December 27, 2010

MEMORANDUM

TO: Special Education Directors
    Charter School Administrators
    Regional Education Cooperative Directors

FROM: Denise Koscielniak
      Special Education Director, Special Education Bureau

RE: CLARIFICATION ON SPECIAL EDUCATION IN NEW MEXICO:
    DEVELOPMENTALLY DELAYED AND RELATED SERVICES

This memorandum has been issued to provide clarification on special education in New Mexico, specifically in regards to Developmentally Delayed classification and related services. In accordance with 34 CFR § 300.8, there are thirteen disabilities a child can be determined to have: Autism, Deaf-blindness, Deafness, Emotional disturbance, Hearing impairment, Mental retardation (Intellectual disability), Multiple disabilities, Orthopedic impairment, Other health impairment, Specific learning disability, Speech or language impairment, Traumatic brain injury, and/or Visual impairment (including blindness). The Individuals with Disabilities Education Act (IDEA) defines special education, under 34 CFR §300.39 (a)(2)(i):

(2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section –
   (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

In New Mexico, as defined under State standards, “Special education” means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.
   (a) As authorized by 34 CFR §300.8(a)(2)(ii) and 300.39 (a)(2)(i), “special education” in New Mexico may include speech-language pathology services.
   (b) Speech-language pathology services must meet the following standards to be considered special education:
      (i) The service is provided to a child who has received appropriate tier I universal screening under Subsection D of 6.29.1.9 NMAC as it may be amended from time to time, before being properly evaluated under 34 CFR §300.301-300.306 and Subsection D of 6.31.2.10 NMAC;
      (ii) 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
(iii) the speech language pathology service consists of specially 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

(iv) the service is provided at no cost to the parents under a properly developed IEP that meets the requirements of Subsection B of 6.31.2.11 NMAC.

(c) If all of the above standards are met, the service will be considered as special education rather than a related service. [6.31.2.7 (B)(18)(a-c) NMAC]

These students are to be reported in STARS, in accordance with State standard 6.29.1.9 (H) NMAC. Student/staff caseloads in gifted and special education.

(1) The student/staff caseload shall not exceed 35:1 for a special education teacher and 60:1 for a speech-language pathologist for special education services or speech-only services, in which properly licensed special education teachers or speech-language pathologists travel from class to class or school to school, providing services to students with disabilities whose individualized education programs (IEPs) require a minimal amount of special education. (A minimal amount of special education services shall not exceed 10 per cent of the school day/week.)

(2) The student/staff caseload shall not exceed 24:1 for a special education teacher and 35:1 for a speech-language pathologist for special education services or speech-only services which properly licensed special education teachers or speech-language pathologists provide to students with disabilities whose IEPs require a moderate amount of special education. (A moderate amount of special education services shall be less than 50 per cent of the school day.)

The staff assignment code in STARS that is to be used for such students is Code #95, Related Service Provider Acting as Caseload Manager or Related Service Teacher.

The definition of "developmentally delayed", as per Subsection 6.31.2.7 (B)(4) NMAC, means a child aged 3 through 9 or who will turn 3 at any time during the school year: with documented delays in development which are at least both standard deviations below the mean on a standardized test instrument or 30 percent below chronological age; and who in professional judgment of the IEP team and one or more qualified evaluators needs special education and related services in at least one of the following five areas: communication development, cognitive development, physical development, social or emotional development or adaptive development. Use of the developmentally delayed option by individual local education agencies is subject to the further requirements of Paragraph 2 of Subsection F of 6.31.2.10 NMAC. Local education agencies must use appropriate diagnostic instruments and procedures to ensure that a child qualifies as a child with developmental delay in accordance with the definition in this paragraph.

Furthermore, regarding eligibility determinations, Subsection (F)(2) of 6.31.2.10 NMAC states:

(2) Optional use of developmentally delayed classification for children aged 3 through 9

(a) The developmentally delayed classification may be used at the option of individual local education agencies but may only be used for children who do not qualify for special education under any other disability category.

(b) Children who are classified as developmentally delayed must be reevaluated during the school year in which they turn 9 and will no longer be eligible in this category when they become 10. A student who does not qualify under any other available category at age 10 will no longer be eligible for special education and related services.

A special rule for eligibility determination, as defined under 34 CFR § 300.306 (b), in which a child must not be determined to be a child with a disability would be if the determinant factor is:

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);
(ii) Lack of appropriate instruction in math; or
(iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria under § 300.8(a).
A student with a disability who only needs a related service, as defined under 34 CFR § 300.34, is not special education as defined above, is not eligible under the IDEA, and hence is not eligible to receive related services thereunder. As per 34 CFR § 300.8(a)(2)(i)&(ii): (i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§ 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs related service and not special education, the child is not a child with a disability under this part. (ii) If, consistent with §300.39 (a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

If you have any questions regarding the additional documentation, please call the SEB at (505) 827-1457 and ask to speak with the staff member assigned to your district.

DK/ss

cc: Dr. Sheila Hyde, Deputy Secretary, Learning and Accountability
    Dr. Kristine Meurer, Acting Assistant Secretary, Student Success Division
    District Superintendents