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Clarification on special education and related services in New Mexico associated with determining the need for specific related services

This memorandum has been issued to provide clarification on special education and related services in New Mexico associated with determining the need for specific related services.

Several issues are addressed in this memo, including:

1. Clarifying the role of NM Technical Evaluation and Assessment Manual (NM TEAM) (question 1)
2. Clarification regarding the determination of need for adding and discontinuing related services (questions 2-4)

Relevant citations from the Individuals with Disabilities Education Act (IDEA) and New Mexico Administrative Code (NMAC) are included following the questions and answers. Eligibility Determination Teams (EDTs) and Individualized Educational Programs (IEP) teams are reminded to reference IDEA, NMAC, current Public Education Department (PED) guidance, and the current edition of the NM Technical Evaluation and Assessment Manual (NM TEAM) and Developing Quality Individualized Educational Programs (IEPs): Technical Assistance Manual when making decisions regarding eligibility determinations, service provision, and placement.

Clarifications: Questions and Answers

Clarifying the Role of NM TEAM

Q1. What is the role of NM TEAM in determining a child's need for related services?

A1. The NM TEAM provides guidance regarding determining if a child has a disability and, if as a result of that disability, requires "special education and related services." The intent of the guidance provided in NM TEAM is to support Eligibility Determination Teams (EDTs) in

answering two questions: (1) is the child a child with a disability and (2) does the child require specially designed instruction as a result of that disability?

After the EDT has determined that the child is a child with a disability and requires specially designed instruction, the IEP team makes decisions regarding the specific nature of the child's educational program. The IEP team identifies goals, objectives/benchmarks (as appropriate), and instructional accommodations/modifications. Only after those decisions are made does the IEP team determine what specific services are needed and then make a placement decision based on those IEP elements. The IEP team must make all decisions based on the assumption that a child's needs can be met in the general education setting, with a thoughtful discussion and documentation of the rationale for the need to provide services in alternative settings.

The NM TEAM does not provide any guidance regarding determining a child's need for any specific special education or related services, as those determinations are made by the child's IEP team following the development of IEP goals.

Determination of Need for Related Services

Q2. Does a child need to demonstrate test scores that are more than 2 standard deviations (SDs) below the mean to receive related services such as occupational therapy, physical therapy, and speech-language services?

A2. No. These criteria as outlined in Subsection 6.31.2.7(B)(4) NMAC are specific to the eligibility category of developmental disability (DD) and refer to the data used alongside other evaluation information per NM TEAM in order to document the presence of a child's disability to determine if a child is eligible for "special education and related services. Consistent with 71 Federal Register 46586 (August 14, 2006), "the student's IEP team determines the services that are needed to provide free and appropriate education (FAPE) to a child with a disability based on the needs of the child." This includes the child's special education needs and a determination of any related services the child requires in order to benefit from their special education program. These decisions are not based on test scores or eligibility criteria, but rather on the unique needs of the child as determined by the IEP team.

Q3. Under what circumstances are related services (e.g., occupational therapy, physical therapy, and speech-language pathology services) added to a child's IEP?

A3. If the child is a child with a disability according to IDEA and NMAC, provision of related services is an IEP team decision. According to Section 300.24(a) of IDEA, related services are provided when "required to assist a child with a disability to benefit from special education" and the IEP team makes that determination based on the needs of the child, not based on test scores or other prescriptive criteria.

The NM PED cannot provide specific guidance on circumstances under which related services would need to be added, as each child's IEP is specific to their educational program. It is important to note that related services cannot be added to a child's IEP without parental consent (including prior written notice), an evaluation, and determination by the IEP team that the student needs this related service in order to benefit from special education.

It is important for teams to recognize that “an evaluation” does not mean formal, standardized testing. Per IDEA and NMAC, evaluations must use a variety of evaluation strategies that allow the teams to identify all of the child’s special education and related service needs. This includes information from formal assessments, informal assessments, interviews, observations, etc. As the need for related services is determined on an individual basis for each child, it is not appropriate to require formal, standardized testing prior to adding related services to a child’s IEP.

The expertise of appropriate related service providers should be used when determining the need for related services on a child’s IEP. It would rarely (if ever) be appropriate to add related services to a child’s IEP without meaningful input from a related service provider of the same profession.

These decisions should be made based on what the child needs in order to benefit from their special education program. 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. 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.

Q4. Do goals need to be specifically designated as goals linked to a specific related service (e.g., “occupational therapy (OT) goal,” “physical therapy (PT) goal,” “speech-language pathology (SLP) goal,” or “social work (SW) goal”)?

A4. No. Nothing in IDEA or NMAC require that goals be specifically linked to individual related services. Instead the intent of special education and related services is to ensure that the child has access to and can make progress in the general education curriculum. Specifically, related services are those services that are required in order for the child to benefit from the special education program.

The IEP team should be clear on how a related service provider is supporting the child and the child’s goals, but that does not require separate IEP goals for that provider. For example, a child’s IEP team may develop a goal related to work completion for and identify that one of the barriers to work completion is self-regulation skills, which requires the expertise of an OT. In this case, there does not need to be a separate “self-regulation” goal because progress towards developing self-regulation will be indicated by an increase in work completion. In addition, for the child to develop these self-regulation skills and use them to promote work completion, the OT cannot work on this goal in isolation. The general education teacher and special education teacher will also need to be providing specific support in self-regulation skills, in consultation with the OT.

Some districts request that the related service providers are attached or assigned to a specific goal for ease in tracking progress, seeking reimbursement, etc., but it is important to recognize that multiple special education and related service providers may be associated with a single goal and that it is not necessary for each provider to have a separate goal. For example, a single IEP goal related to developing basic reading skills may require the expertise of a special education teacher (for reading instruction), a speech-language pathologist (for language development), and an occupational therapist (for visual perceptual skills).

Q5. When are related services (e.g., occupational therapy, physical therapy, and speech-language pathology services) discontinued from a child's IEP?

A5. Although the NM PED cannot provide specific guidance on circumstances under which related services would need to be discontinued because each child's IEP is specific to their educational program, it is important for IEP teams to recognize that nothing in IDEA or NMAC requires formal, standardized testing when making the decision to discontinue the provision of related services to a child.

The IDEA requires the Local Education Agency (LEA) to evaluate a child before determining that a child is no longer a child with a disability (Section 300.305(e)(1)), and the NM TEAM strongly encourages the use of the REED process prior to discontinuing special education services, but there is no requirement in IDEA or NMAC that a child must be evaluated prior to discontinuing related services.

Discontinuation of specific supports and services should be considered when the child no longer demonstrates a need for that related service. This can be determined by factors such as: (1) the child has met IEP goals supported by that related service and no other support from that related service provider is necessary; (2) the school team has the ability to effectively implement strategies without the expertise of the related service provider; (3) the child's identified areas of need (e.g., motor skills) are not interfering with the child's functioning in the educational environment; and/or (4) the related service provider's expertise indicates that continuation of the service is not warranted based on available data (formal and/or informal data). These are determinations that are most appropriately made by the child's IEP team after the development of appropriate IEP goals.

The expertise of appropriate related service providers should be considered and heavily weighed when determining discontinuation of a related service from a child's IEP. It would rarely (if ever) be appropriate to continue or to discontinue related services from a child's IEP without meaningful input from a related service provider of the same profession.

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; and 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 §300.320(a)(2) states that a child’s IEP must include “a statement of measurable annual goals, including academic and functional goals designed to (A) meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and (B) meet each of the child’s other educational needs that result from the child’s disability.”

34 CFR §300.320(a)(4) states that a child’s IEP must include “a statement of the special education and related services and supplementary aids and services, based on peer-reviewed

research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child (i) to advance appropriately toward attaining the annual goals; (ii) to be involved in and make progress in the general education curriculum ... and to participate in extracurricular and other nonacademic activities; and (iii) to be educated and participate with other children with disabilities and nondisabled children...”

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 services needs, whether or not commonly linked to the disability category in which the child has been classified.”