



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Ms. Denise Koscielniak
New Mexico Public Education Department
300 Don Gaspar
Santa Fe, New Mexico 87501-2786

JUN 22 2005

Dear Ms. Koscielniak:

This letter is in response to a request to the Office of Special Education Programs (OSEP) for clarification regarding New Mexico Public Education Department's (NMPED) kindergarten screening program, known as the Dynamic Indicators of Basic Literacy Skills (DIBELS) and Federal requirements related to the participation of children with disabilities in State and district-wide assessments. In October 2004, a representative from your Office e-mailed the following questions regarding this issue to a member of my staff:

1. "Is the Dynamic Indicators of Basic Early Literacy Skills (DIBELS) considered a State-wide, State-mandated assessment under 34 CFR 300.138 of the Individuals with Disabilities Education Act (IDEA), which would require states to develop an Alternate Assessment and guidelines for participation?"
2. "If the DIBELS does fall under the category of a State-mandated assessment, how would we identify or develop an Alternate Assessment to a screening instrument such as the DIBELS?"

As explained more fully below, OSEP has determined that the application of the DIBELS to students in all-day kindergarten programs in New Mexico constitutes a general State assessment program, as described in the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97) and the Individuals with Disabilities Education Improvement Act Amendments of 2004 (IDEA). Therefore, the State is required to include all kindergarten children with disabilities in the screening program, using appropriate accommodations and alternate assessments where necessary. Any guidelines developed and implemented by the State related to alternate assessments of children with disabilities in all-day kindergarten programs in New Mexico must be consistent with the IDEA requirements described below.

Participation Issues

It is our understanding from conversations with members of your staff and information posted on your website that teachers in all-day kindergarten programs and Reading First schools are required to administer the DIBELS as a progress monitoring tool for children in those programs. In New Mexico, all-day kindergarten programs are mandated on a statewide basis in all school districts in the State. The DIBELS was designed to be an early literacy-screening instrument that measures skills such as phonological awareness, the alphabetic principle, and fluency with

connected text. NMPED uses the DIBELS to measure and report performance against the State’s Language Arts Content Standards, Benchmarks, and Performance Standards in reading and early literacy. Because it is apparent that the DIBELS is part of New Mexico’s accountability system for children in kindergarten, and that the progress of children with and without disabilities is measured using the DIBELS, OSEP believes that the DIBELS is a statewide assessment program under applicable provisions of the amended IDEA and the current provisions of IDEA ‘97.

The current regulations for Part B of the Individuals with Disabilities Education Act (Part B), which implement the IDEA Amendments of 1997, require that children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations and modifications in administration, if necessary. 34 CFR §300.138(a). Under those regulations, States have developed guidelines for the participation of children in alternate assessments for those children who could not participate in State and district-wide assessment programs. 34 CFR §300.138(b). Further, each child’s individualized education program (IEP) must include “[a] statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment.” If the IEP team determines that the student will not participate in a particular assessment or part of an assessment, the IEP must contain a statement of why the assessment is not appropriate for the child and how the child will be assessed. The Part B regulations also include reporting requirements at 34 CFR §300.139. 34 CFR §300.347(a)(5).

The provisions in the amended IDEA relating to assessments, which become effective on July 1, 2005, provide additional clarification regarding the participation of children with disabilities in State and district-wide assessment programs, and state in the provision regarding participation in assessments at section 612(a)(16)(A) that “[a]ll children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.” [emphasis added].

With respect to accommodations, section 612(a)(16)(B) of the amended IDEA provides that the State, or in the case of a district-wide assessment, the local educational agency, has developed guidelines for the provision of appropriate accommodations. With respect to alternate assessments, section 612(a)(16)(C)(i) provides further that “the State, or in the case of a district-wide assessment, the local educational agency, has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments with accommodations as indicated in their respective individualized education programs.” Under section 612(a)(16)(C)(ii), these guidelines must provide for alternate assessments that “[a]re aligned with the State’s challenging academic content standards and challenging student academic achievement standards.”

IEP Requirements relating to Assessments

Under the individualized education program (IEP) provisions in the amended IDEA, which become effective on July 1, 2005, there are new requirements for IEP teams to follow with respect to State and district-wide assessments. Under section 614(d)(1)(A)(vi)(aa), IEPs must

include a statement of any individual appropriate accommodations that are necessary to measure academic achievement and functional performance of a child on State and districtwide assessments, consistent with section 612(a)(16)(A). Section 612(d)(1)(A)(vi)(bb)(AA)-(BB) provides that if the IEP team determines that a child must take an alternate assessment for a particular State or districtwide assessment of student achievement, the IEP must contain a statement of why the child cannot participate in the assessment and why the particular alternate assessment selected is appropriate for the child.

Alternate Assessments

It is our understanding that, although all children in all-day kindergarten programs in New Mexico are required to participate in the DIBELS, the State does not have a statewide alternate assessment to the DIBELS for children with disabilities for whom the IEP team has determined the DIBELS is not appropriate. Through phone conferences with NMPED staff, OSEP learned that, although the expectation is that all children in kindergarten participate, the State is not sure how many or what forms of alternate screening instruments are being used for children with disabilities who do not participate in the DIBELS. It is OSEP's understanding, through phone conferences and a review of NMPED's Guidance Memorandum of November 22, 2004, that IEP teams determine how kindergarten children with disabilities will participate in the screening program. According to the Memorandum, "The IEP team has three options: (1) participation in the DIBELS without allowable accommodations; (2) participation in the DIBELS with allowable accommodations; or (3) participation in another form of assessment identified by the IEP team as a more appropriate means of measuring the student's literacy development." However, as noted above, since OSEP considers the DIBELS to be a statewide assessment under section 612(a)(16)(A) of the amended IDEA, NMPED must develop and implement guidelines for the participation of children with disabilities in alternate assessments, and it is these State guidelines that will enable IEP teams to make decisions in this regard for kindergarten children in New Mexico who are unable to take the DIBELS with individual appropriate accommodations.

Performance and Reporting Issues

The DIBELS provides, through five subtests given three times during the kindergarten year, information that determines a child to be either "at risk" or "not at risk" in the development of literacy skills. NMPED staff reported to OSEP that all kindergarten children who participate in an alternate to the DIBELS are determined to be in the "at risk" category. Currently, the State is reporting to the public on the performance of children in kindergarten programs against the New Mexico State Board of Education's (SBE) Standards, Benchmarks and Performance Standards in reading and early literacy. NMPED staff informed OSEP that individual scores are not reported publicly.

Section 612(a)(16)(D) provides that the State, or a local educational agency in the case of a district-wide assessment, makes available and reports to the public with the same frequency and in the same detail as the State reports on the assessment of nondisabled children the following data: the number of children with disabilities participating in regular assessments, the number of those children who are provided accommodations in order to participate in those assessments, and the number of children who participate in alternate assessments that are aligned with the

State’s challenging academic content standards and challenging student academic achievement standards. In addition to participation rates, section 612(a)(16)(D)(iv) provides that, “States must report on the performance of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.”

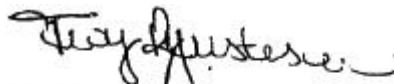
Please note that with respect to the development and administration of assessments, section 612(a)(16)(E) provides that the State and its local educational agencies, in the case of a district-wide assessment, must, to the extent feasible, use universal design principles in developing and administering any assessments under this section.

Conclusion

Based on the applicable IDEA requirements described above, NMPED must review, and as necessary, revise its policies, practices and guidelines regarding the State’s kindergarten screening program to ensure that alternate assessments that are aligned with the State’s content and performance standards are available for those children with disabilities who cannot participate in the DIBELS. Furthermore, when the State reports publicly on the performance of kindergarten children on the DIBELS, it must report on the performance of all children with disabilities according to the requirements of IDEA described above.

Thank you for your attention to this matter. If you have any questions regarding our response to your inquiry, contact Ms. Linda Whitsett, OSEP’s State Contact for New Mexico, at 202-245-7573. We appreciate your ongoing commitment to the provision of quality educational services to children with disabilities.

Sincerely,



**Troy R. Justesen
Acting Director
Office of Special Education
Programs**