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October 22, 2019

MEMORANDUM

TO: Superintendents, Charter School Administrators, Special Education Directors, District Test Coordinators

FROM: Gwen Perea Warniment, PhD, Deputy Secretary of Teaching, Learning, and Assessment

RE: **Placement Decisions for Alternate Academic Achievement Assessment**

A handwritten signature in black ink, appearing to be "Gwen Perea Warniment".

Federal law allows states to provide alternate achievement assessments for students with cognitive disabilities too severe for those students to participate in the general academic achievement assessments, even with intensive and substantial accommodations. The alternate achievement assessment used in New Mexico has been the New Mexico Alternate Performance Assessment (NMAPA) through fall 2019, and will be the Dynamic Learning Maps (DLM) assessment beginning in spring 2020.

Section 6.29.1.9 J.(13)(g) of the New Mexico Administrative Code (NMAC) states: "If the student has previously been administered the New Mexico alternate assessment and has achieved an advanced level of overall performance, the IEP team shall arrange for the student to participate in the general graduation examination, and shall identify appropriate accommodations that the student may require."

This code is problematic for two reasons: 1) This code is **not** in compliance with section 1111 (2) (D) (ii) (I) of the Every Student Succeeds Act (ESSA) and section 614(d)(1)(A)(i)(VI)(bb) of the Individuals with the Disabilities in Education Act (IDEA); and 2) Neither NMAPA nor DLM yield overall performance levels. Both the ESEA and IDEA sections cited above mandate that an Individualized Education Program (IEP) shall determine when a student with a significant cognitive disability shall participate in the alternate assessment. Consequently, NMAC 6.29.1.9 J.(13)(g) will be amended.

Local educational agencies (LEAs) should follow the federal laws and allow IEP teams to make decisions regarding placement in the alternate and general assessments rather than following 6.29.1.9 J.(13)(g) NMAC.

cc: Ryan Stewart, EdLD, Secretary Designate
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