

Compliance Issues:

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▪ **Service Level for Preschool (3Y4Y) Students Identified as Speech Only**

On June 10, 2011, a Memorandum was sent to all New Mexico Superintendents regarding a change in the service level to be reported for preschool (3Y4Y) students receiving only speech language pathology services as a special education service. In other words, the Memorandum directed that “speech only” 3Y4Y preschool students will no longer automatically be reported as maximum (D level) as they have in the past. (*This Memorandum does not address, affect, or impact speech therapy as a related service.*)

The Memorandum goes on to explain that, in New Mexico, the term “special education” may include speech-language pathology services when the services meet required standards which include:

1. The IEP team that makes the eligibility determination finds that the child has a *communication disorder*, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that *adversely affects a child’s educational performance*; and
2. The speech language pathology service consists of *pecially designed instruction* that *is provided* to enable the child to have access to the general curriculum and meet the educational standards of the public agency that apply to all children; and
3. The service is provided at no cost to the parents under a properly developed IEP.

If all the above standards are met, the service will be considered as special education, and these speech-only students can be funded as special education students; conversely, if the above standards are not met, the students cannot be funded as special education students. Preschool students who meet the standards above and who are receiving only speech language pathology services as a special education service, must be reported in STARS in the Staff Assignment Template, position code **95S**.

The student/staff caseloads for speech-only students receiving only speech language pathology services as a special education services are subject to the requirements of Paragraphs (1) and (2) of Subsection H of 6.29.1.9 NMAC which describe caseloads that are funded as minimal (A) or moderate (B). The student/staff caseload may not exceed 60:1 for a speech-language pathologist providing *minimal A level* speech-only special education services (*not greater than 10 percent* of the school day/week); and may not exceed 35:1 for a speech-language pathologist providing *moderate B level* speech-only special education services (*less than 50 percent* of the school day/week). Therefore, unless modified by further guidance from NMPED, all preschool (3Y4Y) speech-only

students reported in STARS under position code 95S may only be reported as minimal (A level) or moderate (B level).

District Implementation Procedure: *Pending clarification from NMPED regarding the contents of this Memorandum, the special education department will first review the IEPs of 3Y4Y students attending a Head Start program and receiving only the special education service of speech therapy. These students will, *unless there is forthcoming NMPED guidance to the contrary*, and pursuant to a case-by-case review, be reported in STARS under position code 95S with service levels changed to minimal (A) or moderate (B) as appropriate. No action will be taken regarding 4Y students attending Pre-K Centers or 3Y4Y Early Childhood classrooms until further guidance is forthcoming from NMPED.*

▪ **4Y Special Education Students Attending Pre-K Programs**

Many questions have arisen regarding how to document 4Y students who will be attending Pre-K in the fall, when their acceptance into the Pre-K program was not known at the end of the previous school year due to the lottery selection method. After making telephone contact with each parent awaiting notification of their child's selection or non-selection to attend the Pre-K program, the specific action required would vary with the specific scenario, and may require case-by-case decision-making. For example:

1. For a 3Y student whose end-of-year IEP/WNPA included a statement that the student would attend Pre-K in the fall, if selected: An updated WNPA should be provided to the parent explaining that the student *was* or *was not* selected to attend the Pre-K program for the coming school year. For those who *were* selected, the provision or non-provision of regular or special *transportation* to the Pre-K program should have been already discussed and clearly explained in writing in the end-of-year IEP/WNPA. If it was not, *and until clear guidelines addressing the extent of the district's responsibility to provide transportation for 4Y students to and from Pre-K programs (and addressing issues related to the "voluntary" and "lottery selection" aspects of the program) are forthcoming from the district's attorneys*, transportation must be addressed on a case-by-case basis with the parent, followed by a clearly written WNPA.
2. For a 3Y student whose end-of-year IEP/WNPA did not include a statement that the student would attend Pre-K in the fall, if selected, but it is certain that the parent DOES want the child to attend Pre-K in the fall, the same procedure outlined above regarding a new WNPA, including addressing the issue of transportation, should be provided to the parent.

Regarding an additional question of whether a diagnostician must be present if an IEP meeting were held to document a child's move to the Pre-K program, since diagnosticians are required to be present for "changes in placement": The *voluntary* (on the part of the parent) movement of a child to a different program, without a corresponding change in a student's services in the IEP, and *based on a lottery selection*

method, is not consistent with the meaning of an IDEA “change in placement”. Therefore, the presence of a diagnostician is not required. Under the IDEA, a change in placement is generally pursuant to a change in a student’s educational needs, confirmed by new evaluation data, resulting in a change to the services provided to the student. The rationale for the attendance of an educational diagnostician at such an IEP meeting is to “interpret the instructional implications of evaluation results”. However, if the movement to ANY other program IS consistent with the meaning of a “change in placement” under the IDEA, and the change is made in accordance with the student with a disability’s identified needs, a diagnostician would be required to interpret new evaluation data collected for the IEP team to determine if the change in placement is necessary and appropriate.

▪ **Changes in State Special Education Rules (6.31.2 NMAC)**

Effective July 29, 2011, the following changes to the State Special Education Rules became effective:

1. The term “mental retardation” has been changed to “intellectual disability”
2. Each district is now responsible for training their administrators and teachers who teach reading to implement appropriate research-based reading interventions *prior to* referring the student for a special education evaluation and must train their special education teachers to provide appropriate specialized reading instruction for students with dyslexia who have been identified as eligible for special education services.
3. The term that identifies the group of individuals charged with Identification, Evaluations, and Eligibility Determinations has been changed from “multidisciplinary team” or “IEP team” to “eligibility determination team”.
4. A paragraph has been added stating that a parent may request an initial special education evaluation at any time during the implementation of tiers 1 and 2 of the three-tier model of student intervention. If the public agency agrees with the parent that the child may be a child who is eligible for special education services, the public agency must evaluate the child. If the public agency disagrees and declines the parent’s request for an evaluation, the public agency must issue a prior written notice explaining the decision to deny the request and the reasons for the denial. The parent can challenge this decision by requesting a due process hearing.
5. The reference to “ninety days” for preschool transition conferences has been deleted.
6. IEP teams are now required to consider eleven strategies in developing IEPs for students with autism spectrum disorders; the considerations must be documented.