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MEMORANDUM

TO: District Superintendents
Charter School Administrators
Superintendents of State-Supported Schools
Special Education Directors
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FROM: Margaret Cage, Ed.D.
Director, Office of Special Education

RE: Graduation Options for Students with Disabilities and Entitlement to FAPE

Overview of State Rule Changes

This memorandum is to inform you of important changes to state rules regarding graduation requirements and the provision of a Free Appropriate Public Education ("FAPE") to special education students as defined in the Individuals with Disabilities Act (IDEA).

The following guidance updates and supersedes the previous memoranda issued on June 13, 2012 and October 17, 2012, respectively entitled "Clarification on 'Important Graduation Memo' from Pete Goldschmidt, Ph.D." and "Reminders about Graduation Options and the Requirements for Students with Disabilities." Changes include, but are not limited to, a clarifying student's right to a continued FAPE upon receipt of a diploma through one of the three programs of study.

As background, schools are able to issue students with disabilities in New Mexico a diploma through either one of three programs of study to obtain a high school diploma:

- 1) standard program of study- which is a program of study that requires a student to meet or exceed all requirements for graduation based on the New Mexico Standards of Excellence, as well as any other requirements of the respective local education agencies;

2) modified program of study- which is an alternative program of study in which a student may demonstrate competency on state assessments by achieving individualized passing scores and earning course credit based on performance standards determined by the IEP team; and,

3) ability program of study- which is an alternative program of study for students with significant cognitive disabilities or severe mental health issues. The program of study involves functional curriculum coursework as well as the IEP team determining the level of competency on state examinations or alternate assessments.

Students with disabilities may also receive a conditional certificate of transition and continue working towards a diploma. These programs of study and conditional certificate are referenced in Rule 6.29.1.9(J)(13) NMAC.

Federal and State law have differed in how a diploma through one of the three New Mexico programs of study had been treated. State provisions had treated diplomas obtained through each of the programs of study as regular high school diplomas. In contrast, the federal regulation, 34 C.F.R. § 300.102(a)(3)(i), defines a regular high school diploma as “the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards.”

The distinction between state and federal provisions is significant because a student’s right to FAPE and receipt of special education and related services terminates once the student receives a regular high school diploma as that term is defined in federal law. The amended state rule provisions update the language allowing for a special education student earning a diploma through the modified or ability programs of study to continue receiving FAPE.

The following is a summary of the substantive amendments:

- 1) Rule 6.19.7.8(F) NMAC – amended to put in plain text that a diploma obtained through the modified or ability programs of study does not terminate a student’s right to FAPE and that the student may continue to receive special education and related services in accordance with their IEP until the student meets the requirements of the standard program of study or at the end of the academic school year in which the student turned 22 years of age.
- 2) 6.29.1.9(J)(13)(b)(i) NMAC - amended to make clear that a diploma obtained through a standard program of study is a regular high school diploma as defined in federal regulations and a student’s entitlement to FAPE ends upon graduating with that diploma.
- 3) 6.29.1.9(J)(13)(b)(ii) NMAC – amended to clarify that a diploma obtained through a modified program of study is NOT a regular high school diploma under federal regulations and a student may continue to receive special education and related services (right to FAPE) until the student meets the requirements of the standard program of study or at the end of the academic school year in which the student turned 22 years of age.

- 4) 6.29.1.9(J)(13)(b)(iii) NMAC – amended to explain that a diploma earned through an ability program of study is NOT a regular high school diploma pursuant to federal regulations and student’s entitlement to FAPE continues until the student meets the requirements of the standard program of study or at the end of the academic school year in which the student turned 22 years of age.
- 5) 6.29.1.9(J)(13)(k) NMAC – amended to indicate that a student who receives a certificate of transition but does not return to complete the program of study as outlined in the continuing or transition IEP will NOT be considered a dropout, but will be included as an exiting student for federal reporting purposes.
- 6) 6.31.2.11(G)(1)(c) NMAC – amended to include that a diploma earned through the modified or ability programs of study in the regulatory description of an “alternative degree” does not end a student’s right to FAPE.
- 7) 6.31.2.11(G)(1)(d) NMAC – added to require that a student who is near obtaining a conditional certificate of transition or a diploma through the modified or ability programs of study receive a prior written notice from their school informing them of their continued right to FAPE until either the student meets the requirements of the standard program of study or until the end of the academic year in which student becomes 22 years of age.

For a full copy of the amendments, please visit the New Mexico State Records and Archives website housing the New Mexico Administrative Code at <https://www.srca.nm.gov/nmac-home/nmac-titles/>.

Additional guidance regarding these rule changes is available on the following pages of this memorandum. Revisions to the Special Education Divisions technical manual on graduation of students with disabilities is forthcoming.

Additional Guidance

1. Will PED be keeping the three programs of study for a New Mexico Diploma of Excellence?

Yes.

2. What are the possible Programs of Study to obtain a Diploma?

Under current state rule, three programs of study are available to all students with disabilities in New Mexico: Standard, Modified (formerly Career Readiness), and Ability. A student with a disability may be awarded a diploma using any of the three programs of study.

3. How does a special education student graduate through the Standard Program of Study?

To receive a diploma through the standard program of study, a special education student must meet or exceed all requirements for graduation based on the New Mexico Standards for Excellence, with or without reasonable accommodations of delivery and assessment methods. In addition, a student must meet all demonstration of competency requirements through standard administration or with state-approved accommodations. In addition, the student must meet all other standard graduation requirements of the public agency. 6.29.1.9(J)(13)(b)(i) NMAC.

4. How does a special education student graduate through the Modified Program of Study?

The modified pathway is an alternative program of study. It is based on a student's career interest in relation to one of the career clusters, with or without reasonable accommodations of delivery and assessment methods. The student must take the current state graduation exam with state-approved accommodations or under standard administration. The students must achieve a level of competency pre-determined by the IEP team. A student may use standard or alternative courses that address employability and career development standards with benchmarks and performance standards determined by the IEP team. 6.29.1.9(J)(13)(b)(ii) NMAC.

5. How does a special education student graduate through the Ability Program of Study?

An ability program of study is for students who have a significant cognitive disability or a severe mental health issue. IEP goals and functional curriculum course work are based on New Mexico standards with benchmarks and performance standards or the alternate achievement standards called the Essential Elements. It also includes employability and career development standards with benchmarks and performance standards. Students must earn the minimum number of credits or have equivalent educational opportunities required by the public agency. 6.29.1.9(J)(13)(b)(iii) NMAC.

6. What does the diploma document look like among the different graduation options?

All diplomas, regardless of which program of study, must be identical in appearance and content. 6.29.1.9(J)(13)(q) NMAC. However, please note that this rule was revised to omit that all diplomas will have the same “effect” because a diploma obtained through a standard program of study ends a student’s right to FAPE whereas diplomas earned through the modified and ability programs of study do not.

7. Who can participate in graduation activities?

Recipients of any diploma or a conditional certificate of transition may participate in graduation activities. A new provision in state rules provides the following clarification: “Students receiving a diploma through any of the programs of study are permitted to participate in all graduation activities.” 6.29.1.9(J)(13)(c) NMAC. Additionally, the same rule already allows for students receiving a conditional certificate of transition to participate in all graduation activities as well. 6.29.1.9(J)(13)(a) NMAC.

8. When should a public agency issue a prior written notice informing a student of their continued right to FAPE?

A public agency should issue the prior written notice a reasonable time before student receives a conditional certificate of transition or a diploma obtained through the modified or ability programs of study so that student has an opportunity to decide whether they will continue to receive special education and related services next school year.

LEAs should note that students graduating with a diploma through the standard program of study or those students receiving a diploma through the modified or ability programs of study who choose not to return to receive a FAPE must be provided with a summary of their academic achievement and functional performance, including recommendations on how to assist the student in meeting postsecondary goals. *See* 34 C.F.R. 300.305(e)(3); 6.31.2.10(C)(3)(b) NMAC.

Continued Eligibility for FAPE

9. How do the different graduation programs of study affect a student’s right to FAPE?

Federal regulations state that when a student earns a “regular high school diploma,” their right to FAPE ends. 34 C.F.R. § 300.102(a)(3)(i). A regular high school diploma is defined as “the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards.” 34 C.F.R. § 300.102(a)(3)(iv).

This means that a diploma earned through the standard program of study is a regular high school diploma that ends a student’s right to FAPE because this diploma requires a student to meet or exceed the New Mexico Standards of Excellence. In contrast, the modified and ability programs of study call for individualized assessment and course credit standards and therefore neither of these programs of study are fully aligned with New Mexico’s state standards. So a

student who earned a diploma through the modified or ability programs of study has not received a regular high school diploma as that term is defined by federal law and their right to FAPE continues until they either meet the requirements of the standard program of study or age out at 22 years of age. IEPs should be developed for Students returning to school to receive FAPE after earning a diploma through the modified or ability programs of student.

10. When does a student’s right to FAPE end?

A student’s eligibility to receive special education and related services terminates in two scenarios, whichever comes first:

- a. Student earns a “regular high school diploma” which means the student completed the requirements for the standard program of study; or
- b. Student reaches the maximum age to receive special education which in New Mexico is 22 years of age. 6.31.2.11(G)(6) NMAC.

11. If a student obtains a diploma through the modified or ability programs of study or is issued a conditional certificate of transition and indicates that they are returning next school year, will the public agency receive state equalization guarantee and IDEA Part B funding to continue providing FAPE to student?

Yes. A public agency should include the student in their child count and state membership counts to ensure the funding allocations for both state and federal funding students in this scenario. For data reporting purposes, public agencies are advised to enter the student as returning/continuing in Nova.

A student who continues to receive FAPE should be treated like other students for purposes of IEP development, logging attendance, scheduling of courses or transition services, teacher assignments, and compliance with local education agency policies (except when a disciplinary change in placement is contemplated).

12. Are students that recently received diplomas through the modified or ability programs of study but did not or were not permitted to continue receiving a FAPE eligible to return to the student’s LEA or the LEA of the student’s current residence to receive a free appropriate public education?

Yes, students that received a diploma through the modified and ability programs of study continue to be eligible to receive a FAPE if they have not met the requirements to receive a diploma through the standard program of study and have not reached the age of 22.

LEAs that do not currently have processes consistent with these rule changes should review and revise their processes to ensure consistency with these revised rules, and should consider necessary actions to ensure that students still eligible to receive a FAPE are aware that they are entitled to do so if they choose.

Students returning to receive a FAPE must be permitted to enroll unless they have either met the requirements to receive a diploma through the standard program of study or reached the age of 22. Those students that are reenrolled should be counted in the school's membership and student counts and will be funded so long as they are eligible to receive a FAPE.

Notably, eligibility to receive a FAPE is not terminated by a student's decision not to return to school. In other words, a student does not have to continuously attend school in order to be eligible to receive a FAPE as long as the student has not met the requirements to receive a diploma through the standard program of study or reached the age of 22.

13. If a student receives conditional certificate of transition or a diploma through the modified or ability program of study and continues to receive FAPE between the ages of 18–21 years old, must a public agency provide the student with transportation?

Yes. It is the responsibility of the IEP team to determine if transportation is necessary as a related service to ensure that the student receives FAPE. 34 C.F.R. § 300.34(16). Specialized transportation such as special or adapted buses, lifts, and ramps are provided on an as needed basis in consideration of a student's individual needs. A student may also be integrated in transportation with non-disabled students for purposes of least restrictive environment. 71 Fed. Reg. 46576.

Data Reporting

14. What changes to state and federal reporting were made to implement the amended state regulations concerning graduation?

With the transition to the Nova system in the 2023-2024 school year, the use of reporting templates, now called "Resources," will be much more limited. It is anticipated that much of the data provided to PED will be automatically submitted through the public agencies' respective student information systems (SIS). The public agencies SIS may not use the same STARS event codes or descriptors as will be used in the Nova system, but the public agency should ensure that the data generated is consistent with the Nova data sets to the extent possible. Public agencies will be able to supplement data that is not included in the SIS data transfer to Nova in a similar way that it did with the former report templates through the use of Resources.

While templates will not be used in the same way that they were used in the 2022-2023 STARS system, the data gathering for reporting purposes will remain mostly intact. The following new and returning data sets will be collected for the purposes of reporting the issuance of diplomas to students with disabilities:

The former Special Education Events Template has the following new event codes that will be used in some form in the public agencies SIS:

- Code 13 denotes that a student has received a conditional certificate of transition and plans to return to school next year for FAPE.

- Code 14 indicates that a student obtained a diploma through the modified or ability programs of study and will return for purposes of FAPE.
- Code 15 must be used to show that a student graduated with a diploma through the modified or ability programs of study and will not be returning to school for FAPE.
- Code 16 is for a student who received a conditional certificate of transition and will not be returning to school next year for FAPE.
- Code 12 is a **new event reason code** in field 7 for students who received a conditional certificate of transition which does not end their right to FAPE.

Certain codes used under the category of Special Education Event Reason Description are still applicable:

- Code 9 is used for when a student graduates with a diploma based on completing the standard program of study (entitlement to FAPE ends).
- Code 10 indicates a student has graduated with a diploma by completing the modified program of study (entitlement to FAPE continues).
- Code 11 is for when a student has graduated with a diploma by fulfilling the requirements of the ability program of study (entitlement to FAPE continues).

However, please note again that Code 12 is a new event reason code in field 7 for students who received a conditional certificate of transition which does not end their right to FAPE.

An updated description in the former Special Education Snapshot Template states that special education information must be submitted for end of year graduating seniors who are continuing to attend school to receive FAPE.

The former Student Template has a new event code that will be used in some form in the public agencies SIS:

- Code 4 must be used for a student who obtains a diploma based on the ability program of study and Code 6 must be used for a student who earns a diploma through the modified program of study.

Information regarding Nova reporting requirements can be found in the [Nova Manual](#). Additionally, the STARS/Nova team will be able to answer specific questions regarding data reporting in the NOVA system. You can contact them at: [Support : NMPED-NOVA \(freshdesk.com\)](#)

15. How will graduation related data be reported for the 2022-2023 school year?

Because the changes to the STARS/Nova reporting were not in effect until this year and because federal reporting requirements were not altered by the rule changes described above, PED will reach out to collect graduation data from the public agencies after the 40th day NOVA data has been certified. PED will request graduation related data from the 2022-2023 school year, including students with disabilities that returned to receive a FAPE after receiving a diploma through the Modified or Ability programs of study or a conditional certificate of

transition as well as those students who chose not to return. The public agencies should be sure to collect and accurately report the requested data as soon as possible after the request is made by PED. Your anticipated cooperation with this request is appreciated.

16. How should a public agency count a student who receives a conditional certificate of transition but later decides to no longer attend school?

The answer in this scenario hinges on whether the student plans to continue attending school for purposes of receiving FAPE. The former Special Education Events Template, field 5 has two event type codes. For students who receive a conditional certificate of transition and plan to return to school and receive FAPE, then event type code 13 must be used. In contrast, if a student obtains a certificate and does not plan to return to school for FAPE, then event type code 16 (completion) is appropriate.

As described above in Question 13, there will be some distinct differences in the entry of data using the NOVA system. Information regarding Nova reporting requirements can be found in the [Nova Manual](#). Additionally, the STARS/Nova team will be able to answer specific questions regarding data reporting in the NOVA system. You can contact them at: [Support : NMPED-NOVA \(freshdesk.com\)](#)

17. Do public agencies need to distinguish between “Continuing IEP” and a “Transition IEP” for students who have obtained a diploma through the modified or ability programs of study and continue to receive special education and related services?

No. IDEA and State rules do not require differentiating between a Continuing IEP and a Transition IEP. A Continuing or Transition IEP are both options when a student is provided a conditional certificate of transition. 6.29.1.9(J)(13) NMAC.

On a related note, public agencies must not delay transition planning and delivery of transition services until a student is issued a Continuing IEP or Transition IEP. State rules require transition planning and services commence no later than the first IEP in effect when the special education student turns 14 years of age. 6.31.2.11(G)(3) NMAC. The expectation that a student will continue special education with a Continuing IEP or Transition IEP until they age out is not a justification for postponing transition services.

18. How should public agencies exit a student in Nova once they receive a conditional certificate of transition?

Public agencies will be able to indicate that a student has received a conditional certificate of transition and will not be returning to school for FAPE (Event code 16 in STARS. *See* Question 13 for more information regarding the changes from the STARS to NOVA system). Pursuant to 6.29.1.9(J)(13)(k) NMAC, a student who receives a certificate of transition but does not return to complete the program of study as outlined in the continuing or transition IEP will NOT be considered a dropout.

19. Are students who earned a diploma through the modified or ability programs of study counted for Indicator 13 (Secondary Transition) if they continue to receive special education and related services from ages 18-21 years old?

Yes.

20. Which graduation cohort will a student with a modified or ability diploma belong to if student continues receiving FAPE after attending high school for four years?

All students, regardless of their diploma pathway, will remain with the cohort that they began with in 9th grade. Public agencies will generate a 4th, 5th, and 6th year graduation rate for state reporting purposes which will include all students who earned a diploma among all three pathways for state reporting. As part of the data reporting, the PED may separately identify all students that obtained a diploma through the Modified or Ability programs of study.

For the purpose of federal IDEA Indicator 1, all students receiving a regular high school diploma (Standard program of study) in any given year, regardless of cohort, will be included in the graduation rate for students with disabilities in that year.

Students receiving a diploma through the Modified or Ability programs of study that do return to receive a FAPE in the following year will not be included as graduates or exiting students for the purpose of Indicator 1.

Conversely, students receiving a diploma through the Modified or Ability programs of study that do not return to receive a FAPE in the following year will not be included as graduates in that year, but will be included in the total universe of exiting students with disabilities to calculate the Indicator 1 rate. The group of exiting students will also include students who received a diploma through the standard program of study; students who received a certificate of transition and did not return to continue to receive FAPE; students who reached the age of 22; and students who dropped out prior to receiving either a diploma or a conditional certificate of transition.