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August 4, 2023

MEMORANDUM

TO: District Superintendents
Charter School Administrators
Superintendents of State-Supported Schools
Special Education Directors
District Test Coordinators

FROM: Candice Castillo, Deputy Secretary of Identity, Equity and Transformation
Amanda DeBell, Deputy Secretary of Teaching, Learning and Innovation

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RE: Definition of Most Significant Cognitive Disability

This memorandum provides the federally required definition for students with the most significant cognitive disabilities (MSCD). By way of background, the Individuals with Disabilities Education Act (IDEA) requires children with disabilities to participate in all general State and district-level assessments unless they cannot participate in these assessments as indicated in their individualized education programs (IEP). 20 U.S.C. § 1412(a)(16)(C). The students in this latter group participate in alternate assessments in which they are measured against alternate academic achievement standards.

The implementing regulations of IDEA requires a State that has adopted alternate academic achievement standards to issue guidelines for determining who are the students with the most significant cognitive disabilities for participation in alternate assessments. 34 C.F.R. § 300.160(c)(1). Title I regulations state that the MSCD guidelines should do the following: (1) address factors related to cognitive functioning and adaptive behavior; (2) not rely on a particular disability classification or English learner status; (3) not identify MSCD solely on previous low academic achievement or student's previous need for accommodations in assessments; and (4) assess whether a student requires extensive, direct individualized instruction and substantial supports to achieve measurable gains on State academic content standards for the grade in which the student is enrolled. 34 C.F.R. § 200.6(d)(1).

The Special Education and Assessment Divisions of the New Mexico Public Education Department began this process by reviewing other state regulations and guidelines for identifying students with the most significant cognitive disabilities. This review included researching the consortium of twenty-one states that use the Dynamic Learning Maps (DLM) Alternate Assessment system, some of the most populated states (CA, FL, TX, and NY), as well as the Southwest states (AZ, CO, NM, and UT). After having concluding this review and accepting input from some stakeholders in the field, NMPED now issues the following definition for the identification of students with the most significant cognitive disabilities:

Students with the most significant cognitive disabilities

- A. For a local education agency to classify a student as having a most significant cognitive disability, all of the following must be true:
1. Student is already determined eligible for special education and has an IEP;
 2. Student demonstrates cognitive functioning and adaptive behavior which are significantly below age expectations even with program modifications and accommodations (typically characterized as having IQ or adaptive behavior scores 2.5 or more standard deviations below the mean);
 3. Student requires intensive, repeated, and direct individualized instruction and substantial supports in order to learn and generalize academic, functional, and adaptive behavior skills across multiple settings;
 4. Student requires substantial modifications to access the general education curriculum; and
 5. Student has a disability that results in dependence on others for meeting their daily living needs and they are expected to require considerable ongoing support into adulthood.
- B. A local education agency shall not classify a student as having a most significant cognitive disability based solely on:
1. disability classification;
 2. below grade level academic achievement;
 3. expected poor performance on the general assessment;
 4. anticipated impact of student's scores on accountability system;
 5. anticipated disruptive behavior if student takes general assessment;
 6. poor attendance;
 7. English learner status; or
 8. need for accommodations to participate in the general assessment.

Beginning in the 2023-2024 school year, school districts, charter schools, and state supported schools should apply this definition as the primary criteria to determine whether an eligible student with a disability under IDEA would be more appropriately assessed using New Mexico's alternate assessment, [Dynamic Learning Maps](#), and instructed using the New Mexico alternate achievement standards, the Essential Elements for [mathematics](#), [language arts](#), and [science](#).

Additional guidance related to the use of this definition and alternate assessment placement is forthcoming from the Assessment and Special Education Divisions.

Definition of MSCD

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For questions regarding the definition and identification of students with the most significant cognitive disabilities, please contact the Special Education Division at SED.Support@ped.nm.gov. Any questions regarding the DLM assessments and Essential Elements should be directed to the Assessment Division at PED.Assessment@ped.nm.gov.

cc: Gregory Frostad
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