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Clarification on special education and related services in New Mexico specifically related to the roles and processes of the Eligibility Determination Teams (EDTs) and the Individualized Educational Program (IEP) teams

This memorandum has been issued to provide clarification on special education and related services in New Mexico specifically related to the roles and processes of the Eligibility Determination Teams (EDTs) and the Individualized Educational Program (IEP) teams.

Three primary issues are addressed in this memo, including:

1. Clarifying the difference between and EDT and an IEP team (question 1)
2. Clarification of the purpose and process for EDTs (questions 2 and 3)
3. Clarification of the purpose and process for IEP teams (questions 4 and 5)

Relevant citations from the Individuals with Disabilities Education Act (IDEA) and New Mexico Administrative Code (NMAC) are included following the questions and answers. EDTs and IEP teams are reminded to reference IDEA; NMAC; current PED guidance; and the current editions of the NM Technical Evaluation and Assessment Manual (NM TEAM), Developing Quality Individualized Educational Programs (IEPs): Technical Assistance Manual, and Placement in the Least Restrictive Environment (LRE): Understanding and Making the Placement Decision booklet when making decisions regarding eligibility determinations, service provision, and placement.

Clarifications: Questions and Answers

Clarifying the Purpose and Process of EDTs vs. IEP teams

Q1: What is the difference between an EDT and an IEP team?

A1: According to IDEA, there is only one team—the IEP team. This IEP team must include the following members:

- the child's parents;
- at least one regular education teacher;
- at least one special education provider (e.g., special education teacher and/or speech-language pathologist, as appropriate);
- a representative of the public agency who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; is knowledgeable about the general education curriculum; and is knowledgeable about the availability of resources of the public agency;

- an individual who can interpret the instructional implications of evaluation results (who may also be one of the other members of the team);
- at the discretion of the parent or educational agency, other individuals who have knowledge of special expertise regarding the child, including related service personnel, as appropriate; and
- the child, whenever appropriate.

A child's IEP team is responsible for:

- determining if a child is a child with a disability;
- determining if a child needs specially designed instruction; and
- developing, reviewing, and revising an IEP to ensure that the child is receiving a free and appropriate public education (FAPE) in the least restrictive environment (LRE).

Although there is only one team (IEP team), in New Mexico, we operationalize this team with two different names depending on the purpose and function: EDT and IEP team. Note: Although some districts use other terms (e.g., Multidisciplinary Evaluation Team [MET]), these terms are not referenced in IDEA or NMAC. For the purposes of this document, the terms EDT (6.31.2.10 (D)(c)(iii) NMAC) and IEP team (34 CFR §300.23) are used.

The EDT is responsible for determining if a child is a child with a disability and, if so, whether they require specially designed instruction **as a result of that disability**. The EDT is involved at the point of initially determining eligibility for special education and related services and during every reevaluation.

The IEP team is responsible for developing and implementing the child's educational program on an on-going basis.

Q2: What is the purpose of the EDT?

A2: The EDT determines if a child is eligible for "special education and related services" per IDEA and NMAC. The EDT is responsible for working together to answer two questions: (1) is the child a child with a disability and (2) does the child require specially designed instruction as a result of the disability. To answer these questions, the EDT collaborates to plan and conduct the evaluation and to interpret the evaluation results (including formal, informal, and other information).

Q3: What is the overall sequence of events that the EDT should follow?

A3: The NM Technical Evaluation and Assessment Manual (NM TEAM) provides detailed guidance to support all members of the EDT throughout the eligibility determination process, including assessment personnel, teachers, related service providers, and parents. EDTs are expected to follow the guidance presented in the NM TEAM for all eligibility determination decisions. The following information is a brief summary of some of the information available in the NM TEAM.

Once receiving a referral for a comprehensive evaluation (e.g., from SAT, parent request, Part C agency, or another type of request), the EDT is responsible for the following sequence of events:

1. Determine the initial composition of the EDT, ensuring that all required members are included (e.g., parent, general education teacher, special education teacher, representative of the local agency, and other evaluation personnel, as appropriate).
2. Review the existing evaluation data (including, but not limited to, information from parents, outside agencies, SAT data, data from Part C, etc.).
3. Plan the evaluation to collect data from a variety of sources (including formal, informal, and extant information) consistent with NM TEAM highly recommended components. The evaluation should be sufficiently comprehensive to identify all of the child's special education and related service needs whether or not commonly linked with the suspected disability category.
4. Conduct the evaluation consistent with NM TEAM guidance.
5. Synthesize and interpret the evaluation data as a team.

6. Conduct an EDT meeting where the team answers the following two questions per guidance in NM TEAM (and document the discussion and decisions on appropriate forms):
 - a. Is the child a child with a disability according to IDEA and NMAC? If so,
 - b. Does the child require specially designed instruction as a result of that disability?

Q4: What is the purpose of the IEP team?

A4: After a child is determined to be eligible for special education and related services, the IEP team is responsible for designing the child's educational program. The IEP team is involved throughout the child's school year, providing specially designed instruction, monitoring progress, and providing other supports as documented in the IEP that is reviewed at least once a year.

Q5: What is the overall sequence of events that the IEP team should follow?

A5: Once a child is determined eligible for special education and related services, the IEP team is responsible for the sequence of events outlined below. The public agency must provide the child's parent with proper advance notice of meetings so that they can participate as members of the IEP team. The public agency must also provide written notice of actions proposed or refused by the public agency and obtain informed written parental consent for actions for which consent is required. During an annual IEP meeting, all of the areas below must be addressed for all children regardless of their eligibility category, including children identified as children with speech or language impairment in the area of articulation.

1. Document the child's present levels of academic and functional performance using a variety of data sources (e.g., formal and informal assessment data, observations, classroom performance, parent and student input, etc.).
2. Develop academic and functional goals that are clearly tied to the child's areas of educational need and present levels of performance.
 - a. It is important to recognize that the goals need to be developed to address that child's specific educational needs, regardless of their eligibility category. Goals should be unique to the child and clearly linked to their present levels of academic and functional performance.
 - b. Goals should not be tied specifically to individual related services providers (i.e., there is rarely, if ever, a need for an "OT goal," an "SLP goal," or a "PT goal," as these related services are intended to support the child's overall academic and functional goals).
 - c. Goals should be established prior to determining the type and amount of special education and related services that a child requires.
 - d. Goals should generally be written at the level of educational impact (e.g., "work completion") rather than underlying deficit (e.g., "fine motor" or "self-regulation").
3. Determine and document the child's special education needs, including the amount of service.
 - a. In general, special education services should be provided at least weekly, although there are circumstances in which the service may be required less often (e.g., collaboration with the general education teacher on a semimonthly or monthly basis).
 - b. The amount of time must be stated clearly so that the Local Educational Agency's (LEA's) commitment of resources is clear to all IEP team members.
4. Determine and document the child's related service needs, including the amount of service, if appropriate.
 - a. These decisions should be made based on what the child needs in order to benefit from their special education program.
 - b. IEP teams should look at the child's IEP goals and discuss how the needs can be met first by the general and special education teachers.
 - c. Related services should only be added when their unique expertise is required to support the child and teachers in order to promote access to and progress in the general education curriculum and to benefit from their special education program.
 - d. As with special education services, the amount of time must be stated clearly. In most cases, it will be most appropriate to designate weekly services, but under special circumstances another service

- e. delivery model may be more appropriate. Nothing in IDEA nor NMAC prohibit such an arrangement in an IEP as long as the service level is stated clearly in the IEP.
5. Determine the least restrictive environment for the provision of all services.
- a. It is important to remember that the assumption should be for children to receive their services in the general education environment first and all decisions to remove a child from that environment needs to be thoughtful and clearly documented. However, each decision must be made on an individualized basis because schools are responsible for providing a continuum of services designed to meet the needs of individual children. These decisions should be made at least annually, if not more often, to ensure that children are receiving appropriate supports.
 - b. For children to receive services in the least restrictive environment, it is important for IEP teams to consider and provide services both to the child and on behalf of the child (e.g., consultation, collaboration, curriculum modification, etc.). All services provided to the child and on behalf of the child should be documented on the schedule of services page in the child's IEP. Teams should remember that "services provided on behalf of the child" is not the same thing as "supplementary aids and services." Services provided on behalf of the child should be documented on the schedule of services consistent with documentation for "services provided to the child."
 - c. Each type of special education and related service can be provided in a variety of ways for an individual child, such as the provision of special education services in a combination of the general education classroom and special education classroom, with additional consultation and collaboration with the school staff. It is important for IEP teams to clearly document the way in which the child's special education and related services will be provided (e.g., amount of time in each setting).
 - d. It is possible that a child would require highly specialized supports in a segregated setting for a short amount of time in order to learn specific skills, but then can be reintegrated into a less restrictive setting with supports. For example, a child may requires 6-8 weeks of OT services in a segregated setting in order to develop specific self-regulation strategies, but can then transition to receiving services in the general education classroom to generalize supports.

Relevant Laws and Regulations

In New Mexico, "special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. This also includes instruction in physical education.

- (a) As authorized by 34 CFR §300.8(a)(2)(ii) and 300.39 (a)(2)(i), "special education" in New Mexico may include speech-language pathology services.
- (b) Speech-language pathology services must meet the following standards to be considered special education:
 - (i) The service is provided to a child who has received appropriate tier I universal screening under Subsection D of 6.29.1.9 NMAC as it may be amended from time to time, before being properly evaluated under 34 CFR §300.301-300.306 and Subsection D of 6.31.2.10 NMAC;
 - (ii) The IEP team that makes the eligibility determination finds that the child has a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance;
 - (iii) The speech language pathology service consists of specially designed instruction that is provided to enable the child to have access to the general curriculum and meet the educational standards of the public agency that apply to all children; and
 - (iv) The service is provided at no cost to the parents under a properly developed IEP that meets the requirements of Subsection B of 6.31.2.11 NMAC.
- (c) If all of the above standards are met, the service will be considered as special education rather than a related service. [6.31.2.7 (B)(18)(a-c) NMAC]."

34 CFR §300.39(b)(3) defines specially designed instruction as “adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction (i) to address the unique needs of the child that result from the child’s disability; and (ii) to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.”

According to 34 CFR §300.34(a), “related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.”

34 CFR §300.304 provides guidance on evaluation procedures, including that “the public agency must (1) use a variety of assessment tools and strategies to gather relevant, functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining (i) whether the child is a child a disability under §300.8 and (ii) the content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities); (2) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child...”

34 CFR §300.304(c)(6) states that the LEA is responsible for ensuring that “the evaluation is sufficiently comprehensive to identify all of the child’s special education and related service’s needs, whether or not commonly linked to the disability category in which the child has been classified.”

34 CFR §300.23 describes that the “Individualized education program team or IEP Team means a group of individuals described in § 300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.”

NMAC 6.31.2.10(D) references the eligibility determination team.