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SECRETARY OF EDUCATION

BILL RICHARDSON
Governor

April 29, 2010

Memorandum

TO: Superintendents
Principals
Charter School Administrators
REC Directors
Special Education Directors
Interested Others

FROM: Veronica C. García, Ed.D.
Secretary of Education

RE: House Bill 230—Relating to Interventions for Students Displaying Characteristics of Dyslexia

It has come to my attention that schools are asking for clarification of HB 230 passed during the 2010 Regular Session which amended Section 22-13-6 NMSA 1978. (Please see <http://nmlegis.gov/Sessions/10%20Regular/final/HB0230.pdf>). Page 3 of the amendment includes new material entitled "Interventions for Students Displaying Characteristics of Dyslexia." Subsection A on page 3 provides that students displaying characteristics of dyslexia and having difficulty learning to read, write, spell, and understand spoken language shall be referred to the school's Student Assistance Team (SAT).

Clarification is needed because it appears that this amendment provides an automatic referral to the SAT and negates the decision rules and referral procedures the school must use under the state's Response to Intervention (RtI) Framework—The Three-Tier Model of Student Intervention. However, that is not the case. Subsection A is clear that the student must show these characteristics and difficulties **despite effective instruction in general education as provided by department standards.**

So this means that schools must use the instructional, universal screening, and progress monitoring procedures for Tier 1 found in the state's guidance manual *The Student Assistance Team and the Three-Tier Model of Student Intervention: A Guidance and Resource Manual for New Mexico's Response to Intervention (RtI)*

NMAC—Student Intervention System (*New Mexico's RtI Framework*). For the entire guidance manual, please see <http://www.ped.state.nm.us/sat3tier/sat3tierModelComplete.pdf>.

Prior to referring a student to the SAT, the guidance manual emphasizes the need for data to demonstrate that that classroom instruction with universal interventions was diligently delivered, **and** that student-centered data was obtained over time through universal screenings (i.e., short-cycle assessments), and that progress monitoring between universal screenings shows that the student's response was poor **in comparison to grade-level peers**. This requires more than just an informal determination that the student demonstrates "characteristics" of dyslexia or is merely having academic difficulty. In addition, levels of intervention and progress monitoring are required for any student suspected of having a learning disability, including dyslexia, in accordance with Subsections B and C of 6.31.2.10 NMAC and the federal Individuals with Disabilities Education Act (IDEA) regulations at 34 CFR Sections 300.307 and 300.309.

Subsection C of the amendment addresses a parent's right to request an initial special education evaluation at public expense at any time. As this issue comes up frequently, I take this opportunity to clarify how schools must respond to such a request. When a parent makes a request for such an evaluation, the school must do one of two things:

1. Agree to conduct the evaluation, and then convene an Eligibility Team meeting to determine the student's eligibility for special education services. Such an evaluation must occur within 60 days of receiving the written parental consent for evaluation.
2. Refuse to conduct the evaluation and notify the parent in writing that it refuses to evaluate the student, including an explanation of the basis for the refusal. In addition, it then must also inform the parents of their procedural safeguards under the IDEA which includes the right for parents to request a due process hearing to contest the refusal.

Therefore, while parents may request a special education evaluation at any time, it does not automatically trigger the right to an evaluation. Nonetheless, schools should investigate thoroughly the possible existence of a disability before refusing to evaluate, particularly when the request comes from parents of a student who is not progressing well in school academically or behaviorally as compared to peers.

HB230 goes into effect on May 19, 2010. Please distribute this memo to appropriate staff. If you have questions about special education, please call the Department's Special Education Bureau at 505-827-1457. If you have questions about the state's RtI Framework, please call the Department's Quality Assurance Help Desk at 505-827-4296.

VCG/JRE/pb

cc: Mimi Stewart, Representative, New Mexico State Legislature
Mary Jane M. Garcia, Senator, New Mexico State Legislature
Catherine Cross Maple, Deputy Secretary, New Mexico Public Education Department
Sheila Hyde, Assistant Secretary, Quality Assurance & Systems Integration Division
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