

## Compliance Issues:

Graduation Options; Making Up Missed Related Services;  
Rationale for at Least One Reject on the Written Notice of Proposed Actions;  
Categorical Services Prohibited

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1. Question: Are there any circumstances under which a senior's Graduation Option can be changed from Standard to Career after the 20<sup>th</sup> day of the school year (the most common reason being not having passed the NMHSCE)?

Answer: NMAC 6.29.1.9(J)(13)(h)(iii) answers this question directly: "The IEP team *shall not* change the program of study for a student entering the final year of high school from the standard program of study to the career readiness program of study, nor from the career readiness program of study to the ability program of study, after the 20<sup>th</sup> school day of the final year of high school." (NMPED staff have clarified that the "special exceptions" to the 20<sup>th</sup> day rule, referred to on page 6 of the August 2009 Graduations Options Technical Assistance Manual, are limited to medical and/or mental health issues or emergencies and require the written request procedure addressed to in Question 2 below.)

2. Question: Are there any circumstances under which a senior student on the Career Graduation Option or Ability Graduation Option could graduate WITHOUT meeting the LOC (targeted levels of proficiency) set by the IEP team?

Answer: NMAC 6.29.1.9(J)(13)(g) addresses this question as follows: "IEP teams shall document the targeted levels of proficiency on the IEP and the PWN.... Districts may submit a written request for a waiver to the secretary in cases where a student has medical or mental health issues that may result in regression or that negatively influence the student's ability to achieve targeted levels of proficiency. The written request shall be signed by the superintendent and shall include documentation of the medical or mental health issues."

3. Question: Are related service staff required to make up services that are missed by fault of the student, the school, or the parent?

Answer: It is the position of OCR and/or OSEP, that when a related service is missed because of the service provider, the service time must be made up. When services will be missed because of school events, the parent should be informed *before* the fact, via the WNPA, that services will, or will not, be provided (or be made up) when certain school events occur. However, when the service is missed because the student is absent, the service does not *have* to be made up **UNLESS**

there is a *pattern* of absences, or an *excessive number* of absences – to the extent that the student may not derive the benefit intended from the provision of the service in the first place. In that case, the service provider and the IEP team **MUST** address the issue and make whatever changes/adjustments are necessary to ensure the student is provided the services that are required. In other words, **it is NOT acceptable for the district or the related service provider to remain passive, or simply document the absences**. Every effort must be made, or at least attempted *and documented*, to ensure the provision of FAPE.

4. Question: What is the reason for the rule that all Written Notices of Proposed Action (WNPA), also referred to as Prior Written Notices, have to include at least one proposal that is rejected, and the reason it is rejected?

Answer: The source for this requirement is the New Mexico Public Education Department (NMPED) in their efforts to enforce the **LRE** requirements of the IDEA. NMPED requires the following: For each student whose placement is NOT in the general education classroom/program for 100% of the school day, with 0% removal to a segregated (i.e., for special education students only) setting at any time during the school day or week, the WNPA must contain at least one proposal for a *less* (not necessarily the *least*) restrictive environment than the one finally decided upon by the IEP team, with a clear explanation of *why* it was rejected. Examples such as proposing that a child ride the regular bus and then rejecting it, or proposing that a child participate in ESY and then rejecting it, do **NOT** meet the letter or intent of this requirement.

5. Questions related to Categorical Services: A) Can a student who is SLI who “qualified” in the area of articulation be provided special education services other than those in the area of articulation? B) Can a student who is SLD, or any other of the 13 disability categories but NOT *also* SLI, be provided speech therapy? C) Can a student who is SLD, who “qualified” in the area of mathematics (or reading, written language, etc.), be provided special education services other than those in the area of mathematics (or reading, written language, etc.)?

Answer: The answer to all three questions above is YES *if* the data and the present levels of performance indicate there are areas of need requiring specialized services in order the student to receive FAPE. The Analysis and Comments section of the 2006 IDEA Rules and Regulations (Federal Register/Vol. 71, No. 156/ Monday, August 14, 2006, page 46655) clarifies this issue by stating, “**Services must meet the child’s needs and cannot be determined by the child’s eligibility category.**”

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