# September 1, 2015

# **MEMORANDUM**

**To:** Superintendents, State Charter School Directors, Special Education Directors, and Regional Education Cooperative Directors

**Fr:** Michael Lovato, Director of Special Education

**RE: Behavior Management Services in the School Setting**

This guidance is provided in an effort to clarify the role of Behavior Management Services (BMS) within the school setting and in relation to special education services. This letter supersedes any previous guidance that has been issued by providers related to BMS in the schools.

## BMS services are not considered an ancillary or related service under the Individuals with Disabilities Education Act (IDEA) at 34 CFR § 300.34 and § 22-8-21 of the Public School Finance Act. Therefore, these services are not eligible for reimbursement under the Medicaid School-Based Services (MSBS) program and cannot be utilized for ancillary units under the State Equalization Guarantee formula.

## BMS services are one of many supplementary aids and services that may benefit a student with a disability under the IDEA. 34 CFR § 300.42 defines Supplementary aids and services as meaning aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§ 300.114 through 300.116.

If the student’s Individualized Education Program (IEP) team determines that BMS services are needed, those services should be included in the supplementary aids and services portion of the student’s IEP.

The Local Education Agency (LEA) may choose to utilize an outside agency to provide BMS to meet the needs of the student. However, if this option is selected, the LEA must have a contract or a Memorandum of Understanding (MOU) in place prior to services being provided within the school setting. In addition, all contractors must meet all of the State requirements including passing criminal background checks. All BMS in schools must be provided in accordance with 8.321.2.13 NMAC –“Behavior Management Skills Development Services.”

Questions related to this guidance may be directed to Michael Lovato, Director of Special Education at 505-827-1457 or michael.lovato@state.nm.us.

cc: Hanna Skandera, Secretary of Education

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