



# NEW MEXICO CORRECTIONS DEPARTMENT

Secretary  
Alisha Tafoya Lucero

CD-121500 Special Education	Issued: 4/16/01 Effective: 4/16/01	Reviewed: 5/31/18 Revised: 6/21/17
Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

## AUTHORITY:

- A. NMSA 1978, Section 22-13-5, as amended.
- B. NMAC 6.31.2.2. Education Standards, Special Education.
- C. Policy *CD-010100*

## REFERENCE:

- A. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq.; 34 CFR Parts 300 and 303.
- B. ACA Standard 2-CO-5B-01, *Standards for the Administration of Correctional Agencies*.
- C. ACA Expected Practices 5-7B-4464, 5-7B-4466, 5-7B-4470, 5-7B-4475, 5-7B-4479, *Performance Based Expected Practices for Correctional Institutions*, 5<sup>th</sup> Edition.
- D. Correctional Education Association, CEA Standards 70 and 71, Education for Exceptional Students.

## PURPOSE:

To provide a process for the appropriate identification and programming of inmate students with disabilities who qualify for special education services under IDEA, Individuals with Disabilities Education Act.

## APPLICABILITY:

All employees and contracted staff of the Recidivism Reduction Division and other personnel involved in the identification of special education students or in the implementation, delivery, or monitoring of special education services and all identified inmates. This includes staff at all state NMCD and privately contracted facilities at all custody levels.

## FORMS:

None

## ATTACHMENTS:

None

- A. Individualized Education Plan (IEP): A written statement for a person with a disability that is developed, reviewed, and revised in accordance with SS300.320 through 300.324. The IEP includes the student's strengths, needs, specific recommendations, the annual goals and how they are to be measured, the services needed and how and when they are to be provided, the considerations of any special factors, transition, and least restrictive environment.
- B. Psycho-educational testing: A comprehensive assessment battery administered by a licensed professional that may include the following areas: academic and achievement skills, cognitive/intellectual abilities, processing abilities, classroom behavior/performance, creativity and/or thinking skills, communication and language skills, and physical abilities.
- C. Special Education Coordinator: An individual designated by the Recidivism Reduction Director or designee to assume the responsibility for oversight of special education programs throughout all New Mexico Corrections Department state and privately contracted facilities.
- D. Student Assistance Team (SAT): Serves as the facility screening committee to determine services and make referral decisions for students who have not been previously identified as IDEA eligible. The SAT team consists of general education staff, the Recidivism Reduction Director, the Special Education Coordinator and other staff as directed by the Recidivism Reduction Director or designee.

**POLICY:**

- A. The Recidivism Reduction Division will provide the identification and special education services for all individuals under age 22 who qualify as IDEA eligible by state and federal regulations. The Recidivism Reduction Division will assure all qualified students are provided free and appropriate education according to state and federal mandates.
  - 1. NMCD Recidivism Reduction Division shall provide a free appropriate public education to each qualified handicapped student within the Division's jurisdiction, regardless of the nature or severity of the student's handicap. An appropriate education shall include regular and/or special education and related services that are designed to meet the individual education needs of the students, as adequately as the needs of non-handicapped students are met and that are based on adherence to procedures that satisfy federal and state requirements for educational setting, evaluation and placement, and procedural safeguards. Curriculum shall be competency based and supported by appropriate materials and classroom resources. [2-CO-5B-01] [5-7B-4466] [5-7B-4475]
  - 2. Academic and vocational education programs shall be recognized, certified, or licensed by the state department of education or other recognized agency having jurisdiction. Programs up to the completion of high school and/or GED/High School Equivalency shall be available at no cost to inmates. [5-7B-4470]

**B.** The Recidivism Reduction Division shall provide for a comprehensive education program, available to all inmates who are eligible that includes the following: **[5-7B-4464]**

- Educational philosophy and goals;
  - Communication skills;
  - Cognitive education
  - General education;
  - GED/HSE preparation and testing;
  - Access to high school curriculum for Special Education students
  - Graduation pathways aligned with State requirements
  - Special education;
  - Vocational Career Technical Education (CTE);
  - Reentry education
  - Postsecondary education; and
- Other educational programs as directed by the Recidivism Reduction Director



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## AUTHORITY:

Policy *CD-121500*

## PROCEDURE: [4-4464] [4-4475]

### A. Intake:

1. Initial Education and Mental Health screen takes place at the Regional Diagnostic Center (RDC).
2. Education File is created by the RDC Registrar and follows the inmate when he/she transfers from facility to facility and/or transitions back into society.
3. If the inmate indicates a history of special education, the RDC Registrar, Special Educator, or Special Education Coordinator requests the special education records from the last school the inmate attended. A notation is made on the contact log in the education file. When received and documented in OMP, records are placed in the inmates file and sent to the receiving facility.
4. All inmates will be screened for special educational needs at RDC.
  - a. Vision, hearing, communication skills, cognitive or academic levels and concerns, social or behavioral skills, health, and fine motor will be screened.

### B. Receiving Facility:

1. The Special Educator or designee at each facility is responsible for reviewing and signing the mental health chrono/face sheet for all students under age 22.
2. Within a 45-day period, the Special Educator will be responsible for screening all inmates not originally screened by RDC for special educational needs in order to monitor accuracy in initial screening.
3. If the inmate is over the age of 18 and has been previously identified by another agency as eligible for special education services, the special educator will conduct an IEP meeting to consider the student's need for special education services. If the IEP team agrees that services are needed and appropriate, an IEP will be developed and services provided. If the inmate has an active IEP from another agency, the IEP will be implemented as is until an IEP meeting is convened to review the plan and make any adjustments, if needed.

4. The Special Educator must schedule and convene an IEP meeting within 30 days of receiving the special education file.
5. If the inmate is under 18, parent/guardian involvement and consent must be obtained before the development of an IEP and the implementation of services. This may be accomplished by phone and will be documented. If an IEP meeting is necessary, the parent/guardian must be contacted and invited to attend in person or by speakerphone. If the parent/guardian gives permission to conduct the IEP meeting without his or her presence, they must provide input and a copy will be sent to them immediately for their review and approval before the IEP is implemented. All contact with the parent/guardian will be well documented in the education file and on the IEP. No action will be taken on a student under 18 without guardian knowledge and consent. If guardian is available, a surrogate guardian will be appointed.

**C. Student Assistance Team-SAT:**

1. The SAT team is composed of general education, special education, the student, and other staff as appropriate.
2. The SAT team is convened by Recidivism Reduction staff when an inmate student is identified as not progressing, has not received special education services previously, and may be in need of educational assistance in order to progress.

**D. Diagnostic Evaluation:**

1. When an inmate is identified as IDEA eligible based on records received, a review of those records is conducted. If the last psycho-educational testing is over three years old, a re-evaluation plan must be developed. The IEP team, based on the information available, will determine the type of reevaluation or, if one is necessary. A **Consent to Test** form must be signed before psycho-educational testing is conducted. If it is deemed necessary to reevaluate, the reevaluation must be conducted in a timely manner.
2. A student may be referred for an evaluation by the SAT. For all students referred for an evaluation, a referral packet will be compiled for the diagnostician.
3. The referral packet on all inmates will be sent to an NMCD Recidivism Reduction Division designated-Diagnostician for review before testing takes place.
4. Students age 18 or over may sign all forms including the consent to test forms. Students under the age of 18 must have guardian consent or a surrogate guardian appointed to represent them.

**F. Discipline**

1. Absences
  - a. If an inmate chooses to not attend class more than three times, he or she may be suspended or given other consequences determined by the Recidivism Reduction Director. However, the inmate must not be dropped from class.

2. Misconduct

- a. If an inmate is placed in a disciplinary unit, where educational services are not allowed, the special educator will document this in the student's file.
- b. Inmates who are suspended or removed from the IEP by the classification committee for refusal to actively participate, and after review by the classification committee, shall not be eligible for monetary compensation for work performed or for meritorious deductions.
- c. Inmates who have been terminated from good time eligibility or from meritorious deductions as a result of their refusal to actively participate shall not be eligible for reinstatement until the inmate has been approved by the classification committee for return to the IEP.
- d. NMCD personnel may remove a person with a disability from his or her current placement to an interim alternative educational setting, another setting, or suspension for up to 10 school days in the same school year without providing educational services.

**E. IEP Meeting- Individualized Education Plan:**

1. The IEP team develops the IEP. The team consists of the student, a general education teacher, a special education teacher, a diagnostician (if testing has been done or requested), an education administrator, mental health staff (if the inmate has an active mental health treatment plan), and others designated as appropriate to include parents, outside agencies to assist in transition, vocational teachers, etc.
2. The IEP will contain specific information on present levels of performance in all academic areas. It must also include information about present levels of performance in community experiences, employment, independent living skills (as necessary), functional career technical/vocational skills, post-secondary goals, and transition services. This information is a compilation of the testing information, previous history, classroom observations, student, parent and teacher input.
3. A statement of the annual goals and short-term objectives must be included. All objectives will be measurable and relate to the present levels of performance.
4. The IEP will specify: the amount of time spent in each setting of general education, special education, vocational, etc; the people responsible for special education related services, accommodations and/or modifications necessary for the student to be successful in general education, schedule for evaluation and ancillary or support services.
5. If the IEP team or the diagnostician recommends an evaluation by a related service staff, NMCD will conduct a review of existing evaluation data (REED) prior to an initial evaluation, if appropriate, and prior to any reevaluation. The reevaluation

always commences with the review of existing evaluation data. The REED determines the scope of the evaluation. NMCD will determine if additional data are needed to make an eligibility determination and determine the person's educational needs.

6. Procedural Safeguards will be reviewed with all students and parents before a change in program. This includes review before testing, before placement, and before a change in placement. The procedural safeguards are available in print in English, Spanish, Navajo and Russian. A written copy is provided to the student and/or parent at each event. If their primary language is not written, the notification will be presented in the mode of communication best understood by the parent/student.
7. Students who are 18 years of age or older are regarded as legal adults and will represent themselves in all special education matters, such as notifications, consents, and IEP meeting decisions. Students under age 18 will be represented by their legal parent(s), guardians, or surrogate guardians who have been appointed if parents or legal guardians are not available. Surrogate parents will be selected in accordance with state law.

**F. Notification:**

1. Student/parent(s)/guardians will be provided notification of their rights as stated above. They will be provided prior written notice of any proposed change of placement and will be required to sign in agreement or disagreement.
2. The student/ parent(s)/guardian will be notified in their primary language five days before initiating or changing the identification, evaluation, or educational placement. If the student/parent(s)/guardian agrees, the meeting can take place sooner. If their primary language is not written, the notification will be presented in the mode of communication best understood by the student/ parent(s)/guardian.
3. The Prior Written Notice will include a description of the actions proposed or refused and an explanation of why the department wishes to take the action or refuse the action, and a description of any other options considered.
4. Documentation of notifications will be placed in the inmate's file and recorded on the contact log.

**G. Confidentiality of Records and Access to Records:**

1. All state and federal laws pertaining to the confidentiality of records will be observed. The special educator at each facility and the Special Education Coordinator will be responsible for ensuring the confidentiality of these records. [5-7B- 4479]
2. The student/parent(s)/guardian will have access to his or her educational records for inspections and reviews. The student parent(s)//guardian have the right to have school personnel explain or interpret any item in the student's records. The student/

parent(s)/guardian must request access through the Recidivism Reduction Division at the facility. The Special Education Coordinator must be notified and the records provided no later than 45 days from the date of request. Copies will be provided at no charge to the student/ parent(s)/guardian.

3. Teachers, administrators, support staff, Recidivism Reduction contracted or permanent staff , or consultants employed by NMCD or privately contracted facilities will have access to all records in order to perform their responsibilities in the assessments, teaching, IEP development, review of evaluation, and review of records.

#### **H. Safeguards:**

1. The student/parent(s)/guardian has the right to place a statement in the education file commenting upon information in the records and/or setting forth reasons for disagreeing with the decisions of the department. If the student requests a correction, the Special Education Coordinator will be notified and will respond within 30 days of receipt of the request.
2. If a student/ parent(s)/guardian requests a hearing, all applicable state and federal laws will be complied with by the Department. All requests must be addressed to the Special Education Coordinator.
3. Consent documentation will be maintained in the education file and recorded on the contact log to indicate that the eligible student has been fully informed of all information relevant to the activity for which consent is sought in the student's primary language or mode of communication; that the student understands the information relevant to the activity; that the student agrees in writing to the carrying out of the activity; and that the student understands that the granting of consent is

voluntary and may be revoked at any time. Consent is obtained prior to formal evaluation procedures, initial placement, disclosure of confidential information, and use of information for purposes other than those previously specified to the student.

#### **I. Educational Placement/Programs:**

1. The special education student will be provided services that allow for implementation of the IEP. These services will be provided at all custody levels and in all facilities to include general population, RDC intake, D&E, segregation, and special controls facility.
  - a. FAPE for eligible students shall be made available in programs that are to the *security requirements* of each facility and eligible suited student.
  - b. In order to receive special education services, all students who have an IEP must be (mandated) enrolled in an education program at the start of incarceration no matter the sentence length or placement.
  - c. The receipt of a standard diploma terminates the service eligibility of students with special education needs. A GED/HSE does not constitute a standard diploma.
2. The student will be educated to the maximum extent appropriate with non-



handicapped students and will be provided the opportunity to participate in all classes on the same basis as a non-handicapped student.

3. Other arrangements, if not available and deemed necessary by the IEP team, will be provided in accordance with state and federal regulations.

#### **J. Withdrawal and/or Transfer of Students:**

1. Withdrawals: If a student paroles, discharges, graduates, waives services, or no longer qualifies for special education services, service shall be withdrawn by an Exit IEP meeting. It must be determined by an evaluation if a student no longer qualifies for special education, written in a summary and an EDT will be completed stating that the student is no longer eligible. If a student paroles, discharges, graduates, ages out or waives services, a Summary of Performance must be completed.
2. Transfers: Students who are transferred within NMCD and privately contracted facilities will not be withdrawn. The education file must be sent to the receiving institution immediately. It is the Special Education Coordinator, facility Supervisor of Education:, or their designee's, responsibility to identify special education students. After identification, the special education teachers will provide the appropriate services within 10 days of the student entering their facility. The placement should be in an appropriate class according to the IEP. If it is not possible to provide similar services, a new IEP will be developed.
3. If an inmate is placed in a disciplinary unit, where educational services are not allowed, the special educator will document this in the student's file.

#### **K Program Management:**

1. The special education program includes: coordination of the assessment process with mental health; regular, special and vocational education; supervision for the efficient operation of the IEP committees; operation of the program within the policies of general and special education and state and federal law; coordination with Central Region Educational Cooperative (CREC); at least annual evaluation of the program; dissemination of policies and procedures to all staff and interested others.
2. The Special Education Coordinator will serve as a liaison to the facilities and other agencies as assigned.