

# New Mexico TEAM Professional Development Module: Emotional Disturbance

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## **[Slide 1]: Welcome**

Welcome to the New Mexico TEAM technical assistance module on making eligibility determinations under the category of emotional disturbance. This module will review the guidance of the NM TEAM section on emotional disturbance, also known as ED. During this module, you will sometimes be referred back to a different module or other resources for additional information. We encourage you to have a copy of the NM TEAM available and open to the section on ED for reference during this module.

## **[Slide 2]: Learner Objectives**

After successfully completing this module, you will have the knowledge to use evaluation data effectively to make an eligibility determination under the category of emotional disturbance or ED. Specifically, you will be able to: understand the federal definition of ED, identify some common characteristics of ED and the associated educational impact, and recognize special considerations for assessment for children with known or suspected ED. Additionally, you will understand the highly recommended and potential components of an evaluation for ED, know the criteria required for eligibility under the category of ED, and understand how to document the team's eligibility determination decisions.

## **[Slides 3-8]: Definition**

[Slide 3]: When teams are making eligibility determination decisions, IDEA outlines a two-step approach. Each of these steps involves responding to a specific question—the first question is “Does the child have a disability as defined by IDEA?” and the second question is “Does the child require specially designed instruction as a result of this disability?”

This module will walk you through answering those two questions. First, we'll talk about the definition of ED, as defined by IDEA, to help you begin to better understand the disability itself. Next, we'll talk about the impact of the disability on educational performance to help you understand when a child might require specially designed instruction as a result of ED. Later, after establishing this basic framework, we'll talk more specifically about the evaluation components and the eligibility determination decisions.

IDEA's definitions of disability terms are the cornerstones of eligibility determination decisions. The definition, combined with comprehensive assessment data, including detailed information about the child's background, educational strengths and needs, and other pertinent factors, helps schools, educators, and parents determine if the child is eligible for and in need of special education and related services. Please take a moment to read the IDEA definition of ED and then we'll take a closer look at it.

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[Slide 4]: Now let's take a closer look at the definition. This definition of the disability will help teams answer the question: "Does the child have a disability as defined by IDEA?"

ED means a condition exhibiting one or more of the following five characteristics ... over a long period of time ... and to a marked degree, ... and, that adversely affects a child's educational performance. The characteristics include: an inability to learn which cannot be explained by intellectual, sensory, or other health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; and/or a tendency to develop physical symptoms or fears associated with personal or school problems.

To be identified as a child with ED, the child must demonstrate one or more of these characteristics. The characteristic or characteristics must be evident "over a long period of time" and "to a marked degree." What is meant by "over a long period of time" and "to a marked degree"? Although IDEA does not clearly define these terms for us, the Office of Special Education Programs, also referred to as OSEP, has provided guidance that can help teams identify when it might be appropriate to consider an eligibility under the category of ED.

[Slide 5]: According to OSEP, a generally acceptable definition of "a long period of time" is a range of time from two to nine months - assuming that systematic interventions have been implemented and proven ineffective during that period.

[Slide 6]: Although OSEP hasn't clearly defined the term "to a marked degree," their position is that data regarding the behaviors of concern need to be collected, documented, and interpreted. The data collected need to include information regarding the frequency, duration, or intensity of the child's behaviors so that a comparison can be made between the behaviors of concern and the behavior of the child's peers.

[Slide 7]: The IDEA definition of ED also states that children cannot be eligible under the category of ED if they are "socially maladjusted." This is perhaps the most controversial and confusing part of the regulation. "Socially maladjusted" remains a concept for which there is currently no universally accepted definition, nor is it defined in federal law. Social maladjustment can include behaviors such as frequent involvement in the criminal justice system, truancy, running away from home, gang behavior, early sexual promiscuity, and drug/alcohol use. Although these behaviors may be concerning, they alone are not enough to determine that a child is eligible under the ED category. Similarly, self-injurious behaviors such as cutting or suicidal ideation are also not enough to qualify a child under the category of ED. Although these behaviors may be suggestive of a need for counseling or psychological services, they do not necessarily impact educational performance or require specially designed instruction. Please remember that this does not mean that children who engage in these behaviors are never eligible for special education and related services under the eligibility category of ED. Simply, a child identified as

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socially maladjusted must meet all of the eligibility criteria for ED as defined in IDEA in order to be found eligible for services under this category.

[Slide 8]: Similarly, children with schizophrenia may be eligible under the category of ED if they meet all of the eligibility criteria under this category.

It is important to remember that this disability must adversely affect the child's educational performance in order for the child to be found eligible for special education and related services. Now, we'll talk about this second step to eligibility determination decisions by first talking about educational performance in general and then looking specifically at issues related to ED.

### **[Slides 9-15]: Educational Performance**

[Slide 9]: To determine the impact of a disability on a child's educational performance, the team needs to answer the question: "Does the child require specially designed instruction as a result of this disability?" If a child with a disability does not require specially designed instruction, then the child would not qualify under IDEA and teams should consider the implementation of a Section 504 plan or other classroom interventions to address the child's needs.

[Slide 10]: According to IDEA, specially designed instruction means adapting, as appropriate, the content, methodology, or delivery of instruction to meet the unique needs that result from a child's disability. This includes special education.

[Slide 11]: In New Mexico, services provided by a speech-language pathologist may also be considered special education, not simply a related service, if the services meet the requirements outlined in the New Mexico Administrative Code, typically referred to as NMAC.

[Slide 12]: When evaluating a child for potential eligibility for special education and related services under the eligibility category of ED, according to IDEA, it is important that teams remember to consider three aspects of the child's educational performance. This includes the child's ability to: be involved and make progress in the general education curriculum, participate in extracurricular and other nonacademic activities, and be educated and participate with other children with and without disabilities.

[Slide 13]: Teams are probably most familiar and most comfortable with the first of these areas: determining if a child's disability results in a need for specially designed instruction in order to be involved in and make progress in the general education curriculum. While this includes academic progress, it may also include social skills, problem solving, communication, and other general curriculum areas.

[Slide 14]: Second, it is also important for teams to consider whether a child needs specially designed instruction in order to participate in extracurricular and nonacademic activities, such as recess, sports, choir, drama, and other clubs or school-related activities. For example, a child with ED may be

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performing satisfactorily in classroom activities because of the amount of supports inherent in the classroom environment. However, this child may have difficulty with participation in extracurricular activities, like soccer or choir, because of the interaction between his disability and the nature of the activities. According to IDEA, this child may be found eligible for special education and related services because of the impact of his disability on his ability to participate in these activities. An example of this might be a child with ED who requires supplementary aids and services to participate in after-school clubs. It is important to recognize that IDEA doesn't guarantee children access to competitive teams or groups because of their disability. However, they should be permitted the same opportunity as other children to try out for the activities and/or teams. The New Mexico Activities Association provides guidance regarding academic eligibility for participation for children enrolled in special education programs.

[Slide 15]: The third and final area for teams to consider is the child's ability to be educated and participate with other children, including those with and without disabilities. This is essentially a question of educational environment. For example, a child with ED may be able to access the general curriculum and participate in extracurricular activities, but because of his disability, it may be especially difficult for him to be educated in the general education classroom. This is not a discussion about where services will be delivered, but what services are necessary. For example, an eligibility determination team, also called an EDT, may determine that a child with challenging behaviors needs specially designed instruction in order to develop and support appropriate classroom behaviors and interactions. Other examples include a child with attention difficulties who requires specially designed instruction to learn strategies to improve his attention and focus in the classroom, or a child who needs specially designed instruction in the form of social skills interventions in order to participate in activities with peers. Where the first question teams ask relates to access to curriculum, this question addresses the educational setting for the child. For young children, teams should consider environments that other children with and without disabilities are involved in.

[Slide 16]: Under the category of ED, it is important that teams remember that there must be evidence that the child's behavior and decreased educational performance are related before a child can be found eligible for special education and related services under the eligibility category of ED. EDTs need to keep in mind that educational performance is not limited to academic performance, but may also include peer interactions and participation in class activities. So, there may be children who qualify under the eligibility category of ED, but who demonstrate adequate or even strong or advanced academic performance. In other words, the child may be making academic progress, however, his behaviors may limit his social interactions with adults and peers, his ability to participate in large group or unstructured activities, and/or he may engage in high rates of inappropriate verbal or nonverbal behaviors.

Now that we've talked in general about educational performance, let's look specifically at the possible adverse effects of ED on a child's education.

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### **[Slides 17-23]: Characteristics and Educational Impact**

[Slide 17]: We're going to highlight some of the developmental areas that are commonly impacted by ED to help teams identify characteristics that may suggest that a child has ED. As we discuss the different areas, we will highlight characteristics and educational impact for both preschool-aged and school-aged children with ED. Although we're examining the same developmental areas for both age groups, the characteristics may be manifested in different ways depending on the developmental level of the child and the demands of the environment. It is important to recognize that the effects of ED will vary considerably, depending in large part upon the interaction between the child's characteristics, and the school, family, and community supports.

To identify the educational impact for a child with ED, the EDT must examine the demands of various settings and environments and the child's abilities to meet those demands by addressing the question of "How do the characteristics of the disability manifest in the child's natural environments (including home, classroom, recess, and others)?" This determination needs to be made at a very individual level for each child and must be based on comprehensive information about the child and his environments, including information gained from observing a child's functional and academic performance across a variety of settings.

It is important to note that although concerning or inappropriate behaviors for children with ED exist across multiple settings, environments, and activities, the child may not engage in these behaviors in all settings, or at least not at the same frequency, intensity, or severity. For example, the behaviors may be less frequent or pervasive when the child has been given clear expectations or the activities are highly engaging. In contrast, if the activity is in a non-structured setting or without clear boundaries, the behaviors may be more prevalent or intense.

[Slide 18]: EDTs should understand that children with ED engage in behaviors that can be categorized as either externalizing or internalizing.

[Slide 19]: Externalizing behaviors include, but are not limited to, aggression, acting out, and disruptive behaviors.

[[Slide 20]: In contrast, internalizing behaviors include being withdrawn, showing anxiety, and being depressed. Although not always the case, it is more typical for male children to engage in externalizing behaviors while female children frequently present with more internalizing behaviors. These behaviors alone do not indicate an emotional disturbance; however, they may suggest that further evaluation is appropriate.

[Slide 21]: Under the category of ED, the characteristics are organized around social/emotional for preschool children and social/emotional and academics for school-aged children. Each of these domains includes a range of skills that may be impacted by ED.

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When we are looking at the domain of social/emotional, for example, when frustrated with a task, preschoolers may act out physically and verbally due to difficulty with self-regulation and/or problem-solving skills. They may try to solve problems and express their frustrations by engaging in behaviors such as throwing toys, stomping their feet, hitting, or simply stopping the task. This same type of aggression in older children may be manifested by behaviors such as verbal and nonverbal aggression, like swearing, fighting, and name-calling, non-compliance with rules and directions, and physical aggression towards property. Some children, though, may not demonstrate these outward signs of frustration, and may respond to frustration in other ways, such as walking away, putting their heads on the desk, or simply avoiding a certain activity.

[Slide 22]: A similar pattern is seen in the social interactions of children with ED. Preschool children may be awkward or inappropriate when initiating, maintaining, and/or terminating conversations. For example, the child may start conversations physically by tugging on someone's sleeve, they may not take turns appropriately, and they may stop a conversation by just walking away or engaging in another task. Similarly, school-aged children with ED may interrupt, start conversations at inappropriate times, with inappropriate people, or in inappropriate places. Additionally, they may have conversations about inappropriate topics. They may not be able to keep a conversation going or may not recognize when it is time to end a conversation.

It is important to recognize that all preschool aged children are still developing their problem-solving and social interaction skills. These behaviors should only be considered indicative of ED or another disability when they deviate in severity, frequency, or intensity from what is typically seen in young children.

In addition to the more noticeable externalizing behaviors we just discussed, some preschool children may show signs of pervasive depression or withdrawn behaviors. These children may demonstrate behaviors such as a consistent preference for solitary activities and to be alone, may not demonstrate the expected excitement or enthusiasm for activities, and may be described as having a certain degree of "low energy." School-aged children with pervasive depression or withdrawn behavior may not be as actively involved in peer activities and play as would be expected for their age. They may cry more than usual or at times that seem inappropriate for the setting. As children get older, we often see an increase in high-risk behaviors related to depression, such as substance abuse, risky sexual behaviors, suicide attempts, excessive absences, excessive sleeping, etc.

[Slide 23]: Finally, when looking at the domain of academics for school-aged children, the child may demonstrate academic difficulties, as well as have difficulty attending to and completing academic and/or non-academic tasks. Some children with ED will demonstrate inconsistent patterns of performance. These students may demonstrate proficiency on short-cycle and standards-based assessments on some administrations and less than proficiency on others. They may complete work in the classroom, meeting a standard equivalent to their peers some days, and other days demonstrate a lower than expected performance. Other children may perform well on standards-based assessments

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and formal testing, but are consistently failing on classroom assignments either because of performance or truancy. These inconsistencies may be indicative of emotional or behavioral challenges and should be further explored.

For some children, their behavior doesn't support participation in academic and non-academic activities. These are children who may frequently be in the office; lose access to recess or school activities, such as dances; or are suspended frequently. These children are losing out on educational and non-academic opportunities with their peers.

Please refer to the "Characteristics and Educational Impact" section of the NM TEAM for more detailed information in each of these areas, but remember that the characteristics presented in NM TEAM are not meant to be exhaustive nor is the NM TEAM suggesting that all children with ED will demonstrate all of the presented characteristics. It is important for teams to recognize that these characteristics may lead to limited opportunities for engaging in age-appropriate activities, opportunities to be educated with peers, and the learning that accompanies these activities.

### **[Slides 24-27]: Special Considerations for Assessment**

[Slide 24]: It is important for EDTs to be aware of issues related to evaluating young children and children with known or suspected disabilities, regardless of the eligibility categories being considered. For example, when evaluating young children, it is imperative that the impact of the family, home environment, home language, and developmental history be considered. Although it's important with all eligibility categories, because of the developmental nature of social, emotional, and behavioral skills, it is essential that evaluators of young children with suspected ED are knowledgeable about early childhood development in these areas. Specifically, EDTs must determine that a possible lack of exposure to developmentally appropriate activities is not the primary reason for the child's difficulties. In addition, for a child with a known or suspected disability, EDTs must ensure that the assessment results accurately reflect the areas being assessed. For example, be careful that you are not measuring the child's sensory, motor, or speaking skills, unless those are the skills you wish to assess. Please review NM TEAM section 6 for more information on these issues.

[Slide 25]: Like all of the eligibility categories, ED has unique characteristics that can influence the evaluation process. Perhaps the most challenging part of an eligibility determination decision under the category of ED involves determining the relationship between academic and behavioral concerns. Often, but not always, academic and behavioral concerns go hand-in-hand. It can be difficult to determine how these concerns are related because while it is possible that the child is engaging in inappropriate behaviors due to academic deficits, it is also possible that the child is falling behind academically because of the inappropriate behaviors.

[Slide 26]: To assist in determining this causal relationship, teams should determine whether the child has a skills deficit or a motivational deficit. Teams can utilize a functional behavioral assessment, also called an FBA to answer the questions, is it that the child "can't do it?" or that he "won't do it"? These

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questions are essential considerations when interpreting all of the data, including classroom-based assessments, standardized tests, and observations of behavior. Answering these questions is critical for appropriate eligibility determination under the ED eligibility category.

[Slide 27]: Because of the nature of the needs of children with suspected ED, it is important for evaluators working with the child to consider and attend to issues related to the assessment process. These issues include providing appropriate structure and encouragement, taking time to clearly establish rapport with the child, recognizing the appropriate personnel and methods to use during the assessment process, and taking breaks if the child becomes frustrated. While these are considerations for all evaluations, they may be more significant during the evaluation of children with suspected ED. It is important that EDTs remember that they are making an educational determination of ED, not a medical, psychiatric, or psychological diagnosis. Medical, psychiatric, and/or psychological factors should be considered and in some specific situations, documentation in these areas may be necessary to make appropriate eligibility or program decisions.

In New Mexico, it is necessary that the child meets the eligibility criteria outlined in the NM TEAM ED chapter and on the corresponding eligibility determination worksheets.

### **[Slides 28-30]: Initial Evaluation: Emotional Disturbance**

[Slide 28]: To answer the questions on the eligibility determination worksheets and make eligibility decisions, it is important to discuss the evaluation components that are outlined in the NM TEAM. A number of the components are the same across most, if not all, of the eligibility categories. These components are outlined and discussed in the Conducting Initial Evaluations Module.

Highly recommended evaluation components for ED are listed on the screen in front of you and in the NM TEAM under the ED section. All of the highly recommended components are important and should be addressed in an evaluation, but some of the elements need to be discussed in a bit more depth to help evaluators more clearly understand the component within the context of ED.

Please remember that the assessments chosen must be tailored to assess specific areas of suspected disability and educational need. Assessment of children for whom ED is suspected should be multidisciplinary, comprehensive, and conducted by individuals experienced in evaluating individuals with ED. There is no single definitive assessment for suspected ED. Thus, the use of multiple tools, as well as the professional judgment and skill of the professionals who conducted the evaluation, will ensure accurate findings. Please remember that the NM TEAM provides information about common characteristics of children with ED—this information can help EDTs identify if ED may be an appropriate eligibility category for consideration.

Remember, that in New Mexico eligibility determination under the category of ED must include the participation of a New Mexico licensed clinical or school psychologist and that a psychological evaluation be completed as part of the eligibility determination process. The team should determine what areas should be included in the psychological evaluation.

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First, let's talk about the information gathered during a review of existing data, the child's history, and direct observations of the child's behavior. When evaluating a child for suspected ED, EDTs should pay particular attention to information that documents that the behaviors of concern have been prevalent for an extended period of time, which is generally considered to be at least 2 to 9 months. Often an appropriate and useful way to begin gathering this information is looking at the frequency and dates of office discipline referrals, as well as teacher and parent interviews or reports, previous functional behavior assessments and behavior intervention plans. If the child has just started engaging in the behaviors of concern or if the behaviors are a result of a recent traumatic event such as the death of a family member, the child would not be eligible under the category of ED.

[Slide 29]: Similarly, the team needs to gather information that demonstrates that the behaviors are occurring "to a marked degree," in other words, that the behaviors are significantly more frequent, severe, or intense than the behaviors of their same-age peers. This information can be obtained through teacher and parent interviews, classroom observations, and behavioral rating scales. Finally, the team will need to collect data that the behaviors adversely affect the child's educational performance. Although some of the information documenting the educational impact may come from short-cycle assessments, academic achievement tests, and other relevant academic data, teams need to remember that educational impact is not defined as academic achievement deficits alone. EDTs should recognize that the academic performance of children with ED may or may not be impacted. Some children with ED may perform well on standards-based assessments, standardized academic achievement tests, and other assessments, such as basic receptive and expressive language measures, but may have significant difficulty participating in learning activities with their peers and adults. EDTs must understand that a child does not need to demonstrate academic achievement deficits to be found eligible for special education and related services under the category of ED, but they do need to show significant educational impact.

In addition, the evaluation must document that the child has one or more of the characteristics of ED. That is, in order to determine that a child is eligible under the category of ED, the EDT must also document that the child engages in one or more of the following behaviors: an inability to learn which cannot be explained by intellectual, sensory, or other health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; and/or a tendency to develop physical symptoms or fears associated with personal or school problems.

EDTs need to make a thoughtful decision about the type of assessments used and data gathered so that they obtain a comprehensive view of the child's abilities and deficits.

As part of the evaluation, the child's academic achievement skills should be assessed and documented. This will likely include informal and formal measures of the child's academic achievement performance obtained from teacher information and state/local evaluations, as well as from an individual academic achievement assessment administered as part of the child's evaluation. In addition to collecting

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information on the child's academic achievement, the assessment of the student's academic achievement also allows for face-to-face interaction with the child and an opportunity to observe and document how the child works, approaches difficult problems, handles frustration, communicates with adults, and participates in the evaluation in general. Note that even in a situation when the child refuses to complete the test or part of the test, valuable information can be obtained.

Conducting systematic observations across multiple settings is also a critical aspect of the evaluation, as they provide relevant information about the learning environment, including curriculum and task demands. In addition, these data will help teams document the frequency and duration of the behaviors of concern, to compare the child's performance to that of their peers. The observer should conduct observations across different times of the day, different people, different days of the week, and structured and unstructured settings. Observations can be formal (for example, a set time to sit in a classroom or other setting and collect data) or, informal, such as observing while team teaching in the classroom, supervising the lunchroom or playground, or passing in the hallways.

Observational data also lend themselves to the completion, review, and updating of the functional behavioral assessment (or FBA). For children with ED, a comprehensive FBA is paramount in identifying the function of the behavior, which is critical for developing an effective intervention that is designed to reduce the undesirable behavior and increase the desired, pro-social, or replacement behaviors. This information is also useful in determining the appropriateness of placement and services.

[Slide 30]: Finally, it is important to recognize that decisions regarding transition assessments need to be highly individualized for each child and situation. In New Mexico, transition planning must be documented on the first IEP in effect when the child turns 14 or during their 8th grade year, whichever comes first. This type of transition planning specifically relates to the child's progression from the public schools to post-secondary settings. However, EDTs should recognize first that this planning may need to start earlier for some children and second, that transitions occur throughout a child's school tenure. For example, children transition from preschool to elementary school, from elementary school to middle school, between schools, and so on. EDTs should ensure that they have the information necessary to support children through all of these critical transitions, as appropriate for each individual child.

### **[Slide 31]: Potential Additional Components**

It is the responsibility of the team to answer any questions that may arise throughout the evaluation process, including what eligibility category best describes the child's primary disability and what supports and services the child needs. The highly recommended evaluation components that we've discussed should help teams answer many of the questions that they might have, but in some situations, teams may require additional information. Although the NM TEAM section that addresses the category of ED does not present any potential additional components, EDTs should remember that they are responsible for collecting the data necessary to address any areas of concern. This may include evaluation components that aren't listed under the Initial Evaluation category. EDTs make the final decisions regarding other areas that they need to explore to make an appropriate eligibility

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determination decision for a child based on the reason for the referral and other questions that arise during the evaluation process.

### **[Slides 32-43]: Eligibility Determination Process for Emotional Disturbance**

[Slide 32]: Before we examine criteria that are specific to the eligibility determination decision for ED, we would like to remind you that general information regarding the eligibility process and use of the eligibility determination worksheets is presented in the module, “Eligibility Determination and Use of Eligibility Determination Worksheets.” We encourage you to listen to that module and to review the information presented in the NM TEAM in “Section Six. Essential Components of Eligibility Determination.”

For this discussion, you will find it helpful to refer specifically to the “Eligibility Determination” and “Eligibility Determination Worksheets” sections within the ED chapter of the NM TEAM.

[Slide 33]: To determine that a child is eligible for special education and related services as a child with ED, an EDT must first determine that the child is a child with a disability, and second that the child demonstrates a need for specialized instruction as a result of his or her disability.

[Slide 34]: The Eligibility Determination Worksheets are structured to guide the EDT in making these decisions. They provide a detailed road map to guide teams not only in working through the process, but also in documenting their decisions. We will use the ED worksheet as a guide for the rest of this discussion.

[Slide 35]: First, the EDT must document relevant identifying information and the assessment and evaluation data they have collected and will be using in the eligibility determination process. This information should reflect data collected from multiple data sources.

[Slide 36]: Second, under the “Determine the presence of a disability” section, the EDT will address seven questions that specifically relate to determining if a child has ED.

[Slide 37]: The first two questions, questions 1 and 2, which are consistent across almost all of the eligibility categories, require that the EDT discuss determinant factors related to the child’s performance, specifically the lack of appropriate instruction in reading and math, as well as limited English proficiency. Essentially EDTs must consider all of the factors contributing to the child’s difficulties and decide which factors are the primary cause or causes of the child’s difficulties. Like all decisions, these decisions must be made based on comprehensive evaluation data and with the input of all of the members of the EDT. It is important that EDTs recognize that a child may have experienced a lack of appropriate instruction and/or have limited English proficiency, but if these factors are not the primary reasons for the child’s difficulties, they would not be considered determinant factors. Once the EDT has ruled out either of these factors, they check “Yes” on the Worksheet. This communicates that “Yes, they have eliminated the possibility that one of these factors is a determinant factor.” If the EDT is considering more than one potential eligibility category, these first two question would be answered the

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same and use the same documentation across all of the categories. EDTs may find it useful to complete multiple worksheets simultaneously if they are considering more than one eligibility category.

Additionally, EDTs should remember that lack of appropriate instruction for preschool-aged children is considered to be a lack of opportunities to participate in developmentally appropriate activities. It is important to remember that the lack of opportunities must be due to a reason other than the nature of the child's disability in order for it to be considered a determinant factor. For example, it may be that a young child has significant behavioral challenges that make it difficult for the family to involve the child in family and community activities. In this situation, even though the child has had a lack of opportunity to participate in these activities, EDTs should not consider this as the determinant factor for the child's learning difficulties. Rather, this information might be helpful and used as further documentation to support a decision that indicates that a child is eligible for special education and related services.

[Slide 38]: Questions three, four, five, and six are unique to ED. To answer these questions, the team must determine that the child is a child with ED, as defined by IDEA based on assessment and evaluation data collected by the EDT. To respond to these questions, EDTs must consider assessment data from a multiple sources, including data from a variety of settings and from multiple perspectives, such as teachers, parents, and the child. To answer question three, the EDT must determine whether or not the child demonstrates one or more of the five ED characteristics. That is, does the child display one or more of the following: an inability to learn which cannot be explained by intellectual, sensory, or other health factors, an inability to build or maintain satisfactory interpersonal relationships with peers and teachers, inappropriate types of behaviors or feelings under normal circumstances, a general pervasive mood of unhappiness or depression, and/or a tendency to develop physical symptoms or fears associated with personal or school problems. To be eligible for special education and related services under the eligibility category of ED, the team must answer "yes" to **one or more** of the above characteristics.

[Slide 39]: For the fourth question, the EDT must determine that the ED characteristics described in question three have been present over a long period of time, to a marked degree, and that the child's educational performance is adversely affected. We will highlight each of these terms now, but please remember that the NM TEAM section on ED includes more detailed descriptions. First, EDTs must determine if the behaviors, or ED characteristics discussed in question three, have been present for a long time. In general, "a long period of time" is considered to be approximately two to nine months, assuming that appropriate interventions have been provided during that time. However, this is a very general recommendation and EDTs must consider each individual child when responding to this question. Second, EDTs must determine if the behaviors have been present to a marked degree. Although neither IDEA nor its regulations define this requirement, the Office of Special Education Programs, or OSEP, provides guidance that teams should look at the frequency, duration, and/or intensity of a child's behavior when answering this question. Finally, EDTs must determine whether the child's behaviors are adversely affecting his educational performance. This is not limited to academic performance, but also includes peer interactions, participation in class activities, and other educational

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activities. EDTs must remember that they should not focus solely on whether the child is able to perform adequately on standardized achievement measures, including diagnostic and state or local testing. Many times children with ED will demonstrate adverse educational performance in other forms, such as engaging in disruptive behaviors, demonstrating difficulty with peer relationships, and not completing work in class or at home. A child can have adequate academic performance, but still be a child with ED because of the impact of the behaviors on other educational areas. Although results of cognitive assessments and academic achievement assessments will provide the EDT with valuable information regarding the most appropriate educational program for the child, the scores from these assessments may not directly relate to the eligibility determination decision. As with all decisions, this determination will be made individually for each child with suspected ED. In order for a child to be considered to be considered under the eligibility category of ED, the EDT must be able to answer “yes” to all three parts of question four. If even one of these answers is a “no,” then the child is not eligible for special education and related services under this category.

[Slide 40]: The fifth question is specifically related to determining whether the child meets the requirements of the ED definition. Specifically, has the EDT determined that the assessment and evaluation data demonstrate that the child is a child with ED? To answer this question, the EDT must consider all of the evaluation data and their answers to the previous four questions. If the answers to the previous four questions suggest that the child has ED, the EDT would answer “yes” to this fifth question. Otherwise, they would answer “no” and the child would not be considered eligible under the category of ED.

[Slide 41]: The sixth question relates to an exclusionary factor for ED: social maladjustment. The EDT must document whether or not the child engages in socially maladjusted behavior that is not related to the emotional disturbance. As we’ve discussed, there is no universally accepted definition of “socially maladjusted,” however, there are some behaviors that are associated with social maladjustment and not ED. Please refer to the ED section of the NM TEAM for a more complete discussion of this issue. If the child engages in socially maladjusted behaviors but does not meet all the requirements of ED, then the child would not be considered to be a child with ED. On the other hand, if a child engages in socially maladjusted behaviors and **also** meets the criteria for ED, then they may be considered to be a child with ED, as the socially maladjusted behaviors could be considered to be related to the ED. Although for most questions, the EDT must answer “Yes” in order to continue with the discussion regarding the child’s eligibility under a particular category, for this question, if the EDT answers “Yes,” they are saying, “Yes, something other than ED is the reason for the child’s behavior and educational difficulties.” This would mean that the child is not eligible for special education and related services under this category. If the EDT determines that socially maladjusted behavior is either not present or is present, but related to the ED, the EDT would answer “No” to this question and continue on to the final question in this section: question seven.

[Slide 42]: The seventh question to be addressed is also consistent across all eligibility categories, like the determinant factors. In this case, the EDT is determining if any other eligibility category better

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describes the child's disability. It is possible that a child demonstrates more than one disability, but if the EDT determines that ED **best** describes the child's disability, they would respond "Yes, we've determined that no other category better describes the child's disability." On the other hand, if the child has ED but also has another disability and the other disability better describes the child, the EDT would answer "No, we've determined that another category better describes this child's disability." In either case, it is likely that the EDT will need to complete the "Determine the presence of a disability" section on one or more worksheets for the other eligibility categories being considered.

In addition to answering each of the questions "yes" or "no" in this section, it is critical that the EDT briefly describe the documentation that supported each of their decisions.

[Slide 43]: Each of the seven questions serves as a stopping point in the process, depending on the EDT's answer. For most of the questions, if the EDT answers "no," they have determined that the child is not a child with ED. The exception to this is question six, as we've discussed. For question six, a "yes" answer serves as a stopping point. If the EDT hits a stopping point, they should stop moving through the questions. If the EDT either is not considering another potential eligibility category or has already completed the "Determine the presence of a disability" section for other potential categories, the EDT should move to the "Determination of eligibility for special education and related services" section of the worksheet. At this point, the EDT will document the determination that "The child is not eligible under the eligibility category of ED." They also need to indicate why that decision was reached by indicating either that the child doesn't have ED or that a different category best describes the child's disability. The process then stops for this eligibility category.

The responses to these seven questions determine whether or not the EDT will proceed to the section of the worksheet, "Determination of the need for specially designed instruction." Remember, if you have even one "no" response to any question other than question six or a "yes" response on question six, you skip over the "Determination of the need for specially designed instruction" section.

[Slide 44] To determine the need for specially designed instruction, using the assessment and evaluation data collected, the EDT must determine if, as a result of ED, the child requires special education and related services in one or more areas outlined in IDEA.

[Slide 45] These areas include: being involved in and making progress in the general education curriculum or developmentally appropriate activities; participating in extracurricular and other nonacademic activities; and/or being educated and participating with other children with and without disabilities. The EDT must answer "yes" to at least one of the questions in this section of the worksheet to say that the child requires specially designed instruction because of needs resulting from ED.

[Slide 46] After answering these three questions, the EDT moves into the final phase of the eligibility determination process—documenting the final eligibility determination decision. This section of the worksheet, "Determination of eligibility for special education and related services," allows EDTs to document that either the child is eligible for special education and related services under the category of

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ED, is not eligible under the category of ED, or that more information needs to be collected to make a determination.

[Slide 47] If the EDT determines that the results of the evaluation indicate that the child requires specially designed instruction as a result of ED, the child would be eligible under the category of ED.

[Slide 48] If the EDT determines that the child is not eligible under the category of ED, they must indicate the rationale for that decision by checking one of the four options within that decision. These options allow EDTs to document either that the child doesn't have ED or any other disability, that the child does not have ED, but is eligible under another eligibility category, that the child has ED but another eligibility category better describes the child's primary disability, or that the child has ED, but doesn't demonstrate a need for specially designed instruction. This section allows for the documentation that a different eligibility category better describes the primary disability.

EDTs should clearly read the questions presented on the worksheet and determine which situation most accurately describes the child being evaluated. Any child who is found to be "not eligible" for special education and related services must be referred to the SAT.

Finally, if the EDT is unable to make an eligibility determination, they may identify additional information that need to be gathered. They would then reconvene later to make the final eligibility determination decision.

### **[Slide 49]: Reevaluation and Discontinuation of Services**

The Reevaluation worksheets in the NM TEAM will support the EDT through the documentation and decision-making process during reevaluations.

Any child whose special education services are discontinued should promptly be referred to the SAT at his or her school to ensure that the child is supported in this important transition period. Monitoring of social skills, behavior, communication, current levels of academic performance, and independence may continue to be necessary, even if special education supports are discontinued.

### **[Slide 50] Closing**

Thank you for participating in this NM TEAM training module. We hope this information has been helpful in clarifying and expanding on the information presented in the manual.