screening data and/or any previously conducted evaluation data and for school-aged children, reviewing and considering complete SAT file documentation and existing evaluation data; gathering and analyzing developmental/educational, medical, family, and social history, including an interview with the parent(s)/guardian(s); completing direct observations across multiple settings; conducting an assessment of cognitive abilities; completing a systematic review of individual academic achievement performance including formal and informal measures; administering an individual academic achievement assessment in the area(s) of suspected need and for which instruction and intervention have been documented; conducting an adaptive behavior assessment including information in the areas of conceptual, social and practical skills; conducting a speech/language/communication assessment; conducting a sensory processing and motor skills assessment; conducting a social/emotional assessment; gathering autism specific information through the use of an autism instrument; completing a transition assessment, including a vocational evaluation (as appropriate); and when an evaluation in any area is unable to be completed using standardized measures, using alternative methods of obtaining data to gather information about the child's present levels of performance. (See NM TEAM, January 2017 for potential additional components and reevaluation guidance.) <u>Deaf-Blindness</u> An initial evaluation for deaf-blindness may include (highly recommended): for preschool-aged children, reviewing existing screening data and/or any previously conducted evaluation data and for school-aged children, reviewing and considering complete SAT file documentation and existing evaluation data; gathering and analyzing developmental/educational, medical, family, and social history, including an interview with the parent(s)/guardian(s); obtaining a current, comprehensive audiological evaluation by a licensed

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bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). (9) *Other health impairment* means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that— (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and (ii) Adversely affects a child's educational performance. (10) Specific learning disability— (i) *General.* Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. *(ii) Disorders not included.* Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of		audiologist to determine degree and type of hearing loss, including the assessment of hearing levels (both aided and unaided) and the functional use of hearing; obtaining an eye examination conducted by a licensed eye specialist, such as an ophthalmologist or an optometrist, to determine the presence of an eye condition; completing a functional vision evaluation coordinated by a licensed Teacher(s) of Students with Blindness/Visual Impairment; conducting a speech/language/communication assessment; obtaining a learning media assessment conducted by a licensed Teacher(s) of Students with Blindness/Visual Impairment; completing direct observations across multiple settings; completing a systematic review of individual academic achievement, including formal and informal measures; completing a transition assessment, including a functional vocational evaluation (as appropriate); and when an evaluation in any area is unable to be completed using standardized measures, using alternative methods of obtaining data to gather information about the child's present levels of performance. The eye examination written report (see NM TEAM, January 2017, Appendix B) must include the diagnosis of the eye condition, visual acuity, and recommendations in regard to using prescription lenses. (See NM TEAM, January 2017 for potential additional components and reevaluation guidance.) <u>Hearing Impairment including Deafness</u> An initial evaluation for hearing impairment including deafness may include (highly recommended): for preschool-aged children, reviewing existing screening data and/or any previously conducted evaluation data and for school-aged children, reviewing and considering complete SAT file documentation and existing evaluation data; gathering and analyzing developmental/educational, medical, family, and social history, including an interview with the parent(s)/guardian(s); obtaining a current, comprehensive audiological evaluation by a licensed audiologist to determine degree and type of hearing loss, including the assessment of hearing levels (aided and unaided) and the functional use of hearing; conducting a

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emotional disturbance, or of environmental, cultural, or economic disadvantage. (11) *Speech or language impairment* means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance. (12) *Traumatic brain injury* means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma. (13) *Visual impairment including blindness* means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. (Authority: 20 U.S.C. 1401(3); 1401(30))		speech/language/communication assessment; completing a systematic review of individual academic achievement, including formal and informal measures; administering an individual academic achievement assessment in the area(s) of suspected need and for which instruction and intervention have been documented; completing multiple direct observations across both structured and unstructured settings and various times; conducting a transition assessment, including a vocational evaluation (as appropriate); and when an evaluation in any area is unable to be completed using standardized measures, using alternative methods of obtaining data to gather information about the child's present levels of performance. (See NM TEAM, January 2017 for potential additional components and reevaluation guidance.) <u>Emotional Disturbance</u> CAPITAN MUNICIPAL SCHOOLS expects that the initial eligibility determination under the category of emotional disturbance include the participation of a New Mexico licensed psychologist (clinical or school). (See NM TEAM, January 2017) With respect to the criterion that the student manifest one or more characteristics of emotional disturbance over a long period of time, "a long period of time" is a range of from two to nine months, assuming preliminary interventions have been implemented and proven ineffective during that period. (See OSEP Letter to Anonymous (1989)) With respect to the criterion that the student manifest one or more characteristics of emotional disturbance to a "marked degree," this generally refers to the frequency, duration, or intensity of a student's emotionally disturbed behavior in comparison to the behavior of peers, and can be indicative of either degree or acuity or pervasiveness. (See OSEP Letter to Anonymous (1989)) With respect to the criterion that the emotional disturbance adversely affect educational performance,

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		CAPITAN MUNICIPAL SCHOOLS expects the EDT to determine educational performance on an individual basis including non-academic as well as academic standards as determined by standardized measures. (See OSEP Letter to Lybarger (1990)) An initial evaluation for emotional disturbance may include (highly recommended): for preschool-aged children, reviewing existing screening data and/or any previously conducted evaluation data and for school-aged children, reviewing and considering complete SAT file documentation and existing evaluation data; gathering and analyzing developmental/educational, medical, family, and social history, including an interview with the parent(s)/guardian(s); completing multiple direct observations across both structured and unstructured settings and various times; completing a systematic review of individual academic achievement performance including formal and informal measures; administering an individual academic achievement assessment in the area(s) of suspected disability and for which instruction and intervention has been documented; conducting or reviewing and updating a functional behavioral assessment; conducting or obtaining a psychological evaluation consistent with the area(s) of suspected disability; using rating scales /checklists to collect data about frequency and intensity of behaviors (internalizing or externalizing); completing a transition assessment, including a vocational evaluation (as appropriate); and when an evaluation in any area is unable to be completed using standardized measures, using alternative methods of obtaining data to gather information about the child's present levels of performance. (See NM TEAM, January 2017 for potential additional components and reevaluation guidance.) <u>Intellectual Disability</u> An initial evaluation for intellectual disability may include (highly recommended): for preschool-aged children, reviewing existing screening data and/or any previously conducted evaluation data and for school-aged children, reviewing and considering complete SAT

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		file documentation and existing evaluation data; gathering and analyzing developmental/educational, medical, family, and social history, including an interview with the parent(s)/guardian(s); completing multiple direct observations across both structured and unstructured settings and various times; conducting an assessment of cognitive abilities; obtaining adaptive behavior information including the areas of conceptual, social, and practical skills; documenting manifestation of the disability before the age of 18; completing a systematic review of individual academic achievement, including formal and informal measures; administering an individual academic achievement assessment in the areas of suspected disability and for which instruction and intervention have been documented; conducting a speech/language/communication evaluation; conducting a transition assessment, including a vocational evaluation, as appropriate; and when an evaluation in any area is unable to be completed using standardized measures, using alternative methods of obtaining data to gather information about the child's present levels of performance. (See NM TEAM, January 2017 for potential additional components and reevaluation guidance.) <u>Multiple Disabilities</u> CAPITAN MUNICIPAL SCHOOLS expects that the highly recommended and potential additional components of an initial evaluation be determined by the evaluation team based upon the concomitant disabilities and the guidance provided in the NM TEAM that is specific to those areas of suspected disability and need for special education. (See NM TEAM, January 2017 for reevaluation guidance.) <u>Orthopedic Impairment</u> An initial evaluation for orthopedic impairment may include (highly recommended): for preschool-aged children, reviewing existing screening data and/or any previously conducted evaluation data and for school-aged children, reviewing and considering complete SAT file documentation and existing evaluation data;

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		gathering and analyzing developmental/educational, medical, family, and social history, including an interview with the parent(s)/guardian(s); documenting medical diagnosis of a chronic orthopedic impairment (See NM TEAM, January 2017, Appendix B); completing multiple direct observations across both structured and unstructured settings and various times; conducting a motor skills assessment by a licensed occupational therapist, licensed physical therapist, or both; completing a systematic review of individual academic achievement, including formal and informal measures; administering an individual academic achievement assessment in the area(s) of suspected disability and for which instruction and intervention have been documented; conducting a transition assessment, including a vocational evaluation (as appropriate); and when an evaluation in any area is unable to be completed using standardized measures, using alternative methods of obtaining data to gather information about the child's present levels of performance. (See NM TEAM, January 2017 for potential additional components and reevaluation guidance.) Other Health Impairment The list of acute or chronic health conditions in the definition of other health impairment is not exhaustive, but rather provides examples of problems that children have that could make them eligible for special education and related services under the category of other health impairment. (See 71 Fed. Reg. 46550 (August 14, 2006)) IDEA does not necessarily require a school district to conduct a medical evaluation for the purpose of determining whether a child has ADD/ADHD. If CAPITAN MUNICIPAL SCHOOLS believes that a medical evaluation by a licensed physician is needed as part of the evaluation to determine whether a child suspected of having ADD/ADHD meets the eligibility criteria of the OHI category, or any other disability category under the IDEA, CAPITAN MUNICIPAL SCHOOLS will ensure that this evaluation is conducted

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		at no cost to the parents. (See OSEP Letter to Williams (March 14, 1994)) If CAPITAN MUNICIPAL SCHOOLS believes that there are other effective methods for determining whether a child suspected of having ADD/ADHD meets the eligibility requirements of the OHI category, then it is permissible for CAPITAN MUNICIPAL SCHOOLS to use qualified personnel other than a licensed physician to conduct the evaluation as long as all of the protections in evaluation procedures are met. (See OSEP Letter to Williams (March 14, 1994)) An initial evaluation for other health impairment may include (highly recommended): for preschool-aged children, reviewing existing screening data and/or any previously conducted evaluation data and for school-aged children, reviewing and considering complete SAT file documentation and existing evaluation data; gathering and analyzing developmental/educational, medical, family, and social history, including an interview with the parent(s)/guardian(s); obtaining documentation from a licensed physician or other qualified health professional, licensed to determine such conditions, that includes a diagnosis of a chronic or acute physical, physiological, or neurological impairment that results in limited strength, vitality, and/or alertness; completing an analysis of individual academic achievement, including formal and informal measures; administering an individual academic achievement assessment in the areas of suspected disability and for which instruction and intervention have been documented; completing direct observations across multiple settings, both structured and unstructured and at various times; if the referral concern being considered is attention, focus, and/or hyperactivity, obtaining behavior rating scales/checklists to collect data about the frequency and intensity of behaviors of concern (internalizing and externalizing), multiple time-sampled classroom observations, and a functional behavioral assessment; conducting a transition assessment, including a vocational evaluation (as appropriate); and when an evaluation in any area is unable to be completed using standardized measures,

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		using alternative methods of obtaining data to gather information about the child's present levels of performance. (See NM TEAM, January 2017 for potential additional components and reevaluation guidance.) Specific Learning Disability CAPITAN MUNICIPAL SCHOOLS recognizes it must use the State criteria when determining whether a child has a Specific Learning Disability. In the specific learning disability category, CAPITAN MUNICIPAL SCHOOLS expects that evaluation teams adhere to NM TEAM (January 2017) when evaluating a student for a suspected learning disability, as a means of ensuring compliance with State criteria. (See OSEP Letter to Massanari (September 24, 2007); see also OSEP Letter to Zirkel (August 15, 2007). An initial evaluation for a specific learning disability may include (highly recommended): for school aged-children, reviewing and considering complete SAT file documentation and existing evaluation data; gathering and analyzing developmental/educational, medical, family, and social history, including an interview with the parent(s)/guardian(s); completing direct observations across multiple settings, both structured and unstructured and at various times; analyzing observation completed in the child's learning environments including the general classroom setting, either through the SAT process or as part of the initial evaluation process (the observation must be completed in all areas of difficulty); conducting a comprehensive assessment of cognitive abilities, including verbal and nonverbal skills; gathering and analyzing informal individual academic achievement data, including benchmark testing, progress monitoring, curriculum-based measures, running records, work samples, and criterion-referenced testing; gathering and analyzing formal individual academic achievement data in the area of suspected disability, including basic reading skills, reading fluency, reading comprehension, math, written expression, oral expression, and/or listening comprehension; conducting an assessment of cognitive

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		processing skills in the areas related to the suspected area(s) of disability; conducting a transition assessment, including a vocational evaluation (as appropriate); and when an evaluation in any area is unable to be completed using standardized measures, using alternative methods of obtaining data to gather information about the child's present levels of performance. (See NM TEAM, January 2017 for potential additional components and reevaluation guidance.) Speech-Language Impairment An initial evaluation for a speech-language impairment (speech disorder) may include(highly recommended) : for preschool-aged children, reviewing existing screening data and/or any previously conducted evaluation data and for school-aged children, reviewing and considering complete SAT file; gathering and analyzing developmental/educational, medical, family, and social history, including an interview with the parent(s)/guardian(s); conducting a functional communication assessment; assessing intelligibility of speech; administering an oral mechanism/oral motor exam; completing an analysis of a spontaneous speech sample with a focus on areas of concern; conducting a transition assessment, including a vocational evaluation (as indicated); and when an evaluation in any area is unable to be completed using standardized measures, using alternative methods of obtaining data to gather information about the child's present levels of performance. In addition to the components listed above, the evaluation of articulation may include (highly recommended): assessing stimulability; and completing standardized and/or non-standardized inventory(ies) of speech sounds/phonological processes. In addition to the components listed above, the evaluation of voice may include (highly recommended): completing measures of and/or qualitative descriptions of quality, resonance, pitch, and volume. In addition to the components listed above, the evaluation of fluency may include (highly recommended): completing observations of oral, laryngeal, and respiratory behaviors; and completing a qualitative description of non-measurable

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		aspects of fluency (i.e., coping behaviors, such as circumlocution, starter devices, postponement tactics, or attempts to disguise stuttering and emotional reactions). (See NM TEAM, January 2017 for potential additional components and reevaluation guidance.) An initial evaluation for a speech-language impairment (language disorder) may include (highly recommended): for preschool-aged children, reviewing existing screening data and/or any previously conducted evaluation data and for school-aged children, reviewing and considering complete SAT file; gathering and analyzing developmental/educational, medical, family, and social history, including an interview with the parent(s)/guardian(s); conducting a functional communication assessment; administering standardized and non-standardized assessments of receptive and expressive language in the areas of content (semantics), form (morphology and syntax), and use (pragmatics); completing a systematic review of individual academic achievement, including formal and informal measures; conducting a transition assessment, including a vocational evaluation (as appropriate); and when an evaluation in any area is unable to be completed using standardized measures, using alternative methods of obtaining data to gather information about the child's present levels of performance. (See NM TEAM, January 2017 for potential additional components and reevaluation guidance.) <u>Traumatic Brain Injury</u> An initial evaluation for traumatic brain injury may include (highly recommended): for preschool-aged children, reviewing existing screening data and/or any previously conducted evaluation data and for school-aged children, reviewing and considering complete SAT file documentation and existing evaluation data; gathering and analyzing developmental/educational, medical, family, and social history, including an interview with the parent(s)/guardian(s); obtaining medical or historical documentation of a TBI, including premorbid functioning, if available; conducting a speech/language/communication assessment; conducting

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		an assessment of cognitive abilities; completing a systematic review of individual academic achievement, including formal and informal measures; administering an individual academic achievement assessment in the area(s) of suspected disability for which instruction and intervention have been documented; conducting a sensory processing and motor skills assessment; obtaining adaptive behavior information in the areas of conceptual, social, and practical skills; completing multiple direct observations across both structured and unstructured settings and at various times; conducting a transition assessment, including a vocational evaluation (as appropriate); and when an evaluation in any area is unable to be completed using standardized measures, using alternative methods of obtaining data to gather information about the child's present levels of performance. Specific to this eligibility category, it is vital to obtain any pre-injury information that may be available. This would include information regarding functioning at school, home, and in the community. (See NM TEAM, January 2017 for potential additional components and reevaluation guidance.) <u>Visual Impairment</u> An initial evaluation for visual impairment may include (highly recommended): for preschool-aged children, reviewing existing screening data and/or any previously conducted evaluation data and for school-aged children, reviewing and considering complete SAT file documentation and existing evaluation data; gathering and analyzing developmental/educational, medical, family, and social history, including an interview with the parent(s)/guardian(s); obtaining an eye examination (within one year) conducted by a licensed eye specialist such as an ophthalmologist or optometrist to determine the presence of an eye condition; conducting a functional vision evaluation by a licensed Teacher(s) of Students with Blindness/Visual Impairment or a certified orientation and mobility specialist; conducting a learning media assessment by a licensed Teacher(s) of Students with Blindness/Visual Impairment; completing multiple direct observations across both structured and unstructured settings and at various times; completing a

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		systematic review of individual academic achievement, including formal and informal measures; administering an individual academic achievement assessment in the area(s) of suspected need and for which instruction and intervention have been documented; completing a transition assessment, including a vocational evaluation (as appropriate); and when an evaluation in any area is unable to be completed using standardized measures, using alternative methods of obtaining data to gather information about the child's present levels of performance. The eye examination written report (see NM TEAM, January 2017, Appendix B) must include the diagnosis of the eye condition, visual acuity, and recommendations in regard to using prescription lenses. (See NM TEAM, January 2017 for potential additional components and reevaluation guidance.)

§ 300.9 Consent.		
Consent means that— (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (c) (1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. (2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** E. Communications in understandable language. Pursuant to 34 CFR Secs. 300.9(a), 300.322(e), 300.503(c) and 300.504(d), each public agency must communicate with parents in understandable language, including the parent's native language or other mode of communication, unless it is clearly not feasible to do so, if necessary for understanding, in IEP meetings, in written notices and in obtaining consent where consent is required.	CAPITAN MUNICIPAL SCHOOLS understands that the definition of consent requires a parent to be fully informed of all information relevant to the activity for which consent is sought. CAPITAN MUNICIPAL SCHOOLS further understands that the definition also requires a parent to agree in writing to an activity for which consent is sought. Therefore, whenever consent is used in the regulations, CAPITAN MUNICIPAL SCHOOLS will ensure that the consent is both informed and in writing. (See 71 Fed. Reg. 46551 (August 14, 2006))

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action that has occurred after the consent was given and before the consent was revoked). (3) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent. (Authority: 20 U.S.C. 1414(a)(1)(D))		

§ 300.10 Core academic subjects.		
Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. (Authority: 20 U.S.C. 1401(4))		

§ 300.11 Day; business day; school day.		
(a) *Day* means calendar day unless otherwise indicated as business day or school day. (b) *Business day* means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in § 300.148(d)(1)(ii)). (c)		

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(1) *School day* means any day, including a partial day that children are in attendance at school for instructional purposes. (2) *School day* has the same meaning for all children in school, including children with and without disabilities. (Authority: 20 U.S.C. 1221e–3)		

§ 300.12 Educational service agency.		
Educational service agency means— (a) A regional public multiservice agency— (1) Authorized by State law to develop, manage, and provide services or programs to LEAs; (2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State; (b) Includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and (c) Includes entities that meet the definition of intermediate educational unit in section 602(23) of the Act as in effect prior to June 4, 1997. (Authority: 20 U.S.C. 1401(5))		

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§ 300.13 Elementary school.		
Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law. (Authority: 20 U.S.C. 1401(6))		

§ 300.14 Equipment.		
Equipment means— (a) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and (b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials. (Authority: 20 U.S.C. 1401(7))		

§ 300.15 Evaluation.		
Evaluation means procedures used in accordance with §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. (Authority: 20 U.S.C. 1414(a) (c))		CAPITAN MUNICIPAL SCHOOLS will ensure that a child suspected of having one of the enumerated disabilities under the IDEA and needing special education services will be evaluated by a group of qualified professionals. The evaluation will be at no cost to the parent, including any educationally necessary evaluation conducted by a licensed physician to determine the child's medically-related disability that

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		results in the child's need for special education and related services.

§ 300.16 Excess costs.		
Excess costs means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting— (a) Amounts received— (1) Under Part B of the Act; (2) Under Part A of title I of the ESEA; and (3) Under Parts A and B of title III of the ESEA and; (b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (*See* Appendix A to part 300 for an example of how excess costs must be calculated.) (Authority: 20 U.S.C. 1401(8))		

§ 300.17 Free appropriate public education.		
Free appropriate public education or *FAPE* means special education and related services that— (a) Are provided at public expense, under public	**6.31.2.7 NMAC. DEFINITIONS:** B. The following terms shall have the following meanings for purposes of these rules. …	

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supervision and direction, and without charge; (b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324. (Authority: 20 U.S.C. 1401(9))	(8) A **"free appropriate public education (FAPE)"** means special education and related services which meet all requirements of 34 CFR Sec. 300.17 and which, pursuant to Sec. 300.17(b), meet all applicable department rules and standards, including but not limited to these rules (6.31.2 NMAC), the Standards for Excellence (6.29.1 NMAC) and department rules governing school personnel preparation, licensure and performance (6.60 NMAC through 6.64 NMAC), student rights and responsibilities (6.11.2 NMAC) and student transportation (6.41.3 and 6.41.4 NMAC). **6.29.1.7 NMAC. DEFINITIONS:** AS. "Free appropriate public education (FAPE)" means special education and related services that are provided at public expense, under public supervision and direction without charge, which meet the standards of the department in providing appropriate preschool, elementary or secondary education in New Mexico; and which are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR, Sections 300.320 through 300.324.	

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General education curriculum. (Not defined in federal regulations; see New Mexico Rules).	**6.31.2.7 NMAC. DEFINITIONS:** B. The following terms shall have the following meanings for purposes of these rules. … (9) The **"general education curriculum"** pursuant to 34 CFR Sec. 300.320, means the same curriculum that a public agency offers for nondisabled children. For New Mexico public agencies whose non-special education programs are subject to department rules, the general curriculum includes the content standards, benchmarks and all other applicable requirements of the Standards for Excellence (Chapter 29 of Title 6 of the NMAC) and any other department rules defining curricular requirements.	

§ 300.18 Highly qualified special education teachers.		
(a) *Requirements for special education teachers teaching core academic subjects.* For any public elementary or secondary school special education teacher teaching core academic subjects, the term *highly qualified* has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also— (1) Include the requirements described in paragraph (b) of this section; and (2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section. (b) *Requirements for special education teachers in general.* (1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly		"If the only reason a parent believes their child was denied FAPE is that the child did not have a highly qualified teacher, the parent would have no right of action under the Act on that basis." (71 Fed. Reg. 46562 (August 14, 2004)) "The implementation and enforcement of the highly qualified teacher standards under the ESEA and the Act complement each other. The Office of Elementary and Secondary Education (OESE) currently monitors the implementation of the highly qualified teacher standards for teachers of core academic subjects under the ESEA. This includes special education teachers who teach core academic subjects." (71 Fed. Reg. 46562 (August 14, 2004))

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qualified requires that— (i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State's public charter school law; (ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and (iii) The teacher holds at least a bachelor's degree. (2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to special education certification program under which— (i) The teacher— (A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching; (B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program; (C) Assumes functions as a teacher only		

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for a specified period of time not to exceed three years; and (D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and (ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met. (3) Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements in paragraph (b)(1) or the requirements in (b)(1)(iii) and (b)(2) of this section. (c) *Requirements for special education teachers teaching to alternate achievement standards.* When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either— (1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or (2) Meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to		

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effectively teach to those standards, as determined by the State. (d) *Requirements for special education teachers teaching multiple subjects.* Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either— (1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c); (2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or (3) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single HOUSSE covering multiple subjects. (e) *Separate HOUSSE standards for special education teachers.* Provided that any adaptations of the State's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education		

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teachers— (1) A State may develop a separate HOUSSE for special education teachers; and (2) The standards described in paragraph (e)(1) of this section may include single HOUSSE evaluations that cover multiple subjects. (f) *Rule of construction.* Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under §§ 300.151 through 300.153 about staff qualifications with the SEA as provided for under this part. (g) *Applicability of definition to ESEA; and clarification of new special education teacher.* (1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA. (2) For purposes of § 300.18(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher. (h) *Private school teachers not covered.* The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities under §300.138. (Authority: 20 U.S.C. 1401(10))		

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§ 300.19 Homeless children.		
Homeless children has the meaning given the term *homeless children and youths* in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 *et seq.* (Authority: 20 U.S.C. 1401(11))		CAPITAN MUNICIPAL SCHOOLS will utilize the following definition from the McKinney-Vento Homeless Assistance Act. The term "homeless children and youths" – (A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302(a)(1) of this title); and (B) includes – (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement; (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 11302(a)(2)(C) of this title); (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and (iv) migratory children (as such term is defined in section 6399 of Title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).

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		(42 U.S.C. § 11434a)

§ 300.20 Include.		
Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named. (Authority: 20 U.S.C. 1221e–3)		

§ 300.21 Indian and Indian tribe.		
(a) *Indian* means an individual who is a member of an Indian (b) *Indian tribe* means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*). (c) Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a State Indian tribe that is not listed in the **Federal Register** list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a–1. (Authority: 20 U.S.C. 1401(12) and (13))		

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§ 300.22 Individualized education program.		
Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§ 300.320 through 300.324. (Authority: 20 U.S.C. 1401(14))	**6.31.2.7 NMAC. DEFINITIONS:** B. The following terms shall have the following meanings for purposes of these rules. … (11) **"Individualized education program"** or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR Secs. 300.320 through 300.324; **6.29.1.7 NMAC. DEFINITIONS:** BC. "Individualized education program (IEP)" means a written statement for a student (with a disability) that is developed, reviewed and revised in accordance with 34 CFR, Sections 300.320 through 300.324.	

§ 300.23 Individualized education program team.		
Individualized education program team or *IEP Team* means a group of individuals described in § 300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability. (Authority: 20 U.S.C. 1414(d)(1)(B))		

§ 300.24 Individualized family service plan.		
Individualized family service plan or *IFSP* has the meaning given the term in section 636 of the Act. (Authority: 20 U.S.C. 1401(15))		CAPITAN MUNICIPAL SCHOOLS understands that an IFSP must contain: (1) a statement of the infant's or toddler's present levels of physical development, cognitive

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		development, communication development, social or emotional development, and adaptive development, based on objective criteria; (2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability; (3) a statement of the measurable results or outcomes expected to be achieved for the infant or toddler and the family, including pre-literacy and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the results or outcomes is being made and whether modifications or revisions of the results or outcomes or services are necessary; (4) a statement of specific early intervention services based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services; (5) a statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment; (6) the projected dates for initiation of services and the anticipated length, duration, and frequency of the services; (7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this subchapter) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and (8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services. (20 U.S.C. § 1436)

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§ 300.25 Infant or toddler with a disability.		
Infant or toddler with a disability— (a) Means an individual under three years of age who needs early intervention services because the individual— (1) Is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or (2) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and (b) May also include, at a State's discretion— (1) At-risk infants and toddlers; and (2) Children with disabilities who are eligible for services under section 619 and who previously received services under Part C of the Act until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under Part C of the Act serving such children shall include— (i) An educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and (ii) A written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under Part C of the Act or participate in preschool programs		

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under section 619. (Authority: 20 U.S.C. 1401(16) and 1432(5))		

§ 300.26 Institution of higher education.		
Institution of higher education— (a) Has the meaning given the term in section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 *et seq.* (HEA); and (b) Also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, *et seq.* (Authority: 20 U.S.C. 1401(17))		

§ 300.27 Limited English proficient.		
Limited English proficient has the meaning given the term in section 9101(25) of the ESEA. (Authority: 20 U.S.C. 1401(18))		CAPITAN MUNICIPAL SCHOOLS understands the term "limited English proficient", when used with respect to an individual, to mean an individual: (A) who is aged 3 through 21; (B) who is enrolled or preparing to enroll in an elementary school or secondary school; (C) (i) who was not born in the United States or whose native language is a language other than English; (ii)

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		(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and (II) who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or (iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and (D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual-- (i) the ability to meet the State's proficient level of achievement on State assessments described in section 6311(b)(3) of the [Elementary and Secondary Education Act]; (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or (iii) the opportunity to participate fully in society. (20 U.S.C. § 7801)

§ 300.28 Local educational agency.		
(a) *General. Local educational agency* or *LEA* means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or	**6.31.2.7 NMAC. DEFINITIONS:** B. The following terms shall have the following meanings for purposes of these rules. … (10) **"LEA"** means a local educational agency as defined in 34 CFR Sec. 300.28.	CAPITAN MUNICIPAL SCHOOLS recognizes that it is a local educational agency (LEA) under the IDEA.

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counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools. (b) Educational service agencies and other public institutions or agencies. The term includes— (1) An educational service agency, as defined in § 300.12; and (2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under State law. (c) *BIA funded schools.* The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population. (Authority: 20 U.S.C. 1401(19))	**6.29.1.7 NMAC. DEFINITIONS:** BF. "Local educational agency (LEA)" means a local educational agency as defined in 34 CFR Sec. 300.28. The LEA may be a public school district, a state-chartered charter school or a state educational institution.	

§ 300.29 Native language.		
(a) *Native language*, when used with respect to an individual who is limited English proficient, means		

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the following: (1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section. (2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. (b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication). (Authority: 20 U.S.C. 1401(20))		

NMAC.		
(Not defined in federal regulations; see New Mexico Rules).	**6.31.2.7 NMAC. DEFINITIONS:** B. The following terms shall have the following meanings for purposes of these rules. … (13) **"NMAC"** means the New Mexico administrative code, including future amendments.	

NMSA 1978.		
(Not defined in federal regulations; see New Mexico Rules).	**6.31.2.7 NMAC. DEFINITIONS:** B. The following terms shall have the following meanings	

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	for purposes of these rules. … (14) **"NMSA 1978"** means the 1978 Compilation of New Mexico Statutes Annotated, including future amendments.	

§ 300.30 Parent.		
(a) *Parent* means— (1) A biological or adoptive parent of a child; (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or (5) A surrogate parent who has been appointed in accordance with § 300.519 or section 639(a)(5) of the Act. (b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or	**6.31.2.7 NMAC. DEFINITIONS:** B. The following terms shall have the following meanings for purposes of these rules. … (15) **"Parent"** includes, in addition to the persons specified in 34 CFR Sec. 300.30, a child with a disability who has reached age 18 and for whom there is no court-appointed general guardian, limited guardian or other court-appointed person who has legal custody or has otherwise been authorized by a court to make educational decisions on the child's behalf as provided in Subsection K of 6.31.2.13 NMAC. Pursuant to 34 CFR Sec. 300.519 and department policy, a foster parent of a child with a disability may act as a parent under Part B of the IDEA if: (i) the foster parent or the state children, youth and families department (CYFD) provides appropriate documentation to establish that CYFD has legal custody and has designated the person in question as the child's foster parent; and (ii) the foster parent is willing to make the educational decisions required of parents under the IDEA; and has no interest that would conflict with the interests of the child. A foster parent who does not qualify under the above requirements but who meets all requirements for a surrogate parent under 34 CFR Sec. 300.519 may be appointed as a surrogate if the public agency responsible for making the	CAPITAN MUNICIPAL SCHOOLS understands the phrase "attempting to act as a parent" generally to refer to situations in which an individual attempts to assume the responsibilities of a parent under the IDEA. An individual may "attempt to act as a parent" under the IDEA in many situations; for example, if an individual provides consent for an evaluation or reevaluation, or attends an IEP Team meeting as the child's parent. (See 71 Fed. Reg. 46567 (August 14, 2004))

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adoptive parent does not have legal authority to make educational decisions for the child. (2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent'" for purposes of this section. (Authority: 20 U.S.C. 1401(23))	appointment deems such action appropriate. (See Subsection J of 6.31.2.13 NMAC.)	

§ 300.31 Parent training and information center.		
Parent training and information center means a center assisted under sections 671 or 672 of the Act. (Authority: 20 U.S.C. 1401(25))		

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

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(Authority: 20 U.S.C. 1415(a))		

§ 300.33 Public agency.		
Public agency includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. (Authority: 20 U.S.C. 1412(a)(11))	**6.31.2.7 NMAC. DEFINITIONS:** B. The following terms shall have the following meanings for purposes of these rules. … (7) The **"educational jurisdiction"** of a public agency includes the geographic area, age range and all facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions, juvenile justice facilities, state supported schools, or programs within which the agency is obligated under state laws, rules or regulations or by enforceable agreements including joint powers agreements (JPA) or memoranda of understanding (MOU) to provide educational services for children with disabilities. In situations such as transitions, transfers and special placements, the educational jurisdiction of two or more agencies may overlap and result in a shared obligation to ensure that a particular child receives all the services to which the child is entitled. … (20) A **"state-supported educational program"** means a publicly funded program that: (a) provides special education and related services to children with disabilities who come within the program's educational jurisdiction; (b) is operated by, or under contractual arrangements for, a state school, state educational institution or other state institution, state hospital or state agency; and	

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	(c) is primarily funded through direct legislative appropriations or other direct state support to a public agency other than a local school district.	
"Puente para los ninos fund" (Not defined in federal regulations; see New Mexico Rules).	**6.31.2.7 NMAC. DEFINITIONS:** B. The following terms shall have the following meanings for purposes of these rules. … (16) **"**Puente **para los ninos fund"** in New Mexico means a risk pool fund to support high cost students with disabilities identified by LEAs pursuant to 34 CFR Sec. 300.704(c)(3)(i).	

§ 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 include school health services and school nurse services, 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		CAPITAN MUNICIPAL SCHOOLS understands that the list of related services in the IDEA is not exhaustive and may include other developmental, corrective, or supportive services if they are required to assist a child with a disability to benefit from special education. (See 71 Fed. Reg. 46569 (August 14, 2006))

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optimization of that device's functioning (e.g., mapping), maintenance of that 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 a public agency 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).

(c) *Individual related services terms defined.* The terms used in this definition are defined as follows:

(1) *Audiology* includes—

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs

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for prevention of hearing loss; (v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and (vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification. (2) *Counseling services* means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel. (3) *Early identification and assessment of disabilities in children* means the implementation of a formal plan for identifying a disability as early as possible in a child's life. (4) *Interpreting services* includes— (i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and (ii) Special interpreting services for children who are deaf-blind. (5) *Medical services* means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services. (6) *Occupational therapy*— (i) Means services provided by a qualified		

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occupational therapist; and (ii) Includes— (A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation; (B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and (C) Preventing, through early intervention, initial or further impairment or loss of function. (7) Orientation *and mobility services*— (i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and (ii) Includes teaching children the following, as appropriate: (A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street); (B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision; (C) To understand and use remaining vision and distance low vision aids;		

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and (D) Other concepts, techniques, and tools. (8) (i) *Parent counseling and training* means assisting parents in understanding the special needs of their child; (ii) Providing parents with information about child development; and (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP. (9) *Physical therapy* means services provided by a qualified physical therapist. (10) *Psychological services* includes— (i) Administering psychological and educational tests, and other assessment procedures; (ii) Interpreting assessment results; (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning; (iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations; (v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and (vi) Assisting in developing positive behavioral intervention strategies.		

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(11) *Recreation* includes— (i) Assessment of leisure function; (ii) Therapeutic recreation services; (iii) Recreation programs in schools and community agencies; and (iv) Leisure education. (12) *Rehabilitation counseling services* means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 *et seq*. (13) *School health services and school nurse services* means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person. (14)*Social work services in schools* includes— (i) Preparing a social or developmental history on a child with a disability; (ii) Group and individual counseling with the child and family; (iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's		

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adjustment in school; (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and (v) Assisting in developing positive behavioral intervention strategies. (15) *Speech-language pathology services* includes— (i) Identification of children with speech or language impairments; (ii) Diagnosis and appraisal of specific speech or language impairments; (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments; (iv) P rovision of speech and language services for the habilitation or prevention of communicative impairments; and (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments. (16) *Transportation* includes— (i) Travel to and from school and between schools; (ii) Travel in and around school buildings; and (iii)Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability. (Authority: 20 U.S.C. 1401(26))		

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"SAT" (Not defined in federal regulations; see New Mexico Rules).	**6.29.1.7 NMAC. DEFINITIONS:** CM. "Student assistance team (SAT)" is a school-based group of people whose purpose is to provide additional tier II support (consistent with requirements of the three-tier model of student intervention provided in Subsection D of 6.29.1.9 NMAC) to students who are experiencing academic or behavioral difficulties that are preventing them from benefiting from general education, because they are either performing below or above expectations. (Public agencies may have similar names used for this team, such as "student success team" or "student support team.") **6.31.2.7 NMAC. DEFINITIONS:** B. The following terms shall have the following meanings for purposes of these rules. … (17) **"SAT"** means the student assistance team, which is a school-based group of people whose purpose is to provide additional educational support to students who are experiencing difficulties that are preventing them from benefiting from general education.	

§ 300.35 Scientifically based research.		
Scientifically based research has the meaning given the term in section [20 U.S.C. 7801(37)] of the ESEA. (Authority: 20 U.S.C. 1411(e)(2)(C)(xi))		CAPITAN MUNICIPAL SCHOOLS understands that "scientifically based research" (A) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

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		(B) includes research that-- (i) employs systematic, empirical methods that draw on observation or experiment; (ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn; (iii) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators; (iv) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls; (v) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and (vi) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review. (20 U.S.C. § 7801)

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§ 300.36 Secondary school.		
Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12. (Authority: 20 U.S.C. 1401(27))		
§ 300.37 Services plan.		
Services plan means a written statement 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 § 300.132, and is developed and implemented in accordance with §§300.137 through 300.139. (Authority: 20 U.S.C. 1412(a)(10)(A))		

§ 300.38 Secretary.		
Secretary means the Secretary of Education. (Authority: 20 U.S.C. 1401(28))		

§ 300.39 Special education.		
(a) *General*. (1) *Special education* means specially designed	**6.31.2.7 NMAC. DEFINITIONS:** B. The following terms shall have the following meanings	

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Federal Regulations	New Mexico Rules	Procedures
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. (2) *Special education* includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section— (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards; (ii) Travel training; and (iii) Vocational education. (b) *Individual special education terms defined.* The terms in this definition are defined as follows: (1) *At no cost* means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program. (2) *Physical education* means— (i) The development of— (A) Physical and motor fitness; (B) Fundamental motor skills and patterns; and (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and (ii) Includes special physical education,	for purposes of these rules. … (19) **"Special education"** means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. (a) As authorized by 34 CFR Sec. 300.8(a)(2)(ii) and 300.39(a)(2)(i), "special education" in New Mexico may include speech-language pathology services. (b) Speech-language pathology services must meet the following standards to be considered special education: (i) the service is provided to a child who has received appropriate tier I universal screening under Subsection D of 6.29.1.9 NMAC as it may be amended from time to time, before being properly evaluated under 34 CFR Secs. 300.301-300.306 and Subsection D of 6.31.2.10 NMAC; (ii) the IEP team that makes the eligibility determination finds that the child has a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance; and (iii) the speech language pathology service consists of specially designed instruction that is provided to enable the child to have access to the general curriculum and meet the educational standards of the public agency that apply to all children; and (iv) the service is provided at no cost to the parents under a properly developed IEP	

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adapted physical education, movement education, and motor development.

(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.

(4) *Travel training* means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to—

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(5) *Vocational education* means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

(Authority: 20 U.S.C. 1401(29))

that meets the requirements of Subsection B of 6.31.2.11 NMAC.

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

(d) Student/staff caseloads shall meet the requirements of Paragraphs (1) and (2) of Subsection H of 6.29.1.9 NMAC.

6.29.1.11 NMAC. PROGRAM REQUIREMENTS:

F. Special education. Special education is specially-designed instruction that is provided at no cost to parents to meet the unique needs of a student with a disability, as defined in the IDEA regulations (34 CFR Part 300 and state special education regulations (6.31.2 NMAC). Special education programs shall:

(1) provide specially-designed instruction in career and technical education and travel training for students whose IEPs require such services;

(2) provide instruction to students placed on homebound services as per their IEP; and

(3) provide instruction in state-supported educational programs, hospitals, institutions and other settings. As set forth in the state special education regulations at Paragraph (15) of Subsection C of 6.31.2.7 NMAC, special education may include speech-language pathology services consisting of specially-designed instruction that is provided to enable a student with a disability, as recognized under IDEA, to have access to the general curriculum and to meet the educational standards of the public agency that apply to all children;

(4) provide instruction, in accordance with Section 22-13-1 (D) NMSA 1978, for the unique needs of gifted and talented students;

(5) be assessed as part of the EPSS process; and

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	(6) support the local curriculum and EPSS. **6.29.1.7 NMAC. DEFINITIONS:** W. "Caseload" means the total number of students receiving special education and speech-only services as special education, for whom a special education teacher or speech language pathologist has responsibility for developing and monitoring the students' IEPs. "Caseload" may also mean the number of students for which individual support services staff members are responsible. … AB. "Class load" means the number of students for whom a teacher structures activities at a given time. **6.29.1.9 NMAC. PROCEDURAL REQUIREMENTS:** G. Class loads. Class loads shall be in compliance with the most current class load requirements in Section 22-10A-20 NMSA 1978 and Section 22-5-15 NMSA 1978. … (5) Students receiving special education services integrated into a regular classroom for any part of the day shall be counted in the calculation of class load averages. Students receiving special education services not integrated into the regular classroom shall not be counted in the calculation of class load averages. Only classroom teachers charged with responsibility for the regular classroom instructional program shall be counted in determining average class loads. In elementary schools offering only one grade level, average class loads may be calculated by averaging appropriate grade levels between schools in the school district. **6.29.1.9 NMAC. PROCEDURAL REQUIREMENTS:** H. Student/staff caseloads in gifted and special education.	

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	(1) The student/staff caseload shall not exceed 35:1 for a special education teacher and 60:1 for a speech-language pathologist for special education services or speech-only services, in which properly licensed special education teachers or speech-language pathologists travel from class to class or school to school, providing services to students with disabilities whose individualized education programs (IEPs) require a minimal amount of special education. (A minimal amount of special education services shall not exceed 10 percent of the school day/week.) (2) The student/staff caseload shall not exceed 24:1 for a special education teacher and 35:1 for a speech-language pathologist for special education services or speech-only services which properly-licensed special education teachers or speech-language pathologists provide to students with disabilities whose IEPs require a moderate amount of special education. (A moderate amount of special education services shall be less than 50 percent of the school day.) (3) The student/staff caseload shall not exceed 15:1 for special education services in which properly licensed special education teachers provide services to students with disabilities whose IEPs require an extensive amount of special education for a portion of the school day as appropriate to implement the plan. (An extensive amount of special education services shall be provided 50 percent or more of the school day.) (4) The student/staff caseload shall not exceed 8:1 for special education services in which a properly licensed professional provides services to students with disabilities whose IEPs require a maximum amount of special education. (A maximum amount of special education services shall be provided in an amount approaching a full school day.) (5) The student/adult caseload shall not exceed 4:1 for center-based special education services in which one	

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	of the adults in the program is a properly licensed professional providing three- and four-year old children with the amount of special education needed to implement each child's IEP. (6) The student/adult caseload shall not exceed 2:1 for center-based special education services in which three- and four-year old children have profound educational needs. (7) Adequate student/staff caseloads shall be provided to appropriately address needs identified in the IEPs. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to students with disabilities under Part B of IDEA. (8) If the student/staff caseload ratio exceeds the standards provided above, a request for waiver shall be submitted to the department for review and approval by the secretary.	

§ 300.40 State.		
State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas. (Authority: 20 U.S.C. 1401(31))		

§ 300.41 State educational agency.		
State educational agency or *SEA* means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by	**6.31.2.7 NMAC. DEFINITIONS:** B. The following terms shall have the following meanings for purposes of these rules. …	

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State law. (Authority: 20 U.S.C. 1401(32))	(3) **"Department"** means the public education department. … (18) **"SEB"** means the special education bureau of the public education department.	

§ 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: 20 U.S.C. 1401(33))		

§ 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	**6.29.1.7 NMAC. DEFINITIONS:** CP. "Transition" means the goal of creating a seamless transition from one part of the educational system to the next. CQ. "Transition plan" means a coordinated set of activities for a student with a disability, which specifies special education and related services designed to meet a student's unique needs and to prepare the student for	The definition of transition 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. CAPITAN MUNICIPAL SCHOOLS expects that IEP Teams will make decisions regarding transition services 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 a FAPE to a child with a disability based on the

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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 provision of a 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: 20 U.S.C. 1401(34))	future education, employment and independent living. The use of individualized educational program (IEP) transition planning, graduation planning and post-secondary transitions is described in Subparagraph (a) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC.	needs of the child, and not on the disability category or severity of the disability. (See 71 Fed. Reg. 46579 (August 14, 2006))

§ 300.44 Universal design.		
Universal design has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002. (Authority: 20 U.S.C. 1401(35))		

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"USC" (Not defined in federal regulations; see New Mexico Rules).	**6.31.2.7 NMAC. DEFINITIONS:** B. The following terms shall have the following meanings for purposes of these rules. … (21) **"USC"** means the United States code, including future amendments.	

§ 300.45 Ward of the State.		
(a) *General.* Subject to paragraph (b) of this section, *ward of the State* means a child who, as determined by the State where the child resides, is— (1) A foster child; (2) A ward of the State; or (3) In the custody of a public child welfare agency. (b) *Exception.* Ward of the State does not include a foster child who has a foster parent who meets the definition of a *parent* in § 300.30. (Authority: 20 U.S.C. 1401(36))		
	6.31.2.7 NMAC. DEFINITIONS: E. The definitions in Subsection E apply only to Section 13, Subsection I (additional rights of parents, students, and public agencies - due process hearings). (1) "Expedited hearing" means a hearing that is available on request by a parent or a public agency under 34 CFR Secs. 300.532(c) and is subject to the requirements of 34 CFR Sec. 300.532(c).	

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	(2) "Gifted services" means special education services to gifted children as defined in Subsection A of 6.31.2.12 NMAC. (3) "Transmit" means to mail, send by electronic mail or telecopier (facsimile machine) or hand deliver a written notice or other document and obtain written proof of delivery by one of the following means: (a) an electronic mail system's confirmation of a completed transmission to an e-mail address that is shown to be valid for the individual to whom the transmission was sent; (b) a telecopier machine's confirmation of a completed transmission to a number which is shown to be valid for the individual to whom the transmission was sent; (c) a receipt from a commercial or government carrier showing to whom the article was delivered and the date of delivery; (d) a written receipt signed by the secretary of education or designee showing to whom the article was hand-delivered and the date delivered; or (e) a final decision to any party not represented by counsel for a due process hearing by the U.S. postal service, certified mail, return receipt requested, showing to whom the articles was delivered and the date of delivery.	
	6.31.2.7 NMAC. DEFINITIONS: F. The definitions in Subsection F apply only to Section 9, Subsection B (public agency funding and staffing) and Section 11, Subsection L (children in private schools or facilities): (1) "Qualified student" means, pursuant to Paragraph (1) of Subsection A of Section 22-13-8 NMSA 1978, a public school student who: (a) has not graduated from high school;	

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	(b) is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students; and (c) in terms of age: (i) is at least five years of age prior to 12:01 a.m. on September 1 of the school year or will be five years of age prior to 12:01 a.m. on September 1 of the school year if the student is enrolled in a public school extended-year kindergarten program that begins prior to the start of the regular school year; (ii) is at least three years of age at any time during the school year and is receiving special education pursuant to rules of the department; or (iii) has not reached the student's twenty-second birthday on the first day of the school year and is receiving special education in accordance with federal law. (2) "School-age person" means, pursuant to Paragraph (2) of Subsection A of Section 22-13-8 NMSA 1978, a person who is not a qualified student but who meets the federal requirements for special education and who: (a) will be at least three years old at any time during the school year; (b) is not more than twenty-one years of age; and (c) has not received a high school diploma or its equivalent.	

SUBPART B—STATE ELIGIBILITY
GENERAL

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§ 300.100 Eligibility for assistance.		
A State is eligible for assistance under Part B of the Act for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets the conditions in §§ 300.101 through 300.176. (Authority: 20 U.S.C. 1412(a)		

FAPE Requirements		
§ 300.101 Free appropriate public education (FAPE).		
(a) *General.* A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in § 300.530(d). (b) FAPE for children beginning at age 3. (1) Each State must ensure that— (i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and (ii) An IEP or an IFSP is in effect for the child by that date, in accordance with § 300.323(b). (2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.	**6.31.2.8 NMAC. RIGHT TO A FREE APPROPRIATE PUBLIC EDUCATION (FAPE):** A. All children with disabilities aged 3 through 21 or who will turn 3 at any time during the school year who reside in New Mexico, including children with disabilities who have been suspended or expelled from school, have the right to a free appropriate public education that is made available by one or more public agencies in compliance with all applicable requirements of 34 CFR Secs. 300.101 and 300.120 and these or other department rules and standards. Children with disabilities who are enrolled in private schools have the rights provided by 34 CFR Secs. 300.129-300.148 and Subsection L of 6.31.2.11 NMAC. B. Only children who meet the criteria in these rules may be included in calculating special education program units for state funding and counted as eligible children for federal flow-through funds under Part B of the IDEA.	

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Federal Regulations	New Mexico Rules	Procedures
(c) *Children advancing from grade to grade.* (1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade. (2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations. (Authority: 20 U.S.C. 1412(a)(1)(A))	**6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** A. Preschool programs for children aged 3 through 5. (1) Each public agency shall ensure that a free appropriate public education is available for each preschool child with a disability within its educational jurisdiction no later than the child's third birthday and that an individualized education program (IEP) under Part B or an individual family services plan (IFSP) under Part C of the IDEA is in effect by that date in compliance with 34 CFR Secs. 300.101, 300.124 and 300.323(b). (2) Eligibility to enroll in Part B preschool program. (a) If a child turns three at any time during the school year and is determined to be eligible under Part B, the child may enroll in a Part B preschool program when the child turns three if the parent so chooses, whether or not the child has previously been receiving Part C services. (b) Notwithstanding subparagraph (a) of this paragraph, if a child turns three at any time prior to July 1, 2012 and is enrolled in a Part C program, the parent has the option of having the child complete the remainder of the school year in early intervention services or, if the child is determined to be eligible under Part B, enrolling the child in a Part B preschool program. (3) To ensure effective transitioning from IDEA Part C programs to IDEA Part B programs, each public agency must conduct a full and individual initial comprehensive evaluation, at no cost to the parent, and in compliance with requirements of 34 CFR Secs. 300.300, 300.301, 300.302, 300.304 and 300.305 and other department rules and standards before the initial provision of Part B special	

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	education and related services to a child with a disability. (a) The initial comprehensive evaluation process shall be conducted in all areas of suspected disability. (b) The Part B eligibility determination team shall review current assessments and shall determine the additional data and assessments needed for the comprehensive evaluation. Current assessments are defined as assessments, other than medical assessments, conducted no more than six months prior to the date of the meeting of the Part B eligibility determination team. (c) The Part B eligibility determination team must consider educationally relevant medical assessments as part of the review of existing evaluation data. The determination of eligibility may not be made solely on the basis of medical assessments. If the team considers medical assessments conducted more than six months prior to the date of the meeting, the team must document the appropriateness of considering such medical assessments. **6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** **A.** Preschool programs for children aged 3 through 5. … (5) In particular: … (h) In compliance with 34 CFR Sec. 300.101(b)(2), if a child's birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin. Each public agency must engage in appropriate planning with the Part C lead agency so that the eligible child will be prepared to receive Part B	

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	special education and related services when the IEP team determines that the services under the IEP or IFSP will begin.	

§ 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: (1) Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children of those ages. (2) (i) Children aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility— (A) Were not actually identified as being a child with a disability under § 300.8; and (B) Did not have an IEP under Part B of the Act. (ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who— (A) Had been identified as a child with a disability under § 300.8 and had received services in accordance with	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** G. Graduation planning and post-secondary transitions. … (6) Students eligible for special education services are entitled to a FAPE through age 21. If a student turns 22 during the school year, that student shall be allowed to complete the school year and shall continue to receive special education and related services during that school year. If the student turns 22 prior to the first day of the school year, the student is no longer eligible to receive special education and related services. **6.29.1.9 NMAC. 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: … (o) Students eligible for special education services are entitled to a FAPE through age 21. If a	CAPITAN MUNICIPAL SCHOOLS recognizes that children with disabilities who have not graduated with a regular high school diploma still have an entitlement to a FAPE until the child reaches the age at which eligibility ceases under the age requirements within the State. (See 71 Fed. Reg. 46580 (August 14, 2006))

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an IEP, but who left school prior to their incarceration; or (B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under § 300.8. (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 children who have graduated from high school 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) of 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). (4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act. (b) *Documents relating to exceptions.* The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by §300.700 (for purposes of making grants to States under this part), is current and accurate.	student turns 22 during the school year, the student shall be allowed to complete the school year. If a student becomes 22 prior to the first day of the school year, the student is no longer eligible to receive special education services. (p) The receipt of a diploma terminates the service eligibility of students with special education needs. (q) All diplomas awarded by a school district or charter school shall be identical in appearance, content and effect, except that symbols or notations may be added to individual students' diplomas to reflect official school honors or awards earned by students.	

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(Authority: 20 U.S.C. 1412(a)(1)(B)–(C))		

Other FAPE Requirements		
§ 300.103 FAPE—methods and payments.		

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Federal Regulations	New Mexico Rules	Procedures
(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement. (b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability. (c) Consistent with § 300.323(c), the State must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined. (Authority: 20 U.S.C. 1401(8), 1412(a)(1)).	**6.31.2.9 NMAC. PUBLIC AGENCY RESPONSIBILITIES:** B. Public agency funding and staffing. (1) Each public agency that provides special education or related services to children with disabilities shall allocate sufficient funds, staff, facilities and equipment to ensure that the requirements of the IDEA and all department rules and standards that apply to programs for children with disabilities are met. (2) The public agency with primary responsibility for ensuring that FAPE is available to a child with a disability on the date set by the department for a child count or other report shall include that child in its report for that date. Public agencies with shared or successive responsibilities for serving a particular child during a single fiscal year are required to negotiate equitable arrangements through joint powers agreements or memorandums of understanding or interstate agreements for sharing the funding and other resources available for that child. Such agreements shall include provisions with regard to resolving disputes between the parties to the agreement.	CAPITAN MUNICIPAL SCHOOLS assures that it has allocated sufficient funds, staff, facilities and equipment to ensure that the requirements of the IDEA and all department rules and standards that apply to programs for children with disabilities are met.

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§ 300.104 Residential placement		
If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child. (Authority: 20 U.S.C. 1412(a)(1), 1412(a)(10)(B))	**6.31.2.9 NMAC. PUBLIC AGENCY RESPONSIBILITIES:** B. Public agency funding and staffing. … (3) Placement of students in private residential treatment centers, or other out of home treatment or habilitation programs, by the IEP team or by a due process decision. In no event shall a child with an IEP be allowed to remain in an out of home treatment or habilitation program for more than 10 days without receiving special education and related services. The school district in which the qualified student or school-age person lives, whether in-state or out-of-state, is responsible for the educational, nonmedical care and room and board costs of that placement. (a) Agreements between the resident school district of the qualified student or school-age person and a private residential treatment center must be on the form posted on the department's website or on a form otherwise approved by the department and must be reviewed and approved by the secretary of public education. (b) Agreements must provide for: (i) student evaluations and eligibility; (ii) an educational program for each qualified student or school-age person that meets state standards for such programs, except that teachers employed by private schools are not required to be highly qualified; (iii) the provision of special education and related services in conformance with an IEP that meets the requirements of federal	CAPITAN MUNICIPAL SCHOOLS understands that parents are not required to bear the costs of a public or private residential placement if such placement is determined necessary to provide a FAPE. (See 71 Fed. Reg. 46581 (August 14, 2006)) The IEP Team determines whether a residential placement is the least restrictive environment for providing a FAPE to an individual child.

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	and state law and applicable regulations and rules; (iv) adequate classroom or other physical space that allows the school district to provide an appropriate education; (v) a detailed description of the costs for the placement; and (vi) an acknowledgement of the authority of the local school board and the department to conduct on-site evaluations of programs and student progress to ensure that state standards are met. (4) Placement of students in public residential treatment centers, or other out of home treatment or habilitation programs, by the IEP team or by a due process decision. The sending school shall be responsible for the provision of special education and related services. In no event shall a child with an IEP be allowed to remain in an out of home treatment or habilitation program for more than 10 days without receiving special education and related services.	

§ 300.105 Assistive technology.		
(a) Each public agency must 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		34 C.F.R. § 300.105 specifies the circumstances under which CAPITAN MUNICIPAL SCHOOLS is responsible for making available assistive technology devices and assistive technology services to children with disabilities. (See 71 Fed. Reg. 46581 (August 14, 2006)) Whether an augmentative communication device, playback devices, or other devices could be considered an assistive technology device for a child depends on

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(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. — (Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(B)(i))		whether the device is used to increase, maintain, or improve the functional capabilities of a child with a disability, and whether the child's IEP Team determines that the child needs the device in order to receive a FAPE. (See 71 Fed. Reg. 46547 (August 14, 2006)) As a general matter, however, CAPITAN MUNICIPAL SCHOOLS is not responsible for providing personal devices, such as eyeglasses or hearing aids that a child with a disability requires, regardless of whether the child is attending school. (See 71 Fed. Reg. 46581 (August 14, 2006)) If a hearing aid meets the definition of an *assistive technology device* for a particular child, CAPITAN MUNICIPAL SCHOOLS is responsible for the provision of the assistive technology device as part of FAPE, only if: the device is required as part of the child's *special education* defined in § 300.39; *related services* defined in § 300.34; or *supplementary aids and services* defined in § 300.42. CAPITAN MUNICIPAL SCHOOLS expects the IEP Team to make this decision on an individualized basis. (See 71 Fed. Reg. 46581 (August 14, 2006)) If an IEP Team determines that the child requires a personal device that is not surgically implanted (e.g., eyeglasses) in order to receive a FAPE, CAPITAN MUNICIPAL SCHOOLS will ensure that the device is provided at no cost to the child's parents. (See 71 Fed. Reg. 46581 (August 14, 2006))

§ 300.106 Extended school year services.		
(a) *General.* (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.		CAPITAN MUNICIPAL SCHOOLS recognizes that some children with disabilities may not receive a FAPE unless they receive necessary services during times when other children, both disabled and nondisabled, normally would not be served. (See 71 Fed. Reg. 46581 (August 14, 2006))

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(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, a public agency may 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 public agency; (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 SEA. (Authority: 20 U.S.C. 1412(a)(1))		The determination of whether a child requires extended school year (ESY) services for FAPE is an IEP Team decision. With respect to ESY services, CAPITAN MUNICIPAL SCHOOLS expects that the IEP Team analysis of whether the child's level of achievement would be jeopardized by a summer break in his or her structured educational programming will be based not only on retrospective data, such as past regression and rate of recoupment, but also on predictive data, based on the opinion of professionals in consultation with the child's parents, and circumstantial considerations of the child's individual situation at home and in his or her neighborhood and community. (See Johnson v. Bixby Independent Sch. Dist. No. 4, 921 F.2d 1022, 1028 (10th Cir. 1990)) Typically, ESY services are provided during the summer months. However, ESY services will be provided to a child with a disability during times other than the summer, such as before and after regular school hours or during school vacations, if the IEP Team determines that the child requires ESY services during those time periods in order to receive a FAPE. CAPITAN MUNICIPAL SCHOOLS recognizes that the regulations give the IEP Team the flexibility to determine when ESY services are appropriate, depending on the circumstances of the individual child. (See 71 Fed. Reg. 46582 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of the Mountain Plains Regional Resource Center's Primer on the Provision of Extended School Year Services for Parents and Educators (2006), available through the NMPED website.

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§ 300.107 Nonacademic services.		
The State must ensure the following: (a) Each public agency must 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. (b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available. (Authority: 20 U.S.C. 1412(a)(1))		CAPITAN MUNICIPAL SCHOOLS will take steps, including the provision of supplementary aids and services determined appropriate and necessary by a 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. (See 71 Fed. Reg. 46541 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS does not consider the list of nonacademic and extracurricular services and activities in § 300.107(b) to be exhaustive. The list provides examples of services and activities that may afford children with disabilities an equal opportunity for participation in the services offered to other children of the public agency. (See 71 Fed. Reg. 46583 (August 14, 2006))

§ 300.108 Physical education.		
The State must ensure that public agencies in the State comply with the following: (a) *General.* Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades. (b) *Regular physical education.* Each child with a disability must be afforded the opportunity to	**6.29.1.9 NMAC. PROCEDURAL REQUIREMENTS:** J. Graduation requirements. … (12) Excuses from physical education. The physical education graduation requirement may be waived by the secretary, based upon a request by the local superintendent or charter school administrator with documentation from a licensed medical doctor, osteopath, certified nurse practitioner with	CAPITAN MUNICIPAL SCHOOLS makes physical education available equally to children with disabilities and children without disabilities. If physical education is not available to all children (*i.e.*, children with and without disabilities), the CAPITAN MUNICIPAL SCHOOLS is not required to make physical education available for children with disabilities (*e.g.*, a district may provide physical education to all children through grade 10, but not to any children in their junior and senior years). However, if physical education is specially designed to meet the unique needs of a child

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participate in the regular physical education program available to nondisabled children unless— (1) The child is enrolled full time in a separate facility; or (2) The child needs specially designed physical education, as prescribed in the child's IEP. (c) *Special physical education.* If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs. (d) Education *in separate facilities.* The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section. (Authority: 20 U.S.C. 1412(a)(5)(A))	prescriptive authority or chiropractor, that the student has a permanent or chronic condition that does not permit physical activity. Such requests shall be submitted using the department's physical education waiver request form. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and, for each student for whom the waiver is requested: name, school and year of student graduation, district affirmation that it possesses required medical documentation, name and email address of school principal and rationale for the request. A student receiving special education supports and services pursuant to the IDEA or Section 504 of the federal Rehabilitation Act may also be eligible to request this waiver, when appropriate medical documentation is provided in the IEP.	with a disability and is set out in that child's IEP, CAPITAN MUNICIPAL SCHOOLS will provide those services whether or not they are provided to other children in the CAPITAN MUNICIPAL SCHOOLS. (See 71 Fed. Reg. 46583 (August 14, 2006))

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§ 300.109 Full educational opportunity goal (FEOG).		
The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal. (Authority: 20 U.S.C. 1412(a)(2))		CAPITAN MUNICIPAL SCHOOLS will provide full educational opportunity to all children with disabilities, including by taking steps to ensure that children with disabilities have access to the same program options that are available to nondisabled children. CAPITAN MUNICIPAL SCHOOLS recognizes that this would apply to dual enrollment programs in post-secondary or community-based settings. Therefore, to the extent that CAPITAN MUNICIPAL SCHOOLS offers dual enrollment programs in post-secondary or community-based settings to a nondisabled student, CAPITAN MUNICIPAL SCHOOLS would have that option available to a student with disabilities whose IEP Team determined that such a program would best meet the student's needs. (See 71 Fed. Reg. 46583 (August 14, 2006))

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§ 300.110 Program options.		
The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education. (Authority: 20 U.S.C. 1412(a)(2), 1413(a)(1))		CAPITAN MUNICIPAL SCHOOLS recognizes a full educational opportunity would apply to dual enrollment programs in post-secondary or community-based settings. Therefore, to the extent that CAPITAN MUNICIPAL SCHOOLS offers dual enrollment programs in post-secondary or community-based settings to a nondisabled student, CAPITAN MUNICIPAL SCHOOLS would have that option available to a student with disabilities whose IEP Team determined that such a program would best meet the student's needs. (See 71 Fed. Reg. 46583 (August 14, 2006))

§ 300.111 Child find.		
(a) *General.* (1) The State must have in effect policies and procedures to ensure that— (i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and (ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services. (b) *Use of term developmental delay.* The following provisions apply with respect to implementing the child find requirements of this section: (1) A State that adopts a definition of	**6.31.2.9 NMAC. PUBLIC AGENCY RESPONSIBILITIES:** A. Compliance with applicable laws and regulations. Each New Mexico public agency, within the scope of its authority, shall develop and implement appropriate policies, procedures, programs and services to ensure that all children with disabilities who reside within the agency's educational jurisdiction, including children who are enrolled in private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, or are schooled at home, are identified and evaluated and have access to a free appropriate public education (FAPE) in compliance with all applicable requirements of state and federal laws and regulations. This obligation applies to all New Mexico public agencies that are responsible under laws, rules, regulations or written agreements for providing educational services for children with disabilities, regardless of whether that agency receives funds under the IDEA and regardless of whether it provides special education and related	CAPITAN MUNICIPAL SCHOOLS will comply with its child find obligations. CAPITAN MUNICIPAL SCHOOLS has adopted and will implement the following procedures to ensure that all children with disabilities within its educational jurisdiction and who are in need of special education and related services, are located, evaluated and identified: [INSERT] CAPITAN MUNICIPAL SCHOOLS permits referrals from any source that suspects a child may be eligible for special education and related services. CAPITAN MUNICIPAL SCHOOLS's child find activities typically include a screening process to determine whether the child should be referred for a full evaluation to determine eligibility for special education and related services. Persons such as employees of the SEA, CAPITAN MUNICIPAL SCHOOLS, or other public agencies responsible for the education of the child may identify children who might need to be referred for an evaluation. However, it is the parent of a child and the CAPITAN MUNICIPAL SCHOOLS that have the

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developmental delay under § 300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (*e.g.*, ages three through five). (2) A State may not require an LEA to adopt and use the term *developmental delay* for any children within its jurisdiction. (3) If an LEA uses the term *developmental* delay for children described in § 300.8(b), the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State. (4) If a State does not adopt the term *developmental delay*, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part. (c) *Other children in child find.* Child find also must include— (1) Children who are suspected of being a child with a disability under § 300.8 and in need of special education, even though they are advancing from grade to grade; and (2) Highly mobile children, including migrant children. (d) *Construction.* Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in § 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act. (Authority: 20 U.S.C. 1401(3)); 1412(a)(3))	services directly, by contract, by referrals to private schools or facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions or through other arrangements. **6.31.2.10 NMAC. IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:** A. Child find. Each public agency shall adopt and implement policies and procedures to ensure that all children with disabilities who reside within the agency's educational jurisdiction, including children with disabilities attending private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, detention and correctional facilities, children who are schooled at home, highly mobile children, children who reside on Indian reservations and children who are advancing from grade to grade, regardless of the severity of their disability, and who are in need of special education and related services, are located, evaluated and identified in compliance with all applicable requirements of 34 CFR Secs. 300.111, 300.131, 300.301-306 and these or other department rules and standards. For preschool children, child find screenings shall serve as interventions under Subsection B of 6.31.2.10 NMAC. B. The public agency shall follow a three tier model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning as set forth in Subsection D of 6.29.1.9 NMAC. C. Criteria for identifying children with perceived specific learning disabilities. (1) Each public agency must use the three tiered model of student intervention for students suspected of having a perceived specific learning disability, consistent with the department rules, policies and standards for children who are being referred for evaluation due to a suspected disability under the	responsibility to initiate the evaluation procedures. (See 71 Fed. Reg. 46636 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS does not specify how long a child can receive early intervening services before an initial evaluation is conducted. If a child receiving early intervening services is suspected of having a disability, CAPITAN MUNICIPAL SCHOOLS will conduct a full and individual evaluation in accordance with §§ 300.301, 300.304 and 300.305 to determine if the child is a child with a disability and needs special education and related services. (See 71 Fed. Reg. 46626 (August 14, 2006)) In CAPITAN MUNICIPAL SCHOOLS, child find is an ongoing process. CAPITAN MUNICIPAL SCHOOLS expects that children whose parents revoke consent will be identified, located and offered an evaluation in the same manner as any other child if the child is suspected of having a disability and being in need of special education and related services. CAPITAN MUNICIPAL SCHOOLS has policies and procedures in place to ensure effective child find, including that general education teachers make appropriate referrals of children suspected of having a disability, which would include the referral of children whose parents have previously revoked consent for such services. (See 73 Fed. 73012 (December 1, 2008))

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	specific learning disability category in compliance with 34 CFR Sec. 300.307. … (d) A parent may request an initial special education evaluation at any time during the public agency's implementation of tiers 1 and 2 of the three-tier model of student intervention. If the public agency agrees with the parent that the child may be a child who is eligible for special education services, the public agency must evaluate the child. If the public agency declines the parent's request for an evaluation, the public agency must issue prior written notice in accordance with 34 CFR Sec. 300.503. The parent can challenge this decision by requesting a due process hearing. **6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** K. Children in detention and correctional facilities. … (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. L. Children in private schools or facilities. … (8) Children schooled at home. Each LEA shall locate, evaluate and determine the eligibility of children with disabilities who are schooled at home pursuant to Secs. 22-2-2(H) NMSA 1978. **6.29.1.7 NMAC. DEFINITIONS:** BX. "Response to intervention (RtI)" means a multi-tiered organizational framework that uses a set of increasingly intensive academic or behavioral supports, matched to	

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	student need, as a system for making educational programming and eligibility decisions. It is a continuum of school-wide support that contributes to overall comprehensive school improvement efforts. In New Mexico, the RtI framework is called the "the three-tier model of student intervention." **6.29.1.9 NMAC. PROCEDURAL REQUIREMENTS:** D. Student intervention system. The school and district shall follow a three-tier model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning or behavior. (1) In tier 1, the school and district shall ensure that adequate universal screening in the areas of general health and well-being, language proficiency status and academic levels of proficiency has been completed for each student enrolled. If data from universal screening, a referral from a parent, a school staff member or other information available to a school or district suggests that a particular student needs educational support for learning or behavior, then the student shall be referred to the SAT for consideration of interventions at the tier 2 level. (2) In tier 2, a properly-constituted SAT at each school, which includes the student's parents and the student (as appropriate), shall conduct the student study process and consider, implement and document the effectiveness of appropriate research-based interventions utilizing curriculum-based measures. As part of the child study process, the SAT shall address culture and acculturation, socioeconomic status, possible lack of appropriate instruction in reading or math, teaching and learning styles and instructional delivery mechanisms in order to rule out other possible causes of the student's educational difficulties. The SAT shall create no undue delay for full initial evaluation to determine eligibility for	

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	special education for a student who is identified as homeless or in foster care under the state's foster care system or based on criteria to assess housing stability status under the federal McKinney-Vento Act and the 2015 ESSA Title IV, Part B, due to the high mobility of this specific population group. When it is determined that a student has an obvious disability or a serious and urgent problem, the SAT shall address the student's needs promptly on an individualized basis, which may include a referral for a full, initial evaluation to determine possible eligibility for special education and related services consistent with the requirements of Subsections D-F of 6.31.2.10 NMAC and federal regulations at 34 CFR § 300.300. (3) In tier 3, a student has been identified as a student with disability or gifted under the state criteria for giftedness deemed eligible for special education and related services, and an IEP is developed by a properly-constituted IEP team, pursuant to Subsection B of 6.31.2.11 NMAC and federal regulations at 34 CFR § 300.321. (4) The department's manual, *the student assistance team and the three-tier model of student intervention*, shall be the guiding document for schools and districts to use in implementing the student intervention system.	CAPITAN MUNICIPAL SCHOOLS uses the NMPED manual, Response to Intervention Framework (2014), as its guiding document in implementing the student intervention system. CAPITAN MUNICIPAL SCHOOLS, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.

§ 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).		IDEA 2004 required the U.S. Department of Education to develop a model IEP form. The U.S. Department of Education has developed an IEP form to assist States and school districts in understanding the IEP content requirements. The Model Form: Individualized Education Program developed by the U.S. Department

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(Authority: 20 U.S.C. 1412(a)(4)		of Education is available through the U.S. Department of Education's website. The NMPED has also developed model IEP forms for Preschool/Elementary School and Secondary (updated February 2015) along with a guide, Developing Quality IEPs, available through the NMPED website. CAPITAN MUNICIPAL SCHOOLS uses a localized IEP form based upon the NMPED form and guidance document.

§ 300.113 Routine checking of hearing aids and external components of surgically implanted medical devices.		
(a) *Hearing aids.* Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. (b) *External components of surgically implanted medical devices.* (1) Subject to paragraph (b)(2) of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly. (2) For a child with a surgically implanted medical device who is receiving special education and related services under this part, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device). (Authority: 20 U.S.C. 1401(1), 1401(26)(B))		CAPITAN MUNICIPAL SCHOOLS recognizes its obligation to change a battery or routinely check an external component of a surgically implanted medical device to make sure it is turned on and operating. However, mapping a cochlear implant (or paying the costs associated with mapping) is not routine checking and is not the responsibility of CAPITAN MUNICIPAL SCHOOLS. (See 71 Fed. Reg. 46581 (August 14, 2006))

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Least Restrictive Environment (LRE)		
§ 300.114 LRE requirements.		
(a) *General.* (1) Except as provided in § 300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§ 300.115 through 300.120. (2) Each public agency must ensure that— (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (b) *Additional requirement—State funding mechanism—* (1) *General.* (i) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section; and (ii) A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** C. Least restrictive environment. (1) Except as provided in 34 CFR Sec. 300.324(d) and Subsection K of 6.31.2.11 NMAC for children with disabilities who are convicted as adults under state law and incarcerated in adult prisons, all educational placements and services for children with disabilities must be provided in the least restrictive environment that is appropriate to each child's needs in compliance with 34 CFR Secs. 300.114-300.120. (2) In determining the least restrictive environment for each child's needs, public agencies and their IEP teams shall ensure that the following requirements are met. (a) The requirements of 34 CFR Sec. 300.114(a)(2) for each public agency to ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled, and that special classes, separate schooling or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (b) The required continuum of alternative placements as specified in 34 CFR Sec. 300.115.	CAPITAN MUNICIPAL SCHOOLS acknowledges there is a strong preference in favor of educating children with disabilities in the regular classroom with appropriate aids and supports; however, a regular classroom placement is not appropriate for every child with a disability. Placement decisions will be made on a case-by-case basis and must be appropriate for the needs of the child. (See 71 Fed. Reg. 46589 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS presumes that the first placement option to consider for each child with a disability is the regular classroom in the school that the child would attend if not disabled, with appropriate supplementary aids and services to facilitate such placement. (See 71 Fed. Reg. 46588 (August 14, 2006))

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Federal Regulations	New Mexico Rules	Procedures
which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP. (2) *Assurance.* If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph. (Authority: 20 U.S.C. 1412(a)(5))	(c) The requirement of 34 CFR Sec. 300.116(c) that each child with a disability be educated in the school that he or she would attend if nondisabled unless the child's IEP requires some other arrangement. (d) The requirement of 34 CFR Sec. 300.116(e) that a child with a disability not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum. (e) The requirements of 34 CFR Sec. 300.320(a)(4) that the IEP for each child with a disability include 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 for the child to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities with nondisabled children. (f) The requirement of 34 CFR Sec. 300.324(a)(3) that the regular education teacher of a child with a disability, as a member of the IEP team, must assist in determining the supplementary aids and services, program modifications or supports for school personnel that will be provided for the child in compliance with Sec. 300.320(a)(4). (g) The requirement of 34 CFR Sec. 300.320(a)(5) that the IEP include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and the activities described in Sec. 300.320(a)(4) and 300.117. (h) The requirements of 34 CFR Sec. 300.503 that a public agency give the parents written notice a	

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	reasonable time before the agency proposes or refuses to initiate or change the educational placement of the child or the provision of FAPE to the child and that the notice include a description of any other options considered and the reasons why those options were rejected. (i) The requirement of 34 CFR Sec. 300.120 that the department carry out activities to ensure that Sec. 300.114 is implemented by each agency and that, if there is evidence that a public agency makes placements that are inconsistent with Sec. 300.114, the department must review the public agency's justification for its actions and assist in planning and implementing any necessary corrective action.	

§ 300.115 Continuum of alternative placements.		
(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. (b) The continuum required in paragraph (a) of this section must— (1) Include the alternative placements listed in the definition of special education under § 300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.		CAPITAN MUNICIPAL SCHOOLS will make available a full continuum of placements. CAPITAN MUNICIPAL SCHOOLS understands that there is no requirement that each of the placements on the continuum be utilized.

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(Authority: 20 U.S.C. 1412(a)(5))		

§ 300.116 Placements.		
In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that— (a) The placement decision— (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118; (b) The child's placement— (1) Is determined at least annually; (2) Is based on the child's IEP; and (3) Is as close as possible to the child's home; (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled; (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and (e) A child with a disability is not removed from education in age- appropriate regular classrooms solely because of needed modifications in the general education curriculum. (Approved by the Office of Management and Budget under control number 1820–0030)(Authority: 20 U.S.C.	**6.29.1.9 NMAC. PROCEDURAL REQUIREMENTS:** I. Length of school day and year. … (3) All students shall be in school-directed programs, exclusive of lunch, for a minimum of the following: (a) kindergarten, for half-day programs: two and one-half (2 and 1/2) hours per day or 450 hours per year; or, for full-day programs: five and one-half (5 and 1/2) hours per day or 990 hours per year; (b) grades one through six: five and one-half (5 and 1/2) hours per day or 990 hours per year; and (c) grades seven through twelve: six (6) hours per day or 1,080 hours per year.	CAPITAN MUNICIPAL SCHOOLS expects the IEP Team to follow the Tenth Circuit standard for determining the least restrictive environment. First, the IEP Team will consider whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily. If the answer is "no", and the IEP Team intends to provide special education or to remove the child from regular education, CAPITAN MUNICIPAL SCHOOLS's IEP Team will examine whether the school has mainstreamed the child to the maximum extent appropriate. (See L.B. v. Nebo School District, 379 F.3d 966 (10th Cir. 2004)) The Tenth Circuit standard includes five factors for consideration: ■ Whether the district has taken steps to accommodate the child with disabilities in regular education (by providing supplementary aids and services or modifying its regular education program); ■ Whether these efforts were sufficient or token (the requirement that districts modify and supplement regular education is broad; however, districts need not provide every conceivable supplementary aid or service to assist the child); ■ Whether the child will receive an educational benefit from regular education; ■ The child's overall educational experience in the mainstreamed environment, balancing the benefits of regular and special education (since, on the one hand, the nonacademic benefit that the child receives from mainstreaming may tip the balance in favor of mainstreaming, even if the child cannot flourish academically; while on the other hand,

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1412(a)(5))		placing the child in regular education may be detrimental to the child); and ■ The effect the disabled child's presence has on the regular classroom environment. (See L.B. v. Nebo School District, 379 F.3d 966 (10th Cir. 2004)) CAPITAN MUNICIPAL SCHOOLS believes that if a child with a disability has behavioral problems that are so disruptive in a regular classroom that the education of other children is significantly impaired, the needs of the child with a disability generally cannot be met in that environment. However, before making such a determination, CAPITAN MUNICIPAL SCHOOLS will ensure that consideration has been given to the full range of supplementary aids and services that could be provided to the child in the regular educational environment to accommodate the unique needs of the child with a disability. If the IEP Team determines that, even with the provision of supplementary aids and services, the child's IEP could not be implemented satisfactorily in the regular educational environment, that placement would not be the LRE placement for that child at that particular time, because her or his unique educational needs could not be met in that setting. (See 71 Fed. Reg. 46589 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will utilize the same process for determining the educational placement for children with low-incidence disabilities (including children who are deaf, hard of hearing, or deaf-blind), as used for determining the educational placement for all children with disabilities. That is, each child's educational placement will be determined on an individual case-by case basis depending on each child's unique educational needs and circumstances, rather than by the child's category of disability, and will be based on the child's IEP. (See 71 Fed. Reg. 46586 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS does not consider maintaining a child's placement in an educational

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		program that is substantially and materially similar to the former placement to be a change in placement. (See 71 Fed. Reg. 46588-89 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS understands that there is nothing in the IDEA that requires a detailed explanation in the student's IEP of why their educational needs or education placements cannot be met in the location the parents request; however, CAPITAN MUNICIPAL SCHOOLS will strive to adequately communicate such to parents. (See 71 Fed. Reg. 46588 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will ensure that children with disabilities have available an instructional day commensurate with that of children without disabilities. The IEP Team may provide for a shortened school day as part of the child's IEP only in rare circumstances specific to the needs of the individual child. (See NMPED memoranda regarding Shortened School Days for Students with Disabilities (November 13, 2002) and Length of School Day and Instructional Time (January 3, 2003)) CAPITAN MUNICIPAL SCHOOLS prohibits shortening the school day for a student with disabilities solely to accommodate transportation schedules or in order to accommodate teacher planning time or for administrative convenience. (See NMPED memorandum regarding Length of School Day and Instructional Time (January 3, 2003)) CAPITAN MUNICIPAL SCHOOLS will only shorten the school day for a child with a disability in the rare circumstance that it is educationally justified to meet the student's unique needs, as determined and documented by the IEP Team. Legitimate factors that IEP teams consider and that may indicate the need for a shortened school day include the student's stamina, medical needs, and behavioral and/or emotional needs. (See NMPED memorandum regarding Length of School Day and Instructional Time (January 3, 2003))

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§ 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, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must 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. (Approved by the Office of Management and Budget under control number 1820–0030)(Authority: 20 U.S.C. 1412(a)(5))		CAPITAN MUNICIPAL SCHOOLS will provide supplementary aids and services in extracurricular and nonacademic settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate. (See 71 Fed. Reg. 46578 (August 14, 2006))

§ 300.118 Children in public or private institutions.		
Except as provided in § 300.149(d) (regarding agency responsibility for general supervision for some individuals in adult prisons), an SEA must ensure that § 300.114 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures). (Authority: 20 U.S.C. 1412(a)(5))		

§ 300.119 Technical assistance and training activities.		
Each SEA must carry out activities to ensure that teachers		

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and administrators in all public agencies— (a) Are fully informed about their responsibilities for implementing § 300.114; and (b) Are provided with technical assistance and training necessary to assist them in this effort. (Authority: 20 U.S.C. 1412(a)(5))		

§ 300.120 Monitoring activities.		
(a) The SEA must carry out activities to ensure that § 300.114 is implemented by each public agency. (b) If there is evidence that a public agency makes placements that are inconsistent with § 300.114, the SEA must— (1) Review the public agency's justification for its actions; and (2) Assist in planning and implementing any necessary corrective action. (Authority: 20 U.S.C. 1412(a)(5))		

Additional Eligibility Requirements		
§ 300.121 Procedural safeguards.		
(a) *General.* The State must have procedural safeguards in effect to ensure that each public agency in the State meets the requirements of §§ 300.500 through 300.536. (b) *Procedural safeguards identified.* Children with disabilities and their parents must be afforded the		CAPITAN MUNICIPAL SCHOOLS's Board Policy along with this Handbook of Procedures constitute the Policies and Procedures of CAPITAN MUNICIPAL SCHOOLS which are designed to be consistent with State policies and procedures established under § 300.121 and §§ 300.500 through 300.536 to ensure that

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procedural safeguards identified in paragraph (a) of this section. (Authority: 20 U.S.C. 1412(a)(6)(A))		children with disabilities and their parents are afforded the procedural safeguards under the IDEA. A current copy of the Parent and Child Rights in Special Education Procedural Safeguards Notice (English Version), Derechos de los Padres y del/la Niño(a) en la Educación Especial: Su Aviso Interino Sobre Procedimientos De Proteccion (Spanish Version), the Parent and Child Rights in Special Education Procedural Safeguards Notice (Navajo Version) and the Parent and Child rights in Special Education Procedurals Safeguards Notice (Russian) are available through the NMPED.

§ 300.122 Evaluation.		
Children with disabilities must be evaluated in accordance with §§300.300 through 300.311 of subpart D of this part. (Authority: 20 U.S.C. 1412(a)(7))		CAPITAN MUNICIPAL SCHOOLS's Board Policy along with this Handbook of Procedures constitute the Policies and Procedures of CAPITAN MUNICIPAL SCHOOLS which are designed to be consistent with State policies and procedures established under § 300.122 and §§ 300.300 through 300.311 to ensure that children with disabilities are evaluated under the IDEA.

§ 300.123 Confidentiality of personally identifiable information.		
The State must have policies and procedures in effect to ensure that public agencies in the State comply with §§ 300.610 through 300.626 related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))		CAPITAN MUNICIPAL SCHOOLS's Board Policy (including policies to ensure compliance with the Family Educational Rights and Privacy Act) along with this Handbook of Procedures and CAPITAN MUNICIPAL SCHOOLS's annual FERPA notice constitute the Policies and Procedures of CAPITAN MUNICIPAL SCHOOLS which are designed to be consistent with State policies and procedures established under § 300.123 and §§ 300.610 through 300.626 related

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		to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act.

§ 300.124 Transition of children from the Part C program to preschool programs.		
The State must have in effect policies and procedures to ensure that— (a) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act; (b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with § 300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with §300.101(b); and (c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act. (Authority: 20 U.S.C. 1412(a)(9))	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** A. Preschool programs for children aged 3 through 5. (1) Each public agency shall ensure that a free appropriate public education is available for each preschool child with a disability within its educational jurisdiction no later than the child's third birthday and that an individualized education program (IEP) under Part B or an individual family services plan (IFSP) under Part C of the IDEA is in effect by that date in compliance with 34 CFR Secs. 300.101, 300.124 and 300.323(b). (2) Eligibility to enroll in Part B preschool program. (a) If a child turns three at any time during the school year and is determined to be eligible under Part B, the child may enroll in a Part B preschool program when the child turns three if the parent so chooses, whether or not the child has previously been receiving Part C services. (b) Notwithstanding subparagraph (a) of this paragraph, if a child turns three at any time prior to July 1, 2012 and is enrolled in a Part C program, the parent has the option of having the child complete the remainder of the school year in early intervention services or, if the child is determined to be eligible under Part B, enrolling the child in a Part B preschool program.	CAPITAN MUNICIPAL SCHOOLS's Board Policy along with this Handbook of Procedures constitute the Policies and Procedures of CAPITAN MUNICIPAL SCHOOLS which are designed to be consistent with State policies and procedures established under § 300.124, § 300.101, and § 300.323 for the transition of children from the IDEA Part C programs to IDEA Part B programs. CAPITAN MUNICIPAL SCHOOLS will implement its Policies and Procedures to ensure a smooth and effective transition from IDEA Part C (FIT Program) to Part B programs for preschool children with disabilities within CAPITAN MUNICIPAL SCHOOLS's educational jurisdiction, in compliance with 34 C.F.R. § 300.124. The IDEA Part C lead agency must share the directory information of potentially eligible students with their LEA(s) including CAPITAN MUNICIPAL SCHOOLS. CAPITAN MUNICIPAL SCHOOLS will make reasonable efforts to establish productive working relations with local Part C programs and when given reasonable notice shall participate in the ninety day transition planning conferences arranged by local Part C providers. CAPITAN MUNICIPAL SCHOOLS understands that the process of sharing this data must be completed in a Memorandum of Understanding (MOU) or Interagency Agreement between both CAPITAN MUNICIPAL SCHOOLS and the Part C lead agency.

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	(3) To ensure effective transitioning from IDEA Part C programs to IDEA Part B programs, each public agency must conduct a full and individual initial comprehensive evaluation, at no cost to the parent, and in compliance with requirements of 34 CFR Secs. 300.300, 300.301, 300.302, 300.304 and 300.305 and other department rules and standards before the initial provision of Part B special education and related services to a child with a disability. (a) The initial comprehensive evaluation process shall be conducted in all areas of suspected disability. (b) The Part B eligibility determination team shall review current assessments and shall determine the additional data and assessments needed for the comprehensive evaluation. Current assessments are defined as assessments, other than medical assessments, conducted no more than six months prior to the date of the meeting of the Part B eligibility determination team. (c) The Part B eligibility determination team must consider educationally relevant medical assessments as part of the review of existing evaluation data. The determination of eligibility may not be made solely on the basis of medical assessments. If the team considers medical assessments conducted more than six months prior to the date of the meeting, the team must document the appropriateness of considering such medical assessments. (4) Each public agency shall develop and implement appropriate policies and procedures to ensure a smooth and effective transition from Part C to Part B programs for preschool children with disabilities within the agency's educational jurisdiction, in compliance with 34 CFR Sec. 300.124. Each LEA and other public agencies as appropriate shall make reasonable efforts to establish productive working relations with local Part C programs and when given	On September 6, 2011, the U.S. Department of Education announced the release of the final regulations for the early intervention program under Part C of the IDEA. CAPITAN MUNICIPAL SCHOOLS is committed to a seamless transition of children with disabilities from the Part C program to its Part B program. CAPITAN MUNICIPAL SCHOOLS, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of the Part C regulations and U.S. Department of Education Non Regulatory Guidance related to same in order to effectuate a seamless transition.

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	reasonable notice shall participate in the transition planning conferences arranged by local Part C providers. (5) In particular: (a) Each LEA shall survey Part C programs within its educational jurisdiction in its child find efforts to identify children who will be eligible to enter the LEA's Part B preschool program in future years. (b) Each LEA shall promote parent and family involvement in transition planning with Part C programs, community programs and related services providers at least six months before the child is eligible to enter the LEA's Part B preschool program. (c) Each LEA shall establish and implement procedures to support successful transitions including parent training, professional development for special educators and general educators, and student and parent self-advocacy training and education. (d) Each LEA shall assist parents in becoming their child's advocates as the child makes the transition through systems. (e) Each LEA shall participate in transition planning conferences arranged by the designated Part C lead agency no less than 90 days prior to the anticipated transition or the child's third birthday, whichever occurs first, to facilitate informed choices for all families. (f) Each LEA shall designate a team including parents and qualified professionals to review existing evaluation data for each child entering the LEA's preschool program in compliance with 34 CFR Sec. 300.305, and based on that review to identify what additional data, if any, are needed to determine the child's eligibility for Part B services or develop an appropriate program in a manner that is consistent with	

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	Paragraph (3) of Subsection A of this section. The notice of procedural safeguards shall be given to the parents as provided in Paragraph (3) of Subsection D of 6.31.2.13 NMAC. (g) Development of IFSP, IEP or IFSP-IEP. (i) The IFSP, IEP, or IFSP-IEP will be developed by a team constituted in compliance with 34 CFR Sec. 300.321 that includes parents. For children transitioning from Part C programs to Part B programs, the team must also include one or more early intervention providers who are knowledgeable about the child. "Early intervention providers" are defined as Part C service coordinators or other representatives of the Part C system. (ii) For each child transitioning from a Part C program to a Part B preschool program, the LEA shall initiate a meeting to develop the eligible child's IFSP, IEP or IFSP-IEP, in accordance with 34 CFR Sec. 300.124. The IFSP, IEP or IFSP must be developed and implemented no later than the child's third birthday, consistent with 34 CFR Sec. 300.101(b). (h) In compliance with 34 CFR Sec. 300.101(b)(2), if a child's birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin. Each public agency must engage in appropriate planning with the Part C lead agency so that the eligible child will be prepared to receive Part B special education and related services when the IEP team determines that the services under the IEP or IFSP will begin. (i) Each public agency shall develop policies and procedures to ensure a successful transition from Part B preschool for children with	

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	disabilities who are eligible for continued services in pre-kindergarten and kindergarten.	

§§ 300.125–300.128 **[Reserved]**		

Children in Private Schools		
§ 300.129 State responsibility regarding children in private schools.		
The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in §§ 300.130 through 300.148. (Authority: 20 U.S.C. 1412(a)(10))		The NMPED has issued a memorandum containing guidance regarding Children in Private Schools (November 14, 2005) available through the NMPED website. CAPITAN MUNICIPAL SCHOOLS, 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 guidance documents titled, "Questions and Answers On Serving Children with Disabilities Placed By Their Parents at Private Schools"(Revised April 2011), available through the U.S. Department of Education website. These guidance documents provide detailed responses to frequently asked questions, and provide a clear explanation of CAPITAN MUNICIPAL SCHOOLS's duty to parentally-placed private school children. CAPITAN MUNICIPAL SCHOOLS, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.

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Children With Disabilities Enrolled by Their Parents in Private Schools		
§ 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: 20 U.S.C. 1412(a)(10)(A))	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** L. Children in private schools or facilities. (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. (b) A school district in which a private school or facility is located shall not be considered the resident school district of a school-age person if residency is based solely on the school-age person's enrollment at the facility and the school-age person would not otherwise be considered a resident of the state.	New Mexico's statutory definition of a "private school" specifically excludes a home school. However, CAPITAN MUNICIPAL SCHOOLS's child find duty still extends to home-school students. (See NMPED Memorandum Children in Private Schools (November 14, 2005))

§ 300.131 Child find for parentally-placed private school children with disabilities.		
(a) *General.* Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:**	CAPITAN MUNICIPAL SCHOOLS's child find duty applies to students enrolled in private schools by their parents, whether or not accredited, and to homeschooled students within CAPITAN MUNICIPAL SCHOOLS's

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Federal Regulations	New Mexico Rules	Procedures
religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§ 300.111 and 300.201. (b) *Child find design.* The child find process must be designed to ensure— (1) The equitable participation of parentally-placed private school children; and (2) An accurate count of those children. (c) *Activities.* In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children. (d) *Cost.* The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under §300.133. (e) *Completion period.* The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with § 300.301. (f) *Out-of-State children.* Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located. (Authority: 20 U.S.C. 1412(a)(10)(A)(ii))	L. Children in private schools or facilities. (1) Children enrolled by parents in private schools or facilities. … (c) Each LEA must locate, identify and evaluate all children with disabilities who are enrolled by their parents in private schools, including religious elementary schools and secondary schools located in the education jurisdiction of the LEA, in accordance with 34 CFR Secs. 300.131 and 300.111.	jurisdiction, whether or not registered with the NMPED. (See NMPED Memorandum regarding Children in Private Schools (November 14, 2005)) CAPITAN MUNICIPAL SCHOOLS will monitor and document all child find activities that include homeschooled and private school students within their respective jurisdictions, including the specific activities conducted, the dates of each activity, and the results of each activity. (See NMPED Memorandum regarding Children in Private Schools (November 14, 2005)) All screenings and evaluations resulting from CAPITAN MUNICIPAL SCHOOLS's child find activities will be free to parents, including parents of home-schooled students and parents of students who attend private school by parent choice. (See NMPED Memorandum regarding Children in Private Schools (November 14, 2005)) CAPITAN MUNICIPAL SCHOOLS has options as to ensure child find responsibilities. CAPITAN MUNICIPAL SCHOOLS may assume the responsibility or contract with another public agency, or make other arrangements. (See OSERS Q/A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011)) CAPITAN MUNICIPAL SCHOOLS's child find duty for parentally-placed children with disabilities in private schools extends to children aged 3 through 5 only if the school or facility meets the definition of "elementary school". (See OSERS Q/A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011)) The child find activities conducted by CAPITAN MUNICIPAL SCHOOLS for parentally-placed private school children will be similar to activities undertaken for child find for children in CAPITAN MUNICIPAL SCHOOLS, and will not be delayed. (See OSERS Q/A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011))

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		CAPITAN MUNICIPAL SCHOOLS's child find duty also includes children from other states attending private elementary schools and secondary schools located in CAPITAN MUNICIPAL SCHOOLS. (See OSERS Q/A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011))

§ 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 must 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:	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** L. Children in private schools or facilities. (1) Children enrolled by parents in private schools or facilities. … (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. (e) Pursuant to 34 CFR Sec. 300.133, each LEA is obligated to spend a proportionate amount of its federal IDEA Part B funds to assist private school children with disabilities placed in a private school or private facility by a parent who assumes responsibility for such placement. In doing so, LEAs must use the formula for	If appropriate, CAPITAN MUNICIPAL SCHOOLS will inform the parents that the LEA of residence is responsible for providing the child a free appropriate public education (FAPE) if the student leaves the private school and enrolls in public school. If the parent makes clear his or her intention to keep the child in the private school, the LEA where the child resides does not have to create an IEP. (See NMPED Q/A on IDEA and Private Schools (May 7, 2010)) Every parentally-placed private school child with a disability attending a private school within CAPITAN MUNICIPAL SCHOOLS, who has been designated by the CAPITAN MUNICIPAL SCHOOLS to receive special education and related services, will have a service plan. The plan will describe the specific special education or related services that CAPITAN MUNICIPAL SCHOOLS will provide to the child. CAPITAN MUNICIPAL SCHOOLS will ensure that a representative of the private school attends each meeting to develop the plan, or use other methods to ensure participation by the private school, including conference telephone calls. (See OSERS Q/A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011)) The NMPED has developed a model Private School Service Plan form available through the NMPED website.

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(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: 20 U.S.C. 1412(a)(10)(A)(i))	calculating proportionate amount and annual count of parentally placed private school children with disabilities in accordance with 34 CFR Sec. 300.133. The public agency shall not use IDEA funds to benefit private schools as provided in 34 CFR Sec. 300.141. The state is not required to distribute state funds for such school-age persons. Furthermore, the Constitution and laws of New Mexico prohibit public agencies from spending state funds to assist private schools or facilities or their students. … (7) The department will assign a unique student identifier for school-age persons who have service plans, including those who are not residents of the state but who are attending private residential treatment facilities in the state.	Although the IDEA and its regulations do not specify how often a service plan must be written, CAPITAN MUNICIPAL SCHOOLS will generally review and revise a service plan annually, as appropriate. (See OSERS Q & A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011)) CAPITAN MUNICIPAL SCHOOLS will maintain in its records and provide to the NMPED the number of parentally-placed private school children evaluated, the number of parentally-placed private school children determined to have disabilities under Part B of the IDEA, and the number of children provided with equitable services. (See OSERS Q/A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011))

§ 300.133 Expenditures.		
(a) *Formula.* To meet the requirement of § 300.132(a), each LEA must spend the following on providing special education and related services (including direct services) to parentally- placed private school children with disabilities: (1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** L. Children in private schools or facilities. (1) Children enrolled by parents in private schools or facilities. … (e) Pursuant to 34 CFR Sec. 300.133, each LEA is obligated to spend a proportionate amount of its federal IDEA Part B funds to assist private school children with disabilities placed in a private school or private facility by a parent who assumes responsibility for such placement.	If the LEA has not expended the entire proportionate share of its IDEA funds by the end of the fiscal year, CAPITAN MUNICIPAL SCHOOLS will obligate the remaining funds for services for parentally-placed private school students with disabilities during a carry-over period of one additional year. CAPITAN MUNICIPAL SCHOOLS will enter the proportionate share in the uniform chart of accounts. (See NMPED Q/A on IDEA and Private Schools (May 7, 2010)) For technical assistance on how to calculate the proportionate share, see OSERS Q & A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011), Section H. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school

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(2) (i) For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five. (ii) As described in paragraph (a)(2)(i) of this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in §300.13. (3) If an LEA has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2) of this section by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry- over period of one additional year. (b) *Calculating proportionate amount.* In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under § 300.134, must conduct a	In doing so, LEAs must use the formula for calculating proportionate amount and annual count of parentally placed private school children with disabilities in accordance with 34 CFR Sec. 300.133. The public agency shall not use IDEA funds to benefit private schools as provided in 34 CFR Sec. 300.141. The state is not required to distribute state funds for such school-age persons. Furthermore, the Constitution and laws of New Mexico prohibit public agencies from spending state funds to assist private schools or facilities or their students.	children (ages 5 through 21) with disabilities, CAPITAN MUNICIPAL SCHOOLS will ensure that the count is conducted between October 1st and December 1st of each year, or by the annual child count date set by the New Mexico Public Education Department. (See NMPED Q/A on IDEA and Private Schools (May 7, 2010))

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thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA. (*See* Appendix B for an example of how proportionate share is calculated). (c) *Annual count of the number of parentally-placed private school children with disabilities.* (1) Each LEA must— (i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with §300.134), determine the number of parentally- placed private school children with disabilities attending private schools located in the LEA; and (ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year. (2) The count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year. (d) *Supplement, not supplant.* State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part. (Authority: 20 U.S.C. 1412(a)(10)(A))		

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§ 300.134 Consultation.		
To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally- placed private school children with disabilities during the design and development of special education and related services for the children regarding the following: (a) Child find. The child find process, including— (1) How parentally-placed private school children suspected of having a disability can participate equitably; and (2) How parents, teachers, and private school officials will be informed of the process. (b) *Proportionate share of funds.* The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under § 300.133(b), including the determination of how the proportionate share of those funds was calculated. (c) *Consultation process.* The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services. (d) *Provision of special education and related services.* How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of—	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** L. Children in private schools or facilities. (1) Children enrolled by parents in private schools or facilities. … (g) Pursuant to 34 CFR Secs. 300.134 and 300.135, LEAs must ensure timely and meaningful consultation with private school representatives and representatives of parents of parentally placed private school children with disabilities. If the LEA fails to engage in meaningful and timely consultation or did not give due consideration to a request from private school officials, private school officials have the right to submit a complaint to the department. The private school official and the LEA must follow the procedures outlined in 34 CFR Sec. 300.136.	CAPITAN MUNICIPAL SCHOOLS believes that effective consultation provides a genuine opportunity for all parties to express their views and to have those views considered by CAPITAN MUNICIPAL SCHOOLS. CAPITAN MUNICIPAL SCHOOLS will strive to establish positive and productive working relationships that make planning easier and ensure that the services provided meet the needs of eligible parentally placed private school children with disabilities. (See OSERS Q/A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011)) CAPITAN MUNICIPAL SCHOOLS will consult, in a timely and meaningful way, with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for parentally placed private school children. (See OSERS Q/A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011)) In the consultation process, CAPITAN MUNICIPAL SCHOOLS will address the child find process and how parentally-placed private school children suspected of having a disability can participate equitably, including how parents, teachers and private school officials will be informed of the process. (See OSERS Q/A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011)) In the consultation process, CAPITAN MUNICIPAL SCHOOLS will address the proportionate share of federal funds available to serve parentally-placed private school children with disabilities, including the determination of how the share was calculated. (See OSERS Q/A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011))

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(1) The types of services, including direct services and alternate service delivery mechanisms; and (2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and (3) How and when those decisions will be made; (e) W*ritten explanation by LEA regarding services.* How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract. (Authority: 20 U.S.C. 1412(a)(10)(A)(iii))		In the consultation process, CAPITAN MUNICIPAL SCHOOLS will address how, where, and by whom special education and related services will be provided, including a discussion of types of services – including direct services and alternate service delivery mechanisms, as well as how the services will be apportioned if funds are insufficient. (See OSERS Q/A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011)) If CAPITAN MUNICIPAL SCHOOLS disagrees with the views of the private school officials on the provision of services or the types of services, CAPITAN MUNICIPAL SCHOOLS will provide a written explanation of the reasons why CAPITAN MUNICIPAL SCHOOLS chooses not to adopt the recommendations of the private school officials. (See OSERS Q/A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011)) CAPITAN MUNICIPAL SCHOOLS will submit a Consultation Documentation as part of their New Mexico Local Application for IDEA-B Funding. This appears as part of Objective 7 on the application. Representatives of each private school within the CAPITAN MUNICIPAL SCHOOLS's jurisdiction are required to sign and date this form indicating that they have been made aware by CAPITAN MUNICIPAL SCHOOLS's appropriate provisions contained in the IDEA. (See NMPED Q/A on IDEA and Private Schools (May 7, 2010))

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§ 300.135 Written affirmation.		
(a) When timely and meaningful consultation, as required by §300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools. (b) If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA. (Authority: 20 U.S.C. 1412(a)(10)(A)(iv))		After the consultation has occurred, CAPITAN MUNICIPAL SCHOOLS will obtain a written affirmation signed by the representative of the private school. If the representatives do not provide the affirmation within a reasonable period of time, CAPITAN MUNICIPAL SCHOOLS will forward the documentation of the consultation process to the NMPED. (See OSERS Q/A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011))

§ 300.136 Compliance.		
(a) *General.* A private school official has the right to submit a complaint to the SEA that the LEA— (1) Did not engage in consultation that was meaningful and timely; or (2) Did not give due consideration to the views of the private school official. (b) *Procedure.* (1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and (2) The LEA must forward the appropriate documentation to the SEA. (3) (i) If the private school official is dissatisfied with the decision of the SEA, the official	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** L. Children in private schools or facilities. (1) Children enrolled by parents in private schools or facilities. … (g) Pursuant to 34 CFR Secs. 300.134 and 300.135, LEAs must ensure timely and meaningful consultation with private school representatives and representatives of parents of parentally placed private school children with disabilities. If the LEA fails to engage in meaningful and timely consultation or did not give due consideration to a request from private school officials, private school officials have the right to submit a complaint to the department. The private school official and the	In New Mexico, although the child find duty extends to home-school students, the requirements for proportionate spending and "meaningful and timely consultation" do not apply to home-schooled students. Parents who home school their children do not have the right to file a state-level complaint against CAPITAN MUNICIPAL SCHOOLS alleging a violation of these consultations requirements. (See NMPED Memorandum regarding Children in Private Schools (November 14, 2005))

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may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and (ii) The SEA must forward the appropriate documentation to the Secretary. (Authority: 20 U.S.C. 1412(a)(10)(A)(v))	LEA must follow the procedures outlined in 34 CFR Sec. 300.136.	

§ 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,	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** L. Children in private schools or facilities. (1) Children enrolled by parents in private schools or facilities. … (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. …	CAPITAN MUNICIPAL SCHOOLS understands that it has the obligation to provide the group of parentally-placed private school children with disabilities with equitable participation in the services funded with federal IDEA funds. However, children with disabilities enrolled in private schools by their parents have no individual entitlement to receive some or all of the special education and related services they would receive if enrolled in a public school other than child find, including evaluations. (See OSERS Q/A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011))

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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: 20 U.S.C. 1412(a)(10)(A))	(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.	

§ 300.138 Equitable services provided.		
(a) *General*. (1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of §300.18. (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	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** L. Children in private schools or facilities. (1) Children enrolled by parents in private schools or facilities. … (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.	Equitable services will be provided to parentally-placed private school children with disabilities by CAPITAN MUNICIPAL SCHOOLS employees or through contract by CAPITAN MUNICIPAL SCHOOLS with an individual, association, agency or organization. (See OSERS Q/A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011)) If CAPITAN MUNICIPAL SCHOOLS personnel is providing equitable services to private school children on or off the premises of the private school, those CAPITAN MUNICIPAL SCHOOLS personnel must meet the highly qualified teacher requirements in section 300.18. However, if CAPITAN MUNICIPAL SCHOOLS contracts with private school teachers to provide equitable services, those private school teachers do not have to meet the highly qualified special education teacher requirements. (See OSERS Q & A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011)) Although IDEA and its regulations do not specify how often a service plan must be written, CAPITAN MUNICIPAL SCHOOLS will generally review and revise a service plan annually, as appropriate. (See

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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*. (1) The provision of services pursuant to this section and §§300.139 through 300.143 must be provided: (i) By employees of a public agency; or (ii) Through contract by the public agency with an individual, association, agency, organization, or other entity. (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: 20 U.S.C. 1412(a)(10)(A)(vi))		OSERS Q & A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011))

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§ 300.139 Location of services and transportation.		
(a) *Services on private school premises.* Services to parentally- placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law. (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: 20 U.S.C. 1412(a)(10)(A))	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** L. Children in private schools or facilities. (1) Children enrolled by parents in private schools or facilities. … (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.	CAPITAN MUNICIPAL SCHOOLS will provide services on-site at the child's private school so as to not unduly disrupt the child's educational experience, unless there is a compelling rationale for these services to be provided off-site. (See OSERS Q & A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011))

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§ 300.140 Due process complaints and State complaints.		
(a) *Due process not applicable, except for child find.* (1) Except as provided in paragraph (b) of this section, the procedures in §§ 300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of §§300.132 through 300.139, including the provision of services indicated on the child's services plan. (b) *Child find complaints—to be filed with the LEA in which the private school is located.* (1) The procedures in §§ 300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in § 300.131, including the requirements in §§ 300.300 through 300.311. (2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of this section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA. (c) *State complaints.* (1) Any complaint that an SEA or LEA has failed to meet the requirements in §§ 300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in §§ 300.151 through 300.153. (2) A complaint filed by a private school official under §300.136(a) must be filed with the SEA in accordance with the procedures in §300.136(b). (Authority: 20 U.S.C. 1412(a)(10)(A))	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** L. Children in private schools or facilities. (1) Children enrolled by parents in private schools or facilities. … (h) Pursuant to 34 CFR Secs. 300.140, the due process provisions of Subsection I of 6.31.2.13 NMAC are not applicable except for child find complaints which must be filed in compliance with 34 CFR Sec. 300.140(b). Any complaint that the department or any LEA has failed to meet the requirements in 34 CFR Secs, 300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the provisions described in Subsection H of 6.31.2.13 NMAC	Although the child find duty extends to home-school students, the requirements for proportionate spending and "meaningful and timely consultation" do not apply to home-schooled students. Parents who home school their children do not have the right to file a state-level complaint against CAPITAN MUNICIPAL SCHOOLS alleging a violation of these consultations requirements. (See NMPED Memorandum regarding Children in Private Schools (November 14, 2005))

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§ 300.141 Requirement that funds not benefit a private school.		
(a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school. (b) The LEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting— (1) The needs of a private school; or (2) The general needs of the students enrolled in the private school. (Authority: 20 U.S.C. 1412(a)(10)(A))		CAPITAN MUNICIPAL SCHOOLS will control and administer the funds used to provide special education and related services to parentally-placed private school children with disabilities, and will maintain title to materials, equipment, and property purchased with those funds. Private school officials may not obligate or receive Part B funds. (See OSERS Q/A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011)) CAPITAN MUNICIPAL SCHOOLS will not pay any IDEA Part B funds for equitable services directly to a private school. Nor will any IDEA Part B funds be used for repairs, minor remodeling, or construction of private school facilities. (See OSERS Q/A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011))

§ 300.142 Use of personnel.		
(a) *Use of public school personnel.* An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities— (1) To the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities; and (2) If those services are not normally provided by the private school.		If CAPITAN MUNICIPAL SCHOOLS personnel is providing equitable services to private school children on or off the premises of the private school, those CAPITAN MUNICIPAL SCHOOLS personnel must meet the highly qualified teacher requirements in section 300.18. However, if CAPITAN MUNICIPAL SCHOOLS contracts with private school teachers to provide equitable services, those private school teachers do not have to meet the highly qualified special education teacher requirements. (See OSERS Q & A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011))

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(b) Use of private school personnel. An LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§ 300.130 through 300.144 if— (1) The employee performs the services outside of his or her regular hours of duty; and (2) The employee performs the services under public supervision and control. (Authority: 20 U.S.C. 1412(a)(10)(A))		

§ 300.143 Separate classes prohibited.		
An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if—' (a) The classes are at the same site; and (b) The classes include children enrolled in public schools and children enrolled in private schools. (Authority: 20 U.S.C. 1412(a)(10)(A))		

§ 300.144 Property, equipment, and supplies.		
(a) A public agency must control and administer the funds used to provide special education and related services under §§300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.		CAPITAN MUNICIPAL SCHOOLS may place equipment and supplies in a private school for the period of time needed for the specific program. (See OSERS Q/A on Serving Children With Disabilities Placed by Their Parents at Private Schools (Revised April 2011))

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(b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program. (c) The public agency must ensure that the equipment and supplies placed in a private school— (1) Are used only for Part B purposes; and (2) Can be removed from the private school without remodeling the private school facility. (d) The public agency must remove equipment and supplies from a private school if— (1) The equipment and supplies are no longer needed for Part B purposes; or (2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes. (e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities. (Authority: 20 U.S.C. 1412(a)(10)(A)(vii))		

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Children With Disabilities in Private Schools Placed or Referred by Public Agencies		
§ 300.145 Applicability of §§ 300.146 through 300.147.		
Sections 300.146 through 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services. (Authority: 20 U.S.C. 1412(a)(10)(B))		

§ 300.146 Responsibility of SEA.		
Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency— (a) Is provided special education and related services— (1) In conformance with an IEP that meets the requirements of §§ 300.320 through 300.325; and (2) At no cost to the parents; (b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, except for § 300.18 and §300.156(c); and (c) Has all of the rights of a child with a disability who is served by a public agency.	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** L. Children in private schools or facilities. … (2) Children placed in or referred to private schools or facilities by New Mexico public agencies. Each public agency shall ensure that a child with a disability who is placed in or referred to a private school or facility by the agency as a means of providing special education and related services is provided services in compliance with the requirements of 34 CFR Secs. 300.146 and 300.147. Such a child has all the rights of a child with a disability who is served by a public agency. (3) Children placed in or referred to private schools or facilities by New Mexico public non-educational agencies. For a qualified student or school-age	

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(Authority: 20 U.S.C. 1412(a)(10)(B)	person in need of special education placed in a private school or facility by a New Mexico public noneducational agency with custody or control of the qualified student or school-age person or by a New Mexico court of competent jurisdiction, the school district in which the facility is located shall be responsible for the planning and delivery of special education and related services, unless the qualified student's or school-age person's resident school district has an agreement with the facility to provide such services. The district must make reasonable efforts to involve the qualified student or school-age person's resident school district in the IEP process. (4) Children placed in or referred to private schools or facilities by public noneducational agencies other than New Mexico public agencies. A school district in which a private school or facility is located shall not be considered the resident school district of a school-age person if residency is based solely on the school-age person's enrollment at the facility and the school-age person would not otherwise be considered a resident of the state. … (6) If not otherwise governed by this rule, the department will determine which school district is responsible for the cost of educating a qualified student in need of special education who has been placed in a private school or facility outside the qualified student's resident school district in accordance with the following procedures. (a) The receiving school district must notify the SEB of the department in writing no later than thirty (30) days after the receiving school district receives notice of the placement. The notice, as described on the department's website, must include: name of student, date of birth of student, date of placement, information regarding the qualified student's resident school district, documentation of placement, including	

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	student's IEP, cost of placement, and any other information deemed relevant by the SEB. The receiving school district must provide a copy of the notice to the district identified as the student's resident district. (b) The district identified as the student's resident district may provide any additional information it deems relevant. Such additional information must be provided no later than 15 days after the resident district receives its copy of the notice described in Subparagraph (a) of this paragraph. (c) No later than 60 days after its receipt of the notice described in Subparagraph (a) of this paragraph, the SEB will issue its determination as to which school district is responsible for the cost of educating the student, together with the amount of any reasonable reimbursement owed to the receiving school district. The SEB may extend the 60 day timeline for good cause.	

§ 300.147 Implementation by SEA.		
In implementing § 300.146, the SEA must— (a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires; (b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and (c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them. (Authority: 20 U.S.C. 1412(a)(10)(B)		

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Children With Disabilities Enrolled by Their Parents in Private Schools When FAPE Is at Issue		
§ 300.148 Placement of children by parents when FAPE is at issue.		
(a) *General.* This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§300.131 through 300.144. (b) *Disagreements about FAPE.* Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§ 300.504 through 300.520. (c) *Reimbursement for private school placement.* If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** L. Children in private schools or facilities. … (5) Children placed in private schools or facilities by parents when FAPE is at issue. The responsibility of a local educational agency to pay for the cost of education for a child with a disability who is placed in a private school or facility such as residential treatment centers, day treatment centers, hospitals or mental health institutions, by parents who allege that the LEA failed to offer FAPE is governed by the requirements of 34 CFR Sec. 300.148. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of Subsection I of 6.31.2.13 NMAC.	CAPITAN MUNICIPAL SCHOOLS understands that disagreements between a parent and CAPITAN MUNICIPAL SCHOOLS regarding the availability of a program appropriate for the child and the question of financial responsibility are subject to the due process procedures. (See 71 Fed. Reg. 46599 (August 14, 2007)) When a parent intends to enroll their child in a private school at public expense, CAPITAN MUNICIPAL SCHOOLS expects that parents will notify the CAPITAN MUNICIPAL SCHOOLS ■ At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, that they are rejecting the placement proposed by the CAPITAN MUNICIPAL SCHOOLS to provide FAPE to their child, including by stating their concerns and their intent to enroll their child in a private school at public expense; or ■ At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school**,** that they are rejecting the placement proposed by the CAPITAN MUNICIPAL SCHOOLS to provide FAPE to their child, including by stating their concerns and their intent to enroll their child in a private school at public expense. CAPITAN MUNICIPAL SCHOOLS acknowledges that tuition reimbursement is available if a hearing officer or court concludes both that CAPITAN MUNICIPAL SCHOOLS's placement violated the IDEA, and that the private school placement was proper under the IDEA. (See 71 Fed. Reg. 46599 (August 14, 2007); School

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(d) *Limitation on reimbursement.* The cost of reimbursement described in paragraph (c) of this section may be reduced or denied— (1) If— (i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or (ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section; (2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in §300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or (3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents. (e) *Exception.* Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement—		Committee of the Town of Burlington v. Department of Education, 471 U.S. 359 (1985)) CAPITAN MUNICIPAL SCHOOLS acknowledges that a unilateral parental placement does not need to meet New Mexico standards in order to be considered by a hearing officer or court to be "appropriate" as those standards only apply if public agencies initiate the placement. (See 71 Fed. Reg. 46599 (August 14, 2007); see also, Florence County School District Four v. Carter, 471 U.S.359 (1993))

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(1) Must not be reduced or denied for failure to provide the notice if— (i) The school prevented the parents from providing the notice; (ii) The parents had not received notice, pursuant to §300.504, of the notice requirement in paragraph (d)(1) of this section; or (iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and (2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if— (i) The parents are not literate or cannot write in English; or (ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child. (Authority: 20 U.S.C. 1412(a)(10)(C))		

SEA Responsibility for General Supervision and Implementation of Procedural Safeguards		
§ 300.149 SEA responsibility for general supervision.		
(a) The SEA is responsible for ensuring— (1) That the requirements of this part are carried out; and (2) That each educational program for children with disabilities administered within the State, including each program administered by any	**6.31.2.3 NMAC. STATUTORY AUTHORITY:** Section 22-13-5 NMSA 1978 authorizes the public education department to develop and establish regulations and standards for the conduct of special education in the schools and classes of the public school system in the state and in all institutions	CAPITAN MUNICIPAL SCHOOLS recognizes the general supervisory authority of the NMPED.

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other State or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior)— (i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and (ii) Meets the educational standards of the SEA (including the requirements of this part). (3) In carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*) are met. (b) The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in §§ 300.600 through 300.602 and §§ 300.606 through 300.608. (c) Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State. (d) Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law) may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the Act are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons. (Authority: 20 U.S.C. 1412(a)(11); 1416)	wholly or partially supported by the state and to monitor and enforce those regulations and standards. Section 22-13-6.1 NMSA 1978 authorizes the public education department to adopt standards pertaining to the determination of who is a gifted child as part of the educational standards for New Mexico schools. Section 22-13-5 NMSA 1978 directs the public education department to establish rules and standards under Public Law 108-446, now the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). The IDEA at 20 USC Sec. 1412(a)(11) requires the state educational agency in each participating state to ensure that the requirements of the IDEA and state educational standards are met in all educational programs administered by any state or local educational agency for children with disabilities aged 3 through 21.	

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§ 300.150 SEA implementation of procedural safeguards.		
The SEA (and any agency assigned responsibility pursuant to §300.149(d)) must have in effect procedures to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency. (Authority: 20 U.S.C. 1412(a)(11); 1415(a))		

CONFLICT RESOLUTION AT THE LOWEST POSSIBLE LEVEL		
Conflict Resolution at the Lowest Possible Level.		
(Not in Federal Regulations; See New Mexico Rules)	**6.31.2.7 NMAC. DEFINITIONS:** C. Definitions related to dispute resolution. The following terms are listed in the order that reflects a continuum of dispute resolution options and shall have the following meanings for the purposes of these rules. (1) "Facilitated IEP (FIEP) meeting" means an IEP meeting that utilizes an independent, state approved, state-funded, trained facilitator as an IEP facilitator to assist the IEP team to communicate openly and effectively, in order to resolve conflicts related to a student's IEP. (2) "Mediation" means a meeting or series of meetings that utilizes an independent, state-approved, state-funded, trained mediator to assist parties to reconcile disputed matters related to a student's IEP or other educational, non-IEP-related issues. **6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** G. Conflict management and resolution.	IDEA requires that parents turn first to the IDEA's administrative framework to resolve any conflicts they have with CAPITAN MUNICIPAL SCHOOLS including regarding identification, evaluation, educational placement, or the provision of a FAPE. The Tenth Circuit federal court of appeals has interpreted the IDEA's exhaustion requirements broadly, "noting Congress' clear intention to allow those with experience in educating the nation's disabled children 'at least the first crack at formulating a plan to overcome the consequences of educational shortfalls.'" (Ellenberg v. New Mexico Military Institute, 478 F.3d 1262 (10th Cir. 2007)) CAPITAN MUNICIPAL SCHOOLS seeks to establish and maintain productive working relationships with the parents of each child it serves and to deal constructively with disagreements. Toward that end, CAPITAN MUNICIPAL SCHOOLS provides appropriate training for staff and parents in skills and techniques of conflict prevention and management and dispute resolution. (See 6.31.2.13(G)(1) NMAC)

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	(1) Each public agency shall seek to establish and maintain productive working relationships with the parents of each child the agency serves and to deal constructively with disagreements. Toward that end, each public agency is strongly encouraged to provide appropriate training for staff and parents in skills and techniques of conflict prevention and management and dispute resolution, and to utilize an informal dispute resolution method as set forth under Subparagraph (a) of Paragraph (2) of Subsection G of 6.31.2.13 NMAC to resolve disagreements at the local level whenever practicable. (2) Spectrum of dispute resolution options. To facilitate dispute prevention as well as swift, early conflict resolution whenever possible, the department and the public agency shall ensure that the following range of dispute resolution options is available to parents and public agency personnel. (a) Informal dispute resolution option. If a disagreement arises between parents and a public agency over a student's IEP or educational program, either the parents or the public agency may convene a new IEP meeting at any time to attempt to resolve their differences at the local level, without state-level intervention. (b) Third-party assisted intervention. The special education bureau (SEB) of the department will ensure that mediation is available to parents and public agencies who request such third-party assisted intervention before filing a state-level complaint or a request for a due process hearing. The SEB will honor a request for mediation that: (i) is in writing; (ii) is submitted to the SEB;	CAPITAN MUNICIPAL SCHOOLS utilizes informal dispute resolution methods to resolve disagreements at the local level whenever practicable. (See 6.31.2.13(G)(2) NMAC) CAPITAN MUNICIPAL SCHOOLS encourages parents to contact the campus principal first in an effort to resolve conflicts. If those efforts are not resolved to the parent's satisfaction, they should then contact the Capitan Municipal Schools Department of Special Education.

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	(iii) is a mutual request signed by both parties or their designated representatives; (iv) includes a statement of the matter(s) in dispute and a description of any previous attempts to resolve these matters at the local level; and (v) any request that does not contain all of these elements will be declined, with an explanation for the SEB's decision and further guidance, as appropriate. (c) Formal dispute resolution. (i) A state-level complaint may be filed with the SEB of the department by the parents of a child, or by another individual or organization on behalf of a child, as described under Subparagraph (a) of Paragraph (2) of Subsection H of 6.31.2.13 NMAC. Once a complaint has been filed, the parties may agree to convene a FIEP meeting or mediation as described under Paragraph (3) of Subsection H of 6.31.2.13 NMAC. (ii) A request for a due process hearing may be filed by parents or their authorized representative, or by a public agency, as described under Paragraph (5) of Subsection I of 6.31.2.13 NMAC. A resolution session between the parties must be convened by the public agency following a request for a due process hearing, unless the parties agree in writing to waive that option or to convene a mediation instead, as described under Paragraph (8) of Subsection I of 6.31.2.13 NMAC.	

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	(d) The Mediation Procedures Act does not apply to mediations conducted under 6.31.2 NMAC.	

State Complaint Procedures		
§ 300.151 Adoption of State complaint procedures.		
(a) *General.* Each SEA must adopt written procedures for— (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of § 300.153 by— (i) Providing for the filing of a complaint with the SEA; and (ii) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and (2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§ 300.151 through 300.153. (b) *Remedies for denial of appropriate services.* In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address— (1) The failure to provide appropriate services,	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** H. State complaint procedures. (1) Scope. This Subsection H of 6.31.2.13 NMAC prescribes procedures to be used in filing and processing complaints alleging the failure of the department or a public agency to comply with state or federal laws or regulations governing programs for children with disabilities under the IDEA or with state statutes or regulations governing educational services for gifted children.	

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including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and (2) Appropriate future provision of services for all children with disabilities. (Authority: 20 U.S.C. 1221e–3)		

§ 300.152 Minimum State complaint procedures.		
(a) *Time limit; minimum procedures.* Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under § 300.153 to— (1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary; (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; (3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum— (i) At the discretion of the public agency, a proposal to resolve the complaint; and (ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with § 300.506; (4) Review all relevant information and make an	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** H. State complaint procedures. … (3) Preliminary meeting. (a) FIEP meeting: mediation. Parties to a state-level complaint may choose to convene a FIEP meeting or mediation instead of a CAIEP meeting. To do so, the public agency must (and the parent may) notify the SEB of the department in writing within 1 business day of reaching their decision to jointly request one of these ADR options. A FIEP meeting or mediation shall be completed not later than 14 days after the assignment of the IEP facilitator or mediator by the SEB, unless a brief extension is granted by the SEB based on exceptional circumstances. Each session in the FIEP or mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the complaint.	The NMPED has issued guidance regarding facilitated IEP meetings. The Facilitated IEP Meeting Fact Sheet (May 2012) is available through the NMPED website. A parent can contact the CAPITAN MUNICIPAL SCHOOLS's special education director to request a FIEP meeting as an alternative form of dispute resolution whether or not the parent has filed a State-level complaint. Both the CAPITAN MUNICIPAL SCHOOLS and parent must agree to engage in this process. When a parent files a State-level complaint, the CAPITAN MUNICIPAL SCHOOLS and parent may choose to convene a FIEP meeting. The CAPITAN MUNICIPAL SCHOOLS by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document. Either the CAPITAN MUNICIPAL SCHOOLS or the parent can request mediation as an alternative form of dispute resolution by contacting the NMPED's Special Education Bureau and asking to speak to the ADR Coordinator to obtain a Request for Mediation form. Both the CAPITAN MUNICIPAL SCHOOLS and parent must agree to engage in mediation. When a parent files a State-level complaint, the CAPITAN MUNICIPAL SCHOOLS and parent may choose to

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independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and (5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains— (i) Findings of fact and conclusions; and (ii) The reasons for the SEA's final decision. (b) *Time extension; final decision; implementation.* The SEA's procedures described in paragraph (a) of this section also must— (1) Permit an extension of the time limit under paragraph (a) of this section only if— (i) Exceptional circumstances exist with respect to a particular complaint; or (ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and (2) Include procedures for effective implementation of the SEA's final decision, if needed, including— (i) Technical assistance activities; (ii) Negotiations; and (iii) Corrective actions to achieve compliance.	(b) Mediation requirements. If the parties choose to use mediation, the following requirements apply. (i) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. (ii) Any mediated agreement must state that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. Any such agreement must also be signed by both the parent and a representative of the agency who has the authority to bind such agency, and shall be enforceable in any state court of competent jurisdiction or in a district court of the United States. (iii) If a mediated agreement involves IEP-related issues, the agreement must state that the public agency will subsequently convene an IEP meeting to inform the student's service providers of their responsibilities under that agreement, and revise the student's IEP accordingly. (iv) The mediator shall transmit a copy of the written mediation agreement to each party within 7 days of the meeting at which the agreement was concluded. A mediation agreement involving a claim or issue that later goes to a due process hearing may be received in evidence if the hearing officer rules that part or all of the agreement is relevant to one or more IDEA issues that are properly before the hearing officer for decision.	participate in mediation. The CAPITAN MUNICIPAL SCHOOLS by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.

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(c) *Complaints filed under this section and due process hearings under § 300.507 and §§ 300.530 through 300.532.* (1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§ 300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section. (2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties— (i) The due process hearing decision is binding on that issue; and (ii) The SEA must inform the complainant to that effect. (3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA. (Authority: 20 U.S.C. 1221e–3)	(v) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute. (vi) Any other requirement provided in 34 CFR 300.506(b) that is not otherwise provided herein. (4) Complaints and due process hearings on the same issues. Pursuant to 34 CFR Sec. 300.152(c). (a) The SEB of the department shall set aside any part of a written complaint that is also the subject of a due process hearing under Subsection I of 6.31.2.13 NMAC until the conclusion of the hearing and any civil action. Any issue in the complaint that is not a part of the due process hearing or civil action will be resolved by the SEB as provided in Subsection H of 6.31.2.13 NMAC. (b) If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the SEB must inform the complainant to that effect. (c) A complaint alleging a public agency's failure to implement a due process decision will be resolved by the SEB as provided in this Subsection H of 6.31.2.13 NMAC. (5) Complaints against public agencies. (a) Impartial review. Upon receipt of a complaint that meets the requirements of Paragraph (2) of Subsection H of 6.31.2.13 NMAC above, the SEB of the department shall: (i) undertake an impartial investigation which shall include complete review of all documentation presented and may include	

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

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	jurisdiction over the issue of noncompliance with the law or regulations and shall retain jurisdiction over the implementation of any corrective action required. (6) Complaints against the department. If the complaint concerns a violation by the department and: is submitted in writing to the secretary of education; is signed by the complainant or a designated representative; includes a statement that the department has violated a requirement of an applicable state or federal law or regulation; contains a statement of facts on which the allegation of violation is based, and otherwise meets the requirements of Paragraph (2) of Subsection H of 6.31.2.13 NMAC, the secretary of education or designee shall appoint an impartial person or impartial persons to conduct an investigation. (a) Investigation. The person or persons appointed shall: acknowledge receipt of the complaint in writing; undertake an impartial investigation which shall include a complete review of all documentation presented and may include an independent onsite investigation, if necessary; give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; provide the department with the opportunity to respond to the complaint; and review all relevant information and make an independent determination as to whether the department is violating a requirement of an applicable state or federal statute or regulation. (b) Decision. A written decision, including findings of fact, conclusions, recommendations for corrective action, and the reasons for the decision and addressing each allegation in the complaint, shall be issued by the person or persons appointed pursuant to this paragraph and mailed to the parties within sixty (60) days of receipt of the written complaint. The person	

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	appointed pursuant to this paragraph has no authority to order rulemaking by the department. (7) Extension of time limit. An extension of the time limit under Subparagraph (b) of Paragraph (5) or Subparagraph (b) of Paragraph (6) of this Subsection H of 6.31.2.13 NMAC shall be permitted by the SEB of the department only if exceptional circumstances exist with respect to a particular complaint or if the parent or any other party filing a complaint and the public agency involved agree to extend the time to engage in mediation or a FIEP meeting. (8) Conflicts with federal laws or regulations. If any federal law or regulation governing any federal program subject to this regulation affords procedural rights to a complainant which exceed those set forth in Subsection H of 6.31.2.13 NMAC for complaints within the scope of these rules, such statutory or regulatory right(s) shall be afforded to the complainant. In acknowledging receipt of such a complaint, the SEB shall set forth the procedures applicable to that complaint.	

§ 300.153 Filing a complaint.		
(a) An organization or individual may file a signed written complaint under the procedures described in §§ 300.151 through 300.152. (b) The complaint must include— (1) A statement that a public agency has violated a requirement of Part B of the Act or of this part; (2) The facts on which the statement is based;	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** H. State complaint procedures. … (2) Requirements for complaints. (a) The SEB of the department shall accept and investigate complaints from organizations or individuals that raise issues within the scope of	

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(3) The signature and contact information for the complainant; and (4) If alleging violations with respect to a specific child— (i) The name and address of the residence of the child; (ii) The name of the school the child is attending; (iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending; (iv) A description of the nature of the problem of the child, including facts relating to the problem; and (v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed. (c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with § 300.151. (d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA. (Authority: 20 U.S.C. 1221e–3)	this procedure as defined in the preceding Paragraph (1) of Subsection H of 6.31.2.13 NMAC. The complaint must: (i) be in writing; (ii) be submitted to the SEB (or to the secretary of education, in the case of a complaint against the department); (iii) be signed by the complainant or a designated representative and have the complainant's contact information; (iv) if alleging violations with respect to a specific child, include the name and address of the child and the school the child is attending; (v) include a statement that the department or a public agency has violated a requirement of an applicable state or federal law or regulation; and (vi) contain a statement of the facts on which the allegation of violation is based, and (vii) include a description of a proposed resolution of the problem to the extent known. Any complaint that does not contain each of these elements will be declined, with an explanation for the SEB's decision and further guidance, as appropriate. (b) If the complaint alleges violations with respect to a specific child, the complaint must include the information required by 34 CFR 300.153(b)(4). (c) The party filing the complaint must forward a copy of the complaint to the public agency serving the child at the same time the party files the complaint with the SEB of the department. (d) Pursuant to 34 CFR Sec. 300.153(c), the complaint must allege a violation that occurred not more than one year before the date the complaint is received by the SEB in accordance with Subparagraph (a) of Paragraph (2) of Subsection H of 6.31.2.13 NMAC.	

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METHODS OF ENSURING SERVICES		
§ 300.154 Methods of ensuring services.		
(a) *Establishing responsibility for services.* The Chief Executive Officer of a State or designee of that officer must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in paragraph (b) of this section and the SEA, in order to ensure that all services described in paragraph (b)(1) of this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph (a)(3) of this section. The agreement or mechanism must include the following: (1) An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP). (2) The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies. (3) Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.	**6.31.2.9 NMAC. PUBLIC AGENCY RESPONSIBILITIES:** B. Public Agency Funding and Staffing (5) Educational agencies may seek payment or reimbursement from noneducational agencies or public or private insurance for services or devices covered by those agencies that are necessary to ensure FAPE to children with disabilities. Claims for payment or reimbursement shall be subject to the procedures and limitations established in 34 CFR Secs. 300.154(b) and 300.154(d) through (g), Section 22-13-8 NMSA 1978 and any laws, regulations, executive orders, contractual arrangements or other requirements governing the noneducational payor's obligations. … (7) Children with disabilities who are covered by public benefits or insurance. Pursuant to 34 CFR Sec. 300.154(d), a public agency may use the medicaid or other public benefits or insurance in which a child participates to provide or pay for services required under the IDEA Part B regulations, as permitted under the public insurance program, except as provided in (a) below. (a) With regard to services required to provide FAPE to an eligible child, the public agency: (i) may not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the IDEA;	(See U.S. Department of Education's Non-Regulatory Guidance on the IDEA Part B Regulations Regarding Parental Consent for the Use of Public Benefits or Insurance to Pay for Services under the IDEA, Issued February 14, 2013, and Effective March 18, 2013) CAPITAN MUNICIPAL SCHOOLS notifies parents in writing of a number of safeguards to protect their rights before the CAPITAN MUNICIPAL SCHOOLS accesses the child's or parent's public benefits or insurance to pay for services under the IDEA for the first time and annually thereafter. CAPITAN MUNICIPAL SCHOOLS obtains a one-time written consent from the parent that meets the requirements of 34 CFR §99.30 and §300.622, and that specifies that the parent understands and agrees that the CAPITAN MUNICIPAL SCHOOLS may access the child's or parent's public benefits or insurance to pay for special education or related services under part 300 (services under the IDEA). CAPITAN MUNICIPAL SCHOOLS will not use Medicaid or other public benefits or insurance or private insurance without consent.

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(4) Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in paragraph (b)(1) of this section. (b) *Obligation of noneducational public agencies.* (1) (i) If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in § 300.5 relating to assistive technology devices, § 300.6 relating to assistive technology services, §300.34 relating to related services, §300.41 relating to supplementary aids and services, and § 300.42 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to paragraph (a) of this section or an agreement pursuant to paragraph (c) of this section. (ii) A noneducational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context. (2) If a public agency other than an educational	(ii) may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to the IDEA Part B regulations, but pursuant to 34 CFR Sec. 300.154(f)(2), may pay the cost that the parent otherwise would be required to pay; and (iii) may not use a child's benefits under a public benefits or insurance program if that use would: (A) decrease available lifetime coverage or any other insured benefit; (B) result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school; (C) increase premiums or lead to the discontinuation of benefits or insurance; or (D) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures. (b) Prior to obtaining the parental consent described in Subparagraph (c) of this paragraph, and prior to accessing the parent or child's public benefits, the public agency must provide written notice to the child's parents, consistent with 34 CFR Sec. 300.503(c). The written notice must be provided annually thereafter. (i) The notice must include a statement of the parental consent provisions in 34 CFR Sec. 99.30 and 34 CFR Sec. 300.622 and must specify: (A) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to the child; (B) the purpose of the disclosure (e.g., billing for services under 34 CFR Part 300; (C) the agency to which the disclosure may be made (e.g, New Mexico medicaid	

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agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child's IEP) must provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) of this section. (c) *Special rule.* The requirements of paragraph (a) of this section may be met through— (1) State statute or regulation; (2) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or (3) Other appropriate written methods as determined by the Chief Executive Officer of the State or designee of that officer and approved by the Secretary. (d) *Children with disabilities who are covered by public benefits or insurance.* (1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section. (2) With regard to services required to provide FAPE to an eligible child under this part, the	program); and (D) that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under 34 CFR Part 300. (ii) The notice must further include: (A) a statement of the "no cost" provisions in 34 CFR Sec. 300.154(d)(2)(i)-(iii); (B) a statement that the parents have the right under 34 CFR Parts 99 and 300 to withdraw their consent to disclosure of their child's personally identifiable information to the New Mexico medicaid program at any time; and (C) a statement that the withdrawal of consent or refusal to provide consent under 34 CFR Parts 99 and 300 to disclose personally identifiable information to the New Mexico medicaid program does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents. (c) Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notice to the child's parents consistent with Subparagraph (b) of this paragraph, the public agency must obtain written parental consent as defined by 34 CFR Sec. 300.9. The written consent, consistent with the requirements of 34 CFR Sec. 300.154(d)(2)(iv), must: (i) meet the requirements of 34 CFR Sec. 99.30 and 34 CFR Sec. 300.622 and must specify: (A) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to the child; (B) the purpose of the disclosure (e.g., billing for services under 34 CFR Part 300; (C) the agency to which the disclosure may be	

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public agency— (i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act; (ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay; (iii) May not use a child's benefits under a public benefits or insurance program if that use would— (A) Decrease available lifetime coverage or any other insured benefit; (B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school; (C) Increase premiums or lead to the discontinuation of benefits or insurance; or (D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and (iv) Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notification to the child's parents consistent with	made (e.g, New Mexico medicaid program); and (ii) must specify that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under 34 CFR Part 300. (d) The public agency is not required to obtain a new parental consent if the following conditions are present: (i) there is no change in any of the following: the type of services to be provided to the child; the amount of services to be provided to the child; or the cost of the services to be charged to the public benefits or insurance program; and (ii) the public agency has on file a parental consent meeting the requirements of 34 CFR Sec. 300.9, 34 CFR Sec. 99.30 and 34 CFR Sec. 300.622. (e) Once the public agency obtains the one-time consent consistent with 34 CFR Sec. 300.154(d)(2)(iv), the public agency is not required to obtain parental consent before it accesses the child's or parent's public benefits or insurance in the future, regardless of whether there is a change in the type or amount of services to be provided to the child or a change in the cost of the services to be charged to the public benefits or insurance program. (f) If a child transfers to a new public agency, the new public agency must provide the written notification described in 34 CFR Sec. 300.154(d)(2)(v) and Subparagraph (b) of this paragraph, and must then obtain parental consent meeting the requirements of 34 CFR Sec. 300.154(d)(2)(iv).	

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paragraph (d)(2)(v) of this section, must obtain written, parental consent that— (A) Meets the requirements of § 99.30 of this title and § 300.622, which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under part 300), and the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid)); and (B) Specifies that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under part 300. (v) Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, must provide written notification, consistent with § 300.503(c), to the child's parents, that includes— (A) A statement of the parental consent provisions in §300.154(d)(2)(iv)(A)-(B); (B) A statement of the "no cost" provisions in §300.154(d)(2)(i)-(iii); (C) A statement that the parents have the right under 34 CFR part 99 and part 300 to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of	(8) Children with disabilities who are covered by private insurance benefits. Pursuant to 34 CFR Sec. 300.154(e), an educational agency must obtain a parent's informed written consent for each proposed use of private insurance benefits and must inform parents that their refusal to permit the use of their private insurance will not relieve the educational agency of its responsibility to ensure that all required services are provided at no cost to the parents. The public agency may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to the IDEA Part B regulations. (9) Pursuant to 34 CFR Sec. 300.154(f): (a) if a public agency is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service required under the IDEA Part B regulations, to ensure FAPE the public agency may use its Part B funds to pay for the service; and (b) to avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).	

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the State's public benefits or insurance program (e.g., Medicaid) at any time; and (D) A statement that the withdrawal of consent or refusal to provide consent under 34 CFR part 99 and part 300 to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents. (e) *Children with disabilities who are covered by private insurance.* (1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access the parents'private insurance proceeds only if the parents provide consent consistent with § 300.9. (2) Each time the public agency proposes to access the parents' private insurance proceeds, the agency must— (i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and (ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents. (f) *Use of Part B funds.* (1) If a public agency is unable to obtain parental consent to use the parents' private insurance,		

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or public benefits or insurance when the parents would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service. (2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts). (g) *Proceeds from public benefits or insurance or private insurance.* (1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25. (2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in §§300.163 and 300.203. (h) *Construction.* Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program. (Authority: 20 U.S.C. 1412(a)(12) and (e))		

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Additional Eligibility Requirements		
§ 300.155 Hearings relating to LEA eligibility.		
The SEA must not make any final determination that an LEA is not eligible for assistance under Part B of the Act without first giving the LEA reasonable notice and an opportunity for a hearing under 34 CFR 76.401(d). (Authority: 20 U.S.C. 1412(a)(13))		

§ 300.156 Personnel qualifications.		
(a) *General.* The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. (b) *Related services personnel and paraprofessionals.* The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that— (1) Are consistent with any State-approved or State- recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and (2) Ensure that related services personnel who deliver services in their discipline or profession— (i) Meet the requirements of paragraph (b)(1) of this section; and	**6.31.2.9 NMAC. PUBLIC AGENCY RESPONSIBILITIES:** B. Public Agency Funding and Staffing … (10) Staff training and qualifications. (a) Each public agency is responsible for ensuring that personnel serving children with disabilities are qualified under state licensure requirements and are adequately prepared for their assigned responsibilities, pursuant to 34 CFR Sec. 300.156. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to children with disabilities under Part B of the IDEA. (b) Each public agency and charter school shall train their school administrators and teachers who teach reading to implement appropriate research-	CAPITAN MUNICIPAL SCHOOLS ensures that personnel essential to carrying out the purposes of the IDEA are appropriately and adequately prepared and trained including by ensuring that those personnel also have the content knowledge and skills to serve children with disabilities. (See 71 Fed. Reg. 46562 (August 14, 2004)) CAPITAN MUNICIPAL SCHOOLS will provide training to its school administrators and teachers who teach reading to implement appropriate research-based reading interventions prior to referring the student for a special education evaluation. CAPITAN MUNICIPAL SCHOOLS will also train its special education teachers to provide appropriate specialized reading instruction for students with dyslexia who have been identified as eligible for special education services. Such training may be through the New Mexico Dyslexia Professional Development Modules hosted by the Region IX Educational Cooperative in Ruidoso, New Mexico. These modules are provided through a partnership between the New Mexico Special Education Bureau and the 95 Percent Group Inc., Susan L. Hall, Ed.D., Founder and President and the Region IX Education Cooperative.

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(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and (iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities. (c) *Qualifications for special education teachers.* The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA. (d) *Policy.* In implementing this section, a State must adopt a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities. (e) *Rule of construction.* Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this part. (Authority: 20 U.S.C. 1412(a)(14))	based reading interventions prior to referring the student for a special education evaluation and shall train their special education teachers to provide appropriate specialized reading instruction for students with dyslexia who have been identified as eligible for special education services.	

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§ 300.157 Performance goals and indicators.		
The State must— (a) Have in effect established goals for the performance of children with disabilities in the State that— (1) Promote the purposes of this part, as stated in § 300.1; (2) Are the same as the State's objectives for progress by children in its definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the ESEA, 20 U.S.C. 6311; (3) Address graduation rates and dropout rates, as well as such other factors as the State may determine; and (4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the State; (b) Have in effect established performance indicators the State will use to assess progress toward achieving the goals described in paragraph (a) of this section, including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 U.S.C. 6311; and (c) Annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under paragraph (a) of this section, which may include elements of the reports required	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** D. Performance goals and indicators. (1) Pursuant to the requirements of 34 CFR Sec. 300.157(a), the content standards and benchmarks from the department's Standards for Excellence (Chapter 29 of Title 6 of the NMAC) for all children attending public schools and state-supported educational programs in New Mexico shall provide the basic performance goals and indicators for children with disabilities in the general education curriculum. (2) The IEP academic goals must align with the New Mexico content standards and benchmarks, including the expanded performance standards for students with significant cognitive disabilities, however, functional goals do not have to align with the standards and benchmarks. (a) Beginning in the 2012-2013 school year, IEP academic goals in English language arts and mathematics for students in grades K through three must align with the English Language Arts Common Core Standards (6.29.13 NMAC) and the Mathematics Common Core Standards (6.29.14 NMAC). (b) Beginning in the 2013-2014 school year, IEP academic goals in English language arts and mathematics for students in grades four through 12 must align with the English Language Arts Common Core Standards (6.29.13 NMAC) and the Mathematics Common Core Standards (6.29.14 NMAC).	

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under section 1111(h) of the ESEA. (Authority: 20 U.S.C. 1412(a)(15))	(3) Unless waivers or modifications covering individual public agencies' programs have been allowed by the department or the secretary of education, the general education curriculum and the content standards and benchmarks shall only be adapted to the extent necessary to meet the needs of individual children with disabilities as determined by IEP teams in individual cases. E. Participation in statewide and district-wide assessments. Each local educational agency and other public agencies when applicable shall include all children with disabilities in all statewide and district-wide assessment programs. Each public agency shall 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; public agencies shall 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).	

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§§ 300.158–300.159 [Reserved]		

§ 300.160 Participation in assessments.		
(a) General. A State 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) A State (or, in the case of a district-wide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations. (2) The State's (or, in the case of a district-wide assessment, the LEA'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) A State (or, in the case of a district-wide assessment, an LEA) must develop and implement alternate assessments and guidelines	**6.29.1.9 NMAC. PROCEDURAL REQUIREMENTS:** L. Statewide student assessment system. As stated in 22-2-8.13 NMSA 1978, students' knowledge and skills are assessed and evaluated though the New Mexico content standards with benchmarks and performance standards, the New Mexico standards-based assessments (SBA) and local measures. All public schools, state educational institutions and educational programs conducted in state institutions other than New Mexico military institute, as noted in the scope of this rule, shall participate in the statewide student assessment system. … (2) Exceptions. Exceptions include special provisions and requirements for the assessment of English language learners and students with IEPs. … (b) Students with IEPs. Students with IEPs who receive special education and related services shall participate in all statewide and district-wide assessments of student achievement or in state-approved alternate assessments. Pursuant to Subsection E of 6.31.2.11 NMAC, 34 CFR 300.320 (a)(2)(ii) and 34 CFR 300.320(a)(6), the IEPs for such students shall specify which assessments each student will participate in and what, if any, accommodations or modifications in administration are needed to enable the	CAPITAN MUNICIPAL SCHOOLS's IEP teams will follow the 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. CAPITAN MUNICIPAL SCHOOLS will use the most current forms and follow the most current guidance of the NMPED.

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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. A State (or in the case of a district-wide assessment, an LEA) 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).	student to participate. The IEPs for students who will not participate in a particular statewide or district-wide assessment shall meet state-approved criteria, methods and instruments.	

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(e) Inform parents. A State (or in the case of a district-wide assessment, an LEA) 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. An SEA (or, in the case of a district-wide assessment, an LEA) 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--		

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(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. An SEA (or, in the case of a district-wide assessment, an LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this section.		

§ 300.161 [Reserved]		

§ 300.162 Supplementation of State, local, and other Federal funds.		
(a) *Expenditures.* Funds paid to a State under this part must be expended in accordance with all the provisions of this part. (b) Prohibition *against commingling.* (1) Funds paid to a State under this part must not be commingled with State funds. (2) The requirement in paragraph (b)(1) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a State under this part. Separate bank accounts are not required. (*See* 34 CFR 76.702 (Fiscal control and fund accounting procedures).) (c) *State-level nonsupplanting.*		

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(1) Except as provided in § 300.202, funds paid to a State under Part B of the Act must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the SEA or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those Federal, State, and local funds. (2) If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (c)(1) of this section if the Secretary concurs with the evidence provided by the State under § 300.164. (Authority: 20 U.S.C. 1412(a)(17))		

§ 300.163 Maintenance of State financial support.		
(a) *General.* A State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year. (b) *Reduction of funds for failure to maintain support.* The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement. (c) *Waivers for exceptional or uncontrollable circumstances.* The Secretary may waive the		

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requirement of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that— (1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or (2) The State meets the standard in § 300.164 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act. (d) *Subsequent years.* If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of his section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support. (Authority: 20 U.S.C. 1412(a)(18))		

§ 300.164 Waiver of requirement regarding supplementing and not supplanting with Part B funds.		
(a) Except as provided under §§ 300.202 through 300.205, funds paid to a State under Part B of the Act must be used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of SEAs or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act and in no case to supplant those Federal, State, and local funds. A		

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State may use funds it retains under § 300.704(a) and (b) without regard to the prohibition on supplanting other funds. (b) If a State provides clear and convincing evidence that all eligible children with disabilities throughout the State have FAPE available to them, the Secretary may waive for a period of one year in whole or in part the requirement under §300.162 (regarding State-level nonsupplanting) if the Secretary concurs with the evidence provided by the State. (c) If a State wishes to request a waiver under this section, it must submit to the Secretary a written request that includes— (1) An assurance that FAPE is currently available, and will remain available throughout the period that a waiver would be in effect, to all eligible children with disabilities throughout the State, regardless of the public agency that is responsible for providing FAPE to them. The assurance must be signed by an official who has the authority to provide that assurance as it applies to all eligible children with disabilities in the State; (2) All evidence that the State wishes the Secretary to consider in determining whether all eligible children with disabilities have FAPE available to them, setting forth in detail— (i) The basis on which the State has concluded that FAPE is available to all eligible children in the State; and (ii) The procedures that the State will implement to ensure that FAPE remains available to all eligible children in the State, which must include— (A) The State's procedures under §		

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300.111 for ensuring that all eligible children are identified, located and evaluated; (B) The State's procedures for monitoring public agencies to ensure that they comply with all requirements of this part; (C) The State's complaint procedures under §§300.151 through 300.153; and (D) The State's hearing procedures under §§300.511 through 300.516 and §§ 300.530 through 300.536; (3) A summary of all State and Federal monitoring reports, and State complaint decisions (*See* §§ 300.151 through 300.153) and hearing decisions (*See* §§ 300.511 through 300.516 and §§ 300.530 through 300.536), issued within three years prior to the date of the State's request for a waiver under this section, that includes any finding that FAPE has not been available to one or more eligible children, and evidence that FAPE is now available to all children addressed in those reports or decisions; and (4) Evidence that the State, in determining that FAPE is currently available to all eligible children with disabilities in the State, has consulted with the State advisory panel under §300.167. (d) If the Secretary determines that the request and supporting evidence submitted by the State makes a prima facie showing that FAPE is, and will remain, available to all eligible children with disabilities in the State, the Secretary, after notice to the public throughout the State, conducts a public hearing at which all interested persons and organizations may		

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present evidence regarding the following issues: (1) Whether FAPE is currently available to all eligible children with disabilities in the State. (2) Whether the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver. (e) Following the hearing, the Secretary, based on all submitted evidence, will provide a waiver, in whole or in part, for a period of one year if the Secretary finds that the State has provided clear and convincing evidence that FAPE is currently available to all eligible children with disabilities in the State, and the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver. (f) A State may receive a waiver of the requirement of section 612(a)(18)(A) of the Act and § 300.164 if it satisfies the requirements of paragraphs (b) through (e) of this section. (g) The Secretary may grant subsequent waivers for a period of one year each, if the Secretary determines that the State has provided clear and convincing evidence that all eligible children with disabilities throughout the State have, and will continue to have throughout the one-year period of the waiver, FAPE available to them. (Authority: 20 U.S.C. 1412(a)(17)(C), (18)(C)(ii))		

§ 300.165 Public participation.		

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(a) Prior to the adoption of any policies and procedures needed to comply with Part B of the Act (including any amendments to those policies and procedures), the State must ensure that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities. (b) Before submitting a State plan under this part, a State must comply with the public participation requirements in paragraph (a) of this section and those in 20 U.S.C. 1232d(b)(7). (Authority: 20 U.S.C. 1412(a)(19); 20 U.S.C. 1232d(b)(7))		

§ 300.166 Rule of construction.		
In complying with §§ 300.162 and 300.163, a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to LEAs, including funding based on student attendance or enrollment, or inflation. (Authority: 20 U.S.C. 1412(a)(20))		

State Advisory Panel		
§ 300.167 State advisory panel.		
The State must establish and maintain an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State. (Authority: 20 U.S.C. 1412(a)(21)(A))		

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§ 300.168 Membership.		
(a) *General.* The advisory panel must consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, be representative of the State population and be composed of individuals involved in, or concerned with the education of children with disabilities, including— (1) Parents of children with disabilities (ages birth through 26); (2) Individuals with disabilities; (3) Teachers; (4) Representatives of institutions of higher education that prepare special education and related services personnel; (5) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, (42 U.S.C. 11431 *et seq.*); (6) Administrators of programs for children with disabilities; (7) Representatives of other State agencies involved in the financing or delivery of related services to children with disabilities; (8) Representatives of private schools and public charter schools; (9) Not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;		

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(10) A representative from the State child welfare agency responsible for foster care; and (11) Representatives from the State juvenile and adult corrections agencies. (b) *Special rule.* A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities (ages birth through 26). (Authority: 20 U.S.C. 1412(a)(21)(B) and (C))		

§ 300.169 Duties.		
The advisory panel must— (a) Advise the SEA of unmet needs within the State in the education of children with disabilities; (b) Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities; (c) Advise the SEA in developing evaluations and reporting on data to the Secretary under section 618 of the Act; (d) Advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act; and (e) Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities. (Authority: 20 U.S.C. 1412(a)(21)(D))		

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Other Provisions Required for State Eligibility		
§ 300.170 Suspension and expulsion rates.		
(a) *General.* The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities— (1) Among LEAs in the State; or (2) Compared to the rates for nondisabled children within those agencies. (b) *Review and revision of policies.* If the discrepancies described in paragraph (a) of this section are occurring, the SEA must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act. (Authority: 20 U.S.C. 1412(a)(22))	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** F. Behavioral management and discipline. … (4) LEAs must keep an accurate accounting of suspension and expulsion rates for children with disabilities as compared to children without disabilities to ensure that children with disabilities are not being expelled or suspended at a significantly higher rate than children without disabilities.	CAPITAN MUNICIPAL SCHOOLS will provide accurate, valid and timely data to the NMPED as deemed necessary by the NMPED to carry out its duty to determine if significant discrepancies exist between the rates of long-term suspensions and expulsions of children with and without disabilities or any other information that may be required by the NMPED or the U.S. Department of Education.

§ 300.171 Annual description of use of Part B funds.		
(a) In order to receive a grant in any fiscal year a State must annually describe— (1) How amounts retained for State administration and State-level activities under § 300.704 will be used to meet the requirements of this part; and (2) How those amounts will be allocated among the activities described in § 300.704 to meet		CAPITAN MUNICIPAL SCHOOLS will provide the NMPED with information needed by the NMPED to enable the NMPED to carry out its duties under the IDEA, including, with respect to 34 C.F.R. § 300.171, information relating to use of IDEA Part B funds.

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State priorities based on input from LEAs. (b) If a State's plans for use of its funds under § 300.704 for the forthcoming year do not change from the prior year, the State may submit a letter to that effect to meet the requirement in paragraph (a) of this section. (c) The provisions of this section do not apply to the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated States. (Authority: 20 U.S.C. 1411(e)(5))		

§ 300.172 Access to instructional materials.		
(a) *General.* The State must— (1) Adopt the National Instructional Materials Accessibility Standard (NIMAS), published as appendix C to part 300, for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after publication of the NIMAS in the **Federal Register** on July 19, 2006 (71 FR 41084); and (2) Establish a State definition of "timely manner" for purposes of paragraphs (b)(2) and (b)(3) of this section if the State is not coordinating with the National Instructional Materials Access Center (NIMAC) or (b)(3) and (c)(2) of this section if the State is coordinating with the NIMAC. (b) *Rights and responsibilities of SEA.* (1) Nothing in this section shall be construed to		Nothing in 34 C.F.R. § 300.210 shall be construed to require an LEA to coordinate with the National Instructional Materials Access Center (NIMAC). CAPITAN MUNICIPAL SCHOOLS has chosen not to coordinate with the NIMAC but assures that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. CAPITAN MUNICIPAL SCHOOLS will ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities in 34 C.F.R. §300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

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require any SEA to coordinate with the NIMAC. (2) If an SEA chooses not to coordinate with the NIMAC, the SEA must provide an assurance to the Secretary that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. (3) Nothing in this section relieves an SEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but are not included under the definition of blind or other persons with print disabilities in § 300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner. (4) In order to meet its responsibility under paragraphs (b)(2), (b)(3), and (c) of this section to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, the SEA must ensure that all public agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials. (c) *Preparation and delivery of files.* If an SEA chooses to coordinate with the NIMAC, as of December 3, 2006, the SEA must— (1) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to—		

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(i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or (ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats. (2) Provide instructional materials to blind persons or other persons with print disabilities in a timely manner. (d) *Assistive technology.* In carrying out this section, the SEA, to the maximum extent possible, must work collaboratively with the State agency responsible for assistive technology programs. (e) *Definitions*. (1) In this section and §300.210— (i) *Blind persons or other persons with print disabilities* means children served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled _An Act to provide books for adult blind,'' approved March 3, 1931, 2 U.S.C 135a; (ii) *National Instructional Materials Access Center* or *NIMAC* means the center established pursuant to section 674(e) of the Act; (iii) *National Instructional Materials Accessibility Standard* or *NIMAS* has the meaning given the term in section 674(e)(3)(B) of the Act;		

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(iv) *S pecialized formats* has the meaning given the term in section 674(e)(3)(D) of the Act. (2) The definitions in paragraph (e)(1) of this section apply to each State and LEA, whether or not the State or LEA chooses to coordinate with the NIMAC. (Authority: 20 U.S.C. 1412(a)(23), 1474(e))		

§ 300.173 Overidentification and disproportionality.		
The State must have in effect, consistent with the purposes of this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in § 300.8. (Authority: 20 U.S.C. 1412(a)(24))	**6.31.2.9 NMAC. PUBLIC AGENCY RESPONSIBILITIES:** E. Significant disproportionality. (1) Pursuant to CFR 34 Sec. 300.646, LEAs must provide for the collection and examination of data to determine if significant disproportionality, based on race and ethnicity, is occurring with respect to: (a) the identification of children as children with disabilities including the identification of children as children with disabilities in accordance with a particular impairment as defined by 34 CFR Sec. 300.8; (b) the placement in particular educational settings of these children; and (c) the incidence, duration and type of disciplinary actions, including suspensions and expulsions.	CAPITAN MUNICIPAL SCHOOLS complies with Title VI of the Civil Rights Act of 1964 which protects people from discrimination based on race, color or national origin in programs or activities that receive Federal financial assistance. The Office for Civil Rights under the U.S. Department of Education ("OCR") provides school districts and state departments of education guidance in satisfying Title VI. CAPITAN MUNICIPAL SCHOOLS, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of the Provision of an Equal Education Opportunity to Limited-English Proficient Students (Revised August 2000).

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§ 300.174 Prohibition on mandatory medication.		
(a) *General.* The SEA must prohibit State and LEA personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under §§ 300.300 through 300.311, or receiving services under this part. (b) *Rule of construction.* Nothing in paragraph (a) of this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under § 300.111 (related to child find). (Authority: 20 U.S.C. 1412(a)(25))	**6.31.2.9 NMAC. PUBLIC AGENCY RESPONSIBILITIES:** J. Prohibition on mandatory medication. Each LEA and other public agencies serving students with disabilities are prohibited from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a student as a condition of 6.31.2 NMAC 9 attending school, receiving an evaluation under 34 CFR Secs. 300.300 through 300.311, or receiving services under Part B of the IDEA. This prohibition shall be construed as provided in 34 CFR Sec. 300.174(b).	The NMPED has issued a memorandum regarding the Prohibition on Mandatory Medication (October 7, 2005) available through the NMPED website. CAPITAN MUNICIPAL SCHOOLS, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this memorandum.

§ 300.175 SEA as provider of FAPE or direct services. [Text omitted from these procedures.]		

§ 300.176 Exception for prior State plans. [Text omitted from these procedures.]		

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§ 300.177 States' sovereign immunity. [Text omitted from these procedures.]		

Department Procedures		
§ 300.178 Determination by the Secretary that a State is eligible to receive a grant. [Text omitted from these procedures.]		

§ 300.179 Notice and hearing before determining that a State is not eligible to receive a grant. [Text omitted from these procedures.]		

§ 300.180 Hearing official or panel. [Text omitted from these procedures.]		

§ 300.181 Hearing procedures. [Text omitted from these procedures.]		

§ 300.182 Initial decision; final decision. [Text omitted from these procedures.]		

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§ 300.183 Filing requirements. [Text omitted from these procedures.]		

§ 300.184 Judicial review. [Text omitted from these procedures.]		

§ 300.185 [Reserved]		

§ 300.186 Assistance under other Federal programs. [Text omitted from these procedures.]		

By-pass for Children in Private Schools		
§ 300.190 By-pass—general. [Text omitted from these procedures.]		

§ 300.191 Provisions for services under a by-pass. [Text omitted from these procedures.]		

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§ 300.192 Notice of intent to implement a by-pass. [Text omitted from these procedures.]		

§ 300.193 Request to show cause. [Text omitted from these procedures.]		

§ 300.194 Show cause hearing. [Text omitted from these procedures.]		

§ 300.195 Decision. [Text omitted from these procedures.]		

§ 300.196 Filing requirements. [Text omitted from these procedures.]		

§ 300.197 Judicial review. [Text omitted from these procedures.]		

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§ 300.198 Continuation of a by-pass. [Text omitted from these procedures.]		

State Administration		
§ 300.199 State administration.		
(a) *Rulemaking.* Each State that receives funds under Part B of the Act must— (1) Ensure that any State rules, regulations, and policies relating to this part conform to the purposes of this part; (2) Identify in writing to LEAs located in the State and the Secretary any such rule, regulation, or policy as a State- imposed requirement that is not required by Part B of the Act and Federal regulations; and (3) Minimize the number of rules, regulations, and policies to which the LEAs and schools located in the State are subject under Part B of the Act. (b) *Support and facilitation.* State rules, regulations, and policies under Part B of the Act must support and facilitate LEA and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards. (Authority: 20 U.S.C. 1407)	**6.31.2.3 NMAC. STATUTORY AUTHORITY:** Section 22-13-5 NMSA 1978 authorizes the public education department to develop and establish regulations and standards for the conduct of special education in the schools and classes of the public school system in the state and in all institutions wholly or partially supported by the state and to monitor and enforce those regulations and standards. Section 22-13-6.1 NMSA 1978 authorizes the public education department to adopt standards pertaining to the determination of who is a gifted child as part of the educational standards for New Mexico schools. Section 22-13-5 NMSA 1978 directs the public education department to establish rules and standards under Public Law 108-446, now the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). The IDEA at 20 USC Sec. 1412(a)(11) requires the state educational agency in each participating state to ensure that the requirements of the IDEA and state educational standards are met in all educational programs administered by any state or local educational agency for children with disabilities aged 3 through 21.	

SUBPART C—LOCAL EDUCATIONAL AGENCY ELIGIBILITY		
§ 300.200 Condition of assistance.		

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An LEA is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in §§300.201 through 300.213. (Authority: 20 U.S.C. 1413(a))	**6.31.2.9 NMAC. PUBLIC AGENCY RESPONSIBILITIES:** C. IDEA applications and assurances. Each New Mexico public agency that desires to receive IDEA flow-through funds shall file an annual application with the department in the form prescribed by the department. Each application shall: (1) provide all information requested by the department; (2) demonstrate to the department's satisfaction that the agency is in compliance with all applicable requirements of 34 CFR Secs. 300.200-300.230 and these or other department rules and standards; (3) include an agreement that the agency upon request will provide any further information the department requires to determine the agency's initial or continued compliance with all applicable requirements; (4) include assurances satisfactory to the department that the public agency does and will continue to operate its programs in compliance with all applicable federal and state programmatic, fiscal and procedural requirements including the development of joint powers agreements, memoranda of understanding or other interagency agreements to address shared or successive responsibilities to meet the educational needs of a particular child during a single fiscal year; and (5) pursuant to Subsection C of Section 22-8-11, NMSA 1978, the department shall not approve and certify an operating budget of any school district or state-chartered charter school that fails to demonstrate that parental involvement in the process was solicited.	Each year, CAPITAN MUNICIPAL SCHOOLS submits a local application for assistance under Part B of the IDEA. As part of the application, CAPITAN MUNICIPAL SCHOOLS's Board of Education provides assurance to the NMPED Special Education Bureau that the applicable Federal, State and local laws and regulations will be met as described in the Local Application for IDEA Part B Funding. As part of the assurance process, CAPITAN MUNICIPAL SCHOOLS provides NMPED with documentation that it has in effect Special Education Policies and Procedures consistent with State's policies and procedures. CAPITAN MUNICIPAL SCHOOLS further submits or otherwise makes available, as requested, its Policies and Procedures including updates if any, on a timetable established by the NMPED. This Handbook of Procedures constitutes the CAPITAN MUNICIPAL SCHOOLS's Procedures.

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§ 300.201 Consistency with State policies.		
The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§ 300.101 through 300.163, and §§ 300.165 through 300.174. (Authority: 20 U.S.C. 1413(a)(1))	**6.31.2.9 NMAC. PUBLIC AGENCY RESPONSIBILITIES:** A. Compliance with applicable laws and regulations. Each New Mexico public agency, within the scope of its authority, shall develop and implement appropriate policies, procedures, programs and services to ensure that all children with disabilities who reside within the agency's educational jurisdiction, including children who are enrolled in private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, or are schooled at home, are identified and evaluated and have access to a free appropriate public education (FAPE) in compliance with all applicable requirements of state and federal laws and regulations. This obligation applies to all New Mexico public agencies that are responsible under laws, rules, regulations or written agreements for providing educational services for children with disabilities, regardless of whether that agency receives funds under the IDEA and regardless of whether it provides special education and related services directly, by contract, by referrals to private schools or facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions or through other arrangements. **NMSA 1978, § 22-5-4.12 (2017) [H.B. 75]. Limiting the Use Of Restraint And Seclusion In Schools; Providing for Notice To Parents** … C. Schools shall establish policies and procedures for the use of restraint or seclusion techniques in a school safety plan; provided that:	CAPITAN MUNICIPAL SCHOOLS's Board Policy along with this Handbook of Procedures constitute the Policies and Procedures of CAPITAN MUNICIPAL SCHOOLS which are designed to be consistent with the State's policies and procedures established under §§ 300.101 through 300.163, and §§ 300.165 through 300.174. CAPITAN MUNICIPAL SCHOOLS's Special Education Handbook of Procedures is not for the purpose of creating a requirement that is not otherwise imposed by the IDEA (and its implementing federal regulations, state statutes and rules) and shall not be construed to create a higher standard. This Handbook of Procedures developed at the Superintendent's direction shall be posted on the CAPITAN MUNICIPAL SCHOOLS's website. CAPITAN MUNICIPAL SCHOOLS Special Education Handbook of Procedures should be interpreted consistent with the IDEA. CAPITAN MUNICIPAL SCHOOLS's Special Education Handbook of Procedures is reviewed and updated, as needed, on at least an annual basis. CAPITAN MUNICIPAL SCHOOLS will make timely changes to policies and procedures in response to IDEA amendments, regulatory or rule changes, changes to State policy, or new legal interpretation as are necessary to bring CAPITAN MUNICIPAL SCHOOLS into compliance with the requirements of the IDEA. CAPITAN MUNICIPAL SCHOOLS, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of the Board's Policy and School Safety Plan (applicable to all students including students with disabilities) implementing NMSA 1978, § 22-5-4.12 (2017) [H.B. 75].

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	(1) the school safety plan shall not be specific to any individual student; and (2) any school safety plan shall be drafted by a planning team that includes at least one special education expert. … F. Policies regarding restraint and seclusion shall consider school district support and strategies for school employees to successfully reintegrate a student who has been restrained or secluded back into the school or classroom environment.	

§ 300.202 Use of amounts.		
(a) *General.* Amounts provided to the LEA under Part B of the Act— (1) Must be expended in accordance with the applicable provisions of this part; (2) Must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and (3) Must be used to supplement State, local, and other Federal funds and not to supplant those funds. (b) *Excess cost requirement*— (1) *General.* (i) The excess cost requirement prevents an LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to		Amounts provided to CAPITAN MUNICIPAL SCHOOLS under Part B of the IDEA: ■ Will be expended in accordance with the applicable provisions of Part B of the IDEA; ■ Will be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with 34 C.F.R. § 300.202(b); and ■ Will be used to supplement State, local, and other Federal funds and not to supplant those Funds.

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paragraph (b)(1)(ii) of this section. (ii) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children of these ages. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children. (2) (i) An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used. (ii) The amount described in paragraph (b)(2)(i) of this section is determined in accordance with the definition of *excess costs* in § 300.16. That amount may not include capital outlay or debt service. (3) If two or more LEAs jointly establish eligibility in accordance with § 300.223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in § 300.16 in those agencies for elementary or secondary school students, as the case may be. (Authority: 20 U.S.C. 1413(a)(2)(A))		

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§ 300.203 Maintenance of effort.		
(a) *General.* Except as provided in §§ 300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year. (b) *Standard.* (1) Except as provided in paragraph (b)(2) of this section, the SEA must determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available: (i) Local funds only. (ii) The combination of State and local funds. (2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section. (3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to		Except as provided in 34 C.F.R. §§ 300.204 and 300.205, funds provided to CAPITAN MUNICIPAL SCHOOLS under Part B of the IDEA will not be used to reduce the level of expenditures for the education of children with disabilities made by CAPITAN MUNICIPAL SCHOOLS from local funds below the level of those expenditures for the preceding fiscal year.

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account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section. (Authority: 20 U.S.C. 1413(a)(2)(A))		

§ 300.204 Exception to maintenance of effort.		
Notwithstanding the restriction in § 300.203(a), an LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following: (a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel. (b) A decrease in the enrollment of children with disabilities. (c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child— (1) Has left the jurisdiction of the agency; (2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or (3) No longer needs the program of special education. (d) The termination of costly expenditures for long-		

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term purchases, such as the acquisition of equipment or the construction of school facilities. (e) The assumption of cost by the high cost fund operated by the SEA under §300.704(c) (Authority: 20 U.S.C. 1413(a)(2)(B))		

§ 300.205 Adjustment to local fiscal efforts in certain fiscal years.		
(a) *Amounts in excess.* Notwithstanding § 300.202(a)(2) and (b) and § 300.203(a), and except as provided in paragraph (d) of this section and § 300.230(e)(2), for any fiscal year for which the allocation received by an LEA under § 300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by § 300.203(a) by not more than 50 percent of the amount of that excess. (b) *Use of amounts to carry out activities under ESEA.* If an LEA exercises the authority under paragraph (a) of this section, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities. (c) *State prohibition.* Notwithstanding paragraph (a) of this section, if an SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the SEA has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the SEA must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.		

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(d) *Special rule.* The amount of funds expended by an LEA for early intervening services under § 300.226 shall count toward the maximum amount of expenditures that the LEA may reduce under paragraph (a) of this section. (Authority: 20 U.S.C. 1413(a)(2)(C))		

§ 300.206 Schoolwide programs under title I of the ESEA.		
(a) *General.* Notwithstanding the provisions of §§ 300.202 and 300.203 or any other provision of Part B of the Act, an LEA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed— (1) (i) The amount received by the LEA under Part B of the Act for that fiscal year; divided by (ii) The number of children with disabilities in the jurisdiction of the LEA; and multiplied by (2) The number of children with disabilities participating in the schoolwide program. (b) *Funding conditions.* The funds described in paragraph (a) of this section are subject to the following conditions: (1) The funds must be considered as Federal Part B funds for purposes of the calculations required by §300.202(a)(2) and (a)(3). (2) The funds may be used without regard to the		To the extent CAPITAN MUNICIPAL SCHOOLS uses IDEA Part B funds to carry out a school-wide program under section 1114 of the Elementary and Secondary Education Act, CAPITAN MUNICIPAL SCHOOLS will use those funds consistent with 34 C.F.R. § 300.206, and CAPITAN MUNICIPAL SCHOOLS will meet all other requirements of the IDEA Part B, including ensuring that children with disabilities in school-wide program schools: ■ Receive services in accordance with a properly developed IEP; and ■ Are afforded all of the rights and services guaranteed to children with disabilities under the IDEA-B.

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requirements of §300.202(a)(1). (c) *Meeting other Part B requirements.* Except as provided in paragraph (b) of this section, all other requirements of Part B of the Act must be met by an LEA using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in schoolwide program schools— (1) Receive services in accordance with a properly developed IEP; and (2) Are afforded all of the rights and services guaranteed to children with disabilities under the Act. (Authority: 20 U.S.C. 1413(a)(2)(D))		

§ 300.207 Personnel development.		
The LEA must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of § 300.156 (related to personnel qualifications) and section 2122 of the ESEA. (Authority: 20 U.S.C. 1413(a)(3))	**6.31.2.9 NMAC. PUBLIC AGENCY RESPONSIBILITIES:** B. Public Agency Funding and Staffing (10) Staff training and qualifications. (a) Each public agency is responsible for ensuring that personnel serving children with disabilities are qualified under state licensure requirements and are adequately prepared for their assigned responsibilities, pursuant to 34 CFR Sec. 300.156. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to children with disabilities under Part B of the IDEA.	CAPITAN MUNICIPAL SCHOOLS will ensure that all personnel necessary to carry out the IDEA are appropriately and adequately prepared, subject to the requirements of 34 C.F.R. §300.156 (related to personnel qualifications) and section 2122 of the ESEA.

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	(b) Each public agency and charter school shall train their school administrators and teachers who teach reading to implement appropriate research-based reading interventions prior to referring the student for a special education evaluation and shall train their special education teachers to provide appropriate specialized reading instruction for students with dyslexia who have been identified as eligible for special education services.	

§ 300.208 Permissive use of funds.		
(a) *Uses.* Notwithstanding §§ 300.202, 300.203(a), and 300.162(b), funds provided to an LEA under Part B of the Act may be used for the following activities: (1) *Services and aids that also benefit nondisabled children.* For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services. (2) *Early intervening services.* To develop and implement coordinated, early intervening educational services in accordance with § 300.226. (3) *High cost special education and related services.* To establish and implement cost or risk sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services. (b) *Administrative case management.* An LEA may use	**6.31.2.9 NMAC. PUBLIC AGENCY RESPONSIBILITIES:** D. Early intervening services set aside funds. Fifteen percent set aside. (1) Pursuant to 34 CFR Secs. 300.208(a)(2) and 300.266, LEAs may use up to fifteen percent of the amount the LEA receives under Part B of IDEA to implement early intervening services for children with or without disabilities in kindergarten through grade 12 with particular emphasis on children in kindergarten through grade three. (2) Prior to the implementation or use of these set aside funds, the LEA must have on record with the department an approved plan for use of these funds as described by 34 CFR Sec. 300.226(b) and how such activities will be coordinated with regional education cooperatives as described in 34 CFR Sec. 300.226(e), if applicable. (3) The LEA plan for use of set aside funds shall be submitted as an addendum to its annual application for Part B funding. If the LEA determines to implement a set aside plan after the initial application, a request for implementation of a set	To the extent CAPITAN MUNICIPAL SCHOOLS uses IDEA Part B funds to carry out any of the permissive uses described in 34 C.F.R. § 300.208, such funds will be used consistent with 34 C.F.R. § 300.208.

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funds received under Part B of the Act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities. (Authority: 20 U.S.C. 1413(a)(4))	aside plan must be submitted for approval 60 days before the implementation of the plan. (4) Each LEA that develops and maintains coordinated, early intervening services must report annually to the department as provided in 34 CFR Sec. 300.226(d).	

§ 300.209 Treatment of charter schools and their students.		
(a) *Rights of children with disabilities.* Children with disabilities who attend public charter schools and their parents retain all rights under this part. (b) *Charter schools that are public schools of the LEA.* (1) In carrying out Part B of the Act and these regulations with respect to charter schools that are public schools of the LEA, the LEA must— (i) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and (ii) Provide funds under Part B of the Act to those charter schools— (A) On the same basis as the LEA provides funds to the LEA's other	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** I. Children in charter schools. (1) Pursuant to 34 CFR Sec. 300.209, children with disabilities who attend public charter schools and their parents retain all rights under Part B of IDEA. (2) Charter schools that are public schools of the LEA: (a) the LEA must serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and (b) the LEA must provide funds under Part B of IDEA to those charter schools on the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities, and at the same time	

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Federal Regulations	New Mexico Rules	Procedures
public schools, including proportional distribution based on relative enrollment of children with disabilities; and (B) At the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the State's charter school law. (2) If the public charter school is a school of an LEA that receives funding under § 300.705 and includes other public schools— (i) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and (ii) The LEA must meet the requirements of paragraph (b)(1) of this section. (c) *Public charter schools that are LEAs.* If the public charter school is an LEA, consistent with § 300.28, that receives funding under § 300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity. (d) *Public charter schools that are not an LEA or a school that is part of an LEA.* (1) If the public charter school is not an LEA receiving funding under § 300.705, or a school that is part of an LEA receiving funding under § 300.705, the SEA is responsible for ensuring that the requirements of this part are met. (2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However,	as the LEA distributes other federal funds to the LEA's other public schools, consistent with the state's charter school law; and (c) if the public charter school is a school of an LEA that receives funding under 34 CFR Sec. 300.705 and includes other public schools: (i) the LEA is responsible for ensuring that the requirements of this part are met, unless state law assigns that responsibility to some other entity; and (ii) the LEA must meet the requirements of Paragraph (2) of this subsection. (3) Public charter schools that are LEAs. If the public charter school is an LEA, consistent with 34 CFR Sec. 300.28, that receives funding under 34 CFR Sec. 300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless state law assigns that responsibility to some other entity. Charter schools who are LEAs authorized under the public education commission must satisfy child find requirements for children enrolled in the charter school. (4) Public charter schools that are not an LEA or a school that is part of an LEA. (a) If the public charter school is not an LEA receiving funding under 34 CFR Sec. 300.705, or a school that is part of an LEA receiving funding under 34 CFR Sec. 300.705, the department is responsible for ensuring that the requirements of this part are met. (b) Subparagraph (a) of this paragraph does not preclude the governor from assigning initial responsibility for ensuring the requirements of this part are met to another entity, however, the department must maintain the ultimate	

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the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with § 300.149. (Authority: 20 U.S.C. 1413(a)(5))	responsibility for ensuring compliance with this part, consistent with 34 CFR Sec. 300.149.	

§ 300.210 Purchase of instructional materials.		
(a) *General.* Not later than December 3, 2006, an LEA that chooses to coordinate with the National Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as an SEA under § 300.172. (b) *Rights of LEA.* (1) Nothing in this section shall be construed to require an LEA to coordinate with the NIMAC. (2) If an LEA chooses not to coordinate with the NIMAC, the LEA must provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. (3) Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities in § 300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.		Nothing in 34 C.F.R. § 300.210 shall be construed to require an LEA to coordinate with the National Instructional Materials Access Center (NIMAC). CAPITAN MUNICIPAL SCHOOLS has chosen not to coordinate with the NIMAC but assures that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. The CAPITAN MUNICIPAL SCHOOLS will ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities in 34 C.F.R. §300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

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(Authority: 20 U.S.C. 1413(a)(6))		

§ 300.211 Information for SEA.		
The LEA must provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act, including, with respect to §§ 300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act. (Authority: 20 U.S.C. 1413(a)(7))		CAPITAN MUNICIPAL SCHOOLS will provide the NMPED with information needed by NMPED to enable the NMPED to carry out its duties under the IDEA, including, with respect to 34 C.F.R. § 300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under the IDEA Part B.

§ 300.212 Public information.		
The LEA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act. (Authority: 20 U.S.C. 1413(a)(8))		CAPITAN MUNICIPAL SCHOOLS makes available to parents of children with disabilities and to the general public all documents relating to the eligibility of the CAPITAN MUNICIPAL SCHOOLS under the IDEA.

§ 300.213 Records regarding migratory children with disabilities.		
The LEA must cooperate in the Secretary‘s efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children. (Authority: 20 U.S.C. 1413(a)(9))		CAPITAN MUNICIPAL SCHOOLS will cooperate with the Secretary of the U.S. Department of Education’s efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children.

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§§ 300.214–300.219 [Reserved]		

§ 300.220 Exception for prior local plans.		
(a) *General.* If an LEA or a State agency described in § 300.228 has on file with the SEA policies and procedures that demonstrate that the LEA or State agency meets any requirement of § 300.200, including any policies and procedures filed under Part B of the Act as in effect before December 3, 2004, the SEA must consider the LEA or State agency to have met that requirement for purposes of receiving assistance under Part B of the Act. (b) *Modification made by an LEA or State agency.* Subject to paragraph (c) of this section, policies and procedures submitted by an LEA or a State agency in accordance with this subpart remain in effect until the LEA or State agency submits to the SEA the modifications that the LEA or State agency determines are necessary. (c) *Modifications required by the SEA.* The SEA may require an LEA or a State agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA's or State agency's compliance with Part B of the Act or State law, if— (1) After December 3, 2004, the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the applicable provisions of the Act (or the regulations developed to carry out the Act) are amended; (2) There is a new interpretation of an applicable provision of the Act by Federal or State courts;		

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or (3) There is an official finding of noncompliance with Federal or State law or regulations. (Authority: 20 U.S.C. 1413(b))		

§ 300.221 Notification of LEA or State agency in case of ineligibility.		
If the SEA determines that an LEA or State agency is not eligible under Part B of the Act, then the SEA must— (a) Notify the LEA or State agency of that determination; and (b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing. (Authority: 20 U.S.C. 1413(c))		

§ 300.222 LEA and State agency compliance.		
(a) *General.* If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this subpart is failing to comply with any requirement described in §§300.201 through 300.213, the SEA must reduce or must not provide any further payments to the LEA or State agency until the SEA is satisfied that the LEA or State agency is complying with that requirement. (b) *Notice requirement.* Any State agency or LEA in receipt of a notice described in paragraph (a) of this section must, by means of public notice, take the		

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measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency. (c) *Consideration.* In carrying out its responsibilities under this section, each SEA must consider any decision resulting from a hearing held under §§ 300.511 through 300.533 that is adverse to the LEA or State agency involved in the decision. (Authority: 20 U.S.C. 1413(d))		

§ 300.223 Joint establishment of eligibility.		
(a) *General.* An SEA may require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA will be ineligible under this subpart because the agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities. (b) *Charter school exception.* An SEA may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless the charter school is explicitly permitted to do so under the State's charter school statute. (c) *Amount of payments.* If an SEA requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under § 300.705 if the agencies were eligible for those payments. (Authority: 20 U.S.C. 1413(e)(1) and (2))		

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Federal Regulations	New Mexico Rules	Procedures
§ 300.224 Requirements for establishing eligibility.		
(a) *Requirements for LEAs in general.* LEAs that establish joint eligibility under this section must— (1) Adopt policies and procedures that are consistent with the State's policies and procedures under §§ 300.101 through 300.163, and §§ 300.165 through 300.174; and (2) Be jointly responsible for implementing programs that receive assistance under Part B of the Act. (b) *Requirements for educational service agencies in general.* If an educational service agency is required by State law to carry out programs under Part B of the Act, the joint responsibilities given to LEAs under Part B of the Act— (1) Do not apply to the administration and disbursement of any payments received by that educational service agency; and (2) Must be carried out only by that educational service agency. (c) *Additional requirement.* Notwithstanding any other provision of §§ 300.223 through 300.224, an educational service agency must provide for the education of children with disabilities in the least restrictive environment, as required by § 300.112. (Authority: 20 U.S.C. 1413(e)(3) and (4))	**6.31.2.9 NMAC. PUBLIC AGENCY RESPONSIBILITIES:** F. Annual determinations. Each local educational agency and other public agencies when applicable shall be assigned an annual determination. The determinations must be consistent with those provided in 34 CFR Sec. 300.603(b) based on the local educational agency's performance on the targets established in the department's state performance plan. (1) For determinations of needs intervention and needs substantial intervention, the local educational agency may request an opportunity for an informal hearing. The request for hearing must be made in writing to the secretary of public education within 30 days of the date of the determination. (2) The hearing will afford the local educational agency the opportunity to demonstrate why the department should not make the determination of needs intervention or needs substantial intervention. The hearing shall be conducted by the secretary or the secretary's designee. Formal rules of evidence shall not apply to the hearing. G. Notification of public agency in case of ineligibility. Pursuant to 34 CFR Sec. 300.221, if the department determines that a public agency is not eligible under Part B of the act, the department shall notify the affected agency of that determination and provide the agency with reasonable notice and an opportunity for a hearing under 34 CFR Sec. 76.401(d). H. Withholding of funds for noncompliance. Pursuant to 34 CFR Sec. 300.222, if the department, after reasonable notice and an opportunity for a hearing	

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	under 34 CFR Sec. 76.401(d), finds that a public agency that has previously been determined to be eligible is failing to comply with any requirement described in 34 CFR Secs. 300.201-300.213 and 34 CFR Sec. 300.608, the department must reduce or may not provide any further Part B payments to the public agency until the department is satisfied that the public agency is in compliance with that requirement.	

§ 300.225 [Reserved]		

§ 300.226 Early intervening services.		
(a) General. An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to § 300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. (See Appendix D for examples of how § 300.205(d), regarding local maintenance of effort, and § 300.226(a) affect one another.) (b) Activities. In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include—	**6.31.2.9 NMAC. PUBLIC AGENCY RESPONSIBILITIES:** D. Early intervening services set aside funds. Fifteen percent set aside. (1) Pursuant to 34 CFR Secs. 300.208(a)(2) and 300.266, LEAs may use up to fifteen percent of the amount the LEA receives under Part B of IDEA to implement early intervening services for children with or without disabilities in kindergarten through grade 12 with particular emphasis on children in kindergarten through grade three. (2) Prior to the implementation or use of these set aside funds, the LEA must have on record with the department an approved plan for use of these funds as described by 34 CFR Sec. 300.226(b) and how such activities will be coordinated with regional education cooperatives as described in 34 CFR Sec. 300.226(e), if applicable.	IDEA gives local educational agencies flexibility to develop and implement coordinated, early intervening services for children who are not currently receiving special education services, but who require additional academic and behavioral support to succeed in a regular education environment. (See 71 Fed. Reg. 46628 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS understands that prior NMPED Special Education Bureau approval is required to use set aside funds for early intervening services. If CAPITAN MUNICIPAL SCHOOLS develops and maintains coordinated, early intervening services, it will timely submit to the NMPED Special Education Bureau a final progress report. CAPITAN MUNICIPAL SCHOOLS does not believe it is appropriate or necessary to specify how long a child can receive early intervening services before an initial evaluation is conducted. If a child receiving early intervening services is suspected of having a disability and a need for special education, CAPITAN MUNICIPAL SCHOOLS will conduct a full and

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(1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and (2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction. (c) Construction. Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability. (d) Reporting. Each LEA that develops and maintains coordinated, early intervening services under this section must annually report to the SEA on— (1) The number of children served under this section who received early intervening services; and (2) The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two year period. (e) *Coordination with ESEA.* Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.	(3) The LEA plan for use of set aside funds shall be submitted as an addendum to its annual application for Part B funding. If the LEA determines to implement a set aside plan after the initial application, a request for implementation of a set aside plan must be submitted for approval 60 days before the implementation of the plan. (4) Each LEA that develops and maintains coordinated, early intervening services must report annually to the department as provided in 34 CFR Sec. 300.226(d).	individual evaluation to determine if the child is a child with a disability and needs special education and related services. (See 71 Fed. Reg. 46626 (August 14, 2006))

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(Authority: 20 U.S.C. 1413(f))		

§ 300.227 Direct services by the SEA.		
(a) *General*. (1) An SEA must use the payments that would otherwise have been available to an LEA or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that LEA, or for whom that State agency is responsible, if the SEA determines that the LEA or State agency— (i) Has not provided the information needed to establish the eligibility of the LEA or State agency, or elected not to apply for its Part B allotment, under Part B of the Act; (ii) Is unable to establish and maintain programs of FAPE that meet the requirements of this part; (iii) Is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain the programs; or (iv) Has one or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of these children. (2) *SEA administrative procedures*. (i) In meeting the requirements in paragraph (a)(1) of this section, the SEA may provide special education and related		

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services directly, by contract, or through other arrangements. (ii) The excess cost requirements of §300.202(b) do not apply to the SEA. (b) *Manner and location of education and services.* The SEA may provide special education and related services under paragraph (a) of this section in the manner and at the locations (including regional or State centers) as the SEA considers appropriate. The education and services must be provided in accordance with this part. (Authority: 20 U.S.C. 1413(g))		

§ 300.228 State agency eligibility.		
Any State agency that desires to receive a subgrant for any fiscal year under § 300.705 must demonstrate to the satisfaction of the SEA that— (a) All children with disabilities who are participating in programs and projects funded under Part B of the Act receive FAPE, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and (b) The agency meets the other conditions of this subpart that apply to LEAs. (Authority: 20 U.S.C. 1413(h))		

§ 300.229 Disciplinary information.		
(a) The State may require that a public agency include		

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in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children. (b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. (c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child. (Authority: 20 U.S.C. 1413(i))		

§ 300.230 SEA flexibility.		
(a) *Adjustment to State fiscal effort in certain fiscal years.* For any fiscal year for which the allotment received by a State under § 300.703 exceeds the amount the State received for the previous fiscal year and if the State in school year 2003– 2004 or any subsequent school year pays or reimburses all LEAs within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the SEA, notwithstanding §§ 300.162 through 300.163 (related to State-level nonsupplanting and maintenance of effort), and § 300.175 (related to direct services by the SEA) may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.		

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(b) *Prohibition.* Notwithstanding paragraph (a) of this section, if the Secretary determines that an SEA is unable to establish, maintain, or oversee programs of FAPE that meet the requirements of this part, or that the State needs assistance, intervention, or substantial intervention under § 300.603, the Secretary prohibits the SEA from exercising the authority in paragraph (a) of this section. (c) *Education activities.* If an SEA exercises the authority under paragraph (a) of this section, the agency must use funds from State sources, in an amount equal to the amount of the reduction under paragraph (a) of this section, to support activities authorized under the ESEA, or to support need-based student or teacher higher education programs. (d) *Report.* For each fiscal year for which an SEA exercises the authority under paragraph (a) of this section, the SEA must report to the Secretary— (1) The amount of expenditures reduced pursuant to that paragraph; and (2) The activities that were funded pursuant to paragraph (c) of this section. (e) *Limitation.* (1) Notwithstanding paragraph (a) of this section, an SEA may not reduce the level of expenditures described in paragraph (a) of this section if any LEA in the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the LEA receive FAPE from the combination of Federal funds received under Part B of the Act and State funds received from the SEA. (2) If an SEA exercises the authority under paragraph (a) of this section, LEAs in the State		

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may not reduce local effort under § 300.205 by more than the reduction in the State funds they receive. (Authority: 20 U.S.C. 1413(j))		

SUBPART D—EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS		
Parental Consent		
§ 300.300 Parental consent.		
(a) *Parental consent for initial evaluation* (1) (i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under § 300.8 must, after providing notice consistent with §§ 300.503 and 300.504, obtain informed consent, consistent with §300.9, from the parent of the child before conducting the evaluation. (ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services. (iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability. (2) For initial evaluations only, if the child is a ward of the State and is not residing with the child ' s parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** F. Parental consent. (1) Informed parental consent as defined in 34 CFR Sec. 300.9 must be obtained in compliance with 34 CFR Sec. 300.300 before (a) conducting an initial evaluation or reevaluation; and (b) initial provision of special education and related services to a child with a disability. Consent for initial evaluation must not be construed as consent for initial provision of special education and related services. If parental consent is not provided for the initial evaluation or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the due process and mediation procedures in Subsection I of 6.31.2.13 NMAC. (2) Pursuant to 34 CFR Sec. 300.300(d)(1), parental consent is not required before	CAPITAN MUNICIPAL SCHOOLS will begin the process of obtaining parental consent for initial evaluation by identifying the parent and contacting the parent through various means such as by phone or through written correspondence, or by speaking to the parent in parent-teacher conferences. (See 71 Fed. Reg. 46629 (August 14, 2006)) An initial evaluation of a child is the first complete assessment of a child to determine if the child has a disability under the IDEA, and the nature and extent of special education and related services required. Once a child has been fully evaluated, a decision has been rendered that a child is eligible for services under the IDEA, and the required services have been determined, CAPITAN MUNICIPAL SCHOOLS will consider any subsequent evaluation of a child to be a reevaluation. (See 71 Fed. Reg. 46640 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will use reasonable efforts to obtain parental consent. CAPITAN MUNICIPAL SCHOOLS will document its efforts to obtain parental consent, and maintain such documentation in the child's special education file. The level of effort shall be appropriate to the situation. The actions of CAPITAN MUNICIPAL SCHOOLS when seeking parental consent will reflect genuine effort and will include more than one effort or means.

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— (i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child; (ii) The rights of the parents of the child have been terminated in accordance with State law; or (iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child. (3) (i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent. (ii) The public agency does not violate its obligation under § 300.111 and §§ 300.301 through 300.311 if it declines to pursue the evaluation. (b) Parental *consent for services*	(a) reviewing existing data as part of an evaluation or a reevaluation; or (b) administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children. (3) Pursuant to 34 CFR Sec. 300.300(b), if the parents of a child with a disability refuse consent for the initial provision of special education and related services, the public agency may not use the due process and mediation procedures in Subsection I of 6.31.2.13 NMAC in order to obtain agreement or a ruling that the services may be provided to the child. If the parent refuses consent or fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency will not be considered to be in violation of the requirement to make FAPE available to the child and is not required to convene an IEP team meeting or develop an IEP under 34 CFR Secs. 300.320 and 300.324. All provisions of 34 CFR Sec. 300.300 must be followed with respect to parental consent. (4) Pursuant to 34 CFR Sec. 300.300(c)(2), informed parental consent need not be obtained for reevaluation if the public agency can demonstrate that it has taken reasonable measures to obtain that consent by using procedures consistent with those in 34 CFR Sec. 300.322(d) and the child's parent has failed to respond. (5) Pursuant to 34 CFR Sec. 300.300(d)(3), a public agency may not use a parent's refusal to consent to one service or activity for which consent is required to deny the parent or child any other service, benefit or activity of the public agency, except as required by 34 CFR Part 300. (6) Pursuant to 34 CFR Sec. 300.300(b)(4), parents may revoke consent for the continued provision of all special education and related services for their child.	CAPITAN MUNICIPAL SCHOOLS may proceed with a child's initial evaluation without first obtaining the requisite parental consent when one or more of the circumstances in § 300.300(a)(2) are met and a surrogate has not yet been appointed so as not to postpone the child's evaluation to await the appointment of a surrogate. (See 71 Fed. Reg. 46631 (August 14, 2006)) If a surrogate parent already has been appointed because CAPITAN MUNICIPAL SCHOOLS, after reasonable efforts, could not locate a parent, CAPITAN MUNICIPAL SCHOOLS will not have to again attempt to contact other individuals meeting the definition of parent to seek consent. (See 71 Fed. Reg. 46631 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will use its consent override procedures only in rare circumstances when a parent refuses to consent to an initial evaluation or a reevaluation. CAPITAN MUNICIPAL SCHOOLS is not required to pursue an initial evaluation of a child suspected of having a disability if the parent does not provide consent for the initial evaluation. CAPITAN MUNICIPAL SCHOOLS is in the best position to determine whether, in a particular case, an initial evaluation should be pursued, and will make that determination on a case-by-case basis. (See 71 Fed. Reg. 46632 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS understands that the consent override procedures are not available when a parent refuses to consent to the initial provision of special education and related services (or fails to respond to a request for consent to the initial provision of special education and related services). When a parent refuses to consent to the initial provision of special education and related services, CAPITAN MUNICIPAL SCHOOLS will refer the child to the SAT for individual consideration. CAPITAN MUNICIPAL SCHOOLS considers the "initial provision of services" to be the first time a parent is offered special education and related services

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(1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. (2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child. (3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency— (i) May not use the procedures in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child; (ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and (iii) Is not required to convene an IEP Team meeting or develop an IEP under §§300.320 and 300.324 for the child. (4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency—	The revocation of consent must be in writing. After providing prior written notice in accordance with 34 CFR Sec. 300.503, the public agency must cease the provision of special education and related services for that child. The public agency may not use the due process and mediation procedures in Subsection I of 6.31.2.13 NMAC in order to obtain agreement or a ruling that services may be provided to the child. The public agency will not be considered to be in violation of the requirement to make FAPE available to the child once consent has been revoked. The public agency will also not be required to convene an IEP team meeting or develop an IEP for the child for further provision of special education and related services.	after the child has been evaluated and has been determined to be a child with a disability. (See 71 Fed. Reg. 46633 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will use the phrase "initial provision of services" rather than "consent for placement for receipt of special education and related services," to make clear that consent does not need to be sought every time a particular service is provided to the child. Additionally, "placement" refers to the provision of special education services, rather than a specific place, such as a specific classroom or specific school. (See 71 Fed. Reg. 46640 (August 14, 2006)) If the parent refuses to consent to the initial provision of special education and related services, CAPITAN MUNICIPAL SCHOOLS is not required to convene an IEP Team meeting or develop an IEP. CAPITAN MUNICIPAL SCHOOLS is relieved of any potential liability for failure to convene an IEP Team meeting or develop an IEP for a child whose parents have refused consent or failed to respond to a request for consent to the initial provision of special education and related services. CAPITAN MUNICIPAL SCHOOLS may however, convene an IEP Team meeting and develop an IEP for a child as a means of informing the parent about the services that would be provided with the parent's consent. (See 71 Fed. Reg. 46634 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS understands the concern that a parent of a child with a disability who refuses to consent to the provision of special education and related services may not fully understand the extent of the special education and related services their child would receive without the development of an IEP. However, the consent provisions of the Act do not create the right of parents to consent to each specific special education and related service that their child receives. Instead, the parents have the right to consent to the initial provision of special education and related services. "Fully informed," in this context, means that CAPITAN MUNICIPAL SCHOOLS has given the parent an explanation of what special education and

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(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with §300.503 before ceasing the provision of special education and related services; (ii) May not use the procedures in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child; (iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and (iv) Is not required to convene an IEP Team meeting or develop an IEP under §§300.320 and 300.324 for the child for further provision of special education and related services (c) Parental *consent for reevaluations* (1) Subject to paragraph (c)(2) of this section, each public agency — (i) Must obtain informed parental consent, in accordance with § 300.300(a)(1), prior to conducting any reevaluation of a child with a disability. (ii) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures		related services are and the types of services that might be found to be needed for their child, rather than the exact program of services that would be included in an IEP. The CAPITAN MUNICIPAL SCHOOLS will ensure that the parent has been given an explanation of what special education and related services are and the type of services that might be found to be needed for their child. (See 71 Fed. Reg. 46634 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will not conduct a reevaluation without consent except when CAPITAN MUNICIPAL SCHOOLS can demonstrate that it has made reasonable efforts to obtain such consent and the child's parent has failed to respond to a request for consent. When CAPITAN MUNICIPAL SCHOOLS has made reasonable efforts to obtain such consent and the child's parent has failed to respond to a request for consent, CAPITAN MUNICIPAL SCHOOLS will conduct a reevaluation of the child, except in the case of a home schooled or parentally-placed private schooled child. When a parent refuses to consent, the decision to use the consent override procedures is made by CAPITAN MUNICIPAL SCHOOLS on a case by case basis. If a parent revokes consent for a provision of special education and related services, CAPITAN MUNICIPAL SCHOOLS may inquire as to why they are revoking consent. However, CAPITAN MUNICIPAL SCHOOLS will not require a parent to provide an explanation, either orally or in writing, prior to ceasing the provision of special education and related services. (See 73 Fed. 73008 (December 1, 2008)) When CAPITAN MUNICIPAL SCHOOLS receives a parental revocation of consent, in writing, for all special education and related services for a child, CAPITAN MUNICIPAL SCHOOLS will provide prior written notice and within a reasonable time, will discontinue all special education and related services to the child. CAPITAN MUNICIPAL SCHOOLS may not use the procedures in subpart E of these regulations, including mediation procedures or the due process procedures, to

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described in paragraph (a)(3) of this section. (iii) The public agency does not violate its obligation under § 300.111 and §§ 300.301 through 300.311 if it declines to pursue the evaluation or reevaluation. (2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that — (i) It made reasonable efforts to obtain such consent; and (ii) The child's parent has failed to respond. (d) Other *consent requirements* (1) Parental consent is not required before — (i) Reviewing existing data as part of an evaluation or a reevaluation; or (ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children. (2) In addition to the parental consent requirements described in paragraphs (a), (b), and (c) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE. (3) A public agency may not use a parent's refusal to consent to one service or activity under		obtain agreement or a ruling that the services may be provided to the child. (See 73 Fed. Reg. 73011 (December 1, 2008)) <u>Revocation of Consent for Services (Partial vs. Complete Revocation of Consent)</u> A parent has the right under the IDEA to unilaterally revoke consent for the receipt of all special education and related services (complete revocation). (See 34 C.F.R. § 300.300(b)(4)) However, the consent revocation provisions of the IDEA do not provide for partial revocation (revocation to a particular service). If a parent disagrees with the provision of a particular special education or related service, and the IEP Team concludes that the child would be provided with a FAPE if the child did not receive that service, the IEP Team may remove the service from the child's IEP. If, however, the parent and CAPITAN MUNICIPAL SCHOOLS disagree in an IEP Team meeting about whether the child would be provided with FAPE if the child did not receive a particular service, CAPITAN MUNICIPAL SCHOOLS must specify the service(s) it believes are necessary for FAPE (even if the parent disagrees) and provide the parent with Prior Written Notice. The parent may use the due process procedures to seek a ruling that the service with which the parent disagrees is not appropriate for their child. (See 73 Fed. Reg. 73011 (December 1, 2008)) If a parent revokes consent for a child to receive special education and related services (complete revocation), after CAPITAN MUNICIPAL SCHOOLS provides prior written notice and ceases services, CAPITAN MUNICIPAL SCHOOLS will consider the child a general education student. The child will also be considered a general education student under the ESEA. CAPITAN MUNICIPAL SCHOOLS will not be obligated to provide accommodations that were previously contained in the child's IEP. (See 73 Fed. Reg. 73011 (December 1, 2008)) The child may be placed in any classroom where other general education students are placed. If a child whose parent has revoked

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paragraphs (a), (b), (c), or (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part. (4) (i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs(a)(3) and (c)(1) of this section); and (ii) The public agency is not required to consider the child as eligible for services under §§ 300.132 through 300.144. (5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in §300.322(d). (Authority: 20 U.S.C. 1414(a)(1)(D) and 1414(c))		consent is placed in a classroom that is co-taught by a general education teacher and a special education teacher, then that child is placed in the classroom as a general education student and should be treated the same as all other general education students in that classroom. (73 Fed. Reg. 73013 (December 1, 2008)) Students who are no longer receiving special education and related services due to the revocation of parental consent to the continued provision of special education and related services will be subject to CAPITAN MUNICIPAL SCHOOLS's discipline procedures without the discipline protections provided in the Act. CAPITAN MUNICIPAL SCHOOLS expects the parents to consider the possible consequences of discipline procedures when making the decision to revoke consent for the provision of special education and related services. (See 73 Fed. Reg. 73013 (December 1, 2008)) CAPITAN MUNICIPAL SCHOOLS personnel will not encourage a parent to revoke consent for special education and related services. (73 Fed. Reg. 73014 (December 1, 2008))

Evaluations and Reevaluations		
§ 300.301 Initial evaluations.		
(a) *General.* Each public agency must conduct a full and individual initial evaluation, in accordance with §§ 300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.	**6.31.2.10 NMAC. IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:** D. Evaluations and reevaluations. (1) Initial evaluations.	Either a parent or a public agency may initiate a request for an initial evaluation. The language "public agency" does not include employees of SEAs or LEAs (e.g., teachers and related services providers), unless they are acting for the SEA or LEA, or of other State agencies (e.g., probation officers, social workers, or staff from

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Federal Regulations	New Mexico Rules	Procedures
(b) *Request for initial evaluation.* Consistent with the consent requirements in § 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability. (c) Procedures *for initial evaluation.* The initial evaluation— (1) (i) Must be conducted within 60 days of receiving parental consent for the evaluation; or (ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and (2) Must consist of procedures— (i) To determine if the child is a child with a disability under § 300.8; and (ii) To determine the educational needs of the child. (d) *Exception.* The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if— (1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or (2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under § 300.8. (e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is	(a) Each public agency must conduct a full and individual initial evaluation, at no cost to the parent, and in compliance with requirements of 34 CFR Secs. 300.305 and 300.306 and other department rules and standards before the initial provision of special education and related services to a child with a disability. (b) Request for initial evaluation. Consistent with the consent requirement in 34 CFR Sec. 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability. (c) Procedures for initial evaluation. (i) The initial evaluation must be conducted within 60 calendar days of receiving parental consent for evaluation. (ii) Each public agency must follow evaluation procedures in compliance with applicable requirements of 34 CFR Sec. 300.304 and other department rules and standards to determine: (1) if the child is a child with a disability under 34 CFR Sec. 300.8; and (2) if the child requires special education and related services to benefit from their education program. (iii) Each public agency shall maintain a record of the receipt, processing and disposition of any referral for an individualized evaluation. All appropriate evaluation data, including complete SAT file documentation and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the eligibility determination team.	State agencies that are not public agencies as defined in § 300.33). (See 71 Fed. Reg. 46636 (August 14, 2006)) In CAPITAN MUNICIPAL SCHOOLS, the public agency initiates a request for an initial evaluation through the Student Assistance Team process. The requirements in § 300.301(b) pertain to the initiation of an evaluation under §§ 300.301 through 300.305 and should not be confused with the State's child find responsibilities. The child find requirements permit referrals from any source that suspects a child may be eligible for special education and related services. (See 71 Fed. Reg. 46636 (August 14, 2006)) A parent may initiate a request for an initial evaluation to determine if the child is a child with a disability. If, however, CAPITAN MUNICIPAL SCHOOLS does not suspect that the child has a disability and denies the request for an initial evaluation, CAPITAN MUNICIPAL SCHOOLS must provide prior written notice to the parents which explains, among other things, why the CAPITAN MUNICIPAL SCHOOLS refuses to conduct an initial evaluation and the information that was used as the basis to make that decision. The parent may challenge such a refusal by requesting a due process hearing. (See 71 Fed. Reg. 46636 (August 14, 2006)) Consistent with the U.S. Department of Education interpretation, CAPITAN MUNICIPAL SCHOOLS declines to specify the timeframe from referral for evaluation to parental consent, or the timeframe from the completion of an evaluation to the determination of eligibility, as we are not in a position to determine the maximum number of days that should apply to these periods in all circumstances. (See 71 Fed. Reg. 46637 (August 14, 1006))

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making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed. (Authority: 20 U.S.C. 1414(a))	(iv) A parent may request an initial special education evaluation at any time during the SAT process. If the public agency agrees with the parent that the child may be a child who is eligible for special education services, the public agency must evaluate the child. If the public agency declines the parent's request for an evaluation, the public agency must issue prior written notice in accordance with 34 CFR Sec. 300.503. The parent can challenge this decision by requesting a due process hearing. (d) Exception to the 60 day time frame. The requirements of this subsection do not apply: (i) if the parent of a child repeatedly fails or refuses to produce the child for the evaluation; or (ii) if the child enrolls in a school of another LEA after the 60 day time frame in this subsection has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under 34 CFR Sec. 300.8. (e) The exception to the 60 day time frame in Item (ii) of Subparagraph (d) of Paragraph (1) of Subsection D of 6.31.2.10 NMAC applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed. … F. Eligibility determinations. …	

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	(2) Optional use of developmentally delayed classification for children aged 3 through 9 (a) The developmentally delayed classification may be used at the option of individual local education agencies but may only be used for children who do not qualify for special education under any other disability category.	

§ 300.302 Screening for instructional purposes is not evaluation.		
The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. (Authority: 20 U.S.C. 1414(a)(1)(E))		

§ 300.303 Reevaluations.		
(a) *General.* A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311— (1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or (2) If the child's parent or teacher requests a reevaluation.	**6.31.2.10 NMAC. IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:** D. Evaluations and reevaluations. … (2) Reevaluations. (a) Each LEA must ensure that a reevaluation of each child is conducted at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary, and is in compliance with the requirements of 34 CFR Secs. 300.303-300.311, and any other applicable department rules and standards.	A reevaluation is any evaluation subsequent to the initial evaluation. The initial evaluation is the first complete assessment of a child to determine if the child has a disability under the IDEA, and the nature and extent of special education and related services required. (See 71 Fed. Reg. 46640 (August 14, 2006)) However, if a parent who revoked consent for special education and related services later requests that his or her child be re-enrolled in special education, CAPITAN MUNICIPAL SCHOOLS will treat this request as a request for an initial evaluation, rather than a reevaluation. (See 73 Fed. 73015 (December 1, 2008))

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(b) *Limitation.* A reevaluation conducted under paragraph (a) of this section— (1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and (2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary. (Authority: 20 U.S.C. 1414(a)(2))	(b) Reevaluations may be conducted more often if: (i) the LEA determines the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or (ii) the child's parent or teacher requests a reevaluation. (c) Reevaluations may not occur more than once a year, unless the parent and public agency agree otherwise. … F. Eligibility determinations. … (2) Optional use of developmentally delayed classification for children aged 3 through 9 … (b) Children who are classified as developmentally delayed must be reevaluated during the school year in which they turn 9 and will no longer be eligible in this category when they become 10. A student who does not qualify under any other available category at age 10 will no longer be eligible for special education and related services.	CAPITAN MUNICIPAL SCHOOLS will conduct timely reevaluations as required by the IDEA. CAPITAN MUNICIPAL SCHOOLS will not condition a reevaluation on the parent providing a reason for requesting the reevaluation. (See 71 Fed. Reg. 46640 (August 14, 2006)) If a parent requests a reevaluation, and CAPITAN MUNICIPAL SCHOOLS disagrees that a reevaluation is needed, CAPITAN MUNICIPAL SCHOOLS will provide prior written notice to the parent that explains, among other things, why CAPITAN MUNICIPAL SCHOOLS refuses to conduct the reevaluation and the parent's right to contest CAPITAN MUNICIPAL SCHOOLS's decision through mediation or a due process hearing. (See 71 Fed. Reg. 46640 (August 14, 2006)) As part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, will review existing evaluation data. The review of existing evaluation data is part of the reevaluation process. The opportunity for a parent and CAPITAN MUNICIPAL SCHOOLS to agree that a reevaluation is unnecessary occurs before the reevaluation begins (including before the review of existing evaluation data). (See 71 Fed. Reg. 46641 (August 14, 2006)) Prior to reaching an agreement that a reevaluation is unnecessary, the parent and CAPITAN MUNICIPAL SCHOOLS will discuss the advantages and disadvantages of conducting a reevaluation, as well as what effect a reevaluation might have on the child's educational program. (See 71 Fed. Reg. 46641 (August 14, 2006))

§ 300.304 Evaluation procedures.		

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Federal Regulations	New Mexico Rules	Procedures
(a) *Notice.* The public agency must provide notice to the parents of a child with a disability, in accordance with § 300.503, that describes any evaluation procedures the agency proposes to conduct. (b) *Conduct of evaluation.* In conducting the evaluation, the public agency must— (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining— (i) Whether the child is a child with a disability under § 300.8; and (ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities); (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. (c) O*ther evaluation procedures.* Each public agency must ensure that— (1) Assessments and other evaluation materials used to assess a child under this part— (i) Are selected and administered so as not to	**6.31.2.10 NMAC. IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:** D. Evaluations and reevaluations. … (2) Reevaluations. … (d) Procedures for conducting evaluations and reevaluations. (i) The public agency must provide notice to the parents of a child with a disability that describes any evaluation procedures the agency proposes to conduct in compliance with 34 CFR Sec. 300.503. … (iv) Each public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child, including information provided by the child's family that may assist in determining if the child is a child with a disability, the content of the child's IEP including information related to assisting the child to be involved and progress in the general education curriculum or for a preschool child to participate in appropriate activities. … E. Procedural requirements for the assessment and evaluation of culturally and linguistically diverse children. (1) Each public agency must ensure that tests and other evaluation materials used to assess children are selected, provided and administered so as not to be discriminatory on a racial or cultural basis and are provided and administered in the child's native language or other mode of communication, such as	CAPITAN MUNICIPAL SCHOOLS will assess a child in all areas related to the suspected disability. This may include, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. This is not an exhaustive list of areas that may be assessed. Decisions regarding the areas to be assessed are determined by the suspected needs of the child. If a child's behavior or physical status is of concern, evaluations addressing these areas will be conducted. (See 71 Fed. Reg. 46643 (August 14, 2006)) It is standard test administration practice of CAPITAN MUNICIPAL SCHOOLS to include in the evaluation report the extent to which an assessment varied from standard conditions, including the language or other mode of communication that was used in assessing a child. (See, 71 Fed. Reg. 46643 (August 14, 2006)) The native language information may be found in the student's cumulative folder as part of the enrollment information. Upon enrollment, parents complete the home language portion which indicates the language normally used by the parents and the language normally used by the child in the home. If necessary, additional information will be gathered to determine the native language of the child for purposes of providing and administering assessments and other evaluation materials in the child's native language or other mode of communication and in the form most likely to yield accurate information. The NMPED has issued a guidance document titled, New Mexico Technical Evaluation and Assistance Manual: Determining Eligibility for IDEA Part B Special Education Services (NM TEAM, January 2017), available through the NMPED website. The NM TEAM presents a sustained effort to standardize evaluation and assessment procedures and eligibility criteria in every IDEA disability category. CAPITAN MUNICIPAL SCHOOLS expects its evaluation teams to use and follow the guidelines and recommendations established within this manual. CAPITAN MUNICIPAL

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be discriminatory on a racial or cultural basis; (ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer; (iii) Are used for the purposes for which the assessments or measures are valid and reliable; (iv) Are administered by trained and knowledgeable personnel; and (v) Are administered in accordance with any instructions provided by the producer of the assessments. (2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. (3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure). (4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional	American sign language, and in the form most likely to yield accurate information, on what the child knows and can do academically, developmentally and functionally, unless it is clearly not feasible to select, provide or administer pursuant to 34 CFR Sec. 300.304(c)(1). (2) Each public agency must ensure that selected assessments and measures are valid and reliable and are administered in accordance with instructions provided by the assessment producer and are administered by trained and knowledgeable personnel. (3) Each public agency must consider information about a child's language proficiency in determining how to conduct the evaluation of the child to prevent misidentification. A child may not be determined to be a child with a disability if the determinant factor for that eligibility determination is limited English proficiency. Comparing academic achievement results with grade level peers in the public agency with similar cultural and linguistic backgrounds should guide this determination process and ensure that the child is exhibiting the characteristics of a disability and not merely language difference in accordance with 34 CFR Sec. 300.306(b)(1). (4) Each public agency must ensure that the child is assessed in all areas related to the suspected disability. (5) Policies for public agency selection of assessment instruments include: (a) assessment and evaluation materials that are tailored to assess specific areas of educational need; and (b) assessments that are selected ensure that results accurately reflect the child's aptitude or achievement level. (6) Public agencies in New Mexico shall devote particular attention to the foregoing requirements in	SCHOOLS, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.

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status, general intelligence, academic performance, communicative status, and motor abilities; (5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §300.301(d)(2) and (e), to ensure prompt completion of full evaluations. (6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. (7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided. (Authority: 20 U.S.C. 1414(b)(1)-(3), 1412(a)(6)(B))	light of the state's cultural and linguistic diversity. Persons assessing culturally or linguistically diverse children shall consult appropriate professional standards to ensure that their evaluations are not discriminatory and should include appropriate references to such standards and concerns in their written reports.	

§ 300.305 Additional requirements for evaluations and reevaluations.		
(a) *Review of existing evaluation data.* As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must— (1) Review existing evaluation data on the child, including— (i) Evaluations and information provided by	**6.31.2.10 NMAC. IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:** D. Evaluations and reevaluations. … (2) Reevaluations. …	CAPITAN MUNICIPAL SCHOOLS may include "other qualified professionals, as appropriate" who may not be part of the child's IEP Team in the group that determines if additional data are needed to make an eligibility determination and determine the child's educational needs. CAPITAN MUNICIPAL SCHOOLS does not define "other qualified professionals" for purposes of the review of existing evaluation data, but instead, will make that determination on a case by case

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Federal Regulations	New Mexico Rules	Procedures
the parents of the child; (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and (iii) Observations by teachers and related services providers; and (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine— (i) (A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child; (ii) The present levels of academic achievement and related developmental needs of the child; (iii) (A) Whether the child needs special education and related services; or (B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education	(d) Procedures for conducting evaluations and reevaluations. … (ii) The initial evaluation (if appropriate) and any reevaluations must begin with a review of existing information by a group that includes the parents, the other members of a child's IEP team and other qualified professionals, as appropriate, to determine what further evaluations and information are needed to address the question in 34 CFR Sec. 300.305(a)(2). Pursuant to 34 CFR Sec. 300.305(b), the group may conduct its review without a meeting. (iii) If it is determined that a child requires an individualized evaluation or reevaluation the public agency is required to follow the procedures established by the department. **6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** A. Preschool programs for children aged 2 through 5. … (5) In particular: … (f) Each LEA shall designate a team including parents and qualified professionals to review existing evaluation data for each child entering the LEA's preschool program in compliance with 34 CFR Sec. 300.305, and based on that review to identify what additional data, if any, are needed to determine the child's eligibility for Part B services or develop an appropriate program in a manner that is consistent with Paragraph (3) of Subsection A of this section.	basis as appropriate to the specific child. (See Fed. Reg. 46644 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will conduct a review of existing evaluation data prior to an initial evaluation, if appropriate, and prior to any reevaluation. The reevaluation always commences with the review of existing evaluation data. The review of existing evaluation data determines the scope of the evaluation. CAPITAN MUNICIPAL SCHOOLS is not required to obtain parental consent before reviewing existing data as part of an initial evaluation or a reevaluation. (See OSEP Letter to Anonymous (Feb. 6, 2007)) If a parent who revoked consent for special education and related services later requests that his or her child be re-enrolled in special education, CAPITAN MUNICIPAL SCHOOLS will treat this request as a request for an initial evaluation, rather than a reevaluation. However, depending on the existing data available, a new evaluation may not always be required. The IEP Team and other qualified professionals may review existing evaluation data as part of an initial evaluation (if appropriate) that includes classroom based, local, or State assessments, and classroom based observations by teachers and related services providers. On the basis of that review and input from the child's parents, the IEP Team and other qualified professionals will identify what additional data, if any, are needed to determine whether the child is a child with a disability and the educational needs of the child. Therefore, CAPITAN MUNICIPAL SCHOOLS may not always have to expend resources on a "new" initial evaluation. (See 73 Fed. 73015 (December 1, 2008)) Based on the review of existing evaluation data, and input from the child's parents, the IEP Team and other qualified professionals, as appropriate, must determine whether additional data are needed to determine whether the child continues to be a child with a disability, and the educational needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child continues to need special

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Federal Regulations	New Mexico Rules	Procedures
curriculum. (b) *Conduct of review.* The group described in paragraph (a) of this section may conduct its review without a meeting. (c) *Source of data.* The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section. (d) *Requirements if additional data are not needed.* (1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of'— (i) That determination and the reasons for the determination; and (ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs. (2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents. (e) *Evaluations before change in eligibility.* (1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§ 300.304 through 300.311 before determining that the child is no longer a child with a disability.	The notice of procedural safeguards shall be given to the parents as provided in Paragraph (3) of Subsection D of 6.31.2.13 NMAC. … G. Graduation planning and post-secondary transitions. … (5) For a child whose eligibility terminates due to graduation from secondary school with a regular diploma or due to reaching his twenty-second birthday, the public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's post-secondary goals pursuant to 34 CFR Sec. 300.305(e)(3).	education; and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum. If following the review of existing evaluation data, the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, CAPITAN MUNICIPAL SCHOOLS will notify the child's parents of: (i) that determination and the reasons for the determination; and (ii) the right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs. Under these circumstances, CAPITAN MUNICIPAL SCHOOLS may not conduct an assessment unless requested to do so by the child's parents. If the parents do not request an assessment, then the review of existing data constitutes the reevaluation. (See OSEP Letter to Anonymous (Feb. 6, 2007)) CAPITAN MUNICIPAL SCHOOLS will prepare a Summary of Performance as required by the IDEA for each child with a disability prior to the child's eligibility terminating due to graduation with a regular high school diploma or due to exceeding age eligibility for a FAPE. The Summary of Performance takes the place of a reevaluation. CAPITAN MUNICIPAL SCHOOLS is not required to conduct evaluations for children to meet the entrance or eligibility requirements of another institution or agency. The requirements for secondary transition are intended to help parents and schools assist children with disabilities transition beyond high school. However, CAPITAN MUNICIPAL SCHOOLS is not required to assess a child with a disability to determine the child's eligibility to be considered a child with a disability in another agency, such as a vocational rehabilitation program, or a college or other postsecondary setting. CAPITAN MUNICIPAL SCHOOLS is also not

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(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law. (3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals. (Authority: 20 U.S.C. 1414(c))		required to provide the postsecondary services that may be included in the Summary of Performance. (See 71 Fed. Reg. 46644 (August 14, 2006))

§ 300.306 Determination of eligibility.		
(a) *General.* Upon completion of the administration of assessments and other evaluation measures— (1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in § 300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and (2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent (b) *Special rule for eligibility determination.* A child must not be determined to be a child with a disability under this part—	**6.31.2.10 NMAC. IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:** D. Evaluations and reevaluations. (1) Initial evaluations … (f) The eligibility determination team including the parent and child, if appropriate, must meet to determine if the child is a child with a disability and requires an IEP upon completion of the initial evaluation. (2) Reevaluations …	CAPITAN MUNICIPAL SCHOOLS will make eligibility decisions within a reasonable period of time following the completion of an evaluation. (See 71 Fed. Reg. 46728 (August 14, 2006)) The change from "team members" to "group members" was made in the 1999 regulations to distinguish this group from the IEP Team, since the group of qualified professionals and the parent that makes the eligibility determination does not necessarily have to be the same as the IEP Team members. (See 71 Fed. Reg. 46649 (August 14, 2006)) In New Mexico, the group that makes the eligibility determination is called the "Eligibility Determination Team" (EDT). While it would be appropriate for parents to review documents related to the determination of eligibility prior to the eligibility determination, it would not be

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(1) If the determinant factor for that determination is— (i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA); (ii) Lack of appropriate instruction in math; or (iii) Limited English proficiency; and (2) If the child does not otherwise meet the eligibility criteria under §300.8(a). (c) *Procedures for determining eligibility and educational need*. (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, each public agency must— (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and (ii) Ensure that information obtained from all of these sources is documented and carefully considered. (2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§ 300.320 through 300.324.	(e) Each public agency shall maintain a record of the receipt, processing, and disposition of any referral for an individualized reevaluation. Reevaluation shall be completed on or before the three year anniversary date. All appropriate reevaluation data and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the eligibility team or IEP team. … E. Procedural requirements for the assessment and evaluation of culturally and linguistically diverse children. … (3) Each public agency must consider information about a child's language proficiency in determining how to conduct the evaluation of the child to prevent misidentification. A child may not be determined to be a child with a disability if the determinant factor for that eligibility determination is limited English proficiency. Comparing academic achievement results with grade level peers in the public agency with similar cultural and linguistic backgrounds should guide this determination process and ensure that the child is exhibiting the characteristics of a disability and not merely language difference in accordance with 34 CFR Sec. 300.306(b)(1). … F. Eligibility determinations. (1) General rules regarding eligibility determinations. (a) Upon completing the administration of tests and other evaluation materials, a group of qualified professionals and the parent of the child must determine whether the child is a child with a disability, as defined in 34 CFR Sec. 300.8 and Paragraph (2) of Subsection B of 6.31.2.7	appropriate for CAPITAN MUNICIPAL SCHOOLS to provide documentation of the determination of eligibility prior to discussing a child's eligibility for special education and related services with the parent. Providing documentation of the eligibility determination to a parent prior to a discussion with the parent regarding the child's eligibility could indicate that CAPITAN MUNICIPAL SCHOOLS made its determination without including the parent, and possibly qualified professionals, in the decision. (See 71 Fed. Reg. 46645 (August 14, 2006)) The eligibility group which includes the parent should work toward consensus, but CAPITAN MUNICIPAL SCHOOLS has the ultimate responsibility to determine whether the child is a child with a disability. CAPITAN MUNICIPAL SCHOOLS encourages parents and school personnel to work together in making the eligibility determination. If the parent disagrees with CAPITAN MUNICIPAL SCHOOLS's determination regarding eligibility, CAPITAN MUNICIPAL SCHOOLS must provide the parent with prior written notice and the parent's right to seek resolution of any disagreement through an impartial due process hearing. (See 71 Fed. Reg. 46661 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will hold a meeting to develop the child's IEP within 30 days of determining that a child is eligible for special education services under the IDEA. (See 71 Fed. Reg. 46637 (August 14, 2006)) Neither the IDEA nor State law establishes a timeline for providing a copy of the evaluation report or the documentation of determination of eligibility to the parents, instead leaving it up to local discretion. CAPITAN MUNICIPAL SCHOOLS will ensure that parents have the information they need to participate meaningfully in IEP Team meetings, which may include reviewing their child's records. CAPITAN MUNICIPAL SCHOOLS will comply with a parent request to inspect and review existing education records, including an evaluation report, without unnecessary

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(Authority: 20 U.S.C. 1414(b)(4) and (5))	NMAC. The determination shall be made in compliance with all applicable requirements of 34 CFR Sec. 300.306 and these or other department rules and standards and, for a child suspected of having a specific learning disability, in compliance with the additional procedures of 34 CFR Secs. 300.307-300.311, and these or other department rules, policies and standards. (b) The public agency must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.	delay and before any meeting regarding an IEP, and in no case more than 45 days after the request has been made. (See 34 C.F.R. § 300.613(a)) CAPITAN MUNICIPAL SCHOOLS will respond to reasonable requests for explanations and interpretations of records. (See 34 C.F.R. § 300.613(b)(1)) (See 71 Fed. Reg. 46645 (August 14, 2006)) Whether a child has received "appropriate instruction" is appropriately left to State and CAPITAN MUNICIPAL SCHOOLS officials to determine. While information regarding the quality of instruction a child received in the past may be helpful in determining whether a child is eligible for special education services, it is not essential. CAPITAN MUNICIPAL SCHOOLS, however, must ensure that the determinant factor in deciding that a child is a child with a disability is not a lack of appropriate instruction in reading and math. (See 71 Fed. Reg. 46646 (August 14, 2006))

Additional Procedures for Identifying Children With Specific Learning Disabilities		
§ 300.307 Specific learning disabilities.		
(a) *General.* A State must adopt, consistent with § 300.*309*, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). In addition, the criteria adopted by the State— (1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in § 300.8(c)(10); (2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and	**6.31.2.7 NMAC. DEFINITIONS:** … B. The following terms shall have the following meanings for purposes of these rules. … (5) **"Dual discrepancy"** means the child does not achieve adequately for the child's age or to meet grade-level standards established in Standards for Excellence (Chapter 29 of Title 6 of the NMAC); and (a) does not make sufficient progress to meet age or grade-level standards; or	The NMPED has issued a guidance document titled, New Mexico Technical Evaluation and Assistance Manual: Determining Eligibility for IDEA Part B Special Education Services (NM TEAM, January 2017), available through the NMPED website. CAPITAN MUNICIPAL SCHOOLS recognizes it must use the State criteria when determining whether a child has a Specific Learning Disability. In the specific learning disability category, CAPITAN MUNICIPAL SCHOOLS expects that evaluation teams adhere to NM TEAM (January 2017) when evaluating a student for a suspected learning disability, as a means of ensuring compliance with State criteria. (See OSEP Letter to

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(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in § 300.8(c)(10). (b) *Consistency with State criteria.* A public *agency* must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability. (Authority: 20 U.S.C. 1221e–3; 1401(30); 1414(b)(6))	(b) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards or intellectual development. (6) **"Dyslexia"** means a condition of neurological origin that is characterized by difficulty with accurate or fluent word recognition and by poor spelling and decoding abilities, which characteristics typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction and may result in problems in reading comprehension and reduced reading experience that may impede the growth of vocabulary and background knowledge. **NMSA 1978, § 22-13-6 (2010):** E. "Dyslexia" means a condition of neurological origin that is characterized by difficulty with accurate or fluent word recognition and by poor spelling and decoding abilities, which characteristics typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction and may result in problems in reading comprehension and reduced reading experience that may impede the growth of vocabulary and background knowledge.	Massanari (September 24, 2007); see also OSEP Letter to Zirkel (August 15, 2007). When designing and conducting an initial evaluation or reevaluation for an individual child suspected of having a learning disability using the severe discrepancy model, the Highly Recommended and Potential Additional components of an evaluation will be considered and followed as appropriate given the characteristics and needs of the individual child. Consistent with federal and New Mexico state regulations, two distinct models of determining SLD eligibility have been established: severe discrepancy and dual discrepancy. Regardless of the model, areas to be covered in an initial evaluation are identical. It is not the components but the interpretation and use of the results that differs from model to model. To successfully make an appropriate eligibility determination under the SLD category, CAPITAN MUNICIPAL SCHOOLS expects EDTs to understand the criteria for each of the methods (i.e., severe discrepancy and dual discrepancy). (See NM TEAM, January 2017) CAPITAN MUNICIPAL SCHOOLS implements the dual discrepancy model in kindergarten through third grade utilizing the student assistance team and the three-tier model of student intervention as defined and described in NM TEAM. The dual discrepancy model is optional for grades 4-6. Otherwise, the CAPITAN MUNICIPAL SCHOOLS uses the severe discrepancy model as defined and described in NM TEAM. (See NM TEAM, January 2017) In addition, for any child who has been referred for an evaluation due to specific difficulties in reading or written expression, CAPITAN MUNICIPAL SCHOOLS expects that assessments be conducted to determine whether the child demonstrates the characteristics of dyslexia. Not all children with SLD in reading and/or written expression will demonstrate the characteristics of dyslexia, as dyslexia is defined as a specific pattern of processing deficits. However,

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		CAPITAN MUNICIPAL SCHOOLS expects EDTs to consider dyslexia for all students referred for an evaluation for potential eligibility under the category of SLD in the areas of reading and/or written expression. (See NM TEAM, January 2017)

§ 300.308 Additional group members.		
The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in § 300.8, must be made by the child's parents and a team of qualified professionals, which must include— (a) (1) The child's regular teacher; or (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or (3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and (b) At least one person qualified to conduct *individual* diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. (Authority: 20 U.S.C. 1221e–3; 1401(30); 1414(b)(6))		CAPITAN MUNICIPAL SCHOOLS will ensure that a child suspected of having a specific learning disability (SLD) and needing special education services is evaluated by a group of qualified professionals, and that the eligibility determination is made by a group of qualified professionals and the parent. The requirement that the group of qualified professionals include "at least one person qualified to conduct individual diagnostic evaluations of children" allows decisions about the specific qualifications of the members to be made at the local level, so that the composition of the group may vary depending on the nature of the child's suspected disability, the expertise of local staff, and other relevant factors. For example, for a child suspected of having an SLD in the area of reading, it might be important to include a reading specialist as part of the eligibility group. However, for a child suspected of having an SLD in the area of listening comprehension, it might be appropriate for the group to include a speech-language pathologist with expertise in auditory processing disorders. CAPITAN MUNICIPAL SCHOOLS will make these decisions on a case-by-case basis, taking into account individual factors. (See 71 Fed. Reg. 46650 (August 14, 2006))

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§ 300.309 Determining the existence of a specific learning disability.		
(a) The group described in § 300.306 may *determine* that a child has a specific learning disability, as defined in § 300.8(c)(10), if— (1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards: (i) Oral expression. (ii) Listening comprehension. (iii) Written expression. (iv) Basic reading skill. (v) Reading fluency skills. (vi) Reading comprehension. (vii) Mathematics calculation. (viii) Mathematics problem solving. (2) (i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or (ii) The child exhibits a pattern of strengths	**6.31.2.10 NMAC. IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:** B. The public agency shall follow a three tier model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning as set forth in Subsection D of 6.29.1.9 NMAC. C. Criteria for identifying children with perceived specific learning disabilities. (1) Each public agency must use the three tiered model of student intervention for students suspected of having a perceived specific learning disability, consistent with the department rules, policies and standards for children who are being referred for evaluation due to a suspected disability under the specific learning disability category in compliance with 34 CFR Sec. 300.307. (a) The public agency must, subject to Subparagraph (d) of this paragraph, require that the group established under 34 CFR Secs. 300.306(a)(1) and 300.308 for the purpose of determining eligibility of students suspected of having a specific learning disability, consider data obtained during implementation of tiers 1 and 2 in making an eligibility determination. (b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation required in 34 CFR Secs. 300.304 through 300.306: (i) data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular	CAPITAN MUNICIPAL SCHOOLS will ensure that the group of qualified professionals appropriately assesses the child's academic achievement. CAPITAN MUNICIPAL SCHOOLS recognizes it must use the State criteria when determining whether a child has a Specific Learning Disability. In the specific learning disability category, CAPITAN MUNICIPAL SCHOOLS expects that evaluation teams adhere to NM TEAM (January 2017) when evaluating a student for a suspected learning disability, as a means of ensuring compliance with State criteria. (See OSEP Letter to Massanari (September 24, 2007); see also OSEP Letter to Zirkel (August 15, 2007). An initial evaluation for a specific learning disability may include (highly recommended): a review and consideration of SAT file documentation; gathering and analyzing development/educational, medical, family and social history, including an interview with the parent(s) guardian(s); analyzing observation completed in the child's learning environments including the general classroom setting, either through the SAT process or as part of the initial evaluation process; conducting a comprehensive assessment of cognitive abilities, including verbal and nonverbal skills; completing a systematic review of individual academic achievement, including formal and informal measures; administering an individual academic achievement in the area(s) of suspected disability for which instruction and intervention have been documented (required for all SLD areas, including oral expression and listening comprehension); conducting an assessment of processing skills in the areas related to the suspected area(s) of disability; conducting a transition assessment, including a vocational evaluation (as appropriate); and, when an evaluation in any area is unable to be completed using standardized measures, using

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and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§300.304 and 300.305; and (3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of— (i) A visual, hearing, or motor disability; (ii) Mental retardation; (iii) Emotional disturbance; (iv) Cultural factors; (v) Environmental or economic disadvantage; or (vi) Limited English proficiency. (b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§ 300.304 through 300.306— (1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was	education settings, delivered by qualified personnel; and (ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents. … (2) Preschool children suspected of having a specific learning disability must be evaluated in accordance with Subparagraph (f) of Paragraph (5) of Subsection A of 6.31.2.11 NMAC and 34 CFR Secs. 300.300 through 300.305, which may include the severe discrepancy model. (3) Public agencies must implement the dual discrepancy model in kindergarten through third grade utilizing the student assistance team and the three-tier model of student intervention as defined and described in the New Mexico Technical Evaluation and Assessment Manual (New Mexico T.E.A.M.). Data on initial evaluations for perceived learning disabilities in grades K-3 must be submitted to the department through the student teacher accountability reporting system (STARS). (4) In identifying children with specific learning disabilities in grades 4 through 12, the public agency may use the dual discrepancy model as defined and described in the New Mexico Technical Evaluation and Assessment Manual (New Mexico T.E.A.M.) or the severe discrepancy model as defined and described in New Mexico T.E.A.M.	alternative methods of obtaining student's present levels of performance. (See NM TEAM, January 2017) CAPITAN MUNICIPAL SCHOOLS requires that evaluations include a review and/or assessment of all components within the specific area of difficulty. For example, if concerns are documented in any area of reading, all associated areas (e.g., phonics, fluency, phonemic awareness, vocabulary, and comprehension) must be reviewed and/or assessed. (See NM TEAM, January 2017) For any child who has been referred for an evaluation due to specific difficulties in reading or written expression, assessments should be conducted to determine whether the child demonstrates the characteristics of dyslexia. CAPITAN MUNICIPAL SCHOOLS recognizes that not all children with SLD in reading and/or written expression will demonstrate the characteristics of dyslexia, as dyslexia is defined as a specific pattern of processing deficits. (See NM TEAM, January 2017) Intellectual development is included as one of three standards of comparison, along with age and State-approved grade-level standards. The reference to "intellectual development" in this provision means that the child exhibits a pattern of strengths and weaknesses in performance relative to a standard of intellectual development such as commonly measured by IQ tests. Use of the term is consistent with the discretion provided in the IDEA in allowing the continued use of discrepancy models. (See 71 Fed. Reg. 46651 (August 14, 2006)) Under the Dual Discrepancy Model, the results from the assessment of cognitive abilities should be utilized solely to determine the level of the student's cognitive functioning. The data are not to be used for making discrepancy determinations. (See NM TEAM, January 2017)

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provided to the child's parents. (c) The public agency must promptly request *parental* consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§ 300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in §300.306(a)(1)— (1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and (2) Whenever a child is referred for an evaluation. (Authority: 20 U.S.C. 1221e–3; 1401(30); 1414(b)(6))		When using a significant discrepancy model, CAPITAN MUNICIPAL SCHOOLS evaluators will ensure that adequate data are gathered, recognizing that there is a substantial research base summarized in several recent consensus reports that does not support the hypothesis that a discrepancy model by itself can differentiate children with disabilities and children with general low achievement. (See 71 Fed. Reg. 46650 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will ensure that the eligibility group considers the effect of cultural factors on a child's performance. Such consideration should take into account multiple sources of information, including the home environment, language proficiency, and other contextual factors gathered in the evaluation. (See 71 Fed. Reg. 46655 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will ensure that the group of qualified professionals eliminate all exclusionary factors before the group of qualified professionals and the parent reach the conclusion that the child is a child with a specific learning disability. Eligibility is contingent on the ability of CAPITAN MUNICIPAL SCHOOLS to provide appropriate instruction. Determining the basis of low achievement when a child has been given appropriate instruction is the responsibility of the eligibility group. (See 71 Fed. Reg. 46656 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS understands it is important for the eligibility group to have the information that it needs to rule out that the child's underachievement is a result of a lack of appropriate instruction. That could include evidence that the child was provided appropriate instruction either before, or as a part of, the referral process. (See 71 Fed. Reg. 46656 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will ensure that the eligibility group considers whether the child received appropriate instruction from qualified personnel. For

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		children who attend private schools or charter schools or who are home schooled, it may be necessary to obtain information from parents and teachers about the curricula used and the child's progress with various teaching strategies. The eligibility group also may use information from current classroom-based assessments or classroom observations. On the basis of the available information, the eligibility group may identify other information that is needed to determine whether the child's low achievement is due to a disability, and not primarily the result of lack of appropriate instruction. The requirements for special education eligibility or the expectations for the quality of teachers or instructional programs are not affected, and do not differ, by the location or venue of a child's instruction. (See 71 Fed. Reg. 46656 (August 14, 2006)) Before determining that a child has a specific learning disability, CAPITAN MUNICIPAL SCHOOLS will ensure that the group of qualified professionals consider data that demonstrate that prior to or as part of the referral process, the child received appropriate instruction in regular education settings and that data-based documentation of repeated assessments of achievement during instruction was provided to the child's parents. If the child has not made adequate progress under these conditions after an appropriate period of time, CAPITAN MUNICIPAL SCHOOLS will refer the child for an evaluation to determine if special education and related services are needed. Additionally, the child's parents and the group of qualified professionals are permitted to extend the 60-day evaluation timelines for initial evaluation by mutual written agreement. (See 71 Fed. Reg. 46750 (August 14, 2006))

§ 300.310 Observation.		
(a) The public agency must ensure that the child is observed in the child's learning environment		CAPITAN MUNICIPAL SCHOOLS believes important information can be obtained about a child through

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(including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty. (b) The group described in § 300.306(a)(1), in *determining* whether a child has a specific learning disability, must decide to— (1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or (2) Have at least one member of the group described in §300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with § 300.300(a), is obtained. (c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age. (Authority: 20 U.S.C. 1221e–3; 1401(30); 1414(b)(6))		observation in the classroom, or for a child less than school age, in an environment appropriate for a child of that age. CAPITAN MUNICIPAL SCHOOLS believes that objective observations are essential to assessing a child's performance and will be a part of routine classroom instruction. CAPITAN MUNICIPAL SCHOOLS will utilize appropriate observation and documentation of the child's academic performance and behavior in the areas of difficulty to determine whether a child has a SLD. (See 71 Fed. Reg. 46659 (Monday, August 14, 2006)) In the CAPITAN MUNICIPAL SCHOOLS, the observation is completed in the child's learning environments including the general classroom setting, either through the SAT process or as part of the initial evaluation process. CAPITAN MUNICIPAL SCHOOLS expects that the observation be completed in all areas of difficulty.

§ 300.311 Specific documentation for the eligibility determination.		
(a) For a child suspected of having a specific learning *disability*, the documentation of the determination of eligibility, as required in § 300.306(a)(2), must contain a statement of— (1) Whether the child has a specific learning disability; (2) The basis for making the determination,	**6.31.2.10 NMAC. IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:** C. Criteria for identifying children with perceived specific learning disabilities. (1) Each public agency must use the three tiered model of student intervention for students suspected of	CAPITAN MUNICIPAL SCHOOLS will ensure that the written evaluation report prepared by the group of qualified professionals for a possible learning disability contains all of the requisite documentation. The report will address whether the child meets or continues to meet the specific eligibility criteria for a specific learning disability and whether, by reason of the child's specific learning disability, the child needs or continues to need special education and related services.

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including an assurance that the determination has been made in accordance with §300.306(c)(1); (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning; (4) The educationally relevant medical findings, if any; (5) Whether— (i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with § 300.309(a)(1); and (ii) (A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with § 300.309(a)(2)(i); or (B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with §300.309(a)(2)(ii); (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and	having a perceived specific learning disability, consistent with the department rules, policies and standards for children who are being referred for evaluation due to a suspected disability under the specific learning disability category in compliance with 34 CFR Sec. 300.307. … (c) The documentation of the determination of eligibility, as required by 34 CFR Sec. 300.306(c)(1), must meet the requirements of 34 CFR Sec. 300.311, including: (i) a statement of the basis for making the determination and an assurance that the determination has been made in accordance with 34 CFR Sec. 300.306(c)(1); and (ii) a statement whether the child does not achieve adequately for the child's age or to meet state-approved grade-level standards consistent with 34 CFR Sec. 300.309(a)(1); and (iii) a statement whether the child does not make sufficient progress to meet age or grade-level standards consistent with 34 CFR Sec. 300.309(a)(2)(i), or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards or intellectual development consistent with 34 CFR Sec. 300.309(a)(2)(ii); and (iv) if the child has participated in a process that assesses the child's response to scientific, research-based intervention: a statement of the instructional strategies used and the student-centered data collected; documentation that the child's parents were notified about the state's	

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(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention— (i) The instructional strategies used and the student- centered data collected; and (ii) The documentation that the child's parents were notified about— (A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; (B) Strategies for increasing the child's rate of learning; and (C) The parents' right to request an evaluation. (b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions. (Authority: 20 U.S.C. 1221e–3; 1401(30); 1414(b)(6))	policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; strategies for increasing the child's rate of learning; and the parents' right to request an evaluation.	

INDIVIDUALIZED EDUCATION PROGRAMS		
§ 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—	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** B. Individualized education programs (IEPs).	CAPITAN MUNICIPAL SCHOOLS will ensure that the IEP for every child with a disability includes a statement of the child's "functional performance" and "academic performance" since IDEA requires both, and

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(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. (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; (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	(1) Except as provided in 34 CFR Secs. 300.130-300.144 for children enrolled by their parents in private schools, each public agency (1) shall 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) shall 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 public agency. … E. Participation in statewide and district-wide assessments. Each local educational agency and other public agencies when applicable shall include all children with disabilities in all statewide and district-wide assessment programs. Each public agency shall 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; public agencies shall 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	therefore, neither can be omitted. (See 71 Fed. Reg. 46662 (August 14, 2006)) "Functional" is a term that CAPITAN MUNICIPAL SCHOOLS generally understands 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. (See 71 Fed. Reg. 4661 (August 14, 2006)) Neither the IDEA nor CAPITAN MUNICIPAL SCHOOLS requires goals to be written for each specific discipline. (See 71 Fed. Reg. 4662 (August 14, 2006)) Instead, 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 that address the student's need to develop and/or improve communication-related skills; however, it would not be necessary to label the goals as "speech therapy" goals. Therefore, if the IEP includes goals which appropriately address the student's need to develop communication-related skills, no additional or separate "therapy" goals are required. (See OSEP Letter to Hayden (Oct. 3, 1994)) CAPITAN MUNICIPAL SCHOOLS will ensure that the IEP for every child with a disability includes functional and academic measurable annual goals. CAPITAN MUNICIPAL SCHOOLS will further ensure that the IEP of a child who takes the NM Alternate Assessment includes benchmarks or short-term objectives. IDEA does not require goals to have outcomes and measures on a specific assessment tool. However, CAPITAN MUNICIPAL SCHOOLS expects that the goals be objectively measurable. (See 71 Fed. Reg. 46662 (August 14, 2006)) Report cards and quarterly report cards are examples of when periodic reports on the child's progress toward meeting the annual goals might be provided. The

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quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided; (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; (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section; (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 district wide assessments consistent with section 612(a)(16) of the Act; and	in an alternate assessment based on alternate achievement standards according to 34 CFR Sec. 300.320(a)(6). … 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 the 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 public agency, child and family must be identified in the IEP. (b) Graduation options for children with disabilities at Paragraph (13) of Subsection J of 6.29.1.9 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). (2) Appropriate post-secondary transition planning for children with disabilities is essential. Public agencies shall integrate transition planning into the IEP process pursuant to 34 CFR Secs. 300.320(b), 300.324(c) and shall establish and implement appropriate policies, procedures, programs and services to promote successful post-secondary	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 are best left to State and CAPITAN MUNICIPAL SCHOOLS officials to determine. (See 71 Fed. Reg. 46664 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS 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. CAPITAN MUNICIPAL SCHOOLS will maintain copies of the progress reports provided to parents. CAPITAN MUNICIPAL SCHOOLS permits use of electronic mail to provide parents with their child's IEPs and related documentation, such as progress reports provided that the parents agree to use the electronic mail option, and has safeguards in place to ensure the integrity of the process. (See OSEP Letter to Breton (2014)) If the child fails to make progress under the IEP, CAPITAN MUNICIPAL SCHOOLS expects that the IEP be reviewed and the reasons for the lack of progress be identified. If necessary, CAPITAN MUNICIPAL SCHOOLS expects that the IEP will be revised to assist the child in achieving his/her annual goals, and that any services needed to achieve those goals will be included in the IEP, including both special education and related services. (See OSEP Letter to Morris (August 15, 2007)) CAPITAN MUNICIPAL SCHOOLS does not require all IEP Team meetings to include a focused discussion on research-based methods as such requirements are unnecessary and would be overly burdensome. (See 71 Fed. Reg. 46665 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS expects that school personnel will select and use methods that research has shown to be effective, to the extent that methods based on peer-reviewed research are available.

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(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or district wide 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; and (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. (b) *Transition services.* Beginning not later than the *first* IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, 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.	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	This does not mean that the service with the greatest body of research is the service necessarily required for a child to receive FAPE. (See 71 Fed. Reg. 46665 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS understands that 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. (See 71 Fed. Reg. 46665 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS does not require that every IEP include specific instructional methodologies. CAPITAN MUNICIPAL SCHOOLS recognizes the U.S. Department of Education's longstanding position that it is an IEP Team decision whether to include instructional methods in an IEP. Therefore, if an IEP Team determines that specific instructional methods are necessary for the child to receive a FAPE, then instructional methods may be addressed in the IEP. (See 71 Fed. Reg. 46665 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS expects that that the amount of services in an IEP shall be clearly stated in a manner that is appropriate to each 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 each specific service must be sufficiently specific to reflect the commitment of CAPITAN MUNICIPAL SCHOOLS resources to the particular service to ensure that the child's IEP addresses the child's identified educational needs. CAPITAN MUNICIPAL SCHOOLS does not permit using ranges of time to express the CAPITAN MUNICIPAL SCHOOLS'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. (See OSEP Letter to Ackron (1990)) CAPITAN MUNICIPAL SCHOOLS, by reference in these procedures, and through staff development (as

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(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))	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. **6.31.2.13 NMAC. 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 14 or older must include a discussion of the rights that will transfer	appropriate), shall inform appropriate personnel of the following key guidance documents: ■ NMPED Memorandum containing guidance regarding Frequency of Service Stated on an IEP (September 8, 2004), available through the NMPED website. ■ From LRP Publications, Mountain Plains Regional Resource Center, and Parent Alliance, an Overview of Special Education Transportation: A Primer for Parents and Educators (2003), available through the NMPED website. CAPITAN MUNICIPAL SCHOOLS's IEP teams 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. CAPITAN MUNICIPAL SCHOOLS will use the most current forms and follow the most current guidance of the NMPED as reflected in the New Mexico Statewide Assessment Program Procedures Manual. This guidance is updated annually by the NMPED. CAPITAN MUNICIPAL SCHOOLS will ensure that the IEP Team timely conducts graduation planning and addresses all IDEA and State requirements for graduation. NMPED has issued a guidance document regarding Graduation Options for Students with Disabilities (May 2010), available through the NMPED website. CAPITAN MUNICIPAL SCHOOLS, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.

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	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. **6.29.1.7 NMAC. DEFINITIONS:** A. "Ability program of study" means an alternative graduation option for students with disabilities. This option is based upon the student's meeting or exceeding IEP goals and objectives, with or without reasonable accommodations of delivery and assessment methods, referencing skill attainment at a student's ability level which provides a clear and coordinated transition to meaningful employment or other appropriate day habilitation or community membership and independent living, as appropriate to meet anticipated functional needs. … V. "Career readiness program of study" means an alternative graduation option for students with disabilities. This option is based upon meeting the department's employability and career education standards with benchmarks and performance standards as identified in the student's IEP. … CF. "Standard program of study" means a program of study that is based upon the student's meeting or exceeding all requirements for graduation as specified in Section 22-13-1.1 NMSA 1978. **6.29.1.9 NMAC. PROCEDURAL REQUIREMENTS:** J. Graduation requirements. … (13) Graduation requirements for issuance of a conditional certificate of transition for students with	CAPITAN MUNICIPAL SCHOOLS will ensure that the IEP Team timely complies with the requirements for transfer of rights at age of majority. CAPITAN MUNICIPAL SCHOOLS 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. If an IEP Team chooses to address transition before age 14, CAPITAN MUNICIPAL SCHOOLS understands that the same requirements apply. (See OSERS Q/A on IEPs, Evaluations, and Reevaluations (Revised September 2011), Q/A F-3) CAPITAN MUNICIPAL SCHOOLS expects that the IEP Team include in the IEP measurable postsecondary goals based on age-appropriate transition assessments for every 14-year-old (and beyond) student with a disability regardless of the student's skill levels relating to education, employment, and training. (See OSERS Q/A on IEPs, Evaluations, and Reevaluations (Revised September 2011), Q/A F-1) CAPITAN MUNICIPAL SCHOOLS understands that the 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. (See 71 Fed. Reg. 46668 (August 14, 2006); see also, OSERS Q/A on IEPs, Evaluations, and Reevaluations (Revised September 2011), Q/A F-2) CAPITAN MUNICIPAL SCHOOLS expects IEP teams to draft measurable postsecondary transition goals. However, nothing in the IDEA requires CAPITAN MUNICIPAL SCHOOLS to measure the child's progress on these postsecondary transition goals, or provide any special education services to the child after

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	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.	the child has graduated from a regular high school or exceeded the mandatory age range for FAPE. (See OSERS Q/A on IEPs, Evaluations, and Reevaluations (Revised September 2011), Q/A F-4) IDEA 2004 required the U.S. Department of Education to develop a model IEP form. The U.S. Department of Education has developed an IEP form to assist States and school districts in understanding the IEP content requirements. The Model Form: Individualized Education Program developed by the U.S. Department of Education is available through the U.S. Department of Education's website. NMPED has also developed a model IEP form along with a guide, Developing Quality IEPs, available through the NMPED website. CAPITAN MUNICIPAL SCHOOLS uses a localized IEP form based upon the NMPED form and guidance document. CAPITAN MUNICIPAL SCHOOLS, by reference in these procedures, and through staff development (as appropriate), will inform appropriate personnel of the NMPED guide to developing quality IEPs. CAPITAN MUNICIPAL SCHOOLS expects that IEP Teams document consideration of the IEP requirements with sufficient detail to show they complied with the requirement to develop, review, and revise the IEP. (See OSERS Q/A on IEPs, Evaluations, and Reevaluations (Revised September 2011), Q/A C-7)

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

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	minimum of four units of career development opportunities and learning experiences that may include any of the following: career readiness and vocational course work, work experience, community-based instruction, student service learning, job shadowing, mentoring or entrepreneurships related to the student's occupational choices. Credits for work experience shall be related to the program of study that the school offers and specific to the district's ability to offer work experience or community-based instruction credits. The student shall achieve competency in all areas of the employability and career development standards with benchmarks and performance standards, as determined by the IEP team and the student's interest as it relates to the career clusters. The program of study shall address the New Mexico content standards with benchmarks and performance standards in other subject areas as appropriate. (iii) An ability program of study was developed for students who have a significant cognitive disability or severe mental health issues. The IEP goals and functional curriculum course work shall be based on the New Mexico standards with benchmarks and performance standards and employability and career development standards with benchmarks and performance standards. Students in this program of study shall earn the minimum number of credits or be provided equivalent educational opportunities required by the district or charter school, with course work individualized to meet the unique needs of the student through support of the IEP. In addition, a student shall take either the current state	

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	graduation examination(s) administered pursuant to Subsection K of Section 22-13-1.1 NMSA 1978, under standard administration or with state-approved accommodations, or the state-approved alternate assessment. The student shall achieve a level of competency pre-determined by the student's IEP team on the current graduation examination or the state-approved alternate assessment, and meet all other graduation requirements established by the IEP team. (c) The new requirements for the career readiness and ability pathways become effective beginning with students graduating in 2009. (d) By the end of the eighth grade, each student's IEP shall contain a proposed individual program of study for grades nine through twelve. The program of study shall identify by name all course options the student may take and shall align with the student's long-range measurable post-secondary goals and transition services to facilitate a smooth transition to high school and beyond. This program of study shall be reviewed on an annual basis and adjusted to address the student's strengths, interests, preferences and areas of identified educational and functional needs. The IEP team shall document on the IEP the student's progress toward earning required graduation credits and passing the current graduation examination. (e) A district or charter school shall provide each student, who has an IEP and who graduates or reaches the maximum age for special education services, a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting post-secondary goals. (f) Students graduating on the standard program of study shall meet the state's minimum	

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	requirements on all sections of the graduation examination. IEP teams shall document a plan of action on the IEP and the PWN to be carried out by both the student and the district or charter school, to ensure that the student will pass all sections of the graduation examination. (g) To establish a level of proficiency on the current graduation examination or the state-approved alternate assessment for students on a career readiness program of study or ability program of study, IEP teams shall review the student's performance on the first attempt, and establish a targeted proficiency on all sections that are below the state's minimum requirement. For those students who meet participation criteria for the New Mexico alternate assessment, IEP teams shall set targeted levels of proficiency based upon previous performance on the test. If the student has previously been administered the New Mexico alternate assessment and has achieved an advanced level of overall performance, the IEP team shall arrange for the student to participate in the general graduation examination, and shall identify appropriate accommodations that the student may require. IEP teams shall document the targeted levels of proficiency on the IEP and the PWN, outlining the plan of action to be taken by both the student and the district or charter school to ensure that the student will meet the targeted levels of proficiency. Districts or charter schools may submit a written request for a waiver to the secretary in cases where a student has medical or mental health issues that may result in regression or that negatively influence the student's ability to achieve targeted levels of proficiency. The written request shall be signed by the superintendent or charter school administrator and shall include documentation of the medical or mental health issues. (h) Changes in programs of study.	

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	(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. Districts and charter schools are obligated to meet the requirements of IDEA to provide students with IEPs on any one of the three programs of study, and access to the general curriculum in the least restrictive environment. When an alternative program of study is developed, a building administrator or designee who has knowledge about the student shall be a member of the IEP team (ii) Districts and charter schools shall document changes from the standard program of study on the PWN. IEP teams shall identify the reasons for changing the student's program of study, shall provide parents with clear concise explanations of the career readiness or ability programs of study, shall notify parents and students of the potential consequences that may limit the student's post-secondary options, and shall make required changes to the IEP and course of study, to ensure that the student meets the requirements of that program of study. (iii) The IEP team shall not change the program of study for a student entering the final year of high school (not the cohort with which the student entered high school) from the standard program of study to the career readiness program of study, nor	

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	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. (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 district or charter school ensures that a conditional certificate of transition is not a program of study and does not end the student's right to a FAPE; (iv) the district or charter school ensures that a conditional certificate of transition entitles a student who has attended four years or more of high school to participate in graduation activities, and requires that the student continue receiving special education supports and services needed to obtain the high school diploma;	

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	(v) the district or charter school ensures that, prior to receiving a conditional certificate of transition, the student has a continuing or transition IEP; (vi) the student's continuing or transition IEP outlines measures, resources and specific responsibilities for both the student and the district or charter school to ensure that the student receives a diploma. (j) A student who does not return to complete the program of study as outlined in the continuing or transition IEP will be considered as a dropout. (k) A student who receives a conditional certificate of transition is eligible to continue receiving special education services until receipt of a diploma or until the end of the academic year in which the student becomes 22 years of age. (l) Graduation plans shall be a part of all IEPs: (i) by the end of eighth grade, or by the time the student turns 14 years of age, and concurrent with the development of the student's transition plan in accordance with federal regulations at 34 CFR 300.320; (ii) when a student returns to a school after an extended absence, and if an IEP program of study may have been developed but needs to be reviewed; or (iii) when evaluations warrant the need for a modified program of study at any time after development of an initial graduation plan. (m) Graduation plans shall be a part of all of all IEPs and annual reviews, and shall follow the student in all educational settings. Receiving institutions that fall under the department's jurisdiction will recognize these graduation	

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	plans, subject to revision by new IEP teams, if appropriate to meet a student's changing needs. (n) At the exit IEP meeting, the team shall review the student's transition plan, and shall confirm and document that all state and district requirements for graduation under the final IEP have been satisfied. A building administrator who has knowledge about the student shall be a member of this team, and shall sign specifically to verify and accept completed graduation plans, goals and objectives pursuant to (i) - (iii) of Subparagraph (b) of Paragraph (13) of Subsection 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 totaled and submitted to the local school board or governing body of a charter school. This information shall be treated as confidential in accordance with the FERPA. (o) Students eligible for special education services are entitled to a FAPE through age 21. If a student turns 22 during the school year, the student shall be allowed to complete the school year. If a student becomes 22 prior to the first day of the school year, the student is no longer eligible to receive special education services.	

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	(p) The receipt of a diploma terminates the service eligibility of students with special education needs. (q) All diplomas awarded by a school district or charter school shall be identical in appearance, content and effect, except that symbols or notations may be added to individual students' diplomas to reflect official school honors or awards earned by students.	

§ 300.321 IEP Team.		
(a) *General.* The public agency must 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 then one special education provider of the child; (4) A representative of the public agency 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 public agency.	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** A. Preschool programs for children aged 3 through 5. … (5) In particular: … (g) Development of IFSP, IEP or IFSP-IEP. (i) The IFSP, IEP, or IFSP-IEP will be developed by a team constituted in compliance with 34 CFR Sec. 300.321 that includes parents. For children transitioning from Part C programs to Part B programs, the team must also include one or more early intervention providers who are knowledgeable about the child. "Early intervention providers" are defined as Part C service coordinators or other representatives of the Part C system. (ii) For each child transitioning from a Part C program to a Part B preschool program, the LEA shall initiate a meeting to develop the eligible child's IFSP, IEP or IFSP-IEP, in accordance with 34 CFR Sec. 300.124. The IFSP, IEP or IFSP must be developed	CAPITAN MUNICIPAL SCHOOLS determines the specific personnel to fill the roles for the school district's required participants at the IEP Team meeting. A parent does not have a legal right to require other school district members of the IEP Team to attend an IEP Team meeting. Therefore, if a parent invites other CAPITAN MUNICIPAL SCHOOLS personnel who are not designated by the CAPITAN MUNICIPAL SCHOOLS to be on the IEP Team, they are not required to attend. However, CAPITAN MUNICIPAL SCHOOLS will work with parents to try to accommodate reasonable requests for the participation of particular school personnel in an IEP Team meeting. (See 71 Fed. Reg. 46674 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will ensure that each IEP Team meeting is duly constituted. CAPITAN MUNICIPAL SCHOOLS recognizes the uniquely valuable contributions of each IEP Team member. Therefore, CAPITAN MUNICIPAL SCHOOLS will not agree to routinely excuse IEP Team members. When a required member is unable to attend an IEP Team meeting, CAPITAN MUNICIPAL SCHOOLS 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 required IEP Team member in attendance or whether it would be

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(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 agency, 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 public agency must invite a child with a disability to attend the child's IEP Team 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 public agency must 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 public agency must 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 public agency) who invited the	and implemented no later than the child's third birthday, consistent with 34 CFR Sec. 300.101(b). … 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 public agency shall 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. **6.29.1.9 NMAC. 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: … (n) At the exit IEP meeting, the team shall review the student's transition plan, and shall confirm	better to reschedule the meeting so that the IEP Team member can attend and participate in the discussion. Parents will not be pressured into agreeing or consenting to an excusal of a required IEP Team member. An IEP Team meeting cannot take place without all required members present for the duration of the meeting unless the excusal provisions (300.321(e)) have been fully satisfied. CAPITAN MUNICIPAL SCHOOLS will comply with the excusal provisions (300.321(e)) before a required member of the IEP Team is excused from the meeting in whole or in part. Required members subject to the excusal provisions are the regular education teacher, special education teacher or provider of the child, the representative of CAPITAN MUNICIPAL SCHOOLS, and the individual who can interpret the instructional implications of evaluation results. (See OSERS Q/A on IEPs, Evaluations, and Reevaluations (Revised September 2011), Q/A C-2) CAPITAN MUNICIPAL SCHOOLS does not require consent or a written agreement between the parent and CAPITAN MUNICIPAL SCHOOLS to excuse individuals who are invited to attend IEP Team meetings at the discretion of the parent or the CAPITAN MUNICIPAL SCHOOLS because such individuals are not required members of an IEP Team. The excusal provisions only apply to the required members of the IEP Team. (See 71 Fed. Reg. 46675 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS does not require consent or a written agreement between the parent and CAPITAN MUNICIPAL SCHOOLS to excuse an individual IEP Team member if another individual IEP Team member who is present for the entire duration of the meeting satisfies the same IEP Team membership requirement. For example, if there are two regular education teachers of the child present at the IEP Team meeting, one can be excused without following the excusal provisions as long as the other is present throughout the meeting. (See OSERS Q/A on IEPs,

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individual to be a member of the IEP Team. (d) *Designating a public agency representative.* A public agency may designate a public agency 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 paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency 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 paragraph (e)(1) of this section may be excused from attending an IEP Team 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 public agency 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 Team 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.	and document that all state and district requirements for graduation under the final IEP have been satisfied. A building administrator who has knowledge about the student shall be a member of this team, and shall sign specifically to verify and accept completed graduation plans, goals and objectives pursuant to (i) - (iii) of Subparagraph (b) of Paragraph (13) of Subsection 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 totaled and submitted to the local school board or governing body of a charter school. This information shall be treated as confidential in accordance with the FERPA.	Evaluations, and Reevaluations (Revised September 2011), Q/A C-3) CAPITAN MUNICIPAL SCHOOLS will ensure that the special education teacher or provider who is a member of the child's IEP Team is the person who is, or will be, responsible for implementing the IEP. For example, if the child's disability is a speech impairment, the special education teacher or special education provider could be the speech language pathologist. (See 71 Fed. Reg. 46670 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS determines which specific staff member will serve as the CAPITAN MUNICIPAL SCHOOLS representative in a particular IEP Team meeting, so long as the individual meets the requirements for public agency representative. The CAPITAN MUNICIPAL SCHOOLS representative appointed to serve as CAPITAN MUNICIPAL SCHOOLS representative in a particular IEP Team meeting shall have the authority to commit CAPITAN MUNICIPAL SCHOOLS resources and be able to ensure that whatever services are described in the IEP will actually be provided. CAPITAN MUNICIPAL SCHOOLS understands that it will be bound by the IEP that is developed at an IEP Team meeting. (See 71 Fed. Reg. 46671 (August 14, 2006)) If the CAPITAN MUNICIPAL SCHOOLS invites someone with knowledge or special expertise about the child and fails to inform the parents of that person's attendance, the parents may request that the meeting be rescheduled until CAPITAN MUNICIPAL SCHOOLS provides the parent the required notice of 'who will be in attendance.' Alternatively, the CAPITAN MUNICIPAL SCHOOLS may choose to conduct the IEP Team meeting without that individual's attendance to avoid rescheduling the meeting. (See OSEP Redacted Letter (March 31, 2008)) If CAPITAN MUNICIPAL SCHOOLS wishes to invite officials from another agency, CAPITAN MUNICIPAL SCHOOLS will obtain parental consent for the

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(Authority: 20 U.S.C. 1414(d)(1)(B)–(d)(1)(D))		individual to participate in the IEP Team meeting because confidential information about the child from the child's education records will be shared at the meeting. (See 71 Fed. Reg. 46669 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will invite a child with a disability to attend the child's IEP Team 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, regardless of whether the child has reached the age of majority. However, for children who have not reached the age of majority under New Mexico law, if the parent requests that the student not attend, CAPITAN MUNICIPAL SCHOOLS will honor that request and take other steps to ensure that the child's preferences and interests are considered. If possible, CAPITAN MUNICIPAL SCHOOLS will discuss the appropriateness of the child's participation before a decision is made, in order to help the parent determine whether or not the child's attendance would be helpful in developing the IEP or directly beneficial to the child, or both. (See 71 Fed. Reg. 46671 (August 14, 2006)) The decision of whether it would be appropriate to invite other agencies rests with CAPITAN MUNICIPAL SCHOOLS and the parent or the adult student, provided that the parent or the adult student consents to the invitation. If the parent or the adult student refuses to consent to invite a representative of a participating agency that is likely to be responsible for providing or paying for transition services to a child's IEP Team meeting where transition will be considered, CAPITAN MUNICIPAL SCHOOLS may not invite a representative of that agency to attend the child's IEP Team meeting. (See OSEP Letter to Caplan (March 17, 2008)) In determining whether to invite another agency to an IEP Team meeting, CAPITAN MUNICIPAL SCHOOLS will consider such factors as whether a purpose of the IEP Team meeting will be the consideration of the postsecondary goals for the child

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		and the transition services needed to assist the child in reaching those goals; whether there is a participating agency, other than the public agency responsible for providing a FAPE to the child, that is likely to be responsible for providing or paying for the child's transition services; and whether consent of the parents or adult student has been provided for the other agency's participation at the IEP Team meeting. (See OSEP Letter to Caplan (March 17, 2008)) Allowing required 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. (See 71 Fed. Reg. 46673 (August 14, 2006)) There is nothing in the IDEA that would limit the number of IEP Team members who may be excused from attending an IEP Team meeting, so long as CAPITAN MUNICIPAL SCHOOLS meets the requirements that govern when required IEP Team members can be excused from attending IEP Team meetings in whole or in part. (See OSERS Q/A on IEPs, Evaluations, and Reevaluations (Revised September 2011), Q/A C-2) IDEA requires different procedures for different types of excusals, including differentiating 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. Therefore, CAPITAN MUNICIPAL SCHOOLS has different procedures in place for the different types of excusals. (See 71 Fed. Reg. 46673 (August 14, 2006)) The two types of excusals triggering the excusal requirements are: (1) when a required IEP Team member's area of the curriculum or related service is not being modified or discussed; and (2) when a required IEP Team member's area of the curriculum or related service is being modified or discussed.

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		With the first type of excusal, parent and CAPITAN MUNICIPAL SCHOOLS agreement is required. CAPITAN MUNICIPAL SCHOOLS is given wide latitude about the content of the agreement to excuse a required IEP Team member from the meeting. (See 71 Fed. Reg. 46674 (August 14, 2006)) With the second type of excusal, parent consent is required. CAPITAN MUNICIPAL SCHOOLS will ensure that all of the IDEA consent requirements are satisfied including by providing 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 service 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. (See 71 Fed. Reg. 46674 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS does not specify how far in advance of an IEP Team meeting CAPITAN MUNICIPAL SCHOOLS must notify a parent of the school district's request to excuse an IEP Team member from attending the IEP Team meeting. Further, CAPITAN MUNICIPAL SCHOOLS does not specify when the parent agree in writing that the IEP Team member's attendance is not necessary (type 1 excusal), or when the parent must provide written consent regarding the IEP Team member's excusal (type 2 excusal). CAPITAN MUNICIPAL SCHOOLS believes that requiring the request for excusal, or the written agreement (type 1 excusal) or written consent (type 2 excusal), to occur at a particular time prior to an IEP Team meeting would not account for situations where it would be impossible to meet the timeline (e.g., when an IEP Team member has an emergency). Thus, requiring specific timelines could impede Congressional intent to provide this additional flexibility. (See OSERS Q/A on IEPs, Evaluations, and Reevaluations (Revised September 2011), Q/A C-5)

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§ 300.322 Parent participation.		
(a) *Public agency responsibility— general.* Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including— (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. (b) *Information provided to parents.* (1) The notice required under paragraph (a)(1) of this section must— (i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and § 300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act). (2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must—	**6.31.2.11 NMAC. 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 public agency 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. **6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** C. Parent and student participation in meetings. Each public agency shall afford the parents of a child with a disability and, as appropriate, the child, an opportunity to participate in meetings with respect to the identification, evaluation and educational placement or the provision of FAPE to the child, in compliance with 34 CFR Secs. 300.322, 300.501(b) and (c), and any other applicable requirements of these or other department rules and standards. D. Notice requirements. (1) Notice of meetings. Each public agency shall provide the parents of a child with a disability with advance written notice that complies with 34 CFR Sec. 300.322 for IEP meetings and any other meetings in	CAPITAN MUNICIPAL SCHOOLS takes steps to ensure that one or both parents are present at each meeting, including notifying parents of the meeting early enough to ensure that they have an opportunity to attend, and scheduling the meeting at a mutually agreed-on time and place. CAPITAN MUNICIPAL SCHOOLS officials determine how far in advance parents must be notified of a meeting. CAPITAN MUNICIPAL SCHOOLS uses ten days advanced notice as a guide. However, the amount of advanced notice and level of effort shall be appropriate to the situation and based on a number of factors, including, for example, the distance parents typically have to travel to the meeting location, known parent work schedule challenges, and the availability of childcare. The goal of CAPITAN MUNICIPAL SCHOOLS is to ensure parent participation in the IEP Team meeting, and the actions of CAPITAN MUNICIPAL SCHOOLS will be consistent with the goal. (See 71 Fed. Reg. 46678 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS understands that the meeting must be held at a mutually agreed on time and place. CAPITAN MUNICIPAL SCHOOLS is responsive to the parents' scheduling needs. However, the IDEA does not require that CAPITAN MUNICIPAL SCHOOLS schedule IEP Team meetings in the evenings. CAPITAN MUNICIPAL SCHOOLS schedules meetings of the IEP Team only during regular school hours or regular business hours because these times are most suitable for CAPITAN MUNICIPAL SCHOOLS personnel to attend these meetings. (See OSEP Letter to Thomas (June 3, 2008)) CAPITAN MUNICIPAL SCHOOLS will document its efforts to ensure that one or both parents are present at the meeting, and maintain such documentation in the

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(i) Indicate— (A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with § 300.320(b); and (B) That the agency will invite the student; and (ii) Identify any other agency that will be invited to send a representative. (c) *Other methods to ensure parent participation.* If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328 (related to alternative means of meeting participation). (d) *Conducting an IEP Team meeting without a parent in* attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as— (1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses received; and (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits. (e) *Use of interpreters or other action, as* appropriate. The public agency must take whatever action is	which the parent has a right to participate pursuant to 34 CFR Sec. 300.501. … E. Communications in understandable language. Pursuant to 34 CFR Secs. 300.9(a), 300.322(e), 300.503(c) and 300.504(d), each public agency must communicate with parents in understandable language, including the parent's native language or other mode of communication, unless it is clearly not feasible to do so, if necessary for understanding, in IEP meetings, in written notices and in obtaining consent where consent is required.	child's special education folder. CAPITAN MUNICIPAL SCHOOLS will encourage and arrange alternative forms of participation if the parent is unable to attend. If the parent is unable to attend or participate through an alternative means (such as telephone conference), CAPITAN MUNICIPAL SCHOOLS will provide the parent with a Prior Written Notice of Proposed Actions and a copy of the IEP.

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necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. (f) *Parent copy of child's IEP.* The public agency must give the parent a copy of the child's IEP at no cost to the parent. (Authority: 20 U.S.C. 1414(d)(1)(B)(i))		

§ 300.323 When IEPs must be in effect.		
(a) *General.* At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320. (b) *IEP or IFSP for children aged three through five*. (1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two- year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is— (i) Consistent with State policy; and	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** A. Preschool programs for children aged 3 through 5. (1) Each public agency shall ensure that a free appropriate public education is available for each preschool child with a disability within its educational jurisdiction no later than the child's third birthday and that an individualized education program (IEP) under Part B or an individual family services plan (IFSP) under Part C of the IDEA is in effect by that date in compliance with 34 CFR Secs. 300.101, 300.124 and 300.323(b). … (5) In particular: … (g) Development of IFSP, IEP or IFSP-IEP. (i) The IFSP, IEP, or IFSP-IEP will be developed by a team constituted in compliance with 34 CFR Sec. 300.321 that includes parents. For children transitioning from Part C programs to Part B programs, the team must also include	Through timely IEP development, coordination and planning, CAPITAN MUNICIPAL SCHOOLS will ensure that IEPs are in effect for each child with a disability at the beginning of the school year. CAPITAN MUNICIPAL SCHOOLS will develop an IFSP rather than an IEP for children aged three through five only if the parent chooses an IFSP and consents to using the IFSP. The NM Department of Health has developed Model IFSP (English) and (Spanish) forms available through the Department of Health website. CAPITAN MUNICIPAL SCHOOLS will ensure that the child's IEP is 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 is to ensure that teachers and providers understand their specific responsibilities for implementing an IEP, including any accommodations or supports that may be needed. The mechanism that CAPITAN MUNICIPAL SCHOOLS uses to inform each teacher or provider of his or her responsibilities is left to the discretion of CAPITAN MUNICIPAL SCHOOLS. (See 71 Fed. Reg. 46681 (August 14, 2006))

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Federal Regulations	New Mexico Rules	Procedures
(ii) Agreed to by the agency and the child's parents. (2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must— (i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and (ii) If the parents choose an IFSP, obtain written informed consent from the parents. (c) *Initial IEPs; provision of services.* Each public agency must 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; and (2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. (d) *Accessibility of child's IEP to teachers and others.* Each public agency must ensure that— (1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any 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	one or more early intervention providers who are knowledgeable about the child. "Early intervention providers" are defined as Part C service coordinators or other representatives of the Part C system. (ii) For each child transitioning from a Part C program to a Part B preschool program, the LEA shall initiate a meeting to develop the eligible child's IFSP, IEP or IFSP-IEP, in accordance with 34 CFR Sec. 300.124. The IFSP, IEP or IFSP must be developed and implemented no later than the child's third birthday, consistent with 34 CFR Sec. 300.101(b). ... 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 a new public agency in New Mexico, and enrolls in a new school within the same school year the new public agency must 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	In CAPITAN MUNICIPAL SCHOOLS, the IEP designates the individual responsible for informing teachers and other services providers of their responsibilities for implementation of an IEP. Additionally, CAPITAN MUNICIPAL SCHOOLS has regular education teachers sign receipt for the IEP, or applicable portions of the IEP. When referring to comparable services to be provided to a child who transfers to CAPITAN MUNICIPAL SCHOOLS from a previous school district in New Mexico (or from another State), pending the development of a new IEP, CAPITAN MUNICIPAL SCHOOLS interprets "comparable services" to mean "similar" or "equivalent" services to those that were described in the child's IEP from the previous school district. (See 71 Fed. Reg. 46681 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will not deny special education and related services to a transfer student with an IEP pending the development of a new IEP. Instead, CAPITAN MUNICIPAL SCHOOLS will provide comparable services to a transfer student with an IEP upon enrollment. (See OSERS Q/A on IEPs, Evaluations, and Reevaluations (Revised September 2011), Q/A A-3) For a transfer student receiving comparable services, CAPITAN MUNICIPAL SCHOOLS will take steps to conduct an IEP Team meeting within a reasonable period of time to either adopt the IEP from the previous school district or develop and implement a new IEP, so as to avoid any undue interruption in the provision of required special education and related services. (See OSERS Q/A on IEPs, Evaluations, and Reevaluations (Revised September 2011), Q/A A-4) If a child who transfers to CAPITAN MUNICIPAL SCHOOLS from within New Mexico has an IEP that is not current, the CAPITAN MUNICIPAL SCHOOLS in consultation with the parents will provide services comparable to those described in the child's IEP, until the IEP Team meets and either (1) adopts the child's IEP

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Federal Regulations	New Mexico Rules	Procedures
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. (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	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. … K. Children in detention and correctional facilities … (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	from the previous NM school district; or (2) develops, adopts, and implements a new IEP. (See OSERS Q/A on IEPs, Evaluations, and Reevaluations (Revised September 2011), Q/A A-1) If, after taking reasonable steps to obtain the records for a child who transfers to CAPITAN MUNICIPAL SCHOOLS from out of state, CAPITAN MUNICIPAL SCHOOLS is not able to obtain the IEP from the previous school district or from the parent, CAPITAN MUNICIPAL SCHOOLS is not required to provide special education and related services to the child. (See OSERS Q/A on IEPs, Evaluations, and Reevaluations (Revised September 2011), Q/A A-2) When CAPITAN MUNICIPAL SCHOOLS learns that a child with a disability has transferred to another public school, CAPITAN MUNICIPAL SCHOOLS will take reasonable steps to promptly respond to a request for records from the public school in which the child has enrolled.

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requirements in §§ 300.320 through 300.324. (g) *Transmittal of records.* To facilitate the transition for a child described in paragraphs (e) 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: 20 U.S.C. 1414(d)(2)(A)–(C))	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.	

Development of IEP		
§ 300.324 Development, review, and revision of IEP.		
(a) *Development of IEP*— (1) G*eneral.* 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;	**6.31.2.11 NMAC. 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	CAPITAN MUNICIPAL SCHOOLS 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. CAPITAN MUNICIPAL SCHOOLS will ensure that the IEP Team gathers appropriate information upon which to base development of an IEP, including information from the parents.

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(iii) The results of the initial or most recent evaluation of the child; and (iv) The academic, developmental, and functional needs of the child. (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; (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; (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; (iv) 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	in the IEP meeting to document their attendance. Written notice of actions proposed or refused by the public agency shall 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. (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 public agency 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 public agency must ensure that the child's IEP team is informed of those changes. (5) For students with autism spectrum disorders (ASD) eligible for special education services under 34 CFR Sec. 300.8(c)(1), the strategies described in Subparagraphs (a)-(k) of this paragraph shall be considered by the IEP team in developing the IEP for the student. The IEP team shall document consideration of the strategies. The strategies must be based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed to provide FAPE, addressed in the IEP:	When considering the special factor of behavior, CAPITAN MUNICIPAL SCHOOLS expects the IEP Team to focus on interventions and strategies to address the needs of a child whose behavior impedes the child's learning or that of others. While conducting a functional behavioral assessment (FBA) typically precedes developing positive behavioral intervention strategies, the IEP Team should make an individualized determination of whether a functional behavioral assessment is needed. CAPITAN MUNICIPAL SCHOOLS emphasizes a proactive approach to behaviors that interfere with learning. (See 71 Fed. Reg. 46683 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will conduct a FBA as needed to address the behavioral concerns of a child whose behavior interferes with learning and as required in the disciplinary context. (See 71 Fed. Reg. 46721 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS, by reference in these procedures, and through staff development (as appropriate), shall provide training and disseminate information to appropriate personnel regarding research-based positive behavioral interventions and supports, and other strategies, including on-line information available through the National Technical Assistance Center on Positive Behavioral Interventions and Supports (PBIS). The NMPED has issued a guidance document titled, Addressing Student Behavior: A Guide for Educators (updated November 2010), available through the NMPED website. CAPITAN MUNICIPAL SCHOOLS, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document. CAPITAN MUNICIPAL SCHOOLS, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of the Board's Policy and School Safety Plan (applicable to all students including students with disabilities) implementing NMSA 1978, § 22-5-4.12 (2017) [H.B.

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instruction in the child's language and communication mode; and (v) Consider whether the child needs assistive technology devices and services (3) Requirement *with respect to regular education teacher.* A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development 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). (4) *Agreement*. (i) 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 public agency 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. (ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child's IEP Team is informed of those changes. (5) *Consolidation of IEP Team meetings.* To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team	(a) extended educational programming, including, for example, extended day or extended school year services that consider the duration of programs or settings based on assessment of behavior, social skills, communication, academics, and self-help skills; (b) daily schedules reflecting minimal unstructured time and active engagement in learning activities, including, for example, lunch, snack, and recess periods that provide flexibility within routines, adapt to individual skill levels, and assist with schedule changes, such as changes involving substitute teachers and other in-school extracurricular activities; (c) in-home and community-based training or viable alternatives to such training that assist the student with acquisition of social or behavioral skills, including, for example, strategies that facilitate maintenance and generalization of such skills from home to school, school to home, home to community, and school to community; (d) positive behavior support strategies based on relevant information, including, for example: (i) antecedent manipulation, replacement behaviors, reinforcement strategies, and data-based decisions; and (ii) a behavioral intervention plan focusing on positive behavior supports and developed from a functional behavioral assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings; (e) futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments;	75] to ensure that Board Policies and School Safety Plan is followed whenever a student with a disability is restrained or secluded. The U.S. Department of Education has issued a guidance document, Restraint and Seclusion: Resource Document (May 15, 2012), available through the U.S. Department of Education website. CAPITAN MUNICIPAL SCHOOLS, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance. CAPITAN MUNICIPAL SCHOOLS will ensure that the IEP Team addresses the language and communication needs of each child with a disability regardless of the category of disability. CAPITAN MUNICIPAL SCHOOLS 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. For a child who is blind or visually impaired, CAPITAN MUNICIPAL SCHOOLS 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, CAPITAN MUNICIPAL SCHOOLS will ensure that the IEP provides for instruction in Braille or the use of Braille, as appropriate. CAPITAN MUNICIPAL SCHOOLS 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. With respect to students with autism spectrum disorders (ASD), CAPITAN MUNICIPAL SCHOOLS will ensure

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meetings for the child. (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. (b) *Review and revision of IEPs*— (1) *General.* Each public agency must ensure that, subject to paragraphs (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. (2) *Consideration of special factors.* In conducting a review of the child's IEP, the IEP Team must	(f) parent or family training and support, provided by qualified personnel with experience in ASD, that, for example: (i) provides a family with skills necessary for a child to succeed in the home or community setting; (ii) includes information regarding resources such as parent support groups, workshops, videos, conferences, and materials designed to increase parent knowledge of specific teaching and management techniques related to the child's curriculum; and (iii) facilitates parental carryover of in-home training, including, for example, strategies for behavior management and developing structured home environments or communication training so that parents are active participants in promoting the continuity of interventions across all settings; (g) suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social or behavioral progress based on the child's developmental and learning level and that encourages work towards individual independence as determined by, for example: (i) adaptive behavior evaluation results; (ii) behavioral accommodation needs across settings; and (iii) transitions within the school day; (h) communication interventions, including communication modes and functions that enhance effective communication across settings such as augmentative, incidental, and naturalistic teaching; (i) social skills supports and strategies based on social skills assessment or curriculum and provided across settings, including, for example,	that the IEP team consider and document its consideration of the 11 strategies, address the strategy or strategies in the IEP when needed to provide a FAPE. The NMPED has defined each of the strategies in a document titled, "IEP Considerations for Students with Autism Spectrum Disorders" available through the NMPED website. CAPITAN MUNICIPAL SCHOOLS, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of the NMPED definitions document. CAPITAN MUNICIPAL SCHOOLS will ensure that promotion and retention decisions affecting a student enrolled in special education are made in accordance with the provisions of the IEP established for that student. IDEA does not require an agreement between the parent and CAPITAN MUNICIPAL SCHOOLS to amend an IEP without a meeting to be in writing. In addition, the parent is not required to provide consent to amend the IEP without an IEP Team meeting. However, CAPITAN MUNICIPAL SCHOOLS will document the terms of the agreement in writing. Moreover, the changes to the child's IEP must be in writing. (See 71 Fed. Reg. 46685 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will provide the parent with prior written notice of the amendments to the IEP. (See OSERS Q/A on IEPs, Evaluations, and Reevaluations (Revised September 2011), Q/A C-10) If the parent needs further information about the proposed amendment to the IEP 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 CAPITAN MUNICIPAL SCHOOLS's request to amend the IEP without an IEP Team meeting. Whenever the CAPITAN MUNICIPAL SCHOOLS proposes to amend an IEP without a meeting, CAPITAN MUNICIPAL SCHOOLS will ensure that the parent understands that the parent can choose not to agree, and

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consider the special factors described in paragraph (a)(2) of this section. (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. (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. (2) *Construction.* Nothing in this part relieves any participating agency, including a State 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. (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 section 612(a)(16) of the Act and § 300.320(a)(6) (relating to participation of children with disabilities in general assessments). (ii) The requirements in § 300.320(b)	trained peer facilitators, video modeling, social stories, and role playing; (j) professional educator and staff support, including, for example, training provided to personnel who work with the student to assure the correct implementation of techniques and strategies described in the IEP; and (k) teaching strategies based on peer reviewed, research-based practices for students with ASD, including, for example, those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, and social skills training. … F. Behavioral management and discipline. (1) Behavioral planning in the IEP. Pursuant to 34 CFR Sec. 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. … K. Children in detention and correctional facilities … (4) FAPE for eligible students in juvenile or adult detention or correctional facilities shall be made	instead have an IEP Team meeting. (See 71 Fed. Reg. 46685 (August 14, 2006)) The IDEA is silent as to which individuals must participate in making changes to the IEP where there is agreement between the parent and the CAPITAN MUNICIPAL SCHOOLS not to convene an IEP Team meeting for the purpose of making the changes. (See OSERS Q/A on IEPs, Evaluations, and Reevaluations (Revised September 2011), Q/A C-9) While IDEA does not specify the manner in which CAPITAN MUNICIPAL SCHOOLS must document that it has ensured that the child's IEP Team is informed of an amendment to the IEP, CAPITAN MUNICIPAL SCHOOLS will maintain records to show compliance with this program requirement. (See OSERS Q/A on IEPs, Evaluations, and Reevaluations (Revised September 2011), Q/A C-8; see also, 71 Fed. Reg. 46686 (August 14, 2006)) After the annual IEP Team meeting has been held for a school year, CAPITAN MUNICIPAL SCHOOLS does permit amendments to the IEP without an IEP Team meeting if the parent and school agree. However, CAPITAN MUNICIPAL SCHOOLS does not permit amendments without a meeting after the annual IEP Team meeting for the following actions: (1) a change in eligibility; (2) a decision to terminate eligibility for special education services (including through graduation); (3) a change in placement; or (4) a manifestation determination. CAPITAN MUNICIPAL SCHOOLS will ensure that an IEP Team meeting is held within two weeks of each use of restraint or seclusion after the second use within a thirty-calendar-day period to provide recommendations for avoiding future incidents requiring the use of restraint or seclusion as required by NMSA 1978, § 22-5-4.12 (2017) [H.B. 75], Board Policy and the CAPITAN MUNICIPAL SCHOOLS's Safety Plan.

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(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 (d)(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: 20 U.S.C. 1412(a)(1), 1412(a)(12)(A)(i), 1414(d)(3), (4)(B), and (7); and 1414(e))	available in programs that are to the security requirements of each facility and eligible suited 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. **NMSA 1978, § 22-5-4.12 (2017) [H.B. 75]. Limiting the Use Of Restraint And Seclusion In Schools; Providing for Notice To Parents** A. A school may permit the use of restraint or seclusion techniques on any student only if both of the following apply: (1) the student's behavior presents an imminent danger of serious physical harm to the student or others; and (2) less restrictive interventions appear insufficient to mitigate the imminent danger of serious physical harm. B. If a restraint or seclusion technique is used on a student: (1) school employees shall maintain continuous visual observation and monitoring of the student while the restraint or seclusion technique is in use; (2) the restraint or seclusion technique shall end when the student's behavior no longer presents an imminent danger of serious physical harm to the student or others; (3) the restraint or seclusion technique shall be used only by school employees who are trained in the safe and effective use of restraint and seclusion techniques unless an emergency situation does not allow sufficient time to summon those trained school employees; (4) the restraint technique employed shall not impede the student's ability to breathe or speak; and (5) the	In order to ensure timely IEP Team meetings, CAPITAN MUNICIPAL SCHOOLS has systems in place to track timelines for the initial IEP Team meeting and the annual IEP Team meeting. CAPITAN MUNICIPAL SCHOOLS will begin its planning and preparation for an IEP Team meeting (including notice to the parent) early enough to ensure a timely meeting.

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	restraint technique shall not be out of proportion to the student's age or physical condition. … D. Schools shall establish reporting and documentation procedures to be followed when a restraint or seclusion technique has been used on a student. The procedures shall include the following provisions: (1) a school employee shall provide the student's parent or guardian with written or oral notice on the same day that the incident occurred, unless circumstances prevent same-day notification. If the notice is not provided on the same day of the incident, notice shall be given within twenty-four hours after the incident; (2) within a reasonable time following the incident, a school employee shall provide the student's parent or guardian with written documentation that includes information about any persons, locations or activities that may have triggered the behavior, if known, and specific information about the behavior and its precursors, the type of restraint or seclusion technique used and the duration of its use; and (3) schools shall review strategies used to address a student's dangerous behavior if use of restraint or seclusion techniques for an individual student has occurred two or more times during any thirty-calendar-day period. The review shall include: (a) a review of the incidents in which restraint or seclusion techniques were used and an analysis of how future incidents may be avoided, including whether the student requires a functional behavioral assessment; and (b) a meeting of the student's individualized education program team, behavioral intervention plan team or student assistance team within two weeks of each use of restraint or seclusion after the second use within a thirty-calendar-day period to provide	

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	recommendations for avoiding future incidents requiring the use of restraint or seclusion. **NMSA 1978, § 22-2C-6. Remediation programs; promotion policies; restrictions**… I. Promotion and retention decisions affecting a student enrolled in special education shall be made in accordance with the provisions of the individual educational plan established for that student.	

§ 300.325 Private school placements by public agencies.		
(a) *Developing IEPs.* (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with §§300.320 and 300.324. (2) The agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls. (b) *Reviewing and revising IEPs.* (1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency. (2) If the private school or facility initiates and conducts these meetings, the public agency		Even after a private school or facility implements a child's IEP, CAPITAN MUNICIPAL SCHOOLS retains responsibility for compliance with Part B of the Act. (See 71 Fed. Reg. 46687 (August 14, 2006))

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must ensure that the parents and an agency representative— (i) Are involved in any decision about the child's IEP; and (ii) Agree to any proposed changes in the IEP before those changes are implemented. (c) *Responsibility.* Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA. (Authority: 20 U.S.C. 1412(a)(10)(B))		

§ 300.326 [Reserved]		

§ 300.327 Educational placements.		
Consistent with § 300.501(c), each public agency must 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: 20 U.S.C. 1414(e))		In New Mexico, the IEP Team is the group that makes decisions on the educational placement of a child with disabilities under IDEA. CAPITAN MUNICIPAL SCHOOLS will utilize the same process for determining the educational placement for children with low-incidence disabilities (including children who are deaf, hard of hearing, or deaf-blind), as used for determining the educational placement for all children with disabilities. That is, each child's educational placement will be determined on an individual case-by case basis depending on each child's unique educational needs and circumstances, rather than by the child's category of disability, and will be based on the child's IEP. (See 71 Fed. Reg. 46586 (August 14, 2006))

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		CAPITAN MUNICIPAL SCHOOLS does not consider maintaining a child's placement in an educational program that is substantially and materially similar to the former placement to be a change in placement. (See 71 Fed. Reg. 46588-89 (August 14, 2006)) A parent will be given prior written notice within a reasonable time before CAPITAN MUNICIPAL SCHOOLS implements a proposal or refusal to initiate or change the identification, evaluation or education placement of the child, or the provision of a FAPE to the child. (See 71 Fed. Reg. 46588(August 14, 2006))

§ 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 a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls. (Authority: 20 U.S.C. 1414(f))		CAPITAN MUNICIPAL SCHOOLS may utilize electronic mail as an alternative means of meeting participation. (See 71 Fed. Reg. 4658 (August 14, 2006)) If CAPITAN MUNICIPAL SCHOOLS incurs costs as a result of using an alternative means of meeting participation so the parents may participate, CAPITAN MUNICIPAL SCHOOLS is responsible for all the costs. (See 71 Fed. Reg. 46587 (August 14, 2006))

SUBPART E—PROCEDURAL SAFEGUARDS		
DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN		
§ 300.500 Responsibility of SEA and other public agencies.		
Each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§ 300.500 through 300.536.	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:**	CAPITAN MUNICIPAL SCHOOLS understands the importance that the IDEA places on procedural safeguards, and assures that it has established through its policies and procedures a system of procedural

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(Authority: 20 U.S.C. 1415(a))	A. General responsibilities of public agencies. Each public agency shall establish, implement and maintain procedural safeguards that meet the requirements of 34 CFR Secs. 300.500-300.536, and all other applicable requirements of these or other department rules and standards.	safeguards, and that its system is being implemented and maintained through monitoring and training.

§ 300.501 Opportunity to examine records; parent participation in meetings.		
(a) *Opportunity to examine records.* The parents of a child with a disability must be afforded, in accordance with the procedures of §§ 300.613 through 300.621, an opportunity to inspect and review all education records with respect to— (1) The identification, evaluation, and educational placement of the child; and (2) The provision of FAPE to the child. (b) *Parent participation in meetings.* (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to— (i) The identification, evaluation, and educational placement of the child; and (ii) The provision of FAPE to the child. (2) Each public agency must provide notice consistent with § 300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** B. Examination of records. Each public agency shall afford the parents of a child with a disability an opportunity to inspect and review all education records related to the child in compliance with 34 CFR Secs. 300.501(a), 300.613-300.620, 34 CFR Part 99, and any other applicable requirements of these or other department rules and standards. C. Parent and student participation in meetings. Each public agency shall afford the parents of a child with a disability and, as appropriate, the child, an opportunity to participate in meetings with respect to the identification, evaluation and educational placement or the provision of FAPE to the child, in compliance with 34 CFR Secs. 300.322, 300.501(b) and (c), and any other applicable requirements of these or other department rules and standards. D. Notice requirements. (1) Notice of meetings. Each public agency shall provide the parents of a child with a disability with advance written notice that complies with 34 CFR Sec. 300.322 for IEP meetings and any other meetings in which the parent has a right to participate pursuant to 34 CFR Sec. 300.501.	CAPITAN MUNICIPAL SCHOOLS assures that parents are afforded the opportunity to inspect and review records and participate in meetings.

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described in paragraph (b)(1) of this section. (3) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting. (c) *Parent involvement in placement decisions.* (1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child. (2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in §300.322(a) through (b)(1). (3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. (4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement. (Authority: 20 U.S.C. 1414(e), 1415(b)(1))		

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§ 300.502 Independent educational evaluation.		
(a) *General.* (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section. (2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section. (3) For the purposes of this subpart— (i) *Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and (ii) *Public expense* means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §300.103. (b) *Parent right to evaluation at public expense.* (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section. (2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—	**6.31.2.10 NMAC. IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:** D. Evaluations and Reevaluations. … (2) Reevaluations … (f) The parents of a child with a disability who disagree with an evaluation obtained by the public agency have the right to obtain an independent educational evaluation of the child at public expense pursuant to 34 CFR Sec. 300.502.	The IEP Team will consider any IEE, whether paid for privately by the parent, or publicly by CAPITAN MUNICIPAL SCHOOLS, that meets CAPITAN MUNICIPAL SCHOOLS's criteria. A parent may request an IEE at CAPITAN MUNICIPAL SCHOOLS's expense if the parent disagrees with an evaluation obtained by CAPITAN MUNICIPAL SCHOOLS. When a parent requests an IEE at CAPITAN MUNICIPAL SCHOOLS's expense, the CAPITAN MUNICIPAL SCHOOLS must, without unnecessary delay, either initiate a due process hearing to show that its evaluation is appropriate; or ensure that an IEE is provided at CAPITAN MUNICIPAL SCHOOLS's expense, unless the CAPITAN MUNICIPAL SCHOOLS demonstrates at a hearing that the evaluation obtained by the parent did not meet district criteria. Only one IEE may be reimbursed for each evaluation obtained by CAPITAN MUNICIPAL SCHOOLS. This would include the three-year reevaluation or reevaluations conducted more frequently. If CAPITAN MUNICIPAL SCHOOLS has not conducted an evaluation, the parent does not have a right to an IEE at CAPITAN MUNICIPAL SCHOOLS's expense. If the parent requests an IEE at CAPITAN MUNICIPAL SCHOOLS's expense prior to the completion of the CAPITAN MUNICIPAL SCHOOLS's evaluation, the CAPITAN MUNICIPAL SCHOOLS may deny the request without initiating a due process hearing. (See OSEP Letter to Zirkel (2008)) When CAPITAN MUNICIPAL SCHOOLS conducts an evaluation and a parent disagrees with the evaluation because a child was not assessed in a particular area, the parent has the right to request an IEE to assess the child in that area to determine whether the child has a disability and the nature and extent of the special

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(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. (3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. (4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation. (5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees. (c) *Parent-initiated evaluations.* If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation— (1) Must be considered by the public agency, if it meets agency criteria, in any decision made		education and related services that child needs. (See OSEP Letter to Baus (2015)) The right of a parent to obtain an IEE at CAPITAN MUNICIPAL SCHOOLS's expense is triggered if the parent disagrees with a CAPITAN MUNICIPAL SCHOOLS initiated evaluation. Therefore, if a parent refuses to consent to a proposed CAPITAN MUNICIPAL SCHOOLS's evaluation, then an IEE at CAPITAN MUNICIPAL SCHOOLS's expense would not be available since there would be no CAPITAN MUNICIPAL SCHOOLS evaluation with which the parent can disagree. The CAPITAN MUNICIPAL SCHOOLS may ask but may not require the parent to state the reasons for the disagreement. A hearing officer or a court may find that there was no underlying disagreement with the evaluation, and therefore the parent is not entitled to an IEE at CAPITAN MUNICIPAL SCHOOLS's expense. CAPITAN MUNICIPAL SCHOOLS will notify the parent within a reasonable time of its decision to either pay for the IEE or request a due process hearing. Parents are encouraged to contact the Special Education Director prior to obtaining an IEE to obtain approval and assistance in ensuring that the criteria are met. Parents may also make their request known by informing the IEP Team in an IEP Team meeting. CAPITAN MUNICIPAL SCHOOLS's representative of the IEP Team should promptly notify the Special Education Director of the parent's request. Parents who obtain an IEE and later seek reimbursement risk a finding by a hearing officer that the IEE did not meet CAPITAN MUNICIPAL SCHOOLS criteria, and therefore, does not have to be reimbursed by CAPITAN MUNICIPAL SCHOOLS. Upon request for an IEE, CAPITAN MUNICIPAL SCHOOLS will provide to the parent information on where an IEE may be obtained (list of qualified evaluators). However, the list may not be exhaustive.

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with respect to the provision of FAPE to the child; and (2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child. (d) *Requests for evaluations by hearing officers.* If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense. (e) *Agency criteria*. (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. (2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. (Authority: 20 U.S.C. 1415(b)(1) and (d)(2)(A))		Therefore, parents are free to select whomever they choose to perform the IEE so long as the evaluator meets the CAPITAN MUNICIPAL SCHOOLS's criteria. The criteria for obtaining an IEE at CAPITAN MUNICIPAL SCHOOLS's expense, including the location of the evaluation and the qualifications of the examiner, are the same criteria that CAPITAN MUNICIPAL SCHOOLS uses when it conducts its own evaluation. The following constitute the CAPITAN MUNICIPAL SCHOOLS's criteria which must be followed: <u>The Evaluator</u> (1) The evaluator conducting an IEE of a child with a disability at public expense must be located within a 150-mile radius of the District. (2) Evaluators must possess current NM licensure/certification. The components of an evaluation must be administered, reviewed, and/or gathered by personnel licensed by the State of New Mexico and/or the NMPED to complete or collect each of the components respectively. For instance, individualized assessments of cognitive/intellectual ability must be administered by NMPED-licensed Educational Diagnosticians or New Mexico-licensed Psychologists. (See 71 Fed. Reg. 46689 (August 14, 2006)) (3) Evaluators must be trained and qualified to administer the specific tests and other evaluation materials in conformance with the instructions provided by the producer. <u>The Evaluation</u> (1) Evaluations must comply with all requirements specified in State and federal law. (2) The evaluation must be completed a reasonable time after CAPITAN MUNICIPAL SCHOOLS approves the IEE. (3) The content of the evaluation report must comply with all requirements of State and federal law, board policy, and these administrative procedures (using

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		the CAPITAN MUNICIPAL SCHOOLS's format or alternatively the New Mexico T.E.A.M. format for evaluation, or containing the same information). (4) The independent evaluator is requested to furnish a typed evaluation report to the CAPITAN MUNICIPAL SCHOOLS in advance of the IEP Team meeting at which the report will be considered by the student's IEP Team. (5) The report must include an original signature, title of all evaluation personnel involved in the evaluation, and licensure(s)/certification(s) of each evaluator, including license/certification number(s). (6) Protocols must be available for review. <u>The Cost</u> (1) CAPITAN MUNICIPAL SCHOOLS will pay a fee for an IEE that allows a parent to choose from among qualified professionals in the area. (2) CAPITAN MUNICIPAL SCHOOLS will not pay unreasonably excessive fees. An unreasonably excessive fee is one that is three percent above the prevailing rate in the area for the specific test or type of evaluation (3) When service providers have a sliding scale fee based on parent income, CAPITAN MUNICIPAL SCHOOLS will pay the amount charged to the parent. (4) Reimbursement rates for travel costs for examiners will not exceed CAPITAN MUNICIPAL SCHOOLS's rates for travel as established by CAPITAN MUNICIPAL SCHOOLS policy or guidelines. CAPITAN MUNICIPAL SCHOOLS will not cash advance any travel costs. <u>Steps to be followed by Parents Requesting an IEE at Public Expense and Obtaining Direct Payment or Reimbursement</u> Parents obtaining an IEE without following CAPITAN MUNICIPAL SCHOOLS's criteria risk non-payment. The following steps are designed to ensure an IEE that meets CAPITAN MUNICIPAL SCHOOLS's criteria and safeguard against non-payment.

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		(1) Parents are encouraged to provide the name and address of the evaluator in advance of the IEE to enable the CAPITAN MUNICIPAL SCHOOLS to check the evaluator's certification/licensure and contract directly with the evaluator. (2) If the parent selects an evaluator that is not on CAPITAN MUNICIPAL SCHOOLS's list of qualified evaluators, the parent is encouraged to submit the name and vitae of the evaluator to the Special Education Director in advance of obtaining the IEE in order that CAPITAN MUNICIPAL SCHOOLS may notify the parent regarding whether the evaluator is qualified to perform the IEE. (3) Payment will be made directly to the evaluator following receipt of an IEE that meets CAPITAN MUNICIPAL SCHOOLS's criteria. (4) In the event that a parent pursues an IEE without following steps (1)-(3), an original billing statement must be submitted to CAPITAN MUNICIPAL SCHOOLS and all criteria must be met, including the receipt of a written report by the independent evaluator that meets CAPITAN MUNICIPAL SCHOOLS's criteria, prior to direct payment or reimbursement. (5) If a parent believes that an IEE that falls outside of the CAPITAN MUNICIPAL SCHOOLS's criteria is justified by the child's unique circumstances, the parent must request a waiver of the criteria with a description of the unique circumstances that justify an IEE that does not meet CAPITAN MUNICIPAL SCHOOLS's criteria. The CAPITAN MUNICIPAL SCHOOLS will consider any such request. Upon receipt of an IEE that does not meet CAPITAN MUNICIPAL SCHOOLS's criteria including cost criteria, CAPITAN MUNICIPAL SCHOOLS reserves the right to request a due process hearing to demonstrate that the IEE obtained by the parent did not meet CAPITAN MUNICIPAL SCHOOLS's criteria.

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§ 300.503 Prior notice by the public agency; content of notice.		
(a) *Notice.* Written notice that meets the *requirements* of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency— (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. (b) *Content of notice.* The notice required under *paragraph* (a) of this section must include— (1) A description of the action proposed or refused by the agency; (2) An explanation of why the agency proposes or refuses to take the action; (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part; (6) A description of other options that the IEP	**6.29.1.7 NMAC. DEFINITIONS:** BS. "Prior written notice (PWN)" means the written notice that goes to parents from the school district, informing them that the district proposes or refuses to initiate or change the identification, evaluation or educational placement of their child, or the provision of FAPE to the child, and which meets the requirements of 34 CFR, Sections 300.503 and 300.504. **6.31.2.11 NMAC. 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 public agency shall 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. **6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:**	CAPITAN MUNICIPAL SCHOOLS may refuse to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child, if the CAPITAN MUNICIPAL SCHOOLS provides written notice. This includes situations in which CAPITAN MUNICIPAL SCHOOLS wishes to deny a parent's request for an initial evaluation. The written notice must meet the requirements in § 300.503(b). Thus, for situations in which CAPITAN MUNICIPAL SCHOOLS wishes to deny a parent's request for an initial evaluation, the written notice would provide, among other things, an explanation of why CAPITAN MUNICIPAL SCHOOLS refuses to conduct an initial evaluation and the information that was used to make that decision. A parent may challenge CAPITAN MUNICIPAL SCHOOLS's refusal to conduct an initial evaluation by requesting a due process hearing. (See 71 Fed. Reg. 46636 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS is required to provide parents with prior written notice a "reasonable time" before CAPITAN MUNICIPAL SCHOOLS proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. CAPITAN MUNICIPAL SCHOOLS will not substitute a specific timeline to clarify what is meant by the requirement that the notice be provided within a reasonable period of time, because there are a wide variety of circumstances for which any one timeline would be too rigid and, in many cases, might prove unworkable. (See 71 Fed. Reg. 46691 (August 14, 2006)) However, CAPITAN MUNICIPAL SCHOOLS will provide a prior written notice at the close of the IEP meeting. CAPITAN MUNICIPAL SCHOOLS does not provide prior written notice in advance of meetings since

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Team considered and the reasons why those options were rejected; and (7) A description of other factors that are relevant to the agency's proposal or refusal. (c) *Notice in understandable language.* (1) The notice required under paragraph (a) of this section must be— (i) Written in language understandable to the general public; and (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. (2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure— (i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; (ii) That the parent understands the content of the notice; and (iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met. (Authority: 20 U.S.C. 1415(b)(3) and (4), 1415(c)(1), 1414(b)(1))	D. Notice requirements. … (2) Notice of agency actions proposed or refused. A public agency must give written notice that meets the requirements of 34 CFR Sec. 300.503 to the parents of a child with a disability a reasonable time before the agency proposes or refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child. If the notice relates to a proposed action that also requires parental consent under 34 CFR Sec. 300.300, the agency may give notice at the same time it requests parental consent. … E. Communications in understandable language. Pursuant to 34 CFR Secs. 300.9(a), 300.322(e), 300.503(c) and 300.504(d), each public agency must communicate with parents in understandable language, including the parent's native language or other mode of communication, unless it is clearly not feasible to do so, if necessary for understanding, in IEP meetings, in written notices and in obtaining consent where consent is required. F. Parental consent. … (6) Pursuant to 34 CFR Sec. 300.300(b)(4), parents may revoke consent for the continued provision of all special education and related services for their child. The revocation of consent must be in writing. After providing prior written notice in accordance with 34 CFR Sec. 300.503, the public agency must cease the provision of special education and related services for that child. The public agency may not use the due process and mediation procedures in Subsection I of 6.31.2.13 NMAC in order to obtain agreement or a ruling that services may be provided to the child. The public agency will not be considered to be in violation of the requirement to make FAPE available	providing prior written notice in advance of meetings could suggest, in some circumstances, that CAPITAN MUNICIPAL SCHOOLS's proposal was improperly arrived at before the meeting and without parent input. (See 71 Fed. Reg. 46691 (August 14, 2006)) The prior written notice provisions apply even if the IEP is amended without convening an IEP Team meeting. (See § 300.324(a)(4)(i)) CAPITAN MUNICIPAL SCHOOLS will provide the parent with prior written notice of any amendments to the IEP without a meeting. (See OSERS Q/A on IEPs, Evaluations, and Reevaluations (Revised September 2011), Q/A C-10) CAPITAN MUNICIPAL SCHOOLS may provide prior written notice at the same time as parental consent is requested, because parental consent cannot be obtained without the requisite prior written notice. (See 71 Fed. Reg. 46691 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS cannot discontinue services following revocation of consent until prior written notice has been provided to the parents. CAPITAN MUNICIPAL SCHOOLS will promptly respond to receipt of written revocation of consent by providing prior written notice to the parents. (See 73 Fed. 73008 (December 1, 2008)) Once CAPITAN MUNICIPAL SCHOOLS receives a parent's written revocation of consent for a child's receipt of special education and related services, CAPITAN MUNICIPAL SCHOOLS must provide prior written notice to the parent regarding the change in educational placement and services that will result from the revocation of consent. (See 73 Fed. 73008 (December 1, 2008)) In the 2004 reauthorization of the IDEA, the Congress required the U.S. Department of Education to develop a model form for prior written notice. The Department has, consistent with the instructions from the Congress, developed a Model Form for Prior Written notice to assist States and school districts in understanding the

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	to the child once consent has been revoked. The public agency will also not be required to convene an IEP team meeting or develop an IEP for the child for further provision of special education and related services. **6.29.1.9 NMAC. 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: … (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	content that IDEA Part B requires. The form developed by the U.S. Department of Education is available through the U.S. Department of Education's website. The NMPED has developed a model form for prior written notice of the proposed actions of an IEP Team as part of its guidance document for Developing Quality IEPs (December 2010), available through the NMPED website. CAPITAN MUNICIPAL SCHOOLS will provide prior written notice of the proposed actions of an IEP Team following the IEP Team meeting, and will also provide prior written notice as required by the IDEA including whenever the CAPITAN MUNICIPAL SCHOOLS proposes or refuses to evaluate a student. CAPITAN MUNICIPAL SCHOOLS is not required to use the format or specific language reflected in the U.S. Department of Education model form for prior written notice; however the prior written notice provided to the parent by CAPITAN MUNICIPAL SCHOOLS will be consistent with the IDEA and sufficient to meet its requirements. CAPITAN MUNICIPAL SCHOOLS may use the IEP as part of the prior written notice so long as the document(s) the parent receives meet all the requirements in § 300.503. (See 71 Fed. Reg. 46691 (August 14, 2006))

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

§ 300.504 Procedural safeguards notice.		
(a) *General*. A copy of the procedural safeguards *available* to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents— (1) Upon initial referral or parent request for evaluation; (2) Upon receipt of the first State complaint under §§300.151 through 300.153 and upon receipt of the first due process complaint under §300.507 in a school year; (3) In accordance with the discipline procedures in §300.530(h); and (4) Upon request by a parent.	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** D. Notice requirements. … (3) Notice of procedural safeguards. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, only one time a school year, except that a copy must be given to the parents, (a) upon initial referral for evaluation; (b) upon receipt of the first state complaint under 34 CFR Secs. 300.151-300.153; (c) upon receipt of the first due process complaint under 34 CFR Sec. 300.507 of the school year; (d) in accordance with the discipline procedures in 34 CFR Sec. 300.530(h); and (e) upon request of the parents. The notice must meet all requirements of 34 CFR Sec. 300.504, including the requirement to inform	CAPITAN MUNICIPAL SCHOOLS provides parents with a copy of the Parent and Child Rights in Special Education Procedural Safeguards Notice, in English, Spanish or Navajo, as appropriate, at least one time per year and as required by 34 C.F.R. § 300.504. A current copy of the Parent and Child Rights in Special Education Procedural Safeguards Notice (English Version), Derechos De Padre Y Nino En Educacion Especial Aviso Sobre Procedimientos De Proteccion (Spanish Version), the Parent and Child Rights in Special Education Procedural Safeguards Notice (Navajo Version) and the Parent and Child rights in Special Education Procedurals Safeguards Notice (Russian) are available through the NMPED.

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(b) *Internet Web site.* A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists. (c) *Contents.* The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under § 300.148, §§ 300.151 through 300.153, § 300.300, §§300.502 through 300.503, §§ 300.505 through 300.518, §300.520, §§ 300.530 through 300.536 and §§ 300.610 through 300.625 relating to— (1) Independent educational evaluations; (2) Prior written notice; (3) Parental consent; (4) Access to education records; (5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including— (i) The time period in which to file a complaint; (ii) The opportunity for the agency to resolve the complaint; and (iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures; (6) The availability of mediation; (7) The child's placement during the pendency of any due process complaint;	the parents of their obligation under 34 CFR Sec. 300.148 to notify the public agency if they intend to enroll the child in a private school or facility and seek reimbursement from the public agency. A public agency may place a current copy of the procedural safeguards notice on its internet website if a website exists. E. Communications in understandable language. Pursuant to 34 CFR Secs. 300.9(a), 300.322(e), 300.503(c) and 300.504(d), each public agency must communicate with parents in understandable language, including the parent's native language or other mode of communication, unless it is clearly not feasible to do so, if necessary for understanding, in IEP meetings, in written notices and in obtaining consent where consent is required.	

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(8) Procedures for students who are subject to placement in an interim alternative educational setting; (9) Requirements for unilateral placement by parents of children in private schools at public expense; (10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations; (11) State-level appeals (if applicable in the State); (12) Civil actions, including the time period in which to file those actions; and (13) Attorneys' fees. (d) *Notice in understandable language.* The notice required under paragraph (a) of this section must meet the requirements of § 300.503(c). (Authority: 20 U.S.C. 1415(d))		

§ 300.505 Electronic mail.		
A parent of a child with a disability may elect to receive notices required by §§ 300.503, 300.504, and 300.508 by an electronic mail communication, if the public agency makes that option available. (Authority: 20 U.S.C. 1415(n))		CAPITAN MUNICIPAL SCHOOLS does make available to parents the option of receiving notices by electronic mail. Parents who wish to receive notices through electronic mail should contact the Director of Special Education in writing.

§ 300.506 Mediation.		
(a) *General.* Each public agency must ensure that		

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procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process. (b) *Requirements.* The procedures must meet the *following* requirements: (1) The procedures must ensure that the mediation process— (i) Is voluntary on the part of the parties; (ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. (2) A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party— (i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and (ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents. (3)		CAPITAN MUNICIPAL SCHOOLS encourages mediation as a form of dispute resolution. A party can request mediation by complaint the NMPED Alternative Dispute Resolution Request Form, available in English and Spanish through the NMPED website.

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(i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. (ii) The SEA must select mediators on a random, rotational, or other impartial basis. (4) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section. (5) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute. (6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that— (i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and (ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency. (7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.		

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(c) *Impartiality of mediator*. (1) An individual who serves as a mediator under this part— (i) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and (ii) Must not have a personal or professional interest that conflicts with the person's objectivity. (2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under § 300.228 solely because he or she is paid by the agency to serve as a mediator. (Authority: 20 U.S.C. 1415(e))		

Due Process Hearings in General.		
(Not in Federal Regulations; see New Mexico Rules)	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** I. Due process hearings. (1) Scope. This Subsection I of 6.31.2.13 NMAC establishes procedures governing impartial due process hearings for the following types of cases: (a) requests for due process in IDEA cases governed by 34 CFR Secs. 300.506-300.518 and 300.530-300.532; and (b) claims for gifted services.	

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	(2) Definitions. In addition to terms defined in 34 CFR Part 300 and 6.31.2.7 NMAC, the following definitions apply to this Subsection I of 6.31.2.13 NMAC. (a) "Expedited hearing" means a hearing that is available on request by a parent or a public agency under 34 CFR Secs. 300.532(c) and is subject to the requirements of 34 CFR Sec. 300.532(c). (b) "Gifted services" means special education services to gifted children as defined in Subsection A of 6.31.2.12 NMAC. (c) "Transmit" means to mail, send by electronic mail or telecopier (facsimile machine) or hand deliver a written notice or other document and obtain written proof of delivery by one of the following means: (i) an electronic mail system's confirmation of a completed transmission to an e-mail address that is shown to be valid for the individual to whom the transmission was sent; (ii) a telecopier machine's confirmation of a completed transmission to a number which is shown to be valid for the individual to whom the transmission was sent; (iii) a receipt from a commercial or government carrier showing to whom the article was delivered and the date of delivery; (iv) a written receipt signed by the secretary of education or designee showing to whom the article was hand-delivered and the date delivered; or	

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	(v) a due process final decision to any party not represented by counsel in a due process hearing by the U.S. postal service, certified mail, return receipt requested, showing to whom the articles was delivered and the date of delivery. … (21) Rule of construction. Nothing in this Subsection I shall be construed to affect the right of a parent to file a complaint with the SEB of the department, as described under Subsection H of 6.31.2.13 NMAC. … M. Computation of time. (1) In computing any period of time prescribed or allowed by 6.31.2.13 NMAC, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday in which case the last day shall be the next business day. As used in this rule, "legal holiday" includes any day designated as a state holiday. (2) Notwithstanding Paragraph (1) of this subsection, if the due date of a decision referenced in Subsection H of 6.31.2.13 NMAC falls on a Saturday, a Sunday or a legal holiday, the decision will be due on the previous business day. (3) Notwithstanding Paragraph (1) of this subsection, if the due date of a decision referenced in Subsection I of 6.31.2.13 NMAC falls on a Saturday, a Sunday or a legal holiday, the decision must be mailed no later than the actual due date. A decision is considered "mailed" when addressed, stamped and placed in a United States postal service mailbox. If a parent exercises the option of receiving the decision electronically, the decision is "mailed" when transmitted electronically.	

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§ 300.507 Filing a due process complaint.		
(a) *General*. (1) A parent or a public agency may file a due process complaint on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child). (2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in § 300.511(f) apply to the timeline in this section. (b) Information *for parents.* The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if— (1) The parent requests the information; or (2) The parent or the agency files a due process complaint under this section. (Authority: 20 U.S.C. 1415(b)(6))	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** I. Due Process Hearings … (3) Bases for requesting hearing. A parent or public agency may initiate an impartial due process hearing on the following matters: (a) the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; (b) the public agency refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child; (c) the public agency proposes or refuses to initiate or change the identification, evaluation or educational placement of, or services to, a child who needs or may need gifted services; … (11) Withdrawal of request for hearing. A party may unilaterally withdraw a request for due process at any time before a decision is issued. A written withdrawal that is transmitted to the hearing officer, and the other party at least two business days before a scheduled hearing, shall be without prejudice to the party's right to file a later request on the same claims, which shall ordinarily be assigned to the same hearing officer. A withdrawal that is transmitted or communicated within two business days of the scheduled hearing shall ordinarily be with prejudice to the party's right to file a later request on the same claims unless the hearing officer orders otherwise for good cause shown. A withdrawal that is entered	Upon receipt of a request for a due process hearing filed by a parent, CAPITAN MUNICIPAL SCHOOLS will provide the parent with a copy of the Parent and Child Rights in Special Education Procedural Safeguards Notice, in English, Spanish or Navajo, as appropriate. The Parent and Child Rights in Special Education Procedural Safeguards Notice informs parents that the request for due process hearing must be filed within two years of the date that the parent knew or should have known about the problem. The Notice also informs the parent of any free or low-cost legal and other relevant services available in the area. A current copy of the Parent and Child Rights in Special Education Procedural Safeguards Notice (English Version), Derechos de los Padres y del/la Niño(a) en la Educación Especial: Su Aviso Interino Sobre Procedimientos De Proteccion (Spanish Version), the Parent and Child Rights in Special Education Procedural Safeguards Notice (Navajo Version) and the Parent and Child rights in Special Education Procedurals Safeguards Notice (Russian) are available through the NMPED.

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	during or after the hearing but before a decision is issued shall be with prejudice. In any event, the hearing officer shall enter an appropriate order of dismissal.	

§ 300.508 Due process complaint.		
(a) *General*. (1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential). (2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA. (b) *Content of complaint.* The due process complaint required inparagraph (a)(1) of this section must include— (1) The name of the child; (2) The address of the residence of the child; (3) The name of the school the child is attending; (4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending; (5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** I. Due Process Hearings **…** (5) Request for hearing. A parent requesting a due process hearing shall transmit written notice of the request to the public agency whose actions are in question and to the SEB of the department. A public agency requesting a due process hearing shall transmit written notice of the request to the parent(s) and to the SEB of the department. The written request shall state with specificity the nature of the dispute and shall include: (a) the name of the child; (b) the address of the residence of the child (or available contact information in the case of a homeless child); (c) the name of the school the child is attending; (d) the name of the public agency, if known; (e) the name and address of the party making the request (or available contact information in the case of a homeless party); (f) a description of the nature of the problem of the child relating to the proposed or refused	Upon receipt of a request for a due process hearing filed by a parent, CAPITAN MUNICIPAL SCHOOLS will provide the parent with a copy of the Parent and Child Rights in Special Education Procedural Safeguards Notice, in English, Spanish or Navajo, as appropriate. A current copy of the Parent and Child Rights in Special Education Procedural Safeguards Notice (English Version), Derechos de los Padres y del/la Niño(a) en la Educación Especial: Su Aviso Interino Sobre Procedimientos De Proteccion (Spanish Version), the Parent and Child Rights in Special Education Procedural Safeguards Notice (Navajo Version) and the Parent and Child rights in Special Education Procedurals Safeguards Notice (Russian) are available through the NMPED. If the hearing officer determines that the request for due process hearing complaint notice is not sufficient, the hearing officer's decision will identify how the notice is insufficient, so that the filing party can amend the notice, if appropriate. (See 71 Fed. Reg. 46698 (August 14, 2006)) If request for due process hearing complaint notice is determined to be insufficient by the hearing officer and is not amended, the complaint could be dismissed. (See 71 Fed. Reg. 46698 (August 14, 2006)) This process ensures that the parties involved understand and agree on the nature of the complaint before the hearing begins. (See 71 Fed. Reg. 46698 (August 14, 2006))

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(6) A proposed resolution of the problem to the extent known and available to the party at the time. (c) *Notice required before a hearing on a due process complaint.* A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section. (d) *Sufficiency of complaint.* (1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section. (2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination. (3) A party may amend its due process complaint only if— (i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to § 300.510; or (ii) The hearing officer grants permission,	initiation or change, including facts relating to the problem; (g) a proposed resolution of the problem to the extent known and available to the party requesting the hearing at the time; (h) a request for an expedited hearing must also include a statement of facts sufficient to show that a requesting parent or public agency is entitled to an expedited hearing under 34 CFR Secs. 300.532(c) or 20 USC Sec. 1415(k)(3); (i) a request for a hearing must be in writing and signed and dated by the parent or the authorized public agency representative; an oral request made by a parent who is unable to communicate by writing shall be reduced to writing by the public agency and signed by the parent; (j) a request for hearing filed by or on behalf of a party who is represented by an attorney shall include a sufficient statement authorizing the representation; a written statement on a client's behalf that is signed by an attorney who is subject to discipline by the New Mexico supreme court for a misrepresentation shall constitute a sufficient authorization; and (k) a party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of this paragraph. (6) Response to request for hearing. (a) A request for a hearing shall be deemed to be sufficient unless the party receiving the notice of request notifies the hearing officer and the other party in writing that the receiving party believes the request has not met the requirements of Paragraph (5) of Subsection I of 6.31.2.13 NMAC.	The CAPITAN MUNICIPAL SCHOOLS may seek dismissal of a due process hearing if the parent's request for due process hearing complaint notice is insufficient and is not properly or timely remedied through an amendment. It is up to the hearing officer to determine whether a specific complaint is within the allowable timeline, including whether an amended complaint relates to a previous complaint. (See 71 Fed. Reg. 46698 (August 14, 2006)) When CAPITAN MUNICIPAL SCHOOLS receives a request for due process hearing, CAPITAN MUNICIPAL SCHOOLS will timely provide the parent with a prior written notice regarding the subject matter contained in the parent's request for due process hearing complaint notice, if CAPITAN MUNICIPAL SCHOOLS has not already done so. CAPITAN MUNICIPAL SCHOOLS will provide prior written notice even in the event that CAPITAN MUNICIPAL SCHOOLS believes the request for due process hearing complaint notice is insufficient. If CAPITAN MUNICIPAL SCHOOLS believes the request for due process hearing complaint notice is insufficient, CAPITAN MUNICIPAL SCHOOLS will timely notify the hearing officer.

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except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

(4) If a party files an amended due process complaint, the timelines for the resolution meeting in § 300.510(a) and the time period to resolve in § 300.510(b) begin again with the filing of the amended due process complaint.

(e) *LEA response to a due process complaint*.

(1) If the LEA has not sent a prior written notice under §300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes—

(i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;

(ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(iv) A description of the other factors that are relevant to the agency's proposed or refused action.

(2) A response by an LEA under paragraph (e)(1) of this section shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.

(b) Public agency response.

(i) In general. If the public agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process hearing request, such public agency shall, within 10 days of its receipt of the request, send to the parent a response that meets the requirements of 34 CFR Sec. 300.508(e) and 20 USC Sec. 1415(c)(2)(B)(i). This requirement presents an additional opportunity for parties to clarify and potentially resolve their dispute(s).

(ii) Sufficiency. A response filed by a public agency pursuant to (i) of Subparagraph (b) of Paragraph (6) shall not be construed to preclude such public agency from asserting that the parent's due process hearing request was insufficient where appropriate.

(c) Other party response. Except as provided in Subparagraph (b) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC above, the non-complaining party shall, within 10 days of its receipt of the request for due process, send to the requesting party a response that specifically addresses the issues raised in the hearing request. This requirement also presents an opportunity to clarify and potentially resolve disputed issues between the parties.

(d) A party against whom a due process hearing request is filed shall have a maximum of 15 days after receiving the request to provide written notification to the hearing officer of insufficiency under Subparagraph (a) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC. The 15 day timeline for the public agency to convene a resolution session under Paragraph (8) of Subsection I of 6.31.2.13

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(f) *Other party response to a due process complaint.* Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint. (Authority: 20 U.S.C. 1415(b)(7), 1415(c)(2))	NMAC below runs at the same time as the 15 day timeline for filing notice of insufficiency. (e) Determination. Within five days of receipt of a notice of insufficiency under Subparagraph (d) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC above, the hearing officer shall make a determination on the face of the due process request of whether it meets the requirements of Paragraph (5) of Subsection I of 6.31.2.13 NMAC, and shall immediately notify the parties in writing of such determination. (f) Amended due process request. A party may amend its due process request only if: (i) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to Paragraph (8) of Subsection I of 6.31.2.13 NMAC; or (ii) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs. (g) Applicable timeline. The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under Paragraph (8) of Subsection I of 6.31.2.13 NMAC.	

§ 300.509 Model forms.		
(a) Each SEA must develop model forms to assist parents and public agencies in filing a due process		

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complaint in accordance with §§ 300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing a State complaint under §§ 300.151 through 300.153. However, the SEA or LEA may not require the use of the model forms. (b) Parents, public agencies, and other parties may use the appropriate model form described in paragraph (a) of this section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in § 300.508(b) for filing a due process complaint, or the requirements in § 300.153(b) for filing a State complaint. (Authority: 20 U.S.C. 1415(b)(8))		The NMPED has developed a model Due Process Hearing Request Form for use when filing a due process hearing request, available through the NMPED website.

§ 300.510 Resolution process.		
(a) *Resolution meeting*. (1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under § 300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that— (i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and (ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney. (2) The purpose of the meeting is for the parent of the child to discuss the due process complaint,	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** I. Due process hearings. … (8) Preliminary meeting. (a) Resolution session. Before the opportunity for an impartial due process hearing under Paragraphs (3) or (4) of Subsection I of 6.31.2.13 NMAC above, the public agency shall convene a resolution session with the parents and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process request, unless the parents and the public agency agree in writing to waive such a meeting, or agree to use the mediation process instead. The resolution session:	Upon receipt of a request for a due process hearing filed by a parent, CAPITAN MUNICIPAL SCHOOLS will provide the parent with a copy of the Parent and Child Rights in Special Education Procedural Safeguards Notice, in English, Spanish or Navajo, as appropriate. The Parent and Child Rights in Special Education Procedural Safeguards Notice informs parents of the requirement of a resolution session. A current copy of the Parent and Child Rights in Special Education Procedural Safeguards Notice (English Version), Derechos de los Padres y del/la Niño(a) en la Educación Especial: Su Aviso Interino Sobre Procedimientos De Proteccion (Spanish Version), the Parent and Child Rights in Special Education Procedural Safeguards Notice (Navajo Version) and the Parent and Child rights in Special Education Procedurals Safeguards Notice (Russian) are available through the NMPED.

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and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint. (3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if— (i) The parent and the LEA agree in writing to waive the meeting; or (ii) The parent and the LEA agree to use the mediation process described in §300.506. (4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting. (b) *Resolution period*. (1) If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur. (2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under § 300.515 begins at the expiration of this 30-day period. (3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held. (4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in §	(i) shall occur within 15 days of the respondent's receipt of a request for due process; (ii) shall include a representative of the public agency who has decision-making authority on behalf of that agency; (iii) may not include an attorney of the public agency unless the parent is accompanied by an attorney; and (iv) shall provide an opportunity for the parents of the child and the public agency to discuss the disputed issue(s) and the facts that form the basis of the dispute, in order to attempt to resolve the dispute; (v) if the parties desire to have their discussions in the resolution session remain confidential, they may agree in writing to maintain the confidentiality of all discussions and that such discussions cannot later be used as evidence in the due process hearing or any other proceeding; and (vi) if an agreement is reached following a resolution session, the parties shall execute a legally binding agreement that is signed by both the parent and a representative of the agency who has the authority to bind that agency, and which is enforceable in any state court of competent jurisdiction or in a district court of the United States; if the parties execute an agreement pursuant to a resolution session, a party may void this agreement within three business days of the agreement's execution; further, if the resolution session participants reach agreement on any IEP-related matters, the binding agreement must state that the public agency will subsequently convene	CAPITAN MUNICIPAL SCHOOLS will contact the parent to arrange a resolution meeting within the required timeframe, unless the parties agree in writing to waive the resolution meeting. CAPITAN MUNICIPAL SCHOOLS and the parent may alternatively agree to participate in mediation. CAPITAN MUNICIPAL SCHOOLS may seek dismissal of the due process hearing complaint if the parent refuses to participate in a resolution meeting and CAPITAN MUNICIPAL SCHOOLS has not agreed to waive the resolution meeting. If the parties do not waive the resolution meeting, CAPITAN MUNICIPAL SCHOOLS will contact the parent to arrange the meeting soon after the due process complaint is received in order to ensure that the resolution meeting is held within 15 days. However, it is not necessary to notify the parent within five days of receiving a due process complaint about CAPITAN MUNICIPAL SCHOOLS's intention to convene or waive the resolution meeting. (See 71 Fed. Reg. 46700 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will act cooperatively with the parents in determining who will attend the resolution meeting, as a resolution meeting is unlikely to result in any resolution of the dispute if the parties cannot agree on who should attend. CAPITAN MUNICIPAL SCHOOLS understands that the resolution process offers a valuable chance to resolve disputes before expending what can be considerable time and money in due process hearings. (See 71 Fed. Reg. 46701 (August 14, 2006)) In situations where CAPITAN MUNICIPAL SCHOOLS convenes a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint, and the parent fails to participate in the resolution meeting, CAPITAN MUNICIPAL SCHOOLS will continue to make diligent efforts throughout the remainder of the 30-day resolution period to convince the parent to participate in the resolution

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300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint. (5) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline. (c) *Adjustments to 30-day resolution period.* The 45-day timeline for the due process hearing in § 300.515(a) starts the day after one of the following events: (1) Both parties agree in writing to waive the resolution meeting; (2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; (3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process. (d) *Written settlement agreement.* If a resolution to the *dispute* is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is— (1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and (2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other	an IEP meeting to inform the student's service providers of their responsibilities under that agreement, and revise the student's IEP accordingly. (b) FIEP meeting; mediation. Parties to a due process hearing may choose to convene a FIEP meeting or mediation instead of a resolution session. To do so, the party filing the request for the hearing must (and the responding party may) notify the hearing officer in writing within one business day of the parties' decision to jointly request one of these options. A FIEP meeting or mediation shall be completed not later than 14 days after the assignment of the IEP facilitator or mediator by the SEB, unless, upon joint request by the parties, an extension is granted by the hearing officer. Each session in the FIEP or mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the hearing. The requirements for mediation, as set forth at Subparagraph (c) of Paragraph (3) of Subsection H of 6.31.2.13 NMAC, apply to mediation in this context, as well. (c) Applicable timelines. (i) If the parties agree to convene a resolution session, the applicable timelines for the due process hearing shall be suspended for up to 30 days from the date the due process request was received by the SEB (except in the case of an expedited hearing), and the meeting shall proceed according to the requirements set forth under Subparagraph (a) of Paragraph (8) of Subsection I of 6.31.2.13 NMAC above. (ii) If the parties agree to convene a FIEP meeting or mediation, the public agency shall contact the person or entity identified by the SEB to arrange for mediation or a FIEP meeting, as appropriate. Except for	meeting. If, however, at the end of the 30-day resolution period, CAPITAN MUNICIPAL SCHOOLS is still unable to convince the parent to participate in the resolution meeting, CAPITAN MUNICIPAL SCHOOLS may seek intervention by a hearing officer to dismiss the complaint. (See 71 Fed. Reg. 46702 (August 14, 2006))

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mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to § 300.537. (e) *Agreement review period.* If the parties execute an *agreement* pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution. (Authority: 20 U.S.C. 1415(f)(1)(B))	expedited hearings, the parties to the FIEP meeting or mediation process may jointly request that the hearing officer grant a specific extension of time for the prehearing conference and for completion of the hearing beyond the 45 day period for issuance of the hearing decision. The hearing officer may grant such extensions in a regular case but may not exceed the 20 school day deadline in an expedited case. (iii) If the parties agree to waive all preliminary meeting options and proceed with the due process hearing, the hearing officer shall send written notification to the parties that the applicable timelines for the due process hearing procedure shall commence as of the date of that notice. The hearing officer shall thereafter proceed with the prehearing procedures, as set forth under Paragraph (12) of Subsection I of 6.31.2.13 NMAC. (d) Resolution. Upon resolution of the dispute, the party who requested the due process hearing shall transmit a written notice informing the hearing officer and the SEB that the matter has been resolved and withdrawing the request for hearing. The hearing officer shall transmit an appropriate order of dismissal to the parties and the SEB. (e) Hearing. If the parties convene a resolution session and they have not resolved the disputed issue(s) within 30 days of the receipt of the due process request by the SEB in a non-expedited case, the public agency shall (and the parents may) notify the hearing officer in writing within one business day of reaching this outcome. The hearing officer shall then promptly notify the parties in writing that the due process hearing shall proceed and all applicable timelines for a	

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	hearing under this part shall commence as of the date of such notice. (f) Further adjustments to the timelines may be made as provided in 34 CFR Sec. 300.510(b) and (c). (g) The resolution of disputes by mutual agreement is strongly encouraged and nothing in these rules shall be interpreted as prohibiting the parties from engaging in settlement discussions at any time before, during or after an ADR meeting, a due process hearing or a civil action.	

Due Process Prehearing Procedures.		
(Not in Federal Regulations; see New Mexico Rules)	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** I. Due Process Hearings … (12) Prehearing procedures. Unless extended by the hearing officer at the request of a party, within 14 days of the commencement of the timeline for a due process hearing and as soon as is reasonably practicable in an expedited case, the hearing officer shall conduct an initial prehearing conference with the parent and the public agency to: (a) identify the issues (disputed claims and defenses) to be decided at the hearing and the relief sought; (b) establish the hearing officer's jurisdiction over IDEA and gifted issues; (c) determine the status of the resolution session, FIEP meeting or mediation between the parties,	

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	and determine whether an additional prehearing conference will be necessary as a result; (d) review the hearing rights of both parties, as set forth in Paragraphs (16) and (17) of Subsection I of 6.31.2.13 NMAC below, including reasonable accommodations to address an individual's need for an interpreter at public expense; (e) review the procedures for conducting the hearing; (f) set a date, time and place for the hearing that is reasonably convenient to the parents and child involved; the hearing officer shall have discretion to determine the length of the hearing, taking into consideration the issues presented; (g) determine whether the child who is the subject of the hearing will be present and whether the hearing will be open to the public; (h) set the date by which any documentary evidence intended to be used at the hearing by the parties must be exchanged; the hearing officer shall further inform the parties that, not less than 5 business days before a regular hearing or, if the hearing officer so directs, not less than two business days before an expedited hearing, each party shall disclose to the other party all evaluations completed by that date and recommendations based on the evaluations that the party intends to use at the hearing; the hearing officer may bar any party that fails to disclose such documentary evidence, evaluation(s) or recommendation(s) by the deadline from introducing the evidence at the hearing without the consent of the other party; (i) as appropriate, determine the current educational placement of the child pursuant to	

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	Paragraph (27) of Subsection I of 6.31.2.13 NMAC below; (j) exchange lists of witnesses and, as appropriate, entertain a request from a party to issue an administrative order compelling the attendance of a witness or witnesses at the hearing; (k) address other relevant issues and motions; and (l) determine the method for having a written, or at the option of the parent, electronic verbatim record of the hearing; the public agency shall be responsible for arranging for the verbatim record of the hearing; and (m) the hearing officer shall transmit to the parties and the SEB of the department a written summary of the prehearing conference; the summary shall include, but not be limited to, the date, time and place of the hearing, any prehearing decisions, and any orders from the hearing officer. … (14) In order to limit testimony at the hearing to only those factual matters which remain in dispute between the parties, on or before 10 days before the date of the hearing, each party shall submit a statement of proposed stipulated facts to the opposing party. On or before five days before the date of the hearing, the parties shall submit a joint statement of stipulated facts to the hearing officer. All agreed-upon stipulated facts shall be deemed admitted, and evidence shall not be permitted for the purpose of establishing these facts.	

§ 300.511 Impartial due process hearing.		

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Federal Regulations	New Mexico Rules	Procedures
(a) *General.* Whenever a due process complaint is received under § 300.507 or § 300.532, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§ 300.507, 300.508, and 300.510. (b) *Agency responsible for conducting the due process hearing.* The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA. (c) *Impartial hearing officer.* (1) At a minimum, a hearing officer— (i) Must not be— (A) An employee of the SEA or the LEA that is involved in the education or care of the child; or (B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing; (ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts; (iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and (iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** I. Due Process Hearings … (9) Hearing officer responsibility and authority. Hearing officers shall conduct proceedings under these rules with due regard for the costs and other burdens of due process proceedings for public agencies, parents and students. In that regard, hearing officers shall strive to maintain a reasonable balance between affording parties a fair opportunity to vindicate their IDEA rights and the financial and human costs of the proceedings to all concerned. Accordingly, each hearing officer shall exercise such control over the parties, proceedings and the hearing officer's own practices as he deems appropriate to further those ends under the circumstances of each case. In particular, and without limiting the generality of the foregoing, the hearing officer, at the request of a party or upon the hearing officer's own initiative and after the parties have had a reasonable opportunity to express their views on disputed issues: (a) shall ensure by appropriate orders that parents and their duly authorized representatives have timely access to records and information under the public agency's control which are reasonably necessary for a fair assessment of the IDEA issues raised by the requesting party; (b) shall limit the issues for hearing to those permitted by the IDEA which the hearing officer deems necessary for the protection of the rights that have been asserted by the requesting party in each case; (c) may issue orders directing the timely production of relevant witnesses, documents or other information within a party's control, protective orders or administrative orders to	CAPITAN MUNICIPAL SCHOOLS understands that New Mexico has considerable latitude in determining appropriate procedural rules for due process hearings as long as they are not inconsistent with the basic elements of due process hearings and rights of the parties set out in IDEA and its regulations. The specific application of those procedures to particular cases generally should be left to the discretion of hearing officers who have the knowledge and ability to conduct hearings in accordance with standard legal practice. There is nothing in the IDEA or these regulations that would prohibit a hearing officer from making determinations on procedural matters not addressed in IDEA, so long as such determinations are made in a manner that is consistent with a parent's or CAPITAN MUNICIPAL SCHOOLS's right to a timely due process hearing. (See 71 Fed. Reg. 46704 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will pay expenses of a hearing as required to do so.

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legal practice. (2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. (3) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons. (d) *Subject matter of due process hearings.* The party requesting the due process hearing may not raise issues *at* the due process hearing that were not raised in the due process complaint filed under § 300.508(b), unless the other party agrees otherwise. (e) *Timeline for requesting a hearing.* A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law. (f) *Exceptions to the timeline.* The timeline described in *paragraph* (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to— (1) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or (2) The LEA's withholding of information from the parent that was required under this part to be provided to the parent. (Approved by the Office of Management and Budget under	appear for hearings, and may address a party's unjustified failure or refusal to comply by appropriate limitations on the claims, defenses or evidence to be considered; (d) shall exclude evidence that is irrelevant, immaterial, unduly repetitious or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in federal courts or the courts of New Mexico; (e) may issue such other orders and make such other rulings, not inconsistent with express provisions of these rules or the IDEA, as the hearing officer deems appropriate to control the course, scope and length of the proceedings while ensuring that the parties have a fair opportunity to present and support all allowable claims and defenses that have been asserted; and (f) shall not permit non-attorneys to represent parties at due process hearings. (10) Duties of the hearing officer. The hearing officer shall excuse himself or herself from serving in a hearing in which he or she believes a personal or professional bias or interest exists which conflicts with his or her objectivity. The hearing officer shall: (a) make a determination regarding the sufficiency of a request for due process within 5 days of receipt of any notice of insufficiency, and notify the parties of this determination in writing; (b) schedule an initial prehearing conference within 14 days of commencement of the timeline for a due process hearing, or as soon as reasonably practicable in an expedited case pursuant to Paragraph (12) of Subsection I of 6.31.2.13 NMAC below; (c) reach a decision, which shall include written findings of fact, conclusions of law, and reasons	

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control number 1820–0600) (Authority: 20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)–(D))	for these findings and conclusions and shall be based solely on evidence presented at the hearing; (d) transmit the decision to the parties and to the SEB within 45 days of the commencement of the timeline for the hearing, unless a specific extension of time has been granted by the hearing officer at the request of a party to the hearing, or at the joint request of the parties where the reason for the request is to permit the parties to pursue an ADR option; for an expedited hearing, no extensions or exceptions beyond the timeframe provided in Subparagraph (a) of Paragraph (20) of Subsection I of 6.31.2.13 NMAC; (e) the hearing officer may reopen the record for further proceedings at any time before reaching a final decision after transmitting appropriate notice to the parties; the hearing is considered closed and final when the written decision is transmitted to the parties and to the SEB; and (f) the decision of the hearing officer is final, unless a party brings a civil action as set forth in Paragraph (25) of Subsection I of 6.31.2.13 NMAC below. … (18) Limitations on the hearing. (a) The party requesting the due process hearing shall not be allowed to raise issues at the hearing that were not raised in the request for a due process hearing (including an amended request, if such amendment was previously permitted) filed under Paragraph (5) of Subsection I of 6.31.2.13 NMAC, unless the other party agrees otherwise. (b) Timeline for requesting hearing. A parent or agency shall request an impartial due process	

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	hearing within two years of the date that the parent or agency knew or should have known about the alleged action that forms the basis of the due process request. (c) Exceptions to the timeline. The timeline described in Subparagraph (b) of Paragraph (18) of Subsection I of 6.31.2.13 NMAC above shall not apply to a parent if the parent was prevented from requesting the hearing due to: (i) specific misrepresentations by the public agency that it had resolved the problem that forms the basis of the due process request; or (ii) the public agency's withholding of information from the parent that was required under this part to be provided to the parent. … (23) Expenses of the hearing. The public agency shall be responsible for paying administrative costs associated with a hearing, including the hearing officer's fees and expenses and expenses related to the preparation and copying of the verbatim record, its transmission to the SEB, and any further expenses for preparing the complete record of the proceedings for filing with a reviewing federal or state court in a civil action. Each party to a hearing shall be responsible for its own legal fees or other costs, subject to Paragraph (26) of Subsection I of 6.31.2.13 NMAC below.	

§ 300.512 Hearing rights.		

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Federal Regulations	New Mexico Rules	Procedures
(a) *General.* Any party to a hearing conducted pursuant to §§300.507 through 300.513 or §§ 300.530 through 300.534, or an appeal conducted pursuant to § 300.514, has the right to— (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that whether parties have the right to be represented by non-attorneys at due process hearings is determined under State law; (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses; (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing; (4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and (5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions. (b) Additional *disclosure of information*. (1) At least five business days prior to a hearing conducted pursuant to § 300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party' evaluations that the party intends to use at the hearing. (2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.	**6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** I. Due Process Hearings … (7) Duties of the SEB of the department. Upon receipt of a written request for due process, the SEB shall: (a) appoint a qualified and impartial hearing officer who meets the requirements of 34 CFR Sec. 300.511(c) and 20 USC Sec. 1415(f)(3)(A); (b) arrange for the appointment of a qualified and impartial mediator or IEP facilitator pursuant to 34 CFR Sec. 300.506 to offer ADR services to the parties; (c) inform the parent in writing of any free or low-cost legal and other relevant services available in the area; the SEB shall also make this information available whenever requested by a parent; and (d) inform the parent that in any action or proceeding brought under 20 USC Sec. 1415, a state or federal court, in its discretion and subject to the further provisions of 20 USC Sec. 1415(g)(3)(b) and 34 CFR Sec. 300.517, may award reasonable attorneys' fees as part of the costs to a prevailing party; (e) the SEB shall also: (i) keep a list of the persons who serve as hearing officers and a statement of their qualifications; (ii) appoint another hearing officer if the initially appointed hearing officer excuses himself or herself from service;	

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(c) Parental *rights at hearings.* Parents involved in hearings must be given the right to— (1) Have the child who is the subject of the hearing present; (2) Open the hearing to the public; and (3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents. (Authority: 20 U.S.C. 1415(f)(2), 1415(h))	(iii) ensure that mediation and FIEP meetings are considered as voluntary and are not used to deny or delay a parent's right to a hearing; and (iv) ensure that within forty-five (45) days of commencement of the timeline for a due process hearing, a final written decision is reached and a copy transmitted to the parties, unless one or more specific extensions of time have been granted by the hearing officer at the request of either party (or at the joint request of the parties, where the reason for the request is to allow the parties to pursue an ADR option); (f) following the decision, the SEB shall, after deleting any personally identifiable information, transmit the findings and decision to the state IDEA advisory panel and make them available to the public upon request. … (15) Any party to a hearing has the right to: (a) be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities; (b) present evidence and confront, cross-examine and compel the attendance of witnesses; (c) prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before a regular hearing or, if the hearing officer so directs in the prehearing summary, at least two business days before an expedited hearing; (d) obtain a written, or, at the option of the parents, electronic verbatim record of the hearing; and	

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	(e) obtain written, or, at the option of the parents, electronic findings of fact and decisions. (16) Parents involved in hearings also have the right to: (a) have the child who is the subject of the hearing present; and (b) open the hearing to the public. (17) The record of the hearing and the findings of fact and decisions described above must be provided at no cost to the parents.	

§ 300.513 Hearing decisions.		
(a) *Decision of hearing officer on the provision of FAPE.* (1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds. (2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies— (i) Impeded the child's right to a FAPE; (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) Caused a deprivation of educational	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** I. Due Process Hearings … (20) Decision of the hearing officer. (a) In general. Subject to Subparagraph (b) of Paragraph (20) of Subsection I of 6.31.2.13 NMAC below, a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (FAPE). (b) Procedural issues. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies:	

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benefit. (3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§300.500 through 300.536. (b) *Construction clause.* Nothing in §§ 300.507 *through* 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under §300.514(b), if a State level appeal is available. (c) *Separate request for a due process hearing.* Nothing in §§300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed. (d) *Findings and decision to advisory panel and general public.* The public agency, after deleting any personally identifiable information, must— (1) Transmit the findings and decisions referred to in §300.512(a)(5) to the State advisory panel established under § 300.167; and (2) Make those findings and decisions available to the public. (Authority: 20 U.S.C. 1415(f)(3)(E) and (F), 1415(h)(4),1415(o))	(i) impeded the child's right to a FAPE; (ii) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student; or (iii) caused a deprivation of educational benefits. (c) Rule of construction. Nothing in this paragraph shall be construed to preclude a hearing officer from ordering a public agency to comply with procedural requirements under this section.	

§ 300.514 Finality of decision; appeal; impartial review.		
(a) *Finality of hearing decision.* A decision made in a hearing conducted pursuant to §§ 300.507 through 300.513 or §§300.530 through 300.534 is final, except that any party involved in the hearing may	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** I. Due Process Hearings	CAPITAN MUNICIPAL SCHOOLS will comply with the final decision of a hearing officer, unless otherwise required due to a pending appeal or by order of a court.

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appeal the decision under the provisions of paragraph (b) of this section and § 300.516. (b) *Appeal of decisions; impartial review.* (1) If the hearing required by § 300.511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA. (2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must— (i) Examine the entire hearing record; (ii) Ensure that the procedures at the hearing were consistent with the requirements of due process; (iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §300.512 apply; (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official; (v) Make an independent decision on completion of the review; and (vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties. (c) *Findings and decision to advisory panel and general public.* The SEA, after deleting any personally identifiable information, must— (1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the	… (22) Modification of final decision. Clerical mistakes in final decisions, orders or parts of the record and errors therein arising from oversight or omission may be corrected by the hearing officer at any time on the hearing officer's own initiative or on the request of any party and after such notice, if any, as the hearing officer orders. Such mistakes may be corrected after a civil action has been brought pursuant to Paragraph (24) of Subsection I of 6.31.2.13 NMAC below only with leave of the state or federal district court presiding over the civil action.	Upon receipt of a request for a due process hearing filed by a parent, CAPITAN MUNICIPAL SCHOOLS will provide the parent with a copy of the Parent and Child Rights in Special Education Procedural Safeguards Notice, in English, Spanish or Navajo, as appropriate. The Parent and Child Rights in Special Education Procedural Safeguards Notice informs parents of the timelines for appealing the decision of a hearing officer. A current copy of the Parent and Child Rights in Special Education Procedural Safeguards Notice (English Version), Derechos de los Padres y del/la Niño(a) en la Educación Especial: Su Aviso Interino Sobre Procedimientos De Proteccion (Spanish Version), the Parent and Child Rights in Special Education Procedural Safeguards Notice (Navajo Version) and the Parent and Child rights in Special Education Procedurals Safeguards Notice (Russian) are available through the NMPED.

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State advisory panel established under § 300.167; and (2) Make those findings and decisions available to the public. (d) *Finality of review decision.* The decision made by the reviewing official is final unless a party brings a civil action under § 300.516. (Authority: 20 U.S.C. 1415(g) and (h)(4), 1415(i)(1)(A),1415(i)(2))		

§ 300.515 Timelines and convenience of hearings and reviews.		
(a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under § 300.510(b), or the adjusted time periods described in § 300.510(c)— (1) A final decision is reached in the hearing; and (2) A copy of the decision is mailed to each of the parties. (b) The SEA must ensure that not later than 30 days after the receipt of a request for a review— (1) A final decision is reached in the review; and (2) A copy of the decision is mailed to each of the parties. (c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party. (d) Each hearing and each review involving oral	**6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** I. Due Process Hearings … (13) Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.	

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arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved. (Authority: 20 U.S.C. 1415(f)(1)(B)(ii), 1415(g), 1415(i)(1))		

§ 300.516 Civil action.		
(a) *General.* Any party aggrieved by the findings and decision made under §§ 300.507 through 300.513 or §§ 300.530 through 300.534 who does not have the right to an appeal under § 300.514(b), and any party aggrieved by the findings and decision under § 300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under § 300.507 or §§300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. (b) *Time limitation.* The party bringing the action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law. (c) *Additional requirements.* In any action brought under paragraph (a) of this section, the court— (1) Receives the records of the administrative proceedings; (2) Hears additional evidence at the request of a party; and (3) Basing its decision on the preponderance of the evidence, grants the relief that the court	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** I. Due Process Hearings … (24) Civil action. (a) Any party aggrieved by the decision of a hearing officer in an IDEA matter has the right to bring a civil action in a state or federal district court pursuant to 20 USC Sec. 1415(i) and 34 CFR Sec. 300.516. Any civil action must be filed within 30 days of the receipt of the hearing officer's decision by the appealing party. (b) A party aggrieved by the decision of a hearing officer in a matter relating solely to the identification, evaluation, or educational placement of or services to a child who needs or may need gifted services may bring a civil action in a state court of appropriate jurisdiction within 30 days of receipt of the hearing officer's decision by the appealing party.	

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determines to be appropriate. (d) *Jurisdiction of district courts.* The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy. (e) *Rule of construction.* Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§ 300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act. (Authority: 20 U.S.C. 1415(i)(2) and (3)(A), 1415(l))		

§ 300.517 Attorneys' fees.		
(a) *In general*. (1) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to— (i) The prevailing party who is the parent of a child with a disability; (ii) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** I. Due Process Hearings … (25) Attorney fees. (a) In any action or proceeding brought under 20 USC Sec. 1415, the court, in its discretion and subject to the further provisions of 20 USC Sec. 1415(i) and 34 CFR Sec. 300.517, may award reasonable attorney fees as part of the costs to: (i) the parent of a child with a disability who is a prevailing party;	Upon receipt of a request for a due process hearing filed by a parent, CAPITAN MUNICIPAL SCHOOLS will provide the parent with a copy of the Parent and Child Rights in Special Education Procedural Safeguards Notice, in English, Spanish or Navajo, as appropriate. The Parent and Child Rights in Special Education Procedural Safeguards Notice informs parents generally of the circumstances under which a prevailing parent may recover attorney's fees from a school district and a prevailing school district may recover attorney's fees from the parent. A current copy of the Parent and Child Rights in Special Education Procedural Safeguards Notice (English Version), Derechos de los Padres y del/la Niño(a) en la Educación Especial: Su Aviso Interino Sobre

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litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or (iii) To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. (2) Nothing in this subsection shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005. (b) Prohibition *on use of funds.* (1) Funds under Part B of the Act may not be used to pay attorneys 'fees or costs of a party related to any action or proceeding under section 615 of the Act and subpart E of this part. (2) Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act. (c) *Award of fees.* A court awards reasonable attorneys' fees under section 615(i)(3) of the Act consistent with the following: (1) Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.	(ii) a prevailing public agency against the attorney of a parent who files a request for due process or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or (iii) a prevailing public agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. (b) Any action for attorney fees must be filed within 30 days of the receipt of the last administrative decision. (c) Opportunity to resolve due process complaints. A meeting conducted pursuant to Subparagraph (a) of Paragraph (8) of Subsection I of 6.31.2.13 NMAC shall not be considered: (i) a meeting convened as a result of an administrative hearing or judicial action; or (ii) an administrative hearing or judicial action for purposes of this paragraph. (d) Hearing officers are not authorized to award attorney fees. (e) Attorney fees are not recoverable for actions or proceedings involving services to gifted children or other claims based solely on state law.	Procedimientos De Proteccion (Spanish Version), the Parent and Child Rights in Special Education Procedural Safeguards Notice (Navajo Version) and the Parent and Child rights in Special Education Procedurals Safeguards Notice (Russian) are available through the NMPED.

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(2) (i) Attorneys‘ fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if— (A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins; (B) The offer is not accepted within 10 days; and (C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement. (ii) Attorneys‘ fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in § 300.506. (iii) A meeting conducted pursuant to § 300.510 shall not be considered— (A) A meeting convened as a result of an administrative hearing or judicial action; or (B) An administrative hearing or judicial action for purposes of this section.		

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(3) Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer. (4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that— (i) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy; (ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; (iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or (iv) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with § 300.508. (5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act. (Authority: 20 U.S.C. 1415(i)(3)(B)–(G))		

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§ 300.518 Child's status during proceedings.		
(a) Except as provided in § 300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under §300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement. (b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings. (c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under § 300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency. (d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section. (Authority: 20 U.S.C. 1415(j))	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** I. Due Process Hearings … (26) Child's status during proceedings. (a) Except as provided in 34 CFR Sec. 300.533 and Paragraph (4) of Subsection I of 6.31.2.13 NMAC, and unless the public agency and the parents of the child agree otherwise, during the pendency of any administrative or judicial proceeding regarding an IDEA due process request, the child involved must remain in his or her current educational placement. Disagreements over the identification of the current educational placement which the parties cannot resolve by agreement shall be resolved by the hearing officer as necessary. (b) If the case involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings. (c) If a hearing officer agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the public agency and the parents for purposes of Subparagraph (a) of Paragraph (26) of Subsection I of 6.31.2.13 NMAC.	CAPITAN MUNICIPAL SCHOOLS will ensure that the child remains in the stay-put placement during the pendency of the proceedings, unless CAPITAN MUNICIPAL SCHOOLS and the parent agree otherwise.

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§ 300.519 Surrogate parents.		
(a) *General.* Each public agency must ensure that the rights of a child are protected when— (1) No parent (as defined in § 300.30) can be identified; (2) The public agency, after reasonable efforts, cannot locate a parent; (3) The child is a ward of the State under the laws of that State; or (4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)). (b) *Duties of public agency.* The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method— (1) For determining whether a child needs a surrogate parent; and (2) For assigning a surrogate parent to the child. (c) *Wards of the State.* In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section. (d) *Criteria for selection of surrogate parents*.	**6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** K. Children in detention and correctional facilities. (7) Children with disabilities who are detained or incarcerated in detention or correctional facilities are wards of the state and may have surrogate parents appointed pursuant to 34 CFR Sec. 300.519 and Subsection J of 6.31.2.13 NMAC to protect their IDEA rights while in state custody. (8) The public agency that administers the educational program in a juvenile or adult detention or correctional facility shall ensure that surrogate parents are appointed in cases where no parent as defined in 34 CFR Sec. 300.30(a) and Paragraph (14) of Subsection B of 6.31.2.7 NMAC is reasonably available or willing to make the educational decisions required for children with disabilities who are housed in that facility. **6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** J. Surrogate parents and foster parents. (1) Each public agency shall ensure that a qualified surrogate parent is appointed in compliance with 34 CFR Sec. 300.519 when needed to protect the rights of a child with a disability who is within the agency's educational jurisdiction. A surrogate parent need not be appointed if a person who qualifies as a parent under 34 CFR Sec. 300.30(b) and Paragraph (13) of Subsection B of 6.31.2.7 NMAC can be identified. (2) A foster parent who meets all requirements of 34 CFR Sec. 300.30 may be treated as the child's parent	CAPITAN MUNICIPAL SCHOOLS will timely identify the need for a surrogate parent and appoint a surrogate parent who meets the IDEA criteria. CAPITAN MUNICIPAL SCHOOLS does not compensate individuals for acting as surrogate parents. CAPITAN MUNICIPAL SCHOOLS understands that a private agency that contracts with CAPITAN MUNICIPAL SCHOOLS for the education or care of the child, in essence, works for CAPITAN MUNICIPAL SCHOOLS, and therefore, could not act as a surrogate parent under the IDEA. (See 71 Fed. Reg. 46568 (August 14, 2004))

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(1) The public agency may select a surrogate parent in any way permitted under State law. (2) Public agencies must ensure that a person selected as a surrogate parent— (i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child; (ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and (iii) Has knowledge and skills that ensure adequate representation of the child. (e) *Non-employee requirement; compensation.* A *person* otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent. (f) *Unaccompanied homeless youth.* In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section. (g) *Surrogate parent responsibilities.* The surrogate parent *may* represent the child in all matters relating to— (1) The identification, evaluation, and educational placement of the child; and (2) The provision of FAPE to the child. (h) *SEA responsibility.* The SEA must make reasonable	pursuant to that regulation. A foster parent who does not meet those requirements but meets all requirements of 34 CFR Sec. 300.519 may be appointed as a surrogate parent if the public agency that is responsible for the appointment deems such action appropriate. (3) Pursuant to 34 CFR Sec. 300.519, a surrogate parent may represent the child in all matters relating to the identification, evaluation and educational placement of the child and the provision of FAPE to the child.	

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efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent. (Authority: 20 U.S.C. 1415(b)(2))		

§ 300.520 Transfer of parental rights at age of majority.		
(a) *General.* A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)— (1) (i) The public agency must provide any notice required by this part to both the child and the parents; and (ii) All rights accorded to parents under Part B of the Act transfer to the child; (2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and (3) Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the child and the parents of the transfer of rights. (b) Special *rule.* A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under State	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** K. Transfer of parental rights to students at age 18. (1) Pursuant to Secs. 12-2A-3 and 28-6-1 NMSA 1978, a person's age of majority begins on the first instant of his or her 18th birthday and a person who has reached the age of majority is an adult for all purposes not otherwise limited by state law. A guardianship proceeding under the probate code is the only way an adult in New Mexico can legally be determined to be incompetent and have the right to make his or her own decisions taken away. Public agencies and their IEP teams are not empowered to make such determinations under New Mexico law. Accordingly, pursuant to 34 CFR Sec. 300.520, when a child with a disability reaches age 18 and does not have a court-appointed general guardian, limited guardian or other person who has been authorized by a court to make educational decisions on the student's behalf or who has not signed a power of attorney as provided under New Mexico law: (a) a public agency shall provide any notices required by 34 CFR Part 300 to the child and the parents;	CAPITAN MUNICIPAL SCHOOLS follows all of the procedural requirements concerning transfer of rights at age of majority. CAPITAN MUNICIPAL SCHOOLS affords all of the procedural safeguards to the adult student when rights transfer. When rights transfer, the parent continues to receive all the requisite notices, a right shared by both the adult student and the parent.

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law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program. (Authority: 20 U.S.C. 1415(m))	(b) all other rights accorded to parents under Part B of the IDEA, New Mexico law or department rules and standards transfer to the child; and (c) the public agency shall notify the individual and the parents of the transfer of rights.	

§§ 300.521–300.529 [Reserved]		

DISCIPLINE PROCEDURES		
§ 300.530 Authority of school personnel.		
(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct. (b) *General.* (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.536).	**6.11.2.10 NMAC. ENFORCING RULES OF CONDUCT:** F. Detention, suspension and expulsion: Where detention, suspension or expulsion is determined to be the appropriate penalty, it may be imposed only in accordance with procedures that provide at least the minimum safeguards prescribed in Section 6.11.2.12 NMAC, below. Suspensions or expulsions of students with disabilities shall be subject to the further requirements of Subsection G of Section 6.11.2.10 NMAC and Section 6.11.2.11 NMAC below. G. Discipline of students with disabilities: Students with disabilities are not immune from school disciplinary processes, nor are they entitled to remain in a particular educational program when their behavior substantially impairs the education of other children in the program. However, the public schools are required by state law and regulations to meet the individual educational needs of students with disabilities to the extent that current educational expertise permits. Public school	CAPITAN MUNICIPAL SCHOOLS, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of the following guidance: ■ NMPED guidance document regarding Student Discipline: A Technical Assistance Manual for Students with Disabilities (April 2008), available through the NMPED website. ■ When disciplining students with disabilities for general misconduct, Flowchart A. ■ When disciplining students with disabilities under special circumstances (for drugs, weapons, serious bodily injury), Flowchart B. ■ U.S. Department of Education Office of Special Education and Rehabilitative Services (OSERS) Questions and Answers On Discipline Procedures (Revised June 2009). CAPITAN MUNICIPAL SCHOOLS personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement

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Federal Regulations	New Mexico Rules	Procedures
(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section. (c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section. (d) *Services.* (1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must— (i) Continue to receive educational services, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur. (2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational	personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, consistent with the other requirements of 6.11.2.11 NMAC, is appropriate for a student with a disability who violates a code of conduct as provided in 34 CFR Sec. 300.530. (1) Long-term suspensions or expulsions of students with disabilities shall be governed by the procedures set forth in Section 6.11.2.11 NMAC below. (2) Temporary suspensions of students with disabilities may be imposed in accordance with the normal procedures prescribed in Subsection D of Section 6.11.2.12 NMAC below, provided that the student is returned to the same educational placement after the temporary suspension and unless a temporary suspension is prohibited under the provisions of Subsection G, Paragraph (3) of 6.11.2.10 NMAC below. (3) Program prescriptions. A student with a disability's individualized education program (IEP), under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), need not affirmatively authorize disciplinary actions which are not otherwise in conflict with this rule. However, the IEP team may prescribe or prohibit specified disciplinary measures for an individual student with a disability by including appropriate provisions in the student's IEP. Administrative authorities shall adhere to any such provisions contained in a student with a disability's IEP, except that an IEP team may not prohibit the initiation of proceedings for long-term suspension or expulsion which are conducted in accordance with this rule. (4) Immediate removal. Immediate removal of students with disabilities may be done in accordance with the procedures of Subsection C of Section 6.11.2.12 NMAC below.	is appropriate for a child with a disability who violates a code of student conduct. Making a case-by-case basis determination means CAPITAN MUNICIPAL SCHOOLS personnel may consider whether a change in placement that is otherwise permitted under the disciplinary procedures is appropriate and should occur. It does not independently authorize CAPITAN MUNICIPAL SCHOOLS personnel, on a case-by-case basis, to institute a change in placement that would be inconsistent with § 300.530(b) through (i), including the requirement in paragraph (e) of this section regarding manifestation determinations. (See 71 Fed. Reg. 46714 (August 14, 2006)) When making a case-by-case determination regarding whether a disciplinary change in placement is appropriate for a child with a disability, factors such as a child's disciplinary history, ability to understand consequences, expression of remorse, and supports provided to a child with a disability prior to the violation of a school code could be unique circumstances considered by school personnel. (See 71 Fed. Reg. 46714 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS personnel may remove a child with a disability from his or her current placement to an interim alternative educational setting, another setting, or suspension for up to 10 school days in the same school year without providing educational services. (See 71 Fed. Reg. 46718 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS understands that the term "consecutive" is used to permit school personnel to remove children with disabilities who violate a code of student from their current educational placement for not more than 10 consecutive school days at a time, and that additional removals of 10 consecutive school days or less in the same school year would be possible, as long as any removal does not constitute a change in placement. (See 71 Fed. Reg. 46714 (August 14, 2006))

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setting. (3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed. (4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under § 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. (5) If the removal is a change of placement under § 300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section. (e) Manifestation *determination.* (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—	**6.11.2.11 NMAC. DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:** A. General. The following rules shall apply when a student with a disability under IDEA violates a rule of conduct as set forth in this rule which may result in: (1) long-term suspension or expulsion; or (2) any other disciplinary change of the student's current educational placement as specified in the federal regulations implementing IDEA at 34 CFR Secs. 300.530 through 300.536 and these or other public education department rules and standards. B. When behavior is not a manifestation of disability. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to Subsection C of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in Subsection I of this section. C. Manifestation determination. (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a rule of student conduct, the administrative authority, the parent and relevant members of the child's IEP team (as determined by the parent and the administrative authority) must review all relevant information in the student's file, including the child's IEP, any teacher observations and any relevant information provided by the parents to determine: (a) if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or	CAPITAN MUNICIPAL SCHOOLS recognizes it is important for purposes of school safety and order to preserve the authority that CAPITAN MUNICIPAL SCHOOLS personnel have to be able to remove a child for a discipline infraction for a short period of time, even though the child already may have been removed for more than 10 school days in that school year, as long as the pattern of removals does not itself constitute a change in placement of the child. (See 71 Fed. Reg. 46715 (August 14, 2006)) Beginning, however, on the eleventh cumulative day in a school year that a child with a disability is removed from the child's current placement, and for any subsequent removals, CAPITAN MUNICIPAL SCHOOLS shall provide educational services to the extent required in § 300.530(d), while the removal continues. (See 71 Fed. Reg. 46718 (August 14, 2006)) When calculating days of removal, CAPITAN MUNICIPAL SCHOOLS understands that portions of a school day that a child has been suspended may be considered as a removal. (See 71 Fed. Reg. 46715 (August 14, 2006)) When calculating days of removal, CAPITAN MUNICIPAL SCHOOLS understands that whether a bus suspension would count as a day of removal would depend on whether the bus transportation is a part of the child's IEP. If the bus transportation were a part of the child's IEP, a bus suspension would be treated as a day of removal unless CAPITAN MUNICIPAL SCHOOLS provides the bus service in some other way, because that transportation is necessary for the child to obtain access to the location where services will be delivered. If the bus transportation is not a part of the child's IEP, a bus suspension is not a day of removal. In those cases, the child and the child's parent have the same obligations to get the child to and from school as a nondisabled child who has been suspended from the bus. (See 71 Fed. Reg. 46715 (August 14, 2006)) After a child with a disability has been removed from

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(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP. (2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met. (3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies. (f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must— (1) Either— (i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and	(b) if the conduct in question was the direct result of the administrative authority's failure to implement the IEP. (2) The conduct must be determined to be a manifestation of the child's disability if the administrative authority, the parent and relevant members of the child's IEP team determine that a condition in either Subparagraph (a) or (b) of Paragraph (1) of Subsection C of 6.11.2.11 NMAC was met. (3) If the administrative authority, the parent and relevant members of the child's IEP team determine the condition described in Subparagraph (b) of Paragraph (1) of Subsection C of 6.11.2.11 NMAC was met, the administrative authority must take immediate steps to remedy those deficiencies. D. Determination that behavior is manifestation of disability. If the administrative authority, the parent and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must comply within 34 CFR Sec. 300.530(f). E. Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child's behavior involves one of the special circumstances listed in 34 CFR Sec. 300.530(g). For purposes of this subsection, the definitions provided in 34 CFR Sec. 300.530(i) shall apply. ... H. Parental notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the administrative authority must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR Sec. 300.504.	his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement, CAPITAN MUNICIPAL SCHOOLS personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. The determination of which teacher CAPITAN MUNICIPAL SCHOOLS personnel should consult should be based on the facts and circumstances of each case, the needs of the child and the expertise of the child's teachers. In many cases, the special education teacher may be the most appropriate teacher with whom CAPITAN MUNICIPAL SCHOOLS personnel should consult. This, however, is not always the case. In light of the short-term nature of the removals under paragraph (d)(4) and the need for CAPITAN MUNICIPAL SCHOOLS personnel to make quick decisions regarding services, CAPITAN MUNICIPAL SCHOOLS believes CAPITAN MUNICIPAL SCHOOLS personnel need broad flexibility in making such decisions and are in the best position to determine the appropriate teacher with whom to consult. (See 71 Fed. Reg. 46718 (August 14, 2006)) The opportunity to "continue to participate" does not mean that CAPITAN MUNICIPAL SCHOOLS must replicate every aspect of the services that a child would receive if in his or her normal classroom. For example, it would not generally be feasible for a child removed for disciplinary reasons to receive every aspect of the services that a child would receive if in his or her chemistry or auto mechanics classroom as these classes generally are taught using a hands-on component or specialized equipment or facilities. (See 71 Fed. Reg. 46716 (August 14, 2006)) While children with disabilities removed for more than 10 school days in a school year for disciplinary reasons

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(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan. (g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child— (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA; (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA. (h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in § 300.504. (i) Definitions. For purposes of this section, the following definitions apply: (1) Controlled substance means a drug or other substance identified under schedules I, II, III,	I. Services. A student with a disability who is removed from the student's current placement pursuant to this section must continue to receive special education and related services as provided in 34 CFR Sec. 300.530(d). **6.11.2.12 NMAC. PROCEDURE FOR DETENTIONS, SUSPENSIONS AND EXPULSIONS:** The authority of the state and of local school boards to prescribe and enforce standards of conduct for public school students must be exercised consistently with constitutional safeguards of individual student rights. The right to a public education is not absolute; it may be taken away, temporarily or permanently, for violations of school rules. But it is a property right which may only be denied where school authorities have adhered to the minimum procedural safeguards required to afford the student due process of law. This section prescribes minimum requirements for detention, in-school suspension and temporary, long-term or permanent removal of students from the public schools. Local school boards may adopt procedures which afford students more protection than this rule requires. The procedures in this section apply only to disciplinary detentions, suspensions and expulsions. They do not apply to disenrollment of students who fail to meet immunization, age, residence or other requirements for valid enrollment, nor to the removal from school membership reports of students who have been absent from school for ten (10) consecutive school days in accordance with Subsection B of Section 22-8-2 NMSA 1978. Nothing in this section should be construed as prohibiting school boards or administrative authorities from involving other school staff, students and members of the community in the enforcement of rules of student conduct to the extent they believe is appropriate. A. Post-suspension placement of students. Any student suspended from school shall be delivered directly by a school official to the student's parent(s), legal guardian or an adult designated by the parent(s) or the legal guardian, or kept on school grounds until the usual end of the school day. B. Students with disabilities. This section does not apply to long-term suspension or expulsion of students who	must continue to receive FAPE, CAPITAN MUNICIPAL SCHOOLS recognizes that the IDEA modifies the concept of FAPE in these circumstances to encompass those services necessary to enable the child to continue to participate in the general curriculum, and to progress toward meeting the goals set out in the child's IEP. CAPITAN MUNICIPAL SCHOOLS is not required to provide children removed for more than 10 school days in a school year for disciplinary reasons exactly the same services in exactly the same settings as they were receiving prior to the imposition of discipline. However, CAPITAN MUNICIPAL SCHOOLS shall ensure that the special education and related services the child does receive enables the child to continue to participate in the general curriculum, and to progress toward meeting the goals set out in the child's IEP. (See 71 Fed. Reg. 46716 (August 14, 2006)) Decisions regarding the extent to which services would need to be provided and the amount of services that would be necessary to enable a child with a disability to appropriately participate in the general curriculum and progress toward achieving the goals on the child's IEP may be different if the child is removed from his or her regular placement for a short period of time. For example, a child who is removed for a short period of time and who is performing at grade level may not need the same kind and amount of services to meet this standard as a child who is removed from his or her regular placement for 45 days under § 300.530(g) or § 300.532 and not performing at grade level. (See 71 Fed. Reg. 46716 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS shall not deny educational services to children with disabilities who have been removed for more than 10 school days in a school year; however § 300.530(d)(4) does not always require the provision of services when a child is removed from school for just a few days in a school year. (See 71 Fed. Reg. 46717 (August 14, 2006)) The manifestation provisions provide a simplified, common sense manifestation determination process.

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IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)). (2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law. (3) Serious bodily injury has the meaning given the term ''serious bodily injury'' under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code. (4) Weapon has the meaning given the term ''dangerous weapon'' under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (Authority: 20 U.S.C. 1415(k)(1) and (7))	are disabled pursuant to the IDEA or Section 504. The procedures for long-term suspension or expulsion of disabled students are set forth in Section 6.11.2.11 NMAC above. School personnel under this section may remove a student with a disability who violates a rule of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to students without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under Subsection G of 6.11.2.11 NMAC above). **6.31.2.11 NMAC. EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:** F. Behavioral management and discipline. (1) Behavioral planning in the IEP. Pursuant to 34 CFR Sec. 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. (2) Suspensions, expulsions and disciplinary changes of placement. Suspensions, expulsions and other disciplinary changes of placement for children with disabilities shall be carried out in compliance with all	CAPITAN MUNICIPAL SCHOOLS expects that the manifestation determination review will be done carefully and thoroughly with consideration of any rare or extraordinary circumstances presented. As part of the manifestation determination review, the Team will analyze the child's behavior as demonstrated across settings and across time when determining whether the conduct in question is a direct result of the disability. (See 71 Fed. Reg. 46720 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS recognizes that a child with a disability may display disruptive behaviors characteristic of the child's disability and the child should not be punished for behaviors that are a result of the child's disability. In determining that a child's conduct was a manifestation of his or her disability, the Team must find that the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability, and was not an attenuated association, such as low self-esteem, to the child's disability. (See Note 237–245 of the Conf. Rpt., p. 225; see also, 71 Fed. Reg. 46720 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS recognizes that in instances where a child's disciplinary removal constitutes a change in placement, and given the length of time of such removals, the IEP Team is the appropriate entity to determine the educational services necessary to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. (See 71 Fed. Reg. 46718-46719 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS understands that when removing on the basis of special circumstances, "serious bodily injury" means "bodily injury which involves-- (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or

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	applicable requirements of 34 CFR Secs. 300.530-300.536, and these or other department rules and standards, including particularly 6.11.2.11 NMAC, governing interim disciplinary placements and long-term suspensions or expulsions of students with disabilities. (3) FAPE for children removed from current placement for more than 10 school days in a school year. FAPE shall be provided in compliance with all applicable requirements of 34 CFR Sec. 300.530(d) and these or other department rules and standards for all children with disabilities who have been removed from their current educational placements for disciplinary reasons for more than 10 school days during a school year, as defined in 34 CFR Sec. 300.536. (4) LEAs must keep an accurate accounting of suspension and expulsion rates for children with disabilities as compared to children without disabilities to ensure that children with disabilities are not being expelled or suspended at a significantly higher rate than children without disabilities.	(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty." 18 U.S.C. § 1365(h)(3). CAPITAN MUNICIPAL SCHOOLS understands that when removing on the basis of special circumstances, "dangerous weapon" means "a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length." 18 U.S.C. § 930(g)(2).

§ 300.531 Determination of setting.		
The child's IEP Team determines the interim alternative educational setting for services under § 300.530(c), (d)(5), and (g). (Authority: 20 U.S.C. 1415(k)(2))	**6.11.2.11 NMAC. DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:** F. Determination of setting. The student's IEP team determines the interim alternative educational setting for services under Subsections B and E of this section.	If the child's current placement is a special education setting, the child could be removed from the special education setting to another setting for disciplinary reasons. Similarly, if the child with a disability who violated a school code of conduct receives services in a regular classroom, the child could be removed to an appropriate interim alternative educational setting, another setting, or suspension. However, CAPITAN MUNICIPAL SCHOOLS understands that the child who is removed for more than 10 school days in the same school year must continue to receive educational services, to enable the child to continue to participate in the general education curriculum although in another

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		setting, and to progress toward meeting the goals set out in his or her IEP. (See 71 Fed. Reg. 46717 (August 14, 2006)) The IEP Team is responsible for determining the interim alternative educational setting for a child with a disability for removals that are a change of placement. CAPITAN MUNICIPAL SCHOOLS interprets this obligation to apply to all removals that constitute a change of placement for disciplinary reasons. (See 71 Fed. Reg. 46719 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS interprets "setting" in this context to be the environment in which the child will receive services, such as an alternative school, alternative classroom, or home setting. In many instances, the location and the setting or environment in which the child will receive services are the same. CAPITAN MUNICIPAL SCHOOLS may have available more than one location that meets the criteria of the setting chosen by the IEP Team. For example, CAPITAN MUNICIPAL SCHOOLS may have available two alternative schools that meet the criteria of the interim alternative educational setting chosen by the IEP Team. In those cases, CAPITAN MUNICIPAL SCHOOLS personnel would be able to assign the child to either of these locations, if the IEP Team has not specified a particular one. (See 71 Fed. Reg. 46719 (August 14, 2006))

§ 300.532 Appeal.		
(a) *General.* The parent of a child with a disability who disagrees with any decision regarding placement under §§ 300.530 and 300.531, or the manifestation determination under §300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by	**6.11.2.11 NMAC. DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:** J. Appeal. (1) The parent of a student with a disability who disagrees with any decision regarding the placement or the manifestation determination under this section, or an administrative authority that believes that	Although IDEA does not address allocation of the burden of proof in due process hearings brought under the IDEA, the U.S. Supreme Court addressed the issue. In *Schaffer*, the Court held that the burden of persuasion in a hearing challenging the validity of an IEP is placed on the party on which this burden usually falls—on the party seeking relief—whether that is the parent of the child with a disability or the school district. Where

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filing a complaint pursuant to §§ 300.507 and 300.508(a) and (b). (b) Authority *of hearing officer*. (1) A hearing officer under § 300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section. (2) In making the determination under paragraph (b)(1) of this section, the hearing officer may— (i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of § 300.530 or that the child's behavior was a manifestation of the child's disability; or (ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. (3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others. (c) Expedited *due process hearing*. (1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.507 and 300.508(a) through (c) and §§	maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to Subsection I of 6.31.2.13 NMAC. (2) A hearing officer who hears a matter under Paragraph (1) of Subsection J of 6.11.2.11 NMAC, has the authority provided in 34 CFR Sec. 300.532(b). **6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** I. Due Process Hearings (4) Bases for requesting expedited hearing. (a) Pursuant to 34 CFR Sec. 300.532 and 20 USC Sec. 1415(k)(3), a parent may request an expedited hearing to review any decision regarding placement or a manifestation determination under 34 CFR Secs. 300.530-300.531. (b) Pursuant to 34 CFR Sec. 300.532(c) and 20 USC Sec. 1415(k)(3), a public agency may request an expedited hearing if it believes that maintaining the current placement of a child is substantially likely to result in injury to the child or others. … (19) Rules for expedited hearings. The rules in Paragraphs (4) through (18) of Subsection I of 6.31.2.13 NMAC shall apply to expedited due process hearings with the following exceptions. (a) The SEB of the department and the hearing officer shall ensure that a hearing is held within 20 school days of the date the request for hearing is received by the SEB, and a written	CAPITAN MUNICIPAL SCHOOLS has requested that a hearing officer remove a child to an interim alternative educational setting, CAPITAN MUNICIPAL SCHOOLS understands that the burden of persuasion is on CAPITAN MUNICIPAL SCHOOLS. (See 71 Fed. Reg. 46723 (August 14, 2006)) If the parent disagrees with the manifestation determination, they have the right to appeal that decision by requesting a due process hearing under § 300.532. At the point a due process hearing is requested, the concept of burden of proof would be applicable. In this instance, the burden of proof would be allocated to the parent who is the moving party. (See 71 Fed. Reg. 46724 (August 14, 2006)) In light of the shortened timelines for conducting an expedited due process hearing under § 300.532(c), it is not practical to apply to the expedited due process hearing the sufficiency provision in § 300.508(d). (See 71 Fed. Reg. 46725 (August 14, 2006)) Recognizing the need to promptly resolve a disagreement regarding a disciplinary decision, CAPITAN MUNICIPAL SCHOOLS believes the resolution meeting provides an opportunity for CAPITAN MUNICIPAL SCHOOLS and parents to resolve a disagreement regarding a disciplinary placement or manifestation determination before the timeframe for conducting a due process hearing begins. (See 71 Fed. Reg. 46725 (August 14, 2006)) Therefore, in most instances, CAPITAN MUNICIPAL SCHOOLS will not waive this opportunity even in the context of an expedited due process hearing.

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300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section. (2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing. (3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in §300.506— (i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and (ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint. (4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in §§ 300.510 through 300.514 are met. (5) The decisions on expedited due process hearings are appealable consistent with § 300.514. (Authority: 20 U.S.C. 1415(k)(3) and (4)(B), 1415(f)(1)(A))	decision is reached within 10 school days of the completion of the hearing, without exceptions or extensions, and thereafter mailed to the parties. (b) The hearing officer shall seek to hold the hearing and issue a decision as soon as is reasonably practicable within the time limit described in Subparagraph (a) of Paragraph (19) of Subsection I of 6.31.2.13 NMAC above, and shall expedite the proceedings with due regard for any progress in a resolution session, FIEP meeting or mediation, the parties' need for adequate time to prepare and the hearing officer's need for time to review the evidence and prepare a decision after the hearing. (c) The parties shall decide whether to convene a resolution session, FIEP meeting, or mediation before the commencement of an expedited hearing in accordance with Paragraph (8) of Subsection I of 6.31.2.13 NMAC, and are encouraged to utilize one of these preliminary meeting options. However, in the case of an expedited hearing, agreement by the parties to convene a resolution session, FIEP meeting or mediation shall not result in the suspension or extension of the timeline for the hearing stated under Subparagraph (a) of Paragraph (19) of Subsection I of 6.31.2.13 NMAC above. The timeline for resolution sessions provided in 34 CFR Sec. 300.532(c)(3) shall be observed. (d) Subparagraph (a) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC relating to sufficiency of the request for the expedited due process hearing does not apply to expedited hearings. (e) The hearing officer may shorten the timeline for the exchange of proposed stipulated facts between the parties as he deems necessary and appropriate given the circumstances of a	

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	particular case. The hearing officer may also shorten the timeline for providing agreed-upon stipulated facts to the hearing officer to two school days before the hearing. (f) Decisions in expedited due process hearings are final, unless a party brings a civil action as provided in Paragraph (24) of Subsection I of 6.31.2.13 NMAC below.	

§ 300.533 Placement during appeals.		
When an appeal under § 300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in § A300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise. (Authority: 20 U.S.C. 1415(k)(4)(A))	**6.11.2.11 NMAC. DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:** J. Appeal. … (3) When an appeal under this subsection has been made by either the parent or the administrative authority, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in Subsections B or E of this section, whichever occurs first, unless the parent and the administrative authority agree otherwise.	CAPITAN MUNICIPAL SCHOOLS will ensure that the child remains in the stay-put placement during the pendency of the proceedings, unless CAPITAN MUNICIPAL SCHOOLS and the parent agree otherwise.

§ 300.534 Protections for children not determined eligible for special education and related services.		
(a) *General.* A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the	**6.11.2.10 NMAC. ENFORCING RULES OF CONDUCT:** G. Discipline of students with disabilities: Students with disabilities are not immune from school disciplinary	If a child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct asserts the protections of the IDEA, CAPITAN MUNICIPAL SCHOOLS will ensure IDEA

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public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. (b) *Basis of knowledge.* A public agency must be deemed to have knowledge that a child is a child with a *disability* if before the behavior that precipitated the disciplinary action occurred— (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services; (2) The parent of the child requested an evaluation of the child pursuant to §§ 300.300 through 300.311; or (3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency. (c) *Exception.* A public agency would not be deemed to have knowledge under paragraph (b) of this section if— (1) The parent of the child— (i) Has not allowed an evaluation of the child pursuant to §§ 300.300 through 300.311; or (ii) Has refused services under this part; or (2) The child has been evaluated in accordance with §§300.300 through 300.311 and	processes, nor are they entitled to remain in a particular educational program when their behavior substantially impairs the education of other children in the program. However, the public schools are required by state law and regulations to meet the individual educational needs of students with disabilities to the extent that current educational expertise permits. Public school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, consistent with the other requirements of 6.11.2.11 NMAC, is appropriate for a student with a disability who violates a code of conduct as provided in 34 CFR Sec. 300.530. … (5) A student who has not been determined to be eligible for special education and related services under 6.31.2 NMAC and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in this subsection if the conditions set forth in 34 CFR Sec. 300.534 have been met.	protections are extended to the child who is not yet eligible for special education services if the child meets the criteria for such protections. CAPITAN MUNICIPAL SCHOOLS interprets the phrase "express concern" to mean that a parent is concerned that his or her child is in need of special education and related services and expresses that concern in writing to the child's teacher or administrative personnel. (See 71 Fed. Reg. 46727 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will not be considered to have a basis of knowledge merely because a child receives coordinated early intervening services. However, if a parent or a teacher of a child receiving early intervening services expresses a concern, in writing, to appropriate agency personnel, that the child may need special education and related services, CAPITAN MUNICIPAL SCHOOLS would be deemed to have knowledge that the child is a child with a disability under this part. (See 71 Fed. Reg. 46727 (August 14, 2006)) When a parent revokes consent for special education and related services, the parent has refused services as described in § 300.534(c)(1)(ii); therefore, CAPITAN MUNICIPAL SCHOOLS is not deemed to have knowledge that the child is a child with a disability and the child may be disciplined as a general education student and is not entitled to the IDEA's discipline protections. (See 73 Fed. Reg. 73012 (December 1, 2008)) CAPITAN MUNICIPAL SCHOOLS does not specify a timeline for an expedited evaluation or an eligibility determination. What may be required to conduct an evaluation will vary widely depending on the nature and extent of a child's suspected disability and the amount of additional information that would be necessary to make an eligibility determination. However, when the evaluation must be "expedited", CAPITAN MUNICIPAL SCHOOLS interprets this to mean that the

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determined to not be a child with a disability under this part. (d) *Conditions that apply if no basis of knowledge.* (1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) of this section. (2) (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under §300.530, the evaluation must be conducted in an expedited manner. (ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. (iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§ 300.530 through 300.536 and section 612(a)(1)(A) of the Act. (Authority: 20 U.S.C. 1415(k)(5))		evaluation should be conducted in a shorter period of time than a typical initial evaluation which must be conducted within 60 days of receiving parental consent for the evaluation. (See 71 Fed. Reg. 46728 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS recognizes that nothing in the IDEA prevents a parent from requesting an evaluation when their child has a discipline issue or is at risk of not succeeding in school, even after the parent has previously revoked consent for the provision of special education and related services. (See 73 Fed. Reg. 73014 (December 1, 2008))

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§ 300.535 Referral to and action by law enforcement and judicial authorities.		
(a) *Rule of construction.* Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability. (b) Transmittal *of records*. (1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime. (2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act. (Authority: 20 U.S.C. 1415(k)(6))	**6.11.2.10 NMAC. ENFORCING RULES OF CONDUCT:** G. Discipline of students with disabilities: Students with disabilities are not immune from school disciplinary processes, nor are they entitled to remain in a particular educational program when their behavior substantially impairs the education of other children in the program. However, the public schools are required by state law and regulations to meet the individual educational needs of students with disabilities to the extent that current educational expertise permits. Public school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, consistent with the other requirements of 6.11.2.11 NMAC, is appropriate for a student with a disability who violates a code of conduct as provided in 34 CFR Sec. 300.530. … (6) Referral to and action by law enforcement and judicial authorities. (a) Nothing in these rules of conduct prohibits an administrative authority from reporting a crime committed by a student with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability. (b) Transmittal of records. (i) An administrative authority reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted, for consideration by the appropriate	CAPITAN MUNICIPAL SCHOOLS reads § 300.535(b)(2) consistent with the disclosures permitted under FERPA for the education records of all children. Under FERPA, CAPITAN MUNICIPAL SCHOOLS can only release personally identifiable information (such as the child's status as a special education child) with parental consent, except in certain very limited circumstances. Therefore, the transmission of a child's special education and disciplinary records without parental consent is permissible only to the extent that such transmission is permitted under FERPA. (See 71 Fed. Reg. 46728 (August 14, 2006)) When the CAPITAN MUNICIPAL SCHOOLS reports a crime committed by a student with a disability to law enforcement authorities, CAPITAN MUNICIPAL SCHOOLS will transmit special education and disciplinary records of the student only to the extent permitted by FERPA. CAPITAN MUNICIPAL SCHOOLS, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of the Board's Policy and School Safety Plan (applicable to all students including students with disabilities) implementing NMSA 1978, § 22-5-4.12 (2017) [H.B. 75] to ensure that Board Policies and School Safety Plan is followed whenever a student with a disability is restrained or secluded including when law enforcement is summoned instead of using a restraint or seclusion technique on a student.

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	authorities, to whom the administrative authority reports the crime. (ii) An administrative authority reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act. **NMSA 1978, § 22-5-4.12 (2017) [H.B. 75]. Limiting the Use Of Restraint And Seclusion In Schools; Providing for Notice To Parents** … E. If a school summons law enforcement instead of using a restraint or seclusion technique on a student, the school shall comply with the reporting, documentation and review procedures established pursuant to Subsection D of this section. … G. The provisions of this section shall not be interpreted as addressing the conduct of law enforcement or first responders.	

§ 300.536 Change of placement because of disciplinary removals.		
(a) For purposes of removals of a child with a disability from the child's current educational placement under §§ 300.530 through 300.535, a change of placement occurs if— (1) The removal is for more than 10 consecutive school days; or	**6.11.2.11 NMAC. DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:** G. Change of placement because of disciplinary removals. For purposes of removals of a student with a disability from the child's current educational placement under 6.11.2.11 and 6.11.2.12 NMAC, a change of placement	CAPITAN MUNICIPAL SCHOOLS recognizes that to the extent that any school district has "a zero tolerance" policy, such policies are irrelevant to what constitutes a change in placement for disciplinary removals under the IDEA. (See 71 Fed. Reg. 46728 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will consider on a case-by-case basis whether the behavior in the incidents that resulted in the series of removals is "substantially

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(2) The child has been subjected to a series of removals that constitute a pattern— (i) Because the series of removals total more than 10 school days in a school year; (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. (b) (1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a charge of placement. (2) This determination is subject to review through due process and judicial proceedings. (Authority: 20 U.S.C. 1415(k))	occurs if the conditions provided in 34 CFR Sec. 300.536 are met.	similar." In making the determination as to "substantially similar behavior," CAPITAN MUNICIPAL SCHOOLS will consider any relevant information regarding the child's behaviors, including, where appropriate, any information in the child's IEP. However, "substantially similar behaviors" do not need to be recognized by the IEP Team or included in the child's IEP, and instead will be determined by CAPITAN MUNICIPAL SCHOOLS. Although "substantially similar behavior" is a subjective determination, when the child's behaviors, taken cumulatively, are objectively reviewed in the context of all the criteria for determining whether the series of behaviors constitutes a change in placement, CAPITAN MUNICIPAL SCHOOLS will be able to make a reasonable determination as to whether a change in placement has occurred. (See 71 Fed. Reg. 46729 (August 14, 2006))

§ 300.537 State enforcement mechanisms.		
Notwithstanding §§ 300.506(b)(7) and 300.510(d)(2), which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in this part that would prevent the SEA from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States. (Authority: 20 U.S.C. 1415(e)(2)(F), 1415(f)(1)(B))		

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§§ 300.538–300.599 [Reserved]		

EDUCATIONAL SERVICES FOR GIFTED CHILDREN		
(Not addressed in federal regulations; see New Mexico Rules).	**GIFTED CHILDREN** **6.31.2.7 NMAC. DEFINITIONS:** D. The definitions in Subsection D apply only to Section 12 (*educational services for gifted children*). (1) Gifted child defined. As used in 6.31.2.12 NMAC, "**gifted child**" means a school-age person as defined in Sec. 22-13-6(D) NMSA 1978 whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking meets the eligibility criteria in 6.31.2.12 NMAC and for whom a properly constituted IEP team determines that special education services are required to meet the child's educational needs. (2) Qualifying areas defined. (a) **"Intellectual ability**" means a score two standard deviations above the mean as defined by the test author on a properly administered intelligence measure. The test administrator must also consider the standard error of measure (SEM) in the determination of whether or not criteria have been met in this area. (b) "**Subject matter aptitude/achievement**" means superior academic performance on a total subject area score on a standardized measure, or as documented by information from	The NMPED has issued a Characteristics of Gifted Students with Factors Instructions, Checklist, and Scoring Guide (November 2005) that the SAT committee may use. As indicated in the Purpose Statement, "This checklist exists in order to discover factors that may influence classroom performance or test scores of gifted students. It does not weigh for or against qualification, but aids the Student Assistance Team (SAT) in making good judgments about how to proceed with the evaluation process." Per the Interpretation instructions, "Quantitative data from this checklist should be combined with qualitative data for consideration by the SAT in determining whether or not a student referred for gifted services would be considered to have 'factors.' If there are 'factors' that are determined to be significant through the use of this instrument and other qualitative data, the student would be referred by the SAT to the team administering the alternative protocol that has been approved by the Public Education Department/Special Education Bureau and adopted by the district/charter school for screening and evaluation." The CAPITAN MUNICIPAL SCHOOLS, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this resource. The NMPED has issued a Technical Assistance Manual for Gifted Education in New Mexico (August 2008), available through the NMPED website.

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	other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC. (c) "**Creativity/divergent thinking**" means outstanding performance on a test of creativity/ divergent thinking, or in creativity/divergent thinking as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC. (d) "**Problem-solving/critical thinking**" means outstanding performance on a test of problem-solving/critical thinking, or in problem-solving/critical thinking as documented by information from other sources as specified in Subparagraph (b) of Paragraph (2) of Subsection B of 6.31.2.12 NMAC. **6.31.2.12 NMAC. EDUCATIONAL SERVICES FOR GIFTED CHILDREN:** A. Gifted child defined. As used in 6.31.2.12 NMAC, "gifted child" means a school-age person as defined in Sec. 22-13-6(D) NMSA 1978 whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking meets the eligibility criteria in 6.31.2.12 NMAC and for whom a properly constituted IEP team determines that special education services are required to meet the child's educational needs. B. Qualifying areas defined. (1) "Intellectual ability" means a score two standard deviations above the mean as defined by the test author on a properly administered intelligence measure. The test administrator must also consider the standard error of measure (SEM) in the determination of whether or not criteria have been met in this area. (2) "Subject matter aptitude/achievement" means superior academic performance on a total subject	This technical assistance manual provides legal requirements, as well as sample forms, processes, and checklists. The forms or checklists included are offered by the PED in response to the many requests received for sample models. However, according to the PED, "none of the forms are required or necessarily recommended." If they are used, CAPITAN MUNICIPAL SCHOOLS will review, adapt, and/or revise the forms to fit CAPITAN MUNICIPAL SCHOOLS's specific demographic and procedural needs. CAPITAN MUNICIPAL SCHOOLS, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this technical assistance manual.

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	area score on a standardized measure, or as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC. (3) "Creativity/divergent thinking" means outstanding performance on a test of creativity/ divergent thinking, or in creativity/divergent thinking as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC. (4) "Problem-solving/critical thinking" means outstanding performance on a test of problem-solving/critical thinking, or in problem-solving/critical thinking as documented by information from other sources as specified in Paragraph (2) of Subsection B of 6.31.2.12 NMAC. (5) For students with "factors" as specified in Paragraph (2) of Subsection E of 6.31.2.12 NMAC, the impact of these factors shall be documented and alternative methods will be used to determine the student's eligibility. C. Evaluation procedures for gifted children. (1) Each district must establish a child find procedure that includes a screening and referral process for students in public school who may be gifted. (2) Analysis of data. The identification of a student as gifted shall include documentation and analysis of data from multiple sources for subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking including: (a) standardized measures, as specified in Subsection B of 6.31.2.12 NMAC, and (b) information regarding the child's abilities from other sources, such as collections of work, audio/visual tapes, judgment of work by	

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	qualified individuals knowledgeable about the child's performance (e.g., artists, musicians, poets and historians, etc.), interviews, or observations. (3) The child's ability shall be assessed in all four areas specified in Subsection B of 6.31.2.12 NMAC. D. Standard method for identification. Under the standard method for identification, students will be evaluated in the areas of intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking. A student who meets the criteria established in Subsection B of 6.31.2.12 for intellectual ability and also meets the criteria in one or more of the other areas will qualify for consideration of service. A properly constituted IEP team, including someone who has knowledge of gifted education, will determine if special education services are required to meet the child's educational needs. E. Alternative method for identification. (1) A district may apply to the public education department to utilize an alternative protocol for all students. Eligibility of a student will then be determined by a properly administered and collected, department-approved alternative protocol designed to evaluate a student's intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving /critical thinking. (2) If an accurate assessment of a child's ability may be affected by factors including cultural background, linguistic background, socioeconomic status or disability condition(s), an alternative protocol as described in Paragraph (1) of Subsection E of 6.31.2.12 NMAC will be used in all districts to determine the student's eligibility. The impact of these factors shall be documented by the person(s) administering the alternative protocol.	

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	(3) The student assistance team (SAT) process requirements will not apply to students who meet the criteria established by the alternative protocols. When a student's overall demonstrated abilities are very superior (as defined by the alternative protocol author), a properly constituted IEP team, including someone who has knowledge of gifted education, will determine if special education services are required to meet the child's educational needs. F. Applicability of rules to gifted children. (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: (a) the requirements of 6.31.2.8 NMAC through 6.31.2.10 NMAC [Right to FAPE, Public Agency Responsibilities, Identification, Evaluations and Eligibility Determinations]; (b) Subsections J [Children in State-Supported Educational Programs], K [Children in Detention and Correctional Facilities] and L [Children in Private Schools or Facilities] 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; (c) the requirements of 34 CFR Secs. 300.530-300.536 [Discipline Procedures], Subsection I of 6.31.2.13 NMAC [Due Process Hearings] and 6.11.2.11 NMAC regarding disciplinary changes of placement for children with disabilities; and	

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	(d) the requirements of 34 CFR Secs. 300.43 [Ward of the State], 300.320(b) [IEP's Transition Service] 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. disability and be entitled to a free appropriate public education for both reasons. (2) Assuming appropriate evaluations, a child may properly be determined to be both gifted and a child with a disability and be entitled to a free appropriate public education for both reasons. The rules in this section 6.31.2.12 NMAC apply only to gifted children. (3) Nothing in these rules shall preclude a school district or a charter school within a district from offering additional gifted programs for children who fail to meet the eligibility criteria. However, the state shall only provide funds under Section 22-8-21 NMSA 1978 for department approved gifted programs for those students who meet the established criteria. G. Advisory committees. (1) Each school district offering a gifted education program shall create one or more advisory committees of parents, community members, students and school staff members. The school district may create as many advisory committees as there are high schools in the district or may create a district-wide advisory committee. (2) The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the school district or the schools the committee advises. Representation from all schools the committee is advising is required. (3) Purposes. The advisory committee shall:	

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	(a) regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery; (b) demonstrate support for the gifted program; (c) provide information regarding the impact that cultural background, linguistic background, socioeconomic status and disability conditions within the community may have on the child referral, identification, evaluation and service delivery processes; (d) advocate for children who have been under-represented in gifted services due to cultural or linguistic background, socioeconomic status, or disability conditions, in order to ensure that these children have equal opportunities to benefit from services for gifted students; and (e) meet three or more times per year at regular intervals. (4) Formal documentation of committee membership, activities and recommendations shall be maintained. If proposals are made by the committee to address any of the purposes as listed in Subsection G(3) of 6.31.2.12 NMAC, they shall be submitted in writing to the district administration. The administration shall respond in writing to any proposed actions before the next scheduled meeting of the advisory committee.	

Subpart F—Monitoring, Enforcement, Confidentiality, and Program Information		
Monitoring, Technical Assistance, and Enforcement		
§ 300.600 State monitoring and enforcement.		

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[Text omitted from these procedures.]		

§ 300.601 State performance plans and data collection. [Text omitted from these procedures.]		

§ 300.602 State use of targets and reporting. [Text omitted from these procedures.]		

§ 300.603 Secretary's review and determination regarding State performance. [Text omitted from these procedures.]		

§ 300.604 Enforcement. [Text omitted from these procedures.]		

§ 300.605 Withholding funds. [Text omitted from these procedures.]		

§ 300.606 Public attention. [Text omitted from these procedures.]		

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§ 300.607 Divided State agency responsibility. [Text omitted from these procedures.]		

§ 300.608 State enforcement. [Text omitted from these procedures.]		

§ 300.609 Rule of construction. [Text omitted from these procedures.]		

Confidentiality of Information		
§ 300.610 Confidentiality.		
The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with §§ 300.611 through 300.627. (Authority: 20 U.S.C. 1417(c))	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** L. Confidentiality of information. (1) Confidentiality requirements. Each public agency collecting, using or maintaining any personally identifiable information on children under Part B of the IDEA shall comply with all applicable requirements of 34 CFR Secs. 300.610-300.626, and the Family Educational Rights and Privacy Act, 34 CFR Part 99. (2) Parental rights to inspect, review and request amendment of education records. Each public agency shall permit parents or their authorized representatives to inspect and review any education records relating to their children that are collected, maintained or used by the agency under Part B of the IDEA pursuant to 34 CFR Sec. 300.613. A parent who believes that information in the education	CAPITAN MUNICIPAL SCHOOLS has a Board policy ensuring compliance with FERPA. CAPITAN MUNICIPAL SCHOOLS will follow Board policy, including with regard to assuring the following rights: ■ The right to inspect and review the child's education records within 45 days of the day CAPITAN MUNICIPAL SCHOOLS receives a request for access. Parents should submit to the custodian of records a written request that identifies the record(s) they wish to inspect. CAPITAN MUNICIPAL SCHOOLS will make arrangements for access and notify the parent of the time and place where the records may be inspected. ■ The right to request the amendment of the child's education records that the parent believes is inaccurate or misleading or violates the privacy or other rights of the child. Parents or eligible students may ask CAPITAN MUNICIPAL SCHOOLS to amend a record that they believe is

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	records is inaccurate or misleading or violates the privacy or other rights of the child may request the agency that maintains the information to amend the information pursuant to 34 CFR Sec. 300.618 and shall have the opportunity for a hearing on that request pursuant to 34 CFR Secs. 300.619-300.621 and 34 CFR Sec. 99.22. (3) Transfer of student records. (a) Pursuant to 34 CFR Sec. 99.31(a)(2), an educational agency may transfer child records without parental consent when requested by another educational agency in which a child seeks or intends to enroll as long as the sending agency has included the proper notification that it will do so in its required annual FERPA notice to children and parents. In view of the importance of uninterrupted educational services to children with disabilities, each New Mexico public agency is hereby directed to include such language in its annual FERPA notice and to ensure that it promptly honors each proper request for records from an educational agency that has become responsible for serving a child with a disability. (b) State-supported educational programs and the educational programs of juvenile or adult detention or correctional facilities are educational agencies for purposes of the Family Educational Rights and Privacy Act (FERPA) and are entitled to request and receive educational records on children with disabilities on the same basis as local school districts. Public agencies shall promptly honor requests for records to assist such programs in providing appropriate services to children within their educational jurisdiction. (c) Pursuant to 34 CFR Sec. 99.34(b), an educational agency that is authorized to transfer student records to another educational agency	inaccurate or misleading or violates the privacy or other rights of the child. They should clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading or violates the privacy or other rights of the child. If CAPITAN MUNICIPAL SCHOOLS decides not to amend the record as requested by the parent or eligible student, CAPITAN MUNICIPAL SCHOOLS will notify the parent of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent when notified of the right to a hearing. ■ The right to consent to disclosures of personally identifiable information contained in the child's education records, except to the extent that FERPA authorizes disclosure without consent. One exception, which permits disclosure without consent, is disclosure to school officials with legitimate educational interests. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility. Upon request, CAPITAN MUNICIPAL SCHOOLS discloses education records without consent to officials of another school district in which a child seeks or intends to enroll. ■ The right to file a complaint with the U.S. Department of Education concerning alleged failures by the School to comply with the requirements of FERPA. The name and address of the Office that administers FERPA are: Family Policy Compliance Office U.S. Department of Education 400 Maryland Avenue, SW Washington, DC 20202-5901 The Director of Special Education is custodian of the special education folder for students currently enrolled at the assigned school. The Director of Special

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	without parental consent under Sec. 99.31(a)(2) may properly transfer to the receiving agency all educational records the sending agency maintains on a child, including medical, psychological and other types of diagnostic and service information which the agency obtained from outside sources and used in making or implementing educational programming decisions for the child. (d) Pursuant to Paragraph (3) of Subsection E of 6.29.1.9 NMAC, 34 CFR Sec. 300.229 and the federal No Child Left Behind Act at 20 USC 7165, any transfer of educational records to a private or public elementary or secondary school in which a child with disabilities seeks, intends, or is instructed to enroll must include the following: (i) transcripts and copies of all pertinent records as normally transferred for all students; (ii) the child's current individualized education program with all supporting documentation, including the most recent multidisciplinary evaluations and any related medical, psychological or other diagnostic or service information that was consulted in developing the IEP; and (iii) disciplinary records with respect to current or previous suspensions or expulsions of the child. (4) Parental refusals of consent for release of information. If parental consent is required for a particular release of information regarding a child with a disability and the parent refuses consent, the sending or receiving public agency may use the impartial due process hearing procedures specified in Subsection I of 6.31.2.13 NMAC to determine if the information may be released without parental	Education is the custodian of records for the special education folder of students who have withdrawn or graduated. CAPITAN MUNICIPAL SCHOOLS will provide notice when records are no longer needed. The parent may seek destruction of the records once they are no longer needed. The information must be destroyed at the request of the parents or, at their option, the records must be given to the parents. When informing parents about their rights to destruction of personally identifiable records, CAPITAN MUNICIPAL SCHOOLS advises them that the records may be needed by the child or the parents for social security benefits and other purposes.

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	consent. If the hearing officer determines that the proposed release of information is reasonably necessary to enable one or more public agencies to fulfill their educational responsibilities toward the child, the information may be released without the parent's consent. The hearing officer's decision in such a case shall be final and not subject to further administrative review.	

§ 300.611 Definitions.		
As used in §§ 300.611 through 300.625— (a) *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. (b) *Education records* means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)). (c) Participating *agency* means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act. (Authority: 20 U.S.C. 1221e–3, 1412(a)(8), 1417(c))		

§ 300.612 Notice to parents.		
(a) The SEA must give notice that is adequate to fully inform parents about the requirements of § 300.123, including— (1) A description of the extent that the notice is given in the native languages of the various		CAPITAN MUNICIPAL SCHOOLS will comply with Board Policy regarding annual notice to parents under the Family Educational Rights and Privacy Act (FERPA); and will provide annual notice.

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population groups in the State; (2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information; (3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and (4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99. (b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))		

§ 300.613 Access rights.		
(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 300.507 or §§ 300.530 through 300.532, or resolution session pursuant to §	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** B. Examination of records. Each public agency shall afford the parents of a child with a disability an opportunity to inspect and review all education records related to the child in compliance with 34 CFR Secs. 300.501(a), 300.613-300.620, 34 CFR Part 99, and any	CAPITAN MUNICIPAL SCHOOLS will comply with Board Policy regarding a parent's access rights under the Family Educational Rights and Privacy Act (FERPA). CAPITAN MUNICIPAL SCHOOLS will afford parents the opportunity to inspect and review their child's education records within 45 days of the day CAPITAN MUNICIPAL SCHOOLS receives a request for access.

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300.510, and in no case more than 45 days after the request has been made. (b) The right to inspect and review education records under this section includes— (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; (2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and (3) The right to have a representative of the parent inspect and review the records. (c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))	other applicable requirements of these or other department rules and standards.	Parents should submit to the custodian of records a written request that identifies the record(s) they wish to inspect. CAPITAN MUNICIPAL SCHOOLS will make arrangements for access and notify the parent of the time and place where the records may be inspected.

§ 300.614 Record of access.		
Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.		CAPITAN MUNICIPAL SCHOOLS maintains the Record of Access for special education records in the Special Education folder.

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(Authority: 20 U.S.C. 1412(a)(8); 1417(c))		

§ 300.615 Records on more than one child.		
If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))		CAPITAN MUNICIPAL SCHOOLS will comply with Board Policy regarding records on more than one child under the Family Educational Rights and Privacy Act (FERPA). To ensure that any information on a child other than the child of the requesting parent remains protected, CAPITAN MUNICIPAL SCHOOLS will redact any identifying information on the other child or inform the parents of the information that pertains to only their child if redaction does not fully protect the identity of the other child.

§ 300.616 List of types and locations of information.		
Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))		In CAPITAN MUNICIPAL SCHOOLS, the special education records of a student are located at the Department of Special Education.

§ 300.617 Fees.		
(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. (b) A participating agency may not charge a fee to search for or to retrieve information under this part. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))		CAPITAN MUNICIPAL SCHOOLS will comply with Board Policy regarding charging fees for copies.

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§ 300.618 Amendment of records at parent's request.		
(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information. (b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. (c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §300.619. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))		CAPITAN MUNICIPAL SCHOOLS will comply with Board Policy regarding amendment of records under the Family Educational Rights and Privacy Act (FERPA). CAPITAN MUNICIPAL SCHOOLS affords parents and adult students the opportunity to request the amendment of their child's education records when a parent or adult student believes the records are inaccurate or misleading or violates the privacy or other rights of the child. Parents or eligible students may ask CAPITAN MUNICIPAL SCHOOLS to amend a record that they believe is inaccurate or misleading or violates the privacy or other rights of the child. They should clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading or violates the privacy or other rights of the child. If CAPITAN MUNICIPAL SCHOOLS decides not to amend the record as requested by the parent or eligible student, CAPITAN MUNICIPAL SCHOOLS will notify the parent of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent when notified of the right to a hearing.

§ 300.619 Opportunity for a hearing.		
The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))		CAPITAN MUNICIPAL SCHOOLS will comply with Board Policy regarding the opportunity for a hearing, including hearing procedures and result of the hearing under the Family Educational Rights and Privacy Act (FERPA).

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		CAPITAN MUNICIPAL SCHOOLS will hold the hearing within a reasonable time after it has received the request for hearing from the parents or adult student. (See 34 CFR 99.22; 71 Fed. Reg. 46735 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will give the parent or adult student notice of the date, time, and place, reasonably in advance of the hearing. (See 34 CFR 99.22; 71 Fed. Reg. 46735 (August 14, 2006)) The hearing may be conducted by any individual, including an official of CAPITAN MUNICIPAL SCHOOLS, who does not have a direct interest in the outcome of the hearing. (See 34 CFR 99.22; 71 Fed. Reg. 46735 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS, the parents or eligible student may, at their own expense, be assisted or represented by one or more individuals of their choice. (See 34 CFR 99.22; 71 Fed. Reg. 46735 (August 14, 2006)) CAPITAN MUNICIPAL SCHOOLS will make its decision within a reasonable period of time after the hearing. The decision will be based solely on the evidence presented at the hearing, and will include a summary of the evidence and the reasons for the decision. (See 34 CFR 99.22; 71 Fed. Reg. 46736 (August 14, 2006))

§ 300.620 Result of hearing.		
(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing. (b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or		

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otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency. (c) Any explanation placed in the records of the child under this section must— (1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and (2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))		

§ 300.621 Hearing procedures.		
A hearing held under § 300.619 must be conducted according to the procedures in 34 CFR 99.22. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))		

§ 300.622 Consent.		
(a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.		CAPITAN MUNICIPAL SCHOOLS will comply with Board Policy regarding parental consent requirements under the Family Educational Rights and Privacy Act (FERPA). CAPITAN MUNICIPAL SCHOOLS will obtain parental consent before disclosing personally

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(b) (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part. (2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with §300.321(b)(3). (3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))		identifiable information contained in a child's education records, except to the extent that FERPA authorizes disclosure without consent. One exception, which permits disclosure without consent, is disclosure to school officials with a legitimate educational interest. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility. Upon request, CAPITAN MUNICIPAL SCHOOLS discloses education records without consent to officials of another school district in which a child seeks or intends to enroll.

§ 300.623 Safeguards.		
(a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. (b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information. (c) All persons collecting or using personally		CAPITAN MUNICIPAL SCHOOLS will comply with Board Policy regarding safeguards under the Family Educational Rights and Privacy Act (FERPA). The child's school principal of CAPITAN MUNICIPAL SCHOOLS is responsible for ensuring the confidentiality of any personally identifiable information. CAPITAN MUNICIPAL SCHOOLS will ensure that all persons collecting or using personally identifiable

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identifiable information must receive training or instruction regarding the State's policies and procedures under § 300.123 and 34 CFR part 99. (d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))		information will receive training or instruction regarding the Family Educational Rights and Privacy Act (FERPA). CAPITAN MUNICIPAL SCHOOLS will maintain a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

§ 300.624 Destruction of information.		
(a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. (b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))	**6.31.2.13 NMAC. ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:** L. Confidentiality of information. … (5) Destruction of information. (a) Pursuant to 34 CFR Sec. 300.624, each public agency shall inform parents when personally identifiable information collected, maintained, or used under 34 CFR Part 300 is no longer needed to provide educational services to the child. As at other times, the parents shall have the right to inspect and review all educational records pertaining to their child pursuant to 34 CFR Sec. 300.613. The information must be destroyed at the request of the parents or, at their option the records must be given to the parents. When informing parents about their rights to destruction of personally identifiable records under these rules, the public agency should advise them that the records may be needed by the child or the parents for social security benefits and other purposes.	CAPITAN MUNICIPAL SCHOOLS will provide notice when records are no longer needed. The parent may seek destruction of the records once they are no longer needed. The information must be destroyed at the request of the parents or, at their option, the records must be given to the parents. When informing parents about their rights to destruction of personally identifiable records, CAPITAN MUNICIPAL SCHOOLS advises them that the records may be needed by the child or the parents for social security benefits and other purposes.

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	(b) If the parents do not request the destruction of personally identifiable information about their children, the public agency may retain that information permanently. In either event, a permanent record of a student's name, address and phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. Additional information that is not related to the student's IDEA services may be maintained if allowed under 34 CFR Part 99. (6) Educational records retention and disposition schedules. (a) Definitions as used in this paragraph: (i) "destruction" means physical destruction or removal of personal identifiers from educational records so that the information is no longer personally identifiable; and (ii) "educational records" means the type of records covered under the definition of "educational records" in 34 CFR Part 99 of the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g (FERPA). (b) Pursuant to 1.20.2.102 NMAC, the public agency must notify the parents that the public agency must retain specific information for five years to include: (i) most recent IEP; (ii) most recent 2 years child progress reports or referral form; (iii) related services reports; (iv) summary of academic achievement and functional performance;	

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	(v) parent communication; (vi) agency community action; (vii) writing sample; and (viii) staff reports on behavior. (c) Federal regulation and department rules require public agencies to inform parents of proposed destruction of special education records (34 CFR Sec. 300.624 and Paragraph (5) of this subsection). (d) Pursuant to 34 CFR Sec. 300.624, the information must be destroyed at the request of the parents. However, a permanent record of a child's name, address and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limit. Notice of destruction of child records must include: (i) informing parents at the last IEP meeting of personally identifiable information that is no longer needed to provide special education and related service and information that must be retained according to the state for five years under 1.20.1.102 NMAC; (ii) documentation at the last IEP meeting and prior written notice of the information that is required to be maintained indefinitely; (iii) documentation at the last IEP meeting and the prior written notice that the parent accepted or rejected the proposed action to maintain records; (iv) if the parent requests that the agency destroy information not required	

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	indefinitely, the agency must maintain the last IEP and prior written notice that states the parent required the public agency to destroy allowable information that must be maintained for 5 years; and (v) the public agency must inform the parents of the proposed date of destruction of records at the last IEP meeting and document on the prior written notice of action the proposed date of destruction of records.	

§ 300.625 Children's rights.		
(a) The SEA must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability. (b) Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18. (c) If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with § 300.520, the rights regarding educational records in §§ 300.613 through 300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))		When rights transfer, the rights afforded to "parent" will be afforded by CAPITAN MUNICIPAL SCHOOLS to the adult student.

§ 300.626 Enforcement.		

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The SEA must have in effect the policies and procedures, including sanctions that the State uses, to ensure that its policies and procedures consistent with §§ 300.611 through 300.625 are followed and that the requirements of the Act and the regulations in this part are met. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))		

§ 300.627 Department use of personally identifiable information.		
If the Department or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to the Privacy Act of 1974, 5 U.S.C. 552a, the Secretary applies the requirements of 5 U.S.C. 552a(b)(1) and (b)(2), 552a(b)(4) through (b)(11); 552a(c) through 552a(e)(3)(B); 552a(e)(3)(D); 552a(e)(5) through (e)(10); 552a(h); 552a(m); and 552a(n); and the regulations implementing those provisions in 34 CFR part 5b. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))		

Reports—Program Information		
§ 300.640 Annual report of children served—report requirement.		
(a) The SEA must annually report to the Secretary on the information required by section 618 of the Act at the times specified by the Secretary. (b) The SEA must submit the report on forms provided by the Secretary. (Approved by the Office of Management and Budget under control numbers 1820–0030, 1820–0043, 1820–0659, 1820–0621, 1820–0518, 1820–0521, 1820–0517, and		CAPITAN MUNICIPAL SCHOOLS will provide accurate, valid and timely data to the NMPED deemed necessary by the NMPED to carry out its duty under 20 U.S.C. § 1418 of the IDEA to report program information to the U.S. Department of Education.

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1820– 0677) (Authority: 20 U.S.C. 1418(a))		

§ 300.641 Annual report of children served—information required in the report.		
(a) For purposes of the annual report required by section 618 of the Act and § 300.640, the State and the Secretary of the Interior must count and report the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year. (b) For the purpose of this reporting provision, a child's age is the child's actual age on the date of the child count. (c) The SEA may not report a child under more than one disability category. (d) If a child with a disability has more than one disability, the SEA must report that child in accordance with the following procedure: (1) If a child has only two disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category "deaf-blindness." (2) A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category ‗multiple disabilities.'' (Approved by the Office of Management and Budget under control numbers 1820–0030, 1820–0043, 1820–0621, 1820–0521, and 1820–0517) (Authority: 20 U.S.C. 1418(a), (b))		CAPITAN MUNICIPAL SCHOOLS will provide accurate, valid and timely data to the NMPED deemed necessary by the NMPED to carry out its duty under 20 U.S.C. § 1418 of the IDEA to report program information to the U.S. Department of Education.

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§ 300.642 Data reporting.		
(a) *Protection of personally identifiable data.* The data described in section 618(a) of the Act and in § 300.641 must be publicly reported by each State in a manner that does not result in disclosure of data identifiable to individual children. (b) Sampling. The Secretary may permit States and the Secretary of the Interior to obtain data in section 618(a) of the Act through sampling. (Approved by the Office of Management and Budget under control numbers 1820–0030, 1820–0043, 1820–0518, 1820–0521, and1820–0517)(Authority: 20 U.S.C. 1418(b))		CAPITAN MUNICIPAL SCHOOLS will provide accurate, valid and timely data to the NMPED deemed necessary by the NMPED to carry out its duty under 20 U.S.C. § 1418 of the IDEA to report program information to the U.S. Department of Education.

§ 300.643 Annual report of children served—certification.		
The SEA must include in its report a certification signed by an authorized official of the agency that the information provided under § 300.640 is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question. (Approved by the Office of Management and Budget under control numbers 1820–0030 and 1820–0043) (Authority: 20 U.S.C. 1418(a)(3))		CAPITAN MUNICIPAL SCHOOLS will provide accurate, valid and timely data to the NMPED deemed necessary by the NMPED to carry out its duty under 20 U.S.C. § 1418 of the IDEA to report program information to the U.S. Department of Education.

§ 300.644 Annual report of children served—criteria for counting children.		
The SEA may include in its report children with disabilities who are enrolled in a school or program that is		CAPITAN MUNICIPAL SCHOOLS will provide accurate, valid and timely data to the NMPED deemed

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operated or supported by a public agency, and that— (a) Provides them with both special education and related services that meet State standards; (b) Provides them only with special education, if a related service is not required, that meets State standards; or (c) In the case of children with disabilities enrolled by their parents in private schools, counts those children who are eligible under the Act and receive special education or related services or both that meet State standards under §§ 300.132 through 300.144. (Approved by the Office of Management and Budget under control numbers 1820–0030, 1820–0043, 1820–0659, 1820–0621, 1820–0521, and 1820–0517)(Authority: 20 U.S.C. 1418(a))		necessary by the NMPED to carry out its duty under 20 U.S.C. § 1418 of the IDEA to report program information to the U.S. Department of Education.

§ 300.645 Annual report of children served—other responsibilities of the SEA.		
In addition to meeting the other requirements of §§ 300.640 through 300.644, the SEA must— (a) Establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services; (b) Set dates by which those agencies and institutions must report to the SEA to ensure that the State complies with §300.640(a); (c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;		CAPITAN MUNICIPAL SCHOOLS will provide accurate, valid and timely data to the NMPED deemed necessary by the NMPED to carry out its duty under 20 U.S.C. § 1418 of the IDEA to report program information to the U.S. Department of Education.

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(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under §§ 300.640 through 300.644; and (e) Ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count. (Approved by the Office of Management and Budget under control numbers 1820–0030, 1820–0043, 1820–0659, 1820–0621, 1820–0518, 1820–0521, and 1820–0517)(Authority: 20 U.S.C. 1418(a))		

§ 300.646 Disproportionality.		
(a) *General.* Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to— (1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act; (2) The placement in particular educational settings of these children; and (3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions. (b) Review and revision of policies, practices, and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with	**6.31.2.9 NMAC. PUBLIC AGENCY RESPONSIBILITIES:** E. Significant disproportionality. (1) Pursuant to CFR 34 Sec. 300.646, LEAs must provide for the collection and examination of data to determine if significant disproportionality, based on race and ethnicity, is occurring with respect to: (a) the identification of children as children with disabilities including the identification of children as children with disabilities in accordance with a particular impairment as defined by 34 CFR Sec. 300.8; (b) the placement in particular educational settings of these children; and (c) the incidence, duration and type of disciplinary actions, including suspensions and expulsions. (2) Each public agency must reserve the fifteen percent early intervening funds if they are identified for	CAPITAN MUNICIPAL SCHOOLS will provide accurate, valid and timely data to the NMPED deemed necessary by the NMPED to carry out its duty to determine if significant discrepancies exist between the rates of long-term suspensions and expulsions of children with and without disabilities or any other information that may be required by the NMPED or the U.S. Department of Education. With respect to the definition of significant disproportionality, CAPITAN MUNICIPAL SCHOOLS recognizes that the State has the discretion to define the term for the LEAs and for the State in general. CAPITAN MUNICIPAL SCHOOLS understands that the State will review CAPITAN MUNICIPAL SCHOOLS's policies, practices, and procedures for identifying and placing children with disabilities if there is significant disproportionality in identification, placement, or discipline. CAPITAN MUNICIPAL SCHOOLS further understands that the purpose of such a review would be to determine if CAPITAN MUNICIPAL SCHOOLS's policies, practices, and procedures are consistent with the IDEA. (See 71 Fed. Reg. 46738 (August 14, 2006))

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disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the State or the Secretary of the Interior must— (1) Provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the Act. (2) Require any LEA identified under paragraph (a) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) of this section; and (3) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (b)(1) of this section. (Authority: 20 U.S.C. 1418(d))	having data that is significantly disproportionate in any one of the following categories: (a) suspension of students with disabilities; (b) over identification of students with disabilities; (c) over identification of students in accordance with a particular impairment as defined by 34 CFR Sec. 300.8; and (d) placement of students with disabilities in a particular setting. (3) Review and revision of policies, practices and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with Paragraph (1) of this subsection, the LEA must: (a) provide for the review and, if appropriate, revision of the policies, procedures and practices used in the identification or placement to ensure that the policies, procedures and practices comply with the requirements of the IDEA; and (b) require any LEA identified under Paragraph (1) of this subsection to reserve the maximum amount of funds under 34 CFR Sec. 300.226 to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly over-identified under Paragraph (1) of this subsection; and (c) require the LEA to publicly report on the revision of policies, practices and procedures described under Subparagraph (b) of this paragraph.	CAPITAN MUNICIPAL SCHOOLS complies with Title VI of the Civil Rights Act of 1964 which protects people from discrimination based on race, color or national origin in programs or activities that receive Federal financial assistance. The Office for Civil Rights under the U.S. Department of Education ("OCR") provides school districts and state departments of education guidance in satisfying Title VI. CAPITAN MUNICIPAL SCHOOLS, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of the following key OCR guidance documents: ■ Education and Title VI of the Civil Rights Act of 1964 (1991). ■ The Provision of an Equal Education Opportunity to Limited-English Proficient Students (Revised August 2000).

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Subpart G— Authorization, Allotment, Use of Funds, and Authorization of Appropriations		
Allotments, Grants, and Use of Funds		
§ 300.700 Grants to States.		
(a) *Purpose of grants.* The Secretary makes grants to States, outlying areas, and freely associated States (as defined in §300.717), and provides funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with Part B of the Act. (b) *Maximum amount.* The maximum amount of the grant a State may receive under section 611 of the Act is— (1) For fiscal years 2005 and 2006— (i) The number of children with disabilities in the State who are receiving special education and related services— (A) Aged three through five, if the State is eligible for a grant under section 619 of the Act; and (B) Aged 6 through 21; multiplied by— (ii) Forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States (as defined in § 300.717); and (2) For fiscal year 2007 and subsequent fiscal years— (i) The number of children with disabilities		

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in the2004–2005 school year in the State who receivedspecial education and related services— (A) Aged three through five if the State is eligible for a grant under section 619 of the Act; and (B) Aged 6 through 21; multiplied by (ii) Forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States (as defined in § 300.717); (iii) Adjusted by the rate of annual change in the sum of— (A) Eighty-five (85) percent of the State's population of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of the Act; and (B) Fifteen (15) percent of the State's population of children described in paragraph (b)(2)(iii)(A) of this section who are living in poverty. (Authority: 20 U.S.C. 1411(a) and (d))		

§ 300.701 Outlying areas, freely associated States, and the Secretary of the Interior. [Text omitted from these procedures.]		

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§ 300.702 Technical assistance. [Text omitted from these procedures.]		

§ 300.703 Allocations to States. [Text omitted from these procedures.]		

§ 300.704 State-level activities.		
(a) *State administration.* (1) For the purpose of administering Part B of the Act, including paragraph (c) of this section, section 619 of the Act, and the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities— (i) Each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under section 611 of the Act for fiscal year 2004 or $800,000 (adjusted in accordance with paragraph (a)(2) of this section), whichever is greater; and (ii) Each outlying area may reserve for each fiscal year not more than five percent of the amount the outlying area receives under § 300.701(a) for the fiscal year or $35,000, whichever is greater.	**6.31.2.7 NMAC. DEFINITIONS:** B. The following terms shall have the following meanings for purposes of these rules. … (16) **"Puente para los ninos fund"** in New Mexico means a risk pool fund to support high cost students with disabilities identified by LEAs pursuant to 34 CFR Sec. 300.704(c)(3)(i). **6.31.2.9 NMAC. PUBLIC AGENCY RESPONSIBILITIES:** B. Public agency funding and staffing. … (6) Risk pool fund. (Puente para los ninos fund.) (a) Local educational agency high cost fund. (i) In compliance with 34 CFR Sec. 300.704(c) the department shall maintain a risk pool fund to support high cost children with disabilities identified by LEAs.	

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(2) For each fiscal year, beginning with fiscal year 2005, the Secretary cumulatively adjusts— (i) The maximum amount the State was eligible to reserve for State administration under section 611 of the Act for fiscal year 2004; and (ii) $800,000, by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. (3) Prior to expenditure of funds under paragraph (a) of this section, the State must certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) of the Act are current. (4) Funds reserved under paragraph (a)(1) of this section may be used for the administration of Part C of the Act, if the SEA is the lead agency for the State under that Part. (b) *Other State-level activities.* (1) States may reserve a portion of their allocations for other State-level activities. The maximum amount that a State may reserve for other State-level activities is as follows: (i) If the amount that the State sets aside for State administration under paragraph (a) of this section is greater than $850,000 and the State opts to finance a high cost fund under paragraph (c) of this section: (A) For fiscal years 2005 and 2006, 10 percent of the State‘s allocation under §300.703.	(ii) Funds distributed under this program will be on a reimbursable basis. (b) Application for funds. LEAs desiring to be reimbursed for the cost of children with disabilities with high needs shall file an application in accordance with the department’s puente para los ninos fund as described on the department’s website.	

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(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10 percent of the State's allocation for fiscal year 2006 under §300.703 adjusted cumulatively for inflation. (ii) If the amount that the State sets aside for State administration under paragraph (a) of this section is greater than $850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section— (A) For fiscal years 2005 and 2006, nine percent of the State's allocation under §300.703. (B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine percent of the State's allocation for fiscal year 2006 adjusted cumulatively for inflation. (iii) If the amount that the State sets aside for State administration under paragraph (a) of this section is less than or equal to $850,000 and the State opts to finance a high cost fund under paragraph (c) of this section: (A) For fiscal years 2005 and 2006, 10.5 percent of the State's allocation under § 300.703. (B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10.5 percent of the State's allocation for fiscal year 2006 under §300.703 adjusted cumulatively for inflation. (iv) If the amount that the State sets aside for		

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State administration under paragraph (a) of this section is equal to or less than $850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section: (A) For fiscal years 2005 and 2006, nine and one-half percent of the State's allocation under § 300.703. (B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine and one-half percent of the State's allocation for fiscal year 2006 under § 300.703 adjusted cumulatively for inflation. (2) The adjustment for inflation is the rate of inflation as measured by the percentage of increase, if any, from the preceding fiscal year in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. (3) Some portion of the funds reserved under paragraph (b)(1) of this section must be used to carry out the following activities: (i) For monitoring, enforcement, and complaint investigation; and (ii) To establish and implement the mediation process required by section 615(e) of the Act, including providing for the costs of mediators and support personnel; (4) Funds reserved under paragraph (b)(1) of this section also may be used to carry out the following activities: (i) For support and direct services, including technical assistance, personnel		

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preparation, and professional development and training; (ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process; (iii) To assist LEAs in providing positive behavioral interventions and supports and mental health services for children with disabilities; (iv) To improve the use of technology in the classroom by children with disabilities to enhance learning; (v) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities; (vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities; (vii) To assist LEAs in meeting personnel shortages; (viii) To support capacity building activities and improve the delivery of services by LEAs to improve results for children with disabilities; (ix) Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State- operated or		

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State-supported schools, and children with disabilities in charter schools; (x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the ESEA; and (xi) To provide technical assistance to schools and LEAs, and direct services, including supplemental educational services as defined in section 1116(e) of the ESEA to children with disabilities, in schools or LEAs identified for improvement under section 1116 of the ESEA on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under section 1111(b)(2)(G) of the ESEA. (c) *Local educational agency high cost fund.* (1) In general— (i) For the purpose of assisting LEAs (including a charter school that is an LEA or a consortium of LEAs) in addressing the needs of high need children with disabilities, each State has the option to reserve for each fiscal year 10 percent of		

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the amount of funds the State reserves for other State- level activities under paragraph (b)(1) of this section— (A) To finance and make disbursements from the high cost fund to LEAs in accordance with paragraph (c) of this section during the first and succeeding fiscal years of the high cost fund; and (B) To support innovative and effective ways of cost sharing by the State, by an LEA, or among a consortium of LEAs, as determined by the State in coordination with representatives from LEAs, subject to paragraph (c)(2)(ii) of this section. (ii) For purposes of paragraph (c) of this section, *local educational agency* includes a charter school that is an LEA, or a consortium of LEAs. (2) (i) A State must not use any of the funds the State reserves pursuant to paragraph (c)(1)(i) of this section, which are solely for disbursement to LEAs, for costs associated with establishing, supporting, and otherwise administering the fund. The State may use funds the State reserves under paragraph (a) of this section for those administrative costs. (ii) A State must not use more than 5 percent of the funds the State reserves pursuant to paragraph (c)(1)(i) of this section for each fiscal year to support innovative and effective ways of cost sharing among consortia of LEAs. (3)		

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(i) The SEA must develop, not later than 90 days after the State reserves funds under paragraph (c)(1)(i) of this section, annually review, and amend as necessary, a State plan for the high cost fund. Such State plan must— (A) Establish, in consultation and coordination with representatives from LEAs, a definition of a high need child with a disability that, at a minimum— (1) Addresses the financial impact a high need child with a disability has on the budget of the child's LEA; and (2) Ensures that the cost of the high need child with a disability is greater than 3 times the average per pupil expenditure (as defined in section 9101 of the ESEA) in that State; (B) Establish eligibility criteria for the participation of an LEA that, at a minimum, take into account the number and percentage of high need children with disabilities served by an LEA; (C) Establish criteria to ensure that placements supported by the fund are consistent with the requirements of §§ 300.114 through 300.118; (D) Develop a funding mechanism that provides distributions each fiscal year to LEAs that meet the criteria developed by the State under paragraph(c)(3)(i)(B) of this section;		

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(E) Establish an annual schedule by which the SEA must make its distributions from the high cost fund each fiscal year; and (F) If the State elects to reserve funds for supporting innovative and effective ways of cost sharing under paragraph (c)(1)(i)(B) of this section, describe how these funds will be used. (ii) The State must make its final State plan available to the public not less than 30 days before the beginning of the school year, including dissemination of such information on the State Web site. (4) (i) Each SEA must make all annual disbursements from the high cost fund established under paragraph (c)(1)(i) of this section in accordance with the State plan published pursuant to paragraph (c)(3) of this section. (ii) The costs associated with educating a high need child with a disability, as defined under paragraph (c)(3)(i)(A) of this section, are only those costs associated with providing direct special education and related services to the child that are identified in that child's IEP, including the cost of room and board for a residential placement determined necessary, consistent with § 300.114, to implement a child's IEP. (iii) The funds in the high cost fund remain under the control of the State until disbursed to an LEA to support a specific child who qualifies under the State plan		

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for the high cost funds or distributed to LEAs, consistent with paragraph (c)(9) of this section. (5) The disbursements under paragraph (c)(4) of this section must not be used to support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure FAPE for such child. (6) Nothing in paragraph (c) of this section— (i) Limits or conditions the right of a child with a disability who is assisted under Part B of the Act to receive FAPE pursuant to section 612(a)(1) of the Act in the least restrictive environment pursuant to section 612(a)(5) of the Act; or (ii) Authorizes an SEA or LEA to establish a limit on what may be spent on the education of a child with a disability. (7) Notwithstanding the provisions of paragraphs (c)(1) through (6) of this section, a State may use funds reserved pursuant to paragraph (c)(1)(i) of this section for implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to LEAs that provides services to high need children based on eligibility criteria for such programs that were created not later than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high need child with a disability as described in paragraph (c)(3)(i)(A) of this section. (8) Disbursements provided under paragraph (c) of this section must not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the		

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State Medicaid program under Title XIX of the Social Security Act. (9) Funds reserved under paragraph (c)(1)(i) of this section from the appropriation for any fiscal year, but not expended pursuant to paragraph (c)(4) of this section before the beginning of their last year of availability for obligation, must be allocated to LEAs in the same manner as other funds from the appropriation for that fiscal year are allocated to LEAs under § 300.705 during their final year of availability. (d) *Inapplicability of certain prohibitions.* A State may use funds the State reserves under paragraphs (a) and (b) of this section without regard to— (1) The prohibition on commingling of funds in §300.162(b). (2) The prohibition on supplanting other funds in §300.162(c). (e) *Special rule for increasing funds.* A State may use funds *the* State reserves under paragraph (a)(1) of this section as a result of inflationary increases under paragraph (a)(2) of this section to carry out activities authorized under paragraph(b)(4)(i), (iii), (vii), or (viii) of this section. (f) *Flexibility in using funds for Part C.* Any State eligible to receive a grant under section 619 of the Act may use funds made available under paragraph (a)(1) of this section, §300.705(c), or § 300.814(e) to develop and implement a State policy jointly with the lead agency under Part C of the Act and the SEA to provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C of the Act to children with disabilities who are eligible for services under section 619 of the Act and who previously received		

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services under Part C of the Act until the children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate. (Approved by the Office of Management and Budget under control number 1820–0600) (Authority: 20 U.S.C. 1411(e))		

§ 300.705 Subgrants to LEAs.		
(a) *Subgrants required*. Each State that receives a grant under section 611 of the Act for any fiscal year must distribute any funds the State does not reserve under §300.704 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act for use in accordance with Part B of the Act. Effective with funds that become available on the July 1, 2009, each State must distribute funds to eligible LEAs, including public charter schools that operate as LEAs, even if the LEA is not serving any children with disabilities. (b) *Allocations to LEAs* For each fiscal year for which funds are allocated to States under § 300.703, each State shall allocate funds as follows: (1) *Base payments.* The State first must award each LEA described in paragraph (a) of this section the amount the LEA would have received under section 611 of the Act for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) of the Act, as that section was then in effect. (2) *Base payment adjustments* For any fiscal year after 1999 — (i) If a new LEA is created, the State must divide the base allocation determined	**6.31.2.9 NMAC. PUBLIC AGENCY RESPONSIBILITIES:** I. Reallocation of funds. If a new LEA is created, the base payment portion of the IDEA subgrant of the LEA that would have served children with disabilities now being served by the new LEA will be adjusted pursuant to 34 CFR Sec. 300.705(b)(2). IDEA funds to new charter schools that are LEAs will be allocated pursuant to 34 CFR Secs. 76.785-76.799 and 34 CFR Sec. 300.705(b). Pursuant to 34 CFR Sec. 300.705(c) if the department determines that a public agency is adequately providing FAPE to all children with disabilities residing in the area served by that public agency with state and local funds, the department may reallocate any portion of the funds under this part that are not needed by that public agency to provide FAPE to other LEAs in the state that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs or the department may also retain those funds for use at the state level as provided by 34 CFR Sec. 300.705(c).	

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under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under § 300.703(b), currently provided special education by each of the LEAs; (ii) If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs; (iii) If, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 21 change, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under § 300.703(b), currently provided special education by each affected LEA; and (iv) If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities. The State must divide the base allocation determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6		

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through 21 currently provided special education by each of the LEAs. This requirement takes effect with funds that become available on July 1, 2009. (3) Allocation of remaining funds. After making allocations under paragraph (b)(1) of this section, as adjusted by paragraph (b)(2) of this section, the State must — (i) Allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA ' s jurisdiction; and (ii) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA. (c) Reallocation of LEA funds. (1) If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under this part that are not needed by that LEA to provide FAPE, to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to §300.704. (2) After an SEA distributes funds under this part to an eligible LEA that is not serving any children with disabilities, as provided in		

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paragraph (a) of this section, the SEA must determine, within a reasonable period of time prior to the end of the carryover period in 34 CFR 76.709, whether the LEA has obligated the funds. The SEA may reallocate any of those funds not obligated by the LEA to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to §300.704. (Approved by the Office of Management and Budget under control number 1820–0030) (Authority: 20 U.S.C. 1411(f))		

§ 300.706 [Reserved]		

Secretary of the Interior

§ 300.707 Use of amounts by Secretary of the Interior. [Text omitted from these procedures.]		

§ 300.708 Submission of information. [Text omitted from these procedures.]		

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§ 300.709 Public participation. [Text omitted from these procedures.]		
§ 300.710 Use of funds under Part B of the Act. [Text omitted from these procedures.]		
§ 300.711 Early intervening services. [Text omitted from these procedures.]		
§ 300.712 Payments for education and services for Indian children with disabilities aged three through five. [Text omitted from these procedures.]		
§ 300.713 Plan for coordination of services. [Text omitted from these procedures.]		
§ 300.714 Establishment of advisory board. [Text omitted from these procedures.]		
§ 300.715 Annual reports. [Text omitted from these procedures.]		

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§ 300.716 Applicable regulations. [Text omitted from these procedures.]		

Definitions that Apply to this Subpart		
§ 300.717 Definitions applicable to allotments, grants, and use of funds. [Text omitted from these procedures.]		

Acquisition of Equipment and Construction or Alteration of Facilities		
§ 300.718 Acquisition of equipment and construction or alteration of facilities.		
(a) *General.* If the Secretary determines that a program authorized under Part B of the Act will be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary may allow the use of those funds for those purposes. (b) *Compliance with certain regulations.* Any construction of new facilities or alteration of existing facilities under paragraph (a)of this section must comply with the requirements of— (1) Appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the "Americans with Disabilities Accessibility Standards for Buildings and Facilities"); or (2) Appendix A of subpart 101–19.6 of title 41, Code of Federal Regulations (commonly known as the "Uniform Federal Accessibility Standards"). (Authority: 20 U.S.C. 1404)		

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Subpart H—Preschool Grants for Children with Disabilities		
§ 300.800 In general. [Text omitted from these procedures.]		

§ 300.801–300.802 [Reserved] [Text omitted from these procedures.]		

§ 300.803 Definition of State. [Text omitted from these procedures.]		

§ 300.804 Eligibility. [Text omitted from these procedures.]		

§ 300.805 [Reserved] [Text omitted from these procedures.]		

§ 300.806 Eligibility for financial assistance. [Text omitted from these procedures.]		

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§ 300.807 Allocations to States. [Text omitted from these procedures.]		
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§ 300.814 Other State-level activities. [Text omitted from these procedures.]		

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§ 300.817 Reallocation of LEA funds. [Text omitted from these procedures.]		

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