

Compliance Corner

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Don't Be Late When It's Time to Evaluate!

The duty to evaluate a child whom you suspect may be a child with a disability has always been an affirmative one for Local Education Agencies (LEAs). In other words, school districts have the obligation of pursuing an evaluation when a suspicion of a disability exists. School personnel do not have to be certain that a student will be found eligible; there just needs to be a suspicion that one may exist. The request for an evaluation may originate from a parent of the child or from the school district. Regardless of the origin, there are responsibilities on the part of the school district to act accordingly.

The Individuals with Disabilities Education Act (IDEA) (*34 CFR §300.111*) requires school districts to have in effect policies and procedures to ensure that-

(a)(1) 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...

Child Find must also include-

(c)(1) children who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade; and

(c)(2) highly mobile children, including migrant children

While regulations within IDEA provide timelines for when consent for an evaluation has been obtained and the requirement of when that evaluation is to be completed, it does not provide a timeline pertaining to the initiation of an evaluation following a request for such. However, rules within the New Mexico Administrative Code (NMAC) were created to address this and became effective on July 1, 2023. In addition, other timelines were created that are not defined specifically in the Individuals with Disabilities Education Act. These new timelines and expectations will be discussed in detail here.

As stated above, prior to July 1, 2023, no timelines existed regarding the initiation of the evaluation process from when a request for an evaluation was made to when consent was to have been obtained from the parent. As a result, referrals for evaluations could linger for quite

some time before the evaluator would seek consent for an evaluation resulting in significant delays for evaluating children. The new timelines address that concern.

Should a parent or district personnel suspect the presence of a disability, school personnel now have 15 school days to respond. This response includes obtaining consent to evaluate from the parent, providing the parent with a Prior Written Notice (PWN) detailing the proposal for an evaluation as well as a copy of their procedural safeguards, known as [SPECIAL EDUCATION PROCEDURAL SAFEGUARDS FOR STUDENTS WITH DISABILITIES AND THEIR FAMILIES REQUIRED UNDER IDEA PART B.](#) There are allowances within that timeline to account for interruptions in the instructional process due to school breaks, etc. Should a school district reject the parent's request for an evaluation, the district would still be responsible for providing the parent with a Prior Written Notice of refusal and a copy of their procedural safeguards but would not seek consent from the parent.

NMAC: 6.31.10 D (3) states: The public agency shall respond to a parental request for initial evaluation or reevaluation to the public agency no later than 15 school days from the receipt of the request. If a parent request for an evaluation or reevaluation is received within 15 school days before the start of a scheduled period in which student attendance is not required for at least 14 calendar days, the public agency shall respond no later than 30 calendar days from the date of the request.

In addition to the new timeline for responding to the request for an evaluation, the New Mexico Administrative Code makes it clear the request can be made in writing or orally and identifies the personnel to be involved should a parent make a request of the school district to evaluate her child.

NMAC: 6.31.2.10 D (2) states: The request for initial evaluation or reevaluation by a parent may be made in writing or orally to any licensed personnel of the school in which the student attends. A parental request for a full and individual evaluation shall be forwarded or communicated to the school or district special education director or a school or district administrator as soon as possible after it is received.

According to the New Mexico Administrative Code (6.68.2.7(E)), licensed personnel are those who possess a license issued by the New Mexico Public Education Department (NMPED) authorizing a person to:

- *teach*
- *supervise an instructional program*
- *counsel*
- *provide special instructional services*
- *coach*

- *provide health care*
- *administer medication*
- *perform medical procedures or*
- *administer in the public schools of the state*

What that process looks like in each individual district may vary. At a minimum, should a request for an evaluation be made by a parent or the public agency, the school district must ensure a process is in place for responding based on the timelines delineated in the New Mexico Administrative Code.

Another new timeline that school districts must adhere to involves the timeframe in which parents are to receive a copy of their child’s diagnostic report as well as the timeframe in which the district must schedule the meeting to determine if the child is eligible for services.

According to the amended rules, parents must receive a copy of their child’s diagnostic report no later than two calendar days prior to the Eligibility Determination Team (EDT) meeting. (See NMAC 6.31.2.10 G (4)) This allows parents to become familiar with the content of the report so they are fully informed of the information and can participate fully in the decision-making process. School districts should be mindful of school breaks to ensure adherence to this timeline. A single day in which schools are not in session prior to the Eligibility Determination Team meeting can cause non-compliance with this requirement.

Following the conclusion of the evaluation process, the EDT must be scheduled within 15 school days, unless the school district is facing a break in instruction for a duration of at least 14 calendar days. In this situation, the due date will be extended.

NMAC 6.31.2.10 J (1). Upon completing the full and individual evaluation and written evaluation report, the public agency shall convene a meeting of the eligibility determination team, which shall include the parent and a group of qualified professionals, within 15 school days to determine whether the child is a child with a disability and requires special education and related services, as defined in 34 CFR Sec. 300.8 and Paragraph (2) of Subsection B of 6.31.2.7 NMAC. If an individual evaluation is completed during a scheduled period in which student attendance is not required for at least 14 calendar days, the public agency shall convene both a meeting of the eligibility determination team and (if the child is determined eligible) a meeting of the IEP team to develop or revise the child’s IEP no later than 15 school days from the first day when student attendance resumes.

Finally, new requirements exist for those students who are evaluated for a possible specific learning disability eligibility. Prior to July 1, 2023, school districts could exercise professional judgment for a student in grades 4th-12th in terms of utilizing the dual discrepancy vs. the severe discrepancy model. As of July 1, 2023, all students, regardless of grade level, are to be evaluated utilizing the dual discrepancy model. (See NMAC 6.31.2.10 K (3)) These changes

came about due to the concerns the use of a severe discrepancy model led to either an over-identification or under-identification of children. In addition, there were concerns the severe discrepancy model was not appropriate or as accurate for students whose first language is not English. These changes should be reflected in the [New Mexico Technical Evaluation and Assessment Manual \(NM TEAM\)](#) at some point in the near future.

No doubt, the new timelines and expectations provide challenges for school districts. However, the purpose of these new timelines is to evaluate students in a timely manner so students who are eligible can receive the services and supports they need. Failing to timely evaluate a student when there is a suspicion of a disability or there should have been a suspicion of a disability could result in the denial of a free appropriate public education (FAPE).

For further information and a visual display of the new timelines, a link is included here: <https://webnew.ped.state.nm.us/wp-content/uploads/2023/03/Evaluation-and-Eligibility-Determination-Rule-Final.pdf>

The information included herein is not intended to provide legal advice. Should you need legal advice or guidance on any issue involving special education, please contact the appropriate person for your district.