

## NOTICE OF PROPOSED RULEMAKING

### Public Hearing

The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing for the following proposed rulemaking on Tuesday, January 3, 2023, from 10 a.m. to 12 p.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501:

- Amendment to **6.31.2 NMAC, Children with Disabilities/Gifted Children**

The location of the public hearing is subject to change due to concerns surrounding COVID-19. Continuous updates on hearing changes will be provided on the PED website. The PED will give a verbal summary statement, on record, at the hearing.

The purpose of the public hearing is to receive public input on the proposed rulemaking. Attendees who wish to provide public comment on record will be given three minutes to make a statement concerning the proposed rulemaking. Written comment will also be accepted at the hearing.

### Explanation of Purpose of Proposed Rulemaking

The purpose of the proposed rulemaking is to provide more definite timelines and requirements for public educational agencies throughout the identification, initial evaluation, and reevaluation procedures for children with disabilities from the use of the multi-layered system of supports (MLSS) and initial evaluation to the eligibility determination and initial individualized education program (IEP) meetings. Additionally, the rule was amended to explicitly include current Individuals with Disabilities Education Improvement Act (IDEA) requirements; address requirements when a student receives a regular high school diploma or exceeds the age of eligibility for special education services; and preclude the use of the severe discrepancy model as a method of evaluating for specific learning disabilities. The subsection regarding initial evaluations and reevaluations was also reorganized and amended to better clarify the requirements for evaluation and reevaluation.

### Summary of Text

The proposed amendment to **6.31.2 NMAC, Children with Disabilities/Gifted Children**, primarily amends section 6.31.2.10, Identification, Evaluation, and Eligibility Determination by:

1. providing that the parent requests for evaluations and the evaluation process can commence while MLSS interventions are provided to a student;
2. providing public agency requirements when a student receives a regular high school diploma or exceeds the age of eligibility;
3. explicitly requiring that written informed consent be obtained before conducting an initial evaluation or reevaluation;
4. explicitly permitting public agencies to utilize the consent override provisions when a parent does not provide consent to evaluate a student;
5. providing requirements of the public agency when it receives a parent request for evaluation, including a 15 school-day prior written notice deadline with considerations for school breaks;
6. providing requirements of the public agency when it receives a referral for evaluation without a parent request including a 15 school-day deadline after the referral to request parent consent to evaluate with consideration for school breaks;
7. explicitly permitting parents to utilize mediation, state complaint, and due process hearing procedures to challenge the public agencies' response or lack of response to a request to evaluate;
8. requiring that the evaluation and written evaluation report be completed within 60 days of parental consent to evaluate;

9. providing additional and clarified requirements for evaluation and reevaluation procedures including that the parent be provided the written evaluation or reevaluation reports at least two calendar days before the eligibility determination team meeting;
10. adding explicit requirements regarding requests for independent education evaluations already included in the IDEA regulations;
11. providing 15 school-day deadlines for the eligibility determination team meeting with considerations for school breaks;
12. precluding the use of the severe discrepancy model as a method of evaluating for specific learning disabilities;
13. requiring that public agencies use the dual discrepancy model to identify specific learning disabilities for students in kindergarten through grade 12.

The proposed rule changes also significantly reorganize current provisions of 6.31.2.10 to improve construction and readability and include minor technical changes throughout the rule.

### **Statutory Authorizations by Proposed Rule**

Sections 22-2-1, 22-2-2, 22-13-5 and 22-13-6.1 NMSA 1978.

No technical information served as a basis for this proposed rule change.

### **Public Comment**

Interested parties may provide comment at the public hearing or may submit written comments by mail, e-mail, or fax.

#### Mailing Address

Policy and Legislative Affairs Division  
New Mexico Public Education Department  
300 Don Gaspar Avenue, Room 121  
Santa Fe, New Mexico 87501

#### E-Mail Address

Rule.Feedback@ped.nm.gov

#### Fax Number

(505) 827-6520

Written comments must be received no later than 5 p.m. (MDT) on Tuesday, January 3, 2023. The PED encourages the early submission of written comments.

### **Public Comment Period**

The public comment period is from Tuesday, November 29, 2022, to Tuesday, January 3, 2023, at 5:00 p.m. (MDT). The PED will review all feedback received during the public comment period and issue communication regarding a final decision of the proposed rulemaking at a later date.

Copies of the proposed rules may be obtained from Gregory Frostad at (505) 470-5752 during regular business hours or may be accessed through the PED Policy and Legislative Affairs webpage titled, "Proposed Rules," at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Gregory Frostad at (505) 470-5752 as soon as possible before the date set for the public hearing. The PED requires at least 10 calendar days advance notice to provide any special accommodations requested.