

Compliance Issues Gifted Services – Part I

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The purpose of this Compliance Issue is to provide general information about Gifted services in New Mexico. The following are commonly-asked questions about gifted services.

1. How is Gifted different in New Mexico than in other states such as Texas?

Answer: In New Mexico, Gifted Education is under the umbrella of Special Education. In Texas, and most other states, it is not. Even though Gifted is not an IDEA eligibility category, in New Mexico most of the procedural requirements of special education also apply to identified gifted students, such as the requirement for a pre-placement evaluation and the development of an IEP *designed to provide a free appropriate public education (FAPE)* based on the unique needs of a student directly resulting from his/her identified “exceptionality”, which is Gifted.

2. Which procedural requirements of the IDEA do not apply to Gifted students in New Mexico?

Answer: IDEA procedural requirements having to do with discipline do not apply nor do Child Find requirements related to private schools, home schooled students, and those enrolled in state supported schools or students in detention and correctional facilities do not apply.

3. What does “Gifted services” mean in New Mexico?

Answer: Gifted services means “special education” services to identified gifted children. (NMPED Policies and Procedures for The Provision of Special Education Services for Students with Disabilities and Gifted Students, Chapter 2, Definitions)

4. What does “special education” mean?

Answer: Special education means “specially designed instruction” to meet the unique needs of a child with a disability/exceptionality. (NMAC 6.30.2.11)

5. What does “specially designed instruction” mean?

Answer: “Specially designed instruction” means adapting, as appropriate to the needs of an eligible child the *content, methodology, or delivery of instruction* to address the unique needs of the child that result from the child’s disability...” (34 CFR 300.39(b)(3))

6. What instructional/educational services can be counted in determining the Service Level of a Gifted student?

Answer: Any time during the school day that fits the definition of “specially designed instruction” can be counted in determining the Service Level of a Gifted student. Instruction that is not adapted or modified from that available to non-Gifted students cannot be counted. NMPED Policies and Procedures states that students receiving gifted services must be provided a differentiated education *from that regularly provided by New Mexico school districts*. Time designated for the delivery of a related service can also be counted in determining Service Level in the same manner as it is for students eligible under the IDEA.

7. What is the Gifted “program” in GISD?

Answer: There can be no *singular* gifted program, *per se*, since services for identified gifted students in New Mexico must be individualized in accordance with their unique needs directly resulting from their disability/exceptionality. Nevertheless, gifted services can fall into certain *categories* such as, but not limited to, enrichment, acceleration, or ability grouping in special classroom settings.

8. Is the concept of LRE the same for Gifted students as it is for students eligible under the IDEA or Section 504?

Answer: No, LRE is not the same for Gifted. The NMPED Policies and Procedures... states that for students who are gifted, a “shift in perspective is necessary. A significant body of research supports the view that gifted students should be provided the opportunity to interact with their intellectual peers, and that lack of such opportunity may well be a *more* restrictive placement.” In addition, for students who are gifted, Settings are not monitored by the state because these data are collected for the federal government through State Performance Plan Indicator 5, and the federal government does not recognize giftedness as a disability.

9. Do parents of Gifted students have the same right to request a due process hearing as do the parents of students eligible under the IDEA or Section 504.

Answer: Yes, a due process hearing may be requested in matters relating solely to the identification, evaluation, or educational placement of, or services to, a child who needs or may need gifted services. Upon receiving an unfavorable decision by a due process hearing officer, a parent 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.

10. Is the SAT/RtI Three-Tiered process required prior to referring a potentially gifted student to special education (Tier III)?

Answer: For the traditional or standard method for identification of gifted students, the SAT/RtI Three-Tiered process is required in the same manner that it is for any other referral to Tier III, special education. For the alternative method of identification of gifted students, which must be used when an accurate assessment of a child’s ability may be affected by any of the ‘four factors’, the SAT/RtI process requirements do not apply.

11. What are the ‘four factors’?

Answer: The four factors include 1) cultural background, 2) linguistic background, 3) socioeconomic status, or 4) disability condition(s).

12. Must the district conduct an evaluation prior to exiting a student from gifted services as is required for students eligible under the IDEA?

Answer: No. Gifted students may exit the gifted program upon request by the parent. (Chapter 4, NMPED Policies and Procedures...)

13. Does the concept of “continuum of instructional options” apply to Gifted students as it does to students eligible under the IDEA?

Answer: Yes. Students should be offered gifted services in an array of settings which may include, but are not limited to, self-contained classrooms; pullout programs such as resource rooms; gifted education seminars; general education classes through cluster groupings; cluster scheduling for core classes; honors, advanced placement and enriched classes; special classes outside the school day; and summer institutes.

