

FW: BMEAC_Dyslexia screening.pdf

MacDonald, Heidi, PED

Fri 5/22/2020 4:15 PM

To: FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

 2 attachments

BMEAC_Dyslexia screening.pdf; ATT00001.htm;

[Please see attached public comment.](#)

From: Valtierrez, Mayra, PED <Mayra.Valtierrez@state.nm.us>

Sent: Thursday, May 21, 2020 10:56 AM

To: Warniment, Gwen, PED <Gwen.Warniment@state.nm.us>; Laine, Kirsi, PED <Kirsi.Laine@state.nm.us>; MacDonald, Heidi, PED <Heidi.MacDonald@state.nm.us>

Cc: Bobroff, Kara, PED <Kara.Bobroff@state.nm.us>; Sena, John, PED <John.Sena@state.nm.us>

Subject: BMEAC_Dyslexia screening.pdf

Good morning,

Please see attached file we just received from the BMEAC.

May 16, 2020

Dear Dr. Stewart,

This letter is a response from the Bilingual Multicultural Education Advisory Council (BMEAC) to the proposed rule # 6.30.17 NMAC Structured Literacy, Intervention and Professional Development that will be heard on June 8, 2020. The rule states that all first graders entering New Mexico public or charter schools shall be screened for the characteristics of dyslexia by the 40th day of school. Students exhibiting characteristics of dyslexia are to be placed in appropriate intervention groups. We understand the importance of early intervention efforts as well as the struggle schools may have to identify dyslexia in children. BMEAC wholeheartedly supports the effort to improve literacy outcomes for all students. Nevertheless, the administration of such a screener to new English learners presents an extra set of hurdles.

The above referenced screening poses problems for new English Learners (ELs) due to the fact that ELs have unique needs that must be addressed. Since dyslexia is defined as a reading disability, which is closely linked to oral language skills, diagnosing characteristics of dyslexia in language learners must take into consideration the language proficiency of the student. We know that dyslexia is found in all student populations, including students of all cultures and speakers of all languages. Educators must keep in mind that English learners may have difficulty learning to read in a second language in which they are not totally proficient. Few of these learners may actually have a disability. In order to prevent the over identification of dyslexia in linguistically diverse students, BMEAC would like to make the following recommendations for the dyslexia screening of students with limited English proficiency:

- Screening and assessment procedures should be conducted in the student's native language whenever possible
- Consideration should be given to students who speak a language other than English but are not literate in that language
- When interpreting screening results, consideration should be given to the child's language proficiency level using (ACCESS) or other language proficiency data
- Delivery of intervention should be in accordance with the program model the student is currently receiving (dual language, enrichment, heritage, ELD pull out) and biliteracy method (holistic biliteracy, separated language block, program guided).
- Interventionists instructing ELs should have additional training to meet the specialized needs of ELs.
- It should be noted that next year's first graders (2020-2021), did not receive a full year of traditional kindergarten education in the 2019-2020 academic year due to Covid 19 concerns. This may affect their preparation for 1st grade and for screening.

Through the consideration and implementation of the above recommendations, BMEAC is confident that the over identification of ELs with dyslexia will be avoided, while ELs who exhibit characteristics of dyslexia will receive the support they need.

We thank you sincerely for your attention to this matter,

BMEAC Members:

Dr. Berlinda Begay	Ms. Maricela Duarte-Stern	Dr. Suzanne Jacquez-Gorman
Mr. Armando Chavez	Ms. Geni Flores	Ms. Mayra Lucero
Ms. Viridiana Cisneros	Ms. Karen Garcia-Brown	Ms. Dawn Salazar
Ms. Karen Dondelinger	Dr. Susana Ibarra-Johnson	Mr. Adrian Sandoval

[EXT] DRNM Public Comments for 6.30.17 NMAC

Jesse Clifton <jclifton@drnm.org>

Mon 6/8/2020 12:52 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Cc:Don Priola <dpriola@drnm.org>;

 1 attachment

DRNM Comments 6.30.17 Final_6.8.2020.pdf;

Please find Disability Rights New Mexico's public comments on NMPED's proposed regulation 6.30.17 NMAC. If you have any questions or concerns, please feel free to contact me or our office at the information provided below.

Best,

Jesse D. Clifton
Attorney and Corinne Wolfe Fellow for Transformative Advocacy
Disability Rights New Mexico
3916 Juan Tabo Blvd. NE
Albuquerque NM 87111
(505) 256-3100

June 8, 2020

Mr. John Sena
Policy Division
New Mexico Public Education Department
300 Don Gaspar Ave.
Room 121
Santa Fe, NM 87501

SUBMITTED VIA EMAIL AS PDF ATTACHMENT TO: Rule.Feedback@state.nm.us

RE: Proposed Rulemaking 6.30.17 NMAC

Dear Mr. Sena,

Disability Rights New Mexico (DRNM) is the designated protection and advocacy agency in New Mexico whose purpose is to promote, protect, and expand the rights of individuals with disabilities. As part of that mission, DRNM advocates on behalf of students with disabilities across the state. In fulfilling that objective, DRNM is submitting the written comments below regarding the proposed introduction of new regulations on Structured Literacy Instruction, Interventions, and Professional Development which will be designated as 6.30.17 in the New Mexico Administrative Code (NMAC). DRNM appreciates the opportunity to share our thoughts on this important regulation with the New Mexico Public Education Department (“PED” or “the Department”).

Notice of Proposed Rulemaking and Proposed Regulation’s Objective

DRNM has concerns with the language used in both the notice of proposed rulemaking and the objective of the proposed regulation found at 6.30.17.6 NMAC, which reads:

This rule provides criteria for improving literacy outcomes for all students through the development and implementation of structured literacy instruction and structured literacy interventions for students displaying difficulties in reading or characteristics of dyslexia, leading to a higher number of students achieving reading proficiency *and a lower number of students identified as requiring special education services.* (Emphasis added).

DRNM would like to use this opportunity to note that while a presumed positive side effect of this regulation’s implementation may be a lower number of students who are identified as requiring special education services, this regulation’s objective should not be to explicitly reduce that number. This is particularly important given that New Mexico school districts have, both historically and presently, met with the opposite problem—the under-identification (or delay in identification/evaluation) of students with disabilities, including reading disabilities. This language is improper and easily misunderstood. DRNM believes PED should strike the language “a lower number of students identified as requiring special education services” from this regulation’s proposed objective.

Clarification of Definitions

The term “multi-layered system of supports,” or MLSS, is a new framework for New Mexico school districts and charter schools. However, this term remains ambiguous, and a clearer definition should be provided by PED. Specifically, this proposed regulation suggests that MLSS is a framework defined and approved by PED at 6.30.17.9 (C) NMAC. (“[Interventions] shall be in accordance with the department’s multi-layered system of supports.”). But the definition paragraph implies something slightly different, stating that MLSS is “a framework for educators to use to organize their schools and school systems to support student learning.” DRNM believes that the Department should elaborate on its definition of multi-layered system of supports to clarify whether the new framework is in fact defined and approved by PED or whether it is left to individual school districts to design themselves.

The definition of “student assistance team” or “SAT” clearly requires a minimum of four team members to include “the student’s teacher, school counselor, school administrator, and parent or legal guardian.” According to NMSA 1978, § 22-13-32 and this proposed regulation, the SAT is responsible for prescribing interventions in accordance with the Department’s multi-layered system of supports. (See 6.30.17.9 (C) NMAC). A key principle of structured literacy instruction is the diagnostic data collection and responsive interventions which are monitored closely by the teacher providing reading instruction to the student. The proposed regulation requires that the student’s teacher be on the SAT. Depending on what interventions are necessary, the SAT may determine that a special education teacher or other reading interventionist should provide reading instruction to the student as part of the prescribed interventions in accordance with the Department’s multi-layered system of supports. In such an instance, the teacher providing the structured literacy instruction ought to be included on the student’s SAT team as well. This is not evident in the proposed regulation as currently drafted. DRNM suggests that PED clarify that the teacher on the student’s SAT should be the teacher who is providing reading instruction and interventions to the student.

Screening, Evaluation, and Intervention

6.30.17.9 (B) NMAC

Under NMSA 1978, § 22-13-32 (B), after a student has been screened and demonstrates characteristics of dyslexia, the student “shall receive appropriate classroom interventions *or be*

referred to a student assistance team.” (Emphasis added). This option does not track in PED’s proposed regulation, which only states that structured literacy interventions will be implemented for the student. According to the proposed regulation, only after receiving structured literacy interventions and continuing to exhibit difficulties is the student referred to SAT. (See 6.30.17.9 (B), (C) NMAC).

Once a particular student exhibits characteristics of dyslexia after the screening required by these regulations, the legislature clearly articulated an option to be considered by educators. The student in need of interventions is to be *either* referred directly to a SAT for prescribed interventions when deemed appropriate by educators, or else the student is to receive appropriate classroom interventions before being referred to a SAT. In any event, the legislature surely did not intend to solely limit students to pre-SAT, classroom interventions before being referred to SAT.

The clear language of NMSA 1978, § 22-13-32 (B) is not reflected in PED’s proposed regulation. The option articulated by the legislature must be maintained in PED’s implementing regulations so as to fulfill the intent and purpose of the authorizing legislation. PED should likewise afford educators the discretion and flexibility necessary to allow them to make referrals for students who are deemed to be in need of SAT interventions sooner rather than later. PED’s regulation on this point should reflect the legislative language at NMSA 1978, § 22-13-32 (B).

6.30.17.9 (C) NMAC

Similarly, 6.30.17.9 (C) NMAC also ignores the language used by the legislature, stating:

[I]f a student does not make adequate progress with targeted structured literacy interventions, *a school shall convene a student assistance team* to prescribe more frequent and intensive structured literacy interventions with progress monitoring to determine the student's level of progress. The structured literacy interventions prescribed by the student assistance team shall be in accordance with the department’s multi-layered system of supports. (Emphasis added).

Given the language used by the legislature, this section of the proposed regulation should be amended to capture the flexibility seemingly intended in NMSA 1978, § 22-13-32 (B). DRNM suggests the italicized and underlined language be incorporated to read, in relevant part, “...a school shall convene a student assistance team, *or, where appropriate, otherwise reconvene the student’s SAT,* to prescribe more frequent and intensive structured literacy interventions...”

6.30.17.9 (D) NMAC

DRNM is puzzled by the meaning of the proposed regulation at 6.30.17 (D) NMAC that states, “[i]f a student does not respond to interventions pursuant to Subsection A of 6.30.17.9 NMAC, the student shall continue to receive structured literacy interventions until a student assistance team is convened and further interventions are prescribed.” Subsection A of 6.30.17.9 NMAC does not address any interventions to be used. It only states that schools will screen all entering first grade students by the reporting deadline. Presumably, PED could have intended

Subsection D to make reference to the interventions in Subsection B. However, in that instance, it seems the provision in Subsection D simply reiterates the requirement of Subsection C.

DRNM believes there is not a need for Subsection D in this proposed regulation, and it should be removed for purposes of clarity and simplicity. However, if PED intended Subsection D to require a second SAT meeting to prescribe further interventions as part of the Department's multi-layered system of supports (or some other step that is not evident in the language as currently drafted), then PED should clearly articulate this in its proposed regulations.

6.30.17.9 (E) NMAC

DRNM appreciates that PED clearly provides that parents are to be informed of their right to request an initial special education evaluation. However, the proposed regulation includes limiting language that could be considered inaccurate or misleading. At 6.30.17.9 (E), the proposed regulation reads:

[A] parent or legal guardian of a student referred to a student assistance team shall be informed of the parent's right to request an initial special education evaluation at any time during the school district's or charter school's implementation of the interventions prescribed by the student assistance team.

DRNM maintains that a parent may request an initial evaluation for special education at any time, regardless of whether the student has been referred to the SAT or not, and regardless of whether structured literacy interventions in accordance with MLSS are being attempted. While it is true that the parent or legal guardian of a student who has been referred to the SAT may request an initial evaluation at any time during the implementation of SAT-prescribed interventions, this does not preclude a parent from making the request before a referral to the SAT, during pre-SAT structured literacy interventions ("classroom interventions"), or in the absence of any interventions. Additionally, the current language implies that: (1) parents are not informed of their rights to request an initial evaluation for special education before their student has been referred to the SAT, and (2) a parent cannot request an initial evaluation during the period between screening and referral to the SAT (i.e. while "classroom interventions" are being attempted). PED should clarify that a parent or legal guardian of a student who has been screened and displaying characteristics of dyslexia shall be informed of their right to request an initial special education evaluation, and that a parental request for an initial special education evaluation can be made at any time regardless of whether the student has already been referred to SAT.

Further, the proposed regulation goes on to read "[i]f the school district or charter school agrees that the student may have a disability, the student assistance team shall refer the child for an evaluation. The student shall be evaluated within 60 days of receiving the parental consent for an initial evaluation."

DRNM's experiences with parental requests for initial evaluation have consistently revealed two troublesome patterns. First, many parents are told that the SAT process must conclude before the school can refer the student for an initial evaluation. Whether by

misunderstanding or misinformation on the part of districts, this representation is simply not accurate in light of federal guidance. (*Memorandum to State Directors of Special Education* 56 IDELR 50 (OSEP 2011)). Second, parents are often not provided with a written denial of their request. Typically, this would suggest that the school district agrees with the parents and will refer the student for an initial evaluation for special education. Unfortunately, these parental requests are often put aside, without a denial, so that districts can control the timeline of when they ultimately honor the parental request and refer the student for an initial special education evaluation by an educational diagnostician. The result is that parental requests for evaluation, although not technically denied, are subjected to a waiting period of several months (or in some cases years) after the parent made their initial request.

Regarding the first assertion, DRNM suggests that PED include a provision in this regulation that clearly states that both SAT interventions and an initial evaluation for special education can run simultaneously and participation in one process does not interrupt or defer the other. Regarding the second assertion, DRNM suggests that PED add clarifying language in Subsection E. DRNM proposes incorporating the italicized and underlined language below:

If the school district or charter school agrees that the student may have a disability, the student assistance team shall refer the child for an evaluation *without undue delay, and, shall document attempts at obtaining informed consent from the student's parent(s) or legal guardian(s).* The student shall be evaluated within 60 days of receiving the parental consent for an initial evaluation.

U.S. Department of Education policy and guidance state that while a federally prescribed timeframe from parental request to referral for evaluation is not provided in the Individuals with Disabilities Education Act (IDEA), the referral should be made in a “reasonable period.” (71 Fed. Reg. 46540; 46637). Further, “the LEA must ensure that eligible children with disabilities receive required instruction and services without undue delay and within a reasonable period of time.” (*Letter to Anonymous* 50 IDELR 258 (OSEP 2008)). Likewise, the obligation of the school district to document its attempts at obtaining informed consent is a requirement under the IDEA at 34 CFR § 300.300(d)(5), and parental consent must be sought “within a reasonable period of time after the referral to evaluation.” (*Memorandum to State Directors of Special Education* 56 IDELR 50 (OSEP 2011)).

Requirements for Documentation

6.30.17.10 NMAC

This proposed regulation specifies that there are requirements for documentation, but it fails to describe those requirements. The proposed regulation states “[s]chool districts and charter schools shall submit data in accordance with PED guidance.” (6.30.17.10 NMAC).

DRNM is concerned that no information has been provided to the public regarding what documentation or data collection school districts are required to keep pursuant to this proposed regulation or its authorizing legislation. In the proposed regulations, PED has made reference to

guidance from the Department which does not appear to currently exist. (*See* 6.30.17.10 NMAC). Furthermore, DRNM notes that PED guidance does not carry the same weight as the regulatory law being promulgated by the Department here in 6.30.17 NMAC. It is DRNM's position that documentation requirements prescribed by the Department's regulations are preferred over rescindable guidance and should be formally incorporated into the proposed regulations at 6.30.17.10 NMAC. In the instance that PED is unwilling to include this information in its proposed regulations, DRNM believes PED should release its referenced guidance before implementing a regulation citing to it.

Professional Development

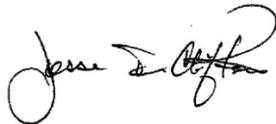
6.30.17.11

DRNM would like to note our appreciation for the provisions of the proposed regulations regarding professional development for all elementary school teachers and training for administrators and relevant staff on structured literacy interventions. Furthermore, DRNM would like to thank PED for its promised provision of professional development materials, referrals and information for school districts, and technical assistance for special education diagnosticians and other professionals regarding formal special education evaluations for students with dyslexia and other specific learning disabilities. The Department's commitment to expanding broad-based knowledge and competency on the part of administrators and teachers tasked with structured literacy interventions strongly supports the success of this initiative.

Conclusion

DRNM appreciates the opportunity to participate in the comment period for this proposed regulation. It is our hope that the Department will meaningfully consider the input provided during this period by advocates and practitioners in the field of special education. We welcome PED's decision to adopt and implement structured literacy instruction in New Mexico schools, and we hope to see the consequential benefits for all students, including those with disabilities.

Sincerely,



Jesse D. Clifton

Staff Attorney
Corinne Wolfe Fellow for Transformative Advocacy
Disability Rights New Mexico
3916 Juan Tabo Blvd. NE
Albuquerque, NM 87111
Office: (505) 256-3100
Fax: (505) 256-3184
jclifton@drnm.org