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New Mexico Register

The official publication for all official notices of rulemaking and filing of proposed, adopted and emergency rules.

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Notices of Rulemaking and Proposed Rules

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on February 28, 2017 from 9:00 a.m. to 11:00 a.m. The purpose of the public hearing will be to obtain input on the proposed repeal of 6.29.8 NMAC, MODERN, CLASSICAL AND NATIVE LANGUAGES to be replaced with 6.29.8 NMAC, WORLD-READINESS STANDARDS FOR LEARNING LANGUAGES.

Interested individuals may provide comments at the public hearing and/or submit written comments to Jamie Gonzales, Policy Division, via email at rule.feedback@state.nm.us, fax (505) 827-6681, or directed to Jamie Gonzales, Policy Division, Jerry Apodaca Public Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501. Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rule may be accessed on the Department's website (http://ped.state.nm.us/) under the "Public Notices" link, or obtained from Jamie Gonzales (505) 827-7889.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Jamie Gonzales at (505) 827-7889 as soon as possible. The NMPED requires at least ten (10) days advance notice to provide requested special accommodations.

PUBLIC REGULATION COMMISSION

NOTICE OF PROPOSED RULEMAKING

The Public Regulation Commission gives notice that in case number 16-00321-FM it has initiated a proposed rulemaking promulgating revisions to the State Fire Marshal Rules for the purpose of rewriting Part 5 of Title 10 of Chapter 25 of the New Mexico Administrative Code (10.25.5 NMAC *et seq*.) to, among other things, replace the currently adopted 2003 International Fire Code with the 2015 International Fire Code; to amend Parts 1, 3, and 6 of Title 10, Chapter 25 of the New Mexico Administrative Code (10.25.1 NMAC *et seq*., 10.25.3 NMAC *et seq*., and 10.25.6 NMAC *et seq*., respectively); and to repeal and reserve Part 2 of Title 10, Chapter 25 of the New Mexico Administrative Code (10.25.2 *et seq*.).

Copies of the Order Establishing Rulemaking Docket and Issuing Notice of Proposed Rulemaking containing additional information, a copy of the proposed rule changes, and filing instructions may be downloaded from the Proposed Rulemaking section of the Commission's website at http://www.nmprc.state.nm.us under Case No. 16-00321-FM or by calling the Commission's Records Management Bureau at (505) 827-6968 (Melanie Sandoval) or (505) 827-6970 (Heather Cordova).

Written Initial Comments and written Response Comments shall be filed by the deadlines below with the NMPRC's Record's Management Bureau at P.O. Box 1269, Santa Fe, NM 87504-1269 or by hand delivery to the NMPRC Records Management Bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501 as follows: Written comments shall be filed not later than **February 14, 2017** and written responses not later than **February 28, 2017**. Comments shall refer to Case No. 16-00321-FM.

Six public comment hearing will be held in this matter. The first public comment hearing will be held on **March 3, 2017, beginning at 10:30 a.m. in Santa Fe** at the offices of the Commission located in the 4th Floor Hearing Room of the old PERA Building, at 1120 Paseo de Peralta, in Santa Fe, NM 87501. The second public comment hearing will be held on **March 10, 2017, beginning at 2:00 p.m. in Las Cruces** at the Branigan Memorial Library (DRESP A), 200 E. Picacho, in Las Cruces, NM 88001. In addition, public comment hearings will be held in Raton, Roswell, Rio Rancho, and Farmington, New Mexico at times and places to be set in due course by the State Fire Marshal; for the schedule of these public comment hearings, please consult the Commission's website (listed above) or call Valerie Romero at (505) 476-0080 at the State Fire Marshal's Office. The purpose of the public comment hearings is to give interested individuals an opportunity to provide oral comments about the proposed rulemaking. The Commission may limit the time for each comment to a consistent limited number of minutes per commenter. Only oral comments, but no testimony or other evidence, shall be taken at the hearing because this docket is a rulemaking proceeding. The record of this case will close on a date to be set by a future order of the Commission to be issued by the Chair of the Commission, or by any other Commissioner, pursuant to the procedural authority of a single commissioner authorized by Subsection B of 1.2.2.30 NMAC.

Interested persons should contact the Commission to confirm the date, time, and place of this public hearing because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the hearing should contact Ms. Kathleen Segura at (505) 827-4501 at least 48 hours

prior to the commencement of the hearing.

Statutory Authority: New Mexico Constitution, Article XI, Section 2; NMSA 1978, Paragraph (10) of Subsection B of Section 8-8-4 (1998) and Section 8-8-15; State Fire Marshal statute, NMSA 1978, Subsection A of Section 59A-52-15.

REGULATION AND LICENSING DEPARTMENT

RESPIRATORY CARE ADVISORY BOARD

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

LEGAL NOTICE

The New Mexico Respiratory Care Advisory Board will hold a Rule Hearing on Friday, February 17, 2017. Following the Rule Hearing, the New Mexico Respiratory Care Advisory Care Board will convene a Regular Meeting to adopt the rules and take care of regular business. The New Mexico Respiratory Care Advisory Board Rule Hearing will begin at 10:00 a.m. and the Regular Meeting will convene immediately following the Rule Hearing. The meetings will be held at the Regulation and Licensing Department, 2550 Cerrillos Rd., located in Hearing Room 1, Santa Fe, New Mexico.

The purpose of the Rule Hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.23.2 NMAC - Fees, 16.23.3 NMAC - Qualifications for Practitioners License, 16.23.4 NMAC - Application Procedures for Practitioners License, 16.23.6 NMAC - Temporary Permits, 16.23.7 NMAC - Temporary Permit Renewal, 16.23.8 NMAC - Renewal and Expiration of Practitioner License, 16.23.9 NMAC - Inactive Status for Practitioner License, 16.23.11 NMAC - License Reactivation; License Lapse, 16.23.12 NMAC - Continuing Education, 16.23.14 NMAC - Scope of Practice Guidelines for Non-Licensed, Non-Exempted Persons.

You can contact the board office at the Toney Anaya Building located at the Toney Anaya Bldg., 2550 Cerrillos Road, 2nd Floor in Santa Fe, New Mexico 87505, (505) 476-4622, or copies of the proposed rules are available on the Respiratory Care Advisory Board's website: www.RLD.state.nm.us/boards/Respiratory_Care.aspx. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board office in writing **no later than February 03, 2017**. Persons wishing to present their comments at the hearing will need 10 copies of any comments or proposed changes for distribution to the Board and staff.

The Board may enter into Executive Session pursuant to Subsection H of Section 10-15-1 NMSA of the Open Meetings Act, to discuss matters related to the issuance, suspension, renewal or revocation of licenses.

If you have questions, or if you are an individual with a disability who wishes to attend the Hearing or Meeting, but you need a reader, amplifier, qualified signed language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4622 at least two weeks prior to the meeting or as soon as possible.

Thank you,
Cynthia Salazar, Board Administrator
P.O. Box 25101, Santa Fe, NM 87504

End Of Notices of Rulemaking and Proposed Rules

Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

ENVIRONMENT DEPARTMENT

This is an amendment to 20.7.4 NMAC, adding Section 16, effective 1/17/2017.

20.7.4.16 CODE OF PROFESSIONAL CONDUCT:

A. This code expresses in general terms the level of professional conduct expected of certified operators in the state of New Mexico. This code of professional conduct is intended to guide the actions of certified operators and depends upon the integrity of each certified operator to conduct themselves in a responsible and straightforward manner in operating public water supply systems and public wastewater facilities.

B. All certified operators are charged with understanding this code of professional conduct and are expected to be familiar with the provisions of these rules and the utility operator certification regulations. Failure to follow the code of professional conduct shall be considered gross incompetence by the department. The department shall, following notification of the certified operator, first seek the advisement of the utility operators certification advisory board prior to any application of enforcement made pursuant to this code of professional conduct.

C. The certified operator shall:

(1) protect the safety, health, and welfare of the public in the performance of the operator's duties;

(2) report to the proper authority or the department as necessary any conduct that would endanger the safety, health, and welfare of the public in regards to the operation of a public water supply system or public wastewater facility;

(3) submit objective and truthful information in all reports, statements, and testimony as required by state and federal law;

(4) conscientiously and proficiently operate and maintain public water supply systems and public wastewater facilities;

(5) act honestly, responsibly, ethically, and lawfully in a manner that enhances the reputation of the profession;

(6) avoid any conflict of interest that could influence the operator's professional judgment and promptly report any such conflict of interest to the operator's employer as necessary; and

(7) not falsify any academic or professional qualifications and not misrepresent such qualifications to the operator's employer, the department, or any member of the public.

[20.7.4.16 NMAC - N, 1-17-17]

FINANCE AND ADMINISTRATION, DEPARTMENT OF

Department of Finance and Administration Local Government Division approved, at its 12/15/2016 hearing, to repeal its rule 2 NMAC 110.4, Local DWI Grant and Distribution of certain DWI Grant Program Funds (filed 12/1/1997), effective 1/17/2017.

FINANCE AND ADMINISTRATION, DEPARTMENT OF

TITLE 2 PUBLIC FINANCE
CHAPTER 110 LOCAL GOVERNMENT GRANTS
PART 4 LOCAL DWI GRANT AND DISTRIBUTION OF CERTAIN DWI GRANT PROGRAM FUNDS

2.110.4.1 ISSUING AGENCY: Department of Finance and Administration, Local Government Division.
[2.110.4.1 NMAC - Rp, 2 NMAC.110.4.1, 1/17/2017]

2.110.4.2 SCOPE: All county and municipal governments.
[2.110.4.2 NMAC - Rp, 2 NMAC.110.4.2, 1/17/2017]

2.110.4.3 STATUTORY AUTHORITY:

A. The Local DWI Grant Program Act, being Sections 11-6A-1 through 11-6A-6 NMSA 1978, as amended, provides for the local DWI grant program to be established by the local government division of the department of finance and administration to award grants to municipalities and counties for:

(1) new, existing innovative or model programs, services and activities to prevent or reduce the incidence of DWI, alcoholism, alcohol abuse; and

(2) programs, services and activities to prevent or reduce the incidence of domestic abuse related to DWI, alcoholism, alcohol abuse. The DWI grant council is created to receive applications, consider grant requests and award DWI grants pursuant to the

act.

B. Pursuant to Section 11-6A-5 NMSA 1978, as amended, the division, with advice and approval of the council, shall adopt regulations necessary for operation of the local DWI grant program and the county DWI program distribution, including:

(1) forms and procedures for the application progress for the local DWI grant program and the county DWI program distribution;

(2) documentation to be provided by the applicant to assure compliance with the grant and the county DWI program distribution guidelines and other provisions of the act;

(3) procedures and guidelines for review, evaluation and approval of grant awards and for review and approval of programs to be funded by the county DWI program distribution;

(4) procedures and guidelines for oversight, evaluation and audit of DWI grantees to assure that grants are being administered in the manner and for the purposes that the grants were awarded; and

(5) design of an evaluation mechanism for DWI grant programs, distributions and services and submission by each DWI grantee of an annual report or other data on each local DWI grant program, distribution or service and its effectiveness and outcomes.

[2.110.4.3 NMAC - Rp, 2 NMAC.110.4.3, 1/17/2017]

2.110.4.4 DURATION: Permanent.

[2.110.4.4 NMAC - Rp, 2 NMAC.110.4.4, 1/17/2017]

2.110.4.5 EFFECTIVE DATE: January 17, 2017 unless a later date is cited at the end of a section.

[2.110.4.5 NMAC - Rp, 2 NMAC.110.4.5, 1/17/2017]

2.110.4.6 OBJECTIVE: To establish procedures for the local DWI grant program applications and the distribution of certain local DWI grant program funds.

[2.110.4.6 NMAC - Rp, 2 NMAC.110.4.6, 1/17/2017]

2.110.4.7 DEFINITIONS:

A. "Act" means the Local DWI Grant Program Act, being Sections 11-6A-1 through 11-6A-6 NMSA 1978, as amended.

B. "Administrative Guidelines" means guidelines that establish the requirements for eligible counties and their municipalities to apply for funding and to administer the fund and that are consistent with both the applicable regulations and statute.

C. "Alternative sentencing program" means a program that provides -state courts with a sentencing alternative to traditional incarceration for a DWI offender while providing access to intervention services in an environment that is consistent with the "least restrictive" means possible, e.g., incarceration/treatment, non-residential treatment, compliance monitoring/tracking.

D. "Board" means the board of county commissioners of a county.

E. "Compliance monitoring/tracking" means any program or activity that enhances tracking, follow-up or otherwise works with DWI and other alcohol-related misdemeanor offenders to assist state courts in the monitoring of offenders for compliance with court-ordered sanctions.

F. "Council" means the New Mexico DWI grant council created pursuant to the act. Membership of the council consists of the president of the New Mexico municipal league or designee, the president of the New Mexico association of counties or designee, the secretary of health or the secretary's designee, the secretary of finance and administration or the secretary's designee, the chief of the traffic safety bureau of the state highway and transportation department, and two representatives of local governing bodies who shall be appointed by the governor so as to provide geographic diversity.

G. "County DWI Plan" means the local DWI grant application developed with the advice of the council and approved by the human services department.

H. "County DWI planning council" means a county planning council that is representative of a broad spectrum of interests and cultural perspectives such as, emergency medical services, community substance abuse treatment, public health, community traffic safety, law enforcement, courts/judicial, prosecutor/legal, and schools. A county DWI planning council is organized to assist in the development, implementation and evaluation of a county DWI program.

I. "DFA" means the department of finance and administration.

J. "Division" means the local government division of the department of finance and administration.

K. "Distribution program" means the distribution of certain local DWI grant funds on a quarterly basis by the division from the fund to eligible counties for council-approved DWI programs, services or activities in an amount in accordance with the formula in Subsection B of Section 11-6A-6 NMSA 1978 as amended.

L. "DWI" means driving while intoxicated.

M. "Fund" means the local DWI grant fund created pursuant to the act, which receives a portion of liquor excise tax revenue and is administered by the division.

N. "Grant program" means the local DWI grant program established by the division to make grants to municipalities or counties for new, existing innovative or model programs, services or activities to prevent or reduce the incidence of DWI, alcoholism and alcohol abuse. Grants shall be awarded by the council pursuant to the advice and recommendations of the division and the requirements of Subsection C of Section 11-6A-3 NMSA 1978, as

amended.

O. "Enforcement program" means any program or activity improving law enforcement approaches to prevent or deter DWI behavior, such as DWI checkpoints, saturation patrols, warrant roundups and underage drinking prevention activities. Local DWI grants may be used for law enforcement overtime only in support of these types of activities. On a case by case basis local DWI grants may be used for a full-time DWI law enforcement officer if sufficient justification is provided.

P. "Local DWI grant application" means the forms required by the division to request funding through the fund.

Q. "Offender program" means any program or activity with the purpose of reducing the recidivism of DWI offenders.

R. "Prevention program" means any program or activity that has as its objective the fostering or creation of an environment that helps individuals make healthy and safe choices to prevent or reduce the incidence of DWI, alcoholism or alcohol abuse. Prevention programs should be designed to increase the ability of an individual to change behavior related to the misuse or abuse of alcohol, to resist pressures or influences to misuse or abuse alcohol, and to prevent or reduce the incidence of DWI, alcoholism, or alcohol abuse.

S. "Public information and education program" means any program or activity aimed at informing communities, families, and individuals about ways to improve efforts toward zero-tolerance of DWI and to support social action for change, such as holiday "survival" campaigns for safety, media conferences, speaker bureaus, resource libraries, emergency medical service professionals providing school presentations, bill boards, and community fairs.

T. "Screening program" means the use of empirically-based procedures, such as standardized tests, self-reporting techniques and interviews to identify, at the judicial stage, those DWI offenders who have alcohol or drug-related problems/consequences, who are at risk for such difficulties, or who are at high risk of DWI recidivism. Screening measures are not designed to explain the nature and extent of such problems, or to substitute for assessments to aid in the treatment planning process.

U. "Supplantation" means the replacement or substitution of existing funding with local DWI grant funding.

V. "Teen court program" means an alternative sentencing program for juveniles accused of minor offenses, which program is sanctioned by a state court or by the juvenile justice division of the children, youth and families department's juvenile probation and parole offices. Teen court program includes juvenile defendants, paid or volunteer staff, teen court judges, community liaison, bailiffs, court clerks and teens serving as jurors, attorneys, or performing other duties.

W. "Treatment program" means an array of individual, family, group or social programs or activity alternatives directed to intervene and address DWI, alcohol problems and alcohol dependence, or alcoholism or alcohol abuse. Treatment seeks to reduce the consumption of alcohol, to support abstinence and recovery from drinking alcohol, and to improve physical health, family and social relationships, emotional health, well-being, and general life functioning.

[2.110.4.7 NMAC - Rp, 2 NMAC.110.4.7, 1/17/2017]

2.110.4.8 ELIGIBLE APPLICANTS:

A. Eligible applicants include all counties and all incorporated municipalities that join with the county in which they are located to participate in the proposed application, or any combination of two or more counties and the incorporated municipalities within the boundaries of the counties.

B. The council shall make grants only to counties or municipalities in counties that have established a local DWI planning council and adopted a county DWI plan or are parties to a multi-county DWI plan that has been approved by each applicable board and county DWI planning council pursuant to Section 43-3-15 NMSA 1978, as amended.

C. Pueblo and tribal governments and non-profit organizations are not eligible to apply directly under the grant and distribution programs. These entities are encouraged to participate in the county DWI planning council process.

D. Municipalities may apply for funding if they are officially designated as fiscal agent for their county by resolution of the applicable county board.

E. For multi-county applicants within reasonable geographic proximity to one another, a lead county or municipality must be identified to administer the project.

F. County DWI planning councils must have provided each municipality and tribal government within the county the opportunity to participate in the development of the application. Documentation of the applicant's efforts to acquire municipal or tribal government participation and endorsement must be presented with the application.

[2.110.4.8 NMAC - Rp, 2 NMAC.110.4.9, 1/17/2017]

2.110.4.9 ELIGIBLE PROGRAMS, SERVICES OR ACTIVITIES: These include the following:

A. New, existing innovative or model programs, services, or activities of any kind designed to prevent or reduce the incidence of DWI, alcoholism or alcohol abuse. As provided in the definitions set forth in these regulations, areas suggested for programs and activities are prevention, enforcement, education, screening, treatment, compliance monitoring/tracking, alcohol related

domestic violence, or alternative sentencing including programs that combine incarceration, treatment and aftercare, to prevent or reduce the incidence of DWI, alcoholism, alcohol abuse or domestic abuse related to DWI, alcoholism or alcohol abuse.

B. Existing community-based programs, services, or facilities for prevention, screening, and treatment of alcoholism and alcohol abuse, which demonstrate effective model approaches to prevent or reduce the incidence of DWI, alcoholism, alcohol abuse or domestic abuse related to DWI, alcoholism or alcohol abuse.

[2.110.4.9 NMAC - Rp, 2 NMAC.110.4.10, 1/17/2017]

2.110.4.10 APPLICATION LIMITATIONS:

A. Distribution programs shall be limited to the county's projected year's distribution amount determined by the distribution formula as contained in Section 11-6A-6 NMSA 1978, as amended.

B. Grant programs shall be limited to programs, services or activities that meet the requirements of Subsection C of Section 11-6A-3 NMSA 1978, as amended.

C. Applicants are required to limit the time period of the application as follows:

(1) distribution programs and yearly grant programs are limited to the 12 month fiscal year; and

(2) multi-year grant programs are limited to no more than 36 months; all multi-year requests must be for projects, activities, or services that support or complement existing DWI efforts and are reasonably anticipated to extend beyond one year.

D. For grant and distribution program applications, a minimum of 10 percent of the proposed operating budget must be from county or municipal matching funds. Cash valued in-kind resources may be applied to the required matching funds; applications proposing to use in-kind resources as required matching funds must demonstrate the value of the in-kind resources to be provided.

E. All approvals will be limited by availability of funds. The division and the council will review requests for funding to ensure all proposed expenditures are justified, meaningful, and feasible within the project period. Justification of need and applicant's past performance will be considered.

F. Multi-county applications will be given preference.

[2.110.4.10 NMAC - Rp, 2 NMAC.110.4.11, 1/17/2017]

2.110.4.11 NUMBER OF APPLICATIONS: To ensure the most efficient and effective use of grant program and distribution program funds, applications are limited as follows:

A. Number of applications - One application per county per grant and distribution program. A county may apply for the funding of a distribution program and a grant program to be implemented in the same fiscal year.

B. Multi-county applications - Two or more counties, within reasonable geographic proximity to each other, may submit a joint application. Parties to a joint application are limited to participation in one distribution program and one grant program.

[2.110.4.11 NMAC - Rp, 2 NMAC.110.4.12, 1/17/2017]

2.110.4.12 INELIGIBLE ACTIVITIES:

A. Capital outlay expenditures are limited to 10 percent of the total grant or distribution amount.

B. Land or building/facility acquisition with DWI grant or distribution funds is not allowed, except that programs eligible for alcohol detoxification grants pursuant to Subsection D of Section 11-6A-3 NMSA 1978 may request approval for land or building/facility acquisition.

C. Use of grant or distribution funds to pay for indirect administrative costs for DWI programs is not allowed in the grant or distribution programs, except that indirect administrative costs may be counted towards in-kind resources match. Administrative costs in direct support of programs may be budgeted in the direct program portion of the budget.

D. Supplantation - Grant or distribution program funds shall not be used to supplant other existing funds, but can be used for new, expanded, supplemental or complementary DWI activities.

E. Cash accumulations - Distribution program funding shall be obligated or encumbered in binding third-party obligations for council-approved programs, activities or services delivered in the fiscal year of the distribution. No distribution program funds may be accumulated beyond the fiscal year.

F. Cash transfers - Grant or distribution program funds will not be transferred by the county or the municipality designated by the county as fiscal agent to other funds in the fiscal agents' budget from the fiscal agent's established, separate local DWI grant and distribution fund.

[2.110.4.12 NMAC - Rp, 2 NMAC.110.4.13, 1/17/2017]

2.110.4.13 APPLICATION PROCEDURES, FORM AND CONTENT:

A. Applications for grant and distribution program funds shall conform to application instructions determined by the division, including an original signed cover sheet.

B. In the event that an application is incomplete or requires modification, the applicant will be promptly notified by the division. The applicant must then immediately submit the information or modification requested. Applicants that do not respond in writing in the timeframe established by the division may be disqualified.

C. The applicant's governing body must authorize the county or municipality designated as fiscal agent for the county to submit

the application by resolution.

D. The form and content of applications will be determined by the division.

[2.110.4.13 NMAC - Rp, 2 NMAC.110.4.14, 1/17/2017]

2.110.4.14 APPLICATION REVIEW, RATING AND SELECTION:

A. The following review, rating and selection process will be used by the division for presentation to the council:

(1) Upon receipt of grant and distribution program applications, division staff shall review for eligibility, completeness and compliance. Additional information may be required and requested. The division may, in its discretion, consult appropriate experts for information and advice concerning technical aspects of any application.

(2) Division staff shall make recommendations to the council on the eligibility of distribution program applications considering compliance with these regulations and the act.

(3) Division staff shall rate grant program applications and present recommendations to the council based on the extent to which applicants meet program rating criteria.

B. Applications will be rated on the following criteria:

(1) quality of statistical analysis of local data identifying gaps and needs;

(2) quality of discussion around the focus of the project, reason for selection of components and brief descriptions of each component;

(3) demonstrated reasonableness and justified costs appropriate to the proposed activities of component budgets (quantifies costs with a best estimate of units, activities, clients, etc.);

(4) measures of past performance;

(5) community participation, collaboration and planning - extent to which the local DWI planning council, solicited participation from municipal, tribal and pueblo representatives, extent of involvement by such parties in developing the application, and how the applicant provides continuing opportunities for public participation in the planned implementation and evaluation of the program's efforts;

(6) extent to which there is proposed leveraging of in-kind match, cash match, self-sufficiency or other funding sources; and

(7) extent to which the proposal is for new, innovative or model programs, services or activities.

C. The council will review division staff ratings and recommendations, and will make grant program funding decisions and distribution program approvals in an open public meeting held in accordance with the Open Meetings Act. The council may, in its sole discretion, approve all, part or none of an application, and may adjust the scope and dollar amounts of grant program applications. The council will make its grant program funding and distribution program approval determinations by a majority vote of the full council.

[2.110.4.14 NMAC - Rp, 2 NMAC.110.4.15, 1/17/2017]

2.110.4.15 REVERSIONS, SUPPLEMENTAL FUNDING AND UNDERRUNS:

A. Reversions/ supplemental funding - When funds are reverted from a previously-approved grant program project or distribution program award, or additional funds are made available for council award for any other reason, the council may:

(1) set aside the funds in a contingency fund; or

(2) take other action as deemed appropriate.

B. Underruns - If, at the end of the fiscal year, a balance of funds remains after all expenditures have been reimbursed, the balance of funds for a grant or distribution program project shall revert to the fund. This underrun rule applies to multi-year grant programs in the last fiscal year of the council-approved program.

C. Special applications - Should additional funds become or be determined to be available in the fund, the council may call for and act on special applications from eligible applicants. The purpose and rating criteria of the special applications will be outlined in the call for applications.

[2.110.4.15 NMAC - Rp, 2 NMAC.110.4.16, 1/17/2017]

2.110.4.16 ADMINISTRATIVE PROCEDURES:

A. All successful grant and distribution program applicants must adhere to state procurement laws, regulations and other procedures as established by the division, to ensure that all grant and distribution program funds are expended in accordance with state law.

B. All counties and municipalities designated by a county as a fiscal agent must set up a separate local DWI grant and distribution program fund in the county or municipality's budget. This fund must be included in the entity's budget process and financial reports.

[2.110.4.16 NMAC - Rp, 2 NMAC.110.4.17, 1/17/2017]

2.110.4.17 SANCTIONS:

A. Grantee sanctions may include any administrative action authorized by the division director taken against a grant or distribution program for improper or inadequate performance or non-compliance with one or more condition(s) of the grant agreement, based on state program requirements, or failure to follow through on the approved DWI application, including the signed statement of assurances or the local DWI planning council approved plan. In each instance, to the extent possible under the circumstances, the sanctions imposed by the director will be intended first, to correct the deficiency; second, to mitigate any adverse effects or consequences of the deficiency; and third, to prevent

recurrence of the same or similar deficiencies.

B. Examples of deficiencies include but are not limited to the following:

(1) failure to correct monitoring or audit findings;

(2) failure to document and report to the division in a timely manner all DWI expenditures of the grant or distribution programs;

(3) failure to implement the project in a timely fashion;

(4) lack of continuing capacity to administer the program;

(5) failure to execute planned activities in accordance with the grant agreement or the approved DWI application for distribution programs;

(6) failure to comply with the local DWI planning council approved plan; and

(7) implementation of a project change without prior division approval.

C. Types of sanctions:

(1) The division director may withhold grant program reimbursement payments, or disallow further distribution draw-downs when there are specific irregularities in payment requests or contractual obligations.

(2) The division director may withhold distributions to distribution programs if the DWI program is not implementing the council-approved DWI programs, services or activities as set forth in the application.

(3) The division director may suspend authority to proceed with any grant or distribution program's programs, services or activities when monitoring of the programs, services or activities warrants such action. Cause for suspension may include local management or project administration irregularities or nonperformance in matters of program compliance, failure to comply with the state procurement code, failure to implement council-approved DWI programs, services or activities as set forth in the application, including the signed statement of assurances, failure to implement the local DWI planning council approved plan, or any other failures or unsatisfactory performance for which the grant or distribution program has been cited by written correspondence or instructions. Any suspension will be in effect until the grant or distribution program cures all causes for suspension, or until termination. The division director shall provide the grant or distribution program with an opportunity to appeal the suspension within 15 calendar days after receipt of written notice of the suspension to demonstrate why the grant or distribution should not be suspended. The director will review any appeal of the suspension and may, in the director's sole discretion, proceed with the suspension, impose another sanction, or resume normal processing of the grant or distribution program.

(4) Termination:

(a) The division director may terminate a grant or distribution program's receipt of further funds after receiving council approval to do so.

(b) Grounds for termination:

(i) the grantee or distribution program is noncompliant with state program statutory requirements, or these regulations;

(ii) the grantee or distribution program lacks the continuing capacity to administer the project;

(iii) the grantee or distribution program has not implemented the project in a timely manner; or

(iv) the grantee or distribution program has not implemented the DWI programs, services or activities approved by the council in the county program application.

[2.110.4.17 NMAC - Rp, 2 NMAC.110.4.18, 1/17/2017]

2.110.4.18 COUNCIL AUTHORITY: The council may at any time waive or adjust any requirement imposed in these regulations so long as the council finds that the waiver or adjustment is in the best interest of the state and that the waiver or adjustment does not unduly penalize or favor any applicant or violate any state law or other regulation.

[2.110.4.18 NMAC - Rp, 2 NMAC.110.4.19, 1/17/2017]

HISTORY OF 2.110.4 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

DFA-LGD Rule No. 93-2, Local Driving While Intoxicated/Impaired (DWI) Grant Program Regulations Governing Program Application and Operations, 5/20/1994.

DFA-LGD Rule No. 94-1, Local Driving While Intoxicated/Impaired (DWI) Grant Program Regulations Governing Program Application and Operations, 10/18/1994.

DFA-LGD Rule No. 95-3, Local Driving While Intoxicated/Impaired (DWI) Grant Program Regulations Governing Program Application and Operations, 11/17/1995.

History of Repealed Material: 2 NMAC 110.4, Local DWI Grant and Distribution of Certain DWI Grant Program Funds, filed 10/1/2001, repealed effective 1/17/2017.

GAME AND FISH, DEPARTMENT OF

This is an amendment to 19.31.13 NMAC, Section 13, effective 1-17-17.

19.31.13.13 SPECIAL DEER HUNTING OPPORTUNITIES:

A. Deer habitat enhancement program:

(1) Program description: The director of the department shall collect all proceeds generated through the auction and lottery of special deer permits, and such monies shall be deposited in the game protection fund. These

monies shall be made available for expenditure by the department solely for programs and projects to benefit deer and for direct costs appropriated form existing funds available to the department for the preservation, restoration, utilization, and management of deer. Deer enhancement licenses or permits shall be valid from September 1 through January 31, for any legal sporting arms, for each license year. These licenses or permits shall be valid statewide, including department WMAs where hunting is allowed. The bag limit shall be one buck deer. The hunt code shall be DER-1-400. Licenses or permits may be used either by the applicant or any individual of the selected applicant's choice through sale, barter, or gift.

(2)

Requirements for issuance of special deer permits:

(a)

The state game commission shall authorize the director of the department to issue not more than two special deer permits in any one license year to take one buck deer per permit. The director shall allow the sale of one permit through auction to the highest bidder and one permit to a person selected through a random drawing for the holder of a lottery ticket by the department or by an incorporated, nonprofit organization dedicated to the conservation of deer.

(b)

Proposals for auctioning one special deer permit and the sale of lottery tickets to obtain one special deer permit through a random drawing shall be submitted to the director of the department prior to January 31, preceding the license year when the permit may be legally used.

(c)

The proposals for auctioning the special deer permit and the sale of lottery tickets and subsequent selection of a recipient for a second permit through a random draw shall each contain and identify: (i) the name of the organization making the request as well as the names, addresses and telephone numbers of those members of the organization who are coordinating the proposal; (ii) the estimated amount of money to be raised and the rationale for that estimate; and (iii) a copy of the organization's articles of incorporation with a letter attesting that the organization has tax-exempt status. The letter must also affirm that the proponent agrees to the conditions set forth by the director of the department. The letter must be signed and dated by the president and secretary-treasurer, or their equivalents.

(d)

The director of the department shall examine all proposals following the close of the application period. The director may reject any application which does not conform to the requirements of this section. In selecting a marketing organization, the director shall consider the qualifications of the organization as a fund raiser; the proposed fund raising plan; the fee charged by the marketing organization for promotional and administrative costs, relative to the funds obtained from auctioning the permit; and the organization's previous involvement with deer management and its conservation objectives. The director may accept any proposal when it is in the best interest of deer to do so.

(e)

After a proposal has been approved, the state game commission shall establish open season dates, open areas, and license requirements.

(f)

The marketing organization must agree in writing to the following: (i) to transfer all proceeds on or before the tenth day of the month following the auction and drawing for the lottery, and (ii) to provide the department with the names, addresses, and the physical descriptions of the individuals to whom the special deer permits are issued.

(g)

The department and the marketing organization must agree to the arrangements for the deposit of the proceeds, payment for services rendered, the accounting procedures, and final audit.

(h)

Unless his or her hunting privileges have been revoked pursuant to law, any resident of New Mexico, nonresident, or alien is eligible to submit a bid for the special deer lottery permit.

(i)

The special deer permits issued through auction and lottery may be transferred through sale, barter or gift by the successful individuals to only other individuals qualified to hunt.

(j)

Special deer permits granted through auction or lottery, as described above, shall not be considered 'once-in-a-lifetime' permits.

B. Deer incentive programs:

(1)

Chronic wasting disease (CWD) reporting incentive: The director may annually allow up to two deer authorizations to be issued for deer and elk hunters submitting their legally harvested animal for CWD testing. Authorization certificates awarded pursuant to this rule may be transferred through sale, barter, or gift. Deer incentive hunts shall be valid only for the dates, legal sporting arms, bag limit, and area specified by the director.

(2) Private land deer conservation incentive program: Private landowners who are conducting significant habitat and management improvements on their deeded lands that significantly benefit deer may submit a deer conservation and management report, subject to review and approval by the department. Upon department approval of the report, the department may offer the landowner various incentives based on the degree of benefit to deer. The incentives may include extended or alternative season dates, or alternate bag limits as approved by the department. The hunt code for any unique hunt season approved pursuant to this program shall be DER-1-600.

C. Premium hunt opportunity: One premium deer draw hunt will be issued each license year through the draw. The hunt area

will be statewide on any public land open to hunting, including wildlife management areas and private land with written permission.

open GMUs or areas	2017-2018 hunt dates	2018-2019 hunt dates	hunt code	licenses	bag limit
statewide	9/1/2017-1/31/2018	9/1/2018-1/31/2019	DER-1-700	1	FAD

[19.31.13.13 NMAC 4-1-15; A, 1-17-17]

GAME AND FISH, DEPARTMENT OF

This is an amendment to 19.31.14 NMAC, Section 13, effective 1-17-17.

19.31.14.13 SPECIAL ELK HUNTING OPPORTUNITIES:

A. Elk enhancement program:

(1) Program description: The director of the department shall collect all proceeds generated through the auction and lottery of special bull elk permits, and such monies shall be deposited in the game protection fund. These monies shall be made available for expenditure by the department solely for programs and projects to benefit elk and for direct costs incurred in carrying out these programs. These monies shall be used to augment, and not replace, monies appropriated from existing funds available to the department for the preservation, restoration, utilization, and management of elk.

(2) Requirements for issuance of special elk permits:

(a) The state game commission shall authorize the director of the department to issue not more than two special elk permits in any one license year to take one bull elk per permit. The director shall allow the sale of one permit through auction to the highest bidder and one permit to a person selected through a random drawing of a lottery ticket by the department or an incorporated, non-profit organization dedicated to the conservation of elk.

(b) Proposals for auctioning one special elk permit and the sale of lottery tickets to obtain one special elk permit through a random drawing shall be submitted to the director of the department prior to January 31, preceding the license year when the permit may be legally used.

(c) The proposals for auctioning one permit, and for the sale of lottery tickets and subsequent selection of a recipient for a second permit through a random draw shall each contain and identify: (i) the name of the organization making the request as well as the names, addresses and telephone numbers of those members of the organization who are coordinating the proposal; (ii) the estimated amount of money to be raised and the rational for that estimate; and (iii) a copy of the organization's articles of incorporation with a letter attesting that the organization has tax-exempt status. The letter must also affirm that the proponent agrees to the conditions set forth by the director of the department. The letter must be signed and dated by the president and secretary-treasurer, or their equivalents.

(d) The director of the department shall examine all proposals following the close of the application period. The director may reject any application which does not conform with the requirements of this section. In selecting a marketing organization, the director shall consider the qualifications of the organization as a fund raiser; the proposed fund raising plan; the fee charged by the marketing organization for promotional and administrative costs, relative to the funds obtained from auctioning the permit; and the organization's previous involvement with elk management and its conservation objectives. The director may accept any proposals when it is in the best interest of elk to do so.

(e) After a proposal has been approved, the state game commission shall establish open season dates, open areas, and license requirements.

(f) The marketing organization must agree in writing to the following: (i) to transfer all proceeds on or before the tenth day of the month following the auction and drawing for the lottery, and (ii) to provide the department with the names, addresses, and the physical descriptions of the individuals to whom the special elk permits are issued.

(g) The department and the marketing organization must agree to the arrangements for the deposit of the proceeds, payment for services rendered, the accounting procedures, and final audit.

(h) Unless his or her hunting privileges have been revoked pursuant to law, any resident of New Mexico, nonresident, or alien is eligible to submit a bid for the special elk auction permit or purchase lottery tickets in an attempt to be selected for the special elk lottery permit.

(i) The special elk permits issued through auction and lottery may be transferred, through sale, barter or gift by the successful individuals to only other individuals qualified to hunt.

(j) Special elk permits granted through auction or lottery, as described above, shall not be considered 'once-in-a-lifetime' permits.

(3) Enhancement hunts: Elk enhancement licenses shall be valid from September 1 through January 31 for any legal sporting arms. These

licenses shall be valid statewide where hunting is allowed. Bag limit shall be one bull elk. The hunt code shall be ELK-1-500. The authorization to obtain an elk enhancement license may be used either by the applicant or any individual. The authorization may be transferred through sale, barter, or gift.

B. Elk incentive programs: The director may annually allow up to two elk authorizations to be issued for deer and elk hunters submitting their legally harvested animal for CWD testing. Authorization certificates to purchase an incentive license may be used either by the applicant or any individual. The authorization may be transferred through sale, barter or gift. Elk incentive hunts shall be valid only for the dates, legal sporting arms, bag limit and area specified by the director.

C. Unique late season archery bull elk hunts: Late season bow-only elk hunts. These hunts will be administered by the department through an internet registration process, web sale, rather than the random draw process. The open GMUs, hunt dates, hunt code, number of licenses and bag limit shall be as indicated below.

open GMUs or areas	2015-2016 hunt dates	2016-2017 hunt dates	2017-2018 hunt dates	2018-2019 hunt dates	hunt code	licenses	bag limit
12	11/21-11/25	11/19-11/23	11/18-11/22	11/17-11/21	ELK-2-533	25	APRE/6
34	12/19-12/23	12/17-12/21	12/16-12/20	12/15-12/19	ELK-2-534	200	APRE/6
37	12/5-12/9	12/3-12/7	12/2-12/6	12/1-12/5	ELK-2-535	50	APRE/6

D. Youth encouragement hunts:

(1) Only youth hunters as defined by 19.31.3.11 NMAC that successfully fulfilled all application requirements and responsibilities for draw hunts for deer, elk, pronghorn antelope, ibex, oryx, or bighorn sheep in the current license year and were unsuccessful in drawing any licenses will be eligible to apply for licenses for these hunts for 14 days subsequent to the original posting of availability of these hunts on the department website. Licenses remaining after the first 14 days of availability shall be available to any youth hunters as defined by 19.31.3.11 NMAC and eligible to purchase an elk license.

(2) The director, with concurrence of the chairman of the state game commission, may adjust the number of licenses available in all youth encouragement hunts listed below based on changes in population levels, harvest rates, habitat availability, or increases in unlawful hunting activities resulting from these hunts.

(3) These hunts will be administered by the department through an internet registration process, web sale, rather than the random draw process. The open GMUs, hunt dates, hunt code, number of licenses and bag limit shall be as indicated below.

open GMUs or areas	2015-2016 hunt dates	2016-2017 hunt dates	2017-2018 hunt dates	2018-2019 hunt dates	hunt code	licenses	bag limit
5B	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	ELK-1-501	20	A
6A	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	ELK-1-502	50	A
6A	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-503	50	A
6C	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	ELK-1-504	50	A
6C	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-505	50	A
9	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	ELK-3-506	30	A
9	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-3-507	30	A
10	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	ELK-1-508	35	A
13	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	ELK-3-509	60	A
13	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-3-510	60	A
15	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	ELK-3-511	75	A
15	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-3-512	75	A
16A	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	ELK-1-513	75	A
16A	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-514	75	A
16C	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	ELK-1-515	75	A
16C	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-516	75	A
16D	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	ELK-1-517	75	A
16D	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-518	75	A
16E	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	ELK-1-519	75	A

16E	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-520	75	A
17	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	ELK-3-521	60	A
17	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-3-522	60	A
34	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-523	80	A
36	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	ELK-1-524	60	A
36	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-525	60	A
49	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	ELK-1-526	50	A
50	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-527	60	A
51	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	ELK-1-528	75	A
51	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-529	75	A
52	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	ELK-1-530	50	A
53	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	ELK-1-531	60	A
53	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-532	60	A

E. Premium hunt opportunity: One premium elk hunt will be issued each license year through the draw. The hunt area will be statewide on any public land open to hunting, including wildlife management areas and private land with written permission.

open GMUs or areas	2017-2018 hunt dates	2018-2019 hunt dates	hunt code	licenses	bag limit
statewide	9/1/2017-1/31/2018	9/1/2018-1/31/2019	ELK-1-700	1	MB

[19.31.14.13 NMAC 4-1-15; A, 1-17-17]

GAME AND FISH, DEPARTMENT OF

This is an amendment to 19.31.21 NMAC, Sections 9 and 11, effective 1-17-17.

19.31.21.9 JAVELINA LICENSE APPLICATION REQUIREMENTS AND RESTRICTIONS

A. One license per javelina per year: It shall be unlawful for anyone to hold more than one permit or license for javelina during a current license year unless otherwise allowed by rule.

B. Validity of license or permit: All javelina entry permits, licenses or authorizations shall be valid only for the specified dates, eligibility requirements or restrictions, legal sporting arms, bag limit and area specified by the hunt code printed on the permit or license.

C. Youth only (YO) hunts: It shall be unlawful for anyone to apply for a youth only **(YO)** javelina license, except as allowed by 19.31.3.11 NMAC.

D. Military only hunts: It shall be unlawful for anyone to apply for a military only javelina license, except as allowed by 19.31.3.11 NMAC.

E. License purchase: Over-the-counter javelina hunters must purchase a javelina license at least two days prior to hunting javelina.

[19.31.21.9 NMAC - Rp, 19.31.21.9 NMAC, 4-1-15; A, 1-17-17]

19.31.21.11 JAVELINA HUNTING SEASONS: Javelina hunts for the 2015-16 through the 2018-19 hunt seasons shall be as indicated below, listing the open GMUs or areas, eligibility requirements or restrictions, hunt dates, hunt codes, number of licenses, and bag limit. Hunt codes for javelina hunts allowing "any legal weapon" type shall be designated JAV-1, hunt codes for javelina hunts allowing "archery only" weapon type shall be designated as JAV-2. Youth hunters must provide their hunter education certification number on their application. Mobility impaired hunt applicants shall meet eligibility requirements, as designated by the director, prior to applying for mobility impaired hunts. Military only hunters must be full time active military and proof of military status must accompany application or, if applying online, forwarded to the department by the application deadline date. The open area for the JAV-2-101 and the JAV-1-102 hunts include the Big Hatchets special management area in GMU 26.

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Continued on the Following Page

A. Entry hunts:

open GMUs or areas	hunt start	hunt end	hunt code	licenses	bag limit
statewide, **YO**	1/1	3/31	JAV-1-100	[~~100~~] 150	ES
GMUs 19, 23, 24, 25, 26 and 27	1/1	1/31	JAV-2-101	300	ES
	2/1	3/1	JAV-1-102	1000	ES
[~~statewide except GMUs 19, 23, 24, 25, 26, 27 and 28~~]	[~~1/1~~]	[~~1/31~~]	[~~JAV-2-103~~]	[~~300~~]	[~~ES~~]
	[~~1/16~~]	[~~3/31~~]	[~~JAV-1-104~~]	[~~1000~~]	[~~ES~~]
28 McGregor range, **military only**. This hunt is the last weekend in December each year.	12/26/2015 12/31/2016 12/30/2017 12/29/2018	12/27/2015 1/1/2017 12/31/2017 12/30/2018	JAV-1-105	5	ES
28 McGregor range. This hunt is the last weekend in December each year.	12/26/2015 12/31/2016 12/30/2017 12/29/2018	12/27/2015 1/1/2017 12/31/2017 12/30/2018	JAV-1-106	5	ES

B. Over-the-counter hunts: The hunt area shall be statewide except GMUs 19, 23, 24, 25, 26, 27 and 28.

open GMUs or areas	hunt start	hunt end	hunt code	licenses	bag limit
Statewide except GMUs 19, 23, 24, 25, 26, 27 and 28	1/1	1/31	JAV-2-103	300	ES
	1/16	3/31	JAV-1-104	1000	ES

C. Properly licensed deer or elk hunters that possess JAV-1-100 may hunt javelina outside of the published javelina hunt dates but only during the same dates and in the same area as their deer or elk hunt. Properly licensed deer or elk hunters that possess JAV-2-103 and JAV-1-104 may hunt javelina outside of the published javelina hunt dates but only during the same dates and in the same area as their deer or elk hunt, except in GMUs 19, 23, 24, 25, 26, 27 and 28. Hunters must use the same weapon type listed on their respective deer or elk license.

[19.31.21.11 NMAC - Rp, 19.31.21.11 NMAC, 4-1-15; A, 1-17-17]

PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.31.2 NMAC, Section 13, effective 01/17/2017.

6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:

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.

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.

(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.

(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 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.

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 (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. 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.

G. Conflict management and resolution.

(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;

(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.

(d)

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

H. State complaint procedures.

(1) Scope and dissemination.

(a)

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.

(b)

The SEB shall disseminate information regarding state complaint procedures to parents and other interested individuals and organizations, as identified by SEB, including parent centers, information centers, advocacy agencies and attorneys, private advocates, independent living centers, and other appropriate entities throughout the state.

(i)

The SEB shall place documents regarding state complaint procedures in English and Spanish, including state complaint forms, in an easily accessible location on the SEB website.

(ii)

The SEB shall, on a yearly basis, send an email to all parent centers, information centers, advocacy agencies and attorneys, private advocates, independent living centers, and other appropriate entities throughout the state, as identified by the SEB, to provide information regarding state complaint procedures and to encourage these organizations and individuals to post a link to the SEB website on their website.

(iii)

Upon request by any individual or organization, the SEB shall provide the information regarding state complaint procedures, as posted on the SEB's website, in print or electronic form.

(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 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; (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.

(3)
Preliminary meeting.

(a)
FIEP meeting: mediation. Parties to a state-level complaint may choose to convene a FIEP meeting or mediation. 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.

(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.

(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 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 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 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.

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.

(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

(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.

(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.

(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.

(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 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.

(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 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.

(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;

(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.

(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:

(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 can not 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 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 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 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.

(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 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 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 (19) 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 (24) of Subsection I of 6.31.2.13 NMAC below.

(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 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.

(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, 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 (15) and (16) 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 Paragraph (26) 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.

(13) Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(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.

(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

(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.

(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 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.

(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 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 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.

(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:

(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.

(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.

(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.

(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 (25) of Subsection I of 6.31.2.13 NMAC below.

(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.

(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;

(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.

(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.

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 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.

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;

(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.

(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 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.

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 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 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 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.

(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.

(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;

(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 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.

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.

[6.31.2.13 NMAC - Rp, 6.31.2.13 NMAC, 6/29/07; A, 12/31/09; A, 7/29/11; A, 02/29/12; A, 09/28/12; A, 01/17/17]

End Of Adopted Rules

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