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DR. VERONICA C. GARCÍA
SECRETARY OF EDUCATION

BILL RICHARDSON
Governor

October 7, 2005

MEMORANDUM

TO: Superintendents
Special Education Directors
Charter Schools Administrators
REC Directors

FROM: Dr. Veronica C. García (Signature on file)
Secretary of Education

RE: IDEA 2004: 20 U.S.C. 1412(a)(25)(A)-(B) Prohibition on Mandatory Medication

This memorandum provides information regarding one provision of the newly reauthorized Individuals with Disabilities Education Improvement Act (IDEA) of 2004. On August 1, 2005, the information was disseminated by the NMPED to Special Education Directors, Charter School Directors, Regional Educational Cooperatives, and school principals as part of the non-regulatory guidance on the IDEA 2004.

IDEA 2004 explicitly states that the State Educational Agency (SEA) shall prohibit state agency and Local Educational Agency (LEA) personnel from requiring a child with a disability or suspected of having a disability to obtain a prescription for a substance covered by the *Controlled Substances Act* (21 U.S.C. Secs. 801 *et seq.*) as a condition of attending school, receiving an evaluation for special education or related services, or receiving special education and related services.

The NMPED emphasizes its expectation that LEAs already follow the requirements above, and also notes the following:

1. At no time, and in no way, may LEA personnel state or suggest that a student with a disability or a suspected disability must obtain a prescribed medication that is covered by the *Controlled Substances Act* before that student may attend school, return to school, receive an evaluation for a suspected disability or receive special education and related services.
2. IDEA 2004 explicitly allows LEA personnel to consult with parents or guardians about school-based observations involving a student's academic, functional, and behavioral performance in the classroom or school, or regarding the need for an evaluation for special education and related services under the agency's child find obligations. *Observations* should be concrete and fact-based, and should not include *opinions* about how a particular medication may or could affect a student.
3. Nothing in the IDEA 2004 prohibits an LEA from administering medications at school to a student with a disability or a suspected disability, upon parental consent, provided the medication is maintained and dispensed according to applicable federal and state laws, rules, and guidelines for the administration of medication of the schools.

As noted in the NMPED's above mentioned non-regulatory guidance document, the NMPED recommends that LEA administrators immediately issue a written directive to personnel to explain the above requirements. Thank you for your cooperation in this matter.

WB/DK/le

cc: Dr. Catherine Cross-Maple, Deputy Secretary
Dr. Patricia Parkinson, Assistant Secretary
Ms. Denise Koscielniak, State Special Education Director
New Mexico Individuals with Disabilities Act (IDEA) State Advisory Panel Members