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SECRETARY OF EDUCATION

BILL RICHARDSON  
Governor

November 6, 2007

**MEMORANDUM**

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

**FROM:** Denise Koscielniak  
State Director of Special Education

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

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The following guidance is being provided to you regarding the reauthorization of the Individuals with Disabilities Education Act (IDEA). The New Mexico Public Education Department issues the following guidance regarding early intervening services ("EIS").

**IDEA 15% SET ASIDE:**

Under IDEA 2004, a local education agency ("LEA") may not use more than 15 percent of the amount the LEA receives from its IDEA Part B subgrant 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 coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a 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. 34 CFR 300.226(a); 20 U.S.C. 1413(f)(1): 6.31.2.9(D) NMAC. In other words, the LEA has the option, unless significantly disproportionate, to set aside up to 15 percent of your IDEA grant 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

6.31.2.10(B) NMAC of the New Mexico Special Education Rules, the students to be served by EIS funds would best be described as those at Tier II.

**ALLOWABLE EARLY INTERVENING SERVICES:**

Allowable early intervening services in implementing coordinated, early intervening services under 34 CFR 300.226, that an LEA may are:

- 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.

**INTENT OF EIS:**

The intent of the activities described in 34 CFR 300.226(b) is to: a) provide training for 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 EIS, 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 discretionary basis to set aside 15 percent or less of your IDEA Part B subgrant for EIS, you must complete Objective 4 in the IDEA-B Local Federal Funding Application and submit your proposal to the Special Education Bureau (SEB) for approval. In that proposal, describe how EIS 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 EIS. Prior SEB approval is needed before EIS funding may be used.

**REQUIRED SET ASIDE:**

There are circumstances that require the LEA to set aside the maximum 15 percent of your IDEA Part B subgrant for EIS. 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 SEB must require any LEA identified under 34 CFR 300.646(a) to reserve the maximum amount of funds under 34 CFR 300.226 to provide comprehensive coordinated early intervening services 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 use of the EIS funds under Objective 5 of the IDEA-B Local Federal Funding Application.

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. In your proposal, please provide a budget that sets out the source of funding for each activity so *ESEA* funds may be identified, utilizing the Uniform Chart of Accounts (UCOA).

**REPORTING REQUIREMENTS:**

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 involved in the EIS program 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 EIS funds the following grant year.

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.

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.

DK/ag/le

cc: Veronica C. García, Ed.D., Secretary of Education  
Catherine Cross Maple, Ph.D., Deputy Secretary, Learning and Accountability

Patricia Parkinson, Ed.D., Assistant Secretary, Instructional Support and Vocational  
Education  
Albert Gonzales, Assistant General Counsel, Special Education Bureau