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June 13, 2012

MEMORANDUM

TO: Superintendents, Charter School Administrators, Directors of State Educational Institutions, BIE School Administrators

FROM: Sandra Schwarz
Deputy Director, Special Education Bureau

RE: **CLARIFICATION ON "IMPORTANT GRADUATION MEMO" FROM PETE GOLDSCHMIDT, PH.D., DATED APRIL 11, 2012**

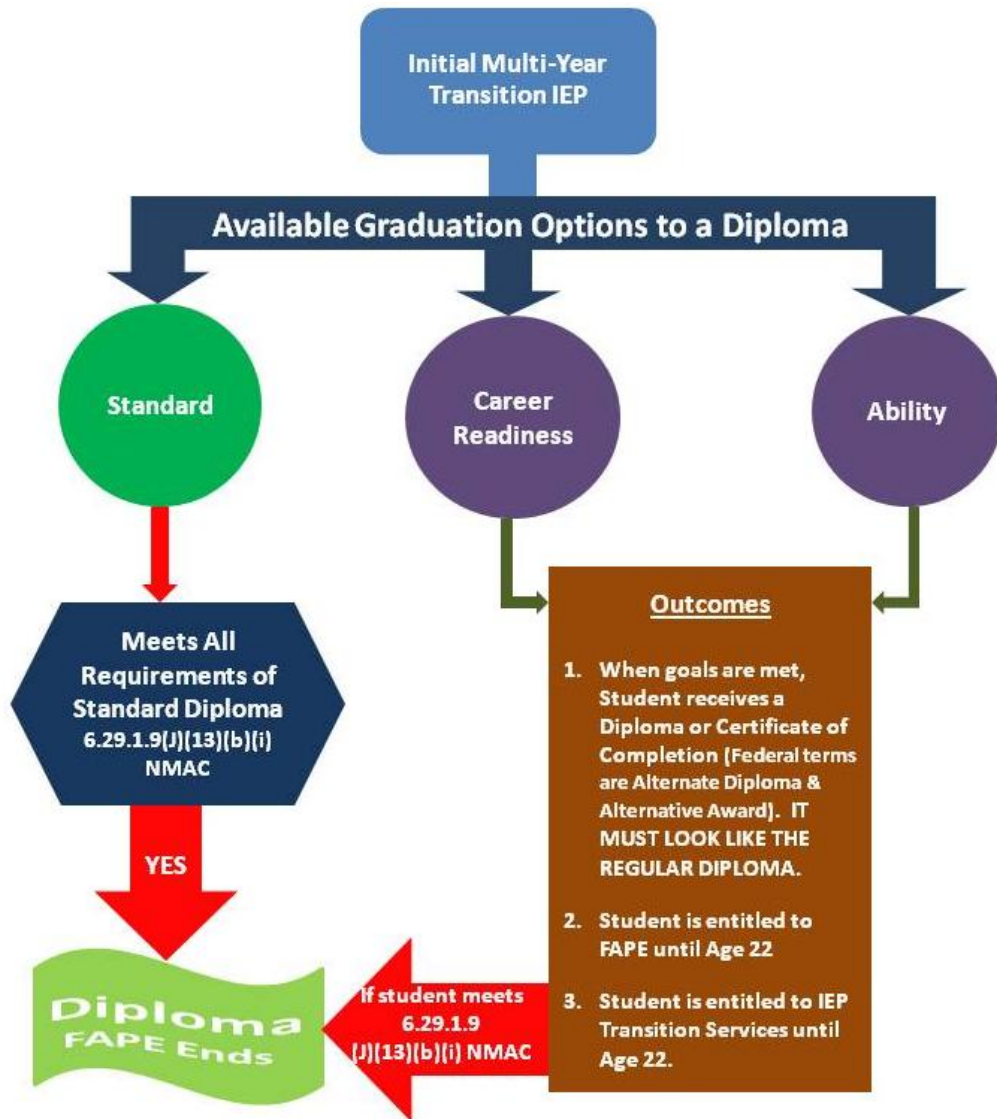
The New Mexico Public Education Department (NMPED) is sending you this additional guidance to answer the concerns that were raised from the "Important Graduation Memo" dated April 11, 2012. The two major concerns raised by the memo are the different options available to students and the effect of these options on graduating and reporting.

Part 1: The Graduation Options Available to Students (and what they mean)

What are the Graduation Options?

The Chart on Page Two of this memo, *Graduation Options Available to NM Special Education Students*, shows the different Options.

Three programs of study are available to all students: Standard, Career Readiness, and Ability. All graduating students using the standard option must meet the graduation requirements described in Subsection J of 6.29.1.9 NMAC.



Note:

1. Students on the Standard Option who do not complete all the requirements cannot change their path. FAPE continues and they may attend school until they complete the requirements or reach Age 22. [6.29.1(J)(13)(h)(i) NMAC]

Graduation Options Available to NM Students with Disabilities Pursuant to 6.29.1.9(J)(13)(b) NMAC

How does a student with an IEP receive a diploma?

A student may be awarded a diploma using any of the three programs of study. It is important that the student's IEP include the student's program of study, the IEP team's discussion points and decisions, and any student or parent proposals accepted or rejected by the IEP team (if the student has not reached the age of majority). All must be documented on the student's IEP and in the Prior Written Notice. [6.29.1.9(J)(13)(b) NMAC]

How does a student with disabilities graduate with the Standard Option?

To receive the standard diploma, a special education student must meet or exceed all requirements for graduation based on the NM Standards for Excellence with or without reasonable accommodations of delivery and assessment methods. In addition, a student must pass all sections of the current graduation exams under standard administration or state-approved accommodations. In addition, the student must meet all of the other standard graduation requirements of the LEA. [6.29.1.9(J)(13)(b)(i) NMAC]

Students receiving a diploma under this option are counted as a graduate in the graduation rate.

How does a student with disabilities graduate with the Career Readiness Option?

Career readiness is an alternative program of study developed to provide relevance. It is based on a student's career interest in relation to one of the career clusters with or without reasonable accommodations of delivery and assessment methods. The student must take the current state graduation exam with state-approved accommodations or under standard administration. The students must achieve a level of competency pre-determined by the IEP team.

Students must earn the minimum number of credits required by the LEA for the standard graduation option. A student may use standard or alternative courses that address employability and career development standards with benchmarks and performance standards determined by the IEP team. Please see 6.29.1.9(J)(13)(b)(ii) NMAC for the specific law and an explanation of the coursework requirements, competency requirements, and the need to address New Mexico content standards and performance standards as appropriate.

Students receiving a diploma under this option are counted as a graduate towards the school's cohort but are not counted in the Annual Performance Report.

How does a student with disabilities graduate with the Ability Option?

An ability program of study is for students who have a significant cognitive disability or severe mental health issue. IEP goals and functional curriculum course work are based on New Mexico standards with benchmarks and performance standards or the State Expanded Grade Band Expectations. It also includes employability and career development standards with benchmarks and performance standards. Students must earn the minimum number of credits or have equivalent educational opportunities required by the LEA. Coursework must meet the unique needs of students through support from the IEP.

Students must take the current state graduation exam with state-approved accommodations or under standard administration, or the state-approved alternate assessment. The IEP team pre-determines a level of competency for either exam as well as all other graduation requirements. [6.29.1.9(J)(13)(b)(iii) NMAC]

Students receiving a diploma under this option are counted as a graduate towards the school's cohort but are not counted in the Annual Performance Report.

What does the graduation document (Diploma) awarded with the different options look like?

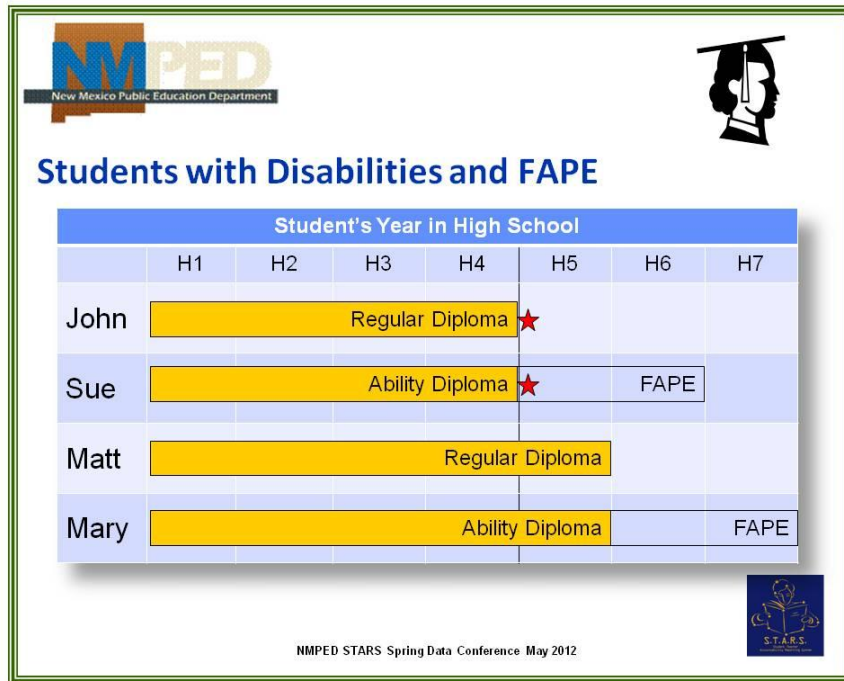
6.29.1.9(J)(13)(q) NMAC states that "[a]ll diplomas awarded by a school district or a charter school shall be identical in appearance, content and effect, except that symbols or notations may be added to individual student diplomas to reflect official school honors or awards earned by students." No matter what option that a student uses to achieve their graduation requirements, they will receive the same diploma as every other student.

How do the different graduation options affect FAPE?

The impact of graduation on FAPE for Special Education students is shown in the following chart.

Student Graduation Option	Did Student Graduate?	Does FAPE Continue?
Standard Option	Yes	NO
	No	Yes: Until Age 22 or Graduation
Career Readiness	Yes or No	Yes Until Age 22
Ability Option	Yes or No	Yes Until Age 22

Here is another graphic to show the relationship between graduation and FAPE:



Graphic Courtesy of Cindy Gregory, Ph.D., NMPED

Graduation under the Career Readiness or Ability Option does not constitute "graduation with a regular high school diploma" within the meaning of 34 CFR §300.102(a)(3). Therefore, students receiving Career Readiness or Ability Diplomas may choose to return to school for additional support. For those students, 6.29.1.9(J)(13)(o)

NMAC states that student with disabilities are entitled to FAPE through age 21 (until their 22nd birthday). If students turn 22 during the school year, they are allowed to complete the school year. Students who turn 22 prior to the start of school are no longer eligible for special education services. Section 22-8-2(M) NMSA 1978 says a "qualified student" includes students who have not reached their 22nd birthday on the first day of the school year and receive special education services under the rules of the department.

6.29.1.9(J)(13)(p) NMAC creates some confusion because it states that receipt of a diploma terminates the eligibility of students with special education needs. This refers ONLY to students receiving a diploma under the standard option that is consistent with the guidelines established in 6.29.1.9(J)(13)(b)(i) NMAC.

Who can participate (Walk) in graduation ceremonies?

According to 6.29.1.9(J)(13)(b) NMAC, students may receive a diploma using any of the three options (Standard, Career Readiness, Ability). Students must meet all requirements described on Page 3 of this document. Therefore, any student (regardless of age or status) may participate in graduation ceremonies and receive a diploma **IF** they have met all the requirements. Please see 6.29.1(J)(13)(n) NMAC to review the requirements of the exit IEP meeting for determining the completion of graduation requirements.

Students with IEPs who do not meet the requirements for a diploma may receive a Conditional Certificate of Transition that entitles them to participate in graduation ceremonies. Please see 6.29.1(J)(13)(i) NMAC for the requirements of a Conditional Certificate of Transition.

Are we required to provide transportation to "Graduated" students with disabilities who have IEPs requiring them to be in school? Who pays?

According to a SmartStart article entitled "Transportation – Assignment and Allocation of Transportation Resources", if a child's IEP team determines that supports or modifications are needed in order for the child to be transported so that the child can receive FAPE, the child must receive the necessary transportation and supports at no cost to the parents. Decisions about the assignment and allocation of transportation resources to satisfy the transportation need are largely within the discretion of the school district. Decisions involving configuration of bus routes, designation of bus-stop locations and scheduling are all issues that are considered to involve systemic aspects of operating public school transportation programs and therefore are matters that fall squarely within the school district's authority.

Part 2: Reporting Graduation Statistics Based Upon the Student Options to Graduation

The concern about the April 11 memo mostly focuses on reporting graduation data and the determination of who counts as a graduate. Students qualify for the two alternate conduits, the Career and Ability options, through their IEP. The chart on page 4 shows that the Career and Ability Options do not end the rights of a student with disabilities to FAPE. It does, however, impact the reporting of graduation and enrollment data.

What is the Cohort of 2011 (Current Graduates for 2011—2012)?

"Cohort of" is the same as "Class of" and refers to students. The 2011 Cohort consists of students who were freshman (9th Graders) in August 2008, joined by incoming transfers in later years, who were expected to graduate in four (4) years. The following chart explains how students are assigned to a cohort.

Student Status	Grade/Year	Determination
First Time 9 th Grader in Public Schools Not a 9th Grader in previous years	H1 in 2008	In 2 Consecutive Snapshots 40D, 80D, 120D, EOY
Transfer-in 10 th Grader	H2 in 2009	In 2 Consecutive Snapshots
Transfer-in 11 th Grader	H3 in 2010	In 2 Consecutive Snapshots
Transfer-in 12 th Grader	H4 in 2011	In 2 Consecutive Snapshots

What Outcomes Excuse Cohort Membership?

- Deceased
- Emigrated to US and Territories
- Foreign Exchange on a "J" Visa
- Transferred out to a non-public educational setting

Is Cohort reassignment allowed?

Starting with the 2011 Cohort, rule changes by the U.S. Department of Education state that we CANNOT reassign students to a later cohort under any circumstances. This includes:

- Students with IEPs (even if granted longer than four years by their IEP)
- Incarcerated during high school
- Pregnancy during high school
- Medical emergency during high school
- Hardship documented by the district

These students must be reported as non-graduates. LEAs should make every reasonable effort to graduate students with their cohort.

Who is a Graduate (for data entry into STARS)?

For EOY 2012, for reporting purposes, a graduate is the recipient of a STANDARD (regular) high school diploma that is fully aligned with the state's academic content standards under 6.29.1.9(J)(13)(b)(i) NMAC. They must also complete all the requirements by August 1 of the cohort year.

The *Letter to Pierce* by the Office of Special Education Programs (OSEP) dated December 2, 2011, determined that 34 CFR 200.19(b)(1)(i)(A) required states to calculate graduation rates strictly based upon students receiving a "regular high school diploma." OSEP said the statute defining a "regular diploma" excludes GED credentials, Certificates of Attendance, Certificates of Completion (i.e., the Career Readiness or Ability Options), or any alternative award that is not fully aligned with the state's academic standards. [34 CFR 200.19(b)(1)(iv)] A similar definition is also found in IDEA at 34 CFR 300.102(a)(3)(iv), and SEAs must report the number of students with disabilities who graduate with such diplomas.

Specific guidance on how to record the various scenarios in STARS (including the continuation of services) is forthcoming in a separate memorandum.

Who is a non-Graduate?

For EOY 2012, for reporting purposes, students with the following status cannot be counted as graduates:

- GED
- Dropped out
- Status unknown
- Still enrolled (non-graduate with a Continuing or Transitional IEP)
- Completer who didn't pass the exit exam

Are students with disabilities graduating with the Career or Ability Option placed at a disadvantage for the Legislative Lottery Scholarship?

The answer is "no" because college admission for full-time students usually, but not always, implies high school graduation. Specific information regarding the "Lottery" scholarship is found on the New Mexico Higher Education Department website at <http://nmhed.sks.com/Lottery.aspx>.

Students establish eligibility for the scholarship in their first regular semester immediately following high school **graduation** and funding begins in the second college semester. The eligibility requirements listed on the web site are:

- New Mexico resident
- **Graduated** from a New Mexico public high school, an accredited New Mexico private high school, or have obtained a New Mexico GED
- Home Schooled students are eligible only if they pass the New Mexico GED
- Must be enrolled full-time and complete 12 credit hours, and a 2.5 grade point average at an eligible New Mexico public college or university, in the first regular semester immediately following their high school graduation
- Undergraduate
- Enroll full-time

As stated previously, a **graduate** is the recipient of a STANDARD high school diploma that is fully aligned with the state's academic content standards under 6.29.1.9(J)(13)(b)(i) NMAC. However, for college admissions and scholarship applications, Career Readiness and Ability Options are included if all of the requirements in 6.29.1.9(J)(13)(b)(ii & iii) NMAC are met.

During the 2007 New Mexico State Legislative session, lawmakers passed a law that redefines "full time" for students with disabilities effective 2007 fall semester.

Students with disabilities must contact the institutional office serving students with disabilities to request permission to take less than 12 credit hours. They cannot take fewer than 6 credit hours. The student must still maintain Lottery eligibility with a 2.5 GPA and consecutive enrollment at a New Mexico public college or university.

How will we flag those students coming back for FAPE after they receive a diploma?

Please see the chart that appears on Page 9 of this memo. Students who graduate on the Career Option or the Ability Option can now be reported with two new codes. "GC" will refer to students who have graduated on either the Career or Ability Option and have a Continuing IEP. "GT" will refer to students who graduated on either the Career or Ability Option and have a Transition IEP. If they are attending classes in the school environment, they are considered as part of your membership.

But, if these students come back in the next school year to continue their goals, how will these students be enrolled (as they have already graduated)?

They remain in their original Cohort. They are recorded as H5 or H6, for example. They would only have another graduation event if, for example, they are able to complete the requirements to graduate with a Standard diploma. They will need to meet the requirements of a Continuing IEP under Field 45 of the Special Education Student Template (STARS Vol. 1, Version 6.1, page 134).

Do we log their attendance? What about classes? Can they take noncredit courses? Are students assigned to a Special Education Teacher's caseload? We have job coaches who work with these students as well. Is there guidance as how many days a week the students have to attend school? Can students go 1/2 days, or 2 or 3 days a week? Again, this will affect attendance.

We have just made several changes to STARS reporting for 2012-2013 on the reporting for graduated students with Continuing and Transition IEPs. However, the direct answer is that any student who is attending classes at your school, even students with disabilities who graduated with a Career Readiness or Ability diploma, are counted in your membership.

Please see the chart on the next page:

Graduation Status	Code	Definition
<p>Non-Graduate and on a Continuing IEP</p> <p>Note: The conditional certificate of transition entitles a student who has attended four or more years of high school to continue to receive special education services until the diploma is obtained or until the student ages out.</p>	C	<p>Designates a Student with Disabilities who:</p> <ul style="list-style-type: none"> • Is in 12th grade • Who has completed four or more years of high school • Did not receive a diploma (Standard, Career or Ability Option) • Must be in school • Must have a current IEP with prior written notice that student will receive a conditional certificate of transition
<p>Non-Graduate and on a Transition IEP</p> <p>Note: The conditional certificate of transition entitles a student who has attended four or more years of high school to continue to receive special education services until the diploma is obtained or until the student ages out.</p>	T	<p>Designates a Student with Disabilities who:</p> <ul style="list-style-type: none"> • Completed 12th grade • may or may not be in the high school setting • Has a current IEP with prior written notice that student will receive a conditional certificate of transition • Continues to receive special education services in order to obtain a diploma (Standard, Career Readiness, Ability Options) <p>Example: A student receiving tutoring to pass the high school exit exam or who is completing credits to graduate</p>
<p>Graduated and is on a Continuing IEP</p> <p>Note: The conditional certificate of transition entitles a student who has attended four or more years of high school to continue to receive special education services until the diploma is obtained or until the student ages out.</p>	GC	<p>Designates a Student with Disabilities who:</p> <ul style="list-style-type: none"> • Received a Diploma from the Career Readiness or Ability Options • Must be in school • Must have a current IEP with prior written notice that student will receive a conditional certificate of transition
<p>Graduated and is on a Transition IEP</p> <p>Note: The conditional certificate of transition entitles a student who has attended four or more years of high school to continue to receive special education services until the diploma is obtained or until the student ages out.</p>	GT	<p>Designates a Student with Disabilities who:</p> <ul style="list-style-type: none"> • Received a Diploma from the Career Readiness or Ability Option • may or may not be in the high school setting • Has a current IEP with prior written notice that student will receive a conditional certificate of transition • Continues to receive special education services <p>Example 1: Student A received his diploma through the Career Readiness Option but comes back to the HS to take art and technology classes that help him with his disability.</p> <p>Example 2: Student B received her diploma through the Ability Option but continues to need special education services while she gets work experience in a volunteer program at the hospital.</p>

This allows students with four or more years of high school to receive special education services until they receive a diploma through the Standard Option OR age-out (turn 22). They are treated just like any other student when it comes to attendance, scheduling, teacher assignments, and compliance with the LEA's student policies.

What does FAPE look like for a student who has graduated on the Career or Ability Option?

FAPE would look like:

- Whatever the student needs
- What the IEP team determines is appropriate
- What is documented on the IEP

Like any other student with an IEP, FAPE is based on individual need. For example, if a student with disabilities only needs two hours per day doing work experience, then that is FAPE for that student. Other students may need some life skills classes, internships, or just to be in classes all day. FAPE is totally dependent upon student needs.

Some colleges will not accept students who graduated on the Career or Ability Options. As a result, some students stay in High School on a Continuing or Transition IEP and take Dual Credit Courses (or other online and classroom courses) at our expense. Is that fair and how do we get funded?

Students graduating on the Career or Ability Option receive diplomas. While that should meet college admission requirements for a diploma, there is still much debate within Higher Education. With regard to denying admission to students who did not pass the SBA but received a waiver, there are cases that held that public entities cannot, consistent with the Americans with Disabilities Act (ADA), use eligibility criteria that screen out or tend to screen out individuals with disabilities unless they can show that such criteria are necessary. A "tend-to-screen-out" concept makes it discriminatory to impose policies or criteria that, while not creating a direct bar to individuals with disabilities, diminish the individual's chances of such participation. Although it may be discrimination, there cannot be a definitive answer without more research and additional facts.

However, students graduating on the Career and Ability Options are entitled to FAPE until they age out or graduate with a standard diploma. These students can continue to take classes in the high school setting based on their educational program determined by the IEP team as necessary to provide the student with FAPE. If dual-credit courses are what the IEP team determines are required for FAPE, the courses must be provided at no cost to the student. The students are counted in your school membership and your special education membership.

References

STARS Volume 1 User Guide:

<http://www.ped.state.nm.us/stars/dl12/SY2012%20STARS%20Manual%20Volume%201.pdf>

Citations from the New Mexico Administrative Code (NMAC) are found at NM Standards of Excellence (6.29.1) – <http://www.nmcpr.state.nm.us/nmac/parts/title06/06.029.0001.htm>

Citations from the Code of Federal Regulations (CFR)

Title 34 — Education

http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title34/34cfr300_main_02.tpl