



STATE OF NEW MEXICO
PUBLIC EDUCATION DEPARTMENT
300 DON GASPAR
SANTA FE, NEW MEXICO 87501-2786
Telephone (505) 827-5800
www.ped.state.nm.us

DR. VERONICA C. GARCÍA
SECRETARY OF EDUCATION

BILL RICHARDSON
Governor

June 27, 2007

MEMORANDUM

TO: Special Education Directors, Regional Education Coordinators, Charter School Administrators

FROM Dr. Tom Dauphinee, Acting Assistant Secretary, Assessment and Accountability (Signature on File)
Denise Koscielniak, State Director of Special Education (Signature on File)

RE: CHANGES IN K-3 SLD EVALUATION AND ELIGIBILITY: DEADLINE JULY 1, 2007

The New Mexico Public Education Department (NMPED) published a revised version of the New Mexico Technical Evaluation and Assessment Manual (NM TEAM) on April 11, 2007. The NM TEAM includes the NMPED's official Policies and Procedures regarding evaluations and eligibility determinations under the IDEA Part B.

Since that time, the Special Education Bureau (SEB) has developed proposed State Rules that both support the changes found in the Code of Federal Regulations, Section 300 (published August 14, 2006), and bring State Rules into compliance with Federal Regulations. One important change affects the guidance contained within the Specific Learning Disability (SLD) section of the NM TEAM. There is also one important change expected within the State Rules around SLD evaluation and eligibility.

The proposed State Rules underwent a public comment period in which input was gathered from statewide educational stakeholders including parents, advocates, school personnel, and other State agencies. Many public comments were received in the areas of SLD evaluation and eligibility, as elaborated in the Proposed Rules in Section 6.31.2.10 (D)(1)(g).

Changes in SLD Evaluation and Eligibility
May 29, 2007
Page Two

Please note that the Local Education Agencies (LEAs) will now be required to implement the Dual Discrepancy Model at grade levels K-3 by July 1, 2009. This change was precipitated by several factors, including district readiness, the need for professional development, and the instructional materials cycle. The SEB is committed to ensuring that the Dual Discrepancy Model replaces the Severe Discrepancy Model in the early grades and hereby officially notifies all affected LEAs that there will be no further postponements of this expectation.

Please contact the Assessment and Accountability Bureau at (505) 827-6508 if you have any questions regarding these changes.

TD/DK/df

Enclosure

cc: Veronica C. García, Ed.D., Secretary of Education
Catherine Cross Maple, Ph.D., Deputy Secretary, Learning & Accountability
Lana Paolillo, Ph.D., Bureau Chief, Early Childhood Education Bureau
Dan Farley, Education Administrator, Assessment and Accountability Bureau
Superintendents

One of the comments received has been addressed in the State Rule and a similar correction must subsequently be made to the New Mexico Technical Evaluation and Assessment Manual (NM TEAM). The situation involves the use of the phrase “high quality, scientific research-based” which was used in the proposed Federal Regulations, but is not found in the final regulations. The phrase has been replaced with the term, “appropriate.” This phrase is to be stricken for the revised April 2007 NM TEAM within both the Dual Discrepancy Model and the Severe Discrepancy Model. There is also a small grammatical error that has been corrected. Language to be removed is in ~~strikethrough~~ font. Language to be added is in [brackets.]:

Pages 119-120, DUAL DISCREPANCY MODEL CHANGE:

“To receive special education or related services, a student **must** meet the NMPED’s adopted eligibility criteria:

1. The student demonstrates significant underachievement, based upon ability. Dual Discrepancy is denoted by having a difference of 1.5 standard deviations between *both* the student’s mean standards-based assessment *scores* and *growth* (slope) measured against those of grade-level students in the LEA’s [in the] area(s) of concern.
2. Standards-based achievement results are both below the average range and support the Dual Discrepancy in the area(s) of concern.
3. The student was provided with ~~high quality, scientific research based~~ [appropriate] instruction and intervention by qualified personnel in regular education settings.
4. Learning difficulties are not the result of lack of appropriate instruction in reading, lack of appropriate instruction in math, limited English proficiency, visual, hearing, or motor disability, mental retardation, emotional disturbance, cultural factors, or environmental or economic disadvantage.
5. Student demonstrates a need for special education services.”

Pages 121-122, SEVERE DISCREPANCY MODEL CHANGE:

The New Mexico Public Education Department (NMPED) cannot require a Local Education Agency (LEA) to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematical calculation, or mathematical problem solving. If a LEA chooses to utilize a severe discrepancy model in evaluating a student for eligibility in the specific learning disability category, the LEA must adhere to the following requirements.

“To receive special education or related services, a student must meet these NMPED adopted eligibility criteria:

1. The student demonstrates a severe discrepancy, of at least **1.5** standard deviations when considering co-normed assessments. If the assessments are not co-normed, and only when the assessments are not co-normed, considering the regression table found in Appendix G, which accounts for the standard error of measure of the difference between the child’s predicted achievement level and actual achievement in the area(s) of concern.
2. The student’s standards-based achievement results are both below the average range and support the discrepancy in the area(s) of concern.

3. The student was provided with ~~high quality, scientific, research-based~~ [appropriate] instruction and intervention by qualified personnel in regular education settings.
4. Learning difficulties are not the result of lack of appropriate instruction in reading, lack of appropriate instruction in math, limited English proficiency, visual, hearing, or motor disability, mental retardation, emotional disturbance, cultural factors, or environmental or economic disadvantage.
5. Student demonstrates a need for special education services.”

The second area of concern that the Special Education Bureau (SEB) must address are related to comments about the SEB’s intent to require the implementation of the Dual Discrepancy Model. The SEB has determined that the State Rule in this area will read as follows:

Effective July 1, 2009, public agencies must implement the Dual Discrepancy Model in kindergarten through third grade in accordance with Subsection C of 6.31.2.10 NMAC.