April 4, 2011

MEMORANDUM

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

FROM: Denise Koscielniak
Special Education Director, Special Education Bureau

RE: QUESTION AND ANSWER FOLLOW UP TO DEVELOPMENTALLY DELAYED AND RELATED SERVICES MEMO

This memorandum has been issued to provide follow up clarification on special education in New Mexico, specifically in regards to the memorandum on the Developmentally Delayed (DD) classification and related services dated December 20, 2010. The information below addresses follow-up questions we have received from local education agencies and regional education cooperatives regarding the use of developmentally delayed and related services.

Q: How is it determined if a student has a disability under the Individuals with Disabilities Education Act (IDEA) or a Developmental Delay under Subsection B(4) of 6.31.2.7 of the New Mexico Administrative Code (NMAC)?

A: The Eligibility Determination Team (EDT) must determine that the student is a student with a disability, or in other words meets the IDEA or NMAC definition using the procedures set forth in the New Mexico Technical Evaluation Assessment Manual (NM TEAM), which is required under Department rules and standards. As a result of the disability, there must be an adverse effect on the student’s educational performance to the degree that the student requires special education and related services. Being classified as DD will not in itself qualify a student for special education since there must be a showing that being developmentally delayed adversely affects educational performance.

Q: Should you be screening students for additional special education and related services who are already eligible for special education and related services?

A: No, you should not be screening all DD students who qualify for special education and related services for additional services. However, if a DD student can be classified under any other disability, the student can no longer be classified as DD. According to the IDEA 2004 commentary on page 46640, this would require a reevaluation: “An initial evaluation of a child is the first complete assessment of a child to determine if the child has a disability under the Act, and the nature and extent of special education and related services required. Once a child has been fully evaluated, a decision has been rendered that a child is eligible for services under the Act, and the required services have been determined, any subsequent
evaluation of a child would constitute a reevaluation.” The applicable IDEA regulations under 34 CFR §§ 300.303 – 300.305 must be followed.

Q: Should you be screening students who are typically developing for disabilities?

A: No, you should not be screening all students, only students who are suspected of being a child with a disability under the IDEA as part of your child find responsibilities under 34 CFR § 300.111. The use of developmental delay can only be used if you rule out the disabilities under the IDEA and meet the State’s criteria under Subsection B(4) of 6.31.2.7 and the NM TEAM.

Q: Can the student be determined to be eligible under DD for motor only?

A: No, services for motor only are considered a related service. If a child only needs a related service and not special education, the child is not considered to have a disability, and thus is not eligible to receive special education services. 34 CFR §300.8(a)(2)(i). The developmentally delayed classification may only be used as an option for students who do not qualify for special education under any other IDEA disability category in accordance with 6.31.2.10(F)(2)(a) NMAC.

Q: If motor is the only area of need, can they qualify and if “yes”, do you give them special education instruction (academic and functional goals) only in motor?

A: The answer is NO. The student must meet the criteria for a student with a disability which means that the student’s condition adversely affects educational performance to the degree that the student needs special education and related services.

Q: Can we write IEPs for fine and/or gross motor only for special education instruction?

A: No, OT/PT cannot be the only related service. OT and PT do not meet the definition of special education under Subsection B(18) of 6.31.2.7 NMAC. IEPs require both academic and functional goals.

Q: Under what circumstances is OT and/or PT added?

A: If the student has a disability under IDEA, then OT/PT would be a team decision. See 34 CFR §§300.303 - 300.306. You must obtain parental consent and provide the parent with prior written notice prior to any reevaluation or evaluation.

Q: How long might the special education teacher work on motor intervention prior to adding OT and/or PT?

A: This is an IEP team decision based on the specific needs of the child. PED cannot decide what time frame is appropriate, as each child’s IEP is specific to their educational program. OT and/or PT cannot be added to the IEP without parental consent, prior written notice, an evaluation, and a determination by the IEP team that the students needs this related service in order to benefit from special education.

Q: Can an OT or PT be the primary case manager if motor is the only area listed on the IEP?

A: No, OTs and PTs are not case managers, only special education teachers and Speech Language Pathologist (SLPs) (for speech-only) can be case managers. Subsection W of 6.29.1.7 NMAC states “Caseload means the total number of students receiving special education and speech-only services as special education, for whom a special education teacher or speech language pathologist has responsibility for developing and monitoring the student’s IEPs. Caseload may also mean the number of students for which individual support services staff members are responsible.” Also, see Subsection H of 6.29.1.9 NMAC regarding student/staff caseloads.
Q: If a student is identified as DD and the speech pathologist is the case manager, can the student receive OT and/or PT?

A: Students who are identified as Developmentally Delayed have received a full educational evaluation. An IEP is developed to address the area(s) of delay. Those students must have a teacher as the case manager. However, students who qualify for speech only services in accordance with Subsection B(18)((b) of 6.31.2.7 NMAC are assigned case managers (SLPs) in accordance with Subsection H(1)(2) of 6.29.1.9 NMAC. Students identified as speech only should not be receiving any other related services such as OT and PT. If there are additional concerns or delays, an evaluation or reevaluation should be completed after parental consent and prior written notice.

If you have any questions regarding this memorandum, please call (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
    Mr. Michael M. Vallejo, Deputy Director, Special Education Bureau
    Ms. Sandra Schwarz, Education Administrator, Special Education Bureau
    District Superintendents