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SECRETARY OF EDUCATION

BILL RICHARDSON
Governor

August 20, 2009

MEMORANDUM

TO: Superintendents
Special Education Directors
Regional Education Cooperatives
Charter Schools Special Education Coordinators

FROM: Denise Koscielniak
Special Education Director, Special Education Bureau

RE: **TECHNICAL ASSISTANCE: COORDINATED EARLY INTERVENING SERVICES**

The New Mexico Public Education Department issues the following guidance regarding Coordinated Early Intervening Services ("CEIS") under the Individuals with Disabilities Education Act (IDEA). Because this is a complicated issue, this memorandum provides a significant amount of detail to help guide decision making.

VOLUNTARY IDEA 15% SET ASIDE:

Under IDEA 2004, a Local Education Agency ("LEA") may use up to 15 percent of the combined IDEA Part B Basic and Preschool Entitlement subgrants the LEA is allocated for any fiscal year, less any amount reduced by the LEA pursuant to 34 CFR § 300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement CEIS. This may include interagency financing structures, for students in kindergarten through grade twelve (with particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment in accordance with 34 CFR § 300.226(a) and 6.31.2.9(D) NMAC.

In other words, the LEA has the option, unless considered to have significant disproportionality, to set aside up to 15 percent of its IDEA subgrant allocations (IDEA preschool and basic

entitlement) to provide academic and behavioral support for students who are struggling in the general education environment and who, as a result, need the additional support to succeed in that environment. In looking at the three tier model of student intervention described at Subsection D of 6.29.1.9 NMAC, http://www.nmcpr.state.nm.us/nmac/ the students to be served by CEIS funds would best be described as those at Tier II.

LEAs that seek to reduce their local maintenance of effort in accordance with 34 CFR § 300.205(d), and use some of their Part B funds for early intervening services under 34 CFR § 300.226, must do so with caution because the local Maintenance of Effort reduction provision and the authority to use Part B funds for early intervening services are interconnected. The decisions that an LEA makes about the amount of funds that it uses for one purpose affect the amount that it may use for the other. For examples on how this interconnection works, please see the examples provided in Appendix D to 34 CFR Part 300 of the federal special education regulations.

ALLOWABLE ACTIVITIES FOR VOLUNTARY CEIS:

In implementing CEIS services under 34 CFR § 300.226, authorized activities include:

- Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and
- Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

The services must be accounted for in the Operating Budget Management System (OBMS) and have prior written approval from the Special Education Bureau (SEB).

INTENT OF VOLUNTARY CEIS:

The intent of the activities described in 34 CFR § 300.226(b) are to: a) provide training for the teachers and other school staff in providing the interventions needed for students who have demonstrated a need for additional support; and b) provide educational and behavioral evaluations, services, and supports that will help ensure these students' success in the general education environment. Such interventions are most often provided within the Student Assistance Team ("SAT") process established at the LEA. However, the LEA is in the best position to make decisions regarding the provision of CEIS, including the specific personnel to provide the services and the specific supports and approaches to be used. Thus the services and supports as well as evaluations to be given will be developed by the LEA so long as the target population served is the students who need additional academic and behavioral support to succeed in the general education environment. However, the academic and behavioral interventions being provided must be derived from scientifically based research. See 34 CFR § 300.35 for the definition of "scientifically based research".

If your LEA desires on a voluntary basis to set aside 15 percent or less of your IDEA Part B subgrant for CEIS, you must complete Objective 4 in the IDEA-B Local Federal Funding Application and submit your proposal to the SEB for approval. The proposal must be included as part of the annual subgrant application and must be renewed annually. In that proposal, describe how CEIS funding will be used for those students struggling in the general education

environment and who need additional support to succeed in that environment. Please also describe the additional evaluations and supports to be used in general and how they will be used to address the needs of those students targeted for CEIS. Prior SEB approval is needed before CEIS funding may be used.

Funds made available to carry out 34 CFR § 300.226 may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the *Elementary and Secondary Education Act (ESEA) of 1965,* as amended by the *No Child Left Behind (NCLB) Act,* if those funds are used to supplement, and not supplant, funds made available under the *ESEA* for the activities and services assisted under 34 CFR §300.226.

MANDATORY SET ASIDE FOR CEIS:

There are circumstances that mandate the LEA to reserve the maximum 15 percent of your combined IDEA Part B subgrant for CEIS. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, the placement in particular educational settings of these children, and the incidence, duration, and type of disciplinary actions, including suspensions and expulsions in accordance with 34 CFR § 300.646(a), the State must require any LEA identified under 34 CFR § 300.646(a) to reserve the maximum amount of funds under 34 CFR § 226 to provide comprehensive CEIS to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under 34 CFR § 300.646(a). In that event, you will be required to submit a proposal for the mandatory set aside of IDEA funds under Objective 5 of the IDEA-B Local Subgrant Application.

PLAN FOR CEIS:

The voluntary or mandatory CEIS plan must be submitted to the SEB for approval as part of the annual IDEA subgrant application or amended Subgrant Application. The plan must explain in detail how the funds will be utilized in accordance with 34 CFR § 300.226(b). In addition, the plan must describe the group of students that will be served through CEIS. In your proposal, be sure and provide a budget that sets out the source of funding for each activity that is identified, utilizing the Uniform Chart of Accounts (UCOA). The plan must have SEB approval prior to implementation.

VOLUNTARY AND MANDATORY REPORTING REQUIREMENTS FOR CEIS:

Each LEA that develops and maintains coordinated, early intervening services under 34 CFR § 300.226 must annually report to the SEB on:

- The number of children served under 34 CFR § 300.226 who received early intervening services; and
- The number of children served under 34 CFR § 300.226 who received early intervening services and subsequently receive special education and related services under Part B of IDEA during the preceding two year period. 34 CFR § 300.226(d); 20 U.S.C. 1413(f)(4); 6.31.2.9(D)(4) NMAC.

The students receiving services through a CEIS program, whether it is voluntary or mandatory, must be reported in the Student Accountability Reporting System (STARS) in the *Programs Fact Template, Field 17.* A final progress report, including each student's progress, and whether

or not a student has been referred for special education services, must be submitted to the SEB no later than June 15 of the current year. Failure to submit the progress report may delay the LEA's request for CEIS funds the following grant year.

Should you have any questions with respect to applying to use EIS funds or actually using such funds, please contact the SEB at (505) 827-1457.

cc: Veronica C. García, Ed.D., Secretary of Education
Catherine Cross Maple, Ph.D., Deputy Secretary, Learning and Accountability
Gloria O. Rendón, Ed.D., Assistant Secretary, Instructional Support and Vocational Education
Joey F. Martin, Data and Fiscal Manager, Special Education Bureau
Cynthia Romero, Data Supervisor, Special Education Bureau
Minerva Carrera, Manager, Information and Technology Bureau
Albert Gonzales, Assistant General Counsel